
The Minister for Planning

Goodman Property Services (Aust) Pty Limited

The Trust Company Limited as custodian for the
Carter Street Trust

The Trust Company Limited as custodian for the
Hill Road Trust

The Trust Company Limited as custodian for the
IBC Trust

Tallina Pty Ltd as trustee for the Carter Street Trust

Tallina Pty Ltd as trustee for the Hill Road Trust

Tallina Pty Ltd as trustee for the IBC Trust

Karimbla Properties (No.51) Pty Ltd

Deed of Novation for Planning Agreement

Contribution Area 1

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Date

24 November 2016

Parties

The Minister for Planning ABN 38 755 709 681 of Level 15, 52 Martin Place, Sydney NSW 2000 (**Minister**)

Goodman Property Services (Aust) Pty Limited ABN 40 088 981 793 of Level 17, 60 Castlereagh Street, Sydney NSW 2000 (**Developer**)

The Trust Company Limited ABN 59 004 027 749 as custodian for the Carter Street Trust ABN 12 909 843 665 (**First Landowner**)

The Trust Company Limited ABN 59 004 027 749 as custodian for the Hill Road Trust ABN 54 244 152 320 (**Second Landowner**)

The Trust Company Limited ABN 59 004 027 749 as custodian for the IBC Trust ABN 30 476 081 229 (**Third Landowner**)

Tallina Pty Ltd ACN 090 716 895 as trustee for the Carter Street Trust ABN 12 909 843 665 (**First Trustee**)

Tallina Pty Ltd ACN 090 716 895 as trustee for the Hill Road Trust ABN 54 244 152 320 (**Second Trustee**)

Tallina Pty Ltd ACN 090 716 895 as trustee for the IBC Trust ABN 30 476 081 229 (**Third Trustee**)

Karimbla Properties (No. 51) Pty Ltd ACN 168 601 250 of Level 11, 528 Kent Street, Sydney NSW 2000 (**New Party**)

Background

- A The Minister, the Developer, the First Landowner, the Second Landowner, the Third Landowner, the First Trustee, the Second Trustee and the Third Trustee are parties to the Planning Agreement.
- B The Planning Agreement relates to the whole of the Land.
- C The First Landowner and First Trustee have entered into the Dealing with the New Party in relation to the Transfer Land.
- D The Developer, First Landowner and First Trustee wish to novate the Required Obligations, being their obligations under the Planning Agreement which relate to the Transfer Land, to the New Party.

Agreed terms

1 Definitions

In this document these terms have the following meanings:

Contracts	Each contract for sale of land for a Lot or Lots entered into pursuant to the Irrevocable Offer and Put Option Deed dated 20 March 2015, as varied on 3 August 2016.
Dealing	Sale of the Transfer Land to the New Party pursuant to the Contracts.
Effective Date	In respect of each Lot, means the date on which the New Party becomes or is entitled to immediately become the registered proprietor of that Lot
GST	Has the same meaning as in the GST Law.
GST Law	Has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Land	Has the meaning given to that term in the Planning Agreement.
Lots	Each of Lots 16, 17, 18, 19, 23 and 24 in DP 225350, and Lot 200 in DP 1160458.
Planning Agreement	The planning agreement dated 18 November 2015 and made between the Minister, the Developer, the First Landowner, the Second Landowner, the Third Landowner, the First Trustee, the Second Trustee and the Third Trustee.
Required Obligations	All of the Developer's, First Landowner's and First Trustee's obligations under the Planning Agreement which relate to the Transfer Land, being: <ol style="list-style-type: none">1. Provision of a Bank Guarantee in the amount of \$40,000 in substitution for the Bank Guarantee in that amount provided by the Developer and the First Landowner pursuant to clause 1.2(a) of Schedule 4 of the Planning Agreement; and2. Provision of all Development Contributions in respect of Contribution Area 1.
Transfer Land	Contribution Area 1 (as that term is defined in the Planning Agreement) which is proposed to be transferred in stages pursuant to the Contracts.

2 Novation

2.1 Original Agreement

Subject to clause 2.2 and clause 2.3 and with effect from the relevant Effective Date:

- (a) the New Party is substituted for the Developer and the First Landowner and First Trustee as a party to the Planning Agreement in respect of that part of the Transfer Land to which the relevant Effective Date applies;
- (b) the New Party will be required to perform the Required Obligations in accordance with the Planning Agreement in respect of that part of the Transfer Land to which the relevant Effective Date applies; and
- (c) the Developer and the First Landowner and First Trustee are released and discharged from the Required Obligations, and from all claims (whether for costs, damages, fees, expenses or otherwise) relating to the Required Obligations in respect of that part of the Transfer Land to which the relevant Effective Date applies.

