

Deed

Mt Gilead

Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Minister for Planning

Lendlease Communities (Mt Gilead) Pty Limited

Lendlease Communities (Mt Gilead No.3) Pty Limited

Mount Gilead Pty Limited

Date:

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Mt Gilead Planning Agreement

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Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

The Minister for Planning ABN 38 755 709 681 of Level 15, 52 Martin Place,
Sydney NSW 2000 (**the Minister**)

and

Lendlease Communities (Mt Gilead) Pty Limited ACN 605 278 331
of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo
Avenue, Barangaroo NSW 2000

and

Lendlease Communities (Mt Gilead No.3) Pty Limited ACN 614
296 294 of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300
Barangaroo Avenue, Barangaroo NSW 2000

(together referred to as **Lendlease**)

and

Mount Gilead Pty Limited ABN 92 008 499 189 of Level 16, 1 Market Street,
Sydney NSW 2000 (**Mount Gilead**)

Background

- A The Landowners own the Land as set out in Schedule 3. The Land is located in the local government area of Campbelltown City Council.
- B The Developer wishes to carry out the Development on the Land.
- C The Developer sought a change to the LEP applying to the Land to enable the Development to be carried out.
- D The Developer has offered to enter into a planning agreement and make Development Contributions in connection with the change to the LEP and the carrying out of the Development, in accordance with the terms and conditions of this Deed.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

Actual Cost means in relation to an Item of Road Work :

- (a) the final certified contract cost inclusive of variations following compliance with all of the Developer's obligations under the WAD;
- (b) other costs (not exceeding in total an amount that is 15% of the amount in paragraph (a) above) reasonably incurred in the carrying out of the Item and paid by the Developer to third parties for the following:
 - (i) design of the Item, project management, fees, investigations, consultant fees, studies or reports specifically required for the Item, other than the design costs which are Item 1 of Part B of the Table;
 - (ii) any Approval specifically required to be obtained for or in relation to the carrying out of the Item; and
 - (iii) other matters only where the approval of the Minister to the inclusion of such costs has been given in writing to the Developer,

and the costs incurred must be reduced by any input tax credit the Developer is entitled to in respect of the Item of Road Work.

Actual B10 Cost means the Actual Cost of Item 10 in Part B of the Table.

Approval includes approval, consent, licence, permission or the like.

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 without any expiry or end date in favour of the Minister to pay an amount or amounts of money to the Minister, on demand, issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Minister in its absolute discretion.

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Base CPI means the CPI number for the quarter ending March 2018.

Biodiversity Conservation Obligation means any agreement (including a biodiversity certification agreement) or binding legal obligation requiring the dedication of land (including subdivision of that land) or the placement of constraints in relation to land, for conservation purposes.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

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

Construction Certificate has the same meaning as in the Act.

Contamination has the same meaning given to it in the *Contaminated Land Management Act 1997* and includes asbestos and lead.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Council means Campbelltown City Council.

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

CPI Adjustment Date means 1 July 2019 and each anniversary of that date.

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

Dealing means in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.

Dedication Land means a part of the Land of approximately 5.27ha to the reasonable satisfaction of RMS having regard to the final design of the Road Work and the provisions of the WAD and being in the general location of the land shown on the plan in Schedule 7 and being Item 1 in Part C of the Table.

Deed means this planning agreement and includes any schedules, annexures and appendices to this planning agreement.

Department means and includes, where relevant, the NSW Department of Planning and Environment, the Secretary and the Minister.

Developer means Lendlease subject to clause 6.2 and clause 16.9.

Development means the staged development of the Land for urban purposes including approximately (but no more than) 1,700 residential housing lots, and community facilities, retail and commercial and employment lands, parks, open space and infrastructure which has been made permissible by the Instrument Change.

Development Consent has the same meaning as in the Act.

Development Contribution means a Monetary Contribution, the dedication of the Dedication Land free of cost, the carrying out of the Road Work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, as set out in Part 1 and 2 of Schedule 4, but does not include any Security or other benefit provided by a Party to the Minister to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

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Final Lot means a lot created in the Development for separate residential, retail or commercial occupation and disposition and which is not intended to be further subdivided (including to create a strata or community lot), or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Minister, RMS or the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Deed.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Instrument Change means the making of the *Campbelltown Local Environmental Plan 2015 (Amendment No.2)* and *Campbelltown Local Environmental Plan 2015 (Amendment No.6)*.

Item means an Item specified in Column 1 of the Table.

Item of Dedication Land means a part of the Dedication Land on which a Road Work is to be constructed.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means the land described in Schedule 3 and shown on the Location Plan.

Landowner means Mount Gilead in respect of Lots 1-5 in DP1240836 and Lendlease in respect of Lot 61 in DP 752042 and **Landowners** means both Mount Gilead and Lendlease.

LEP means the *Campbelltown Local Environmental Plan 2015*.

LRS means NSW Land Registry Service.

Location Plan means the plan in Annexure A.

Minister means the Minister for Planning, or an employee of the Department nominated by the Minister or the Secretary for the purposes of this Deed.

Monetary Contribution means Item 1 in Part A of the Table.

Party means a party to this Deed.

Phase 1 Roadwork Estimated Cost means the sum of the values for all Items of Road Work contained in Column 2 of Part B of the Table in respect of the Road Work, which are required to have reached Substantial Commencement or be completed before the issue of a Subdivision Certificate for a plan of subdivision which will create the 500th Residential Final Lot in the Development.

Planning Application means any application for an Approval under the Act which seeks approval for the development of a Residential Final Lot on the Land.

Practical Completion means the practical completion of an Item of Road Work in accordance with the WAD.

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Regulation means the *Environmental Planning and Assessment Regulation 2000*.

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

Residential Final Lot means a Final Lot for separate residential occupation and disposition.

RMS means Roads and Maritime Services.

Road Work means the road work required to be carried out under this Deed, being Items 1 to 13 in Part B of the Table.

Roadwork Concept Plans means the drawings in Schedule 5.

Roadwork Estimated Cost means the sum of the values for all Items of Road Work contained in Column 2 of Part B of the Table in respect of the Road Work.

Secretary means the Secretary of the NSW Department of Planning and Environment.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Minister provided in accordance with Schedule 6.

SIC Amount means in respect of a Stage of the Development, the amount of the SIC for that Stage of the Development that would have been payable if the application of section 7.24 of the Act to the Development had not been excluded by this Deed and the Development Consent had been granted after the SIC Determination took effect, and includes any discount which the Minister determines, in his or her absolute discretion, applies to SICs.

SIC Determination means a determination under 7.23 of the Act by the Minister of the level and nature of development contributions to be imposed as a condition of Development Consent on land within a Special Contributions Area which applies to a Special Contributions Area that includes all or part of the Land.

Special Contributions Area has the same meaning as in the Act.

Special Infrastructure Contribution (SIC) means a special infrastructure contribution under section 7.24 of the Act towards the provision of infrastructure determined in accordance with the SIC Determination.

Stage in respect of the Development means a part of the Development subject to a particular plan of subdivision.

Subdivision Certificate has the same meaning as in the Act.

Subdivision Work has the same meaning as in the Act.

Substantial Commencement has occurred in respect of an Item of Road Work when the Developer has done the following in respect of that Item of Road Work:

- (a) completed all preconstruction documentation,
- (b) obtained final design approval from RMS,
- (c) received all necessary licenses, permits and environmental clearances from relevant Authorities,
- (d) engaged a head contractor (so physical construction of the (works can commence); and

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- (e) at a minimum, commenced physical site works, being the commencement of the excavation for foundations or the commencement of the installation or erection of improvements at the primary site of the Item of Road Work.

Table means the table in Part 1 of Schedule 4 which is to be read subject to Part 2 of Schedule 4 and the remainder of this Deed, which prevail to the extent of any inconsistency.

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.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

WAD means a Works Authorisation Deed between the Developer and RMS in respect of the construction of the Road Work.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day, other than a Saturday, Sunday or day declared to be a public holiday in New South Wales on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian currency.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

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- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 The Planning Agreement

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2 This Deed commences and has force and effect on and from the date when all Parties have executed the same copy of this Deed or have each executed separate counterparts of this Deed and exchanged the counterparts.
- 2.3 The Parties are to insert the date when this Deed commences on the front page and on the execution page.
- 2.4 This Deed applies to the Land, the Instrument Change and to the Development.

3 Warranties

- 3.1 The Parties warrant to each other that they:
 - 3.1.1 have full capacity to enter into this Deed, and
 - 3.1.2 are able to fully comply with their obligations under this Deed.

