

Deed of Variation to Planning Agreement – Sydney Science Park

Celestino Developments SSP Pty Ltd (ABN 67 607 351 642)

Penrith City Council (ABN 43 794 442 563)

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Deed of Variation

Date

20 September

2023

Parties

Celestino Developments SSP Pty Ltd (ABN 67 607 351 642) of 642 Great Western Highway, Pendle Hill, NSW 2145 (Developer)

Penrith City Council (ABN 43 794 442 563) of 601 High Street, Penrith NSW (Planning Authority)

Background

- A. On around 9 September 2016 the parties entered into a deed titled Planning Agreement – Sydney Science Park, being a planning agreement under then s. 93F of the Act (**Original Agreement**).
- B. The parties have agreed to vary the Original Agreement on the terms and conditions set out in this Deed of Variation.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this Deed of Variation capitalised terms not otherwise defined take their meaning from the Original Agreement and the following other definitions apply:

Act means the Environmental Planning and Assessment Act 1979.

Original Agreement has the meaning given to that term in recital A of this deed.

Deed of Variation means this Deed of Variation.

Effective Date means the date on which this Deed has been executed by the parties.

Regulation means the Environmental Planning and Assessment Regulation 2021.

1.2 Interpretation

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

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a party includes that party's executors, administrators, liquidators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;

- (e) a reference to a document or a provision of a document is to that document or provision as varied, novated, ratified or replaced from time to time;
- (f) a reference to this Deed is a reference to this Deed as varied, novated, ratified or replaced from time to time;
- (g) a reference to \$ or dollar is to Australian currency; and
- (h) this Deed must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Interface with Agreement

- (a) In the event of any inconsistency between the provisions of this Deed of Variation and the provisions of the Original Agreement, the provisions of this Deed of Variation shall prevail to the extent of such inconsistency.

2. Variation of Original Agreement

On and from the Effective Date, the Original Agreement is varied such that it now comprises the document attached to this Deed of Variation as "Annexure A" (the **Varied Agreement**).

3. Acknowledgement

The parties agree that:

- (a) save for the amendments to the Original Agreement set out in this Deed, the Original Agreement remains in all other aspects valid and effective;
- (b) the Varied Agreement comprises a variation to the Original Agreement, rather than a termination or replacement of the Original Agreement; and
- (c) this Deed of Variation, together with the Varied Agreement, comprises an amendment to a planning agreement for the purposes of clause 203 of the Regulation.

4. General

4.1 Amendments

This Deed of Variation may only be varied by a deed executed by or on behalf of each party.

4.2 Counterparts

This Deed of Variation 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.

4.3 Severance

If at any time any provision of this Deed of Variation is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed of Variation; or

- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed of Variation.

4.4 Entire agreement

This Deed of Variation and the Varied Agreement contain the entire agreement between the parties with respect to their subject matter and supersede all previous agreements, understandings and negotiations on that subject matter.

4.5 Further Assurances

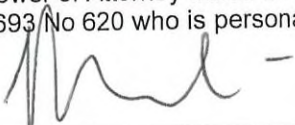
Each party must do all things and execute all further documents necessary to give full effect to this Deed of Variation.

5. Governing Law and Jurisdiction

This Deed of Variation is governed by the law applying in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed of Variation and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 5.

Executed as a deed.

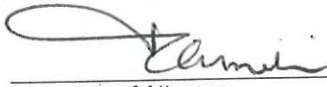
Executed by **Celestino Developments SSP Pty Limited ACN 607 351 842** by its attorney under Power of Attorney dated 21 August 2015 Book 4693 No 620 who is personally known to me:



Witness

Penny Dixon

Name of Witness (Print)




Signature of Attorney

John Camilleri

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

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



Witness

JULIE ROES

Name of Witness (print)



Officer

ANDREW MOORE

Name of Officer (print)

Annexure A – Varied Agreement

Planning Agreement - Sydney Science Park

Celestino Developments SSP Pty Ltd
ABN 67 607 351 642

Penrith City Council
ABN 43 794 442 563

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KEY DETAILS

1 **Date** See execution on page 35

2 **Parties**

Developer

Name Celestino Developments SSP Pty Ltd
ABN 67 607 351 642
Address 642 Great Western Highway, Pendle Hill, NSW 2145
Attention The Directors
Email legal@celestino.net.au with a copy to
contracts@celestino.net.au

Planning Authority

Name Penrith City Council
ABN 43 794 442 563
Address 601 High Street, Penrith NSW
Attention General Manager
Email city.planning@penrithcity.nsw.gov.au

BACKGROUND

- A The Developer intends to develop the Land for the Development.
- B The Development represents a new vision for Australia to cluster leading science based businesses, tertiary institutions, research and development providers in one location to advance innovation in a range of fields. The Development will comprise research and development, employment, education, retail and residential uses. Supporting residential uses, provision of a new town centre and an extensive network of open space are also key features of the Development.
- C In terms of area, the Development consists of approximately 340,000 sqm of research and development floor space, approximately 100,000 sqm of education floor area and associated student accommodation, a town centre comprising up to 30,000 sqm of retail space, 3,400 dwellings, a primary school site, new roads and infrastructure, and landscaping, open space, sporting fields and parks.
- D Sustainability and the environment are key parts of the Development and its science and technology focus. Through innovative master plan design, the Developer intends to develop significant tracts of embellished open spaces and integrate the site's environmental features into parklands, water bodies and view lines to the nearby Blue Mountains.
- E Against this background, the Developer's parent company submitted the Planning Proposal to the Planning Authority in August 2013. The Planning Proposal received Gateway approval from the Minister for Planning on 18 June 2014, and a further revised Gateway approval on 9 July 2015.
- F As part of its commitment to deliver a world class masterplanned hub, the Developer submitted an offer in support of the Planning Proposal and the Development to make certain Development Contributions and enter into a planning agreement on 27 October 2015, to ensure the delivery of a range of infrastructure to meet demands generated by the Development, such as a range of open spaces, footpaths and shared pathways, public art, community facilities and water sensitive urban design and wetland facilities. This Agreement records the Agreement with the Developer and the Planning Authority in relation to the agreed Development Contributions and how they may be dealt with.
- G This Agreement also addresses the management of certain public spaces within the Development known as the Management Lands. For the most part, the Management Land is Dedication Land that is part of the Development Contributions. The Developer has also agreed to provide consultancy support to the Council to assist with assessment of innovative aspects of the Development Contributions on a trial basis, as set out in this Agreement.
- H The guiding vision for the Development is to be a vibrant, integrated and sustainable city, founded as a centre for disruption and innovation where people can innovate, learn, live, play and trade in a connected and responsive community. A key aspect of this vision is to provide a 'safe to fail' environment because trial and error is at the core of innovation. For innovation to thrive there must also be flexibility and nimbleness, with certainty as to the regulatory environment.
- I In support of this vision, the parties have agreed to implement a mechanism for managing the Management Land that is in itself innovative. That is, if the criteria established by this Agreement are satisfied, the Management Land may be privately managed pursuant to a Lease instead of being managed by the Council or another public authority.

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- J Managing the Management Land in this way will contribute to the success of the Development by helping to realise the vision described in paragraph H.
- K In addition to the Management Land, the Developer will also construct Publicly Accessible Roads within the Development. Like the Management Land, some of these Publicly Accessible Roads are intended to be accessible to the public but to remain privately managed under a Lease or privately owned if the criteria in this Agreement are satisfied. This is to support the vision of the Development and to allow for the free flow of innovation and to keep pace with fast changes in technology. While Publicly Accessible Roads are not the subject of the Development Contributions, they have been included in this Agreement to record the arrangements agreed by Council and the Developer in relation to Publicly Accessible Roads.
- L Since this Agreement was entered into on 9 September 2016, the following has occurred:
- a. on 28 October 2016, the Amending LEP came into effect and the Land was rezoned in accordance with the Planning Proposal;
 - b. on 25 March 2022, the Land became subject to the provisions of SEPP (Precincts – Western Parklands City) instead of the Penrith LEP; and
 - c. on 25 March 2022, part of the land to which this Agreement originally applied was compulsorily acquired by Sydney Metro for the purposes of the Sydney Metro – Western Sydney Airport project and is no longer owned by the Developer.
- M Notwithstanding the changes outlined at paragraph L above, the Council and the Developer intend for this Agreement with the amendments which are incorporated in this document to continue to apply, with:
- a. the Land to which this Agreement applies being the Land as defined in Schedule 4 to this Agreement which remains in the Developer's ownership; and
 - b. references to:
 - i. the Penrith LEP to be taken to be references to SEPP (Precincts – Western Parklands City) on and from 25 March 2022;
 - ii. "Precinct Plans" to be taken to be references to the Western Sydney Aerotropolis Precinct Plan on and from 25 March 2022; and
 - iii. "Penrith DCP" to be taken to be references to any development control plan that may come into force and apply to the Land under SEPP (Precincts – Western Parklands City) in future,as well as all applicable environmental planning instruments, precinct plans and development control plans that may apply to the Land from time to time in place of the above.