2.2 Provision of Bank Guarantee

- (a) On the relevant Effective Date for the transfer of the final Lot(s) comprising Contribution Area 1, the New Party must provide a Bank Guarantee to the Minister in the amount of \$40,000 that complies with clause 1.1(b) of Schedule 4 of the Planning Agreement, in substitution for the Bank Guarantee in that amount provided by the Developer and the First Landowner pursuant to clause 1.2(a) of Schedule 4 of the Planning Agreement.
- (b) Notwithstanding anything to the contrary in the Planning Agreement, the Minister will be entitled to retain the Bank Guarantee in the amount of \$40,000 provided by the Developer and the First Landowner pursuant to clause 1.2(a) of Schedule 4 of the Planning Agreement until such time as the New Party has provided the substitute Bank Guarantee under clause 2.2(a).

2.3 Reference in Original Agreement

All references to the Developer and the First Landowner and First Trustee in the Planning Agreement which relate to the Required Obligations are to be construed as references to the New Party in respect of that part of the Transfer Land to which the relevant Effective Date applies.

2.4 Address for notices

The Minister must address all notices and communications to be given or made by it and which relate to the Required Obligations, to the New Party under the Planning Agreement to the following address:

New Party:

Address: Level 11, 528 Kent Street, Sydney NSW 2000

Fax: (02) 9287 2835

Contact Person: Li-Eng Wong, Corporate Counsel

Email: lwong@meriton.com.au

3 Notification prior to completion

The Developer must notify the Minister of the likely date for completion of each Contract:

- (a) no later than 20 Business Days before each relevant Effective Date (other than in relation to the completion of the Contract for the sale of lots 16, 17 and 18 in DP 225350); and
- (b) within 5 Business Days of any written request for an update made by or on behalf of the Minister.

4 Affirmation of the Planning Agreement

The Planning Agreement will be read and construed subject to this document, and in all other respects the provisions of the Planning Agreement are ratified and confirmed, and, subject to the variation and novation contained in this document, the Planning Agreement will continue in full force and effect.

5 Indemnities

- (a) The New Party indemnifies the Developer and the First Landowner and First Trustee on demand against all liabilities, claims, damages and loss which the Developer and First Landowner and First Trustee suffer or incur in relation to the Required Obligations in respect of that part of the Transfer Land to which the relevant Effective Date has been triggered, including those which arise or relate to acts or omissions occurring on or after the relevant Effective Date.
- (b) The New Party indemnifies the Minister in respect of any breach of the Planning Agreement in respect of that part of the Transfer Land to which the relevant Effective Date has been triggered by the Developer and First Landowner and First Trustee on demand, including those which arise or relate to breaches in respect of that part of the Transfer Land to which the relevant Effective Date has been triggered occurring on or after the relevant Effective Date.

6 Warranties and representations

6.1 Warranties

Each party represents and warrants that, at the time of execution, and at the relevant Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;

- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.

6.2 Survival of warranties

The warranties and representations in clause 6.1 survive the execution of this document and the novation of the Planning Agreement.

7 Limitation of liability for the Carter Street Trust

The provisions of this clause 7 apply despite anything to the contrary in this document.

7.1 Definitions

In this clause 7:

- (a) **Assets** includes all assets, property and rights, real and personal, of any value whatsoever, of the Trust.
- (b) **Constitution** means the constitution of the Trust as amended from time to time.
- (c) **Custody Agreement** means the Carter Street Custody Agreement dated 11 February 2002.
- (d) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the First Landowner under or in respect of this document.
- (e) **Tallina** means Tallina Pty Ltd ACN 090 716 895.
- (f) **Trust** means the Carter Street Trust ABN 12 909 843 665.
- (g) **Trustee** means the entity from time to time acting in the Trustee's Capacity, which on the making of this document is Tallina.
- (h) **Trustee's Capacity** means the capacity in which the Trustee enters into this document, being as trustee of the Trust.

