

[Draft: May 2015]

Rail Corporation New South Wales

Transport for NSW

Brookfield Office Properties One Carrington
Developer Pty Ltd

Sovereign Wynyard Centre Pty Limited as trustee
for the Sovereign Wynyard Centre Unit Trust

Planning Agreement

Section 93F of the Environmental Planning
and Assessment Act, 1979 (NSW)

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Date

Parties

Rail Corporation New South Wales ABN 59 325 778 353 a NSW Government agency and corporation incorporated under section 4 of the *Transport Administration Act 1988* (NSW) of 477 Pitt Street, Sydney, New South Wales (**RailCorp**)

and

Transport for NSW ABN 18 804 239 602 a NSW Government agency and corporation incorporated under section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood, New South Wales (**TfNSW**)

and

Brookfield Office Properties One Carrington Developer Pty Ltd ACN 169 154 830 of Level 22, 135 King Street, Sydney, New South Wales (**Developer**)

and

Sovereign Wynyard Centre Pty Limited as trustee for the Sovereign Wynyard Centre Unit Trust ACN 062 235 009 of Level 22, 135 King Street, Sydney, New South Wales (**Land Owner**)

Background

- A On 19 January 2011, the Concept Plan Application was lodged with the Planning Minister seeking approval for the Development on the Land.
 - B The Concept Plan Application was accompanied by an offer to make Development Contributions towards the Public Facilities if the Concept Plan Application was approved.
 - C On 3 April 2012, the PAC as delegate of the Planning Minister granted the Concept Plan Approval.
 - D Condition A6 (Schedule 2) of the Concept Plan Approval requires the Developer to enter into this Agreement prior to the determination of the Stage 1 Development Application.
 - E The Parties have agreed that the Developer will make the Agreed Development Contributions in accordance with the terms of this Agreement.
-

Operative provisions

1 Definitions

In this Agreement these terms have the following meanings:

285 George Street	Lot 22 in Deposited Plan 56723 and Lot 23 in Deposited Plan 59753 being 285 George Street, Sydney.
Act	The <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Address for Service	The address of each party appearing in Schedule 4 of this Agreement or any new address notified in writing by any Party to all other Parties as its new address for service.
Agreed Development Contributions	(a) The construction and commissioning of the Transit Hall Works and any associated works by the Developer; and (b) provision by the Developer of all ongoing operational, maintenance and capital replacement costs associated with the operation and use of the Transit Hall in perpetuity in accordance with the Building Management Statement.
Agreement	This planning agreement, executed as a deed, including any Schedules and Annexures.
Authority	Any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (including RailCorp and TfNSW), Planning Authority and any electricity, telecommunications, gas or other utility company having statutory rights in relation to the carrying out of, use and occupation of the Development (in whole or in part).
Building Management Statement	The building management statement to be registered with the Subdivision Plan on the titles of the Office Lot, Retail Lot and Transit Hall Lot pursuant to section 196D of the <i>Conveyancing Act 1919</i> (NSW), to ensure the maintenance of the upgraded Transit Hall in perpetuity.
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Sydney.

Concept Plan Application	Major project application No. MP 09_0076 made to the Planning Authority seeking approval under Part 3A of the Act for the concept plan for the Development. The Concept Plan Application became a transitional Part 3A project pursuant to the savings and transitional provisions in Schedule 6A of the EP&A Act on the repeal of Part 3A.
Concept Plan Approval	The Approval of the Concept Plan Application granted by the PAC on 3 April 2012, as modified by the PAC and including, but not limited to, any modification resulting from approval of the Concept Plan Modification Application, the Further Concept Plan Modification Application and any Modification Application.
Concept Plan Modification Application	Modification application number 09_0076 MOD2 made on 16 May 2014 seeking approval under section 75W of the Act to modify the Concept Plan Approval.
Construction Certificate	Has the same meaning as in the Act.
Contract for Sale	The contract for the sale of the Office Lot and the Retail Lot to be entered into between RailCorp and the Land Owner.
Control	<p>In relation to a corporation includes the direct or indirect power to directly or indirectly:</p> <ul style="list-style-type: none">(a) direct the management or policies of the corporation; or(b) control the membership of the board of directors, whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise.
Date of Completion	The date when the Transit Hall Works are certified as complete by an independent certifier except for minor omissions and minor defects.
Dealing	Means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land Owner's Land.
Defects Rectification Period	12 months after the Date of Completion, as extended by agreement of the Parties in writing.

Delivery Agreement	<p>The Delivery Agreement to be entered into between TfNSW, RailCorp, the Developer and the Land Owner which will set out the terms on which:</p> <ul style="list-style-type: none">(a) RailCorp will permit the Developer to access RailCorp's land, including the Transit Hall; and(b) the Agreed Development Contributions will be delivered by the Developer.
Delivery Security	<p>An Unconditional Undertaking in the amount of \$52,000,000 to secure delivery of the Transit Hall Works.</p>
Development	<p>The transport interchange, commercial and retail development the subject of the Concept Plan Approval comprising the Stage 1 Development and Stage 2 Development.</p>
Development Contribution	<p>To dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a Public Purpose.</p>
Dispute	<p>Includes any difference, dispute, matter, question, controversy or claim.</p>
Explanatory Note	<p>The Explanatory Note attached at Schedule 3.</p>
Further Concept Plan Modification Application	<p>The modification application(s) to be lodged by the Developer or the Land Owner with the Planning Authority, as part of or in addition to the Concept Plan Modification Application, seeking approval under section 75W of the Act to further modify the Concept Plan Approval to:</p> <ul style="list-style-type: none">(a) amend the proponent of the Development to be the Developer or the Land Owner (unless this amendment is sought and obtained by letter from the Department of Planning & Environment or the Planning Authority);(b) amend condition A6 (Schedule 2) of the Concept Plan Approval to reflect the Agreed Development Contributions; and(c) incorporate any other modifications to the Concept Plan Approval agreed by the Parties that relate to, effect or have any implications for the Transit Hall or Transit Hall Works (noting that other Modification Applications may be lodged by the Developer or Land Owner relating to the Concept Plan Approval that do not relate to, effect or have any implications for the Transit Hall or the Transit Hall Works).

