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Minister for Planning

ABN 38 755 709 681
(Minister)

Stockland Development Pty Limited

ACN 000 064 835
(Developer)

Planning Agreement

Environmental Planning and Assessment Act 1979 (NSW)

SHaddadi

Contact

Robert Moses
Level 65, MLC Centre
19 Martin Place
SYDNEY NSW 2000
RCM:10640171

TABLE OF CONTENTS

1	DEFINITIONS AND INTERPRETATION	1
1.1	Definitions	1
1.2	Interpretation	3
1.3	Construction	5
2	OPERATION AND APPLICATION OF THIS DEED	5
2.1	Status of Deed	5
2.2	Operation	5
2.3	Application	5
3	CONTRIBUTIONS	6
3.1	Requirement to provide Development Contribution	6
3.2	Use of Development Contribution	6
4	APPLICATION OF SECTION 94, SECTION 94A, SECTION 94EF OF THE ACT	6
5	REGISTRATION ON TITLE	6
5.1	Land ownership	6
5.2	Registration of Deed	6
5.3	Release and discharge of Deed	7
6	SECURITY	7
7	DISPUTE RESOLUTION	7
7.1	Written notice of dispute	7
7.2	Attempt to resolve	8
7.3	Referral to Director-General	8
8	INTEREST	8
9	GST	8
9.1	Definitions	8
9.2	Intention of the parties	8
9.3	Reimbursement	8
9.4	Consideration GST exclusive	9
9.5	Additional Amounts for GST	9
9.6	Non monetary consideration	9
9.7	Assumptions	9
9.8	No merger	9
10	ASSIGNMENT	9
11	WARRANTIES OF CAPACITY	10
11.1	General warranties	10
11.2	Power of attorney	10
12	GENERAL PROVISIONS	10
12.1	Entire agreement	10

12.2	Variation	10
12.3	Waiver	10
12.4	Further assurances	10
12.5	Time for doing acts	10
12.6	Severance	11
12.7	Preservation of existing rights	11
12.8	No merger	11
12.9	Counterparts	11
12.10	Relationship of parties	11
12.11	No fetter	11
12.12	Explanatory note	12
12.13	Expenses and stamp duty	12
12.14	Notices	12
SCHEDULE 1 - REQUIREMENTS UNDER SECTION 93F		14
SCHEDULE 2 - ADDRESS FOR SERVICE		15
SCHEDULE 3 - LAND		16
SCHEDULE 4 - DEVELOPMENT CONTRIBUTIONS		18
SCHEDULE 5 – SECURITY TERMS		20

THIS PLANNING AGREEMENT is dated

3 March.

2011

PARTIES:

MINISTER FOR PLANNING (ABN 38 755 709 681) of Level 34, Governor Macquarie Tower, 1 Farrer Place, Sydney 2000 (**Minister**)

STOCKLAND DEVELOPMENT PTY LIMITED (ACN 000 064 835) of Level 25, 133 Castlereagh Street, Sydney NSW 2000 (**Developer**)

INTRODUCTION:

- A The Developer owns the Land.
- B The Developer intends to develop the Land.
- C The Developer has made a Development Application for the Proposed Development.
- D Clause 6.1 of the *Wollongong Local Environmental Plan (West Dapto) 2010* provides that the Council must not grant Development Consent unless the Director-General has certified in writing to the Council that satisfactory arrangements have been made to contribute to the provision of infrastructure, facilities and services referred to in clause 6.1 of the *Wollongong Local Environmental Plan (West Dapto) 2010*.
- E The Developer has offered to enter into this Deed with the Minister to secure the Development Contribution in order to enable the Director-General to provide the certification required by the *Wollongong Local Environmental Plan (West Dapto) 2010*.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context clearly indicates otherwise:

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

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

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

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank and which is an eligible financial institution for the purposes of Treasury Circular NSW TC08/01 dated 21 February 2008 as amended, supplemented or substituted from time to time; and
- (b) on terms, acceptable to the Minister, in the Minister's absolute discretion, to pay the face value of that undertaking (being such an amount as is required under this Deed) on demand.

