

RAIL CORPORATION NEW SOUTH WALES

KOGARAH TOWN CENTRE PTY LIMITED

KTC-I PTY LIMITED ATF KTC-I UNIT TRUST

KTC-II PTY LIMITED ATF KTC-II UNIT TRUST

KTC-III PTY LIMITED ATF KTC-III UNIT TRUST

KTC-IV PTY LIMITED ATF KTC-IV UNIT TRUST

PETER MANEAS

**DEED OF ASSIGNMENT AND VARIATION OF LEASE
AND LESSOR'S CONSENT**

Deed of Assignment and Variation of Lease and Lessor's Consent

Date 30 September 2016

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

Kogarah Town Centre Pty Limited ACN 134 863 068

Address: 427 King Georges Road, Beverly Hills NSW 2209

Contact: John Digby Lewis

Fax Number: (02) 9570 2295

Assignee

KTC-I Pty Limited ACN 611 172 975 as trustee for KTC-I Unit Trust, KTC-II Pty Limited ACN 611 178 977 as trustee for KTC-II Unit Trust, KTC-III Pty Limited ACN 611 178 986 as trustee for KTC-III Unit Trust, KTC-IV Pty Limited ACN 611 178 995 as trustee for KTC-IV Unit Trust

Address: 30 Montague Street, Balmain NSW 2041

Contact: Richard Manning

Fax Number: (02) 9555 5600

New Guarantor

Name: Peter Maneas

Address: 30 Montague Street, Balmain NSW 2041

Fax Number: (02) 9555 5600

Background

- A. The Lessor is the registered proprietor of the Premises.
- 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. At the request of the New Guarantor, 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 New Guarantor has agreed to indemnify the Lessor for the Assignee's obligations under the Lease and in accordance with this deed.
- E. 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.

"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 leases referred to in Item 3 of Schedule 1.

"New Guarantor" means Peter Maneas.

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

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

"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. Before the Transfer Date, the Assignee must notify the Lessor of the actual Transfer Date.

3. ASSIGNMENT OF LEASE

From the Transfer Date and at the New Guarantor's request:

- (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. RELEASE OF ASSIGNOR AND GUARANTORS

4.1 Release

- (a) Subject to clause 4.1(b), the Lessor releases the Assignor (and any guarantor of the Assignor) from all obligations under the Lease from the Transfer Date.
- (b) Nothing in this deed:
 - (i) releases the Assignor from the Assignor's Covenants for the period during which the Assignor was the lessee under the Lease; or
 - (ii) affects the Lessor's rights against the Assignor under the Lease during the period when the Assignor was lessee 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

- (a) The Assignee must pay to the Lessor all money payable under the Lease which has not been paid by the Assignor, even if the payment is calculated with reference to a period of time beginning before the Transfer Date.
- (b) The Assignor must pay to the Lessor all money payable under the Lease (or any other ancillary document) on or before the date of this deed.

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.

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.

However, the Assignee shall not be liable to indemnify the Lessor under this clause to the extent that such loss or damage is caused by the negligence of the Lessor under this deed or the Lease.

7. FORMS FOR REGISTRATION

7.1 Registration

- (a) The Assignee must execute both original Variations of Lease (Form 07VL) in the forms attached at Annexure A (each in triplicate) ('Variation') and provide them to the Lessor in registrable form on or before the date of this deed.
- (b) The Lessor must execute both original Variations (in triplicate) and provide two original documents for each of them to the Assignee on or before the Transfer Date.
- (c) The Assignee and Assignor must provide to the Lessor (or the Lessor's solicitor) within 2 Business Days after the Transfer Date the following documents:

- (i) a copy of the stamped Transfer of Lease (Form 01TL) executed by the Assignor and Assignee ('**Transfer**');
- (ii) a copy of the Discharge of Mortgage (Form 05DM) in respect of Mortgage AG498622 executed by the mortgagee ('**Discharge of Mortgage**'); and
- (iii) a copy of the Withdrawal of Caveat (Form 08WX) in respect of Caveat AK278567 executed by the caveator ('**Withdrawal of Caveat**').

All of the above documents must be in a registrable form.

- (d) The Lessor must put the certificate of title for lot 2 in DP871296 on deposit at Land and Property Information within a reasonable time of the Assignee's request to do so for the purpose of enabling the Assignee's financiers to lodge the documents referred to in clause 7.1(b), clause 7.1(c) and a Mortgage of Lease (Form 05ML) in respect of a new mortgage in respect of lease N106107 and lease Q999099 to Commonwealth Bank of Australia ('**Mortgage of Lease**') for registration.
- (e) The Assignee must provide the documents referred to in clause 7.1(b) and 7.1(c) to its incoming financier, Commonwealth Bank of Australia, for registration on the Transfer Date.
- (f) The Assignee must ensure the incoming financier registers the documents referred to in clause 7.1(b) and 7.1(c) in the following order:
 - (i) Withdrawal of Caveat;
 - (ii) Discharge of Mortgage;
 - (iii) Transfer;
 - (iv) Variation; and
 - (v) Mortgage of Lease.

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 parties, 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 acknowledges and agrees that it was provided with a copy of the Lease and the Assignee has read and understood its terms prior to entering into this deed.

12. **NEW GUARANTOR**

12.1 **Guarantee**

In consideration of the Lessor consenting to the transfer of the Assignor's interest in the Lease to the Assignee, the New Guarantor unconditionally and irrevocably guarantees to the Lessor the Assignee's due and punctual performance of:

- (a) the Assignor's Covenants;
- (b) the Assignee's obligations under any renewal or extension of the term of the Lease; and
- (c) the Assignee's obligations under this deed.

12.2 Indemnity

The New Guarantor indemnifies the Lessor against any loss or damage incurred by the Lessor as a result of:

- (a) the Assignee's breach of its obligations under this deed or the Assignor's Covenants;
- (b) the Assignor's Covenants being unenforceable;
- (c) any money payable by the lessee under the Lease being irrecoverable; or
- (d) the guarantee contained in clause 12.1 being unenforceable.

However, the New Guarantor shall not be liable to indemnify the Lessor under this clause to the extent that such loss or damage is caused by the negligence of the Lessor under this deed or the Lease.

12.3 Liability of New Guarantor

Every obligation of the New Guarantor under this deed:

- (a) is a principal obligation and not ancillary or collateral to any other obligation; and
- (b) may be enforced by the Lessor against the New Guarantor even if the Lessor does not enforce:
 - (i) any other security it holds in respect of the Assignor's Covenants; or
 - (ii) any right against the Assignee, Assignor or Original Guarantor.

12.4 No release

The New Guarantor's obligations under this deed are not released by:

- (a) the termination of this deed or the Lease;
- (b) the grant to any party of any time, waiver, covenant not to sue or other indulgence; or
- (c) the release of any party from any of its obligations under this deed or the Lease.

12.5 Payment by New Guarantor

The New Guarantor must pay any money payable to the Lessor under this deed on demand.

12.6 Suspension of rights

The New Guarantor must not do any of the following without the Lessor's consent until the Assignor's Covenants have been fully discharged:

- (a) take any step to enforce any right against the Assignee in respect of any money paid by the New Guarantor to the Lessor under this deed;
- (b) exercise any right as surety in competition with the Lessor; or
- (c) share in, or stand in the place of the Lessor, in respect of:
 - (i) any guarantee in favour of, or any security or right to receive money held by the Lessor; or

- (ii) any money held by the Lessor.

12.7 Privacy

The New Guarantor acknowledges and agrees that:

- (a) the Lessor has collected or may collect Personal Information about the New Guarantor for the purpose of assessing the New Guarantor's suitability as a guarantor under the Lease;
- (b) the Personal Information may be disclosed to prospective purchasers of the Premises or to an existing or prospective mortgagee;
- (c) the New Guarantor has a right under the Privacy Act 1988 (Cth), subject to certain exceptions, to obtain access to the Personal Information;
- (d) if the Personal Information is not provided to the Lessor, the Lessor will be hindered in deciding whether or not to lease the Premises to the Assignee; and

this clause does not limit or affect any other acknowledgment or agreement that the New Guarantor has given or entered into, or gives or enters into in the future, in relation to the *Privacy Act 1988* (Cth).

12.8 Limits on guarantee and indemnity

Despite any other provision in this deed:

- (a) any claim by the Lessor against the New Guarantor under the guarantee or indemnity in this clause 12 is limited to a maximum amount of \$2,500,000 (inclusive of GST) per claim; and
- (b) the guarantee and indemnity provided by the New Guarantor under this clause 12 ceases with effect from the date the Lessor confirms in writing to the Assignee that it has accepted (in its reasonable opinion) the audited financial statements provided to the Lessor by the Assignee which evidence that KTC-I Unit Trust, KTC-II Unit Trust, KTC-III Unit Trust and KTC-IV Unit Trust have net tangible assets (including without limitation the Lease) of at least \$2,500,000 in the aggregate and may not be re-enlivened after that date. The Lessor must give its written opinion to the Assignee within 20 Business Days of receiving the audited financial statements.