4 Further agreements

- 4.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

5 Surrender of right of appeal, etc.

- 5.1 The Developer and Mount Gilead are not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.
- 5.2 Clause 5.1 does not affect the Developer's or Mount Gilead's ability to commence and/or conduct any class 1 proceedings (as set out in section 17

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of the *Land and Environment Court Act 1979*) and, in doing so, rely on this Deed as a matter for consideration under section 4.15(1)(a)(iia) of the Act, provided that the validity or reasonableness of, or the need for this Deed is not questioned in those proceedings.

Part 2 – Development Contributions

6 Provision of Development Contributions

- 6.1 Subject to clause 6.2 below, the Developer is to make Development Contributions to the Minister or RMS, in accordance with Part 1 and 2 of Schedule 4, and such contributions must be made in accordance with the provisions of this Deed relating to the making of Development Contributions.
- 6.2 Notwithstanding clause 6.1 above, the Developer is not required to dedicate any Dedication Land that it is not the owner of at the relevant time for any such dedication in accordance with this Deed. In those circumstances, if Mount Gilead is the owner of the relevant part of the Dedication Land, Mount Gilead is required to comply with the obligation under this Deed to dedicate the relevant part of the Dedication Land in accordance with this Deed as if it were the Developer.
- 6.3 The Developer and Mount Gilead acknowledge and agree that subject to s7.3 of the Act, the Minister:
 - 6.3.1 has no obligation to use or expend Development Contributions made under this Deed for a particular purpose and has no obligation to repay the Development Contributions; and
 - 6.3.2 in circumstances where the Development Contribution is made or 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.
- 6.4 The Development Contributions made under this Deed are in respect of the development of 1,700 Residential Final Lots only. No provision is made in this Deed for the Development Contributions which may be necessary in respect of any development of the Land for more than 1,700 Residential Final Lots.
- 6.5 For the avoidance of doubt, the Parties agree that the Developer is entitled to offset the value of the Road Works (in the form of the Road Work Offset) and the value of the Dedication Land (in the form of the Dedication Land Offset) against the Monetary Contributions otherwise payable under this Deed in accordance with clauses 1.3, 2.6 and 3 in Part 2 of Schedule 4. To the extent of any inconsistency between this clause and Schedule 4, Schedule 4 will prevail.
- 6.6 If under a WAD, or as a consequence of a requirement of an Authority in respect of the carrying out of the Road Work, including any requirements in Part 5 of the Act (including by reference to any relevant Review of Environmental Factors (**REF**)) the Developer is required to:
 - 6.6.1 dedicate land free of cost;
 - 6.6.2 pay a monetary contribution; or

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- 6.6.3 provide any other material public benefit (such as the carrying out of works),
- or any combination of them, in each case to be used for or applied towards a public purpose (but excluding anything which is a Development Contribution required to be provided by this Deed, or anything for which alternative funding is available to the Developer from an Authority) (**Additional Contribution Item**), then the Parties agree:
- 6.6.4 to negotiate in good faith in relation to whether the Additional Contribution Item should be accepted as a further Development Contribution by including it as an Item in the Table;
- 6.6.5 if agreed by the Parties, the Table is to be amended by adding that Additional Contribution Item as an Item in the Table, provided that the Parties agree in writing to the manner in which that Additional Contribution Item would be described in the columns 1-4 of Table as amended; and
- 6.6.6 the Additional Contribution Item will be treated, for the purposes of this Deed, as an Item of Road Work or Item of Dedication Land and will entitle the Developer to a Road Work Offset or Dedication Land Offset, as appropriate, in accordance with clauses 1.3, 2.6 and 3 of Part 2 of Schedule 4 of this Deed.

7 Interest on Non-Payment of Monies

- 7.1 If any amount of money owing by the Developer under this Deed is not paid by the due date for payment, the Developer will pay interest on the overdue amount until it is paid at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time, and as required by the Minister.

8 Carrying out of Work

- 8.1 Without limiting any other provision of this Deed, Road Work is to be carried out in accordance with:
- 8.1.1 the design and specifications approved by RMS under the terms of a WAD that applies to that Item of Road Work,
- 8.1.2 any WAD for that Item of Road Work,
- 8.1.3 any relevant Approval, and
- 8.1.4 any other applicable law.

9 Application of s7.11, 7.12 and 7.24 of the Act to the Development

- 9.1 This Deed does not exclude the application of s7.11 and 7.12 of the Act to the Development.
- 9.2 This Deed excludes the application of s7.24 of the Act to the Development.

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10 Special Infrastructure Contributions

- 10.1 The Parties acknowledge that the Minister may, in the Minister's absolute discretion, make a SIC Determination, and this clause applies if the Minister makes a SIC Determination.
- 10.2 If the SIC Amount for a Stage of the Development authorised by a Development Consent is less than the amount of Monetary Contributions payable under this Deed for that Stage, then:
 - 10.2.1 the Developer is required to pay only the SIC Amount for that Stage, and
 - 10.2.2 the SIC Amount for that Stage is to be treated as the relevant Monetary Contribution for that Stage for the purposes of this Deed.
- 10.3 If a Monetary Contribution has been paid or offset by Available Credit (within the meaning of clause 3 of Part 2, Schedule 4 of this Deed) in respect of a Stage of the Development, and subsequent to the payment or offsetting of the Monetary Contribution, the SIC Determination is made, or a discount is applied by the Minister to SICs such that the SIC Amount for the Stage would be less than the Monetary Contribution which was paid or offset for the Stage, then the Available Credit is increased by the amount by which the Monetary Contribution paid or offset for the Stage exceeds the SIC Amount for the relevant Stage.
- 10.4 For the avoidance of doubt the Minister is under no obligation to make a SIC Determination or to apply any discounts to SICs.

Part 3 - Provisions Relating to Works

11 Completion of Work

- 11.1 The Developer must provide the Minister with written evidence that RMS is satisfied that an Item of Road Work has achieved Practical Completion for the purposes of any WAD relating to that Road Work.
- 11.2 An Item of Road Work is completed for the purposes of this Deed when the Minister receives the written evidence under clause 11.1 relating to that Road Work.

Part 4 – Dispute Resolution

12 Dispute Resolution

- 12.1 A dispute arises under this Deed if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 12.2 If a notice is given under clause 12.1 the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.

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- 12.3 If the dispute is not resolved within a further 28 days, the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society, or the President's nominee to select a mediator.
- 12.4 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 12.5 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 12.6 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 5 – Security and Enforcement

13 Security

- 13.1 The Developer must provide Security for the performance of its obligations under this Deed in accordance with Schedule 6.

14 Breach of obligations

- 14.1 If the Minister reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 14.1.1 specifying the nature and extent of the breach,
 - 14.1.2 requiring the Developer to:
 - (a) rectify the breach if the Minister reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Minister in lieu of rectifying the breach if the Minister reasonably considers the breach is not capable of rectification, and
 - 14.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 14.2 If the Developer fails to fully comply with a notice referred to in clause 14.1, the Minister may call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach, but only in accordance with Schedule 6 of this Deed.
- 14.3 Any costs incurred by the Minister in remedying a breach in accordance with clause 14.2 may be recovered by the Minister by either or a combination of the following means:

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- 14.3.1 by calling-up and applying the Security provided by the Developer under this Deed, but only in accordance with Schedule 6 of this Deed, or
 - 14.3.2 as a debt due in a court of competent jurisdiction.
- 14.4 For the purpose of clause 14.3, the Minister's costs of remedying a breach the subject of a notice given under clause 15.1 include, but are not limited to:
 - 14.4.1 the costs of the Minister's servants, agents and contractors reasonably incurred for that purpose,
 - 14.4.2 all fees and charges necessarily or reasonably incurred by the Minister in remedying the breach, and
 - 14.4.3 all legal costs and expenses reasonably incurred by the Minister, by reason of the breach.
- 14.5 Nothing in this clause 14 prevents the Minister from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

15 Enforcement in a court of competent jurisdiction

- 15.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 15.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 15.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 15.2.2 the Minister from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 6 – Registration & Restriction on Dealings

16 Registration

- 16.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 16.2 Within 20 business days, unless otherwise agreed in writing, of receiving a copy of this Deed executed by the Minister, the Developer is to lodge with LRS:
 - 16.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer,
 - 16.2.2 certificates of title for the Land, and Mount Gilead is to provide such certificates of title where it is the Landowner, and
 - 16.2.3 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration,

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in order to enable the Deed to be registered on the title to the Land.

