



Dated 12 March 2015

Deed

The Minister for Planning (ACN 755 709 681)

Terrence David Rowney

Stithos Pty Limited (ACN 159 700 268)

Minka Holdings Pty. Limited (ACN 009 458 803)

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This Deed is dated

2015

17.3.15

Between:

Minister

The Minister for Planning (ACN 755 709 681)
of Level 33, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

Developer

Terrence David Rowney of 30-40 George Street, Leichhardt NSW 2040

Transferee

Stithos Pty Limited (ACN 159 700 268)
of C/- Gertos Savell Katos, 169 Parramatta Road, Camperdown NSW 2050

Guarantor

Minka Holdings Pty. Limited (ACN 009 458 803)
of C/- Gertos Savell Katos, 164 Parramatta Road, Camperdown NSW 2050
acting as trustee for The Telstra Unit Trust (ABN 20 326 930 911)

Introduction:

- A** The Minister and the Developer are parties to the Planning Agreement.
- B** Pursuant to clause 9.2(a)(ii) of the Planning Agreement, the Developer agreed not to transfer any part of the Land unless, among other things, the Developer procures the execution of an agreement by the person to whom the Land is to be sold or transferred with the Minister, on terms satisfactory to the Minister (acting reasonably), under which that person agrees to comply with the terms and conditions of the Planning Agreement.
- C** The Developer has entered into the Contract for Sale with the Transferee in relation to the Land.
- D** The Transferee agrees to be bound by the Planning Agreement and to adopt all of the obligations of the Developer under that agreement in accordance with this deed and the Guarantor agrees to guarantee the obligations of the Transferee under the Planning Agreement in accordance with this deed.
- E** This deed is entered into in accordance with the requirements of clause 9.2(a)(ii) of the Planning Agreement.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

Contract for Sale means the contract for sale entered into between the Developer as vendor and the Transferee as purchaser in respect of the Land dated 3 July 2014.

Guarantee means the guarantee provided by the Guarantor to the Minister and is defined in clause 4(a) of this deed.

Planning Agreement means the deed entitled “Planning Agreement” entered into between the Developer and the Minister on 15 February 2014 and registered on the Land as dealing AI801023 and any amendments to it. A copy of the Planning Agreement is annexed to this deed at Annexure A.

All capitalised words in this deed, which have not been defined above, are defined in the Planning Agreement.

1.2 Interpretation

In this deed, unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) unless the context otherwise requires, words or expressions defined in the Planning Agreement have the same meaning in this deed;
- (c) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (d) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (e) the **introduction** and **annexures** form part of this deed;
- (f) the **introduction** accurately sets out the circumstances in which the Transferee has entered into this deed;
- (g) **including** and **includes** are not words of limitation;
- (h) the singular includes the plural and vice-versa; and
- (i) words importing one gender include all other genders.

2. Commencement

2.1 Deed commences on execution

- (a) This deed commences on the later of:
 - (i) execution by the Transferee and the Guarantor; and
 - (ii) completion of the Contract for Sale.
- (b) The Transferee must provide a written notice to the Minister stating that the Contract for Sale has completed on a date that is no later than 10 Business Days after the completion of the Contract for Sale.

3. Adoption of Planning Agreement by Transferee

- (a) The Transferee has read the Planning Agreement and agrees to comply with all of the obligations of the Developer under the Planning Agreement as if the Transferee was joined

as parties to the Planning Agreement in the place of the Developer, including obligations which have arisen before the date of the transfer of the Land.

- (b) The Minister acknowledges that she is bound by the terms of the Planning Agreement as if the Transferee was the Developer named in the Planning Agreement.
- (c) The Developer and the Minister release each other in relation to their respective obligations pursuant to the Planning Agreement, except in relation to any breaches prior to purchase or transfer of the Land to the Transferee.

4. Guarantee and the Guarantor's covenants

- (a) The Guarantor has read the Planning Agreement and, in its capacity as the trustee for the Trust, irrevocably and unconditionally guarantees to the Minister the obligations of the Transferee under the Planning Agreement (**Guarantee**).
- (b) If the Transferee fails to comply with its obligations under the Planning Agreement, the Guarantor will be immediately responsible and must carry out the obligations of the Transferee under the Planning Agreement on demand, including, but not limited to, obligations in relation to Affordable Housing.
- (c) The Guarantor warrants and agrees that:
 - (i) it is empowered under the Trust deed to give the Guarantee and to execute this deed;
 - (ii) all necessary meetings have been held or resolutions passed or consents obtained as are required under the Trust deed to give effect to this Guarantee;
 - (iii) it is the sole trustee of the trust and no new trustees have been appointed;
 - (iv) the Trust has not been terminated; and
 - (v) the Guarantor is not in breach of the Trust deed.
- (d) In this clause:
 - (i) "**Trust**" means the Telstra Unit Trust (ABN 20 326 930 911); and
 - (ii) "**Affordable Housing**" has the same meaning as in the Planning Agreement.