TERMS

1 Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

2 Application of this Agreement

This Agreement applies to the:

- (a) Land;
- (b) Amending LEP;
- (c) Development; and
- (d) any Development Application.

3 Commencement and Operation of this Agreement

This Agreement commences and operates on and from the later of the following dates:

- (a) the date the Amending LEP is published in the NSW Government Gazette; and
- (b) the date the Agreement is entered into as required by clause 25C(1) of the Regulation.

4 Definitions and interpretation

4.1 Definitions

In this Agreement the following definitions apply:

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

Active Open Space means land and facilities typically – but not exclusively – providing for more formal recreational pursuits and organised sporting activities, supporting team or club-based sports, training and competition, which may occur indoor or outdoor and includes, but is not limited to ovals, sports pitches, indoor and outdoor courts, natural and synthetic surfaces and those facilities described in schedule 5 of this Agreement.

Affordable Housing means long term permanent rental accommodation for low income households, provided within the Penrith local government area and within 800 metres of public transport (being a regular bus or train service) and either a supermarket or neighbourhood shopping centre and delivered or managed by an approved local community housing provider.

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

Agreement for Lease means the agreement for lease document titled "Agreement for lease – Sydney Science Park" between Penrith City Council and Celestino Developments SSP Pty Limited, which has reference number 21184/80198254 as at the date of this agreement, and as may be amended by agreement between the parties from time to time.

Amending LEP means the proposed instrument as detailed in the Planning Proposal, which proposes to amend the Penrith LEP to rezone the Land from RU2 Rural Landscape to:

- (a) B4 Mixed Use;
- (b) B7 Business Park; and
- (c) RE1 Public Recreation;

by way of amendments to clauses in the Penrith LEP, and either amendments to maps or possibly additional maps for the Penrith LEP.

Authority means, in respect of a particular context or circumstance, each Federal, State or Local Government, semi-Government, quasi-Government or other body or authority, statutory or otherwise, including but not limited to any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance.

Better Outcome means when the parties agree in writing that a contribution, works or land not contemplated in this Agreement will deliver a greater public benefit, or is more appropriate in the circumstances, than a particular Development Contribution, works or land which is required under this Agreement.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

Commencement Date means the date upon which the Agreement is taken to operate under clause 3.

Completion means the date of practical completion in respect of relevant Works.

Construction Certificate has meaning given to it in the Act.

Consultant means a third party not employed by the Council with relevant expertise to enable them to assess a Lease Submission.

Dealing means subdividing, mortgaging, charging, encumbering or otherwise dealing with the Land.

Dedication Land means that part of the land referred to in Table C of Schedule 5 of this Agreement, except for the DOS Payment under Clause 6.5 and the Temporary Community Facility.

Dedication Roads are roads that the Developer nominates to be dedicated to the Council as a public road (as defined under the Roads Act 1993 (NSW)). It is intended, but not mandatory, for these roads to consist of roads where access to testing and enabling innovation in road infrastructure is not of principal consideration. These roads are likely to be immediately proximate to Torrens titled lots in residential areas, where it is appropriate for road access to be conventional.

Defects Liability Period means the period of 12 months which commences on the date of Completion of the any Works.

Development means development on the Land for:

- (a) approximately 340,000sqm of research and development floor space;
- (b) approximately 100,000sqm of education floor area and associated student accommodation;
- (c) a Town Centre comprising up to 30,000sqm of retail space;
- (d) no greater than 3,400 dwellings;
- (e) a primary school;
- (f) new roads and infrastructure;
- (g) landscaping open space, sporting fields and parks;
- (h) stormwater management, wetlands and riparian works;
- (i) community facilities; and
- (j) public art.

Development Application means a development application made under the Act for the Development or any part or stage of the Development.

Development Consent means the determination by approval of the Development Application for the Development or any part or stage of the Development.

Development Contribution means the development contributions set out in clause 5 of this Agreement.

Development Threshold has the meaning provided in Schedule 5, corresponding with the Dedication Land, Works or Monetary Contribution identified in Schedule 5.

DPE means the NSW Department of Planning and Environment or any other Authority replacing it.

Explanatory Note means the Explanatory Note attached at Schedule 2.

Force Majeure Event means any of the following:

- (a) the declaration by a Court that the Amending LEP is invalid; or
- (b) any of the following:
 - (i) act of God;
 - (ii) law, rule, regulation, order or policy of any government or governmental authority;
 - (iii) act of war declared or undeclared;
 - (iv) accident, fire, explosion, epidemic
 - (v) public disorder;
 - (vi) riot, civil disturbance, insurrection, rebellion, sabotage or act of terrorists;
 - (vii) flood, earthquake, hail, lightning, severe weather conditions or other natural calamity;
 - (viii) strike, boycott, lockout or other labour disturbance,
which:
 - (ix) prevents a party from carrying out its obligations under this Agreement, or the Developer from carrying out the Development;
 - (x) is beyond the control of the affected party; and
 - (xi) was not caused by the affected party.

GFA has the meaning given to it in the Standard Instrument (Local Environmental Plans) Order 2006.

GST Law has the meaning given to that term 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.

Land means the land described in Schedule 4.

Land Owner means Sydney Science Park Pty Ltd, or whichever entity owns the Land at the time the Agreement is in force, if Sydney Science Park Pty Ltd is not the owner of the Land.

Law means any applicable legislation, regulation, regulatory instrument, approval, consent, licence or official directive of the Commonwealth of Australia or any State or Territory, or any government authority.

Lease means a lease of any Management Land or Leaseback Road entered into, or to be entered into between the parties, in the form that is annexed to the Agreement for Lease.

Lease Submission means a submission to Council for an area of Management Land or a Leaseback Road to be subject to a Lease, which must address the criteria set out in Schedule 6.

Leaseback Roads are roads that the Developer nominates to be dedicated as fee simple to the Council (but not as a public road (as defined under the Roads Act 1993 (NSW)), and which the Council will lease back to the Developer under a Lease. It is intended, but not mandatory, that these roads will comprise boulevard and other higher order roads and will typically include hi-tech infrastructure, such as sensors for autonomous vehicles or drone stations. It is likely that roads in this class will be ones where access to testing and enabling innovation is a principal consideration, but public access is also essential. These roads would be 'operational land' owned by Council.

Local Environmental Plan has the meaning given to it in the Act.

LRS means the NSW Land Registry Services or any other Authority replacing it.

Management Land means:

- (a) any Dedication Land; or
- (b) the library in Table B of Schedule 5 if that would be undertaken as works in kind by the Developer and transferred to the Council in the ordinary course if the Lease did not apply;
- (c) the Temporary Community Facility referenced in Table C of Schedule 5;
- (d) any other land within the Development that would be required to be dedicated to Council as part of a development consent or other planning approval.

Monetary Contribution means the monetary contributions as set out in Table A, B C and D of schedule 5.

Novation Deed means a deed substantially in the same form as that attached at Schedule 3.

Occupation Certificate has the meaning given to it in the Act.

Partial Occupation Certificate means an Occupation Certificate issued in relation to only part of a new building or development in accordance with Division 6.3 of Part 6 of the Act.

Party means a party to this Agreement, including their successors and assigns.

Passive open space means areas which are typically used by the community in informal, unstructured ways, either individually or in groups and includes, but is not limited to, features such as parks, landscaped gardens, lakes, water features,

picnic areas, seating, cycling and/or walking paths/trails, including those described in Schedule 5 of this Agreement and which provide for less active or lighter physical activities, places for gathering and socialising, along with options for more active individual recreation such as running or cycling.

Penrith DCP means the Penrith Development Control Plan 2014.

Penrith LEP means the Penrith Local Environmental Plan 2010.

Permanent Community Facility has the same meaning as "community facility" in the Penrith LEP, but for the fact that it must be owned by the Planning Authority but may be operated by a private entity authorised by the Planning Authority at its sole discretion and must incorporate features required in schedule 5 to this Agreement.