- 16.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 16.4 The Developer must provide the Minister with evidence of lodgement of this Deed with LRS for registration within 10 business days of lodgement, and evidence of the registration of this Deed within 10 business days of receiving notification from LRS that it has been registered.
- 16.5 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Minister.
- 16.6 Until such time as this Deed is registered on the title of the Land in accordance with clause 16.1, the Developer and Mount Gilead acknowledge that this Deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- 16.7 If the Minister lodges a caveat in accordance with clause 16.6, then the Minister will do all things reasonably necessary to:
- 16.7.1 ensure that the caveat does not prevent or delay the registration of this Deed, and
- 16.7.2 remove the caveat from the title to the Land promptly, following registration of this Deed in accordance with clause 16.1.
- 16.8 If after 20 business days (or such other time agreed pursuant to clause 16.2) of receipt of a copy of this Deed executed by the Minister, the Developer has failed to or has been unable to register this Deed in accordance with clause 16.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 16.6 to lodge and withdraw a caveat.
- 16.9 Notwithstanding clauses 16.1 to 16.4 and 16.8 above, the Developer is not required to comply with the obligations in those clauses in relation to any part of the Land that it is not the owner of at the relevant time. In those circumstances, if Mount Gilead is the owner of the relevant part of the Land, Mount Gilead is required to comply with the obligations under clauses 16.1 to 16.4 and 16.8 of this Deed as if it were the Developer.
- 16.10 If, in respect of a Stage, the Developer:
- 16.10.1 has paid any Monetary Contribution payable under this Deed (subject to any application of Available Credit) in respect of that Stage and all previous Stages,
- 16.10.2 has made all Development Contributions which, on the date of issue of the Subdivision Certificate for the plan of subdivision for the Stage, were due to have been made, and Mount Gilead has made all Development Contributions it was required to make by that time, and
- 16.10.3 is, and Mount Gilead is, not otherwise in default under this Deed (as determined by the Minister (acting reasonably) and notified to the Developer in writing),
- then at the written request of the Developer (such request to contain all necessary title particulars that are relevant to the request), the Minister may agree, acting reasonably and having regard to the lots included in the relevant

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Stage and the Development Contributions which have been made up to that date and remain to be made (at the Developer's cost) to the extinguishment of the Deed from the title of the land the subject of that Stage. If the Minister agrees to do so, the Minister will promptly do all things reasonably required by the Developer to enable the extinguishment of the Deed from title of the relevant land.

- 16.11 Clause 16.10 will also apply to parts of the Land which are not zoned, or intended to be developed, for residential purposes provided that those parts of the Land are:
- 16.11.1 required to be dedicated to an Authority,
 - 16.11.2 subject to a Biodiversity Conservation Obligation, or
 - 16.11.3 otherwise agreed by the Minister in writing.

17 Restriction on dealings

- 17.1 The Developer and Mount Gilead are not to sell or transfer any part of the Land to anyone other than Lendlease Communities (Mt Gilead) Pty Limited and/or Lendlease Communities (Mt Gilead No.3) Pty Limited, or assign their rights or obligations under this Deed, or novate this Deed, to any person other than Lendlease Communities (Mt Gilead) Pty Limited and/or Lendlease Communities (Mt Gilead No.3) Pty Limited unless:
- 17.1.1 the Developer or Mount Gilead, as the case may be, has, at no cost to the Minister, first procured the execution by the person to whom the Land or part (other than a Final Lot) is to be sold or transferred or the rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Minister on terms reasonably satisfactory to the Minister, and
 - 17.1.2 the Minister has given written notice to the Developer or Mount Gilead (as the case may be) stating that it reasonably considers that the purchaser, transferee, assignee or novatee, other than a purchaser or transferee of a Final Lot, is reasonably capable of performing its obligations under this Deed, and
 - 17.1.3 the Developer and Mount Gilead are not in breach of this Deed, and
 - 17.1.4 the Minister otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 17.2 The Developer and Mount Gilead acknowledge and agree that they remain liable to fully perform their obligations under this Deed unless and until they have complied with their obligations under clause 17.1.

Part 7 – Other Provisions

18 Risk, Release and Indemnity

- 18.1 The Developer and Mount Gilead perform this Deed at their own risk and their own cost.

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- 18.2 The Developer and Mount Gilead release the Minister from any Claim they may have against the Minister arising in connection with the performance of their obligations under this Deed.
- 18.3 The Developer and Mount Gilead respectively indemnify the Minister from and against all Claims that may be sustained, suffered, recovered or made against the Minister arising in connection with the performance of the Developer's and Mount Gilead's respective obligations under this Deed.

19 Reporting by Developer

- 19.1 By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report in a form acceptable to the Secretary for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - 19.1.1 details of all Development Consents (other than Complying Development Certificates), Construction Certificates, and Subdivision Certificates issued in relation to the development of Residential Final Lots,
 - 19.1.2 a description of the status of the development of Residential Final Lots, including a plan that identifies what parts of the development of Residential Final Lots have been completed, are under construction and are to be constructed,
 - 19.1.3 a forecast in relation to the anticipated progression and completion of the Development,
 - 19.1.4 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
 - 19.1.5 when the Developer expects to lodge the next Planning Application.
- 19.2 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.
- 19.3 This clause ceases to apply 12 months after the date when the Developer has completed all of the Development Contributions required to be made under this Deed.

20 Notices

- 20.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
 - 20.1.1 delivered or posted to that Party at its address set out in Schedule 2,
 - 20.1.2 emailed to that Party at its email address set out in Schedule 2.
- 20.2 If a Party gives another Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is

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- only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 20.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 20.3.1 delivered, when it is left at the relevant address listed in Schedule 2,
 - 20.3.2 sent by post to the relevant address listed in Schedule 2, 2 business days after it is posted,
 - 20.3.3 sent by email to the relevant address listed in Schedule 2 and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 20.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

21 Approvals and Consent

- 21.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 21.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

22 Costs

- 22.1 The Developer is to pay to the Minister the Minister's reasonable costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed on execution of this Deed (if the costs are known and notified to the Developer prior to that time) or otherwise within 7 days of a written demand by the Minister for such payment.
- 22.2 The Developer is also to pay to the Minister the Minister's costs of enforcing this Deed within 30 days of a written demand by the Minister for such payment.

23 Entire Agreement

- 23.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 23.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

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24 Further Acts

- 24.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

25 Governing Law and Jurisdiction

- 25.1 This Deed is governed by the law of New South Wales.
- 25.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 25.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

26 Joint and Individual Liability and Benefits

- 26.1 Except as otherwise set out in this Deed:
- 26.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 26.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

27 No Fetter

- 27.1 Nothing in this Deed shall be construed as requiring the Minister to do anything that would cause the Minister to be in breach of any of the Minister's obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

28 Illegality

- 28.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

29 Severability

- 29.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 29.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

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30 Amendment

- 30.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

31 Waiver

- 31.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 31.2 A waiver by a Party is only effective if it:
- 31.2.1 is in writing,
 - 31.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 31.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 31.2.4 is signed and dated by the Party giving the waiver.
- 31.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 31.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 31.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

32 GST

- 32.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have 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 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.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier

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- chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 32.2 Subject to clause 32.4, 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.
- 32.3 Clause 32.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 32.4 No additional amount shall be payable by the Minister under clause 32.2 unless, and only to the extent that, the Minister (or the representative member of any GST group of which the Minister is a member) is entitled to an Input Tax Credit for the Minister's acquisition of the Taxable Supply giving rise to the liability to pay GST, and shall only be payable after the benefit of that Input Tax Credit has been received.
- 32.5 No payment of any amount pursuant to this clause 32, 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.
- 32.6 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.
- 32.7 This clause continues to apply after expiration or termination of this Deed.