5. General provisions

5.1 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

5.2 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 deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

5.3 Legal expenses

The Developer must pay the Minister's reasonable legal costs and disbursements relating to the perusal and execution of this deed and any stamp duty assessed on this deed.

Executed as a deed.

Signed sealed and delivered for and on behalf
of the **Minister for Planning** in the presence of:

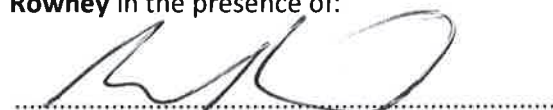

.....
Signature of witness

MARLENE BEZZINA.
.....
Name of witness

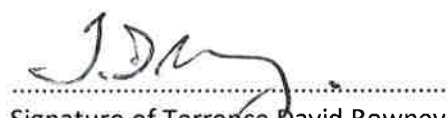

12-3-15
.....
Signature of Minister for Planning

SIMON OFFICER - CFOO
.....
Minister for Planning
AS DELEGATE

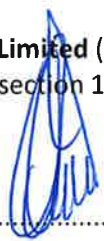
**Signed sealed and delivered by Terrence David
Rowney** in the presence of:


.....
Signature of witness

Matthew Shad
.....
Name of witness



.....
Signature of Terrence David Rowney

Executed by Stithos Pty Limited (ACN 159 700
268) in accordance with section 127 of the
Corporations Act:


.....
Signature of sole director and secretary

Gregory Gav
Name of sole director and secretary

Executed by Minka Holdings Pty. Limited (ACN
099 458 803) in accordance with section 127 of
the Corporations Act:


.....
Signature of sole director and secretary

Gregory Gav
Name of sole director and secretary

Annexure A
Planning Agreement

12-3-18





Minister for Planning and Infrastructure
ABN 38 755 709 681

and

Terrence David Rowney

Planning Agreement

Environmental Planning and Assessment Act 1979

X  
X

Sydney . Melbourne . Brisbane

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ABN 15 364 527 724

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Affordable Housing Provider means an organisation:

- (a) registered as a community housing provider under the *Housing Act 2001* (NSW) or the National Law; and
- (b) which meets any other criteria specified by the Minister or the Minister's nominee.

Agreement for Lease means an agreement to enter into one or more Leases.

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

Building means one or more residential flat buildings to be constructed on the Land.

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.

Development means the demolition of existing structures and construction of the Building.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contributions means the:

- (a) Lease Contribution; and
- (b) Transfer Contribution,

to be provided by the Developer in accordance with Schedule 4.

Director-General means the Director-General of the Department of Planning and Infrastructure from time to time.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

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

Land means the land described in Schedule 3 of this deed.

Sale of Land Contract means one or more contracts for the transfer of the Affordable Housing Lots from the Developer to the Minister or his nominee with a completion date no later than 20 Business Days after the later of:

- (a) a Strata Plan being registered for the relevant Building; or
- (b) the issuing of the first Occupation Certificate for that part of the Building that comprises the relevant Affordable Housing Lots.

Strata Plan means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.

Strata Schemes Act means the *Strata Schemes (Freehold Development) Act 1973* (NSW).

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Transfer Contribution means the obligation to enter into the Sale of Land Contract in accordance with Schedule 4.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed 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**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.3 Application

This deed applies to:

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

3 APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT

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

4 DEVELOPMENT CONTRIBUTIONS

4.1 Developer to provide Development Contributions

The Developer undertakes to provide to the Minister or the Minister's nominee, the Development Contributions in accordance with the provisions of Schedule 4 to this deed.

4.2 Acknowledgement

The Developer acknowledges and agrees that the Minister:

- (a) must comply with section 93E of the Act but has no obligation to repay the Development Contributions to the Developer; and
- (b) in circumstances where the Development Contributions are transferred to any Authority, has not made any representation or warranty that the Development Contributions will or must be used for a particular purpose by that Authority.

5 ENFORCEMENT

5.1 Developer to provide security

The parties agree that:

- (a) the registration of this deed on the title to the Land; and
- (b) clauses 2.2 and 3.2 of Schedule 4,

- (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 6.1 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 6.1(a) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 6.

7 DISPUTE RESOLUTION

7.1 Not commence

A party must not commence any court proceedings relating to a dispute under or in relation to this deed unless it complies with this clause 7.

7.2 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.

7.3 Attempt to resolve

On receipt of notice under clause 7.2, 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.

7.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 7.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such dispute resolution technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

7.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 7.2 then any party which has complied with the provisions of this clause 7

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 8.

8.5 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.