Independent Certifier	The party engaged by TfNSW and the Developer to provide independent certification of the Transit Hall Works.
Institution	An Australian Prudential Regulation Authority regulated authorised deposit taking institution.
Land	The: a) Stage 1 Development Land; and b) Stage 2 Development Land.
Land Owner's Land	Shell House and 285 George Street.
Law	(a) Legislation; and (b) common law and principles of equity applicable to New South Wales.
Legislation	In relation to New South Wales or the Commonwealth of Australia: (a) any act of Parliament or statute; (b) any subordinate legislation, rules, regulations or by-laws; and (c) any document, code, standard or policy issued under such legislation or delegated legislation.
Modification Application	Any application to a Planning Authority to modify either the Concept Plan Approval or any approval of the Stage 1 Development Application, as approved by RailCorp and TfNSW prior to lodgement, and includes the Further Concept Plan Modification Application.
Occupation Certificate	Has the same meaning as in the Act.
Office Lot	The lot proposed to be created to contain the office building component of the Stage 1 Development approved by the Stage 1 Development Consent, subject to approval of a Subdivision Application and final survey and registration of a Subdivision Plan.
PAC	The Planning Assessment Commission of New South Wales constituted under section 23B of the Act.
Parent	Of a person means the person directly or indirectly exercising the decision making power of the first mentioned person including: (a) if the first mentioned person is a corporation, a person who: (i) controls the composition of the board of

- directors of the first mentioned person; or
 - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first mentioned person; or
 - (iii) holds or has a beneficial interest in more than one-half of the issued share capital of the first mentioned person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) if the first mentioned person is a trustee of a unit trust and, in the case of the Developer or the Land Owner, its interest in this Agreement is property subject to that trust, a person who:
- (i) controls the right to appoint the trustee;
 - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units; or
 - (iii) holds or has a beneficial interest in more than one half of the issued units of that trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (c) if the first mentioned person is a trustee of a trust and, in the case of the Developer or the Land Owner, its interest in this Agreement is property subject to that trust, a person who:
- (i) is a beneficiary of that trust entitled directly or indirectly to more than one half of the corpus or profits of the trust; or
 - (ii) is entitled to or whose consent is required to:
 - (A) appoint or change the trustee; or
 - (B) give directions to the trustee; or
 - (C) vary the constituent document of the trust; or
 - (D) appoint or remove beneficiaries; or
 - (E) decide to whom any distribution is made or the amount of any distribution.

	<p>A person is also a Parent of another person if a part of this definition is satisfied in respect of each trust and company in any chain of trusts or companies connecting that person and the other person.</p>
Party	<p>A party to this Agreement, including their successors and assigns.</p>
Pending Planning Applications	<p>The:</p> <ul style="list-style-type: none">(a) Stage 1 Development Application;(b) Concept Plan Modification Application; and(c) Further Concept Plan Modification Application.
Planning Authority	<p>Any person or body granted power under the Act to assess and determine:</p> <ul style="list-style-type: none">(a) planning applications made under Parts 3A, 4 and 5 of the Act; or(b) modifications of developments consents or other planning approvals granted under Parts 3A, 4 and 5 of the Act, <p>including the Planning Minister and the PAC as delegate of the Planning Minister.</p>
Planning Minister	<p>The New South Wales Minister for Planning and his or her predecessors, successors and assigns.</p>
Public Facility	<p>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.</p>
Public Purpose	<p>Any purpose that benefits the public or a section of the public, specified in section 93F(2) of the Act.</p>
Real Property Act	<p>The <i>Real Property Act 1900</i> (NSW).</p>
Registration on Title	<p>The registration of this Agreement under section 93H of the Act in the folio of the register kept under the Real Property Act in relation to the Land Owner's Land, and Registered on Title refers to the state of the Agreement being so registered.</p>
Regulation	<p>The <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).</p>
Related Corporation	<p>is a body corporate which is a related body corporate under section 50 of the <i>Corporations Act 2001</i> (Cth) but also includes:</p> <ul style="list-style-type: none">(a) any body corporate or unit trust the shares or units in any unit trust of which that body corporate is

trustee in which are required by the relevant constitutions, to be held and transferred together with the shares or units of the body corporate or trust of which that body corporate is trustee (commonly referred to as “stapled” entities); and

- (b) a body corporate which is a related body corporate of a body corporate described in paragraph (a) under section 50 of the *Corporations Act 2001* (Cth).