7.2 Limitation of the First Landowner's Liability

- (a) The First Landowner enters into this document as custodian for the Trust and in no other capacity.
- (b) The parties other than the First Landowner acknowledge that the Obligations are incurred by the First Landowner solely in its capacity as custodian of the Assets and that the First Landowner will cease to have any Obligation under this document if the First Landowner ceases for any reason to be owner of the Assets.
- (c) The First Landowner will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified or entitled to be indemnified:
 - (i) by the Trustee; or
 - (ii) out of the Assets in respect of any liability incurred by it.
- (d) The parties other than the First Landowner may enforce their rights against the First Landowner arising from non-performance of the Obligations only to the extent of the First Landowner indemnities referred to in clause 7.2(c).
- (e) Subject to clause 7.2(e)(i), if any party other than the First Landowner does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the First Landowner in its personal capacity; or
 - (ii) applying to have the First Landowner wound up or proving in the winding up of the First Landowner.
- (f) The provisions of this clause 7.2 do not apply to any obligation or liability of the First Landowner to the extent that it is not satisfied because, under the Custody Agreement or by operation of law, there is a reduction in the extent of the First Landowner's indemnification from the Trustee or out of the Assets as a result of the First Landowner's fraud, negligence or breach of duty.
- (g) Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the First Landowner under its custody agreement with the Trustee, the parties other than the First Landowner waive their rights and release the First Landowner from any personal liability whatsoever, in respect of any Loss or damage which they may suffer as a result of any:
 - (i) breach by the First Landowner of any of its Obligations; or
 - (ii) non-performance by the First Landowner of the Obligations but only to the extent to which the liability cannot be paid or satisfied by the indemnities set out above in clause 7.2(c) in respect of any liability incurred by it.

The parties other than The First Landowner acknowledge that the whole of this document is subject to this clause.

- (h) The parties acknowledge that the Trustee is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this document. The parties agree that no act or omission of the First Landowner (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the First Landowner for the purposes of clause 7.2(e)(i) to the extent to which the act or omission was caused or contributed to by any failure of the Trustee or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trustee or any other person.
- (i) No attorney, agent or other person appointed in accordance with this document has authority to act on behalf of the First Landowner in a way which exposes the First Landowner to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the First Landowner for the purposes of clause 7.2(e)(i).

7.3 Limitation of Trustee's Liability

(a) Capacity

The Trustee's liability under this document is limited to the Trustee's Capacity and the Trustee is not liable in any other capacity.

(b) Limitation

Subject to clause 7.3(d), the liability of the Trustee in respect of any cause of action, Claim or Loss arising:

- (i) under or in connection with this document;
- (ii) in connection with any transaction, conduct or any other agreement contemplated by this document; or
- (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this document,

(each, a **Trust Claim**) and the right of each party other than the Trustee to recover from the Trustee any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the Trustee is entitled and able to recover from the Assets (after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Trustee personally in respect of that outstanding amount.

(c) Acknowledgment of limitations

The parties other than the Trustee agree and acknowledge that they must not, in respect of any Trust Claim:

- (i) subject to clause 7.3(d), bring proceedings against the Trustee in its personal capacity;
- (ii) seek to appoint an administrator or liquidator to the Trustee;
- (iii) commence the winding-up, dissolution or administration of the Trustee; or
- (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,

except to the extent that the steps taken affect any Assets or the Trustee's right of recourse against, and indemnity from, the Assets and nothing else.

(d) Exception

If the Trustee acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:

- (i) the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- (ii) the actual amount recoverable by the Trustee in exercise of those rights,

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee will be personally liable.

8 Limitation of liability for the Hill Road Trust

The provisions of this clause 8 apply despite anything to the contrary in this document.

8.1 Definitions

In this clause 8:

- (a) **Assets** includes all assets, property and rights, real and personal, of any value whatsoever, of the Trust.
- (b) **Constitution** means the constitution of the Trust as amended from time to time.
- (c) **Custody Agreement** means the Hill Road Trust Custody Agreement dated 30 October 2002.
- (d) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Second Landowner under or in respect of this document.

Tallina means Tallina Pty Ltd ACN 090 716 895.

- (e) **Trust** means the Hill Road Trust ABN 54 244 152 320.

- (f) **Trustee** means the entity from time to time acting in the Trustee's Capacity which on the making of this document is Tallina.
- (g) **Trustee's Capacity** means the capacity in which the Trustee enters into this document, being as trustee of the Trust.

8.2 Limitation of the Second Landowner's Liability

- (a) The Second Landowner enters into this document as custodian for the Trust and in no other capacity.
- (b) The parties other than the Second Landowner acknowledge that the Obligations are incurred by the Second Landowner solely in its capacity as custodian of the Assets and that the Second Landowner will cease to have any Obligation under this document if the Second Landowner ceases for any reason to be owner of the Assets.
- (c) The Second Landowner will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified or entitled to be indemnified:
 - (i) by the Trustee; or
 - (ii) out of the Assets in respect of any liability incurred by it.
- (d) The parties other than the Second Landowner may enforce their rights against the Second Landowner arising from non-performance of the Obligations only to the extent of the Second Landowner indemnities referred to in clause 8.2(c).
- (e) Subject to clause 8.2(e)(i), if any party other than the Second Landowner does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the Second Landowner in its personal capacity; or
 - (ii) applying to have the Second Landowner wound up or proving in the winding up of the Second Landowner.
- (f) The provisions of this clause 8.2 do not apply to any obligation or liability of the Second Landowner to the extent that it is not satisfied because, under the Custody Agreement or by operation of law, there is a reduction in the extent of the Second Landowner's indemnification from the Trustee or out of the Assets as a result of the Second Landowner's fraud, negligence or breach of duty.
- (g) Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the Second Landowner under its custody agreement with the Trustee, the parties other than the Second Landowner waive their rights and release the Second Landowner from any personal liability whatsoever, in respect of any Loss or damage which they may suffer as a result of any:
 - (i) breach by the Second Landowner of any of its Obligations; or

- (ii) non-performance by the Second Landowner of the Obligations, but only to the extent to which the liability cannot be paid or satisfied by the indemnities set out above in clause 8.2(c) in respect of any liability incurred by it.

The parties other than The Second Landowner acknowledge that the whole of this document is subject to this clause.

- (h) The parties acknowledge that the Trustee is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this document. The parties agree that no act or omission of the Second Landowner (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the Second Landowner for the purposes of clause 8.2(e)(i) to the extent to which the act or omission was caused or contributed to by any failure of the Trustee or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trustee or any other person.
- (i) No attorney, agent or other person appointed in accordance with this document has authority to act on behalf of the Second Landowner in a way which exposes the Second Landowner to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the Second Landowner for the purposes of clause 8.2(e)(i).

8.3 Limitation of Trustee's Liability

(a) Capacity

The Trustee's liability under this document is limited to the Trustee's Capacity and the Trustee is not liable in any other capacity.

(b) Limitation

Subject to clause 8.3(d), the liability of the Trustee in respect of any cause of action, Claim or Loss arising:

- (i) under or in connection with this document;
- (ii) in connection with any transaction, conduct or any other agreement contemplated by this document; or
- (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this document,

(each, a **Trust Claim**) and the right of each party other than the Trustee to recover any amount from the Trustee in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the Trustee is entitled and able to recover from the Assets (after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Trustee personally in respect of that outstanding amount.

(c) Acknowledgment of limitations

The parties other than the Trustee agree and acknowledge that they must not, in respect of any Trust Claim:

- (i) subject to clause 8.3(d), bring proceedings against the Trustee in its personal capacity;
- (ii) seek to appoint an administrator or liquidator to the Trustee;
- (iii) commence the winding-up, dissolution or administration of the Trustee; or
- (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,

except to the extent that the steps taken affect any Assets or the Trustee's right of recourse against, and indemnity from, the Assets and nothing else.

(d) Exception

If the Trustee acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:

- (i) the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- (ii) the actual amount recoverable by the Trustee in exercise of those rights,

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee will be personally liable.

9 Limitation of liability for the IBC Trust

The provisions of this clause 9 apply despite anything to the contrary in this document.

9.1 Definitions

In this clause 9:

- (a) **Assets** includes all assets, property and rights, real and personal, of any value whatsoever, of the Trust.
- (b) **Constitution** means the constitution of the Trust as amended from time to time.
- (c) **Custody Agreement** means the IBC Trust Custody Agreement dated 11 May 2005.
- (d) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Third Landowner under or in respect of this document.

- (e) **Tallina** means Tallina Pty Ltd ACN 090 716 895.
- (f) **Trust** means the IBC Trust ABN 30 476 081 229.
- (g) **Trustee** means the entity from time to time acting in the Trustee's Capacity which on the making of this document is Tallina.
- (h) **Trustee's Capacity** means the capacity in which the Trustee enters into this document, being as trustee of the Trust.

9.2 Limitation of the Third Landowner's Liability

- (a) The Third Landowner enters into this document as custodian for the Trust and in no other capacity.
- (b) The parties other than the Third Landowner acknowledge that the Obligations are incurred by the Third Landowner solely in its capacity as custodian of the Assets and that the Third Landowner will cease to have any Obligation under this document if the Third Landowner ceases for any reason to be owner of the Assets.
- (c) The Third Landowner will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified or entitled to be indemnified:
 - (i) by the Trustee; or
 - (ii) out of the Assets in respect of any liability incurred by it.
- (d) The parties other than the Third Landowner may enforce their rights against the Third Landowner arising from non-performance of the Obligations only to the extent of the Third Landowner indemnities referred to in clause 9.2(c).
- (e) Subject to clause 9.2(e)(i), if any party other than the Third Landowner does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the Third Landowner in its personal capacity; or
 - (ii) applying to have the Third Landowner wound up or proving in the winding up of the Third Landowner.
- (f) The provisions of this clause 9.2 do not apply to any obligation or liability of the Third Landowner to the extent that it is not satisfied because, under the Custody Agreement or by operation of law, there is a reduction in the extent of the Third Landowner's indemnification from the Trustee or out of the Assets as a result of the Third Landowner's fraud, negligence or breach of duty.
- (g) Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the Third Landowner under its custody agreement with the Trustee, the parties other than the Third Landowner waive their rights and release the Third Landowner from any personal liability

whatsoever, in respect of any Loss or damage which they may suffer as a result of any:

- (i) breach by the Third Landowner of any of its Obligations; or
- (ii) non-performance by the Third Landowner of the Obligations but only to the extent to which the liability cannot be paid or satisfied by the indemnities set out above in clause 9.2(c) in respect of any liability incurred by it.

The parties other than The Third Landowner acknowledge that the whole of this document is subject to this clause.

- (h) The parties acknowledge that the Trustee is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this document. The parties agree that no act or omission of the Third Landowner (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the Third Landowner for the purposes of clause 9.2(e)(i) to the extent to which the act or omission was caused or contributed to by any failure of the Trustee or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trustee or any other person.
- (i) No attorney, agent or other person appointed in accordance with this document has authority to act on behalf of the Third Landowner in a way which exposes the Third Landowner to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the Third Landowner for the purposes of clause 9.2(e)(i).

9.3 Limitation of Trustee's Liability

(a) Capacity

The Trustee's liability under this document is limited to the Trustee's Capacity and the Trustee is not liable in any other capacity.

(b) Limitation

Subject to clause 9.3(d), the liability of the Trustee in respect of any cause of action, Claim or Loss arising:

- (i) under or in connection with this document;
- (ii) in connection with any transaction, conduct or any other agreement contemplated by this document; or
- (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this document,

(each, a **Trust Claim**) and the right of each party other than the Trustee to recover any amount from the Trustee in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the Trustee is entitled and able to recover from the Assets

(after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Trustee personally in respect of the outstanding amount.

(c) Acknowledgment of limitations

The parties other than the Trustee agree and acknowledge that they must not, in respect of any Trust Claim:

- (i) subject to clause 9.3(d), bring proceedings against the Trustee in its personal capacity;
- (ii) seek to appoint an administrator or liquidator to the Trustee;
- (iii) commence the winding-up, dissolution or administration of the Trustee; or
- (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,

except to the extent that the steps taken affect any Assets or the Trustee's right of recourse against, and indemnity from, the Assets and nothing else.

(d) Exception

If the Trustee acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:

- (i) the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- (ii) the actual amount recoverable by the Trustee in exercise of those rights,

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee will be personally liable.

10 Trustee's representations and warranties

10.1 Definitions

In this clause 10:

- (a) **Assets** includes all assets, property and rights, real and personal, of any value whatsoever, of the Trusts.
- (b) **Beneficiaries** means the beneficiaries of the Trusts.
- (c) **Custody Agreements** means the following:
 - (i) the IBC Trust Custody Agreement dated 11 May 2005;
 - (ii) the Hill Road Trust Custody Agreement dated 30 October 2002; and

- (iii) the Carter Street Custody Agreement dated 11 February 2002.
- (d) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the First Landowner, the Second Landowner and the Third Landowner under or in respect of this document.
- (e) **Trusts** means the Carter Street Trust ABN 12 909 843 665, the Hill Road Trust ABN 54 244 152 320 and the IBC Trust 30 476 081 229.
- (f) **Trust Deeds** means:
 - (i) the IBC Trust Constitution dated 11 May 2005 between the Trustee and the relevant unit holders;
 - (ii) the Hill Road Trust Constitution dated 30 October 2002 between the Trustee and the relevant unit holders; and
 - (iii) the Carter Street Trust Constitution dated 11 February 2002 between the Trustee and the relevant unit holders.
- (g) **Trustee** means the entity from time to time acting in the Trustee's Capacity, which on the making of this document is Tallina.
- (h) **Trustee's Capacity** means the capacity in which the Trustee enters into this document, being as trustee of the Trust.
- (i) **Trustee Documents** means this document and any documents created under or in connection with this document.