33 Explanatory Note

- 33.1 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule 1

Section 7.4 Requirements

Requirement under the Act	This Deed
Planning instrument and/or development application – (section 7.4(1)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a development application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	 (d) Yes (e) Yes (f) No
Description of land to which this Deed applies – (section 7.4(3)(a))	The Land is described in Schedule 3
Description of change to the environmental planning instrument to which this Deed applies – (section 7.4(3)(b))	Amendment to the <i>Campbelltown Local Environmental Plan 2015</i> to make the Development permissible
The scope, timing and manner of delivery of contributions required by this Deed – (section 7.4(3)(c))	Part 1 and 2 of Schedule 4
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 are not excluded in respect of the Development.
Applicability of section 7.24 of the Act – (section 7.4(3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development.
Consideration of benefits under this	No. The Development Contributions

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Deed if section 7.11 applies – (section 7.4(3)(e))	under the Deed must not be taken into consideration in determining a contribution under s7.11 of the Act in respect of the Development or any other development on the Land.
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See Part 4
Enforcement of this Deed – (section 7.4(3)(g))	See Part 5
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 27

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Schedule 2

(clause 1.1)

Address for Service

The Minister:

Name: The Minister for Planning
Address: Level 15, 52 Martin Place, Sydney NSW 2000
Email: Brett.Whitworth@Planning.nsw.gov.au
Representative: Brett Whitworth

Developer:

Name: Lendlease Communities (Mt Gilead) Pty Limited
Address: Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000
Email: kevin.montier@lendlease.com
Representative: Kevin Montier

Name: Lendlease Communities (Mt Gilead No.3) Pty Limited
Address: Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000
Email: kevin.montier@lendlease.com
Representative: Kevin Montier

Landowner:

Name: Mount Gilead Pty Limited
Address: Nexia Sydney, PO Box H195, Australia Square NSW 1215
Email: srogers@nexiasydney.com.au
Representative: Stephen Rogers

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Schedule 3

(clause 1.1)

Land

Land	Landowner
Lots 1-5 in DP 1240836	Mount Gilead
Lot 61 in DP 752042	Lendlease

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Schedule 4

(Clause 6)

Development Contributions

Part 1 –Table

Part A – Monetary Contribution			
Column 1	Column 2	Column 3	Column 4
Item	Value	Manner & Extent	Timing
1. Monetary contribution to regional transport and infrastructure services	Subject to clause 10, \$68,000,000 indexed in accordance with clause 3.4(a) of Part 2 of Schedule 4, assuming 1700 Residential Final Lots in the Development	Subject to clause 10, payment of \$40,000 per Residential Final Lot, indexed in accordance with clause 3.4(a) of Part 2 of Schedule 4.	Prior to the issue of a Subdivision Certificate in respect of any plan of subdivision for the Development which creates a Residential Final Lot

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Part B – Carrying out of Works				
Column 1	Column 2	Column 3	Column 4	
Item	Value	Manner & Extent	Substantial Commencement	Timing
			Completion	
1. Concept and detailed design	\$6,350,000			
2. Node 1 – Southern Site Intersection	\$5,350,000	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans, subject to the provisions of the WAD that relate to this Item		Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 1700 th Residential Final Lot in the Development, unless otherwise stated in the provisions of the WAD that relate to this Item
3. Node 2 – Lane Duplication (Southern Access - Northern Access)	\$10,960,000	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans, subject to the provisions of the WAD that relate to this Item		Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 1700 th Residential Final Lot in the Development, unless otherwise stated in the WAD

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4. Node 3 – Northern Site Intersection	\$3,400,000	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans, subject to the provisions of the WAD that relate to this Item		Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 500th Residential Final Lot in the Development, unless otherwise stated in provisions of the WAD that relate to this Item
5. Node 4 – Lane Duplication (Northern Access -Copperfield)	\$9,500,000	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans, subject to provisions of the WAD that relate to this Item		Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 1,250th Residential Final Lot in the Development, unless otherwise stated in provisions of the WAD that relate to this Item
6. Node 5 – Copperfield Drive Intersection Upgrade	\$4,060,000	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans, subject to provisions of the WAD that relate to this Item	Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 500th Residential Final Lot in the Development, unless otherwise stated in provisions of the WAD that relate to this Item	Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 800th Residential Final Lot in the Development, unless otherwise stated in provisions of the WAD that relate to this Item

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7. Node 6 – Lane Duplication(Copp erfield to Fitzgibbon) including proofing engineer	\$17,250,000	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans, subject to provisions of the WAD that relate to this Item		Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 1,250 th Residential Final Lot in the Development, unless otherwise stated in provisions of the WAD that relate to this Item
8. Node 7 – Fitzgibbon Intersection Upgrade	\$9,290,000	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans, subject to provisions of the WAD that relate to this Item	Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 500 th Residential Final Lot in the Development, unless otherwise stated in provisions of the WAD that relate to this Item	Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 800 th Residential Final Lot in the Development, unless otherwise stated in provisions of the WAD that relate to this Item
9. Noise Walls on western side	\$3,060,000	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans, subject to provisions of the WAD that relate to this Item		Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 1,250 th Residential Final Lot in the Development, unless otherwise stated in provisions of the WAD that relate to this Item

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10. Noise Walls on eastern side	\$11,970,000	Works to be constructed to a design approved by the Minister and RMS and generally in accordance with the Roadwork Concept Plans, subject to provisions of the WAD that relate to this Item	Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 1,250th Residential Final Lot in the Development, unless otherwise stated in provisions of the WAD that relate to this Item	Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 1,500th Residential Final Lot in the Development, unless otherwise stated in provisions of the WAD that relate to this Item
11. Temporary Construction Access,	\$440,000	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans, subject to provisions of the WAD that relate to this Item		Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 500th Residential Final Lot in the Development, unless otherwise stated in provisions of the WAD that relate to this Item
12. Koala Protection Fencing	\$1,490,000	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans subject to provisions of the WAD that relate to this Item		Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 500th Residential Final Lot in the Development, unless otherwise stated in provisions of the WAD that relate to this Item

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13. Fauna Crossings not including koala crossings	\$140,000	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans, subject to provisions of the WAD that relate to this Item		Prior to the issue of the Subdivision Certificate for the plan of subdivision which, when registered, will create the 500th Residential Final Lot in the Development, unless otherwise stated in provisions of the WAD that relate to this Item
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Part C – Land Dedication			
Column 1	Column 2	Column 3	Column 4
Item	Value	Manner & Extent	Timing
1. Land for Road Work	\$250 per square metre of land zoned R2 under the LEP and in respect of land zoned SP2 under the LEP, the value determined in accordance with clause 2.2 of Part 2 of Schedule 4.	Dedication of the Dedication Land.	An Item of Dedication Land is to be dedicated within 3 months of the Item of Road Work located on the Item of Dedication Land achieving Practical Completion in accordance with clause 2.4 of Part 2 of Schedule 4

Part 2 – Development Contributions Provisions

1. Design, Construction and Handover of the Road Work

1.1 Pre-conditions to Commencement of an Item of Road Work

- (a) Prior to commencement of an Item of Road Work, the Developer must:
 - (i) If Development Consent is required - provide evidence to the Minister that it has obtained Development Consent for the Item of Road Work,
 - (ii) enter into a WAD with RMS, on such terms and conditions as are:
 - (A) consistent with the requirements of this Deed, including this Schedule 4, and
 - (B) acceptable to RMS and the Minister,
 - (iii) provide a copy to the Minister of the executed WAD to carry out the Item of Road Work, and
 - (iv) provide evidence to the Minister of the security provided for the Item of Road Work under the WAD having regard to the requirements of clause 2 of Schedule 6 of this Deed.
- (b) The Developer undertakes to appoint contractors to carry out the Road Work on a commercial, arms-length basis using reasonable endeavours to agree contract costs that are no more than market standard for the Road Work.

1.2 Timing of Road Work

- (a) The Developer must achieve Substantial Commencement in respect of each Item of Road Work and complete each Item of Road Work in accordance with clause 11 of this Deed by no later than the times specified in Column 4 of the Table.

1.3 Road Work Offset

- (a) Unless otherwise agreed with the Minister, within 3 months of completion of an Item of Road Work under clause 11 of this Deed, the Developer must provide to the Minister documentation that evidences the Actual Cost of the Item of Road Work (**Offset Documentation**). The Offset Documentation is to:
 - (i) provide an itemised breakdown and details of the Actual Costs incurred by the Developer, including accounts for the Actual Costs;
 - (ii) provide a reconciliation of the Actual Costs with the value for the Item of Road Work in Column 2 of the Table;

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- (iii) include a tabulated and indexed folder of tax invoices for, and documentary evidence of the payment of, each of the items which the Developer proposes form part of the Actual Costs; and
- (iv) to include such other supporting documentation as is necessary for the Minister to determine what the Minister considers is the Actual Cost of the Item of Road Work,

and the Developer must promptly provide any additional information reasonably requested by the Minister for the purpose of the Minister determining what the Minister considers to be the Actual Cost of the Item of Road Work.

- (b) The Minister may commission an accountant or a quantity surveyor (or both) at the Developer's expense, to review the Offset Documentation and assist the Minister to determine what the Actual Cost of the Item of Road Work.
- (c) The Minister will, within 45 days of receiving the Offset Documentation issue a notice to the Developer stating the approved Actual Cost of the Item of Road Work reasonably determined by the Minister having regard to the Offset Documentation, and whether the Minister considers the Developer has complied with its undertaking in clause 1.1(b) of Schedule 4(**Road Work Offset**).
- (d) In respect of Item 1 in Part B of the Table (Concept and detailed design), the notice referred to in clause 1.3(c) of Part 2 of Schedule 4 must be issued within 3 months of the RMS indicating the concept and detailed design is completed to RMS' satisfaction.
- (e) The Developer acknowledges and agrees that it will not be entitled to any Road Work Offset for a particular Item of Road Work in circumstances where RMS has exercised its step in rights under the WAD or the Developer otherwise fails to provide that Item of Road Work pursuant to the WAD.
- (f) The Developer must complete the Road Work regardless of the actual cost of the Road Work.