Planning Proposal means the planning proposal submitted by the Developer's related entity to the Planning Authority in August 2013, and subsequently forwarded by the Planning Authority to the Minister for Planning under Part 3, Division 4 of the Act for the Amending LEP, DPE reference PP_2014_PENRI_001_00, and which received Gateway approval to proceed under s56 of the Act, from the Minister for Planning on 18 June 2014, and a further revised Gateway approval on 9 July 2015, which proposed to rezone the Land from RU2 Rural Landscape to:

- (a) B4 Mixed Use;
- (b) B7 Business Park; and
- (c) RE1 Public Recreation.

Private Roads are roads that the Developer nominates to be retained in fee simple ownership by the Developer. It is intended, but not mandatory, for these types of roads to exist within campus-style, superlot or similar stages of the Development where general public access is not required. Access arrangements for these roads would be between the Developer (or the then owner of the land) and the primary occupant of the land.

Public Facility means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act matter or thing that meets a Public Purpose.

Public Purpose means any purpose that benefits the public or a section of the public, including as specified in section 7.4(2) of the Act.

Publicly Accessible Road means any one of:

- (a) a Dedication Road;
- (b) a Leaseback Road; or
- (c) a Private Road.

Regulation means the Environmental Planning and Assessment Regulation 2021 (NSW).

Riparian Planting means landscaping and treatment of riparian areas within the Sydney Science Park in accordance with requirements of the Office of Water Guidelines, the Penrith LEP, Penrith DCP and Precinct Plans and as described by schedule 5 to this Agreement.

Roads Authority has the meaning given to it in the Roads Act 1993 (NSW).

SEPP (Precincts - Western Parklands City) means the State Environmental Planning Policy (Precincts—Western Parkland City) 2021.

Subdivision has the meaning given to it in the Act.

Subdivision Certificate has the meaning given to it in the Act.

Temporary Community Facility means a space of at least 138 square metres, whether provided within a building or otherwise, which is to be made available for the purpose of the physical, social, cultural or intellectual development or welfare of the community until such time as the Permanent Community Facility has been completed.

Transfer Dealings means selling or transferring the Land, but does not include consolidating or subdividing the Land.

Water Sensitive Urban Design and Wetland Facilities has the meaning given to it under Penrith DCP and the Penrith Water Sensitive Urban Design Policy 2013, or any succeeding Plan or Policy.

Western Sydney Aerotropolis Precinct Plan means the Western Sydney Aerotropolis Precinct Plan prepared and in force under the provisions of SEPP (Precincts – Western Parklands City).

Works means those works identified in Table B (if applicable) and Table C of Schedule 5.

4.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference in this Agreement to:
 - (i) the Penrith LEP includes SEPP (Precincts – Western Parklands City) on and from 25 March 2022;

-
- (ii) "Precinct Plans" includes the Western Sydney Aerotropolis Precinct Plan on and from 25 March 2022; and
 - (iii) "Penrith DCP" includes references to any development control plan that may come into force and apply to the Land under SEPP (Precincts – Western Parklands City) in future,

as well as all applicable environmental planning instruments, precinct plans and development control plans that may apply to the Land from time to time in place of the above.

- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment, replacement or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) 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.
- (j) 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.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a Party to this Agreement includes a reference to the staff, agents and contractors of the Party, and the Party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

- (a) Subject to this Agreement, the Developer is to make the following Development Contributions:

-
- (i) the carrying out and the delivery of the Works; and
 - (ii) the dedication of the Dedication Land to the Planning Authority in accordance with this Agreement;
 - (iii) where the parties agree not dedicate all or some of the Management Land, to instead implement a Lease for that land in accordance with this Agreement;
 - (iv) the payment of the Monetary Contributions to the Planning Authority; and
 - (v) payment of the reasonable costs of a Consultant to assist Council in assessing Lease Submissions as set out in clause 13
- (b) The Planning Authority is to apply each Development Contribution made by the Developer under this Agreement towards any public purpose for which it is made (as specified in schedule 5) and otherwise in accordance with this Agreement.

6 Indexation of Contributions (excluding Affordable Housing and Permanent Community Facilities)

All monetary contributions to be paid by the Developer under this Agreement, with the exception of that for Affordable Housing and the Permanent Community Facility, will be amended by indexation from the date of the signing of the Agreement in accordance with the following formula and applied on the date of payment, as follows:

$$RC = AC \times CPI/ACPI$$

Where:

RC is the amended contribution rate

AC is the monetary contribution amount or rate (as applicable) at the adoption of the plan

CPI is the latest Consumer Price Index (All Groups Sydney)

ACPI is the Consumer Price Index (All Groups Sydney), which applied at the date of the signing of this Agreement

7 Indexation of Affordable Housing and Permanent Community Facility Contributions

All monetary contributions to be paid by the developer under this Agreement for Affordable Housing and the Permanent Community Facility, will be amended by indexation from the date of the signing of the Agreement in accordance with the

ABS House Prices Index – Established House Prices (Sydney), and applied on the date of payment as follows:

$$RC = AC \times HPI/AHPI$$

Where:

RC is the amended contribution rate

AC is the monetary contribution rate or amount (as applicable) in schedule 5

HPI is the latest ABS House Prices Index – Established House Prices (Sydney)

AHPI is the ABS House Prices Index – Established House Prices (Sydney), which applied at the date of the signing of this Agreement

8 Works

8.1 Carrying out the Works and use following practical completion

Subject to clause 8.5, the Developer must complete the Works identified in schedule 5 by the relevant Development Threshold.

Upon practical completion of the Works, the Developer must provide the community with immediate access to the land on which the Works have been completed for the purpose for which the facility was intended, unless the Planning Authority otherwise notifies the Developer in writing. The provision of access does not remove the Developer's responsibilities under the Defects Liability Period.

8.2 Pre-Conditions for Works

The Developer must obtain at the Developer's cost all necessary approvals (including Development Consents), consents, certifications and authorisations required to carry out the Works, or any component of the Works and, where it proposes to dedicate the Dedication Land or part of the Dedication Land, to subdivide the Dedication Land or part of the Dedication Land.

8.3 Works - Standard of Work

The Developer must carry out the Works in a good and workmanlike manner, in compliance with Schedule 5 and all applicable laws, regulations and currently applicable road design standards (including any relevant Australian Standards, Austroads standards, RMS Supplements to Austroads standards or other standards), the conditions of any Development Consent, conditions of any approval under section 138 of the Roads Act 1993 (NSW), to a value as set out in Schedule 5 and generally to the satisfaction of the Planning Authority, acting reasonably.

8.4 Access to Planning Authority's Land and Assistance

- (a) If requested, the Planning Authority must promptly grant, at no cost to the Developer, such licences or other rights (as are reasonably necessary) over the Planning Authority's land and roads (subject to the provisions of the *Roads Act 1993*) to enable the Developer, its contractors, employees and staff to carry out the Works in accordance with a licence to be agreed between the Parties.
- (b) Subject to this Agreement, the Planning Authority must use its best endeavours to assist the Developer in complying with its obligations under this clause.
- (c) Should the Developer (including its contractors, employees and staff) cause any damage or disturbance to the Planning Authority's land or roads when accessing them under this clause 8.4, then the Planning Authority may give notice to the Developer which requires it to make good any such damage or disturbance.
- (d) If the Developer fails to make good any such damage or disturbance within a reasonable amount of time following notice from the Planning Authority, then the Planning Authority may carry out works to make good the damage or disturbance in place of the Developer. The Planning Authority may recover its reasonable costs in carrying out those works from the Developer as a debt in a court of competent jurisdiction.

8.5 Cash contribution in place of Works

- (a) This clause 8.5 only applies to the Works described in Item 4 of Table C of schedule 5 being "District Open Space (DOS)" (**Eligible Works**).
- (b) At any time 12 months prior to the relevant Development Threshold for any Eligible Works, the Developer may, at its sole discretion, elect to provide a cash contribution in place of all or some of the Eligible Works (**DOS Cash Contribution**) by providing the Planning Authority with written notice of its intention to do so.
- (c) If the Developer has elected to provide the DOS Cash Contribution in place of all or some of the Eligible Works, the Developer must provide the DOS Cash Contribution prior to the relevant Development Threshold for that item of Eligible Works, according to the following formula:

$$DC = A \times DR$$

Where:

DC = DOS Cash Contribution

A = the area of the Eligible Works in hectares for which the Developer is providing the DOS Cash Contribution in lieu

DR = District Open Space Rate of \$332,077.92 per hectare (with this rate being subject to indexation in accordance with the ABS Consumer Price Index, as provided for under this Agreement)

- (d) On providing the DOS Cash Contribution in place of the Eligible Work(s), the Developer will be held to have complied with all of its obligations in respect of the Eligible Works or the component of the Eligible Works under this Agreement. For the avoidance of doubt, the Developer is not required to dedicate the land the subject of the DOS Cash Contribution to the Planning Authority.