10.2 The Trustee's representations and warranties

The Trustee represents and warrants to the Minister that:

- (a) **powers of Trustee and custodian:**
 - (i) the Trustee has power as trustee of the Trusts to execute the Trustee Documents; and
 - (ii) each Landowner has power as custodian of the relevant Trusts to execute the Trustee Documents;
- (b) **due performance:** in executing the Trustee Documents, the Trustee and its representatives have properly performed their obligations to the Beneficiaries;
- (c) **Trustee action taken:** all necessary action required by the Trust Deeds and the Custody Agreement to authorise the unconditional execution and delivery of, and compliance with the Trustee's obligations under, the Trustee Documents has been taken;
- (d) **custodian action taken:** all necessary action required by the Trust Deeds and the Custody Agreement to authorise the unconditional execution and delivery of, and compliance with each of the Landowner's obligations under, the Trustee Documents has been taken;

- (e) **Trustee instructions** the Trustee will give all necessary instructions to all Landowners to enable the Landowners to execute and deliver, and comply with all of their obligations under, the Trustee Documents;
- (f) **sole Trustee and custodian:**
 - (i) the Trustee is the only trustee of the Trusts; and
 - (ii) the Landowners are the only custodians of the relevant Trusts;
- (g) **no removal of Trustee:** no action has been taken to remove the Trustee as trustee of the Trusts or to appoint an additional trustee of the Trusts;
- (h) **no removal of custodian:** no action has been taken to remove any or all of the Landowners as custodians of the relevant Trusts or to appoint any additional custodian of the relevant Trusts;
- (i) **Trustee's right of indemnity:**
 - (i) the Trustee has a right to be fully indemnified out of the Assets;
 - (ii) the Trustee has not released or disposed of the Trustee's equitable lien over the Assets which secures that indemnity;
 - (iii) the Trustee has not committed any breach of trust or done or omitted to do anything which has prejudiced or limited its rights of indemnity or equitable lien; and
 - (iv) the Assets are sufficient to satisfy that indemnity;
- (j) **custodian's right of indemnity:**
 - (i) each Landowner has a right to be fully indemnified from the Assets and by the Trustee for all liabilities under the Trustee Documents;
 - (ii) the Landowners have not released or disposed of the Landowners' equitable lien over the Assets which secures that indemnity;
 - (iii) the Landowners have not committed any breach of the Custody Agreement or done or omitted to do anything which has prejudiced or limited their rights of indemnity or equitable lien; and
 - (iv) the Assets are sufficient to satisfy that indemnity;
- (k) **no default:**
 - (i) the Trustee has not defaulted in the performance and observance of its obligations as trustee of the Trusts; and
 - (ii) so far as the Trustee is aware, the Landowners have not defaulted in the performance and observance of their obligations as custodians of the Trusts or under the Custody Agreement so far as the Trustee is aware, the Landowners have not defaulted in the performance and observance of their obligations as custodians of the Trusts or under the Custody Agreement;

- (l) **Trusts or Custody Agreement not terminated:** no action has been taken or, so far as the Trustee is aware, is contemplated to terminate the Trusts or the Custody Agreement;
- (m) **full disclosure:** the Trustee has disclosed to the Minister full particulars of the Trusts, the Custody Agreement and any other trust or fiduciary relationship affecting the Assets and, without limitation, has given to the Minister copies of any instruments creating or evidencing the Trusts and the Custody Agreement;
- (n) **Trusts duly constituted:** the Trusts are duly constituted and are not void, voidable or otherwise unenforceable;
- (o) **custodian duly appointed:** each Landowner has been duly appointed as custodian of the relevant Trusts;
- (p) **capacity of Trustee:** the Trustee:
 - (i) is duly incorporated in accordance with the laws of its place of incorporation as stated in this document, validly exists under those laws and has the capacity to sue and be sued in its own name, to own property and to act as trustee of the Trusts; and
 - (ii) is not insolvent.