1.4 Item B10 – Sound Attenuation on Eastern Carriageway

- (a) The Developer and the Minister must negotiate in good faith during the design of Item 10 in Part B of the Table to determine the most economical manner in which to provide sound attenuation on the eastern side of Appin Road.
- (b) If the Actual B10 Cost is less than the value noted in Column 2 of the Table in respect of Item 10 in Part B of the Table (**B10 Value**), the Developer is to apply the difference between the Actual B10 Cost and the B10 Value solely to the improvement to the performance of the road network to support the development of the balance of Lendlease's landholdings within the Greater Macarthur area.
- (c) When the Developer provides the Minister with evidence of completion under clause 11.1 of the Deed in respect of Item B10, the Developer must also notify the Minister in writing of the Actual B10 Cost.
- (d) Within 28 days after the written notice provided under clause 1.4(c), the Minister and Developer must meet to discuss appropriate road network improvements

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and the Developer must provide the Minister with six monthly updates after the date of that meeting regarding expenditure on those road improvements.

- (e) The Minister reserves the right to deduct from the Available Credit by notice issued to the Developer in writing, any amount of the difference between the Actual B10 Cost and B10 Value which the Minister, acting reasonably, considers has not been allocated to road improvements in the Greater Macarthur area.

2. Dedication of Dedication Land

2.1 Dedication Land as a Development Contribution

- (a) The Developer must transfer the Dedication Land in accordance with clause 2.4 of this Schedule 4.

2.2 Valuation of Dedication Land

The Developer must:

- (a) provide the Minister with a valuation of the part of the Dedication Land zoned SP2 (**SP2 Dedication Land**) prior to transfer of the Dedication Land to RMS in accordance with clause 2.4 of Schedule 4; and
- (b) ensure the valuation has been carried out:
 - (i) by a valuer appointed in accordance with this clause 2.2 of this Schedule 4; and
 - (ii) in accordance with this clause 2.2 of this Schedule 4.
- (c) Where the Developer has provided the Minister with a valuation of the SP2 Dedication Land in accordance with this clause 2.2 of this Schedule 4, the Minister, within 20 business days of receiving the valuation, must appoint a valuer to prepare a valuation report for the SP2 Dedication Land for the Minister, who:
 - (i) is both an Associate (or a Fellow) Member and a Certified Practising Valuer of the Australian Property Institute (Inc) NSW Division;
 - (ii) is then practising as a valuer;
 - (iii) is independent and not related to any party to this Deed;
 - (iv) has at least 5 years' experience in valuations; and
 - (v) has a practical understanding of the development and planning process to prepare a valuation for the SP2 Dedication Land.
- (d) Any valuation provided by the Developer's or the Minister's valuer must comply with the following:

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- (i) the valuation report prepared by the valuer must confirm that the valuer satisfies each of the requirements set out in this clause 2.2 of this Schedule 4.
- (ii) the valuer is required to determine the market value of the SP2 Dedication Land as a freehold lot with vacant possession as at the date of inspection.
- (iii) in determining the market value of the SP2 Dedication Land, the valuer must assume that the land:
 - (A) is free of all encumbrances;
 - (B) is or can be fully serviced to its boundary; and
 - (C) has appropriate public road frontage and access.
- (iv) in determining the market value of the SP2 Dedication Land, the valuer must comply with the applicable Practice Standards and Guidance Notes for such valuations as published from time to time by the Australian Property Institute (NSW Division), except where such standards and guidelines conflict with this clause 2.2, in which case this clause 2.2 prevails.
- (v) the valuer must provide a comprehensive valuation report which must include the following matters:
 - (A) confirmation of instructions;
 - (B) identification of the subject land being valued;
 - (C) date of inspection and valuation;
 - (D) registered proprietor;
 - (E) legal description of the subject land including the certificate of title folio identifier and reference to any easements, rights of way, covenants, caveats and/or other encumbrances on title;
 - (F) services and amenities;
 - (G) site identification;
 - (H) location description, including any external factors that influence the desirability of the Dedication Land, either positively or negatively;
 - (I) current zoning and town planning considerations;
 - (J) a detailed explanation of the valuation methodologies adopted including all calculations and workings;
 - (K) details of relevant comparable sales and rental evidence appropriately analysed to support the valuation; and
 - (L) the valuation amount.

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- (e) If two or more of the comparable sales analysed cannot reasonably be considered as being directly comparable (in terms of, but not restricted to, date of sale, size, development capability, zoning and physical and ecological constraints etc.) then each valuer must undertake a feasibility or residual land value approach to the valuation.
- (f) In the event that the valuations prepared by each valuer vary by less than 10%, the average of the valuation amounts will be adopted as the value for the SP2 Dedication Land.
- (g) In the event that the valuations vary by more than 10%, then the valuers must meet to compare the valuations and attempt to find common ground (whether this be mutual agreement on value or, at the very least, agreement as to certain valuation drivers, methodologies or inputs). Following this meeting, the valuers must review their valuations. If the valuations continue to vary by more than 10%, the valuation to apply to the SP2 Dedication Land will be determined by a further valuer appointed by the President of the Australian Property Institute (NSW Division). If a further valuer is appointed:
 - (i) that further valuer must:
 - (A) prepare a valuation report for the SP2 Dedication Land in accordance with this clause 2.2 of this Schedule 4; and
 - (B) act as an expert whose decision is final and binding on the parties, in the absence of manifest error; and
 - (ii) the Developer and the Minister must pay the costs associated with the appointment of the further valuer in equal proportions.
- (h) Where the Minister exercises the compulsory acquisition right under clause 2.5 of this Schedule 4, the valuation process set out in clause 2.2 of this Schedule 4 will apply.

2.3 Subdivision of Dedication Land

- (a) Before transferring an Item of Dedication Land in accordance with clause 2.4 of this Schedule 4, the Developer must (at its cost):
 - (i) obtain Development Consent (if required) and all other Approvals necessary to create a separate lot for that Item of Dedication Land, and
 - (ii) in accordance with the applicable Development Consent and all other necessary Approvals, prepare and register a plan of subdivision to create a separate lot for each Item of Dedication Land.

2.4 Transfer of Dedication Land

- (a) The Developer must transfer each Item of Dedication Land to the RMS within 3 months of the Road Work located on that Item of Dedication Land reaching Practical Completion in accordance with this Deed and under the WAD.

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- (b) In satisfying its obligations under clause 2.4(a) of this Schedule 4, the Developer must:
 - (i) deliver to RMS:
 - (A) a form of transfer in respect of the Item of Dedication Land in favour of RMS for a consideration of \$1, executed by the Developer and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue, and
 - (B) the certificate of title for the Item of Dedication Land,
 - (ii) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General of the LRS in relation to the transfer of the Dedication Land, and
- (c) take any other necessary action to give effect to the transfer of the title of the Item of Dedication Land to RMS free of all encumbrances (including any mortgages, easements, covenants and planning agreements) and affectations (including any charge or liability for rates, Taxes and charges) other than service easements or such other encumbrances as agreed by RMS in writing.
- (d) The Developer indemnifies and agrees to keep indemnified RMS against all Claims made against RMS as a result of any Contamination that is required to be Remediated by an Authority over the whole or any part of the Dedication Land but only in relation to Contamination that existed on or before the date that the Dedication Land is transferred to RMS.
- (e) The Developer will pay all rates and Taxes owing in respect of an Item of Dedication Land up to and including the date that the Developer delivers the form of transfer and certificates of title for the Item of Dedication Land pursuant to clause 2.4 of this Schedule 4, after which time RMS will be responsible for any rates and Taxes in relation to the Item of Dedication Land.
- (f) The Developer indemnifies and keeps indemnified the Minister (or at the Minister's election, the RMS or the Minister's nominee) in relation to any failure of the Developer to comply with clauses 2.1 to 2.4 of this Schedule 4.
- (g) The parties agree that this Deed operates as a deed poll in favour of RMS.