Required Rating	A credit rating of at least A- by Standard and Poor’s (Australia) Pty Limited or A3 by Moody’s Investors Service, Inc.
Retail Lot	Means the lot proposed to be created to contain the retail component of the Stage 1 Development approved by the Stage 1 Development Consent, subject to approval of a Subdivision Application and final survey and registration of the Subdivision Plan.
Shell House	Lot 10 in Deposited Plan 595978 formerly known as Shell House, being 2 – 12 Carrington Street, Sydney.
Stage 1 Development	<p>The component of the Development the subject of the Stage 1 Development Application and located on the Stage 1 Development Land including the following works:</p> <ul style="list-style-type: none">(a) demolition of the Menzies Hotel (14 Carrington Street, Sydney), 301 George Street and the eastern accessways to Wynyard Station;(b) construction and use of a 27 storey office tower on the land between Carrington Street and George Street (which will become the Office Lot);(c) partial demolition of Shell House and 285 George Street and refurbishment of those properties for commercial and retail use (part of which may be included in the Retail Lot); and(d) the Transit Hall Works (which will become the Transit Hall Lot).
Stage 1 Development Application	The State significant development application No. SSD 13_5824 made under Part 4 of the Act seeking approval for the proposed Stage 1 Development consistent with the Concept Plan Approval.
Stage 1 Development Consent	<p>The development consent granted by the Planning Authority for the Stage 1 Development Application, including:</p> <ul style="list-style-type: none">(a) any modifications of the Stage 1 Development

	Application imposed by that consent; and
	(b) any future modifications of that consent effected by the determination of any Modification Application.
Stage 1 Development Land	<p>The land to the east of the eastern boundary of Carrington Street, Sydney, comprising:</p> <ul style="list-style-type: none">(a) Lot 1 in Deposited Plan 853331 (14 Carrington Street, Menzies Hotel);(b) Lot 2 in Deposited Plan 853331;(c) Lot 4 in Deposited Plan 853331 (Wynyard Lane);(d) Shell House; and(e) 285 George Street.
Stage 2 Development	<p>The component of the Development located on the Stage 2 Development Land as described in the Concept Plan Application and Stage 1 Development Application.</p>
Stage 2 Development Land	<p>The Land to the west of, and under Carrington Street, Sydney, comprising:</p> <ul style="list-style-type: none">(a) Lot 5 in Deposited Plan 853331 (Carrington Street, Sydney);(b) Lot 6 in Deposited Plan 853331 (Wynyard Park, Sydney); and(c) Rail Plan 1024-41-781 (Wynyard Station under York Street, Sydney).
Subdivision Application	<p>An application submitted by the Developer or the Land Owner to a Planning Authority seeking approval for the subdivision of the Stage 1 Development Land to create the Office Tower Lot, Retail Lot and Transit Hall Lot.</p>
Subdivision Plan	<p>The plan of stratum subdivision to create the Retail Lot, Office Lot and Transit Hall Lot prepared in accordance with the approved Subdivision Application.</p>
Transit Hall	<p>The transit hall at Wynyard Station, Sydney, to be the subject of the Transit Hall Brief as shown on the indicative plans at Annexure B.</p>
Transit Hall Brief	<p>The document to be agreed between the Parties which will set out the Parties' agreed requirements for the final detailed design, construction and commissioning of the Transit Hall Works and will include design and infrastructure operational/interface requirements.</p>
Transit Hall Lot	<p>The lot proposed to be created to contain the Transit Hall component of the Stage 1 Development approved by the Stage 1 Development Consent, subject to approval of a Subdivision Application and final survey and registration</p>

Transit Hall Works

of the Subdivision Plan.

The upgrade of the Transit Hall and associated accesses by the Developer and the commissioning of those Works, including:

- (a) provision of a through site link from George Street to Carrington Street;
- (b) provision of a new entrance and access ways to the Transit Hall from George Street and Carrington Street;
- (c) the upgraded George Street entrance, when combined with the Hunter Connection, to provide a minimum aggregate unobstructed width of 20 metres with a minimum height of 13 metres;
- (d) the upgraded Carrington Street entrance to provide a minimum height of 8 metres;
- (e) provision of:
 - (i) a minimum clear width at the Wynyard Station concourse level of 16 metres;
 - (ii) a fully accessible route from George Street to all public levels, including two passenger lifts connecting George Street to the Wynyard Station concourse level, the Hunter Connection level and Carrington Street level;
 - (iii) six escalators and a fixed stair well to connect George Street to the Wynyard Station concourse level;
 - (iv) intuitive way-finding utilising clear sight-lines from George Street to the Wynyard Station concourse level;
 - (v) a naturally ventilated Transit Hall space benefiting from conditioned spill air from adjacent retail units; and
 - (vi) pedestrian capacities to meet current and future demands during normal and emergency operation of the Transit Hall;
- (f) accommodation of the existing pedestrian connections to the Hunter Connection and the Met Centre (subject to necessary temporary or partial closure of the connections required to facilitate the construction of the Stage 1 Development);
- (g) ensuring that the unimpeded exit width to the east (George Street) will be accessed via the most

convenient route from the Wynyard Station Concourse level to street level;

- (h) implementing a signage strategy consistent with TfNSW's *Guidelines for the Development of Public Transport Interchange Facilities* issued September 2008; and
- (i) addressing, to TfNSW's and RailCorp's satisfaction, all interfaces, and issues arising from such interfaces, with the Transit Hall Lot, including interfaces with the Retail Lot, the Office Lot and the surrounding road network and adjoining properties,

in accordance with the Stage 1 Development Consent, the Delivery Agreement and the Transit Hall Brief and as depicted in the indicative plans at **Annexure A** and as otherwise agreed with TfNSW and RailCorp in writing.

Transit Hall Works Commencement Date

Prior to the date on which the Stage 1 Development Consent lapses or would have lapsed if the Stage 1 Development Consent had not been physically commenced.