Base CPI means the CPI number for the quarter ending 30 March 2010;

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

Commencement Date means the date that this Deed comes into operation in accordance with **clause 2.2(b)**;

Council means Wollongong City Council ABN 63 139 525 939;

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Minister determines in its sole discretion;

CPI Adjustment Date means 1 July 2011 and each anniversary of 1 July 2011 thereafter;

Current CPI means the CPI number for the quarter ending immediately before 30 March 2011 and each anniversary of 30 March 2011 thereafter;

Development Application has the same meaning as in the Act;

Development Consent means any development consent granted by the Council under section 80 of the Act for all or part of the Proposed Development;

Development Contributions means the contributions provided for in **clause 3**;

Director-General means the Director-General of the Department of Planning or any successor office;

Explanatory Note means the explanatory note required by the Regulation;

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW);

GST means any form of goods and services tax payable under the GST Law;

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

Land means the land described in **Schedule 3**;

Lot means a lot located on the Land comprising one of the 295 lots contemplated by the Development Consent to the exclusion of any Super Lots;

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW);

Proposed Development means the development of the Land, the subject of Development Application DA2010/693 lodged with the Council;

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

Register means the torrens title register maintained under the Real Property Act;

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

Security Terms mean the terms and arrangements set out in **clause 6**;

Special Infrastructure Contribution means a contribution determined in accordance with Section 94EE of the Act with respect to the Land;

Subdivision Certificate has the same meaning as in the Act in respect of the Urban Lots;

Subdivision Certificate Application means an application for a Subdivision Certificate;

Super Lots means a lot located on the Land which, following registration of a Plan of Subdivision, is intended for further subdivision for residential housing; and

Urban Lot means a Lot located on the Land, created by the registration of a Plan of Subdivision, intended to be developed, subject to approval, for the purpose of residential housing.

1.2 Interpretation

In this agreement, unless the context clearly indicates otherwise:

- (a) a reference to **this agreement** or another document means this agreement or that other document and any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named

body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;

- (d) a reference to the **introduction**, a **clause**, or **schedule** is a reference to the introduction, a clause or schedule to or of this agreement;
- (e) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this agreement;
- (f) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this agreement;
- (g) the **introduction** accurately sets out the circumstances in which the parties have entered into this agreement;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (l) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement;
- (m) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (n) **including** and **includes** are not words of limitation;
- (o) the words **at any time** mean at any time and from time to time;
- (p) a reference to a time is to that time in New South Wales;
- (q) a word that is derived from a defined word has a corresponding meaning;
- (r) the singular includes the plural and vice-versa;
- (s) words importing one gender include all other genders; and
- (t) a reference to a thing includes each part of that thing.

1.3 Construction

Neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Status of Deed

Subject to **clause 2.2**, this Deed constitutes a planning agreement within the meaning of Section 93F of the Act

2.2 Operation

The parties agree that:

- (a) until this Deed operates in accordance with **clause 2.2(b)**:
 - (i) this Deed constitutes an irrevocable offer from the Developer to enter into the Planning Agreement if Development Consent is granted to any part of the Proposed Development on the Land;
 - (ii) despite anything else in this Deed, **clauses 5 and 6** commence when this Deed is signed by the parties; and
 - (iii) the Developer undertakes to procure the imposition of a condition within the meaning of section 93I(3) of the Act on the Development Consent and if no such condition is imposed, the Developer undertakes to use its best endeavours to have such a condition imposed on the Development Consent;
- (b) this Deed operates only if:
 - (i) Development Consent is granted for the carrying out of the Proposed Development;
 - (ii) the Deed is entered into as required by clause 25C(1) of the Regulation; and
- (c) is terminated when the Developer provides all of the contributions required by this Deed to the Minister.

2.3 Application

This Deed applies to:

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

3 CONTRIBUTIONS

3.1 Requirement to provide Development Contribution

The Developer undertakes to provide, or procure the provision of the Development Contributions in the manner and at the times set out in **Schedule 4** and the parties agree to abide by the procedures and obligations set out in **Schedule 4**.

3.2 Use of Development Contribution

The Developer agrees that the Minister:

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

4 APPLICATION OF SECTION 94, SECTION 94A, SECTION 94EF OF THE ACT

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

5 REGISTRATION ON TITLE

5.1 Land ownership

The Developer represents and warrants that it is:

- (a) the owner of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this Deed is required to be registered under **clause 5.2** of this Deed; and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by **clause 5.2(b)(i)** to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under **clause 5.2**.

5.2 Registration of Deed

- (a) As contemplated by section 93H of the Act, the Developer agrees to procure the registration of this Deed under the Real Property Act in the relevant folio of the Register not later than 10 Business Days after the Minister provides to the Developer this Deed duly executed by the Minister.

- (b) The Developer at its own expense, will take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant certificates of title; and
 - (iv) the lodgement and registration of this Deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this Deed relates to land not under the Real Property Act.
- (c) The Developer will provide the Minister with a copy of the relevant folio of the Register within 10 Business Days of registration of this Deed in accordance with this **clause 5.2**.