2.5 Compulsory Acquisition

- (a) If the Developer does not transfer an Item of Dedication Land as required by clause 2.4 of this Schedule 4, the Minister may elect to, and the Developer consents to, the Minister compulsorily acquiring the whole or any part of the Item of Dedication Land and any other land required in connection with the Item of Dedication Land in accordance with the Just Terms Act in the amount of \$1.00.
- (b) The Developer and the Minister agree that:
 - (i) this clause 2.5 is an agreement between them for the purposes of section 30 of the Just Terms Act, and

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- (ii) in this clause 2.5 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer must ensure that the Item of Dedication Land is free of all encumbrances and affectations (including any charge or liability for rates, Taxes and charges), other than service easements or such other encumbrances as agreed by RMS in writing, on the date that the Minister compulsorily acquires the Item of Dedication Land in accordance with this clause.
- (d) The Developer indemnifies and keeps indemnified the Minister against all Claims made against the Minister as a result of any acquisition by the Minister of the whole or any part of the Item of Dedication Land and any other land required in connection with the Item of Dedication Land under this clause.
- (e) The Developer must pay the Minister, promptly on demand, an amount equivalent to all Costs incurred by the Minister in acquiring the whole or any part of the Item of Dedication Land and any other land required in connection with the Item of Dedication Land as contemplated by this clause.
- (f) A reference to the Developer in paragraphs (a) to (e) above is a reference to Mount Gilead if the Item of Dedication Land which was not dedicated as required by clause 2.4 was at that time, owned by Mount Gilead.

2.6 Dedication Land Offset

- (a) Upon the transfer of an Item of Dedication Land to RMS in accordance with clause 2.4 of this Schedule 4, the Minister must, within 30 business days, issue a notice to the Developer stating the value of the Dedication Land which will be the amount determined based on the values in Column 2 of the Table in respect of the Dedication Land zoned R2 under the LEP and the amount calculated in accordance with clause 2.2 of this Schedule 4 in respect of the SP2 Dedication Land (**Dedication Land Offset**).

3. Contribution Offsets

3.1 Definitions

- (a) **Available Credit** means any amount of the Contributions Offset which has not been applied to satisfy any liability to pay Monetary Contributions or Deferred Monetary Contributions in respect of the Development, subject to clause 1.4(e) of Part 2 of Schedule 4,
- (b) **Contribution Offset** means the amount calculated in accordance with clause 3.2(a) of Part 2 of Schedule 4,
- (c) **Deferred Monetary Contribution** has the meaning given to it in clause 3.3(d) of Part 2 of Schedule 4,
- (d) **VPA Contributions** means the Development Contributions, other than the Monetary Contribution, in the Table.

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3.2 Contribution Offset

- (a) The Developer is entitled to an offset against the Monetary Contribution to the extent of the sum of the amounts contained in notice(s) issued to the Developer under:
 - (i) clause 1.3(c) of this Schedule 4 in respect of the Road Work Offset, and
 - (ii) clause 2.6 of this Schedule 4 in respect of the Dedication Land Offset.

3.3 Application of Credits and Payment of Monetary Contributions

- (a) The Developer may use any Available Credit to satisfy any Monetary Contribution required to be made in respect of the Development.
- (b) If the amount of a Monetary Contribution required to be made for a Stage exceeds the Available Credit at the time the Monetary Contribution becomes due for payment, the Developer must pay the difference between the amount of the Monetary Contribution and the Available Credit at the time when that Monetary Contribution is due for payment.
- (c) The Developer may make a request in writing to the Minister to defer the obligation to make a Monetary Contribution if the Developer will have no Available Credit, or insufficient Available Credit to meet the Monetary Contribution at the time the Monetary Contribution is due for payment.
- (d) The Minister may determine to defer the time for payment of all or part of the Monetary Contribution the subject of the request made under clause 3.3(c) (**Deferred Monetary Contribution**) for a period of up to 24 months or such other period as the Minister may determine, in his absolute discretion, if the Developer provides to the Minister a Bank Guarantee in the amount of 110% of the Deferred Monetary Contribution or other Security of equivalent value that is acceptable to the Minister.
- (e) The Developer may discharge its obligation to pay a Deferred Monetary Contribution at any time by:
 - (i) paying the full amount of the Deferred Monetary Contribution determined in accordance with this Deed, or
 - (ii) if the Available Credit has increased since the date of the determination in clause 3.3(d), satisfying the Minister that Available Credit is available which equals to or exceeds the Deferred Monetary Contribution, and applying that Available Credit to meet the Deferred Monetary Contribution,and once the obligation to pay the Deferred Monetary Contribution is discharged, the Minister will return the Bank Guarantee for that Deferred Monetary Contribution.
- (f) The Developer must pay interest on a Deferred Monetary Contribution in accordance with clause 7 from the date the Monetary Contribution first became payable, until the date the Deferred Monetary Contribution is discharged and the

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interest is taken to be part of the Deferred Monetary Contribution for the purposes of this Deed.

- (g) If the Developer fails to discharge its obligation to pay a Deferred Monetary Contribution by the time required in accordance with clause 3.3(e), the Minister may call on the Bank Guarantee for that Deferred Monetary Contribution and apply the entire Bank Guarantee to discharge the Deferred Monetary Contribution.
- (h) If there is any Available Credit remaining when:
 - (i) all VPA Contributions have been made, and
 - (ii) all Monetary Contributions have been paid (to the extent required after application of any Available Credit),

then the Available Credit may be used by the Developer or any other entity determined by all persons and entities who comprise the Developer, to satisfy:

- (i) any SIC within the meaning of the Act which is required to be made in respect of the development of land within the same Special Contributions Area as the Land after the date of this Deed; or
- (ii) if there is no SIC payable in respect of the development of the Land, then any other requirement for Lendlease to provide to the Minister development contributions as defined in the Act in respect of any development on land partially or wholly within the Campbelltown Local Government Area.

3.4 Indexation

- (a) On each CPI Adjustment Date, the amount of the Monetary Contribution which has not been paid, or offset by Available Credit, at that date is adjusted by multiplying the amount by an amount equal to the Current CPI divided by the Base CPI.
- (b) The amounts contained in notices referred to in clause 3.2(a) in Part 2 of Schedule 4 which have not been applied to satisfy a Monetary Contribution, are to be indexed from the date of the relevant notice until the amount is applied to satisfy a Monetary Contribution, in the same manner in which Monetary Contributions are indexed under clause 3.4(a) in Part 2 of Schedule 4.
- (c) For the purpose of clause 3.4(b) in Part 2 of Schedule 4 the amounts contained in notices issued under clause 3.2(a) in Part 2 of Schedule 4 will be considered to have been applied to satisfy Monetary Contributions in the order in which the notices were issued.

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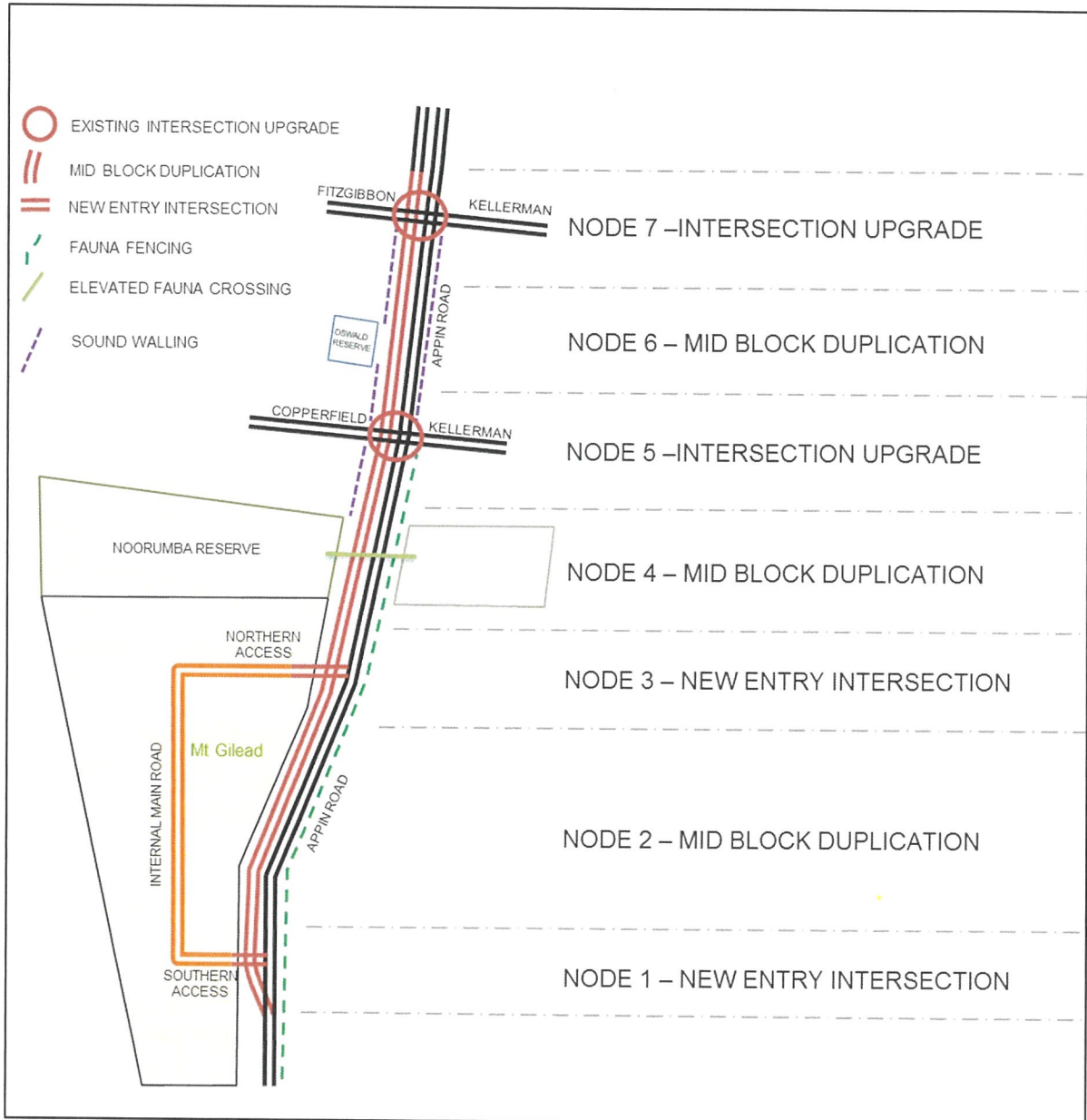
Lendlease Communities (Mt Gilead No.3) Pty Limited

