
Minister for Planning and Public Spaces

Australia YMCI Pty Ltd

Planning Agreement

Carter Street Priority Precinct

15-21, 23-31 and 33-35 Carter Street, Lidcombe



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Date

17 December 2020



Parties

Minister for Planning and Public Spaces ABN 20 770 707 468 c/- NSW Department of Planning, Industry and Environment of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 (**Minister**)

Australia YMCI Pty Ltd ACN 607 884 711 of Suite 36.01, Level 36, 201 Elizabeth Street, Sydney NSW 2000 (**Developer**)

Background

- A As at the date of this document, the Developer is the owner of the Land.
- B The Land is located in the Carter Street Priority Precinct.
- C On 18 November 2015, the Minister entered into the Original Planning Agreement with the Original Developer. The Original Planning Agreement applied to the whole of the Carter Street Priority Precinct.
- D Under the Original Planning Agreement, the Original Developer:
 - a. sought a change to the ALEP in the form of the Planning Proposal to rezone the Carter Street Priority Precinct; and
 - b. agreed to provide Development Contributions in the form of monetary contributions and dedication of land and works (including Remediation Works), to meet the needs created by the future development of the Carter Street Priority Precinct.
- E On 27 November 2015, the ALEP was amended by way of the SEPP Amendment.
- F The Land was subsequently transferred to the Developer as follows:
 - a. Lot 301 in DP541070 was transferred to the Developer on 20 June 2016;
 - b. Lots 26, 27 and 28 in DP225350 and Lot 2 in DP234801 were transferred to the Developer on 20 June 2016. Lot 2 in DP234801 now comprises the whole of Lot 13 in DP1217641 and part of Lot 12 in DP1217641; and
 - c. Lot 12 in DP1217641 (being part of former Lot 25 in DP225350) was transferred to the Developer on 15 June 2017.
- G The Original Developer's obligations under the Original Planning Agreement with respect to the Land were novated to the Developer pursuant to:
 - a. with respect to Lot 301 in DP541070, Lots 26, 27 and 28 in DP225350 and Lot 2 in DP234801, the Novation Deed for Contribution Areas 3 & 4; and
 - b. with respect to Lot 12 in DP1217641, the Novation Deed for Contribution Area 5.



- H The Developer and the Minister entered into a Deed of Partial Surrender with respect to the Original Planning Agreement, simultaneously upon entry into this document.
 - I The Developer has offered to enter into this document to make Development Contributions towards the Public Purpose, subject to the terms and conditions of this document.
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Operative provisions

1 Planning agreement under the Act

The Parties agree that this document is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

2 Application of this document

This document applies to:

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

3 Operation and commencement of this document

- (a) This document will commence on the later of the following dates:
 - (i) the date of commencement of an environmental planning instrument which amends the ALEP and results in the total permissible GFA for buildings (including proposed buildings) on the Land (excluding the Education Land and the Open Space Land) being no less than 348,000m²; and
 - (ii) the date that this document is entered into in accordance with clause 25C(1) of the Regulation,

(Commencing Date).

- (b) For the purpose of **clause 3(a)(i)**, the total permissible GFA for buildings (including proposed buildings) on the Land concerned is the sum of the areas (in square metres) calculated by multiplying each floor space ratio control that applies to any part of the Land by the area of that part.

4 Definitions

In this document these terms have the following meanings:

Act	The <i>Environmental Planning and Assessment Act 1979</i> (NSW).
ALEP	The <i>Auburn Local Environmental Plan 2010</i> , as amended from time to time.
Approval	Any consent, licence, permit or other approval required under any statute, rule, regulation, proclamation, ordinance or by-law (whether federal, State or local) or by an Authority.
Authority	Any federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
Bank Guarantee	<p>An irrevocable and unconditional undertaking which is substantially in the form of the undertaking attached at Annexure E and is:</p> <ul style="list-style-type: none">(a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and(b) on terms, acceptable to the Minister, in the Minister's discretion (acting reasonably).
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Carter Street Priority Precinct	The land identified as "Carter Street Priority Precinct" on the Priority Precinct Map adopted by the ALEP (Map identification number: 0200_COM_PRP_006_010_20151021).
Caveat	The form of caveat attached at Annexure F .
Chemical Substance	<p>Without limitation:</p> <ul style="list-style-type: none">(a) any chemical substance or mixture, including any pollutant, contaminant, chemical, raw material or intermediate whether solid, liquid, gaseous or otherwise;(b) industrial solid, toxic or hazardous substance, material or waste;(c) petroleum or any fraction thereof;(d) asbestos or asbestos-containing material (including asbestos in structures);(e) persistent organic pollutants and chlorinated hydrocarbons;(f) heavy metals, such as mercury, cadmium and lead;

	<p>(g) radionuclides;</p> <p>(h) volatile organic compounds;</p> <p>(i) solvents; and</p> <p>(j) pesticides,</p> <p>and includes by-products and derivatives of the above and all substances, materials or wastes that are identified in or regulated under any Environmental Law.</p>
Claim	Any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise, including (without limitation), any claim for compensation arising under or pursuant to the Just Terms Act.
Commencing Date	Has the meaning given in clause 3 .
Complying Development Certificate	Has the same meaning as in the Act.
Construction Certificate	Has the same meaning as in the Act and includes, where applicable, a Subdivision Works Certificate.
Contamination	Has the meaning given to that term in the <i>Contaminated Land Management Act 1997</i> (NSW). Contaminate and Contaminated have corresponding meanings.
Contribution Amount	The amount of a monetary contribution required to be paid by the Developer in accordance with Schedule 3 .
CPI	The Sydney Consumer Price Index (All Groups) published by the Australian Bureau of Statistics or, if that index no longer exists, any similar index which the Minister may determine in his or her sole discretion.
Dealing	Means: <p>(a) in relation to a Land Contribution, without limitation, selling, transferring, assigning, charging, encumbering or otherwise dealing with the whole or any part of the Land Contribution; and</p> <p>(b) in relation to any part of the Land other than a Land Contribution, selling, transferring or assigning the relevant part of the Land.</p>
Deed of Partial Surrender	A Deed of Partial Surrender of the Original Planning Agreement between the Minister and the Developer, substantially in the form of the deed attached at Annexure

	G.
Department	The NSW Department of Planning, Industry and Environment or any other department replacing it from time to time.
Development	Has the meaning given in clause 5 and excludes: <ul style="list-style-type: none"> (a) the subdivision of the Land for the purpose of creating separate titles for each of the Education Land, the Road Works Land and the Open Space Land; and (b) Remediation of the Education Land and the Open Space Land in accordance with the terms of this document.
Development Application	Has the same meaning as in the Act, but also includes any application for a Complying Development Certificate.
Development Consent	Has the same meaning as in the Act, and for the avoidance of doubt, includes a Complying Development Certificate.
Development Contribution	Dedication of land free of cost, payment of a monetary contribution or provision of any other material public benefit, or any combination of them in accordance with Schedule 3 of this document, to be used for or applied towards a Public Purpose.
Education Land	The minimum 1.88 hectare parcel of land intended to be used for the purposes of a primary school and for public sports and playing fields, generally in accordance with the plan attached at Annexure C .
Education Land Contribution	Transfer of the Education Land by the Developer to the Minister or the Minister's nominee, in accordance with Schedule 3 .
Education Land Security	Has the meaning given in clause 4.4(a) of Schedule 3 .
ELNO	Has the meaning given to that term in the <i>Electronic Conveyancing National Law</i> (NSW).
Encumbrance	Any encumbrance or affectation, including any mortgage, charge, easement, covenant, planning agreement and any liability for rates, Taxes and charges, but excluding service easements, improvements or such other encumbrance as may be agreed with the Minister.
Environment	Has the meaning given to that term in the <i>Contaminated Land Management Act 1997</i> (NSW).
Environmental Laws	Any law (including statute, policies and regulations enforceable by statute) concerning the Environment, including, without limitation, laws concerning:

- (a) emissions of Chemical Substances into the atmosphere, waters and Land;
- (b) pollution or Contamination of the atmosphere, waters and Land; and
- (c) production, use, handling, storage, transportation and disposal of:
 - (i) waste;
 - (ii) Hazardous Materials;
 - (iii) dangerous goods; and
 - (iv) Chemical Substances.

Explanatory Note The Explanatory Note attached at **Schedule 5**.

Form of Novation Deed The deed attached at **Annexure A**.

GFA Gross floor area, as that term is defined in the Standard Instrument – Principal Local Environmental Plan.

GST Has the same meaning as in the GST Law.

GST Law Has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Hazardous Material Any substance, gas, liquid, chemical, mineral or other physical or biological matter that is:

- (a) or may become toxic, flammable or inflammable;
- (b) otherwise dangerous, harmful to the Environment or any life form or which may cause pollution, Contamination or any hazard or increase in toxicity in the Environment or may leak or discharge or otherwise cause damage to any person, property or the Environment; or
- (c) a material or compound controlled, prohibited or regulated from time to time by any Environmental Law.

Just Terms Act *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

Land The land described in **Schedule 2** and shown on the Plan.

Land Contribution The Road Works Land Contribution, the Education Land Contribution and the Open Space Land Contribution.

Loss Any loss (including loss of profit and loss of expected profit), claim, action, liability, damage, cost, charge, expense,

outgoing, payment, diminution in value or deficiency of any kind or character which the Minister pays, suffers or incurs or is liable for, including:

- (a) liabilities on account of Tax;
- (b) interest and other amounts payable to third parties; and
- (c) legal (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability, and all amounts paid in settlement of any claim or action.

LRS	NSW Land Registry Services or any other government agency replacing it.
Minister's nominee	In relation to a Development Contribution, means any Authority nominated by the Minister to receive the contribution and, in the case of the Open Space Land Contribution, means the City of Parramatta Council, unless another Authority is nominated by the Minister in respect of that contribution.
Modification Application	An application made under section 4.55 of the Act to modify a Development Consent.
New Planning Proposal	An application or request made to the relevant Authority seeking the amendment or making of an environmental planning instrument in relation to the whole or any part of the Land.
Novation Deed for Contribution Areas 3 & 4	The deed entitled ' <i>Deed of Novation for Planning Agreement for Contribution Areas 3 and 4</i> ' dated 24 March 2016 between the Minister, the Developer, the Original Developer and the Original Landowners and Trustees.
Novation Deed for Contribution Area 5	The deed entitled ' <i>Deed of Novation for Planning Agreement for Contribution Area 5</i> ' dated 24 March 2016 between the Minister, the Developer, the Original Developer and the Original Landowners and Trustees.
Novation Deeds	The Novation Deed for Contribution Areas 3 & 4 together with the Novation Deed for Contribution Area 5.
Occupation Certificate	Has the same meaning as in the Act.
Open Space Land	The minimum 3.084 hectare parcel of land intended to be used for the purposes of public open space, generally in accordance with the plan attached at Annexure C .
Open Space Land Contribution	Transfer of the Open Space Land by the Developer to the Minister or the Minister's nominee, in accordance with Schedule 3 .
Open Space Land Security	Has the meaning given in clause 5.4(a) of Schedule 3 .
Original Developer	Goodman Property Services (Aust) Pty Limited ABN 40 088 981 793.

Original Landowners and Trustees	<p>(a) The Trust Company Limited ABN 59 004 027 749 as custodian for the Carter Street Trust ABN 12 909 843 665;</p> <p>(b) The Trust Company Limited ABN 59 004 027 749 as custodian for the Hill Road Trust ABN 54 244 152 320;</p> <p>(c) The Trust Company Limited ABN 59 004 027 749 as custodian for the IBC Trust ABN 30 476 081 229;</p> <p>(d) Tallina Pty Ltd ACN 090 716 895 as trustee for the Carter Street Trust ABN 12 909 843 665;</p> <p>(e) Tallina Pty Ltd ACN 090 716 895 as trustee for the Hill Road Trust ABN 54 244 152 320; and</p> <p>(f) Tallina Pty Ltd ACN 090 716 895 as trustee for the IBC Trust ABN 30 476 081 229.</p>
Original Planning Agreement	The registered planning agreement AM540223, AK172109, AK735190 dated 18 November 2015 between the Minister, the Original Developer and the Original Landowners and Trustees, as novated in part to the Developer under the Novation Deeds.
Party	A party to this document, including their successors and assigns, but only to the extent that assignment is permitted under clause 14 .
Permitted Lease	Any new lease over any part of the Land which includes a provision requiring the lessee to consent to the Registration of this document on the title to the relevant part of the Land subject to the lease.
Plan	The plan of the Land attached at Annexure B .
Plan of Subdivision	A registered plan of subdivision within the meaning of section 195 of the <i>Conveyancing Act 1919</i> (NSW) and includes, where applicable, a Strata Plan or Strata Plan of Subdivision.
Planning Agreement	Has the same meaning as in the Act.
Planning Proposal	The Carter Street Lidcombe Urban Activation Precinct Proposal prepared by the Department exhibited in March/April 2014 and dated February 2014 for the rezoning of the Carter Street Priority Precinct and associated Development Control Plan, which includes the Floor Space Ratio Map dated 8 November 2013.
Planning Report	The Carter Street Lidcombe Urban Activation Precinct Planning Report prepared by the Department and dated

February 2014.

