

RAIL CORPORATION NEW SOUTH WALES

DEED OF CONSENT TO ASSIGNMENT OF LEASE

Deed of Consent to Assignment of Lease

Date

21 December 2017

Parties

Lessor

Rail Corporation New South Wales ABN 59 325 778 353 of Level 2, 36 George Street, Burwood NSW 2134 a New South Wales Government agency constituted by the *Transport Administration Act 1988* (NSW) as amended from time to time

Address for Notices: Level 2, 36 George Street, Burwood NSW 2134

Fax Number: (02) 8202 2339

Contact: General Manager of Property

Assignor

Hurstville Retail Pty Ltd ACN 117 284 901

Address: Suite 801, Level 8, 28-34 O'Connell Street, Sydney NSW 2000

Contact: Michael Figg

Fax Number: 02 9231 4222

Assignee

Hurstville Central Pty Ltd ACN 154 174 839 as trustee for the Hurstville Central Investment Trust

Address: Suite 801, Level 8, 28-34 O'Connell Street, Sydney NSW 2000

Contact: Michael Figg

Fax Number: 02 9231 4222

Background

- A. The Lessor is the registered proprietor of the Land.
- B. By the Lease, the Lessor leased to the Assignor the Premises and the Assignor is entitled to possession of the Premises under the Lease.
- C. The Assignor has agreed to assign to the Assignee its interest in the Lease on the terms and conditions contained in this deed.
- D. The Lessor consents to the transfer of the Assignor's interest in the Lease, subject to the terms of this deed.

Operative Part

Interpretation and Definitions

1. DEFINITIONS

In this document unless the contrary intention appears:

"**Assignor's Covenants**" means the obligations of the Assignor under the Lease whether or not they touch and concern the Land.

"**Buildings**" has the same meaning given in the Lease.

"**Business Day**" means a day that is not a Saturday, Sunday or public holiday in New South Wales.

"**Land**" means the land described in Item 4A of Schedule 1.

"**Lease**" means the lease referred to in Item 3 of Schedule 1.

"**Permitted Use**" has the meaning given to it in the Lease.

"**Personal Information**" means personal information, as defined in the *Privacy Act 1988* (Cth), about the Assignee.

"**Premises**" means the premises referred to in Item 4B of Schedule 1.

"**RailCorp Areas**" has the meaning given to it in the Lease.

"**Transfer Date**" means the date specified in Item 5 of Schedule 1.

2. LESSOR'S CONSENT

Subject to this deed, the Lessor consents to the transfer of the Assignor's interest in the Lease to the Assignee.

3. ASSIGNMENT OF LEASE

From the Transfer Date:

- (a) the Assignor assigns its interest in the Lease to the Assignee; and
- (b) the Assignee accepts the Assignor's interest in the Lease.

4. ASSIGNOR'S OBLIGATIONS

4.1 No release

Nothing in this deed:

- (a) releases the Assignor from the Assignor's Covenants; or
- (b) affects the Lessor's rights against the Assignor under the Lease.

4.2 Assignor's Covenants

The Assignor agrees with the Assignee that the Assignor will for the period before the Transfer Date perform and observe all the Assignor's Covenants.

5. ASSIGNEE'S OBLIGATIONS

5.1 Assignee bound by Lease

Subject to clause 5.2, from the Transfer Date the Assignee must perform the Assignor's Covenants as if it is a party to the Lease and named in the Lease as lessee.

5.2 Payments under the Lease

The Assignee must pay to the Lessor all money payable under the Lease, including any contribution to outgoings for the RailCorp Areas, in which the Premises are located calculated with reference to a period of time beginning from but excluding the Transfer Date.

5.3 Assignee must attend induction training

If the Lessor requires, the Assignee must, prior to entering into occupation of the Premises and at any other time required by the Lessor, attend an induction course or training session organised by the Lessor in relation to the safe operation of any railway facility which is in the vicinity of the Premises or any matter relating to the operation of the Railcorp Areas.