9 Dedication or Lease

9.1 Dedication

Subject to clause 9.3, the Developer shall generally dedicate the Dedication Land to the Planning Authority prior to the relevant Development Threshold for the Works associated with the Dedication Land.

9.2 Manner of Dedication

Subject to clause 9.3, the Developer must, prior to the relevant Development Threshold:

- (a) procure the dedication of the Dedication Land or the relevant part of the Dedication Land to the Planning Authority at no cost to the Planning Authority;
- (b) do all things necessary to effect dedication of the Dedication Land, including ensuring that the registered proprietors of the Dedication Land provide to the Planning Authority an instrument in registrable form under the Real Property Act 1900 that is effective to transfer title to the land to the Planning Authority when registered;
- (c) cause to be produced to the LRS the certificate of title to that part of the Dedication Land to be dedicated, or a direction allowing the certificate of title to be used for that purpose to enable registration of an instrument of transfer; and
- (d) deliver to the Planning Authority the certificate of title if that certificate is released to the Developer by the LRS.

9.3 Lease of Management Land

- (a) At least four weeks prior to submitting a Development Application that includes land that is Management Land, if the Developer wishes for that Management Land to be subject to a Lease, the Developer must submit to Council the Lease Submission.
- (b) Council must promptly consider the Lease Submission made pursuant to clause 9.3(a) and must:

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- (i) within 4 weeks of the Developer submitting the Lease Submission to Council, request any further information required to assist with the assessment of the Lease Submission from the Developer and issue a non-binding lease approval to the Developer, on a conditional basis, and subject to any necessary changes or amendments arising from the determination of the relevant development application; and
 - (ii) notify the Developer of its final determination as to whether the Lease Submission is approved or refused within one week of determining the Development Application.
- (c) Council will not unreasonably withhold its approval to the Lease Submission if the Lease Criteria is satisfied and additional concerns do not arise.
- (d) If Council approves the Lease Submission:
- (i) the relevant area of Management Land will be dedicated to Council in accordance with clause 9.2;
 - (ii) Council must promptly and before the Lease commences classify the relevant area of Management Land as 'operational land' for the purposes of section 26 of the Local Government Act 1993 (NSW);
 - (iii) the Agreement for Lease applies to the relevant area of Management Land;
 - (iv) If the Developer is of the opinion that an easement for services on the terms set out in Schedule 7 in favour of the Developer or the benefitted land nominated by the Developer (or if the Developer is not the service provider, the service provider(s)) within the relevant portion of the Management Land lot(s), is required to allow the Developer to install, access and maintain the services, which will survive termination of the Lease, then the Developer may request that Council grant, at no cost, an easement for services; and
 - (v) When requesting an easement for services under clause 9.3, the Developer must ensure that the layout, design and dimensions of the easement minimises the portion of the Management Land lot(s) to be burdened by the easement. The Developer must also be able to confirm, to the satisfaction of Council, that the requirement for an easement for services could not be efficiently accommodated via Leaseback Roads and Dedication Roads.
- (e) Council will not unreasonably withhold a request for an easement for services on Management Land lot(s) subject to the operation of clause 9.3(c).
- (f) If Council does not approve the Lease Submission:
- (i) Council must give the Developer reasons for its decision at the same time as notifying the Developer that the Lease Submission is not approved; and

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- (ii) If the Developer does not dispute the reasons for decision under clause 19, the relevant area of Management Land will be dedicated to Council in the ordinary course pursuant to clause 9.2.
 - (g) For the avoidance of doubt, the submission to Council of a Lease Submission under clause 9.3(a) less than four weeks prior to lodgement of the relevant development application, does not affect:
 - (i) the validity of the Lease Submission or development application in any way;
 - (ii) the four week period that Council has to assess the Lease Submission in clause 9.3(b)(i).

10 Publicly Accessible Roads

10.1 Publicly Accessible Roads under this Agreement

- (a) The parties acknowledge that:
 - (i) for the purposes of the Development, the Developer will be required to construct a range of Publicly Accessible Roads on the Land;
 - (ii) however, while the Developer is not obliged to construct or dedicate any Publicly Accessible Roads under this Agreement, to ensure that the values and vision for the Development can be achieved, this clause 10 applies to the ownership and long term management of Publicly Accessible Roads.

10.2 Hierarchy of Publicly Accessible Roads

For the purpose of this Agreement, the following are the categories of Publicly Accessible Roads, as defined under clause 4.1:

- (a) Dedication Roads;
- (b) Leaseback Roads; and
- (c) Private Roads.

10.3 Nomination of Publicly Accessible Roads classifications

- (a) At least four weeks prior to submitting a Development Application that includes an application to subdivide that will result in, or for the construction of, a Publicly Accessible Road, whichever occurs first, the Developer must:
 - (i) classify and identify to Council whether the Publicly Accessible Road is intended to be a Dedication Road, a Leaseback Road or a Private Road; and
 - (ii) if the classification is a Leaseback Road, make a Lease Submission in relation to the Leaseback Road.

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- (b) Council must promptly consider the Lease Submission made pursuant to clause 10.3(a)(ii) and must:
- (i) within 4 weeks of the Developer submitting the Lease Submission to Council request any further information required to assist with the assessment of the Lease Submission from the Developer and issue a non-binding lease approval to the Developer, on a conditional basis, and subject to any necessary changes or amendments arising from the determination of the relevant Development Application; and
 - (ii) notify the Developer of its final determination as to whether the Lease Submission is approved or refused within one week of determining the Development Application.

Council will not unreasonably withhold its approval to the Lease Submission if the Lease Criteria is satisfied.

- (c) If Council approves the Lease Submission:
- (i) the relevant Leaseback Road will be dedicated to Council as fee simple to the Council (but not as a public road (as defined under the Roads Act 1993 (NSW)) following the procedure set out in clause 9.2;
 - (ii) Council must promptly and before the Lease commences classify the relevant area of Leaseback Road as 'operational land' for the purposes of section 26 of the Local Government Act 1993 (NSW);
 - (iii) the Agreement for Lease applies to the relevant area of Leaseback Road;
 - (iv) Council must on request, at no cost, grant an easement for services on the terms set out in Schedule 7 in favour of the Developer or the benefitted land nominated by the Developer (or if the Developer is not the service provider, the service provider(s)) within the relevant portion of the Leaseback Road lot(s), to allow the Developer to install, access and maintain the services efficiently, and which will survive termination of the Lease.
- (d) If Council does not approve the Lease Submission:
- (i) Council must give the Developer reasons for its decision at the same time as notifying the Developer that the Lease Submission is not approved; and
 - (ii) if the Developer does not dispute the reasons for decision under clause 19, the relevant area of Leaseback Road will be dedicated to Council in the ordinary course following the procedure in clause 9.2.
- (e) In the case of Dedication Roads, on dedication of the Dedication Road, Council must on request, at no cost, grant an easement for services on the terms set out in Schedule 7 in favour of the Developer or the benefitted land

nominated by the Developer (or if the Developer is not the service provider, the service provider(s)) within the relevant portion of the Dedication Road lot(s) if considered necessary by the Developer and Council, to allow the Developer to install, access and maintain the services efficiently.

- (f) For the avoidance of doubt, the submission to Council of a Lease Submission under clause 10.3(a) less than four weeks prior to lodgement of the relevant development application, does not affect:
- (i) the validity of the Lease Submission or development application in any way;
 - (ii) the four week period that Council has to assess the Lease Submission in clause 10.3(b)(i).

11 Monetary Contribution for road works

- (a) By 31 March 2024, the Developer will carry out a traffic report to determine the projected traffic volumes on Luddenham Road at 1 January 2026.
- (b) Should the traffic report identify that, as a result of the Development, the full monetary contribution outlined in Table D of Schedule 5 is required by 2026 the Developer must pay the balance of the monetary contribution set out in Table D by 1 January 2026.
- (c) Should the traffic report identify that the full monetary contribution is not required by 2026, then the timing for its payment will be that shown in Table D of schedule 5 of this Agreement.
- (d) For the avoidance of doubt, irrespective of the finding of the traffic report, the monetary contributions payable by the Developer for road works are limited to those amounts set out in Table D of schedule 5.