Planning Secretary	Has the same meaning as in the Act.
Power of Attorney	The irrevocable power of attorney attached at Annexure H .
Public Purpose	Any purpose that benefits the public or a section of the public, including those specified in section 7.4(2) of the Act.
Register	The Torrens title register maintained under the <i>Real Property Act 1900</i> (NSW). Registration has a corresponding meaning.
Regulation	The <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
Remediation	Of Contaminated land includes: <ul style="list-style-type: none"> (a) the preparation of a long term management plan for the land; (b) investigating, treating, removing, disposing, destroying, reducing, mitigating, dispersing, remediating or containing the Contamination of the land; and (c) eliminating or reducing any hazard arising from the Contamination of the land (including by preventing the entry or persons or animals onto the land). Remediate has a corresponding meaning.
Remediation Works	Has the meaning given to that term in: <ul style="list-style-type: none"> (a) clause 4.3(b) of Schedule 3, with respect to the Education Land; and (b) clause 5.3(b) of Schedule 3, with respect to the Open Space Land.
Road Works Land	The minimum 0.2941 hectare parcel of land forming part of Lot 301 in DP541070 generally as identified in the plan at Annexure C .
Road Works Land Contribution	Transfer of the Road Works Land by the Developer to the Minister or the Minister's nominee, in accordance with Schedule 3 .
Satisfactory Arrangements Certificate	A certificate issued by the Planning Secretary confirming that satisfactory arrangements have been made in respect of a particular development to contribute to the provision of designated State public infrastructure for the purposes of clause 6.8 of the ALEP or any clause in substantially the same terms as clause 6.8 of the ALEP.
SEPP Amendment	<i>State Environmental Planning Policy Amendment (Carter</i>

	<i>Street Priority Precinct) 2015.</i>
Site Auditor	A suitably qualified site auditor accredited under the <i>Contaminated Land Management Act 1997</i> (NSW).
Site Audit Statement	A site audit statement prepared by a Site Auditor in accordance with Part 4 of the <i>Contaminated Land Management Act 1997</i> (NSW).
Special Infrastructure Contribution	A contribution determined in accordance with section 7.23 of the Act.
Strata Certificate	Has the same meaning as in the <i>Strata Schemes Development Act 2015</i> (NSW).
Strata Plan and Strata Plan of Subdivision	Have the same meanings as in the <i>Strata Schemes Development Act 2015</i> (NSW).
Subdivision Certificate	Has the same meaning as in the Act and includes, where applicable, a Strata Certificate.
Subdivision Works Certificate	Has the same meaning as in the Act.
Tax	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.
Zone 3 Land	The land the subject of DA/1005/2016 and DA/174/2018 to which Development Consent has been granted.

5 Development

- (a) In this document, subject to this **clause 5**, “**Development**” means subdivision of the Land and any other development of the Land for residential, retail or commercial purposes that is the subject of a:
 - (i) Development Application:
 - (A) made, but not yet determined, as at the Commencing Date; or
 - (B) that is made at any time after the Commencing Date, or
 - (ii) Modification Application to any Development Consent that is in force as at the Commencing Date or to any Development Consent to a Development Application referred to in **clause 5(a)(i)**:
 - (A) made, but not yet determined, as at the Commencing Date; or
 - (B) that is made at any time after the Commencing Date,

but excludes any Development Application which, if Development Consent was granted, would result in the GFA of all buildings (including proposed buildings) on the Land, or part of the Land to which the Development Application relates, exceeding the maximum GFA of buildings that the application of the relevant floor space ratio under the ALEP as in force at the Commencing Date allows (being 348,000 square metres).

- (b) Development does not cease to be "Development" within the meaning of **clause 5(a)(i)** merely because a modification or proposed modification of a Development Consent will result in that GFA being exceeded.
- (c) For the purpose of determining whether the grant of Development Consent to a Development Application (**Subject Development Application**) will result in the maximum GFA referred to in **clause 5(a)(i)** being exceeded, the following are to be taken into account:
 - (i) the GFA of any existing building on the Land; and
 - (ii) any GFA authorised under an existing Development Consent (being a Development Consent which has been granted prior to the time the Subject Development Application is determined), irrespective of whether any work or development has commenced under the existing Development Consent.

6 Development Contributions to be made under this document

6.1 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 3**.

6.2 Acknowledgement

The Developer acknowledges and agrees that:

- (a) the Minister must comply with section 7.3 of the Act, but the Minister:
 - (i) does not make any representation or warranty that the Development Contributions must be used for a particular purpose; and
 - (ii) has no obligation to repay the Development Contributions; and
- (b) in circumstances where the Development Contributions are transferred to any Authority, the Minister has not made any representation or warranty that the Development Contributions will or must be used for a particular purpose by that Authority.

6.3 Contributions to State Infrastructure

- (a) The Minister agrees that the Development Contributions in this document, to be made by the Developer, wholly fulfil the Developer's obligations to make contributions towards State public infrastructure arising from the Development on the Land.
- (b) The Developer agrees that this document applies only to the Development and that the application of section 7.24 of the Act is excluded only in relation to the Development.
- (c) Accordingly, the Developer acknowledges that:
 - (i) a Special Infrastructure Contribution may need to be made in relation to other development on the Land; or
 - (ii) further satisfactory arrangements may need to be made to contribute to the provision of designated State public infrastructure in relation to other development on the Land.
- (d) Nothing about this **clause 6.3** restricts, offsets, gives rise to credits or otherwise reduces any local infrastructure contributions that may be made or be required to be made in conjunction with the Development.

7 Interest for late payment

- (a) If the Developer fails to pay a Contribution Amount due to the Minister on the due date for payment, the Developer will be liable to pay the Minister interest on the Contribution Amount, in addition to the Contribution Amount, at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest payable under **clause 7(a)** 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.

8 Application of sections 7.11, 7.12 and 7.24 of the Act to the Development

The application of sections 7.11, 7.12 and 7.24 of the Act is excluded to the extent stated in **Schedule 1**.

9 Registration

9.1 Zone 3 Land

Despite any other provision of this **clause 9**, the Parties agree that the Developer will not be required to register this document on the relevant folio(s) of the Register for the Zone 3 Land. References to the 'Land' in this **clause 9**

are therefore to be interpreted as references to the balance of the Land excluding the Zone 3 Land.

9.2 Registration of this document

- (a) The Developer agrees that it will procure the Registration of this document on the relevant folio(s) of the Register for the Land in accordance with section 7.6 of the Act and the terms of this document.
- (b) The Developer will:
 - (i) at the Developer's expense; and
 - (ii) subject to **clause 9.2(d)**, within 90 Business Days of receiving a copy of this document executed by the Minister,
take all practical steps and otherwise do all things necessary to procure, in relation to the Land:
 - (iii) the consent of each person who:
 - (A) has an estate or interest in the Land registered on the Register; and
 - (B) is seized or possessed of an estate or interest in the Land;
 - (iv) the execution of any documents;
 - (v) the production of the relevant certificates of title (or electronic lodgement of relevant CoRD Holder Consents through Property Exchange Australia Ltd or another ELNO); and
 - (vi) the lodgement of this document at LRS for Registration on the relevant folio(s) of the Register relating to the Land.
- (c) The Developer must use all reasonable endeavours to procure Registration of this document on the relevant folio(s) of the Register relating to the Land as soon as possible following lodgement.
- (d) Where the Developer is unable to procure Registration in relation to any part of the Land within 90 Business Days of receiving a copy of this document executed by the Minister, because a consent required from a third party has not been given, the Developer must:
 - (i) continue to use all reasonable endeavours to procure Registration of this document until it is registered on all relevant folios of the Register relating to the Land;
 - (ii) in the event that this document has not been lodged on a particular folio of the Register for any part of the Land pending expiration or termination of a lease, lodge this document for Registration over any such folio within 5 Business Days of the expiration or termination of that lease; and
 - (iii) provide a written report to the Minister:

- (A) on the date that is 90 Business Days after the Developer receives a copy of this document executed by the Minister;
and
 - (B) thereafter monthly, on the first day of each month,
as to the steps which have been taken by the Developer to secure any required consents and procure Registration of this document on title in respect of that Land.
- (e) The Developer agrees that it will not enter into any new lease over any part of the Land unless that lease is a Permitted Lease. This clause does not prevent the Developer from entering into variations of lease (including by way of exercise of option) or transfers of lease, over any part of the Land, provided that any variation of lease for any part of the Land on which this document is not registered does not extend the term of that lease (including any options) beyond its existing term, other than where:
 - (i) the variation includes the clause contained in the Permitted Lease;
or
 - (ii) where the relevant land parcel is the subject of other leases, the variation would not extend the term of the lease in question beyond the term of the lease (including any options) with the longest lease period for that parcel of land.
- (f) Where there is a failure to register this document on the folio(s) of the Register for any part of the Land within 90 Business Days of receiving a copy of this document executed by the Minister:
 - (i) the Developer must comply with the obligation under **clause 9.2(d)** to continue to use all reasonable endeavours to procure Registration of this document on that part of the Land as soon as possible;
 - (ii) the Minister may require provision of a Bank Guarantee or Bank Guarantees with a face value equivalent to \$107.27 for every square metre of GFA (or any part thereof) subject to CPI indexation which the application of the relevant floor space ratio under the ALEP allows for any part of the Land over which this document has not been registered; and
 - (iii) the Developer must provide that Bank Guarantee or the Bank Guarantees to the Minister within 5 Business Days of any such request and **clause 1 of Schedule 4** will apply to any Bank Guarantee(s) provided under this **clause 9.2(f)**.
- (g) The Minister will return to the Developer any Bank Guarantee(s) provided under **clause 9.2(f)** following receipt by the Minister of evidence of the Registration of this document on the title to the relevant part of the Land, with the return of the Bank Guarantee(s) to occur within 10 Business Days of receipt by the Minister of such evidence.

9.3 Evidence of Registration

In respect of each part of the Land, the Developer must provide the Minister with a copy of the relevant folio(s) of the Register and a copy of the registered dealing within 10 Business Days of Registration of this document.

9.4 Right to lodge caveat

- (a) Subject to **clause 9.4(b)**, until such time as this document is registered on the title of the Land in accordance with **clause 9.2(b)(vi)**, the Developer acknowledges that, on and from the Commencing Date:
 - (i) this document confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land; and
 - (ii) the Minister may lodge a caveat on the title to the Land, substantially in the form of the Caveat, or complete an electronic caveat substantially in accordance with the terms of the Caveat through Property Exchange Australia Ltd or another ELNO.
- (b) If the Minister lodges a caveat in accordance with **clause 9.4(a)**, then the Minister:
 - (i) must do all things reasonably necessary to:
 - (A) ensure that the caveat does not prevent or delay the Registration of this document over any part of the Land; and
 - (B) withdraw the caveat from the title to the relevant part of the Land promptly and within 5 Business Days of being provided with evidence of Registration of this document over that part of the Land in accordance with **clause 9.3**; and
 - (ii) must, without delay after being requested to do so, provide such consent or other documentation (such as a withdrawal of caveat) required to permit the Registration of:
 - (A) any easements to burden or benefit the Land;
 - (B) any variations of lease (including by way of exercise of option) subject to compliance with **clause 9.2(e)** or transfers of lease over any part of the Land; or
 - (C) any Permitted Lease;
 - (iii) may, after being requested to do so, provide such consent or other documentation (such as a withdrawal of caveat) required to permit the Registration of any instrument recording Dealings in respect of any part of the Land. The Minister may reasonably refuse to provide such consent or other documentation to permit the Registration of any instrument recording a Dealing until such time as either:

- (A) this document is registered on the title to the relevant part of the Land, in which case the Minister will be required to withdraw the caveat under **clause 9.4(b)(i)(B)**; or
 - (B) all the Development Contributions have been provided in accordance with this document in respect of the relevant part of the Land.
- (c) The Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under **clause 9.4(a)** to lodge a caveat(s) and withdraw caveat(s) and any associated costs.

9.5 Release and discharge of document

- (a) From time to time, the Developer may, following the erection of a building or buildings on any part of the Land pursuant to a Development Consent granted for the Development, request the Minister to facilitate the progressive release and discharge of this document from the relevant folio(s) of the Register for that part of the Land, for which at the date of the request:
 - (i) Occupation Certificates have been issued for all buildings on that part of the Land; and
 - (ii) no other buildings can be erected on that part of the Land pursuant to Development Consent granted for the Development.
- (b) The Minister agrees to do all things reasonably required by the Developer, following a request by the Developer under **clause 9.5(a)**:
 - (i) to release and discharge this document with respect to that part of the Land forming the subject of the request; and
 - (ii) to execute the relevant documents to enable the Developer to remove the notation of this document from the relevant folio(s) of the Register in respect of that part of the Land forming the subject of the request,upon the Minister being satisfied that:
 - (iii) the Developer has satisfied all of its obligations under this document in respect of that part of the Land forming the subject of the request; and
 - (iv) the Developer is not otherwise in default of its obligations under this document; and
 - (v) with respect to any part of the Land to which **clause 9.6** applies, the Developer has complied with the requirements of that clause.

9.6 Land Contribution

- (a) This **clause 9.6** applies to the whole or any part of a Land Contribution, or any part of the Land which includes the whole or any part of a Land Contribution.

- (b) The Developer is not entitled to seek, and the Minister is not required to provide, a release and discharge of this document from title to the whole or any part of a Land Contribution until such time as:
 - (i) in respect of the Education Land, the Education Land has been Remediated in accordance with **clause 4.3 of Schedule 3**;
 - (ii) in respect of the Open Space Land, the Open Space Land has been Remediated in accordance with **clause 5.3 of Schedule 3**; and
 - (iii) the Minister is otherwise satisfied that the Developer has completed all of its obligations under this document that are required to enable dedication or transfer of the Land Contribution in accordance with this document (including but not limited to creation of a separate title for the Land Contribution).

10 Dispute Resolution

10.1 Reference to dispute

If a dispute arises between the Parties in relation to this document, then either Party must resolve that dispute in accordance with this clause.

10.2 Notice of dispute

The Party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

10.3 Representatives of Parties to meet

On receipt of notice under **clause 10.2**, 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.

10.4 Mediation

If the Parties do not agree within 20 Business Days of receipt of the notice under **clause 10.2** (or any further period agreed in writing by them) as to:

- (a) the dispute resolution techniques 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 technique,

the Parties must mediate the dispute in accordance with the Australian Centre for International Commercial Arbitration (**ACICA**) Mediation Rules. The

mediation will take place in Sydney, Australia and be administered by the ACICA.

10.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under **clause 10.2** then any Party which has complied with the provisions of this **clause 10** may in writing terminate any dispute resolution process undertaken under this **clause** and may then commence court proceedings in relation to the dispute.

10.6 Not use information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this **clause 10** is to attempt to settle the dispute. No Party may use information or documents obtained through any dispute resolution process undertaken under this **clause 10** for any purpose other than in an attempt to settle the dispute.

10.7 No prejudice

This **clause 10** does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this document.

11 Enforcement

11.1 Developer to provide security

The following constitutes the security for the purposes of this document:

- (a) the Registration of this document on the title to the folio(s) of the Register comprising the Land and the other security arrangements in **clause 9**;
- (b) **clause 6** of **Schedule 3**; and
- (c) the security set out in **Schedule 4** and **clauses 4.4(a)** and **5.4(a)** of **Schedule 3**.