6. RELEASE AND INDEMNITY

6.1 Release and indemnity

(a) Subject to clause 6.1(b), the Assignor:

- (i) releases the Lessor from all obligations under the Lease from the Transfer Date; and
- (ii) indemnifies the Lessor in relation to any costs, expenses or claims which arise out of or in relation to the matters set out in clauses 8 and 9 of this deed and continues to do so pursuant to clause 10.5 of this deed.

(b) Clause 6.1(a) does not apply to a default by the Lessor under the Lease if:

- (i) the default occurred before the Transfer Date; and
- (ii) the Assignor has notified the Lessor of the default in writing before the Transfer Date and that default remains unremedied as at the Transfer Date.

(c) Each indemnity in this deed is independent from the party's other obligations and continues while the Lease is in force and after it expires or is terminated. A party may enforce an indemnity before incurring an expense.

6.2 No Reliance

The Assignee warrants that, except to the extent expressly contained in this deed or in the Lease:

- (a) it has given the Lessor notice in writing before it executed this deed of any warranty, promise, undertaking or representation given by or on behalf of the Lessor that the Assignee has relied on entering into this deed or which has in any material way induced the Assignee to enter into this deed; and

- (b) except as identified by the Assignee pursuant to clause 6.2(a) it has not relied on any express or implied warranty, promise, undertaking or representation made by or on behalf of the Lessor in entering this deed:
 - (i) in respect of the suitability of the Premises for any use or for the carrying on of any business;
 - (ii) in respect of the fixtures, fittings, furnishings, plant or equipment in, or the finish of, the Premises; or
 - (iii) that the Assignee has an exclusive right to carry on the type of business permitted under the Lease.

6.3 Indemnity

The Assignee indemnifies the Lessor against any loss, cost, expense, claim or damage whether direct or indirect, incurred by the Lessor in relation to:

- (a) a breach of the Assignee's warranties contained in clause 6.2; and
- (b) any default by the Assignee under this deed.

The Assignee indemnifies the Assignor against any loss or damage incurred by the Assignor after the Transfer Date in respect of the Assignor's Covenants.

7. FORMS FOR REGISTRATION

7.1 Registration

- (a) The assignment is conditional on the Assignee and Assignor providing to the Lessor's solicitors on or before the date of this deed a stamped Transfer of Lease (Form O1TL) executed by the Assignor and Assignee and otherwise in a registrable form.
- (b) If the Lease is varied by this deed, a Variation of Lease (Form O7VL) in the form attached at Annexure A, must be provided to the Lessor on or before the date of this deed executed by the Assignee and otherwise in a registrable form.
- (c) ~~The Lessor will attend to registration of the Transfer of Lease (Form O1TL) and will give notice to the Assignee and Assignor of the registration details.~~
 The Assignor and Assignee will ensure the registration of a stamped and executed copy of the Transfer of Lease (Form O1TL) as shown in Annexure A of the Deed and will give notice to the Lessor of the registration details
- (d) The Lessor will register the Variation of Lease (Form O7VL) (if any) with Land and Property Information at the Assignor's cost.

I have been authorised
 by the Parties
 to make this
 alteration
 Julie Jiang 22.12.2017

8. PAYMENT OF COSTS

8.1 Assignor to pay Lessor's costs

The Assignor must pay on demand all costs and expenses of the Lessor in relation to:

- (a) negotiation, preparation, execution, delivery, stamping, completion and registration of this deed and the forms referred to in clause 7.1; and
- (b) enforcement or protection or attempted enforcement or protection of any right under this deed,

including but not limited to, any legal costs and expenses and any professional consultant's fees in respect of any of the above on a full indemnity basis.

9. **GST**

9.1 **Definitions**

"**GST**" means the same as in the GST Law.