12 Road Works Review

- (a) No later than 10 days after the commencement of this Agreement, the parties must jointly engage a suitably qualified traffic expert (Traffic Expert) to review the accuracy of the modelling used by the Developer to identify the monetary contributions set out in Table D in schedule 5.
- (b) If the parties cannot reach agreement on who the parties shall appoint as the Traffic Expert within 7 days after the commencement of this Agreement, the parties must request the Chief Executive Officer of Engineers Australia to appoint the Traffic Expert as soon as practicable.
- (c) The Traffic Expert must be engaged to provide the parties with a draft opinion on the accuracy of the modelling used by the Developer to identify the monetary contributions set out in Table D in schedule 5 within one month of their appointment.

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- (d) The parties shall have 14 days to comment on the draft opinion of the Traffic Expert.
 - (e) The Traffic Expert must then finalise the opinion having appropriate regard to the comments of the parties and provide a final opinion to the parties within a further 14 days.
 - (f) Should the Traffic Expert's opinion demonstrate a manifest error in the amounts of the monetary contributions or the specified road works set out in Table D of Schedule 5, then the parties are to negotiate in good faith on the appropriate next steps.
 - (g) The parties must pay the costs of the Traffic Expert and for any costs of the Chief Executive Officer of Engineers Australia in relation the nomination of the Traffic Expert in equal shares within 14 days of receiving appropriate tax invoices.

13 Consultant support for assessment of Lease Submissions and ongoing management and administration

- (a) Subject to this clause 13, the Council is entitled to claim from the Developer:
 - (i) its reasonable costs of utilising a Consultant to assist in the assessment of Lease Submissions; and
 - (ii) costs that Council reasonably incurs in the ongoing management and administration of the premises that are subject to a Lease that are more than the costs Council would incur to manage and administer the premises if the Lease was not in place.
- (b) On each occasion that the Council receives a Lease Submission under this Agreement, then within 7 days of lodgement of the Lease Submission it may send a notice to the Developer which:
 - (i) informs the Developer that the Council requires the support of a Consultant to assess the Lease Submission or that it reasonably expects to incur costs in the ongoing management and administration of the premises that may become subject to a Lease if the Lease Submission is approved and these costs are more than the costs Council would incur to manage and administer the premises if the Lease was not in place; and
 - (ii) provides a proposal that details, as relevant:
 - i. the identity of the Consultant proposed by Council, the work that Council envisages the Consultant will undertake, the time (in hours or days) that the Council considers are required for that Consultant to assist in the assessment of the Lease Submission and the cost of the Consultant; or

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- ii. the costs that Council reasonably expects to incur (including as to time periods and activities) in the ongoing management and administration of the premises that are subject to a Lease where they will be more than the costs Council would incur to manage and administer the premises if the Lease was not in place.
 - (c) The Developer can respond to the notice in clause 13(b) within 14 days by either:
 - (i) accepting the notice, in which case:
 - i. in respect of costs relating to a Lease Submission: the Developer will be required to pay the Council for the costs of the Consultant as set out in the notice, after the Lease Submission has been assessed and a tax invoice has been given to the Developer
 - ii. in respect of costs relating to ongoing management and administration costs during the Lease term: the parties will include in the Lease an obligation on the lessee entity to pay the costs set out in the notice that has been accepted by the Developer, at the times and in the amounts specified in the notice;
 - (ii) accepting the requirement for the Consultant but rejecting the specific Consultant nominated, the time, or the costs nominated, in which case the Council and the Developer are to meet in an attempt to reach agreement on those outstanding matters within 7 days of the Developer's notice; or
 - (iii) rejecting the notice in its entirety, in which case the Council and the Developer are to meet in an attempt to reach agreement within 7 days of the Developer's notice.
 - (d) Should the Council and Developer be unable to reach agreement under either clause 13(c)(i) or 13(c)(ii) within the 7 day period specified in those clauses, then clause 19 will apply to those matters not agreed.
 - (e) Nothing in this clause 13 affects any time periods in clauses 9.3 or 10.3.
 - (f) The requirements under this clause 13 will apply on a trial basis for 12 months from the commencement date of this clause 13. The parties must meet prior to the expiry of that first year to discuss whether:
 - (i) the requirements of this clause will continue for the remainder of the term of this Agreement or another defined period; or
 - (ii) a different arrangement will be entered into for the Developer to support Council in its assessment of Lease Submissions under this Agreement or in relation to additional costs that Council may incur in the ongoing management and administration of areas that are subject to Leases.

14 Substitution of Contribution for Agreed Better Outcome

- (a) If the Parties agree in writing that a contribution, land or works not contemplated in this Agreement (**Substitution Contribution**) will deliver a Better Outcome than a particular Development Contribution which is required under this Agreement (**Superseded Contribution**), then the Parties may agree, in writing, to substitute the Substitution Contribution for the Superseded Contribution.
- (b) In agreeing to substitute a Substitution Contribution for the Superseded Contribution, the Parties may also agree to a different Development Threshold for the Superseded Contribution. If no different Development Threshold is agreed, then the Development Threshold for the Superseded Contribution becomes the Development Threshold for the Substitution Contribution.
- (c) If the Parties agree in writing to substitute a Substitution Contribution for a Superseded Contribution, then:
 - (i) the Substitution Contribution will function in place of the Superseded Contribution for the purposes of this Agreement as if it were the Superseded Contribution; and
 - (ii) provision of the Substitution Contribution by the Developer will constitute compliance with the Developer's obligations in relation to the Superseded Contribution for the purposes of this Agreement.
- (d) The Parties agree that if they substitute the Substitution Contribution for the Superseded Contribution, that will not constitute an agreement to amend the Agreement for the purposes of clauses 25C(3) and 26(1) of the Regulation.

15 Application of sections 7.11, 7.12 and 7.24 of the Act to the Development

- (a) This Agreement excludes the application of sections 7.11 and 7.12 of the Act to the Development.
- (b) This Agreement does not exclude the application of section 7.24 of the Act to the Development.

16 Contributions towards Penrith City-wide facilities

The Parties acknowledge and agree that the Monetary Contributions under Table A of Schedule 5 include monetary contributions towards open space, cultural facilities and library facilities which are equal to the monetary contribution which would be required under the application section 7.11 contributions plans of the Planning Authority.

17 Registration of this Agreement

- (a) The Developer must, at its expense, procure the registration of the Agreement on the relevant folios of the register held by the LRS pertaining to the Land as soon as reasonably practicable after the Commencement Date and, in any event, no later than 120 Business Days after the Commencement Date.
- (b) Until such time as this Agreement is registered on the relevant folios of the register held by the LRS pertaining to the Land, the Developer agrees that the Planning Authority may lodge a caveat on the relevant folios of the Register held by the LRS pertaining to the Land.
- (c) If the Planning Authority lodges a caveat in accordance with clause 14(b), then the Planning Authority must during such time as the caveat remains lodged on the title of the Land:
 - (i) provide written consent within 5 Business Days to any proposed Dealing in respect of the Land other than a Transfer Dealing;
 - (ii) provide written consent within 5 Business Days to a proposed Transfer Dealing in circumstances where the proposed assignee, transferee, purchaser or other party (the **Incoming Party**) of the Land or part of the Land has executed a Novation Deed in substantially the same form as contained in Annexure A;
 - (iii) ensure that the caveat does not prevent or delay the registration of this Agreement; and
 - (iv) remove the caveat from the title to the Land promptly, following registration of this Agreement in accordance with clause 17(a).

18 Review of this Agreement

- (a) This Agreement may be reviewed or modified and any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

19 Dispute Resolution

19.1 Reference to Dispute

If a dispute arises between the Parties in relation to this Agreement, then neither Party can commence proceedings, except in compliance with this clause.

19.2 Notice of Dispute

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

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

19.3 Representatives of Parties to Meet

- (a) The representatives of the Parties must promptly (and in any event within 20 Business Days of the written notice provided in accordance with clause 19.2) meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution);
 - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

19.4 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with clause 19.3; and
- (b) the Parties have been unable to reach an outcome identified in clause 19.3(b)(i) to (iii); and
- (c) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 19.3,

then, that Party may, by 14 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement and either Party may proceed to enforce this Agreement in a Court of competent jurisdiction.

19.5 Urgent interlocutory proceedings

At any time, a Party may, without inconsistency with anything in this clause 19, seek urgent interlocutory relief in respect of a dispute under this Agreement from any Court having jurisdiction.