Mount Gilead Pty Limited

Schedule 5

(clause 1.1)

Roadwork Concept Plans



Schedule 6

(clause 14)

Security Requirements

1. Developer to provide Security

- (a) In order to secure:
 - (i) the payment of Monetary Contributions;
 - (ii) the carrying out of the Road Work, and
 - (iii) any costs associated with the Minister exercising any rights under this Deed to secure the transfer of the Dedication Land,

the Developer has agreed to provide Security in accordance with this Schedule 6.
- (b) Any Bank Guarantee(s) required to be provided under this Schedule 6 must:
 - (i) name the "Minister for Planning and Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiary, and
 - (ii) not have an expiry date.

2. Security Requirements

- (a) On the date of entry into this Deed, the Developer must provide a Bank Guarantee to the Minister in the amount of \$200,000 to be held by the Minister until all of the Developer's obligations under this Deed are complete, despite any other provision of this Schedule 6.
- (b) If, upon execution of this Deed, the Developer has:
 - (i) entered into a WAD with the RMS in relation to the Road Work,
 - (ii) provided security to RMS for the Roadwork Estimated Cost under the WAD or such other figure to the satisfaction of the RMS, and
 - (iii) satisfied the Minister, in the Minister's absolute discretion, as to the adequacy of the security provided to RMS for the Road Work including providing all information reasonably required by the Minister regarding the security provided under the WAD,

the Minister will accept the security provided under the WAD as security for the performance of the Developer's obligation under Schedule 4 of this Deed to carry

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out the Road Work, and will provide written notification to the Developer of the Minister's position under this clause 2(b) within 20 business days of receiving all required information from the Developer regarding the security provided under the WAD.

- (c) If, upon execution of this Deed, the Developer has not entered into a WAD with RMS in relation to the Road Work, the Developer must, on execution of this Deed, provide a Bank Guarantee to the Minister for the Phase 1 Roadwork Estimated Cost, to secure its obligation to carry out the Road Work.
- (d) If, following execution of this Deed, the Developer:
 - (i) enters into a WAD with RMS in relation to the Road Work in accordance with this Deed,
 - (ii) provides security to RMS for the Roadwork Estimated Cost under the WAD or such other figure to the satisfaction of the RMS, and
 - (iii) satisfies the Minister, in the Minister's absolute discretion, as to the adequacy of the security provided to RMS for the Road Work including providing all information reasonably required by the Minister regarding the security provided under the WAD,

the Minister will accept the security provided under the WAD as securing the performance of the Developer's obligation under Schedule 4 of this Deed to carry out the Road Work, and will provide written notification to the Developer of the Minister's position under this clause 2(d) within 20 business days of receiving all required information from the Developer regarding the security provided under the WAD.

- (e) Where clause 2(d) of this Schedule 6 applies, the Minister will return the Bank Guarantee provided by the Developer under clause 2(c) of this Schedule 6 within 20 business days of the Minister notifying the Developer of the Minister's acceptance of the security provided under the WAD.
- (f) If the Developer does not satisfy the Minister as to the adequacy of the security provided for the Roads Works under the WAD in accordance with clause 2(b) or clause of this Schedule 6, then:
 - (i) the Developer will be required to provide a Bank Guarantee for the difference between the amount of the security provided under the WAD and the Roadwork Estimated Cost,
 - (ii) upon receipt of the Bank Guarantee required by the Minister under clause 2(f)(i) of this Schedule 6, the Minister will accept that Bank Guarantee and the security provided under the WAD as securing the performance of the Developer's obligation under Schedule 4 of this Deed to carry out the Road Work, and
 - (iii) the Minister will return the Bank Guarantee provided under clause 2(c) of this Schedule 6 to the Developer within 10 business days of receiving the Bank Guarantee under clause 2(f)(i) of this Schedule 6.

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3. Claims under a Bank Guarantee

- (a) The Minister may call upon a Bank Guarantee(s) provided in accordance with clause 2 of this Schedule 6:
 - (i) where the Developer has failed to pay a Monetary Contribution in accordance with this Deed, or
 - (ii) where the Developer has failed to complete the Road Work in accordance with this Deed, or
 - (iii) where the Developer or Mount Gilead is in default of its obligations to transfer the Dedication Land to RMS in accordance with this Deed, and
 - (iv) retain and apply such monies towards:
 - (A) the Monetary Contribution;
 - (B) achieving performance of the Road Work, and
 - (C) the Costs incurred by the Minister in rectifying any default by the Developer under this Deed.
- (b) Prior to calling upon a Bank Guarantee(s) the Minister must give the Developer not less than 10 business days written notice.
- (c) If:
 - (i) the Minister calls upon a Bank Guarantee(s), and
 - (ii) applies all or part of such monies towards the Costs 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 Bank Guarantee(s) in accordance with clause 3(b) of this Schedule 6,then the Minister may request that the Developer provide an additional Bank Guarantee(s) to secure performance of the Developer's obligations under this Deed in accordance with clause 4 of this Schedule 6.

4. Release of Security

- If:
- (a) the Developer has satisfied all of its obligations under this Deed secured by Security, and
 - (b) the whole of the monies secured by the Security have not been expended and the monies accounted for in accordance with clause 3 of this Schedule 6,
- then the Minister will promptly return the Security (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Security (as the case may be), to the Developer.

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Schedule 7

(clause 1.1)

Land Dedication Plan

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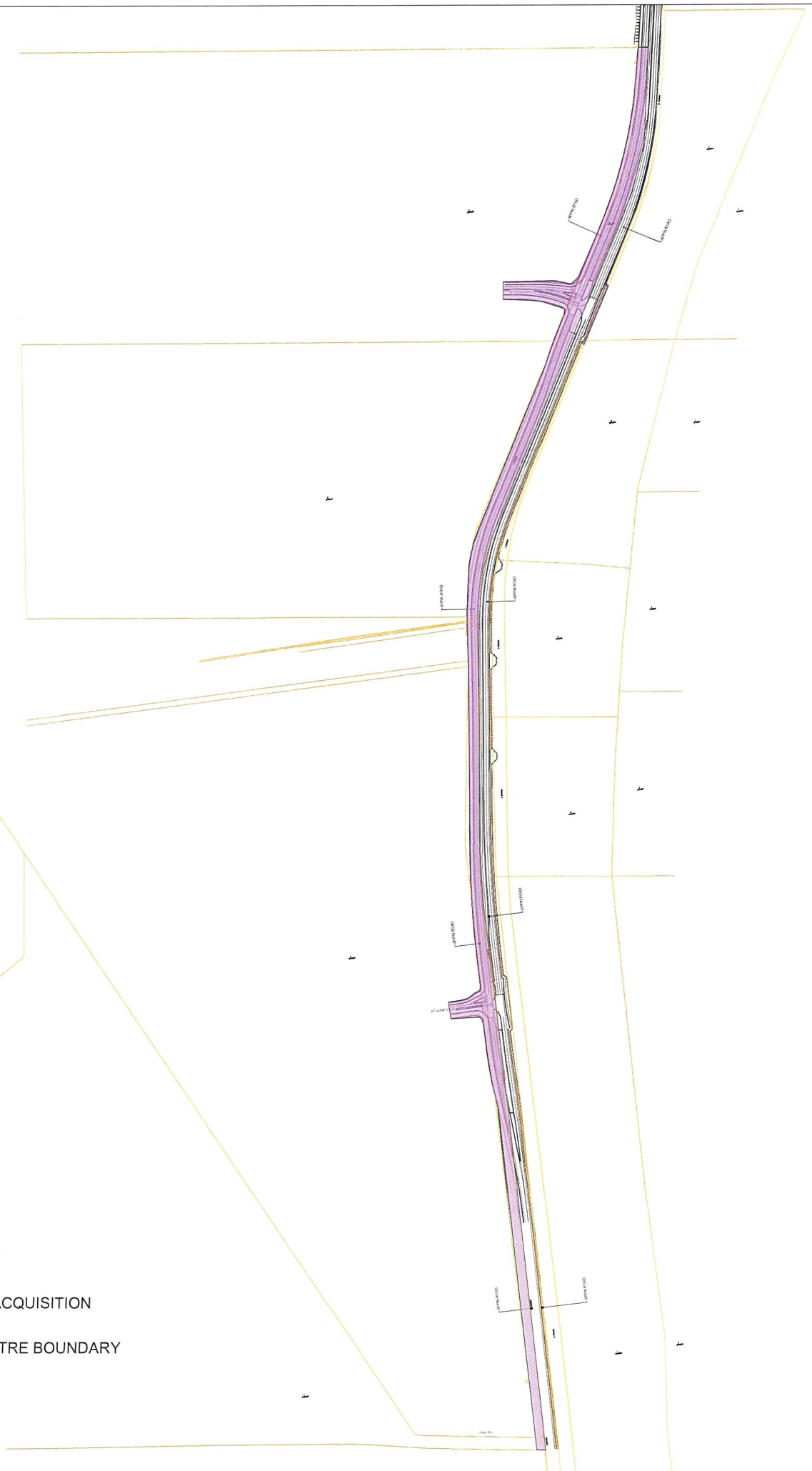
LEGEND