Transit Hall Works Completion Date

Prior to the first Occupation Certificate being issued for any part of the Development.

Trust

The Sovereign Wynyard Centre Unit Trust.

Unconditional Undertaking

An irrevocable unconditional undertaking without any expiry or end date:

- (a) in favour of TfNSW and RailCorp;
- (b) issued by an Institution approved by TfNSW and RailCorp that maintains the Required Rating; and
- (c) where required by Law, duly stamped.

Unsolicited Proposal Process

The unsolicited proposal process set out in the *Unsolicited Proposals – Guide to Submission and Assessment*, dated February 2014, as may be updated from time to time.

Work

Means the physical result of any building, engineering or construction work in, on, over or under land to be carried out by the Developer under this Agreement or the Delivery Agreement.

2 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the Act.

3 Application of this Agreement

This Agreement applies to the Land and the Development.

4 Operation of this Agreement

- (a) This Agreement operates only if:
 - (i) approvals acceptable to:
 - (A) the Developer and Land Owner in respect of the Stage 1 Development; and
 - (B) TfNSW and RailCorp in respect of the Transit Hall Works and any other aspect of the Stage 1 Development as may be relevant to the delivery of the Developer's obligations under this Agreement,

are granted by the relevant Planning Authority to the Pending Planning Applications; and
 - (ii) the Delivery Agreement and Contract for Sale have been entered into.
- (b) This Agreement must have commenced operation prior to the issue of the first Construction Certificate for any part of the Development.

5 Development Contributions to be made under this Agreement

- (a) The Developer undertakes to provide to RailCorp, the Agreed Development Contributions in accordance with **Schedule 2** to this Agreement.
- (b) The Developer's obligation to provide the Transit Hall Works in accordance with **clause 5(a)** will be satisfied on the later of:
 - (i) the date of expiry of the Defects Rectification Period for the Transit Hall Works; and
 - (ii) if any defect identified during the Defects Rectification Period for the Transit Hall Works has not been rectified by the Developer or any other person prior to the expiry of the Defects Rectification Period, the date the defect is rectified and certified by an Independent Certifier.

6 Application of sections 94, 94A and 94EF of the Act to the Development

- (a) This Agreement does not exclude the application of:
 - (i) sections 94, 94A and 94EF of the Act; or
 - (ii) any other monetary contributions required under the Act;
 - (iii) in connection with any approval granted for or in respect of the Development including the Stage 1 Development and the Stage 2 Development.
- (b) The benefits under this Agreement are not to be taken into consideration in determining a development contribution under section 94 for or in respect of the Development including the Stage 1 Development and the Stage 2 Development.

7 Registration of this Agreement

7.1 Registration on Title to Land Owner's Land

- (a) After this Agreement becomes operational, the Developer and Land Owner must, at their expense, take all practical steps to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land Owner's Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land Owner's Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title, to enable the Registration on Title of this Agreement.
- (b) The Developer and Land Owner will take all practical steps to procure the Registration on Title of this Agreement:
 - (i) in respect of Shell House, as soon as reasonably practicable after the Agreement becomes operative under **clause 4** but, in any event, no later than 30 Business Days after that date; and
 - (ii) in respect of 285 George Street, prior to the first Construction Certificate being issued for any part of the Stage 1 Development.
- (c) Following Registration on Title of this Agreement on the Land Owner's Land, RailCorp and TfNSW will do all things reasonably necessary to ensure that the Registration on Title does not prohibit, prevent or delay registration of the following Dealings:
 - (i) any mortgage to a financier of the Developer or the Land Owner;

- (ii) any lease of individual tenancies within Shell House or 285 George Street;
- (iii) the Subdivision Plan; or
- (iv) the Building Management Statement.

7.2 Right to lodge caveat

- (a) Subject to **clause 7.2(b)**, after this Agreement becomes operational and until such time as this Agreement is Registered on Title, the Developer and Land Owner acknowledge that this Agreement confers on RailCorp and TfNSW an interest in the Land Owner's Land and entitles RailCorp and TfNSW to lodge and maintain a caveat on the title to the Land Owner's Land to prevent any Dealing in respect of the Land Owner's Land other than the Dealings referred to in **clause 7.1(c)**.
- (b) If RailCorp or TfNSW lodges a caveat in accordance with **clause 7.2(a)**, then RailCorp or TfNSW will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the Registration on Title of this Agreement;
 - (ii) remove the caveat from the title to the Land Owner's Land promptly, following registration of this Agreement in accordance with **clause 7.1**; and
 - (iii) not prohibit, prevent or delay registration of the Dealings referred to in **clause 7.1(c)**.
- (c) If after 30 Business Days, the Developer and Land Owner have failed or have been unable to achieve the Registration on Title of this Agreement in accordance with **clause 7.1(b)(i)**, the Developer must pay RailCorp's and TfNSW's reasonable costs and expenses, including legal costs, of exercising their respective rights under **clause 7.2(a)**.

7.3 Removal of Agreement from Title

- (a) Following the satisfaction of the Developer's obligations to provide the Agreed Development Contributions in accordance with Items 1 and 2 in the Table in **Schedule 2**, RailCorp and TfNSW will promptly execute any form and supply such other information as is reasonably required by the Developer or the Land Owner to enable either:
 - (i) removal of the Agreement from the titles of the Land Owner's Land; or
 - (ii) if the Agreement has not been Registered on Title, the removal of the caveat(s) lodged pursuant to **clause 7.2**.
- (b) Notwithstanding **clause 7.3(a)**, the Developer and Land Owner may, from time to time, following the Registration on Title of this Agreement, make a written request to RailCorp and TfNSW seeking their consent to remove the Agreement or the caveat(s) as the case may be from all or part of the titles of the Land Owner's Land.

- (c) If the Developer and the Land Owner are compliant with all obligations under this Agreement and RailCorp and TfNSW are willing, in their absolute discretion, to provide their written consent to a request made by the Developer and Land Owner under **clause 7.3(b)**, RailCorp and TfNSW:
 - (i) will execute any form and supply such other information as is reasonably required by the Developer and the Land Owner to enable the removal of the Agreement or the caveat(s) from the relevant title(s) of the Land Owner's Land; and
 - (ii) may, in their absolute discretion, require the Developer or Land Owner to provide an alternative means of security, the type and quantum of such security to be determined by RailCorp and TfNSW, acting reasonably, to secure the Developer's outstanding obligations (if any) to provide the Agreed Development Contributions in accordance with **clause 5**.

8 Release and discharge of Agreement

8.1 Developer's release and discharge

The Developer will be released from its obligations under this Agreement if:

- (a) the Concept Plan Approval is surrendered prior to commencement of the operation of this Agreement under **clause 4**;
- (b) the Developer's obligations to provide the Agreed Development Contributions have been satisfied in accordance with **clause 5(b)**;
- (c) the Parties agree in writing that the performance of the Agreement has been frustrated by an event outside of the control of the Parties;
- (d) the Agreement is terminated for any of the reasons set out in **clause 10**;
- (e) the Developer assigns its rights, interests and obligations in accordance with **clause 16**; or
- (f) the Parties otherwise agree to modify or discharge the Agreement in accordance with **clause 9**.

8.2 Land Owner's release and discharge

- (a) The Land Owner will be released from its obligations under this Agreement if:
 - (i) the Land Owner assigns its rights, interests and obligations in accordance with **clause 16**; or
 - (ii) any of the matters outlined in **clauses 8.1(a) to 8.1(d)** or a discharge of the Agreement under **clause 8.1(f)** occurs.
- (b) If the Land Owner is released from its obligations in accordance with **clause 8.2(a)(ii)**, any caveat on title to Shell House and 285 George Street lodged under **clause 7.2** must be promptly removed and, if

Registration on Title of this Agreement has taken place, TfNSW and RailCorp must promptly execute any form and supply such other information as is reasonably required by the Developer or the Land Owner to enable removal of the Agreement from the title of Shell House and 285 George Street (as applicable).

9 Modification of this Agreement

- (a) The Parties agree that this Agreement may be reviewed or modified and that any review or modification of this Agreement will be conducted in accordance with the Act and 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.

10 Termination

This Agreement will terminate with immediate effect if:

- (a) TfNSW does not accept the Developer's binding offer made for the purpose of the final stage of the Unsolicited Proposal Process;
- (b) the Developer does not commence the Transit Hall Works by the Transit Hall Works Commencement Date; or
- (c) the Delivery Agreement or the Contract for Sale is terminated.

11 Dispute Resolution

11.1 Notice of Dispute

If a Party claims that a Dispute has arisen under this Agreement (**Claimant**), it must give written notice to the other Parties (**Respondents**) stating the matters in Dispute and designating as its representative a person to negotiate the Dispute (**Claim Notice**). Nothing in this clause prevents a Party seeking urgent injunctive or similar interim relief from a court.

11.2 Response to Notice

Within 10 Business Days of receiving the Claim Notice, the Respondents must notify the Claimant of their respective representatives to negotiate the Dispute.

11.3 Negotiation

The nominated representatives must:

- (a) meet to discuss the matter in good faith within 10 Business Days after service by the Respondents of notice of their respective representatives; and

- (b) use reasonable endeavours to settle or resolve the Dispute within 15 Business Days after they have met.

11.4 Further Notice if not Settled

If the Dispute is not resolved within 15 Business Days after the nominated representatives have met, any party may give to the others a written notice calling for determination of the Dispute (**Dispute Notice**). If the Dispute relates to a technical claim or question in relation to the Transit Hall Works (**Technical Dispute**), the Dispute Notice must adequately identify the nature of the Technical Dispute and the date on which the Technical Dispute is alleged to have arisen.

11.5 Reference to Expert

- (a) Within 10 Business Days of receiving a Dispute Notice submitted by a Party pursuant to **clause 11.4** in relation to a Technical Dispute, the Parties shall seek to agree upon and, if agreed upon, appoint an expert. In the event that the Parties cannot agree on an expert to be appointed, the appointment of the expert is to be referred to the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter).
- (b) For all Technical Disputes, the expert must:
 - (i) have reasonable qualifications and practical experience in works similar to the Transit Hall Works; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as an expert, he or she being required to fully disclose any such interest or duty before his or her appointment.
- (c) The Parties must refer the Technical Dispute to the expert for determination within 5 Business Days of the expert's appointment.

11.6 Assistance and Costs

- (a) Each Party must do all things necessary on its part or required by the expert for the proper conduct of the expert determination for the purpose of **clause 11.5(c)**.
- (b) In relation to costs and expenses of the expert determination:
 - (i) each Party will bear its own costs incurred in connection with the expert determination; and
 - (ii) the costs of the expert will be shared equally by the Parties unless the expert determines a Party has engaged in vexatious or unconscionable behaviour in which case the expert may require the full costs of the expert determination to be borne by that Party.

11.7 Expert not an Arbitrator

In determining the Technical Dispute the expert will be acting as an expert and not as an arbitrator.