20 Security and Enforcement

20.1 Security

The Parties agree that registration of this Agreement constitutes suitable means of enforcement for the purpose of section 7.4(3)(g) of the Act.

21 Notices

21.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

Penrith City Council

Attention: General Manager
Address: 601 High St, Penrith NSW 2750
Fax Number: 02 4732 7958
Email: city.planning@penrithcity.nsw.gov.au

Celestino Developments SSP Pty Ltd

Attention: The Directors
Address: 642 Great Western Highway, Pendle Hill, NSW
2145
Fax Number: 02 9842 1059
Email: legal@celestino.net.au with a copy to
contracts@celestino.net.au

21.2 Change of Details

If a Party gives the other Party three Business Days' notice of a change of its address, email address or fax number, any notice, consent, information, application

or request is only given or made by that other Party if it is delivered, electronically sent, posted or faxed to the latest address, email address or fax number.

21.3 Giving of Notice

Subject to clause 21.4, any notice, consent, invoice, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered by process server, when it is served at the relevant address;
- (b) if it is sent by registered post, two Business Days after it is posted; and
- (c) if it is sent by email, when a delivery confirmation report is received by the sender, unless subsequently the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered.

21.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered on a day that is not a Business Day, or if on a Business Day, after 5.00 pm 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.

22 Approvals and consent

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

23 Assignment and Novation

23.1 Assignment

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

23.2 Transfer Dealings

- (a) The Developer must not have any Transfer Dealings with the Land or part of the Land, unless:

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- (i) the proposed assignee, transferee, purchaser or other party (the **Incoming Party**) enters into the Novation Deed; or
 - (ii) the Planning Authority has provided in writing a partial release and discharge of the Agreement in respect of the relevant part of the Land pursuant to clause 24.
- (b) As and from the date of execution of the Novation Deed by the Planning Authority, the Developer and the Incoming Party, and other than as set out in the Novation Deed, the Developer is released from the obligations contained in this Agreement to the extent that they:
- (i) are novated to the Incoming Party, and
 - (ii) remain to be performed.

24 Release and discharge

24.1 Full release and discharge

- (a) Upon satisfaction of the Developer's obligations under this Agreement, the Planning Authority must provide a release and discharge of this Agreement with respect to the Land, including any strata lot, within 20 Business Days of receiving a written request from the Developer and do all things reasonably necessary, including executing any necessary document to enable the Developer to remove the notation of this Agreement on the relevant folio(s) of the Torrens title register held by the LRS pertaining to the Land.
- (b) If there is a disagreement about whether the Developer has satisfied its obligations under this Agreement, the Planning Authority must provide a release and discharge of the Agreement where alternative security is provided by the Developer to the reasonable satisfaction of the Planning Authority to secure any obligations the Planning Authority considers are still outstanding in respect of the Land.

24.2 Partial release and discharge

- (a) From time to time, the Developer may request the Planning Authority provide a partial release and discharge of the Agreement. The Planning Authority must provide a partial release and discharge of this Agreement to the extent that the Agreement affects any part of the Land, including any strata title or community title lot, where:
 - (i) the Developer has satisfied its obligations under this Agreement which physically relate to that part of the Land; or
 - (ii) no obligations under this Agreement physically relate to that part of the Land; or

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- (iii) the Developer has provided alternative security to the reasonable satisfaction of the Planning Authority to secure the performance of any outstanding obligations under this Agreement that physically relate to that part of the Land.
 - (b) The Planning Authority must provide the release and discharge, or partial release and discharge, referred to in paragraphs 24.1 and 24.2, within 20 business days of receiving a written request from the Developer and do all things reasonably necessary, including execute any necessary document to enable the Developer to remove the notation of this Agreement on the relevant folios of the Torrens title register held by the LRS pertaining to the Land, or part of the Land.

24.3 Release and discharge for Publicly Accessible Roads

For the avoidance of doubt, the parties acknowledge that as no Development Contributions are required in respect of Publicly Accessible Roads, Council cannot maintain registration of this Agreement on the title of any parts of the Land, or refuse to de-register this Agreement from such title, due to the presence of, and requirements in relation to, any Publicly Accessible Roads.

25 Insolvency or inability of Developer to fulfil obligations

25.1 Failure Event

Each of the following circumstances is a Failure Event:

- (a) the Developer becomes insolvent; or
- (b) the Developer notifies the Planning Authority that it is no longer able to comply with its obligations under this Agreement; or
- (c) where:
 - (i) the Developer has failed to comply with its obligations under this Agreement for a period of at least 3 months, for reasons other than due to a Force Majeure Event, dispute or change in Law; and
 - (ii) the Planning Authority considers, on reasonable grounds, that the Developer is unable, or unwilling, to continue to comply with its obligations under this Agreement; and
 - (iii) the Planning Authority notifies the Developer that it considers the Developer is unable, or unwilling, to continue to comply with its obligations under this Agreement; and
 - (iv) within 21 days of receipt of the Planning Authority's notice 25.1(c)(iii), the Developer fails to confirm that it will comply with its obligations under this Agreement, and thereafter, fails to comply with any outstanding obligations in a timely manner.

25.2 Planning Authority can undertake Works

If a Failure Event has occurred, in addition to any other remedies available, the Planning Authority may carry out any Works under this Agreement which have not yet been completed by the Developer, in the place of the Developer, provided that;

- (a) the Planning Authority has first notified the Developer of its intentions to carry out the Works; and
- (b) at least 21 days has passed after the Planning Authority notified the Developer of its intentions to carry out the Works; and
- (c) in the case of Works which have been partially undertaken by the Developer, the Developer has not undertaken any further work following the Planning Authority's notification of its intentions to carry out the Works.

25.3 Works undertaken by Planning Authority to function as a debt

If the Planning Authority undertakes Works in the place of the Developer in accordance with this clause 25, then the Planning Authority may recover the reasonable costs in carrying out those Works from the Developer as a debt in a court of competent jurisdiction.

26 Force Majeure

- (a) If a Party is unable by reason of a Force Majeure Event to carry out wholly or in part its obligations under this Agreement, it must:
 - (i) give to the other Parties prompt notice of the force majeure with reasonably full particulars; and
 - (ii) suggest an alternative method, if any, of satisfying its obligations under this Agreement.
- (b) If a Party is unable to satisfy its obligations under this Agreement by an alternative method, the obligations of the Parties, and any time periods, so far as they are affected by the Force Majeure Event are then suspended during continuance of the Force Majeure Event and any further period as may be reasonable in the circumstances.
- (c) The Party giving such notice under this clause must use all reasonable endeavours to remove the Force Majeure Event or mitigate its impacts as quickly as practicable in the circumstances.
- (d) Any dispute relating to a Force Majeure Event, including its existence, is to be treated as a dispute under clause 19.
- (e) If a Force Majeure Event cannot be rectified to the mutual satisfaction of the Parties and the Developer, in its sole discretion, determines that it is unable to undertake or continue with the Development, then upon the surrender of any existing Development Approvals that relate to works that have not yet

been physically commenced (as defined in the Act), the Developer may terminate this agreement by written notice to the Planning Authority in which event neither Party will have any claim against the other under this Agreement.

- (f) If paragraph (e) applies, the Planning Authority shall do all things reasonably necessary including executing any necessary documents to enable the Developer to remove the notation of this Agreement on the relevant folios of the Torrens title register held by LRS relating to the land within 20 Business Days of receiving written request from the Developer.
- (g) If paragraph (e) applies, the Planning Authority may give notice to the Developer that it requires works to be done to ensure that there is no immediate risk of harm to human safety arising from any incomplete Works or any part of the Development.
- (h) The Developer must be given a reasonable period of time, and not less than 10 Business Days, to carry out any works the subject of a notice under this clause and the Planning Authority must reasonably consider any variation sought by the Developer to any works requested under this clause.

27 Change in Law

- (a) On, or following, the occurrence of a change in any Law, any Party which considers that the change in Law will impact on the obligations or rights of that Party under this Agreement, then that Party may notify the other Party of the change in Law, and the impacts it says will arise from the Change in Law.
- (b) Following the notification under clause 27(a), the Parties must meet within 20 Business Days, to discuss the impact of the change in Law, and attempt, in good faith, to reach agreement in relation to any amendments to this Agreement as a result of the change in Law.
- (c) If the Parties are unable to reach agreement on the change in Law, then the matter is to be treated as a dispute in accordance with clause 19.
- (d) If the change in Law meets the definition of Force Majeure Event (in particular, that it prevents a party from carrying out its obligations under this Agreement, or the Developer from carrying out the Development), then the change in Law may be dealt with as a Force Majeure Event.