11.2 Enforcement by any Party

- (a) Without limiting any other remedies available to the Parties, this document may be enforced by any Party in any court of competent jurisdiction. Nothing in this document prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this document or any matter to which this document relates; and
 - (ii) the Minister from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this document or any matter to which this document relates.
- (b) The Developer indemnifies the Minister from any Loss suffered or incurred in exercising the Minister's enforcement rights under **clause 11.2(a)**, other than Loss that is suffered or incurred:

- (i) as a result of the Minister bringing proceedings against another Party or Parties in a court of competent jurisdiction to enforce any aspect of this document or any matter to which this document relates; and
- (ii) in circumstances where, and to the extent that, the court makes orders for the Minister to pay the other Party's or Parties' costs of those proceedings.

12 Notices

12.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this document is only given or made if it is in writing and:

- (a) delivered or posted to that Party at its address set out below;
- (b) faxed to that Party at its fax number set out below; or
- (c) emailed to that Party at its email address set out below.

Minister

Attention: The Planning Secretary
Address: NSW Department of Planning, Industry and Environment
Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
Fax Number: Not Used
Email: planningagreements@planning.nsw.gov.au

Developer

Attention: Andrew J Hall
Address: Australia YMCI Pty Ltd
Suite 36.01, Level 36, 201 Elizabeth Street
Sydney NSW 2000
Fax Number: 02 8288 9405
Email: andrew.hall@ymci.com.au

12.2 Change of details

If a Party gives the other Party three Business Days' notice of a change of its address, email address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, emailed or faxed to the latest address, email address or fax number.

12.3 Giving of notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, two Business Days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- (d) If it is sent by email, at the time the email was sent, provided the sender does not receive a delivery failure notice.

12.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

13 Approvals and consent

Except as otherwise set out in this document, and subject to any statutory obligations, the Minister may give or withhold an approval or consent to be given under this document in the Minister's absolute discretion and subject to any conditions determined by the Minister. The Minister is not obliged to give reasons for giving or withholding consent or for giving consent subject to conditions.

14 Assignment and dealings

14.1 Restriction on assignment and novation

- (a) The Developer must not:
 - (i) assign the rights or benefits; or
 - (ii) novate the burdens or obligations,of this document to any person, unless the requirements of **clause 14.1(b)** are met.
- (b) The parties to any assignment or novation of any rights, benefits, burdens or obligations under this document must enter into a deed with the Minister substantially in the form of the Form of Novation Deed. As a condition of entering into such deed, the Minister may require:
 - (i) the provision of additional security required in addition to that identified in **clause 11**, provided that such additional security amount is no more than 10% of the Contribution Amounts payable for the Land and in any case, no more than \$1 million; and

- (ii) an indemnity in favour of the Minister in respect of any breach of this document by the Developer.
- (c) The Minister may assign the rights and benefits afforded to him or her under this document in the Minister's absolute discretion, without the need for consent from the Developer.

14.2 Restriction on Dealings

- (a) This **clause 14.2**:
 - (i) applies to any part of the Land (other than a Land Contribution) where there has not been a release and discharge of this document under **clause 9.5**; and
 - (ii) does not affect the entry into an "off the plan" contract for sale by the Developer in respect of a proposed lot in a Strata Plan where the Strata Certificate for the Strata Plan has not been issued.
- (b) The Developer must not complete any Dealing with any third party (**Transferee**) relating to its interests in any part of the Land unless the Developer has complied with the requirements of this **clause 14.2**.
- (c) Within 20 Business Days of entering into any Dealing, the Developer must give written notice to the Minister of:
 - (i) the existence of the Dealing;
 - (ii) the identity of the Transferee; and
 - (iii) the anticipated date of completion of the Dealing.
- (d) At least 35 Business Days prior to the date proposed for completion of the Dealing, the Developer must give to the Minister:
 - (i) written notice of their intention to complete the Dealing and of the proposed completion date (**Completion Date**);
 - (ii) written notice of the identity of the Transferee (and whether that has changed from the Transferee identified in the notice given under **clause 14.2(c)**); and
 - (iii) the completed novation deed substantially in the form of the Form of Novation Deed which the parties to the Dealing intend to execute under which the Transferee agrees to comply with those obligations of the Developer under this document which relate to the relevant part of the Land the subject of the Dealing (**Required Obligations**) as if the Transferee were the Developer (**Prepared Novation Deed**).
- (e) At least 20 Business Days prior to the Completion Date, the Minister must give to the Developer written notice of whether the Minister requires:

- (i) any amendments to be made to the Prepared Novation Deed, provided that any such amendments must remain substantially in the form of the Form of Novation Deed; and
 - (ii) as a condition of entering into the Prepared Novation Deed, the provision of additional security required in addition to that identified in **clause 11** (subject to **clause 14.1(b)**).
- (f) At least 15 Business Days prior to the Completion Date, the Developer must give to the Minister the final form of the Prepared Novation Deed, incorporating the Minister's requested amendments under **clause 14.2(e)**, for the Minister's final review and approval, to which the Minister must reply within 5 Business Days.
- (g) At least 5 Business Days prior to the Completion Date, the Developer must deliver to the Minister the Prepared Novation Deed in final form (incorporating any amendments required by the Minister under **clause 14.2(e)**) duly executed by the Developer and the Transferee.
- (h) Prior to the Completion Date:
 - (i) any default by the Developer in relation to the relevant part of the Land the subject of the proposed Dealing must be remedied by the Developer, unless that default has been waived expressly by the Minister; and
 - (ii) the Developer and the Transferee must pay all costs reasonably incurred by the Minister in relation to that Dealing, including, without limitation, legal and administrative costs.
- (i) No later than one Business Day prior to the Completion Date, the Developer must provide to the Minister a Bank Guarantee for any additional security required by the Minister as specified in **clause 14.1(b)**.
- (j) As soon as reasonably practicable after receiving the executed Prepared Novation Deed and any Bank Guarantee referred to in **clause 14.1(b)**, the Minister must:
 - (i) execute the Prepared Novation Deed and deliver a counterpart to the Developer;
 - (ii) return to the Developer its Bank Guarantee(s) referred to in **clause 1.2(a) of Schedule 4** in relation to that part of the Land the subject of the Dealing; and
 - (iii) if requested by the Developer:
 - (A) accept in exchange for the Bank Guarantee referred to in **clause 14.1(b)** a substitute Bank Guarantee provided by the Transferee for the same amount; and
 - (B) return the Bank Guarantee referred to in **clause 14.1(b)** to the Developer.

- (k) If the Developer enters into any Dealing and fully satisfies the requirements of this **clause 14.2** with respect to that Dealing, the Developer will be released from its obligations under this document with respect to the Required Obligations as they relate to the Land the subject of that Dealing.

14.3 Land Contribution

- (a) This **clause 14.3** applies to the whole or any part of a Land Contribution, or any part of the Land which includes a Land Contribution, where there has not been a release and discharge of this document under **clause 9.5** in respect of that land.
- (b) Until such time as a separate title is created for the Land Contribution, the Developer must not enter into any Dealing with any Transferee relating to its interests in any part of the Land to which this **clause 14.3** applies, unless, prior to entering into such Dealing, the Developer and the Transferee enter into a deed with the Minister in the form of the Form of Novation Deed, on terms acceptable to the Minister.
- (c) At any time after a separate title has been created for the Land Contribution, the Developer and the Transferee must:
 - (i) prior to entering into any Dealing with any Transferee relating to its interests in the Land Contribution, enter into a deed with the Minister in the form of the Form of Novation Deed, on terms acceptable to the Minister; and
 - (ii) comply with **clauses 14.2(c) to 14.2(j)** in relation to any Dealing with any Transferee relating to its interests in any part of the Land which previously included the Land Contribution.

15 Capacity

- (a) Each Party warrants to each other Party that this document creates legal, valid and binding obligations, enforceable against the relevant Party in accordance with its terms.
- (b) If an attorney executes this document on behalf of any Party, the attorney declares that it has no notice of the revocation of that power of attorney.

16 Reporting requirement

- (a) The Developer must provide at least 20 Business Days' notice to the Minister of any application made by the Developer or any other third party in relation to the Land for a New Planning Proposal, Development Consent, a Complying Development Certificate, a Construction Certificate, a Subdivision Certificate or an Occupation Certificate which triggers or alters any obligation under this document.

- (b) If any part of the Development is to be carried out without the need for Development Consent and triggers any obligation under this document, then the Developer must provide at least 20 Business Days' notice to the Minister of the date of the proposed commencement of that part of the Development.
- (c) On each anniversary of the date of this document or as otherwise agreed with the Planning Secretary, the Developer must deliver to the Planning Secretary a report which must include those matters set out in **clauses 16(d) and 16(e)**, as applicable.
- (d) If the Developer has not provided a Contribution Amount in the 12 month period immediately preceding the relevant anniversary of this document, the report required under **clause 16(c)** 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 or any other third party (as applicable) expects to lodge any New Planning Proposal, the next Development Application and any application for a Complying Development Certificate, Construction Certificate or Subdivision Certificate for the relevant part of the Land, or an Occupation Certificate for a building or part of a building on the relevant part of the Land.
- (e) If the Developer has provided one or more Contribution Amounts under this document, the report required under **clause 16(c)** must include:
 - (i) details of all New Planning Proposals, Development Consents, Complying Development Certificates, Construction Certificates, Subdivision Certificates and Occupation Certificates granted in relation to the Development;
 - (ii) a schedule that details all Contribution Amounts provided under this document as at the date of the report; and
 - (iii) an estimated date for when the Developer or any other third party (as applicable) expects to lodge any New Planning Proposal, the next Development Application and application for any Complying Development Certificate, Construction Certificate or Subdivision Certificate for the relevant part of the Land, or an Occupation Certificate for a building or part of a building on the relevant part of the Land.
- (f) Upon the Planning Secretary's request, the Developer must deliver to the Planning Secretary all documents and other information which, in the reasonable opinion of the Planning Secretary, are necessary for the Planning Secretary to assess the status of the Development.

17 GST

17.1 Construction

In this **clause 17**:

- (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.

17.2 Consideration GST exclusive

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

17.3 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.

17.4 Timing of GST payment

The amount referred to in **clause 17.3** 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.

17.5 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 17.3**.

17.6 Adjustment event

If an adjustment event arises in respect of a supply made by the Supplier under or in connection with this document, any amount that is payable under **clause 17.3** 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.

17.7 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 17.7** does not limit the application of **clause 17.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 17.7(a)**.

17.8 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.

17.9 No merger

This **clause 17** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

18 Rights and obligations under Original Planning Agreement

- (a) The Developer must, on or before the Commencing Date grant, execute and deliver to the Minister the Power of Attorney.
- (b) In the event that, for any reason, the Deed of Partial Surrender is declared invalid, or is terminated, repudiated or frustrated, then on and from the Commencing Date, the Minister:
 - (i) waives its rights under the Original Planning Agreement to enforce any obligations of the Developer under the Original Planning Agreement;
 - (ii) releases the Developer from its obligations under the Original Planning Agreement; and

- (iii) may in its own right and as attorney for the Developer under the Power of Attorney, take any action or do any thing that it has the right or is empowered to do under the Power of Attorney.
- (c) This **clause 18** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

19 General provisions

19.1 Costs, 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 document.
- (b) The Developer must pay all reasonable costs and expenses associated with the giving of public notice of this document and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this document and any instrument or transaction required or contemplated by or necessary to give effect to this document (including, but not limited to, stamp duty and registration fees, if applicable, on any transfer of a Land Contribution).
- (d) The Developer must provide the Minister with bank cheques in respect of any costs incurred by the Minister pursuant to **clauses 19.1(a), 19.1(b) and 19.1(c)**:
 - (i) where the Minister has provided the Developer written notice of the sum of such costs prior to execution, on the date of execution of this document; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

19.2 Entire agreement

- (a) This document contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this document was executed, except as permitted by law.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this document.

19.3 Variation

- (a) This document must not be varied except by a later written document executed by all Parties.

- (b) Subject to **clause 19.3(c)**, the Parties agree that the requirements of **clause 19.3(a)** will be satisfied where the Minister, in the Minister's absolute discretion, agrees to the Developer making minor amendments relating to the delivery of the Development and those amendments, and the consequences of those amendments under this document, have been agreed by the Parties through an exchange of letters signed by or on behalf of the contact for each Party specified in **clause 12** of this document.
- (c) **Clause 19.3(b):**
 - (i) does not apply where the Act requires public notification of any amendment to this document;
 - (ii) is subject to the Developer obtaining all required Approvals including any Development Consent or modification to a Development Consent; and
 - (iii) is subject to **clause 19.7** of this document.

19.4 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this document and all transactions incidental to it.

19.5 Governing law and jurisdiction

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. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

19.6 Joint and individual liability and benefits

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

19.7 No fetter

Nothing in this document 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.

19.8 Representations and warranties

The Parties represent and warrant that they have power to enter into this document and comply with their obligations under this document and that entry into this document will not result in the breach of any law.

19.9 Severability

If a clause or part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable or valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

19.10 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this document, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

19.11 Effect of Schedules

The Parties agree to comply with any terms contained in Schedules to this document as if those terms were included in the operative part of the document.

19.12 Relationship of parties

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

19.13 Further steps

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

19.14 Counterparts

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

19.15 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a Party under this document are cumulative and are in addition to any other rights of that Party.

19.16 Liability

An obligation of two or more persons binds them separately and together.

19.17 Interpretation

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) a reference in this document to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney;
- (f) if the day on or by which any act, must be done under this document is not a business day, the act must be done on or by the next business day;
- (g) '\$' or 'dollars' is a reference to Australian currency all amounts payable under this document are payable in Australian dollars;
- (h) a reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (i) a reference in this document to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (j) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document;
- (k) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (l) a reference to a Party to this document includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns; and
- (m) any schedules, annexures and attachments form part of this document.

19.18 Headings

Headings do not affect the interpretation of this document.

19.19 Effect of execution

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

Schedule 1

Requirements under the Act

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

Table 1 – Requirements under section 7.4 of the Act (clause 8)

Provision of the Act	This document
Under section 7.4(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this document applies- (Section 7.4(3)(a))	The whole of the Land described in Schedule 2 .
Description of the development to which this document applies- (Section 7.4(3)(b)(ii))	The Development as defined in clause 4 and clause 5 .
The scope, timing and manner of delivery of Development Contributions required by this document - (Section 7.4(3)(c))	See Schedule 3 .
Applicability of Section 7.11 of the Act - (Section 7.4(3)(d))	The application of section 7.11 is not excluded in respect of any part of the Development.
Applicability of Section 7.12 of the Act - (Section 7.4(3)(d))	The application of section 7.12 is not excluded in respect of any part of the Development.
Applicability of Section 7.24 of the Act - (Section 7.4(3)(d))	The application of section 7.24 is wholly excluded in respect of any part of the Development.
Applicability of Section 7.4(3)(e) of the Act	Any benefits under this Agreement for a Public Purpose may not be taken into consideration in determining a Development Contribution under section 7.11 of the Act.