8.6 Non-monetary consideration

Clause 8.5 applies to non-monetary consideration.

8.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 8.5 the Developer will assume the Minister is not entitled to any input tax credit.

8.8 No merger

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

9 ASSIGNMENT

9.1 Developer's right to assign or novate

- (a) Prior to seeking the consent of the Minister to a proposed assignment or novation of its rights or obligations under this deed, the Developer must:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Developer's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required in order to perform the Developer's obligations under this deed insofar as those obligations have been novated to the Incoming Party; and
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with

10.2 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.

11 REPORTING REQUIREMENT

- (a) On each anniversary of the date of this deed or as otherwise agreed with the Director-General, the Developer must deliver to the Director-General a report which must include those matters set out in clauses (b) and (c), as applicable.
- (b) If the Developer has not provided a Development Contribution in the 12 month period immediately preceding the relevant anniversary of this deed, the report must include:
 - (i) a description of the status of the Development;
 - (ii) a forecast in relation to the anticipated progression and completion of the Development; and
 - (iii) an estimated date for when the Developer expects to lodge the first or next Planning Application.
- (c) If the Developer has provided one or more Development Contributions under this deed, the report must include:
 - (i) details of all Development Consents granted in relation to the Development;
 - (ii) a schedule that details all Development Contributions provided under this deed as at the date of the report; and
 - (iii) an estimated date for when the Developer expects to lodge the next Planning Application.
- (d) Within 10 Business Days after receiving the Director-General's written request, the Developer must deliver to the Director-General all documents and other information which, in the reasonable opinion of the Director-General are necessary for the Director-General to assess the status of the Development.

12.7 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 deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

12.8 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.

12.9 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.

12.10 Counterparts

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

12.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed 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.

12.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

12.13 No fetter

Nothing in this deed shall be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

(b) A Notice is given if:

- (i) hand delivered, on the date of delivery;
- (ii) 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; or
- (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

REQUIREMENT UNDER THE ACT	THIS DEED
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 7
Enforcement of this deed – (section 93F(3)(g))	See clause 5
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 12.13

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 6)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see Schedule 4)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

SCHEDULE 3**Land (clause 1.1)****1 Lots proposed for development**

Lot	Deposited Plan	Folio Identifier
1	745978	1/745978
1	745979	1/745979
1	920105	1/920105
1	972151	1/972151
16	69760	16/69760
5	745976	5/745976
6	745976	6/745976
7	448755	7/448755
9	666322	9/666322

- (c) The Developer indemnifies and agrees to keep indemnified the Minister against all claims made against the Minister if the Minister must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) to any person, other than the Developer.

2.3 Reimbursement of Minister's costs

The Developer must reimburse the Minister, promptly on demand, an amount equivalent to all reasonable costs incurred by the Minister in acquiring the leases pursuant to clause 2.2 of this Schedule.

3 Transfer Contribution

3.1 Obligation to enter into the Sale of Land Contract

- (a) The Developer must enter into one or more Sale of Land Contracts, each for a consideration of \$1.
- (b) At least 25 Business Days prior to the issue of the first Occupation Certificate in respect of the Building, the Developer must provide a copy of the Sale of Land Contract(s) to the Director-General.
- (c) Where the Minister's nominee is a party to the Sale of Land Contract(s), the Developer must give to the Director-General a copy of a title search in relation to each Affordable Housing Lot showing the Minister's nominee as the registered proprietor of the relevant lot within 10 Business Days of the relevant transfer being registered.

3.2 Compulsory acquisition

- (a) If the Developer does not comply with clause 3.1(b) of this Schedule, the Developer consents to the Minister or his nominee, at the appropriate time, compulsorily acquiring the Affordable Housing Lots in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) each for the amount of \$1.
- (b) The Developer and the Minister or his nominee agree that in relation to the acquisition of the Affordable Housing Lots:
 - (i) clause 3.2(a) of this Schedule is taken to be an agreement between the Developer and the Minister or his nominee for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in clause 3.2(a) of this Schedule, the Developer and the Minister or his nominee acknowledge that they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer indemnifies and agrees to keep indemnified the Minister or his nominee against all claims made against the Minister or his nominee if the Minister or his nominee must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) to any person, other than the Developer.

EXECUTED as a deed

Signed sealed and delivered for and on behalf of the Minister for Planning and Infrastructure in the presence of:

M. J. J.

Signature of Witness

Shaddad
(Deputy)

Signature of the Minister for Planning and Infrastructure

Louise Higgins

Name of Witness in full

Minister for Planning and Infrastructure

Signed sealed and delivered by Terrence David Rowney in the presence of:

x O Lauricella

Signature of Witness

Signature

OLGA LAURICELLA

Name of Witness in full

Name

TD ROWNEY