"**GST Law**" means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

9.2 **Payment of GST**

(a) A recipient of a taxable supply made under this deed must pay to the supplier, in addition to the consideration for the taxable supply, any GST paid or payable by the supplier in respect of the taxable supply without deduction as set-off of any other amount.

(b) The recipient must pay GST to the supplier:

(i) on the same day as the due date for the consideration in respect of the relevant taxable supply; or

(ii) if there is no due date, within 7 days of receiving a written request or a tax invoice from the supplier.

9.3 **Reimbursements**

A party's obligation to reimburse another party for an amount paid or payable to a third party (eg a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

9.4 **Indemnities**

(a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.

(b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

(c) A party may recover a payment under an indemnity before it makes the payment in respect of which the indemnity is given.

10. **GENERAL CLAUSES AND INTERPRETATION**

10.1 **Governing law**

(a) This deed is governed by the law in force in New South Wales.

(b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

10.2 **Giving effect to this deed**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this deed.

10.3 **Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

10.4 **Operation of this deed**

- (a) This deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this deed and has no further effect.
- (b) Any right that a person may have under this deed is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this deed enforceable, unless this would materially change the intended effect of this deed.

10.5 **No merger**

The provisions of this deed do not merge on termination of the Lease.

10.6 **Exclusion of contrary legislation**

Any legislation that adversely affects an obligation of the Lessee, or the exercise by the Lessor of a right or remedy, under or relating to this deed is excluded to the full extent permitted by law.

10.7 **Termination**

Termination of this deed does not affect any rights arising from a breach of this deed before the date of termination.

10.8 **Counterparts**

This deed may be executed in counterparts.

10.9 **Interpretation**

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

- (iii) a party to this deed or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural, and vice versa.
 - (d) A word which suggests one gender includes the other genders.
 - (e) If a word is defined, another part of speech has a corresponding meaning.
 - (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (g) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (h) A reference to a month is to a calendar month.
 - (i) A reference to an Item is to the relevant Item in Schedule 1 - Reference Schedule in this deed.
 - (j) A reference to a **Schedule** is to a schedule appearing at the end of this deed.

10.10 **Multiple parties**

If a party to this deed is made up of more than one person, or a term is used in this deed to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or that term is a reference to each of those persons separately, so that (for example):
 - (i) a representation, warranty or undertaking is given by each of them separately; and
 - (ii) a reference to that party or that term is a reference to each of those persons separately.

11. **COPY OF LEASE**

The Assignee acknowledge and agree that they were provided with a copy of the Lease and the Assignee have read and understood its terms prior to entering into this deed.

Schedule 1**Reference Schedule****Item 1:****Date of deed**

21 December 2017

Item 2:**Lessor**

Name: Rail Corporation New South Wales ABN 59 325 778
353 of Level 20, 477 Pitt Street Sydney NSW 2000,
being a New South Wales Government agency
constituted by the *Transport Administration Act 1988*
(NSW) as amended from time to time

ACN/ABN 59 325 778 353

Address for Service: Level 2, 36 George Street, Burwood NSW 2134

Facsimile: (02) 8202 2339

Attention: General Manager of Property

Item 3:**Lease**

Lease registered number AG823789

Item 4A:**Land**

The land comprised in folio identifiers 2/1157208 and 3/1157208 together
with a right of support over Folio Identifier 1/1157208

Item 4B:**Premises**

The Land and the Buildings, being the premises known as the Offices and
Main Centre over Hurstville Station, being 225H Forest Hurstville NSW 2220,
45 Ormond Parade, Hurstville NSW 2220, 309A Forest Road Hurstville NSW
2220 and 309B Forest Road Hurstville NSW 2220 having an area of
approximately 11,284 square metres.