Provision of the Act	This document
Mechanism for dispute resolution - (Section 7.4(3)(f))	See clause 10.
Enforcement of this document - (Section 7.4(3)(g))	See clause 11.
No obligation to grant consent or exercise functions - (Section 7.4(9))	See clause 19.7.

Table 1 – Other Matters

Provision of the Act	This document
Registration of this document (Section 7.6)	Yes – see clause 9.
Whether this document specifies that certain requirements must be complied with before a construction certificate is issued (Clause 25E(2)(g) of the Regulation)	No
Whether this document specifies that certain requirements must be complied with before an occupation certificate is issued (Clause 25E(2)(g) of the Regulation)	Yes - see clause 2.5 of Schedule 3.
Whether this document specifies that certain requirements must be complied with before a subdivision certificate is issued (Clause 25E(2)(g) of the Regulation)	No

Schedule 2

Land

Item	Lot and Deposited Plan	Folio Identifier	Landowner
1	Lot 301 in DP541070	301/541070	Australia YMCI Pty Ltd
2	Lot 26 in DP225350	26/225350	Australia YMCI Pty Ltd
3	Lot 27 in DP225350	27/225350	Australia YMCI Pty Ltd
4	Lot 28 in DP225350	28/225350	Australia YMCI Pty Ltd
5	Lot 12 in DP1217641	12/1217641	Australia YMCI Pty Ltd
6	Lot 13 in DP1217641	13/1217641	Australia YMCI Pty Ltd



Schedule 3

Development Contributions

1 Development Contributions

The Developer undertakes to provide the Development Contributions in accordance with the table below:

Column 1	Column 2	Column 3	Column 4
Item	Development Contribution	Value	Timing
1	Contribution Amounts: payment of monetary contributions by the Developer to the Minister or the Minister's nominee.	\$109.41 per square metre of GFA that will result from carrying out the Development in accordance with a Development Consent, including as modified, adjusted in accordance with clause 2.1 of this Schedule 3 .	In accordance with clause 2.2 of this Schedule 3 .
2	Transfer of Road Works Land: transfer of the Road Works Land to the Minister or the Minister's nominee.		In accordance with clause 3.2(a) of this Schedule 3 .
3	Transfer of Education Land: transfer of the Education Land to the Minister or the Minister's nominee.		In accordance with clause 4.2(c) of this Schedule 3 .
4	Transfer of the Open Space Land: transfer of the Open Space Land to the Minister or the Minister's nominee.		In accordance with clause 5.2(c) of this Schedule 3 .

2 Contribution Amount

2.1 Indexation

The value of the Contribution Amounts set out in Column 3 of Item 1 of the Table included at **clause 1** of this **Schedule 3** is to be adjusted on 1 July in each year by multiplying that amount by the following formula:

Current CPI / Base CPI

Where:

- (a) **Current CPI** is the CPI number for the quarter ending on 31 March in the year in which the relevant adjustment is made; and
- (b) **Base CPI** is the CPI number for the quarter ending on 31 March 2020.

Timing for payment of Contribution Amounts

- 2.2 (a) The Developer must pay the Contribution Amounts to the Minister or the Minister's nominee in relation to each square metre of GFA (or any part thereof) for any part of the Land the subject of a Development Consent as it may be modified prior to the issue of an Occupation Certificate for a building or part of a building on that part of the Land to which the Development Consent referred to above applies.
- (b) Notwithstanding **clause 2.2(a)** of this **Schedule 3**, the Developer is not required to pay any Contribution Amount for an alteration or fitout to any Development authorised to be carried out by a Development Consent in force as at the Commencing Date that will not result in any additional GFA on the Land.

2.3 Delivery of Contribution Amounts

- (a) Contribution Amounts are made for the purpose of this **Schedule 3** when cleared funds are deposited by means of electronic funds transfer or bank cheque into a bank account nominated by the Minister.
- (b) The Developer is to give the Minister no less than 20 Business Days' written notice of:
 - (i) its intention to pay a Contribution Amount; and
 - (ii) the amount proposed to be paid.
- (c) The Developer is not required to pay a Contribution Amount under this document until the Minister, after having received a notice under **clause 2.3(a)** of this **Schedule 3**, has provided to the Developer a tax invoice for the relevant Contribution Amount.

2.4 Satisfactory Arrangements

Not Used.

2.5 Restriction on issue of Occupation Certificates

The Parties agree that the requirement to provide Contribution Amounts under this **Schedule 3** is a restriction on the issue of an Occupation Certificate within the meaning of section 6.10 of the Act and clause 154E of the Regulation.

3 Road Works Land Contribution

3.1 Subdivision of Road Works Land

The Developer must, at its cost:

- (a) within one month after the Commencing Date, make a Development Application and apply for all other Approvals necessary to create a separate lot for the Road Works Land;
- (b) use best endeavours to obtain Development Consent and all other Approvals necessary to create a separate lot for the Road Works Land within 12 months after the Commencing Date; and
- (c) in accordance with the applicable Development Consent and all other necessary Approvals, Register a Plan of Subdivision to create a separate lot for the Road Works Land.

3.2 Transfer obligations

- (a) The Developer must transfer or procure the transfer of the Road Works Land to the Minister (or the Minister's nominee) in accordance with this **Schedule 3** for consideration of \$1 within three months of Registration of the Plan of Subdivision which creates a separate lot for the Road Works Land pursuant to **clause 3.1(c)** of this **Schedule 3**.
- (b) Transfer of the Road Works Land is made for the purposes of **clause 3.2(a)** of this **Schedule 3** when the Minister (or the Minister's nominee) is given either:

- (i) a form of transfer, duly executed and in Registrable form, that is effective to transfer title to the Road Works Land to the Minister or the Minister's nominee, when Registered; or
 - (i) evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
- (c) To allow for the Registration of the transfer referred to in **clause 3.2(b)** of this **Schedule 3**, the Developer must:
 - (ii) cause the certificate(s) of title for the Road Works Land to be produced to the LRS or provide a direction allowing the certificate(s) of title to be used for that purpose (or lodge a CoRD Holder Consent for the Road Works Land through Property Exchange Australia or other electronic equivalent);
 - (iii) give to the Minister an irrevocable undertaking to deliver to the Minister or the Minister's nominee the certificate(s) of title if the certificate(s) are released to the Developer by the LRS; and
 - (iv) take any other necessary action to give effect to the transfer of the title of the Road Works Land to the Minister or the Minister's nominee free all Encumbrances,

and the Minister agrees to execute, or procure execution by the Minister's nominee of, all documents necessary to give effect to the transfer of title of the Road Works Land to the Minister or the Minister's nominee promptly upon completion of the Developer's obligations under this **clause 3.2(c)** of this **Schedule 3**.

- (d) Where the Road Works Land is transferred to the Minister's nominee, within 10 Business Days of Registration of that transfer, the Developer must provide evidence by way of written confirmation from the Minister's nominee or such other evidence that is satisfactory to the Minister, acting reasonably, that the Road Works Land Contribution has been delivered.
- (e) The Developer must pay all rates and Taxes owing in respect of the Road Works Land up to and including the date that the Developer either:
 - (i) delivers the form of transfer and certificate(s) of title for the Road Works Land pursuant to **clause 3.2(b)(i)** of this **Schedule 3**; or
 - (ii) provides evidence under **clause 3.2(b)(ii)** of this **Schedule 3** that the transfer has occurred,

after which time the Minister or the Minister's nominee (as appropriate) will be responsible for any rates and Taxes in relation to the Road Works Land.

4 Education Land Contribution

4.1 Subdivision of Education Land

The Developer must, at its cost:

- (a) make a Development Application and apply for all other Approvals necessary to create a separate lot for the Education Land by no later than 30 November 2022;
- (b) use best endeavours to obtain Development Consent and all other Approvals necessary to create a separate lot for the Education Land by no later than 30 September 2023; and
- (c) in accordance with the applicable Development Consent and all other necessary Approvals, Register a Plan of Subdivision to create a separate lot for the Education Land.

4.2 Transfer obligations

- (a) The Developer must transfer the Education Land to the Minister or the Minister's nominee for a consideration of \$1.
- (b) Transfer of the Education Land is made for the purposes of **clause 4.2(a)** of this **Schedule 3** when the Minister is given either:
 - (i) a form of transfer, duly executed and in registrable form, that is effective to transfer title to the Education Land to the Minister or the Minister's nominee, when Registered; or
 - (ii) evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
- (c) The Developer must provide to the Minister the form or evidence of transfer referred to in **clause 4.2(b)** of this **Schedule 3** by no later than 31 December 2023.
- (d) To allow for the Registration of the transfer referred to in **clause 4.2(b)** of this **Schedule 3**, the Developer must:
 - (i) cause the certificate(s) of title for the Education Land to be produced to the LRS or provide a direction allowing the certificate(s) of title to be used for that purpose (or lodge a CoRD Holder Consent for the Education Land through Property Exchange Australia or other electronic equivalent);
 - (ii) give to the Minister an irrevocable undertaking to deliver to the Minister or the Minister's nominee the certificate(s) of title if the certificate(s) are released to the Developer by the LRS; and
 - (iii) take any other necessary action to give effect to the transfer of the title of the Education Land to the Minister or the Minister's nominee free of all above ground improvements on the Education Land, including without limitation any concrete slab constructed on the Education Land, and all Encumbrances,

and the Minister agrees to execute, or procure execution by the Minister's nominee of, all documents necessary to give effect to the transfer of title of the Education Land to the Minister or the Minister's nominee promptly upon completion of the obligations under **clauses 4.2(b) to (d)** of this **Schedule 3**, and to provide any other information within the Minister's knowledge which is reasonably required by the Developer to enable the provision of servicing of the Education Land referred to in **clause 4.2(g)** of this **Schedule 3**, subject to the Developer's compliance with the Remediation obligations under **clause 4.3** of this **Schedule 3**.

- (e) Where the Education Land is dedicated to the Minister's nominee, the Developer must give the Minister copies of the title search(es) for the Education Land showing the Minister's nominee as the registered proprietor of the Education Land within 10 Business Days of the relevant transfer being registered.
- (f) The Developer must pay all rates and Taxes owing in respect of the Education Land up to and including the date that the Developer either:
 - (i) delivers the form of transfer and certificate(s) of title for the Education Land under **clause 4.2(b)(i)** of this **Schedule 3**; or
 - (ii) provides evidence under **clause 4.2(b)(ii)** of this **Schedule 3** that the transfer has occurred,

after which time the Minister or the Minister's nominee (as appropriate) will be responsible for any rates and Taxes in relation to the Education Land; and

- (g) Prior to transfer of the Education Land, the Developer must, at its cost, ensure and provide evidence to the Minister that the Education Land is serviced by:
 - (i) roads, including the road referred to as 'Road #6' in the plan attached at **Annexure C** which is to:
 - (A) adjoin the eastern side of the Open Space Land and the western side of the Education Land;
 - (B) comprise two travel lanes (one northbound and one southbound), an associated shared path and verge;
 - (ii) sewer;
 - (iii) water;
 - (iv) electricity; and
 - (v) communications,

in accordance with any servicing agencies' requirements, and is of a size and capacity that is suitable for the operation of a primary school including for public sports and playing fields on the Education Land.

4.3 Remediation obligations

- (a) The Developer must, prior to transfer of the Education Land, undertake the Remediation Works referred to in **clause 4.3(b)** of this **Schedule 3** and provide to the Minister a Site Audit Statement which certifies that the Education Land is suitable for the proposed uses of a primary school and public sports and playing fields, either unconditionally or subject to conditions which are acceptable to the Minister acting reasonably.
- (b) In this **clause 4** of this **Schedule 3**, "**Remediation Works**" means the Remediation of any Contamination over, on, under, above or migrating through or from the Education Land, including by:
 - (i) undertaking Remediation in accordance with any remedial action plan or voluntary management proposal relating to the Contamination or Remediation of the Education Land;
 - (ii) undertaking Remediation in accordance with the conditions of all Approvals required to be obtained in order to complete the Remediation of the Education Land in accordance with the remedial action plan or any voluntary management proposal relating to the Contamination or Remediation of the Education Land;
 - (iii) engaging a Site Auditor to oversee the Remediation of the Education Land;
 - (iv) obtaining and complying with the conditions of any Approvals required to be obtained under any Environmental Law; and
 - (v) complying with the requirements, notices and directions issued or administered by any Authority in respect of Contamination of the Education Land.

4.4 Education Land Security

- (a) The Developer must provide to the Minister by the date that this document is entered into by the Parties security in the form of a Bank Guarantee in the amount of \$3.5 million to secure the performance of the Developer's obligations in connection with the Remediation Works and dedication of the Education Land in accordance with this document (**Education Land Security**).
- (b) An Education Land Security must:
 - (i) name the 'Minister for Planning and Public Spaces and the Department of Planning, Industry and Environment ABN 20 770 707 468' as the relevant beneficiaries; and
 - (ii) not have an expiry date.
- (c) Until the obligations under **clause 4.2** and **clause 4.3** of this Schedule 3 have been satisfied, the Minister will be entitled to retain the Education Land Security (**Retention Period**).