5.3 Release and discharge of Deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this Deed, in a timely fashion, with respect to any part of the Land upon the Developer satisfying all of its obligations under this Deed in respect of that part of the Land at the time of issue of a Subdivision Certificate for any Plan of Subdivision relating to the creation of an Urban Lot (or earlier if the Developer so satisfies its obligations).

6 SECURITY

- (a) The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this Deed by registering this Deed on the title to the Land.
- (b) The Developer has agreed to provide the Bank Guarantee to the Minister upon execution of this Deed in accordance with the terms and procedures set out in **Schedule 5** to secure the Development Contribution.

7 DISPUTE RESOLUTION

7.1 Written notice of dispute

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

7.2 Attempt to resolve

On receipt of notice under **clause 7.1**, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

7.3 Referral to Director-General

Should the matter not be resolved under **clause 7.2**, the matter shall be referred to the Director-General whose determination of the disagreement shall be final and binding on the parties.

8 INTEREST

If the Developer fails to pay any amount due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time. That interest will be payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

9 GST

9.1 Definitions

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

9.2 Intention of the parties

The parties intend that:

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

9.3 Reimbursement

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

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this **clause 9**.

9.5 Additional Amounts for GST

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

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

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

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

9.8 No merger

This clause will not merge on completion or termination of this Deed.

10 ASSIGNMENT

This agreement is personal to each party and neither party may assign the rights or benefits of this agreement to any person except:

- (a) to a related body corporate, after obtaining the consent of the other party, which the other party must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this agreement; or
- (b) to any other person, with the prior consent of the other party, which the other party may give, give conditionally or withhold in its absolute discretion.

11 WARRANTIES OF CAPACITY

11.1 General warranties

The Developer warrants that:

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

11.2 Power of attorney

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

12 GENERAL PROVISIONS

12.1 Entire agreement

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

12.2 Variation

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

12.3 Waiver

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

12.4 Further assurances

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

12.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this Deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

12.6 Severance

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

12.7 Preservation of existing rights

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

12.8 No merger

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

12.9 Counterparts

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

12.10 Relationship of parties

Unless otherwise stated:

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

12.11 No fetter

Nothing in this Deed will be construed as requiring the Minister, 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.

12.12 Explanatory note

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

12.13 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all stamp duty assessed on or in respect of this Deed and any instrument or transaction required by or necessary to give effect to this Deed.
- (d) On execution of this Deed, the Developer must provide the Minister with a bank cheque in respect of the Minister's costs pursuant to clauses (a) and (b) above which have been notified to the Developer in writing.

12.14 Notices

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:

- (a) hand delivered;
- (b) sent by facsimile transmission;
- (c) sent by prepaid ordinary mail within Australia; or
- (d) sent by prepaid Express Post International airmail to the Address for Service of the recipient party, if the Address for Service of the sender and the recipient are in different countries.

A notice is given if:

- (e) hand delivered, on the date of delivery;
- (f) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted;
- (g) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or

- (h) sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date of posting.

EXECUTED as a deed.

SCHEDULE 1 - REQUIREMENTS UNDER SECTION 93F

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

Requirement under the Act	This Deed
Planning instrument and/or development application – (section 93F(1)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument (b) made, or proposes to make, a development/ project application (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies 	No Yes No
Description of land to which this Deed applies – (section 93F(3)(a))	See Schedule 3
Description of change to the environmental planning instrument to which this Deed applies – (section 93F(3)(b))	Not applicable
The scope, timing and manner of delivery of contribution required by this Deed – (section 93F(3)(c))	See clause 3.1 and Schedule 4
Applicability of section 94 of the Act – (section 93F(3)(d))	Not Excluded
Applicability of section 94A of the Act – (section 93F(3)(d))	Not Excluded
Applicability of section 94EF of the Act – (section 93F(3)(d))	Excluded
Consideration of benefits under this Deed if section 94 applies – (section 93F(3)(e))	No
Mechanism for Dispute Resolution - (Section 93F(3)(f))	See clause 7
Enforcement of this Deed – (section 93F(3)(g))	See clause 6
No obligation to grant consent or exercise functions – (section 93F(9))	See clause 12.11

SCHEDULE 2 - ADDRESS FOR SERVICE**Minister for Planning**

Contact: The Director-General

Address: Department of Planning, 23-33 Bridge Street, Sydney NSW 2000

Facsimile No: (02) 9228 6191

Stockland Development Pty Limited

Contact: The Company Secretary

Address: Level 25, 133 Castlereagh Street, Sydney NSW 2000

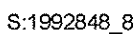
Facsimile No: (02) 8988 2000



SCHEDULE 3 – LAND

Folio Identifiers
601/1054648
Part proposed lot 1 in the draft plan of subdivision attached to this Schedule 3 and shown as "Included" being a land area of 24.93 ha





SCHEDULE 4 - DEVELOPMENT CONTRIBUTIONS

1 Development Contributions

The Developer undertakes to make the following Development Contributions in the manner set out in the table below:

Development Contribution	Value	Timing
Contribution towards state and regional public infrastructure	\$2,263,492	Each instalment must be paid prior to the issue of each Subdivision Certificate in accordance with the terms of this Schedule.

2 Payment

- (a) The Development Contribution must be paid in instalments calculated in accordance with **clauses 2(c), (d) and (e)** of this **Schedule 4**.
- (b) Each instalment must be paid prior to the issue of a Subdivision Certificate.
- (c) Subject to **clause 2(d)**, each instalment is to be paid in accordance with the following formula:

$$X = N \times \$73,219$$

"X" means the value of each instalment of the contribution required to be paid or provided;

"N" means the number of hectares comprised in the Lots referred to in each Subdivision Certificate Application;
- (d) On each CPI Adjustment Date, the value of **X** in **clause 2(c)** will be adjusted by multiplying **X** by an amount equal to the Current CPI divided by the Base CPI.
- (e) Any instalments paid to the Minister prior to 1 July 2011 are to be calculated with a reduction of one third of the amount payable under **clause 2(c)** of this **Schedule**.
- (f) Despite **clause (c)** of this Schedule, the final instalment due and payable prior to the issue of the final Subdivision Certificate will be in an amount equal to the balance of the Development Contribution at the relevant date increased to reflect any increase in the CPI since the date of this Deed, subject to any reductions as a result of instalments paid before 1 July 2011.

3 Determination of Special Infrastructure Contribution

Despite anything else in this Deed, if the Minister determines a Special Infrastructure Contribution, then the Developer must pay to the Minister the Special Infrastructure Contribution amount in lieu of the Development Contribution described

in the table in **clause 1** of this **Schedule** and make such payment in accordance with **clause 2** of this **Schedule** although no further payment will be required relating to land where Development Contributions have been paid pursuant to this Deed.

SCHEDULE 5 – SECURITY TERMS**1 Bank Guarantee Required**

The Developer has agreed to provide security to the Minister in the form of a Bank Guarantee for a face value equivalent to \$50,000 to secure the Developer's obligations to pay the Development Contribution pursuant to **clause 3.1** and the terms and conditions of this Schedule apply in relation to those security arrangements.

2 Claims under Bank Guarantee

The Developer agrees that the Minister may make claims under a Bank Guarantee provided by it on the following basis:

- (a) in relation to the Bank Guarantee securing the Developer's obligations to pay the Development Contribution pursuant to **clause 3.1**, the Minister may call upon that Bank Guarantee (in full or in part) in the event that the Developer breaches those obligations and retain and use such monies in her discretion to compensate the Minister for the Developer's breach of those obligations;
- (b) the Minister agrees not to make any claim under a Bank Guarantee without providing at least 10 Business Days' prior written notice to the Developer of its intention to do so.
- (c) The amount appropriated by the Minister under subclause (a) must be applied towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this Deed.

3 Release of Bank Guarantee

If the Developer has satisfied all of its obligations under this Deed which were secured by the Bank Guarantee and the whole of the monies secured by the Bank Guarantee have not been expended and the monies accounted for in accordance with **clause 2(c)** of this **Schedule**, then the Minister will promptly return the Bank Guarantee (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be), to the Developer.


SIGNED SEALED AND DELIVERED)
 By the MINISTER FOR PLANNING in the)
 presence of:)



Signature of witness

IAN REYNOLDS
 Name of witness
 23-33 Bridge St
 SYDNEY


EXECUTED by STOCKLAND)
 DEVELOPMENT PTY LIMITED (ACN 000)
 064 835) in accordance with section 127 of)
 the Corporations Act: by its attorney)
 Under Power of Attorney Book: 4566
 No: 484
 in the presence of:

X 
 Signature of Director witness

X JEFF BANNERMAN
 Name of Director witness
 133 CASTLEREAGH ST SYDNEY

Signature

Haddad
 Signed by Sam Haddad, Director-
 General under delegation from
 the Minister for Planning dated
 9 February 2011
 Name of signatory

X 
 Signature of Director/Secretary attorney

X Robert Dennis Carr
 Name of Director/Secretary attorney