10.3 Trustee's additional obligations

- (a) The Trustee must:
 - (i) ensure the Assets are not mixed with any other property;
 - (ii) comply with the Trustee's obligations as trustee of the Trusts;
 - (iii) not release, dispose of or otherwise prejudice the Trustee's right of indemnity against, and equitable lien over, the Assets and the Trustee's right of indemnity (if any) against the Beneficiaries;
 - (iv) at the Minister's request, exercise the Trustee's right of indemnity against, and equitable lien over, the Assets and the Trustee's right of indemnity (if any) against the Beneficiaries; and
 - (v) not, without obtaining the Minister's prior written approval:
 - (A) terminate any or all of the Trusts;
 - (B) resettle the Assets; or
 - (C) vary the terms of the Trust if to do so would adversely affect the Trustee's right of indemnity against, or equitable lien over, the Assets or the Trustee's right of indemnity (if any) against the Beneficiaries.
- (b) The Trustee covenants that it will not retire or be replaced as trustee of any or all of the Trusts unless:
 - (i) another entity has been appointed in its place for the relevant Trusts;

- (ii) the new entity agrees to be bound by the Trustee Documents, the Trust Deeds and the Custody Agreements (as applicable) as trustee for the relevant parcel of Land; and
- (iii) unless the new entity is a Developer-Related Entity, the Trustee obtains the Minister's prior written consent, which must not be unreasonably withheld, to the appointment of the new entity.

10.4 The Landowners' representations and warranties

Each Landowner represents and warrants to the Minister that:

- (a) **custodian's power:** the Landowner has power as custodian of the relevant Trusts to execute the Trustee Documents;
- (b) **due performance:** in executing the Trustee Documents, the Landowner and its representatives have properly performed their obligations to the Beneficiaries and Trustee;
- (c) **custodian action taken:** all necessary action required by the Trust Deeds and the Custody Agreement to authorise the unconditional execution and delivery of, and compliance with the Landowner's obligations under, the Trustee Documents has been taken;
- (d) **no removal of custodian:** so far as the Landowner is aware, no action has been taken to remove the Landowner as custodian of the relevant Trusts or to appoint an additional custodian of the relevant Trusts;
- (e) **custodian duly appointed:** each Landowner has been duly appointed as custodian of the relevant Trusts;
- (f) **capacity of custodian:** the Landowner:
 - (i) is duly incorporated in accordance with the laws of its place of incorporation as stated in this document, validly exists under those laws and has the capacity to sue and be sued in its own name, to own property and to act as custodian of the Trusts; and
 - (ii) is not insolvent.

10.5 The Landowners' additional obligations

- (a) Each Landowner must:
 - (i) ensure the Assets are not mixed with any other property;
 - (ii) comply with its obligations under the Custody Agreements as custodian of the relevant Trusts;
 - (iii) not release, dispose of or otherwise prejudice the Landowner's right of indemnity against, and equitable lien over, the Assets and the Landowner's right of indemnity (if any) against the Beneficiaries;

- (iv) at the Minister's request, exercise the Landowner's right of indemnity against, and equitable lien over, the Assets and the Landowner's right of indemnity (if any) against the Beneficiaries;
- (b) Each Landowner covenants that it will not retire or be replaced (and each Trustee covenants that it will not remove the Landowner or cause the Landowner to retire) as custodian of any or all of the Trusts unless:
 - (i) another entity has been appointed in its place for the relevant Trusts; and
 - (ii) the new entity agrees to be bound by the Trustee Documents, the Trust Deeds and the Custody Agreements (as applicable) as Landowner for the relevant parcel of Land.
- (c) No Landowner may take any action to amend the Trust Deeds or the Custody Agreements without the prior written consent of the Minister, acting reasonably.

11 GST

11.1 Construction

In this clause 7:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) 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, 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.

11.2 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 document is exclusive of GST (**GST-exclusive consideration**).

11.3 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 document, 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.

11.4 Timing of GST payment

The amount referred to in clause 11.3 must be paid in addition to and 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.

11.5 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 11.3.

11.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under clause 11.3 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.

11.7 Reimbursements

- (a) Where a party is required under or in connection with this document 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 11.7 does not limit the application of clause 11.3, if appropriate, to the Reimbursable Expense as reduced in accordance with clause 11.7(a).

11.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under or in connection with this document is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

11.9 No merger

This clause 7 does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

12 Stamp duty and costs

The Developer, First Landowner and First Trustee and the New Party are jointly and severally responsible for the Minister's legal costs incidental to the negotiation, preparation and execution of this document.