- (d) The Minister may:
 - (i) call upon the Education Land Security:
 - (A) where the Developer fails to commence remediation of the Education Land by 1 March 2023;
 - (B) if, at any time prior to the date that the Education Land Security is returned to the Developer in accordance with **clause 4.4(e)** of this **Schedule 3**, the Minister has any cause to believe that, notwithstanding the provision of any Site Audit Statement under **clause 4.3(a)** of this **Schedule 3**, Remediation of the Education Land was not undertaken to the standard required for the use specified in **clause 4.3(a)** of this **Schedule 3**; or
 - (C) where the Developer is otherwise in default of its obligations under this document relating to the Remediation of the Education Land; and
 - (ii) retain and apply such monies up to the amount necessary to investigate the environmental condition of the Education Land and undertake any further Remediation for the purpose of Remediating the Education Land to the standard required under **clause 4.3(a)** of this **Schedule 3**.
- (e) At the end of the Retention Period, the Minister must, within 10 Business Days of a request by the Developer, return to the Developer the whole of or, subject to **clause 4.4(b)** of this **Schedule 3**, any remaining amount of, the Education Land Security.
- (f) If any of the circumstances arise entitling the Minister to call on the Education Land Security under **clause 4.4(d)** of this **Schedule 3**, then:
 - (i) the Minister may take any action, pay any monies and obtain any Approvals necessary to Remediate the Education Land to the standard required under **clause 4.3(a)** of this **Schedule 3**;
 - (ii) the Developer must do all things necessary to enable the Minister to obtain the Approvals referred to in **clause 4.4(f)(i)** of this **Schedule 3**; and
 - (iii) all costs incurred by the Minister in taking the action contemplated under **clause 4.4(f)(i)** of this **Schedule 3** will be repaid by the Developer, either:
 - (A) by virtue of the Minister calling on the Education Land Security under **clause 4.4(d)** of this **Schedule 3**; or
 - (B) if the Minister does not call on the Education Land Security, the Minister may issue an invoice to the Developer outlining its costs and the Developer must pay those costs as a debt due within 10 Business Days of receipt of the invoice.

4.5 Additional security

- (a) The Minister reserves the right to call for additional security in relation to the transfer of the Education Land, but only where:
 - (iii) the Developer provides written notification to the Minister prior to the transfer of the Education Land that it proposes to transfer the Education Land subject to any registered Encumbrances noted on the title(s) to the Education Land; or
 - (iv) the Developer transfers the Education Land subject to Encumbrances.
- (b) Without limitation, the Minister may require the Developer to provide an additional Bank Guarantee, insurance bond or other agreed form of security in order to secure the costs of removing any Encumbrances noted on the title(s) to the Education Land. **Clause 1 of Schedule 4** will apply to any Bank Guarantee provided under this **clause 4.5 of Schedule 3**.

5 Open Space Land Contribution

5.1 Subdivision of Open Space Land

The Developer must, at its cost:

- (a) make a Development Application and apply for all other Approvals necessary to create a separate lot for the Open Space Land by no later than 30 November 2022;
- (b) use best endeavours to obtain Development Consent and all other Approvals necessary to create a separate lot for the Open Space Land by no later than 30 September 2023; and
- (c) in accordance with the applicable Development Consent and all other necessary Approvals, Register a Plan of Subdivision to create a separate lot for the Open Space Land.

5.2 Transfer obligations

- (a) The Developer must transfer the Open Space Land to the Minister or the Minister's nominee for a consideration of \$1.
- (b) Transfer of the Open Space Land is made for the purposes of **clause 5.2 of this Schedule 3** when the Minister is given either:
 - (i) a form of transfer, duly executed and in registrable form, that is effective to transfer title to the Open Space Land to the Minister or the Minister's nominee, when Registered; or
 - (ii) evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.

- (c) The Developer must provide to the Minister the form or evidence of transfer referred to in **clause 5.2(b)** of this **Schedule 3** by no later than 31 December 2023.
- (d) To allow for the Registration of the transfer referred to in **clause 5.2(b)** of this **Schedule 3**, the Developer must:
 - (i) cause the certificate(s) of title for the Open Space Land to be produced to the LRS or provide a direction allowing the certificate(s) of title to be used for that purpose (or lodge a CoRD Holder Consent for the Open Space Land through Property Exchange Australia Ltd or other electronic equivalent);
 - (ii) give to the Minister an irrevocable undertaking to deliver to the Minister or the Minister's nominee the certificate(s) of title if the certificate(s) are released to the Developer by the LRS; and
 - (iii) take any other necessary action to give effect to the transfer of the title of the Open Space Land to the Minister or the Minister's nominee free of all above ground improvements on the Open Space Land, including without limitation any concrete slab constructed on the Open Space Land, and all Encumbrances,and the Minister agrees to execute, or procure execution by the Minister's nominee of, all documents necessary to give effect to the transfer of title of the Open Space Land to the Minister or the Minister's nominee promptly upon completion of the obligations under **clauses 5.2(b) to (d)** of this **Schedule 3**, and to provide any other information within the Minister's knowledge which is reasonably required by the Developer to enable the provision of servicing of the Open Space Land referred to in **clause 5.2(g)** of this **Schedule 3**, subject to the Developer's compliance with the Remediation obligations under **clause 5.3** of this **Schedule 3**.
- (e) Where the Open Space Land is dedicated to the Minister's nominee, the Developer must give the Minister copies of the title search(es) for the Open Space Land showing the Minister's nominee as the registered proprietor of the Open Space Land within 10 Business Days of the relevant transfer being Registered.
- (f) The Developer must pay all rates and Taxes owing in respect of the Open Space Land up to and including the date that the Developer either:
 - (i) delivers the form of transfer and certificate(s) of title for the Open Space Land under **clause 5.2(b)(i)** of this **Schedule 3**; or
 - (ii) provides evidence under **clause 5.2(b)(ii)** of this **Schedule 3** that the transfer has occurred,after which time the Minister or the Minister's nominee (as appropriate) will be responsible for any rates and Taxes in relation to the Open Space Land; and

- (g) Prior to transfer of the Open Space Land, the Developer must, at its cost, ensure and provide evidence to the Minister that the Open Space Land:
 - (i) is serviced by:
 - (A) roads, including the road referred to as 'Road #6' in the plan attached at Annexure C which is to:
 - ♦ adjoin the eastern side of the Open Space Land and the western side of the Education Land; and
 - ♦ comprise two travel lanes (one northbound and one southbound), an associated shared path and verge;
 - (B) sewer;
 - (C) water;
 - (D) communications;
 - (ii) has been decompacted;
 - (iii) has correct levels established;
 - (iv) includes topsoil and turf;
 - (v) provides for one water meter and connection and one tap;
 - (vi) has an entry for maintenance; and
 - (vii) has a perimeter that is secured by way of bollards to prevent car access,

in accordance with any servicing agencies' requirements, and to a standard that is suitable for the proposed use as public open space.

5.3 Remediation obligations

- (a) The Developer must, prior to transfer of the Open Space Land, undertake the Remediation Works referred to in **clause 5.3(b)** of this **Schedule 3** and provide to the Minister a Site Audit Statement which certifies that the Open Space Land is suitable for the proposed use as public open space, either unconditionally or subject to conditions which are acceptable to the Minister acting reasonably.
- (b) In this **clause 5** of this **Schedule 3**, "**Remediation Works**" means the Remediation of any Contamination over, on, under, above or migrating through or from the Open Space Land, including by:
 - (i) undertaking Remediation in accordance with any remedial action plan or voluntary management proposal relating to the Contamination or Remediation of the Open Space Land;
 - (ii) undertaking Remediation in accordance with the conditions of all Approvals required to be obtained in order to complete the Remediation of the Open Space Land in accordance with the remedial action plan or any voluntary management proposal

relating to the Contamination or Remediation of the Open Space Land;

- (iii) engaging a Site Auditor to oversee the Remediation of the Open Space Land;
- (iv) obtaining and complying with the conditions of any Approvals required to be obtained under any Environmental Law; and
- (v) complying with the requirements, notices and directions issued or administered by any Authority in respect of Contamination of the Open Space Land.

5.4 Open Space Land Security

- (a) The Developer must provide to the Minister by no later than 31 December 2021 security in the form of a Bank Guarantee in the amount of \$3.5 million to secure the performance of the Developer's obligations in connection with the Remediation Works and dedication of the Open Space Land in accordance with this document (**Open Space Land Security**).
- (b) An Open Space Land Security must:
 - (i) name the 'Minister for Planning and Public Spaces and the Department of Planning, Industry and Environment ABN 20 770 707 468' as the relevant beneficiaries; and
 - (ii) not have an expiry date.
- (c) Until the obligations under **clause 5.2** and **clause 5.3** of this **Schedule 3** have been satisfied, the Minister will be entitled to retain the Open Space Land Security (**Retention Period**).
- (d) The Minister may:
 - (i) call upon the Open Space Land Security:
 - (A) where the Developer fails to commence remediation of the Open Space Land by 1 March 2023;
 - (B) if, at any time prior to the date that the Education Land Security is returned to the Developer in accordance with **clause 5.4(e)** of this Schedule 3, the Minister has any cause to believe that, notwithstanding the provision of any Site Audit Statement under **clause 5.3(a)** of this Schedule 3, Remediation of the Open Space Land was not undertaken to the standard required for the use specified in **clause 5.3(a)** of this Schedule 3; or
 - (C) where the Developer is otherwise in default of its obligations under this document relating to the Remediation of the Open Space Land; and
 - (ii) retain and apply such monies up to the amount necessary to investigate the environmental condition of the Open Space Land

and undertake any further Remediation for the purpose of Remediating the Open Space Land to the standard required under **clause 5.3(a)** of this **Schedule 3**.

- (e) At the end of the Retention Period, the Minister must, within 10 Business Days of a request by the Developer, return to the Developer the whole of or, subject to **clause 5.4(d)** of this **Schedule 3**, any remaining amount of, the Open Space Land Security.
- (f) If any of the circumstances arise entitling the Minister to call on the Open Space Land Security under **clause 5.4(d)** of this **Schedule 3**, then:
 - (i) the Minister may take any action, pay any monies and obtain any Approvals necessary to Remediate the Open Space Land to the standard required under **clause 5.3(a)** of this **Schedule 3**;
 - (ii) the Developer must do all things necessary to enable the Minister to obtain the Approvals referred to in **clause 5.4(f)(i)** of this **Schedule 3**; and
 - (iii) all costs incurred by the Minister in taking the action contemplated under **clause 5.4(f)(i)** of this **Schedule 3** will be repaid by the Developer, either:
 - (A) by virtue of the Minister calling on the Open Space Land Security under **clause 5.4(d)** of this **Schedule 3**; or
 - (B) if the Minister does not call on the Open Space Land Security, the Minister may issue an invoice to the Developer outlining its costs and the Developer must pay those costs as a debt due within 10 Business Days of receipt of the invoice.

5.5 Additional security

- (a) The Minister reserves the right to call for additional security in relation to the transfer of the Open Space Land, but only where:
 - (v) the Developer provides written notification to the Minister prior to the transfer of the Open Space Land that it proposes to transfer the Open Space Land subject to any registered Encumbrances noted on the title(s) to the Open Space Land; or
 - (vi) the Developer transfers the Open Space Land subject to Encumbrances.
- (b) Without limitation, the Minister may require the Developer to provide an additional Bank Guarantee, insurance bond or other agreed form of security in order to secure the costs of removing any Encumbrances noted on the title(s) to the Open Space Land. **Clause 1** of **Schedule 4** will apply to any Bank Guarantee provided under this **clause 5.5** of **Schedule 3**.

6 Compulsory acquisition

- (a) If the Developer does not transfer a Land Contribution by the time specified for the transfer of that Land Contribution under this **Schedule 3**, the Developer consents to the Minister or the Minister's nominee, at the appropriate time, compulsorily acquiring the Land Contribution in accordance with the Just Terms Act for an amount of \$1.
- (b) The Developer and the Minister (or the Minister's nominee, as appropriate), agree that:
 - (i) this **clause 6** of this **Schedule 3** is taken to be an agreement between them for the purpose of section 30 of the Just Terms Act; and
 - (ii) in this **clause 6** of this **Schedule 3**, they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer must ensure that any Land Contribution to be acquired under this **clause 6** of this **Schedule 3** is free of all Encumbrances on the date that the Developer is liable to transfer the Land Contribution to the Minister or the Minister's nominee in accordance with this **clause 6** of this **Schedule 3**.
- (d) The Developer indemnifies and agrees to keep indemnified the Minister (and the Minister's nominee, where applicable) against all Claims for compensation under the Just Terms Act made against the Minister (or the Minister's nominee) as a result of any acquisition by the Minister (or the Minister's nominee) of the whole or any part of a Land Contribution under this **clause 6** of this **Schedule 3**.
- (e) The Developer must pay to the Minister (or the Minister's nominee), within 20 Business Days of a written demand, an amount equivalent to all costs, charges and expenses incurred by the Minister (or the Minister's nominee) in acquiring the whole or any part of the Land Contribution under this **clause 6** of this **Schedule 3** and the quantum of all determined Claims against the Minister (or the Minister's nominee) in exercising acquisition rights under this **clause 6** of this **Schedule 3**. Where the Developer has not complied, in whole or in part, with **clause 4.3** or **clause** of this **Schedule 3**, this amount may include any costs associated with the Remediation of the Education Land or the Open Space Land (as applicable) to facilitate the use of the Education Land or the Open Space Land (as applicable) as a primary school and public sports and playing fields and for public open space, respectively.
- (f) The parties agree that this document operates as a deed poll in favour of the Minister's nominee insofar as this document relates to the transfer of a Land Contribution to the Minister's nominee.

Schedule 4

Security

1 Bank Guarantee

1.1 Developer to provide Bank Guarantees

- (a) In order to secure delivery of Development Contributions under this document, the Developer has agreed to provide security to the Minister in the form of Bank Guarantees.
- (b) A Bank Guarantee required to be provided under this document must:
 - (i) name the "Minister for Planning and Public Spaces and Department of Planning, Industry and Environment ABN 20 770 707 468" as the relevant beneficiaries; and
 - (ii) not have an expiry date.

1.2 Bank Guarantee for legal enforcement

- (a) Upon execution of this document, the Developer will provide security to the Minister in the form of one or more Bank Guarantees for a face value equivalent of **\$600,000**.
- (b) From the date of execution of this document until the date that this document is released and discharged with respect to any part of the Land, the Minister will be entitled to retain the Bank Guarantee provided under **clause 1.2(a)** of this **Schedule 4** for the relevant part of the Land.
- (c) Where one or more Bank Guarantees are required to be provided to the Minister under **clause 9.2(f)**, such Bank Guarantee(s) must be provided in the amount(s) required by the Minister under that clause. From the date that the Bank Guarantee(s) are provided under **clause 9.2(f)** until the date that this document is registered on all of the folios of the Register comprising the Land, the Minister will be entitled to retain the Bank Guarantee(s) to secure registration of this document over all of the relevant folios of the Register comprising the Land.