Item 5:**Transfer Date**

11 December 2017

Executed as a deed

Executed by Lessor

Signed for and on behalf of **Rail Corporation New South Wales ABN 59 325 778 353** in the presence of:

)
)
)

D Stankovic

Signature of Witness

Alex Rogoff

Signature of Authorised Person

DANA STANKOVIC

Print name of Witness

ALEXANDER BASIL ROGLOFF

Print name of Authorised Person

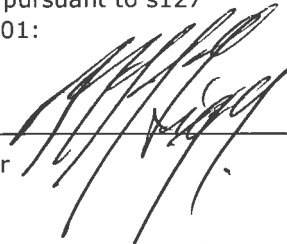
36 GEORGE ST BURWOOD 2134

Address of Witness

Executed by Assignor

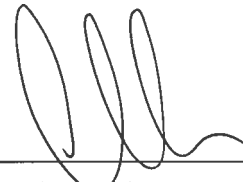
EXECUTED by **Hurstville Retail Pty Ltd**
ACN 117 284 901 pursuant to s127
Corporations Act 2001:

Signature of director



MICHAEL J. FIGG

Print name of director



Signature of director/secretary

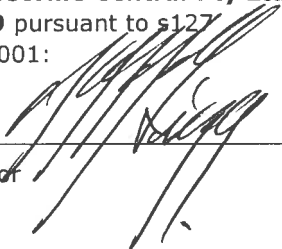
Alton Abrahams

Print name of director/~~secretary~~

Executed by Assignee

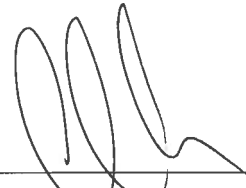
EXECUTED by **Hurstville Central Pty Ltd**
ACN 154 174 839 pursuant to s127
Corporations Act 2001:

Signature of director



MICHAEL J. FIGG

Print name of director



Signature of director/secretary

Alton Abrahams

Print name of director/~~secretary~~

Annexure A
Transfer

Form: 01TL
Firm name: Sparke Helmore Lawyers
Edition: 1303

TRANSFER OF LEASE MORTGAGE OR CHARGE

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

New South Wales
Real Property Act 1900

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) LEASE/CHARGE/
MORTGAGE**

AG823789

(B) TORRENS TITLE

Folio Identifiers 2/1157208 and 3/1157208 together with a right of support over Folio Identifier 1/1157208 (being 225H Forest Road, Hurstville NSW 2220, 45 Ormond Parade, Hurstville NSW 2220, 309A Forest Road, Hurstville NSW 2220 and 309B Forest Road, Hurstville NSW 2220) having an area of approximately 11,284 square metres

(C) LODGED BY

Document
Collection
Box
42G

Name, Address or DX, Telephone and Customer Account Number if any
Sparke Helmore Lawyers 1230095

Reference:

CODE
TL
TM
TC

(D) TRANSFEROR

Hurstville Retail Pty Limited ACN 117 284 901

(E) The transferor acknowledges receipt of the consideration of
and transfers to the transferee all the transferor's estate and interest in the above lease.

(F) Encumbrances (if applicable):

(G) TRANSFEREE

Hurstville Central Pty Ltd ACN 154 174 839

(H) TENANCY:

DATE

//

(I) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company names below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified:

Company: Hurstville Retail Pty Limited ACN 117 284 901
Authority: section 127 of the Corporations Act 2001

Signature of authorised person:
Name of authorised person:
Office held: Director

Signature of Authorised person:
Name of authorised person:
Office held: Directory/Secretary

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company names below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified:

Company: Hurstville Central Pty Ltd ACN 154 174 839
Authority: section 127 of the Corporations Act 2001

Signature of authorised person:
Name of authorised person:
Office held: Director

Signature of Authorised person:
Name of authorised person:
Office held: Director/Secretary

(J) *This section is to be completed where a notice of sale is required and the relevant data has been forwarded through eNOS.*
The transferee's solicitor certifies that the eNOS data relevant to this dealing has been submitted and stored under eNOS ID No. Full name: Signature:

**s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation*