

DEED OF VARIATION OF LEASE

PHOENIX DRIVE PROPERTY INVESTMENTS LIMITED
AND
BUNNINGS LIMITED

MXW-286568-2-277-V1

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DATED

2017

PARTIES

- 1 **PHOENIX DRIVE PROPERTY INVESTMENTS LIMITED ("Lessor")**
- 2 **BUNNINGS LIMITED ("Lessee")**

BACKGROUND

- A The Lessor and the Lessee are currently respectively the lessor and the lessee under the Lease.
- B The Lessor and the Lessee have agreed to a partial surrender of the Lease, a grant of a new lease, and to vary the Lease, as well as other matters described in this Deed and the parties are completing this Deed to record the surrender, grant, variation and other matters.

THE PARTIES AGREE THAT:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed:

"**Front ROW**" means a right of way easement over those parts of the Land marked "F", "A" and "N" on the Plan;

"**Horizon**" means Horizon Energy Distribution Limited;

"**Land**" means the land described in certificate of title 314186;

"**Land Covenants**" means the land covenants in the form attached to this Deed as Schedule 2, to be registered over Lot 1 in favour of Lot 2;

"**Lease**" means the Deed of Lease dated 30 September 2010 between Brookfield Funds Management Limited as custodian for the Brookfield Multiplex Albert Street Landowning Trust (as lessor) and Bunnings Limited (as lessee) in respect of the Premises and includes any variation, renewal and extension of that said lease;

"**Lessee**" and "**Lessor**" include their respective successors, executors, administrators and permitted assigns;

"**Lot 1**" and "**Lot 2**" mean the areas shown as Lot 1 and Lot 2 on the Plan, to be created by a subdivision of the Land;

"**New Lease Area**" means the rectangular area to the south-west rear of the Premises shown back slash hatched on the Plan as well as that part of the Rear ROW as shown on the Plan as '6,000 Bunnings 5,000';

"**Plan**" means the plan attached to this Deed as Schedule 1;

"**Premises**" means the premises leased to the Lessee pursuant to the Lease;

"Rear ROW" means the registered right of way easement referred to in easement instrument 8324397.1; and

"Tripartite Agreement" means a tripartite agreement dated 27 April 2017 between Horizon, the Lessor, and the Lessee.

- 1.2 This Deed is supplemental to the Lease and expressions and definitions used in this Deed bear the same meaning given to them in the Lease.
- 1.3 Where obligations bind more than one person those obligations shall bind those persons jointly and severally.

2 GRANT OF LEASE OF NEW PREMISES

- 2.1 The Lessor grants a lease, and the Lessee accepts the lease, of the New Lease Area on and from 27 April 2017.
- 2.2 The covenants, terms and conditions of the lease of the New Lease Area are on the same terms and conditions as the Lease, except that no Rent shall be payable for the New Lease Area.

3 PARTIAL SURRENDER OF LEASE

- 3.1 With effect from 27 April 2017, the Lessee surrenders and assigns to the Lessor all the Lessee's rights contained in the Lease over the area of the Land shown as Lot 1 on the Plan.
- 3.2 The Lessee acknowledges that from the date of this Deed it shall not be entitled to make any further claim against the Lessor or the Lessor's successors in title in respect of Lot 1 on the Plan.

4 LAND COVENANTS

- 4.1 The Lessor shall procure registration of the Land Covenants against the computer freehold register for Lot 1 on the Plan, for the benefit of Lot 2 on the Plan.
- 4.2 The Lessee shall be responsible for monitoring compliance with the Land Covenants and shall advise the Lessor of any alleged breach and, acting reasonably, direct the Lessor to undertake enforcement action.
- 4.3 The Lessor shall enforce the Land Covenants upon instruction from the Lessee in accordance with clause 4.2 of this Deed.
- 4.4 Nothing in this clause 4 shall in any way affect the Lessor's covenant obligation at clause 8.7(a) of the Lease with respect to the balance of the Land not included in Lot 1 on the Plan.

5 RIGHT OF WAY EASEMENT

- 5.1 The Lessor shall register the Front ROW against the title to Lot 2 and in favour of the title to Lot 1 and lot 3 deposited plan 378419.
- 5.2 The terms of the Front ROW shall include a vehicle weight restriction of 3.5 tonnes (loaded).
- 5.3 The Lessor shall procure signage and traffic calming speed humps as traffic control measures for the Front ROW in accordance with the Lessee's reasonable requirements as shall be communicated by any written notice from the Lessee within 12 months of 27 April 2017.

6 NEW FENCE AND GATES

- 6.1 By the terms of the Tripartite Agreement, Horizon has covenanted to procure construction of a fence separating off the New Lease Area from the balance of the Rear ROW including two gates of the same construction of the fence ("**New Fence and Gates**").
- 6.2 The New Fence and Gates, once constructed, shall be the property of the Lessor and each shall be a Lessor's fixture for the purposes of the Lease until removed by Horizon pursuant to the terms of the Tripartite Agreement.