11.8 Mediation

The parties agree that a Dispute which is not a Technical Dispute should be mediated, in which case:

- (a) the Parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the mediator will be agreed between the Parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, any Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this **clause 11.8 (Mediator)** must:
 - (i) have reasonable qualifications and practical experience in the area of the Dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the Parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the Parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a Dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) in relation to costs and expenses:
 - (i) each Party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) the costs of the Mediator will be shared equally by the Parties unless the Mediator determines a Party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that Party.

11.9 Litigation

If the Dispute is not finally resolved in accordance with **clauses 11.3 to 11.8**, any Party is at liberty to litigate the Dispute.

11.10 Continue to Perform obligations

Each Party must continue to perform its obligations under this Agreement, notwithstanding the existence of a Dispute.

12 Enforcement

12.1 Enforcement by any Party

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (ii) TfNSW or RailCorp from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

13 Delivery Security

13.1 Security

- (a) The Developer must procure for the benefit of TfNSW and RailCorp the Delivery Security prior to the Developer being granted access to RailCorp's land for the purpose of delivering the Stage 1 Development and, in any event, no later than the issue of the first Construction Certificate for any part of the Stage 1 Development.
- (b) TfNSW and RailCorp have the right to have recourse to the Delivery Security if the Transit Hall Works are not completed by the Transit Hall Works Completion Date or are not provided in accordance with the Transit Hall Brief.
- (c) At the request of the Developer, TfNSW and RailCorp may return, in their absolute discretion, portions of the Delivery Security as the Transit Hall Works progress, such portion to be commensurate with the progress of works from time to time.

14 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this Agreement must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery; or
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

- (c) If any Notice is delivered on a day that is not a Business Day or, if on a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

15 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.

16 Restrictions of alienation

16.1 Developer and Land Owner must not alienate

Subject to **clauses 16.2** and **16.3**:

- (a) the Land Owner and the Developer must not assign, transfer, grant rights in connection with, enter into a joint venture regarding or otherwise deal with its interest under this Agreement or the Land Owner's Land in any way;
- (b) a person must not become or cease to become the Parent of the Developer or the Land Owner; and
- (c) a change in Control of the Developer or the Land Owner must not take place,

without the consent of TfNSW and RailCorp (which must not be unreasonably withheld or delayed) and which may require entry into a deed between TfNSW, RailCorp and the relevant third party.

16.2 Encumbering the Developer's and Land Owner's interest

The Developer or the Land Owner must not mortgage, charge or otherwise encumber respectively the Developer's interest in this Agreement or the Land Owner's Land without the prior consent of TfNSW and RailCorp (such consent not to be unreasonably withheld and which will be included in a deed between TfNSW, RailCorp, the Developer, the Land Owner and the financier or security trustee).

16.3 Intra-group transactions permitted

Despite any other provision of this Agreement, the Land Owner and/or the Developer may assign, transfer and grant rights in connection with their interest in this Agreement, Shell House or 285 George Street and will not be in breach of **clause 16.1** and consent is not required from TfNSW or RailCorp provided that:

- (a) at all times, the legal interest in the Land Owner, the Developer, Shell House or 285 George Street is held by:
 - (i) one or more entities, each of which is a Related Corporation of BHCA Pty Ltd; or
 - (ii) a custodian, trustee, responsible entity or fund manager directed to hold the interest on behalf of any entity referred to in **clause 16.3(a)(i)**; and
- (b) the assignment, transfer or grant of rights is the subject of a deed between TfNSW, RailCorp, the Developer, the Land Owner and the relevant entity or entities referred to in **clause 16.3(a)**.

No change in control of the Developer or the Land Owner will be deemed to have occurred provided that the legal interest in those entities continues to be held by one or more entities, each of which is a Related Corporation of BHCA Pty Ltd.

17 Costs

The Parties agree that each party will pay its own costs in respect of the drafting, negotiation and execution of this Agreement.

18 Entire agreement

- (a) This Agreement executed and agreed by the parties contains everything to which the Parties have agreed in relation to the matters this Agreement deals with as at the date of execution. 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.

19 Delivery of the Works

The Developer agrees that the terms on which RailCorp will permit the Developer to access RailCorp's land and RailCorp and TfNSW will permit the delivery of the Agreed Development Contributions will include the following, without limitation:

- (a) the delivery obligations of the Developer under this Agreement, including, but not limited to the Transit Hall Brief and delivery of the Transit Hall Works;
- (b) design documentation for a Work;

- (c) variations to a Work;
- (d) requirements in relation to protection of people and property;
- (e) insurance;
- (f) risk allocation and liabilities in relation to a Work;
- (g) requirements in relation to damage and repairs to a Work;
- (h) the procedures for completion of a Work;
- (i) the procedures for any step-in rights in relation to the delivery of a Work;
- (j) the rectification of any defects in a Work; and
- (k) any other matter referred to in this Agreement.

20 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.

21 Governing law and jurisdiction

This Agreement and the transactions contemplated by it are governed by and are to be construed in accordance with the laws applicable in New South Wales. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

22 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

23 No fetter

Nothing in this Agreement will be construed as requiring RailCorp or TfNSW to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

24 Representations and warranties

24.1 All Parties

The Parties represent and warrant that they have power to enter into this Agreement and, to the extent applicable, have taken all corporate and other action required to enter into this Agreement.