1.3 Claims under the Bank Guarantee

- (a) In addition to any other rights provided to the Minister under this document with respect to the circumstances in which the Minister may call upon a Bank Guarantee provided under this document, the Minister may:
 - (i) call upon any Bank Guarantee provided under this document where the Developer has failed to provide a Development Contribution to which the security relates by the timeframe

specified for provision of that Development Contribution in this document or is otherwise in default of its obligations under this document, including with respect to Registration of this document on the relevant folios of the Register to the Land; and

- (ii) retain and apply such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this document.
- (b) Prior to calling on a Bank Guarantee, the Minister must give the Developer not less than 10 Business Days written notice.
- (c) If:
 - (i) the Minister calls upon any Bank Guarantee; and
 - (ii) applies all or part of such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this document; and
 - (iii) has notified the Developer under **clause 1.3(b)** of this **Schedule 4**, then the Developer must provide to the Minister a replacement Bank Guarantee to ensure that at all times until the date that this document is released and discharged with respect to the whole of the Land, the Minister is in possession of Bank Guarantees for a face value equivalent to the amount required to be provided in accordance with **clause 9.2(f)** and this **Schedule 4**.

1.4 Release of security

If:

- (a) the Developer has satisfied all of its obligations under this document; and
- (b) the whole of the Bank Guarantees have not been expended and the monies accounted for in accordance with this **Schedule 4**,

then the Minister will promptly return the relevant Bank Guarantees (less any costs, charges, duties and Taxes payable) or the remainder of the monies secured by the relevant Bank Guarantees (as the case may be) to the Developer, less any costs, charges, duties and taxes payable to the Minister by the Developer.

2 Charge over Land

2.1 Grant of charge

- (a) To support the caveat referred to in **clause 9.4** of this document, the Developer charges its rights, titles and interests in the Land in favour of the Minister to secure:
 - (i) the proper and timely performance of the Developer's obligations under this document; and

- (ii) any damages that may be payable to the Minister in the event of any breach of this document by the Developer.
- (b) On the date of execution of this document, the Developer is to, at its cost:
 - (i) give the Minister a written instrument in Registrable form effective to Register the charge on the folios of the Register for the Land;
 - (ii) obtain all necessary consents for the Registration of the charge; and
 - (iii) produce the certificates of title for the Land to permit the Registration of the charge.

2.2 Minister may caveat

For the purposes of **clause 9.4** of this document, the Developer consents to the Minister registering a caveat on the title of the Land to which the charge granted under **clause 2.1** of this **Schedule 4** applies.

2.3 Consent

The provisions in **clause 9.4(b)** of this document apply to the removal of the charge from the Land.

Schedule 5

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW)

1 Parties

The Minister for Planning and Public Spaces of the NSW Department of Planning, Industry and Environment, 320 Pitt Street, Sydney NSW 2000
(Minister)

Australia YMCI Pty Ltd ACN 607 884 711 of Suite 36.01, Level 36, 201 Elizabeth Street, Sydney NSW 2000 **(Developer)**

2 Description of subject land

The Land comprises the following lots:

- (a) Lot 301 in DP541070;
- (b) Lot 26 in DP225350;
- (c) Lot 27 in DP225350;
- (d) Lot 28 in DP225350;
- (e) Lot 12 in DP1217641; and
- (f) Lot 13 in DP1217641.

3 Description of proposed development

Subdivision and development of the Land for residential, retail and commercial purposes.

4 Summary of objectives, nature and effect of the draft planning agreement

4.1 Objectives of Planning Agreement

The objective of the Planning Agreement is to facilitate the development and improvement of public facilities within the Carter Street Priority Precinct and specifically to allow for the:

- (a) provision of monetary contribution amounts to the Minister at a rate of \$109.41 per square metre of GFA, subject to indexation;
- (b) transfer of Road Works Land to the Minister or the Minister's nominee;
- (c) transfer of the Education Land to the Minister or the Minister's nominee for the purpose of a primary school operated for the benefit of the public; and
- (d) transfer the Open Space Land to the Minister or the Minister's nominee for the purpose of public open space.

4.2 Nature of Planning Agreement

The Planning Agreement constitutes a planning agreement under section 7.4 of the Act. The Planning Agreement will be registered on the title to the Land.

5 Assessment of the merits of the draft planning agreement

5.1 The planning purposes served by the Planning Agreement

The Planning Agreement:

- (a) promotes the orderly and economic use and development of the Land to which the Planning Agreement applies;
- (b) promotes good design and amenity of the build environment by facilitating the development of the Land in accordance with the Planning Agreement;
- (c) promotes the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State; and
- (d) promotes increased opportunity for the public in environmental planning and assessment.

5.2 How the Planning Agreement promotes the public interest

The Planning Agreement will promote the public interest by promoting the objects of the Act as set out in sections 1.3(c), (g), (i) and (j) of the Act.

5.3 For Planning Authorities:

Development Corporations – How the Planning Agreement promotes its statutory responsibilities

Not Applicable

Other Public Authorities – How the Planning Agreement promotes the objects (if any) of the Act under which it is constituted

Not Applicable

Councils – How the Planning Agreement promotes the elements of the Council's Charter

Not Applicable

All Planning Authorities – Whether the Planning Agreement conforms with the Authority's Capital Works Program

Not applicable

5.4 Certain requirements of the Planning Agreement to be complied with before issue of Planning Approval or issue of a Complying Development Certificate, Construction Certificate or Subdivision Certificate

The Developer will be required to:

- (a) pay a monetary contribution prior to the issue of an Occupation Certificate for a building or part of a building on any part of the Land;
- (b) transfer the Road Works Land to the Minister or the Minister's nominee within three months of Registration of the Plan of Subdivision which creates a separate lot for the Road Works Land, with the Developer to apply for development consent and such other approvals as are required for subdivision by no later than one month after the Commencing Date, and use best endeavours to obtain those approvals within 12 months of the Commencing Date;
- (c) transfer the Education Land to the Minister or the Minister's nominee by no later than 31 December 2023 with the Developer to apply for development consent and such other approvals as are required for subdivision by no later than 30 November 2022, and use best endeavours to obtain those approvals by no later than 30 September 2023; and
- (d) transfer the Open Space Land to the Minister or the Minister's nominee by no later than 31 December 2023 with the Developer to apply for development consent and such other approvals as are required for subdivision by no later than 30 November 2022, and use best endeavours to obtain those approvals by no later than 30 September 2023.

The provision of the Development Contributions is secured through the requirement for:

- (a) a Bank Guarantee in respect of the Minister's enforcement costs;

- (b) a charge over the Land until the Planning Agreement is registered on the title to the Land;
- (c) the ability for the Minister to call for Bank Guarantees with a face value equivalent to \$109.41 for every square metre of GFA (or any part thereof) subject to CPI indexation that the application of the relevant floor space ratio under the *Auburn Local Environmental Plan 2010* to the Land allows, where the Planning Agreement is not registered on all folios of the Register comprising the Land within 90 Business Days (in addition to the charge and the caveat) and then by registration of the Planning Agreement on the title to the Land;
- (d) a Bank Guarantee in respect of remediation of the Education Land and the ability for the Minister to call for an additional Bank Guarantee in order to secure the costs of removing any encumbrance noted on title to the Education Land;
- (e) a Bank Guarantee in respect of remediation of the Open Space Land and the ability for the Minister to call for an additional Bank Guarantee in order to secure the costs of removing any encumbrance noted on title to the Open Space Land; and
- (f) the Minister also has the ability to compulsorily acquire the Education Land, the Road Works Land and the Open Space Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* if such land is not dedicated in accordance with the Planning Agreement.

Execution

Execution

Executed as a deed.

Signed sealed and delivered)
by the Minister for Planning and Public)
Spaces in the presence of:)

.....
Witness

SANGHYUN YANG
.....
Name of Witness (print)

Brett Whitworth
BRETT WHITWORTH
As delegate of the Minister for
Planning and Public Spaces.

Executed by Australia YMCY Pty Ltd Signed for Australia YMCY Pty Ltd by its attorney under
power of attorney dated 22 July 2020 who has no notice of revocation of that power of
attorney in presence of:

.....
Company Secretary/Director WITNESS

MATT LOADER
.....
Name of Company Secretary/Director
(print) WITNESS

.....
Director Attorney
ANDREW JAMES HALL
.....
Name of Director (print) Attorney

ADDRESS - SUITE 3601, 201 ELIZABETH STREET
SYDNEY NSW 2000

.....
Attorney

Annexure A

Form of Novation Deed



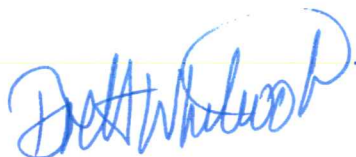
The Minister for Planning and Public Spaces

Australia YMCI Pty Ltd

[New Party]

Deed of Novation for Planning Agreement

Carter Street Priority Precinct
15-21, 23-31 and 33-35 Carter Street, Lidcombe



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Date

Parties

The Minister for Planning and Public Spaces ABN 20 770 707 468 c/- NSW
Department of Planning and Environment, Level 11, 4 Parramatta Square, 12 Darcy
Street Parramatta NSW 2150 (**Minister**)

Australia YMCI Pty Ltd ACN 607 884 711 of Suite 36.01, Level 36, 201 Elizabeth
Street, Sydney NSW 2000 (**Developer**)

[New Party] ACN [Insert ACN] of [Insert address] (**New Party**)

Background

- A The Minister and the Developer are parties to the Planning Agreement.
 - B The Planning Agreement relates to the whole of the Land.
 - C The Developer has entered into the Dealing with the New Party in relation to the Transfer Land.
 - D The Developer wishes to novate the Required Obligations, being its 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:

Dealing	[Insert description of dealing e.g. the sale of the Transfer Land to the New Party].
Effective Date	[Insert date]
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 GST.
Land	Has the meaning given to that term in the Planning

	Agreement.
Planning Agreement	The planning agreement dated [Insert date] and made between the Minister and the Developer.
Required Obligations	The Developer's obligations under the Planning Agreement which relate to the Transfer Land, being: [itemise as required for clarity, including substitution of Bank Guarantees prior to/simultaneously with existing Bank Guarantees, registration of the Planning Agreement, provision of Development Contributions and any arrangements in relation to registration of a caveat, if applicable]
Transfer Land	[Insert description of land], being that part of the Land subject to the Dealing.

2 Novation

2.1 Original Agreement

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

- (a) the New Party is substituted for the Developer as a party to the Planning Agreement;
- (b) the New Party will be required to perform the Required Obligations in accordance with the Planning Agreement; and
- (c) the Developer is released and discharged from the Required Obligations, and from all claims (whether for costs, damages, fees, expenses or otherwise) relating to the Required Obligations.

2.2 Reference in Original Agreement

All references to the Developer in the Planning Agreement which relate to the Required Obligations are to be construed as references to the New Party.

2.3 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: [Insert address]
Fax: [Insert fax]
Contact Person: [Insert contact]
Email: [Insert email]

3 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.

4 Indemnities

- (a) The New Party indemnifies the Developer on demand against all liabilities, claims, damages and loss which the Developer suffers or incurs in relation to the Required Obligations, including those which arise or relate to acts or omissions occurring on or after the Effective Date.
- (b) The New Party indemnifies the Minister in respect of any breach of the Planning Agreement in respect of the Transfer Land by the Developer on demand, including those which arise or relate to breaches in respect of the Transfer Land occurring before, on or after the Effective Date.

5 Warranties and representations

5.1 Warranties

Each party represents and warrants that, at the time of execution, and at the 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.

5.2 Survival of warranties

The warranties and representations in **clause 5.1** survive the execution of this document and the novation of the Planning Agreement.

6 GST

6.1 Construction

In this **clause 6**:

- (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.

6.2 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**).

6.3 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.

6.4 Timing of GST payment

The amount referred to in **clause 6.3** 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.

6.5 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 6.3**.

6.6 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 6.3** 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.

6.7 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 6.7** does not limit the application of **clause 6.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 6.7(a)**.

6.8 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.

6.9 No merger

This **clause 6** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

7 Stamp duty and costs

The Developer 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.

8 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.

9 Amendment

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

10 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.

11 Counterparts

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

12 General

12.1 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.

12.2 Headings

Headings do not affect the interpretation of this document.

12.3 Effect of execution

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

Execution

Executed as a deed/agreement.

Minister

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

.....
Signature of Witness

.....
Name of Witness

.....
Signature of Minister

.....
Name of Minister

Developer

Executed by Australia YMCI Pty Ltd:)
)
)

.....
Company Secretary/Director

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

.....
Director

.....
Name of Director (print)

New Party

Executed by [Insert company name)
and ABN]:)
)