13. BANK GUARANTEE

- (a) On or before the date of this deed, the Assignee must deliver the bank guarantee for the amount specified in Item 6 to the Lessor (or the Lessor's solicitor).
- (b) The provisions of clause 49 of the Lease registered number N106107 apply to the Assignee save that where any inconsistency between that clause and this deed exists, the provisions of this deed shall prevail.
- (c) If the Assignee does not comply with any of its obligations under the Lease, then the Lessor may call on the bank guarantee without notice to the Assignee.
- (d) If the Lessor changes, then no later than 14 days after the Lessor gives the Assignee a notice asking for it, the Assignee must deliver to the Lessor a replacement bank guarantee in favour of the new Lessor. At the same time, the Lessor must give the Assignee the bank guarantee which is replaced. The parties must co-operate to minimise the cost to the Assignee of obtaining the replacement bank guarantee.

14. VARIATION OF LEASE

From the Transfer Date the Lease is amended as specified in Item 7.

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

30 September 2016

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 numbers N106107 and Q999099 (as varied)

Item 4A:**Land**

The land comprised in folio identifiers 2/871296

Item 4B:**Premises**

The part of the Land being Lots 1 and 2 in Deposited Plan 558531 and Lots 1, 3, 4 and 6-18 in Deposited Plan 251577 and known as Kogarah Town Centre, Railway Parade, Kogarah.

Item 5:**Transfer Date**

The Transfer Date is the date the contract for sale dated 8 March 2016 between the Assignee and the Assignor completes (being a date not earlier than the date of this deed and no later than 3 months after the date of this deed).

Item 6:**Bank Guarantee**

\$50,000.00 (plus GST)

Item 7**Variation of Lease**

As set out in Annexure A to this document.

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:)
)
)

Signature of Witness

Signature of Authorised Person

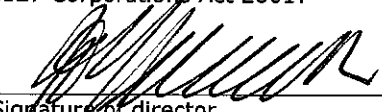
Print name of Witness

Print name of Authorised Person

Address of Witness

Executed by Assignor

EXECUTED by **Kogarah Town Centre Pty Limited ACN 134 863 068** pursuant to s127 Corporations Act 2001:



Signature of director

Signature of director/secretary

JOHN DIBLEY LEWIS

Print name of director
SOLE DIRECTOR

Print name of director/secretary

Executed by Assignee

**EXECUTED by KTC-I Pty Limited ACN
611 172 975 as trustee for KTC-I Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

**EXECUTED by KTC-II Pty Limited ACN
611 178 977 as trustee for KTC-II Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

**EXECUTED by KTC-III Pty Limited ACN
611 178 986 as trustee for KTC-III Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

**EXECUTED by KTC-IV Pty Limited ACN
611 178 995 as trustee for KTC-IV Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

Executed by New Guarantor

SIGNED, SEALED and DELIVERED by
PETER MANEAS in the presence of:

Signature of **PETER MANEAS**

Signature of Witness

Print name of Witness

Address of Witness

Annexure A
Variation of Lease

Form: 07VL
 Licence: 01-05-063
 Licensee: LEAP Legal Software Pty Limited
 Firm name: Property

VARIATION OF LEASE

New South Wales
 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	2/871296
--------------------------	----------

(B) HEAD LEASE	Number	Torrens Title
-----------------------	--------	---------------

(C) LODGED BY	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Document Collection Box</td> <td style="width: 50%;">Name, Address or DX, Telephone and Customer Account Number if any</td> <td style="width: 35%;">CODE</td> </tr> <tr> <td></td> <td>Reference: MK/TJ/161332</td> <td style="text-align: center; vertical-align: middle; font-size: 2em;">VL</td> </tr> </table>	Document Collection Box	Name, Address or DX, Telephone and Customer Account Number if any	CODE		Reference: MK/TJ/161332	VL
Document Collection Box	Name, Address or DX, Telephone and Customer Account Number if any	CODE					
	Reference: MK/TJ/161332	VL					

(D) LESSOR	RAIL CORPORATION NEW SOUTH WALES ABN 59 325 778 353
-------------------	---

(E) LEASE VARIED	Q999099
-------------------------	---------

(F) LESSEE	KTC-I PTY LIMTIED ACN 611 172 975, KTC-II PTY LIMITED ACN 611 178 977, KTC-III PTY LIMITED ACN 611 178 986 AND KTC-IV PTY LIMITED ACN 611 178 995
-------------------	---

- (G)** 1. The **rent** is \$N/A per N/A on and as from N/A
 2. The **term** is N/A years N/A months and N/A days so as to expire on N/A
 3. The **option to renew** is Not Applicable
 4.. The **provisions** of the lease are varied as set out in annexure A hereto.

DATE

(H) I certify that I am an eligible witness and that an authorised officer of the lessor signed this dealing in my presence.
 [See note * below]

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:
 Address of witness:

Authorised officer's name: See page 6 of Annexure A
 Authority of officer: See page 6 of Annexure A
 Signing on behalf of:

Certified correct for the purposes of the Real Property Act 1900 by the company named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appears(s) below.

Company:
 Authority: section 127 of the Corporations Act 2001
 Signature of authorised person:

Signature of authorised person:

Name of authorised person: See page 6 and 7 of Annexure A
 Office held: Director

Name of authorised person:
 Office held: Director

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

THIS IS ANNEXURE A REFERRED TO IN THE VARIATION OF LEASE BETWEEN RAIL CORPORATION NEW SOUTH WALES ABN 59 325 778 353, AS LESSOR AND KTC-I PTY LIMITED ACN 611 172 975, KTC-II PTY LIMITED ACN 611 178 977, KTC-III PTY LIMITED ACN 611 178 986 AND KTC-IV PTY LIMITED ACN 611 178 995, AS LESSEE AND PETER MANEAS, AS GUARANTOR DATED

As from the date the lease registered dealing number Q999099 (**Lease**) is transferred to KTC-I Pty Limited ACN 611 172 975, KTC-II Pty Limited ACN 611 178 977, KTC-III Pty Limited ACN 611 178 986 and KTC-IV Pty Limited ACN 611 178 995 (**Lessee**), the provisions of the Lease are varied as follows:

1. Insert new clause 17 as follows:

17. INSURANCE, RISK AND INDEMNITIES

17.1 Lessee's Insurance obligations

The Lessee must effect and maintain, or cause to be effected and maintained, the following insurances (under one or more policies of insurance) relevant to its obligations under this Lease for the duration of the term:

- (a) public liability insurance written on an occurrence basis which covers the liability of the Lessee, the Lessee's employees, contractors and agents to third parties (and to each other) in respect of:

- (i) bodily injury of, disease or illness to, and death of any person (other than an employee of the insured); and

- (ii) loss of, damage to, or loss of use of tangible property;

arising out of or in connection with the Lessee's occupation of the Premises and which has a limit of not less than \$100 million for each and every occurrence in respect of public liability claims or such other amounts as the Lessor may reasonably require from time to time. The policy must insure the Lessor for its vicarious liability for the acts or omissions of the insureds; and

- (b) property insurance which covers the Lessee for loss of or damage to contents of the Premises (including fixtures, fittings and stock) owned by or in the care, custody or control of the Lessee as a result of all insurable risks which a prudent insured with a risk profile similar to that of the Lessee would maintain acting on the advice of a reputable broker, for the full replacement or reinstatement value of the insured property. The policy must insure the interests of the Lessor in the insured property where relevant.

17.2 Evidence of insurance

At any time during the term of this Lease after receiving a written request from the Lessor (but no more than twice per annum), the Lessee must, within 10 business days, provide to the Lessor a copy of the policies and certificates of currency evidencing the insurances effected and maintained, or caused to be effected and maintained, in compliance with clause 17.1.

17.3 Proceeds of Insurance

If any loss or damage occurs which is covered by any insurance the Lessee is required to maintain under this Lease, the Lessee must, unless otherwise agreed in writing by the Lessor:

- (a) apply for the insurance proceeds immediately; and
- (b) use the proceeds to restore, replace, repair or reinstate the loss or damage and must supplement the proceeds with the Lessee's own money to the extent that the proceeds are insufficient.

17.4 Requirements of Insurance

In respect of the insurances required to be effected by the Lessee under clause 17.1, the Lessee shall:

- (a) effect each insurance for a period of 12 months or more and fully pay the premium for the period of insurance on or before the inception of each policy period;
- (b) identify the risk situation as Kogarah Town Centre, 1 Railway Parade, Kogarah;
- (c) ensure that under the terms of each insurance, the insurance shall not cease to provide cover solely by reason of the fact that the named insured has voluntary or external receivers, receivers and managers, or liquidators appointed;
- (d) ensure that insurances insuring more than one person or entity include a full severability clause under which the insurer agrees not to impute the acts, omissions or non-disclosures of one insured to any other insured for the purposes of determining the rights of the other insured to cover under the insurance;
- (e) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
- (f) punctually pay all premiums, statutory charges, excesses and other sums due under the policy;
- (g) comply with and abide by all the terms and conditions of the policies;
- (h) not do, or omit to do, anything that would entitle the insurers to void or cancel the policy or reduce their liability in respect of any claim;
- (i) not cancel, vary or allow any of the insurances to lapse without the Lessor's prior written consent;
- (j) reinstate a policy if it lapses;
- (k) do everything reasonably required to claim and to collect or recover monies due under any policy; and
- (l) ensure that any insurance policy taken out and maintained by the Lessee or on its behalf does not contain an exclusion in respect of risks associated with rail or for premises situated on, near or in railway stations, tracks or other land owned by a rail operator.

17.5 Insurance Adjustment

- (a) If at any time during the term of this Lease the Lessor acting reasonably determines that the claims limit associated with the public liability insurance policy which the Lessee must maintain in accordance with clause 17.1 is insufficient, then the Lessor may by written notice to the Lessee require the Lessee to increase the claims limit to the amount nominated by the Lessor (**Insurance Notice**).

- (b) The Lessee must, within 60 days of receipt of an Insurance Notice, notify the Lessor in writing if the Lessee disputes the reasonableness of the Insurance Notice (**Insurance Dispute Notice**).
- (c) The Lessor may not issue an Insurance Notice more than once in any 5 year period.

17.6 Resolution of Disputes

- (a) If the Lessee issues an Insurance Dispute Notice, then, within 60 days of the date upon which the Lessee issues an Insurance Dispute Notice the Lessor and the Lessee must negotiate in good faith to agree whether the increase in the claims limit sought by the Lessor associated with the public liability insurance policy which the Lessee must maintain in accordance with clause 17.1 is reasonable.
- (b) If the parties cannot resolve the dispute within 60 days, then either party may refer the matter to the President of the Law Society of New South Wales, who shall be requested to nominate an expert (Expert) to determine whether or not any increase in the claims limit associated with the public liability insurance policy which the Lessee must maintain in accordance with clause 17.1 is reasonable.

17.7 Rules of Expert Determination

- (a) The following rules shall apply to Expert determination:
 - (i) the Expert acts as an expert and not as an arbitrator;
 - (ii) the Expert's decision is final, conclusive and binding on the parties except in the case of manifest error;
- (b) The parties may make written submissions to the expert. If a party makes a written submission, it must give the other party a copy.
- (c) The parties must give every assistance reasonably requested by the Expert (including providing documents).
- (d) The Expert may inquire into the dispute as that person thinks fit.
- (e) The costs of the determination are to be paid in the shares decided by the Expert or if there is no decision about costs, equally.

2. Insert new clause 18 as follows:

18. SIMULTANEOUS ASSIGNMENT

In addition to the requirements set out in clause 11 and 12 of the Head Lease (being dealing number N106107) and subject to the Lessor's written consent, this Lease and the Head Lease (as varied) must only be assigned or transferred together and simultaneously to the same assignee or transferee.

3. Insert new clause 19 as follows:

19. MULTIPLE PARTIES

If a party to this Lease is made up of more than one person, or a term is used in this Lease 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.

4. Insert new clause 17.8 as follows:

17.8 The insurance policies set out in clause 17.1 must note the Lessor as an interested party.

Signing Page

EXECUTED as an agreement

We certify this dealing to be correct for the purposes of the *Real Property Act 1900* (NSW).

Lessor

I certify that I am an eligible witness and the Lessor's authorised officer signed this lease in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness

Signature of authorised officer

Name of witness

Authorised officer's name

Address of witness

Authority of officer

Rail Corporation New South Wales
ABN 59 325 778 353

Signing on behalf of

Lessee

We certify this dealing to be correct for the purposes of the *Real Property Act 1900* (NSW).