28 Costs

The Developer agrees to pay the reasonable costs of the Planning Authority in preparing, negotiating and executing, and, if relevant, modifying, this Agreement. All stamp duty (including fines, penalties and interest) payable on or in connection with this Agreement and on any instruments executed under or any transaction

evidenced by this Agreement, must be borne by the Developer except where stated otherwise in this Agreement, all other costs are to be borne by the party which incurs those costs.

29 Entire Agreement

- (a) This Agreement and its schedules contains everything to which the Parties have agreed in relation to the matters those documents deal with. 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 Agreement was executed, except as permitted by law.
- (b) 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 Agreement.

30 Further acts

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

31 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its Courts. The Parties will not object to the exercise of jurisdiction by those Courts on any basis.

32 No fetter

Nothing in this Agreement shall be construed as requiring the Planning Authority to do anything that would cause it to be in breach of any of its 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.

33 Representations and warranties

- (a) The Developer represents and warrants that on the date of this Agreement that the Developer is either the legal and beneficial owner of the Land, or has the written consent from any Land Owner(s) to enter into and perform its obligations under this Agreement, and register the Agreement in the relevant folio of the Land titles.

-
- (b) The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

34 Severability

If a clause or part of a clause of this Agreement 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. 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 Agreement, but the rest of this Agreement is not affected.

35 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It 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.

36 GST

36.1 Definitions

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 chooses to apply the Margin Scheme in working out the amount of GST on that supply.

36.2 GST exclusive

All prices, Monetary Contributions or other amounts payable or Consideration to be provided pursuant to this Agreement are expressed as being exclusive of GST.

36.3 Taxable supplies

- (a) Subject to clause 34.3, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (b) Clause 33.3(a) does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

36.4 Input tax credit

No additional amount shall be payable by the Planning Authority under clause 33.3(a) unless, and only to the extent that, the Planning Authority (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

36.5 Certain Supplies

If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the GST Law, the Parties agree:

- (a) to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies; and
- (b) that any amounts payable by the Parties in accordance with clause 33.2 (as limited by clause 33.3) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

36.6 Tax invoices

No payment of any amount pursuant to this clause 33, 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.

36.7 Exclusions

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.

36.8 Application of clause

This clause continues to apply after expiration or termination of this Deed.

37 Effect of schedules

The Parties agree to comply with any terms contained in schedules to this Agreement as if those terms were included in the operative part of the Agreement.

38 Relationship of Parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

39 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

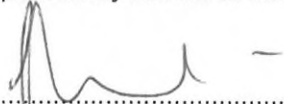
40 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

EXECUTION

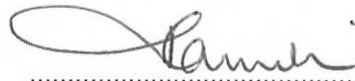
Executed as a deed on **20 September 2023**

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



Witness

Penny Dixon
Name of Witness (print)



Signature of Attorney

John Cameron
Name of Attorney (print)

~~Name of Attorney (print)~~

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

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



Witness

JULIE ROES
Name of Witness (print)



Officer

ANDREW MOORE
Name of Officer (print)

Agreement for lease

Sydney Science Park

Penrith City Council
Council

Celestino Developments SSP Pty Limited
Developer

Clayton Utz
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
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Our reference 21184/80198254

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Reference Schedule

- Item 1** **Council**
- Penrith City Council ABN 43 794 422 563
- Address: 601 High Street, Penrith NSW 2750
- Attention:
- Email:
- Item 2** **Developer**
- Celestino Developments SSP Pty Limited ACN 607 351 842
- Address: 642 Great Western Highway, Pendle Hill NSW 2145
- Attention: The Directors
- Email: legal@celestino.net.au with a copy to contracts@celestino.net.au
- Item 3** **Premises [clause 1.1]**
- The part of the Dedication Land or the Publicly Accessible Road nominated as the land the subject of the Lease pursuant to this Agreement.

Agreement for lease

Date **20 September 2023**

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

1. Interpretation

1.1 Definitions

In this Agreement unless the contrary intention appears:

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

Authorised Officer means:

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

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

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

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

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

Celestino Group means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Lease Definitions Imported

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

1.3 Interpretation

The following apply in the interpretation of this Agreement:

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

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

2. Conditions Precedent to lease for Premises

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

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

3. Completion of the Lease

3.1 Grant of Lease

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

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

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

3.2 Authority to complete

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

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

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

3.3 Execution and registration

As soon as possible after the Commencing Date:

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

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

4. GST

4.1 Definitions

In this clause 4:

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

4.2 Consideration GST exclusive

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

4.3 Payment of GST

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

4.4 Tax invoice

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

4.5 Adjustment event

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

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

4.6 Reimbursements

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

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

5. Dispute resolution

5.1 Reference to a dispute

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

5.2 Notice of Dispute

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

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

5.3 Representatives of parties to meet

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

5.4 Legal proceedings

If:

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

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

5.5 Urgent interlocutory proceedings

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

5.6 Continuing performance

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

6. Notices

6.1 Form of Notices

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

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

6.2 Change of Address

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

6.3 Service of Notices

Notices are taken to be given:

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

6.4 Timing of notices by fax or email

If a notice by fax or email is given:

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

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

6.5 Email signing

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

7. Assignment by Celestino

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

8. Consultative Committee

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

9. Security

9.1 Developer to give Bank Guarantee

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

9.2 Particulars of Bank Guarantee

The Bank Guarantee must:

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

9.3 Bond

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

9.4 Adjustments to Secured Amount

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

9.5 Tenant in default

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

9.6 Developer not to interfere with payment

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

9.7 Replacement Bank Guarantee or Bond

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

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

9.8 Landlord's rights

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

9.9 Return of Bank Guarantee or Bond

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

10. General Provisions

10.1 Confidentiality

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

C. any of its employees to whom it is reasonably necessary to disclose the information;

(ii) if the information is generally and publicly available other than as a result of that party's breach of clause 10.1(a); and

(iii) with the written consent of the other party.

(c) The obligations of the parties under this clause 10.1 will survive the expiration or termination of this Agreement.

10.2 Costs

(a) The Developer must pay the reasonable costs of the Council in respect of the preparation, negotiation and finalisation of this Agreement, capped at \$10,000.

(b) The Developer will bear any stamp duty (including fines and penalties other than those incurred due to the default of the Council) chargeable on this Agreement and on any instruments executed under this Agreement.

10.3 Counterparts

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

10.4 Governing law

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

10.5 Invalidity

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

(a) a word or provision must be read down if:

(i) this Agreement or provision is void, voidable, or unenforceable if it is not read down; and

(ii) the word or provision is capable of being read down;

(b) a word or provision must be severed if, despite the operation of clause 10.5(a), this Agreement or provision is void, voidable or unenforceable if the word or provision is not severed; and

(c) the remainder of this Agreement has full effect even if clause 10.5(b) applies.

10.6 No merger and survival

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

(a) does not merge on completion of that transaction;

(b) continues in favour of the party to which it is owed; and

(c) remains in full effect.

10.7 Variations

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

10.8 No waiver

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

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

10.9 Further assurance

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

10.10 Whole agreement

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

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

Signed as an agreement.

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

Witness

PENNY LEE DIXON
Solicitor

Signature of Attorney

GEORGE ISEKOURAS

Name of Witness (print)

Name of Attorney (print)

Name of Attorney (print)

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

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

Signature of witness

Officer

Print name **JULIE ROES**

Name of Officer (print) **ANDREW MOORE**

Annexure A – Lease

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

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Reference Schedule

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

1. Defined terms and interpretation

1.1 Defined terms

The following are defined terms in this Lease:

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

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

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

Authorised Officer means:

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

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

Breach Notice has the meaning given in clause 24.1.

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

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

Celestino Group means:

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

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

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

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

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

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

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

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

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

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

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

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

Insolvency Event means:

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

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

Item means an item in the Reference Schedule.

Landlord means the lessor named in Item 1.

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

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

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

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

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

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

Specific Park Maintenance Rates are as follows –

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

COUNCIL MAINTENANCE STANDARDS FOR ROADS

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

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

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

Maintenance Review Date means 1 July every year.

Maintenance Review Period means:

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

Permitted Use means the use in clause 9.1.

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

Premises means the premises described in Item 3, comprising:

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

and includes the Landlord's Property.

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

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

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

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

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

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

Road Rules means the Road Rules (2014).

Roads Regulation means the Roads Regulation (2018).