.....
Company Secretary/Director

.....
Director

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

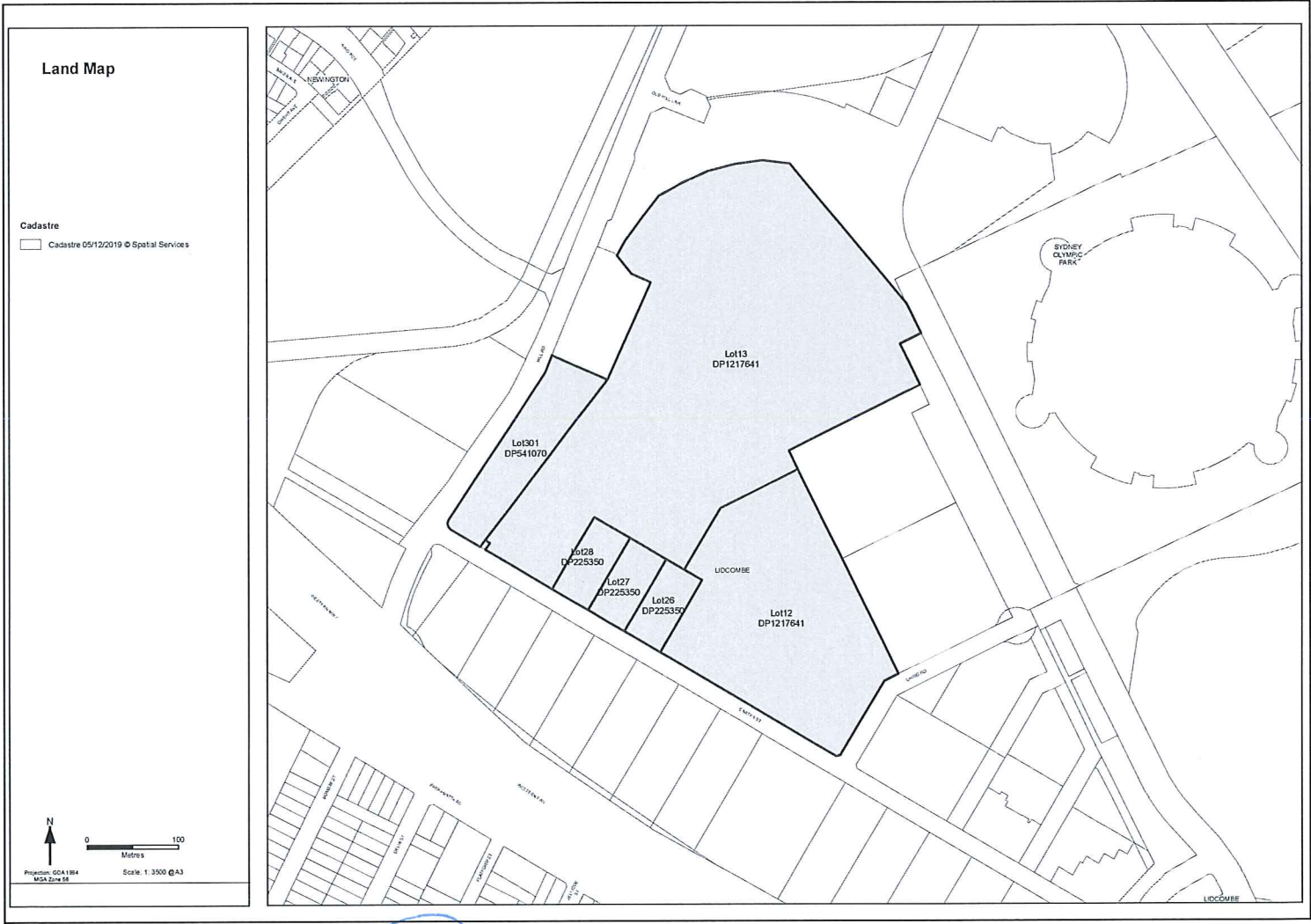
.....
Name of Director (print)



Annexure B

Plan

A handwritten signature in blue ink, appearing to read "Brett Whitlock".A handwritten signature in blue ink, appearing to read "A. Hall".



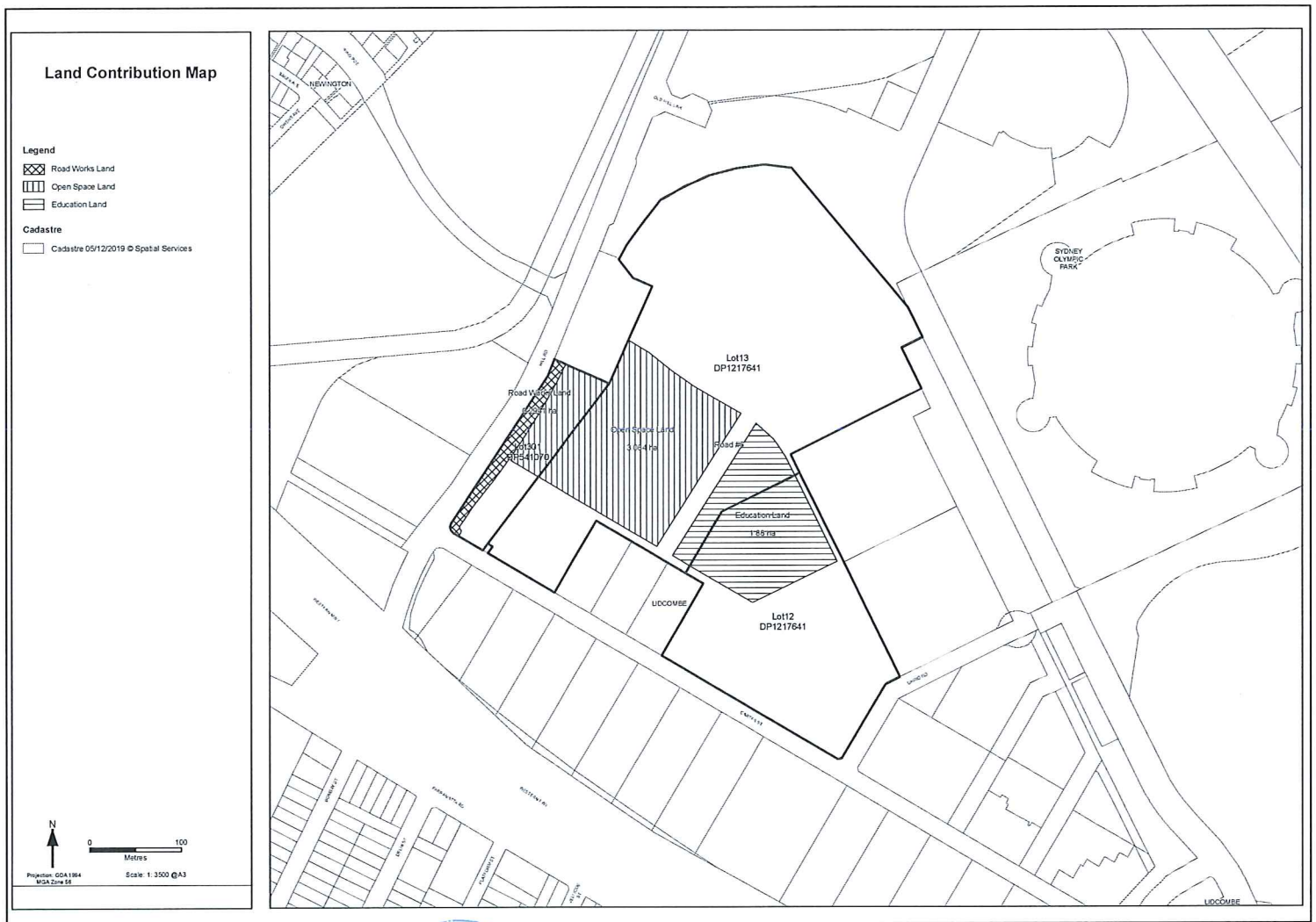
Brett Whitlock

Askill

Annexure C

Education Land, Open Space Land and Road Works
Land





Brett Whitlock

A. Hall

Annexure D

Not used

A handwritten signature in blue ink, appearing to read "Brett Whitlock".A handwritten signature in blue ink, appearing to read "R. Hall".

Annexure E

Bank Guarantee

A handwritten signature in blue ink, appearing to read "Brett Whitlock", is positioned above the footer text on the left side of the page.A handwritten signature in blue ink, appearing to read "R. Hall", is positioned above the footer text on the right side of the page.

FORM OF BANK GUARANTEE

Date: [Insert Date]

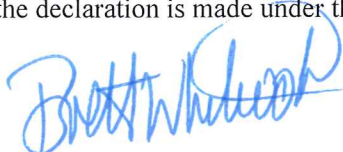
TO: The Minister for Planning and Public Spaces, NSW Department of Planning,
Industry and Environment of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta
NSW 2150

Dear Sirs

Bank Guarantee

NAME OF LENDER (the "**Lender**") has pleasure in detailing the particulars of our Bank Guarantee issued in your favour.

1. At the request of **Australia YMCI Pty Ltd** (the "**Account Party**") and in consideration of **The Minister for Planning and Public Spaces** and the **Department of Planning, Industry and Environment ABN 20 770 707 468** (the "**Beneficiary**") accepting this Bank Guarantee in relation to security for the obligations set out in the Planning Agreement with the Beneficiary (the "**Secured Transaction**"), the Lender unconditionally undertakes to pay any sum or sums which may from time to time be demanded under this Bank Guarantee by the Beneficiary to a maximum total sum of **A\$600,000**.
2. This Bank Guarantee is to continue until the first to occur of:
 - (a) its return to the Lender; or
 - (b) payment at any time to the Beneficiary by the Lender of the maximum amount available under this Bank Guarantee.
3. If the Lender receives a written demand at its office at [ADDRESS OF LENDER] and the demand:
 - (a) purports to be signed on behalf of the Beneficiary;
 - (b) demands payment of all or any part of that sum; and
 - (c) is accompanied by a declaration complying with Clause 4,the Lender will pay to the Beneficiary within [*] Business Days of demand, the amount demanded without further reference to the Account Party and despite any notice to the contrary from the Account Party.
4. A declaration accompanying a demand under this Bank Guarantee must state that:
 - (a) the declarants are 2 officers of the Beneficiary, making the declaration on behalf of the Beneficiary;
 - (b) the declarants have authority to make the declaration on behalf of the Beneficiary;
 - (c) the declaration is made under the Bank Guarantee dated [*];



- (d) the amount claimed is not more than the maximum amount available under this Bank Guarantee;
 - (e) the amount claimed represents an amount or amounts remaining unpaid to the Beneficiary in respect of the Secured Transaction; [and
 - (f) demand for payment of that amount has been made by the Beneficiary on the Account Party and the demand remains unsatisfied].
5. This Bank Guarantee is governed by the laws of New South Wales.
6. This Bank Guarantee may not be assigned without prior written consent of the Lender.

Executed in [*].

On behalf of *NAME OF LENDER*:

Authorised Officer

Authorised Officer

Print Name

Print Name



Annexure F

Caveat

A handwritten signature in blue ink, appearing to read "Brett Whitlock".A handwritten signature in blue ink, appearing to read "A. Hall".

Form:
Edition: 1309
Licence: 04-08-443
Licensee: Corrs Chambers Westgarth

CAVEAT
Prohibiting Recording of a Dealing or Plan
or Granting of a Possessory Application
New South Wales
Section 74F Real Property Act 1900

Leave this space clear. Affix additional
pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

- (A) **TORRENS TITLE** If the claim relates to less than the whole of the land in the Torrens Title, a description of the part or premises affected, consistent with the claim set out on page 2 of this form and in the terms specified by Schedule 4 of the current Real Property Regulation, is required.
Folio identifiers 301/541070, 26/225350, 27/225350, 28/225350, 12/1217641 and 13/1217641
- (B) **REGISTERED DEALING** Number Torrens Title
- (C) **LODGED BY** Document Collection Box Name, Address or DX, Telephone, and Customer Account Number if any
Reference (optional): **CODE**
X
- (D) **REGISTERED PROPRIETOR** Show only the registered proprietor(s) against whom the claim is made: insert the full name and address
Australia YMCI Pty Ltd
Suite 36.01, Level 36, 201 Elizabeth Street
Sydney NSW
Postcode: 2000
- (E) **CAVEATOR** Insert the full name and address (residential if individual/registered office if body corporate)
The Minister for Planning and Public Spaces
Department of Planning, Industry and Environment
Level 11, 4 Parramatta Square, 12 Darcy Street
Parramatta NSW
Postcode: 2150
- (F) **NAME AND ADDRESS IN NEW SOUTH WALES FOR SERVICE OF NOTICES ON THE CAVEATOR** **IMPORTANT NOTE:** The address *must* be a street address. If desired, a Document Exchange box in NSW may be provided *in addition*. If the caveator's name or address for service of notices changes, notification *must* be lodged on form 08CX.
Name: Louise Camenzuli
Street Address:
Corrs Chambers Westgarth
Level 17, 8 Chifley
8-12 Chifley Square
Sydney NSW
NSW postcode: 2000
Document Exchange Box in NSW (additional):
- (G) **ACTION PROHIBITED** List by number only the items in Schedule 2 prohibited by this caveat
1, 2 and 7
- (H) The caveator claims to be entitled to the estate or interest specified in Schedule 1 in the above land/registered dealing by virtue of the instrument/facts set out in that schedule and prohibits the Registrar General from taking, with respect to the land/registered dealing, the action specified above unless the caveator has consented in writing or this caveat has lapsed or been withdrawn.

Paul Whelan

Paul

WARNING: care should be exercised in completing a caveat form. An insupportable caveat may be challenged in the Supreme Court; compensation may be awarded for lodging a caveat without justification (section 74P Real Property Act 1900). Failure to observe the requirements of regulations 7 and 8 of the current Real Property Regulation may make the caveat invalid.

(I) **SCHEDULE 1 Estate or interest claimed**

Particulars of the estate or interest in the land/registered dealing		
Legal interest		
By virtue of the instrument referred to below		
Nature of Instrument	Date	Parties
Planning agreement	[insert date]	The Minister for Planning and Public Spaces Australia YMCI Pty Ltd
By virtue of the facts stated below		
By virtue of the charge over the whole of the land granted by Australia YMCI Pty Ltd to The Minister for Planning and Public Spaces in the above planning agreement		

(J) **SCHEDULE 2 Action prohibited by this caveat**

1. The recording in the Register of any dealing other than a plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
2. The registration or recording of any plan other than a delimitation plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
3. The registration of delimitation plan¹ No.
4. The granting of any possessory application² with respect to the land in the Torrens Title referred to above.
5. The recording in the register of any dealing affecting the estate or interest of which the caveator is registered proprietor.
6. The granting of an application to extinguish the restrictive covenant/easement created by dealing/deposited plan No. .
7. The recording in the Register of a writ affecting the estate or interest claimed by the caveator and set out in Schedule 1.

(K) **STATUTORY DECLARATION³**

I solemnly and sincerely declare that-

1. To the best of my knowledge, information and belief
 - (a) the caveator has a good and valid claim to the estate or interest set out in Schedule 1
 - (b) the address specified at (D) as the address of the registered proprietor is the correct address.
2. This caveat does not require the leave of the Supreme Court or the endorsed consent of the registered proprietor/possessory applicant.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 and I certify this caveat to be correct for the purposes of the Real Property Act 1900.

Made and subscribed at Sydney in the State of NSW on

in the presence of-

- ☐ Justice of the Peace (J.P. Number:) ☒ Practising Solicitor
☐ Other qualified witness Solicitor,

**** who certifies the following matters concerning the making of this statutory declaration by the person who made it:**

1. I saw the face of the person / ~~I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and~~
2. I have known the person for at least 12 months / ~~I have confirmed the person's identity using an identification document and the document I relied on was:~~

Signature of witness:

Signature of declarant:

Capacity of declarant if other than the caveator: Solicitor for the caveator

1 A plan defining the boundaries of land in a limited folio of the Register. See Part IVB Real Property Act 1900.

2 An application made by a person claiming title to land by virtue of adverse possession. See Part VIA Real Property Act 1900

3 As the services of qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. ****If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.**

4 Only one capacity can be selected, either registered proprietor or possessory applicant, cross out whichever does not apply.