13 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this document.
- (b) This document binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

14 Amendment

This document may only be varied or replaced by a document executed by the parties.

15 Governing law and jurisdiction

- (a) This document and the transactions contemplated by this document are governed by and are to be construed in accordance with the laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

16 Counterparts

This document may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

17 General

17.1 Construction

Unless expressed to the contrary, in this document:

- (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) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (g) Capitalised terms not defined in this document have the meanings given to them in the Planning Agreement.

17.2 Headings

Headings do not affect the interpretation of this document.

17.3 Effect of execution

This document is not binding on any party unless it or a counterpart has been duly executed by each party.

Executed as a deed.

Minister

Signed, sealed and delivered by The Minister for Planning in the presence of:

Signature of Witness

BUSSEN SIMPSON

Name of Witness

Signature of Minister

BRENDAN NELSON

Name of Minister

-DELEGATE .

Developer

Signed sealed and delivered for and on behalf of **Goodman Property Services (Aust) Pty Limited** by its attorney under power of attorney Book.....No....who states that no notice of revocation of the power of attorney has been received in the presence of:

Signature of witness

Michelle Ban

Name of witness (BLOCK LETTERS)

Level 17

Address of witness

60 Castlereagh Street
Sydney NSW 2000

Book X567
No 75

SAMANTHA EVANS

First Landowner

Signed sealed and delivered for and on behalf of **The Trust Company Limited as custodian for the Carter Street Trust** by its attorney under power of attorney Book 1631 No 131 who states that no notice of revocation of the power of attorney has been received in the presence of:

Signature of witness

MARIA AGUDERA

Name of witness (BLOCK LETTERS)
**L12, 123 PITT ST
SYDNEY**

Address of witness



Attorney

John Newby
Head of Custody

Name of Attorney (print)

Second Landowner

Signed sealed and delivered for and on behalf of **The Trust Company Limited as custodian for the Hill Road Trust** by its attorney under power of attorney Book 1631 No 131 who states that no notice of revocation of the power of attorney has been received in the presence of:

Signature of witness

MARIA AGUDERA

Name of witness (BLOCK LETTERS)
**L12, 123 PITT ST
SYDNEY**

Address of witness



Attorney

John Newby
Head of Custody

Name of Attorney (print)

Third Landowner

Signed sealed and delivered for and on behalf of **The Trust Company Limited as custodian for the IBC Trust** by its attorney under power of attorney Book 1676 No 131 who states that no notice of revocation of the power of attorney has been received in the presence of:

Signature of witness

MARIA AGUDERA

Name of witness (BLOCK LETTERS)

**L12, 123 PITT ST
SYDNEY**

Address of witness

Attorney

John Newby
Head of Custody

Name of Attorney (print)
Attorney

Trustees

Signed sealed and delivered for and on behalf of **Tallina Pty Ltd as trustee for the Carter Street Trust** by its attorney under power of attorney Book.....No...who states that no notice of revocation of the power of attorney has been received in the presence of:

Signature of witness

Michelle Ban

Name of witness (BLOCK LETTERS)

Address of witness **Level 17
60 Castlereagh Street
Sydney NSW 2000**

Attorney

SAMANTHA EVANS

Name of Attorney (print)

Signed sealed and delivered for and on behalf of **Tallina Pty Ltd as trustee for the Hill Road Trust** by its attorney under power of attorney Book.....No...who states that no notice of revocation of the power of attorney has been received in the presence of:

Bk 4507
No 76



Signature of witness



Attorney

Michelle Ban

SAMANTHA EVANS

Name of witness (BLOCK LETTERS)

Name of Attorney (print)

Level 17

Address of witness 60 Castlereagh Street
Sydney NSW 2000

Signed sealed and delivered for and on behalf of **Tallina Pty Ltd as trustee for the IBC Trust** by its attorney under power of attorney Book.....No...who states that no notice of revocation of the power of attorney has been received in the presence of:

Bk 4507
No 76



Signature of witness



Attorney

Michelle Ban

SAMANTHA EVANS

Name of witness (BLOCK LETTERS)

Name of Attorney (print)
Attorney

Level 17

Address of witness 60 Castlereagh Street
Sydney NSW 2000

New Party

Executed by **Karimbla Properties (No. 51) Pty Ltd**

Company Secretary/Director

ROBYN MCCULLY

Name of Company Secretary/Director
(print)



Director **JAMES SIALEPIS**

Name of Director (print)