24.2 Developer and Land Owner

The Developer and Land Owner each warrants, as at the date of this Agreement, that:

- (a) it is duly registered and remains in existence;
- (b) the execution, delivery and performance of this Agreement does not violate its constitution or any law applying to it;
- (c) this Agreement constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) the execution, delivery and performance of this Agreement does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (e) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (f) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect on its business assets or financial condition, which has not been advised in writing to TfNSW and RailCorp.

24.3 Developer

The Developer represents and warrants that it has or will:

- (a) enter into arrangements with the affected stakeholders regarding access and construction disturbance; and
- (b) secure the creation of all necessary rights required to be granted to TfNSW, RailCorp, City of Sydney Council or any other party under any approval, this Agreement or the Delivery Agreement, at its cost.

25 Land Owner's Limitation of Liability and Trustee Warranty Provisions

25.1 Limitation of Liability

- (a) The Land Owner enters into this Agreement only in its capacity as trustee of the Trust.
- (b) Subject to **clause 25.1(d)**:

- (i) a liability arising under or in connection with this Agreement (or the transactions contemplated by it) is limited and can be enforced against the Land Owner only to the extent to which it can be satisfied out of property of the Trust out of which the Land Owner is actually indemnified for the liability; and
 - (ii) the limitation in **clause 25.1(b)(i)** applies despite any other provisions of this Agreement.
- (c) Subject to **clause 25.1(d)**, no Party shall:
 - (i) sue the Land Owner in any capacity other than as trustee of the Trust;
 - (ii) seek to appoint or take any steps to procure or support the appointment of a receiver, a receiver and manager, a liquidator, a provisional liquidator, an administrator or similar person to the Land Owner or prove in any liquidation, administration or arrangement of or affecting the Land Owner (except in relation to property of the Trust);
 - (iii) enforce or seek to enforce any judgment in respect of any liability arising under or in connection with this Agreement (or the transactions contemplated by it) against any property of the Land Owner other than property held by the Land Owner as trustee of the Trust.
- (d) The limitations in **clauses 25.1(a), (b) and (c)** do not apply to any liability or obligation of the Land Owner to the extent that the liability or obligation is not satisfied because
 - under the constitution of the Trust, or the trust deed constituting the Trust or by operation of Law, there is a reduction in the extent of the Land Owner's indemnification out of the assets of the Trust, as a result of the Land Owner's fraud, negligence or breach of trust (involving its wilful default or lack of good faith).

25.2 Warranties

- (a) The Land Owner warrants that:
 - (i) it has formed the view that it is prudent for it to enter this Agreement;
 - (ii) it is the only trustee of the Trust and will remain the only trustee of the Trust until the Date of Completion;
 - (iii) no action has been taken to remove it as trustee of the Trust;
 - (iv) a certified copy of the trust deed and all variations to the deed have been (or on demand will be) provided to TfNSW and RailCorp;
 - (v) it has power under the trust deed and under the terms of any other relevant documents (including its constitution) to enter into this Agreement and perform its obligations under it;

- (vi) it is authorised to enter this Agreement, perform its obligations under this Agreement and allow this Agreement to be enforced against it;
 - (vii) except as expressly disclosed in writing by the Land Owner to TfNSW and RailCorp, there are no claims (whether legal or equitable) against the assets of the Trust which materially adversely affect the Land Owner's obligations or ability to perform under this Agreement;
 - (viii) it will not amend the terms of the right of indemnity as provided for in clause 25 of the trust deed;
 - (ix) it has or will have access to sufficient trust funds to meet its liabilities under this Agreement;
 - (x) it is not in default under the trust deed;
 - (xi) no action has been taken or proposed to terminate the Trust; and
 - (xii) it will exercise all rights of indemnity which, as trustee, it possesses in relation to the assets of the Trust at the request of TfNSW and/or RailCorp provided that any such request is lawful and would not cause the Land Owner to be in default under the trust deed.
- (b) The Land Owner gives the warranties contained in this clause in its capacity as trustee for the Trust.
- (c) The warranties given under this clause do not merge on completion or on any earlier termination of this Agreement.

26 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.

27 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.

28 GST

28.1 Construction

In this **clause 28**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, government corporation, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

28.2 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this Agreement is exclusive of GST (**GST-exclusive consideration**).

28.3 Application of Divisions 81 and 82

Without limiting the application of **clauses 28.4 to 28.10** the parties intend to apply Division 81 and Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) to supplies made under or in connection with this Agreement to the extent permitted by law.

28.4 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this Agreement, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply. However, an amount payable by RailCorp or TfNSW under this **clause 28.4** is limited to the amount of any input tax credit to which RailCorp or TfNSW (as applicable) is entitled in respect of its acquisition of the supply.

28.5 Timing of GST payment

The amount referred to in **clause 28.4** must be paid in addition to the GST-exclusive consideration:

- (a) if the amount is payable by RailCorp or TfNSW, within 5 Business Days after RailCorp or TfNSW (as applicable) has received the benefit of any input tax credit to which it is entitled in respect of its acquisition of the relevant supply; and
- (b) in any other case, at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

28.6 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 28.4**.

28.7 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this Agreement, any amount that is payable under **clause 28.4** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

However, neither RailCorp nor TfNSW is required to make any payment under this **clause 28.7** if, at the time the payment would otherwise be required, it is not entitled to claim a corresponding credit or refund in respect of that payment (or would not be so entitled following a payment to the recipient).

28.8 Reimbursements

- (a) Where a party is required under or in connection with this Agreement to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 28.8** does not limit the application of **clause 28.4**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 28.8(a)**.