[Handwritten signature]

[Handwritten signature]

Annexure G

Deed of Partial Surrender

A handwritten signature in blue ink, appearing to read "Brett Whitworth", with a large, stylized loop at the end.A handwritten signature in blue ink, appearing to read "A. Hall", with a stylized, cursive script.

The Minister for Planning and Public Spaces

Australia YMCI Pty Ltd

Deed of Partial Surrender of Planning Agreement

Carter Street Priority Precinct
Contribution Areas 3, 4 and 5



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Date

Parties

The Minister for Planning and Public Spaces ABN 20 770 707 468 of c/- NSW Department of Planning, Industry and Environment of Level 11, 4 Parramatta Square, 12 Darcy Street Parramatta NSW 2150 (**Minister**)

Australia YMCI Pty Ltd ACN 607 884 711 of Suite 36.01, Level 36, 201 Elizabeth Street, Sydney NSW 2000 (**Developer**)

Background

- A The Parties are parties to the Planning Agreement as novated under the Novation Deeds, which relate to Contribution Areas 3, 4 and 5.
 - B The Parties have agreed, pursuant to clause 21.3 of the Planning Agreement, to surrender the Planning Agreement insofar as it relates to the Land and to Contribution Areas 3, 4 and 5, subject to:
 - a. the Parties entering into the New Planning Agreement; and
 - b. the terms and conditions of this document.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this document these terms have the following meanings:

Act	The <i>Environmental Planning and Assessment Act 1979</i> .
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Claim	Has the meaning given in the Planning Agreement.
Contribution Area 3	Has the meaning given in the Planning Agreement.
Contribution Area 4	Has the meaning given in the Planning Agreement.
Contribution Area	Has the meaning given in the Planning Agreement.

5

Contribution Areas 3, 4 and 5	Contribution Area 3, Contribution Area 4 and Contribution Area 5.
First Landowner	The Trust Company Limited ABN 59 004 027 749 as custodian for the Carter Street Trust ABN 12 909 843 665.
First Trustee	Tallina Pty Ltd ACN 090 716 895 as trustee for the Carter Street Trust ABN 12 909 843 665.
Land	Lot 301 in Deposited Plan 541070, Lots 26 to 28 in Deposited Plan 225350, and Lots 12 and 13 in Deposited Plan 1217641.
New Planning Agreement	The planning agreement (within the meaning of section 7.4 of the Act) between the Minister and the Developer dated [insert].
Novation Deeds	The: <ul style="list-style-type: none">(a) Deed of Novation for Planning Agreement for Contribution Areas 3 and 4 dated 24 March 2016 between the Minister, the Developer, the Original Developer, the First Landowner, the Second Landowner, the Third Landowner, the First Trustee, the Second Trustee and the Third Trustee; and(b) Deed of Novation for Planning Agreement for Contribution Area 5 dated 24 March 2016 between the Minister, the Developer, the Original Developer, the First Landowner, the Second Landowner, the Third Landowner, the First Trustee, the Second Trustee and the Third Trustee.
Original Developer	Goodman Property Services (Aust) Pty Limited ABN 40 088 981 793.
Party	A party to this document.
Planning Agreement	The planning agreement dated 18 November 2015 between the Minister, the Original Developer, the First Landowner, the Second Landowner, the Third Landowner, the First Trustee, the Second Trustee and the Third Trustee, as novated in part to the Developer under the Novation Deeds.
Register	The Torrens title register maintained under the <i>Real Property Act 1900</i> (NSW).
Second Landowner	The Trust Company Limited ABN 59 004 027 749 as custodian for the Hill Road Trust ABN 54 244 152 320.
Second Trustee	Tallina Pty Ltd ACN 090 716 895 as trustee for the Hill Road Trust ABN 54 244 152 320

Surrender Date	The date of commencement of the New Planning Agreement.
Third Landowner	The Trust Company Limited ABN 59 004 027 749 as custodian for the IBC Trust ABN 30 476 081 229.
Third Trustee	Tallina Pty Ltd ACN 090 716 895 as trustee for the IBC Trust ABN 30 476 081 229.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) headings do not affect the interpretation of this document;
- (b) words in the singular include the plural and vice versa;
- (c) any gender includes the other genders;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) 'includes' means includes without limitation;
- (f) 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;
- (g) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iii) 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;
 - (iv) a right includes a benefit, remedy, discretion or power;
 - (v) time is to local time in Sydney;
 - (vi) '\$' or 'dollars' is a reference to Australian currency;
 - (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (viii) this document includes all schedules and annexures to it; and
 - (ix) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;

- (h) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

2 Partial Surrender of Planning Agreement

The Developer and the Minister agree to surrender the Planning Agreement, insofar as it:

- (a) applies to the Land and to Contribution Areas 3, 4 and 5; and
 - (b) has been novated to the Developer under the Novation Deeds,
- on the Surrender Date (or such later date as may be agreed in writing between the Parties), conditional upon the Parties entering into the New Planning Agreement.

3 Release

- (a) Subject to the terms of this document, the Developer and the Minister release and discharge each other from all Claims and obligations whatsoever under the Planning Agreement arising on or after the Surrender Date.
- (b) Nothing in this **clause 3** or otherwise in this document releases or discharges the Parties from their respective obligations and liabilities under the terms and conditions of the Planning Agreement created or incurred prior to the Surrender Date.

4 Release and discharge of Planning Agreement

- (a) The Developer may, at any time following partial surrender of the Planning Agreement under **clause 2**, submit a written request to the Minister seeking a release and discharge of the Planning Agreement from the relevant folio(s) of the Register in respect of the Land.
- (b) The Minister agrees to do all things reasonably required by the Developer, following receipt of a request by the Developer under **clause 4(a)**, to:
 - (i) release and discharge the Planning Agreement with respect to the Land; and
 - (ii) execute any documents required to remove the notation of the Planning Agreement from the relevant folio(s) of the Register in respect of the Land,

subject to the Developer's compliance with the terms of this document.

5 Consent to surrender

The Developer must, at its cost, obtain the consent of any party required to effect the:

- (a) partial surrender of the Planning Agreement under **clause 2**, prior to the Surrender Date; and
- (b) release and discharge of the Planning Agreement from the relevant folio(s) of the Register in respect of the Land under **clause 4**, prior to submitting any request to the Minister under **clause 4(a)**.

6 Security under Planning Agreement

As soon as reasonably practicable after the Surrender Date, and subject to:

- (a) the Parties entering into the New Planning Agreement; and
- (b) the Developer providing each Bank Guarantee required to be provided by the Developer upon entry into the New Planning Agreement,

the Minister will return to the Developer any Bank Guarantee(s) held pursuant to the Planning Agreement.

7 Notices

7.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this document is only given or made if it is in writing and:

- (a) delivered or posted to that Party at its address set out below;
- (b) faxed to that Party at its fax number set out below; or
- (c) emailed to that Party at its email address set out below.

Minister

Attention:	The Planning Secretary
Address:	NSW Department of Planning, Industry and Environment Level 11, 4 Parramatta Square, 12 Darcy Street Parramatta NSW 2150
Fax Number:	Not Used
Email:	planningagreements@planning.nsw.gov.au

Developer

Attention:	Andrew J Hall
------------	---------------

Address: Australia YMCI Pty Ltd
Suite 36.01, Level 36, 201 Elizabeth Street
Sydney NSW 2000

Fax Number: 02 8288 9405

Email: andrew.hall@ymci.com.au

7.2 Change of details

If a Party gives the other Party three Business Days' notice of a change of its address, email address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, emailed or faxed to the latest address, email address or fax number.

7.3 Giving of notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, two Business Days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the senders fax machine a report of an error free transmission to the correct fax number.
- (d) If it is sent by email, at the time the email was sent, provided the sender does not receive a delivery failure notice.

7.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

8 GST

8.1 Construction

In this **clause 8**:

- (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;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and

- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, 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.

8.2 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**).

8.3 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.

8.4 Timing of GST payment

The amount referred to in **clause 8.3** 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.

8.5 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 8.3**.

8.6 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 8.3** 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.

8.7 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 8.7** does not limit the application of **clause 8.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 8.7(a)**.

9 General

9.1 Duty

- (a) The Developer as between the Parties is liable for, must pay, and indemnify the Minister for any stamp duty or like duties or imposts (including any fine, interest or penalty) payable or assessed in connection with this document and any document contemplated by this document.
- (b) If the Minister pays any duty referred to in **clause 9.1(a)**, in whole or in part, Developer must reimburse the paying party without set-off or deduction immediately on demand.

9.2 Legal costs

The Developer must pay and, if paid by Minister, reimburse the Minister its reasonable legal and other costs and expenses of negotiating, preparing, executing, stamping and registering this document.

9.3 Amendment

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

9.4 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a Party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

9.5 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a Party under this document are cumulative and are in addition to any other rights of that Party.

9.6 Consents

Except as expressly stated otherwise in this document, a Party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

9.7 Further steps

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

9.8 Governing law and jurisdiction

- (a) This document is governed by and is 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.

9.9 No Assignment

- (a) A Party must not assign or deal with any right under this document.
- (b) Any purported assignment or dealing in breach of this clause is of no effect.

9.10 Liability

An obligation of two or more persons binds them separately and together.

9.11 Counterparts

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

9.12 Entire understanding

- (a) This document contains the entire understanding between the Parties as to the subject matter of this document.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No Party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

9.13 Relationship of parties

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

9.14 Effect of execution

This document is not binding on any Party unless it or a counterpart has been duly executed by each person named as a Party to this document.

9.15 Deed

This document is a deed. Factors which might suggest otherwise are to be disregarded.

Execution

Executed as a deed.

Signed for and on behalf of **The Minister**)
for Planning and Public Spaces by its)
authorised delegate in the presence of:)

.....
Witness

.....
Name of Witness (print)

Executed by Australia YMCI Pty Ltd)
)

.....
Company Secretary/Director

.....
Director


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

.....
Name of Director (print)



Annexure H

Power of Attorney



Australia YMCI Pty Ltd

Power of Attorney



Ref: LC:LL 9127152 3444-3517-0574v3

© Corrs Chambers Westgarth

Date

Parties

Australia YMCI Pty Ltd ACN 607 884 711 of Suite 36.01, Level 36, 201 Elizabeth Street, Sydney NSW 2000 (**Grantor**)

1 Definitions

In this document these terms have the following meanings:

Attorney	The Minister for Planning and Public Spaces ABN 20 770 707 468 of Level 22, 320 Pitt Street, Sydney NSW 2000, including successors and any person or entity that assumes any or all of the statutory responsibilities, functions or powers of the Minister for Planning and Public Spaces.
Novation Deed for Contribution Areas 3 & 4	The deed entitled ' <i>Deed of Novation for Planning Agreement for Contribution Areas 3 and 4</i> ' dated 24 March 2016 between the Minister for Planning, the Grantor, the Original Developer and the Original Landowners and Trustees.
Novation Deed for Contribution Area 5	The deed entitled ' <i>Deed of Novation for Planning Agreement for Contribution Area 5</i> ' dated 24 March 2016 between the Minister for Planning, the Grantor, the Original Developer and the Original Landowners and Trustees
Novation Deeds	The Novation Deed for Contribution Areas 3 & 4 and the Novation Deed for Contribution Area 5.
Original Developer	Goodman Property Services (Aust) Pty Limited ABN 40 088 981 793.
Original Landowners and Trustees	<ul style="list-style-type: none">(a) The Trust Company Limited ABN 59 004 027 749 as custodian for the Carter Street Trust ABN 12 909 843 665;(b) The Trust Company Limited ABN 59 004 027 749 as custodian for the Hill Road Trust ABN 54 244 152 320;(c) The Trust Company Limited ABN 59 004 027 749 as custodian for the IBC Trust ABN 30 476 081 229;

- (d) Tallina Pty Ltd ACN 090 716 895 as trustee for the Carter Street Trust ABN 12 909 843 665;
- (e) Tallina Pty Ltd ACN 090 716 895 as trustee for the Hill Road Trust ABN 54 244 152 320; and
- (f) Tallina Pty Ltd ACN 090 716 895 as trustee for the IBC Trust ABN 30 476 081 229.

**Planning
Agreement**

The planning agreement dated 18 November 2015 between the Minister for Planning, the Original Developer and the Original Landowners and Trustees, as novated in part to the Grantor under the Novation Deeds, with registered dealing numbers AM540223, AK172109, AK735190 (insofar as it applies to that part novated to the Grantor).

2 Appointment

The Grantor irrevocably appoints the Attorney, including any authorised delegate of the Attorney, as the attorney of the Grantor, with power on behalf of the Grantor to execute any document that would have the effect of surrendering or terminating the Planning Agreement but only on and from the date the Grantor and the Attorney enter into a new planning agreement which applies to the land at 15-21, 23-31 and 33-35 Carter Street, Lidcombe.

3 Exercise of power

The Attorney may:

- (a) exercise a power under this document in the name of the Grantor or in the name of the Attorney and as the act of the Grantor;
- (b) exercise a power under this document unconditionally or subject to any conditions that the Attorney thinks fit;
- (c) appoint one or more substitute attorneys to exercise any of the Attorney's powers and revoke or suspend any appointment; and
- (d) exercise a power notwithstanding that the exercise of the power constitutes a conflict of interest or confers a benefit on the Attorney.

4 Representation

The exercise by the Attorney of any power under this document does not constitute a representation or warranty by the Attorney as to the validity, enforceability, registrability or adequacy of this document or the Planning Agreement.

5 Ratification

The Grantor ratifies and confirms everything the Attorney lawfully does on behalf of the Grantor under this document.

6 Revocation

The Attorney's powers will remain in force until written notice of its revocation is actually received by the Attorney but without prejudice to the validity of any act of the Attorney done before that date, and any person dealing with the Attorney or the Grantor in good faith may assume without enquiry that this document has not been revoked.

7 Registration

The Grantor will promptly on execution and delivery of this document, register it as required by any applicable law. Otherwise, the Attorney may register it on the Grantor's behalf, and the Grantor must pay the Attorney's reasonable costs of doing so within a reasonable time after demand for payment is made.

8 Governing law

This document is governed by and is to be construed in accordance with the laws applicable in New South Wales.

9 Non-execution

This document will be effective and binding upon the Grantor from the date of execution.

Executed as a deed poll in Sydney.

Executed by Australia YMCI Pty Ltd:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