LAND ACQUISITION



CADASTRE BOUNDARY



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The Minister for Planning

Lendlease Communities (Mt Gilead) Pty Limited

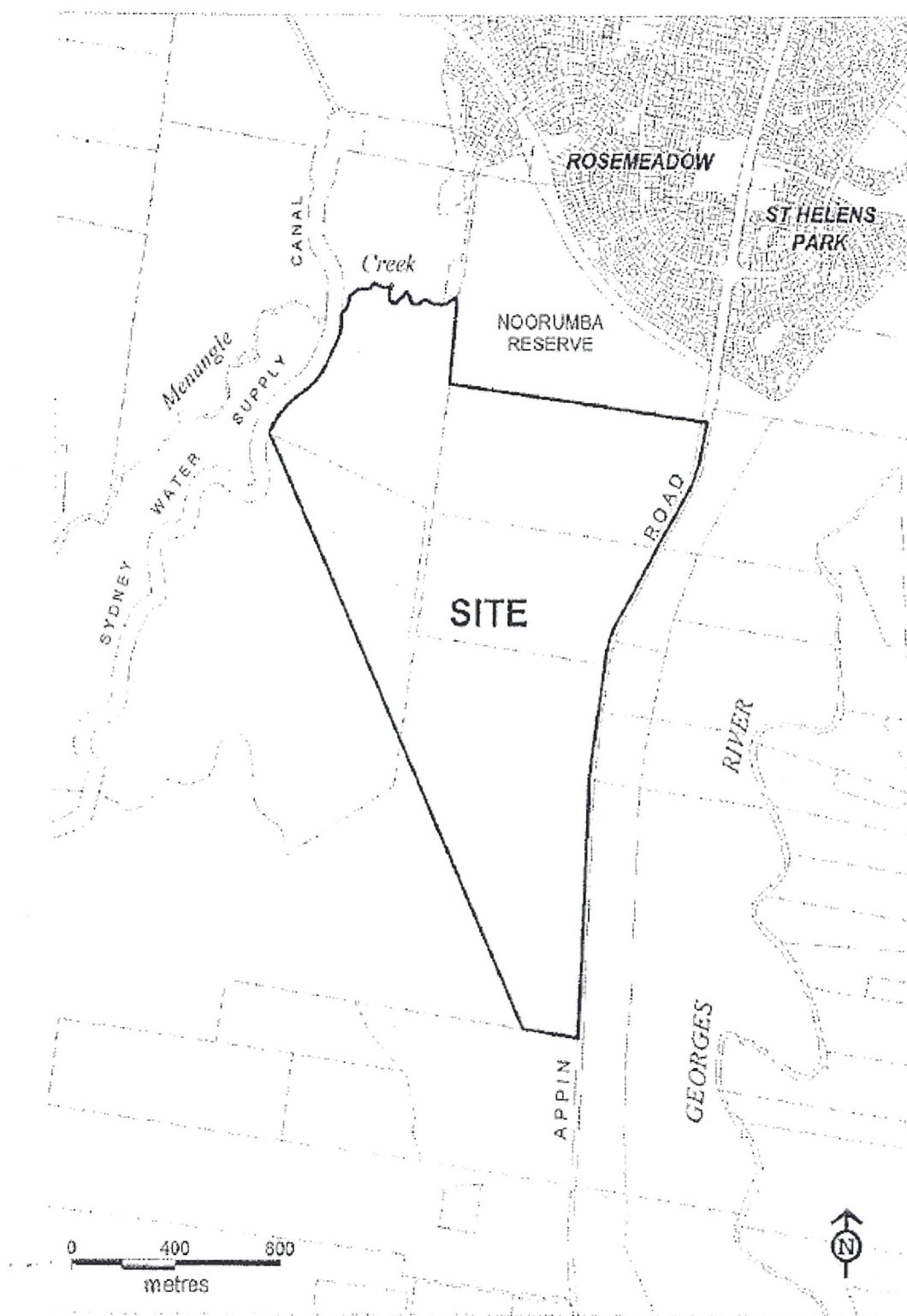
Lendlease Communities (Mt Gilead No.3) Pty Limited

Mount Gilead Pty Limited

Annexure A

(clause 1.1)

Location Plan



Mt Gilead Planning Agreement

The Minister for Planning

Lendlease Communities (Mt Gilead) Pty Limited

Lendlease Communities (Mt Gilead No.3) Pty Limited

Mount Gilead Pty Limited

Execution

Executed as a Deed

Dated:

Signed sealed and delivered by the Minister for Planning

Name of Minister

Signature of Minister

Name of Witness

Signature of Witness

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The Minister for Planning
Lendlease Communities (Mt Gilead) Pty Limited
Lendlease Communities (Mt Gilead No.3) Pty Limited
Mount Gilead Pty Limited

Signed sealed and delivered on behalf of Lendlease Communities (Mt Gilead) Pty Limited

Signed by

.....*MATTHEW MEALS*..... (print name) and

.....*JULIE JANKOWSKI*..... (print name)

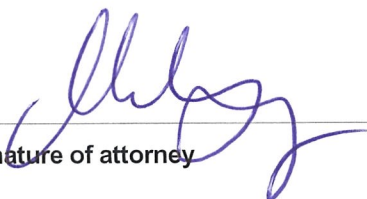
as attorneys for **Lendlease Communities (Mt Gilead) Pty Limited** under power of

attorney dated *9TH NOVEMBER 2019*.....(print date)

in the presence of

..........

Signature of witness

..........

Signature of attorney

.....*DANIEL MAY*.....

Name of witness (print)

..........

Signature of witness

..........

Signature of attorney

.....*DANIEL MAY*.....

Name of witness (print)

Mt Gilead Planning Agreement
The Minister for Planning
Lendlease Communities (Mt Gilead) Pty Limited
Lendlease Communities (Mt Gilead No.3) Pty Limited
Mount Gilead Pty Limited

**Signed sealed and delivered on behalf of Lendlease
Communities (Mt Gilead No. 3) Pty Limited**

Signed by

.....*MATTHEW NEAT*..... (print name) and

.....*JULIE JANOWSKI*..... (print name)


as attorneys for **Lendlease Communities (Mt
Gilead No.3) Pty Limited** under power of

attorney dated *9TH NOVEMBER 2018*.....(print date)

in the presence of



Signature of witness



Signature of attorney

DANIEL NEAT

Name of witness (print)



Signature of witness



Signature of attorney

DANIEL NEAT

Name of witness (print)

Mt Gilead Planning Agreement

The Minister for Planning

Lendlease Communities (Mt Gilead) Pty Limited

Lendlease Communities (Mt Gilead No.3) Pty Limited

Mount Gilead Pty Limited

Signed sealed and delivered on behalf of Mount Gilead Pty Limited in accordance with s127(1) of the Corporations Act (Cth)

Name/Position

Name/Position