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

Significant Breach means one or more of the following:

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

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

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

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

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

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

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

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

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

1.2 Interpretation

The following apply in the interpretation of this Lease:

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

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

2. Demise

- (a) The Landlord grants a lease of the Premises to the Tenant for the Term, subject to the terms and conditions set out in this Lease.
 - (b) Subject to:
 - (i) the rights of the Landlord under this Lease; and
 - (ii) other rights of the Landlord at Law;
- as long as the Tenant complies with its obligations under this Lease, the Tenant may use and occupy the Premises without any disturbance from the Landlord or any person claiming under the Landlord.

3. Services

Subject to clause 16, the Tenant must pay:

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

4. Option renewal term

4.1 Option

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

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

4.2 New Lease

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

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

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

5. Interest on overdue money

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

6. GST

6.1 Definitions

In this clause 6:

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

6.2 Consideration GST exclusive

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

6.3 Payment of GST

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

6.4 Tax invoice

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

6.5 Adjustment event

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

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

6.6 Reimbursements

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

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

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

7. Procedure to swap Premises

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

8. Tenant to grant access to public

8.1 Access to be granted to public

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

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

8.2 Tenant may make and enforce reasonable rules

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

8.3 Access to services

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

8.4 Access for emergency services

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

8.5 Access for waste management

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

9. Use of Premises and Building Work

9.1 Use of Premises

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

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

9.2 Tenant may lodge DAs or other applications

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

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

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

9.4 Tenant may derive commercial benefit

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

9.5 Unfettered discretion of statutory powers

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

9.6 Works subject to consent

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

10. Consultative Committee

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

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

11. Tenant's covenants

11.1 General and specific maintenance standards

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

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

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

11.2 Asset renewal

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

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

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

11.3 Emergency call-out service

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

11.4 Subject to clause 18

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

12. Landlord maintenance check

12.1 Landlord to perform annual maintenance check

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

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

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

12.3 Landlord to contribute for maintenance

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

12.4 General right of inspection

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

13. Landlord asset renewal check**13.1 Landlord to perform asset renewal check**

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

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

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

13.3 Landlord to contribute to asset renewal

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

14. Premises are Public Places

14.1 Landlord may erect notices under s. 632 LG Act

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

14.2 Landlord to remove notice on request of Tenant

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

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

15. Ownership of improvements and Tenant's Equipment

15.1 Ownership

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

15.2 Removal of Tenant's Equipment

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

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

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

15.3 Improvements

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

15.4 Community Expectation

- (a) If there is a Community Expectation that certain Tenant's Equipment will remain on the Premises after the Terminating Date or date of earlier determination to enable Penrith City Council to provide to the public continuity of the relevant service provided by that Tenant's Equipment, the Tenant may give 4 months written notice to the Landlord of the pending Terminating Date and ask the Landlord whether it requires the Tenant's Equipment to remain on the Premises. The Landlord must, give to the Tenant notice as to whether the Landlord requires that Tenant's Equipment remain on the Premises, any such notice to be given not less than 40 Business Days prior the Terminating Date or on the date of earlier determination, and if the Landlord does give the Tenant notice in accordance with this clause 15.4(a) then:
- (i) if the Tenant has received any public funding for that Tenant's Equipment (for example from an Authority, including from Penrith City Council or from levies charged by the Tenant or its Related Entities or Related Bodies Corporate to residents within the development known as Sydney Science Park or its replacement name), the Tenant must not remove that Tenant's Equipment from the Premises and that Tenant's Equipment shall on the Terminating Date or date of earlier determination become Landlord's Property at no cost to the Landlord; and
 - (ii) if the Tenant has not received public funding for that Tenant's Equipment, the Tenant may notify the Landlord of the amount of consideration the Tenant will accept for not removing that Tenant's Equipment from the Premises such amount not to exceed the depreciated value of the Tenant's Equipment. If within 10 Business Days of the Tenant's notice under this clause 15.4(a)(ii), the Landlord notifies the Tenant that the Landlord agrees to pay the consideration specified in the Tenant's notice, the Tenant must not remove that Tenant's Equipment from the Premises and all risk in and responsibility for the Tenant's Equipment passes to the Landlord on the Terminating Date, date of earlier determination or date upon which the consideration specified in the Tenant's notice is paid (whichever occurs first). Upon payment of the consideration specified in the Tenant's notice (which amount must be paid by the Landlord to the Tenant within a reasonable time of demand), that Tenant's Equipment shall become Landlord's Property.
- (b) If the Tenant has not received public funding for Tenant's Equipment and the Tenant does not notify the Landlord of the amount of consideration the Tenant will accept for not removing that Tenant's Equipment from the Premises or if the Tenant does so notify and the Landlord either:
- (i) does not notify the Tenant that the Landlord agrees to pay the consideration specified in the Tenant's notice under clause 15.4(a)(ii) 15.4(a)(i); or
 - (ii) notifies the Tenant that it does not agree to pay the consideration specified in the Tenant's notice under clause 15.4(a)(ii),

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

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

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

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

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

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

16.2 Landlord approval required for novation or assignment

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

16.3 No consent required for dealing within corporate group

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

16.4 Corporate Ownership

If:

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

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

16.5 Unit Trust

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

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

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

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

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

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

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

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

18. Damage or destruction of Premises

18.1 Damage

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

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

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

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

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

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

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

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

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

18.2 Substantial damage and total destruction

If the Premises is:

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

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

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

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

18.3 Landlord's Notice

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

18.4 Landlord may terminate

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

18.5 Rebuilding and reinstatement

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

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

18.6 Tenant's Default

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

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

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

18.7 Landlord need not repair

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

18.8 Resumption

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

18.9 No claim on termination

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

19. Insurance, release and indemnity

19.1 Insurance

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

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

All insurance policies must:

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

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

19.2 Release

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

19.3 Tenant indemnifies Landlord

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

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

- (f) any Default.

19.4 Exception

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

20. Costs, charges and expenses

20.1 Lease preparation costs

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

20.2 Tenant's costs

The Tenant must promptly pay:

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

in connection with this Lease.

21. Dispute resolution

21.1 Reference to a dispute

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

21.2 Notice of Dispute

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

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

21.3 Representatives of parties to meet

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

21.4 Legal proceedings

If:

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

21.5 Urgent interlocutory proceedings

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

21.6 Continuing performance

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

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

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

23. Force Majeure

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

24. Termination and procedures for termination

24.1 Significant breaches or event of Insolvency

In the case of:

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

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

24.2 Further Breach Notice

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

24.3 Termination

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

24.4 Force majeure

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

24.5 Dedication

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

25. Notices

25.1 Form of Notices

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

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

25.2 Change of Address

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

25.3 Service of Notices

Notices are taken to be given:

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

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

25.4 Timing of notices by fax

If a notice by fax is given:

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

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

25.5 Email signing

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

26. Miscellaneous

26.1 Exclusion of statutory provisions

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

26.2 Application of legislation

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

26.3 Tenant to recognise superior or concurrent interest

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

26.4 Landlord's statement prima facie evidence

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

26.5 Tenant's Associates

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

26.6 Entire agreement

This Lease:

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

in relation to the subject matter of this Lease.

26.7 Governing Law

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

26.8 No waiver

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

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

26.9 Variation

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

26.10 Invalidity

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

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

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

26.11 Further Assurance

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

26.12 No merger and survival

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

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

Executed as a deed.

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

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

Signature of witness

Signature of attorney

Name of witness

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

Address of witness

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

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

Signature of witness

Signature of authorise officer

Name of witness

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

Address of witness

Schedule 1 – Maintenance Standards

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

The following asset classes will require future maintenance –

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

Grass Mowing

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

Sportsfields

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

Winter Sportsfields

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

Topsoiling

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

Weed Management

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

Landscaping

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

Wetlands Maintenance

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

The work includes:-

- a) Wetland Areas (Terrestrial Areas)
 - Monitoring water levels, any erosion or structural damage, mosquito larvae and algae blooms

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

Litter Management

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

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

This work includes:-

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

Irrigation Maintenance

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

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

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

Sportsfield Lighting

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

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

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

Park Furniture

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

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

Signage

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

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

The work includes:-

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

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

Playgrounds

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

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

Skate Parks

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

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

Schedule 2 - Asset Renewal Plan

Schedule 3 - Landlord's Property

Schedule 4 - Tenant's Equipment

Annexure B – Tenant Nomination Notice

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

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

Capitalised terms are defined in the Agreement.

DATED this _____ day of _____ 20____

[Insert execution clause of Developer]

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

[Insert execution clause of Tenant]

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

Contact name _____

Address _____

Phone _____

Fax _____