7 VARIATION OF LEASE

- 7.1 The Lessor and the Lessee agree to vary the Lease as follows:
- (a) By the addition of three rights of renewal for further terms of eight years each so that Item 11 of the Schedule of Terms in the Lease reads "4 of 8 years each (exercisable in the manner set out in clause 14 of the Lease)";
 - (b) By amending the final expiry date of the Lease to be 18 June 2050 (if all rights of renewal are exercised);

8 CONFIRMATION OF LEASE COVENANTS

- 8.1 The Lessee acknowledges and covenants with the Lessor that during the term of the Lease the Lessee shall:
- (a) hold the Premises and the New Lease Area on the same terms and provisions expressed or implied in the Lease but as varied by this Deed; and
 - (b) duly and punctually perform and observe the covenants and provisions of the Lease but as varied by this Deed.

EXECUTION

SIGNED as a deed on the date specified at the beginning of this Deed.

**SIGNED by PHOENIX DRIVE
PROPERTY INVESTMENTS LIMITED**
as Lessor in the presence of

) _____
) Director
) _____
) Director/Authorised
) Signatory

Witness signature

Full Name

Address

Occupation

SIGNED by BUNNINGS LIMITED
as Lessee
in the presence of



) _____
) Director
) _____
) Director/Authorised
) Signatory

Witness signature



Full Name



Address



Occupation

SCHEDULE 1 - PLAN

SCHEDULE 2
LAND COVENANTS

(Sections 90A and 90F Land Transfer Act 1952)

Phoenix Drive Property Investments Limited

Phoenix Drive Property Investments Limited

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, or **creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Continue in additional Annexure Schedule, if required

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Covenant		[Insert Lot 1 Computer Register]	[Insert Lot 2 Computer Register]

Easements or profits à prendre rights and powers (including terms, covenants and conditions)

Delete phrases in [] and insert memorandum number as required; continue in additional Annexure Schedule, if required

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby ~~[varied]~~ ~~[negated]~~ ~~[added to]~~ ~~[substituted]~~ by:

~~[Memorandum number #9=memorandum no (in figures) (if there is no number just leave a blank space)#, registered under section 155A of the Land Transfer Act 1952]~~

~~[the provisions set out in the Annexure Schedule]~~

Covenant provisions

Delete phrases in [] and insert Memorandum number as required; continue in additional Annexure Schedule, if required

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number #10=memorandum no (in figures) (if there is no number just leave a blank space)#, registered under section 155A of the Land Transfer Act 1952]~~

~~[the Annexure Schedule]~~

Background

- A. The Grantor is the registered proprietor of the Servient Tenement.
- B. The Grantee is the registered proprietor of the Dominant Tenement.
- C. It is the intention of the Grantee to create for the benefit of the Dominant Tenement and the registered proprietors and occupiers from time to time of the Dominant Tenement the Covenants over the Servient Tenement to the intent that the Servient Tenement and the owners and occupiers for the time being of the Servient Tenement shall be bound for the term described in paragraph 6.

Covenants

- 1. The Grantor for itself and its successors in title of the Servient Tenement (or any part of or interest in the Servient Tenement) covenants, acknowledges and agrees with the Grantee as a restrictive covenant for the benefit of the registered proprietors and occupiers from time to time of the Dominant Tenement, that the Grantor will at all times observe and perform all the stipulations and restrictions contained in this instrument to the intent that each of the stipulations and restrictions will, in the manner and to the extent prescribed, be for the benefit of, and be appurtenant to, the whole of the Dominant Tenement and every part of it for the term described in paragraph 6.
- 2. The Grantor and the Grantee covenant:
 - 2.1. The Servient Tenement is used solely as an at grade or below grade car park.
 - 2.2. The Servient Tenement must not be used for the:
 - (a) sale or rental of hardware or building products;
 - (b) advertising of the sale or rental of hardware or building products; or
 - (c) signage or advertising of a retailer or renter of hardware or building products.
- 3. No delay or failure by the Grantee to enforce performance of any covenants set out in this instrument and no indulgence granted to the Grantor by the Grantee shall prejudice the right of the Grantee to enforce any of the covenants of this instrument.
- 4. If any provision of this instrument is or becomes invalid or unenforceable, that provision will be deemed deleted from this instrument. The invalidity or unenforceability of that provision will not affect the other provisions in this instrument, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 5. The Grantor (being the registered proprietor of the Servient Tenement at the time of the breach) will pay the Grantee's legal costs and disbursements directly or indirectly attributable to the enforcement of this instrument and the covenants and that have arisen either directly or indirectly from any failure by the Grantor to comply with the covenants.
- 6. The covenants on the part of the Grantor are to continue to apply so long as the Dominant Tenement is subject to a leasehold estate created by memorandum of lease dated 30 September 2010 between (at the date of this Covenant) the Grantee as landlord and Bunnings Limited as tenant and any variations or renewals thereof.