28.9 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which **clause 28.4** applies is a taxable supply made by the recipient of that supply (**Recipient Supply**), the amount that would otherwise be payable by the recipient (or party providing consideration for the taxable supply) to the Supplier under **clause 28.4** must:

- (i) if the Supplier is RailCorp or TfNSW, be reduced by the amount of any input tax credit to which RailCorp or TfNSW (as applicable) is entitled in relation to its acquisition of the Recipient Supply, but the party making the Recipient Supply must fund the amount of the input tax credit to the extent to which there is any delay between the time RailCorp or TfNSW (as applicable) is required to account for GST on its taxable supply and the time it is able to claim the input tax credit in whole or in part; and
 - (ii) in any other case be reduced by the amount of GST payable by the recipient on the Recipient Supply.
- (b) The recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the recipient (or party providing consideration for the taxable supply) must pay an amount under **clause 28.4** in accordance with **clause 28.5** (or the time at which such an amount would have been payable in accordance with **clause 28.4** but for the operation of **clause 28.9(a)**).

28.10 No merger

This **clause 28** does not merge on the completion, rescission or other termination of this Agreement or on the transfer of any property supplied under this Agreement.

29 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.

30 Relationship of parties

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

31 Further steps

Each Party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

32 Counterparts

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

33 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.

34 RailCorp Restructure

- (a) The Developer and Land Owner acknowledge and agree that the NSW Government has indicated that it may restructure RailCorp. The restructure of RailCorp may result in RailCorp's assets, rights and liabilities being transferred to other entities.
- (b) The Developer and Land Owner agree:
 - (i) that this Agreement and any assets, rights or liabilities RailCorp holds in connection with this Agreement may be novated, assigned or otherwise transferred from RailCorp to any other government entity;
 - (ii) to undertake all actions reasonably requested by RailCorp to effect such a novation, assignment or other transfer; and
 - (iii) that they are not entitled to make RailCorp or any novatee, assignee or transferee liable for any claim arising from or in connection with any novation, assignment or transfer contemplated by this **clause 34**.

35 General

35.1 Construction

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) if the day on or by which any act, must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (f) '\$' or 'dollars' is a reference to Australian currency all amounts payable under this Agreement are payable in Australian dollars;
- (g) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

- (h) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (i) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
- (j) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (k) a reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns; and
- (l) any Schedules and attachments form part of this Agreement.

35.2 Headings

Headings do not affect the interpretation of this Agreement.

draft

Schedule 1

Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) Yes
Description of the land to which this Agreement applies- (Section 93F(3)(a))	The Land
Description of the development to which this Agreement applies- (Section 93F(3)(b)(ii))	The Development
The scope, timing and manner of delivery of Development Contributions required by this Agreement - (Section 93F(3)(c))	See clause 5 and Schedule 2
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is not excluded by this Agreement.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is not excluded by this Agreement.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not excluded by this Agreement.
Applicability of Section 93F(3)(e) of the Act	The benefits under this Agreement are not be taken into consideration when determining a development contribution under section 94 of the Act.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 11
Enforcement of this Agreement - (Section 93F(3)(g))	See clauses 7 and 12
Registration of this Agreement (Section 93H)	See clause 7

Provision of the Act	This Agreement
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 23

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Schedule 2

Development Contributions

Agreed Development Contributions Table

Item	Nature of Development Contribution	Timing
1	The construction and commissioning of the Transit Hall Works	To be commenced by the Transit Hall Works Commencement Date. To be completed by the Transit Hall Works Completion Date.
2	Registration of the Building Management Statement	To be registered on the relevant titles: (a) at the same time as registration of the Subdivision Plan; and (b) as a pre-condition to completion of the Contract for Sale.
3	Compliance with the Building Management Statement in perpetuity	In perpetuity in accordance with the Building Management Statement.

Schedule 3

Explanatory Note

draft

Schedule 4

Address for Service

RailCorp

Contact: TBC

Address: 447 Pitt Street, Sydney, New South Wales 2000

Telephone No: TBC

TfNSW

Contact: TBC

Address: Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood,
New South Wales

Telephone No: TBC

Brookfield Office Properties One Carrington Developer Pty Ltd

Contact: TBC

Address: Level 22, 135 King Street, Sydney, New South Wales

Telephone No: 02 9322 2000

Sovereign Wynyard Centre Pty Limited as trustee for the Sovereign Wynyard Centre Unit Trust

Contact: TBC

Address: Level 22, 135 King Street, Sydney, New South Wales

Telephone No: 02 9322 2000

Execution

Executed as a deed.

SIGNED for and on behalf of **Rail**)
Corporation of New South Wales by)
an authorised officer in the presence of:)

.....
Witness Authorised signatory

.....
Name of witness (print) Name and title (print)

SIGNED for and on behalf of **Transport**)
for NSW by an authorised officer in the)
presence of:)

.....
Witness Authorised signatory

.....
Name of witness (print) Name and title (print)

SIGNED by **Brookfield Office**)
Properties One Carrington Developer)
Pty Limited ACN 169 154 830 in)
accordance with section 127 of the)
Corporations Act 2001:)

.....
Signature of Director Signature of Director/Secretary

.....
Name of Director (print) Name Director/Secretary (print)

SIGNED by **Sovereign Wynyard
Centre Pty Limited as trustee for the
Sovereign Wynyard Centre Unit Trust**)
ACN 062 235 009 in accordance with)
section 127 of the Corporations Act)
2001:)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director (print)

.....
Name Director/Secretary (print)

draft

Annexure A

Transit Hall Works - Plans

draft

Annexure B

Transit Hall - Plans

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