EXECUTED by KTC-I Pty Limited ACN 611 172 975 as trustee for KTC-I Unit Trust
pursuant to s127 Corporations Act 2001:

Signature of sole director/secretary

Print name of sole director/secretary

EXECUTED by KTC-II Pty Limited ACN 611 172 975 as trustee for KTC-II Unit Trust
pursuant to s127 Corporations Act 2001:

Signature of sole director/secretary

Print name of sole director/secretary

EXECUTED by **KTC-III Pty Limited ACN 611 172 975** as trustee for **KTC-III Unit Trust** pursuant to s127 Corporations Act 2001:

Signature of sole director/secretary

Print name of sole director/secretary

EXECUTED by **KTC-IV Pty Limited ACN 611 172 975** as trustee for **KTC-IV Unit Trust** pursuant to s127 Corporations Act 2001:

Signature of sole director/secretary

Print name of sole director/secretary

Guarantor

I certify that I am an eligible witness and the Guarantor signed this Lease in my presence:

Certified correct for the purposes of the *Real Property Act 1900* by the Lessee:

Signature of witness

Signature of Guarantor

Name of witness

PETER MANEAS

Name of Guarantor

Address of witness

N.B. s.117 of the *Real Property Act 1900* requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Form: 07VL
 Licence: 01-05-063
 Licensee: LEAP Legal Software Pty Limited
 Firm name: Property

VARIATION OF LEASE

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) TORRENS TITLE	2/871296
-------------------	----------

(B) HEAD LEASE	Number	Torrens Title
----------------	--------	---------------

(C) LODGED BY	Document Collection Box	Name, Address or DX, Telephone and Customer Account Number if any	CODE
		Reference: MK/TJ/161332	VL

(D) LESSOR	RAIL CORPORATION NEW SOUTH WALES ABN 59 325 778 353
------------	---

(E) LEASE VARIED	N106107
------------------	---------

(F) LESSEE	KTC-I PTY LIMITED ACN 611 172 975, KTC-II PTY LIMITED ACN 611 178 977, KTC-III PTY LIMITED ACN 611 178 986 AND KTC-IV PTY LIMITED ACN 611 178 995
------------	---

- (G) 1. The **rent** is \$N/A per N/A on and as from N/A
- 2. The **term** is N/A years N/A months and N/A days so as to expire on N/A
- 3. The **option to renew** is Not Applicable
- 4. The **provisions** of the lease are varied as set out in annexure A hereto.

DATE

(H) I certify that I am an eligible witness and that an authorised officer of the lessor signed this dealing in my presence.
 [See note * below]

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:
 Address of witness:

Authorised officer's name: See page 4 of Annexure A
 Authority of officer: See page 4 of Annexure A
 Signing on behalf of:

Certified correct for the purposes of the Real Property Act 1900 by the company named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appears(s) below.

Company: See page 4 and 5 of Annexure A
 Authority: section 127 of the Corporations Act 2001
 Signature of authorised person:

Signature of authorised person:

Name of authorised person: See page 4 and 5 of Annexure A
 Office held: Director

Name of authorised person:
 Office held: Director

Signing Page

EXECUTED as an agreement

We certify this dealing to be correct for the purposes of the *Real Property Act 1900* (NSW).

Lessor

I certify that I am an eligible witness and the Lessor's authorised officer signed this lease in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness

Signature of authorised officer

Name of witness

Authorised officer's name

Address of witness

Authority of officer

**Rail Corporation New South Wales
ABN 59 325 778 353**

Signing on behalf of

Lessee

We certify this dealing to be correct for the purposes of the *Real Property Act 1900* (NSW).

**EXECUTED by KTC-I Pty Limited ACN
611 172 975 as trustee for KTC-I Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

**EXECUTED by KTC-II Pty Limited ACN
611 172 975 as trustee for KTC-II Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

**EXECUTED by KTC-III Pty Limited ACN
611 172 975 as trustee for KTC-III Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

**EXECUTED by KTC-IV Pty Limited ACN
611 172 975 as trustee for KTC-IV Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

Guarantor

I certify that I am an eligible witness and the
Guarantor signed this Lease in my presence:

Certified correct for the purposes of the *Real
Property Act 1900* by the Lessee:

Signature of witness

Name of witness

Address of witness

Signature of Guarantor

PETER MANEAS

Name of Guarantor

N.B. s.117 of the *Real Property Act 1900* requires that you must have known the signatory for
more than 12 months or have sighted identifying documentation.

RAIL CORPORATION NEW SOUTH WALES

KOGARAH TOWN CENTRE PTY LIMITED

KTC-I PTY LIMITED ATF KTC-I UNIT TRUST

KTC-II PTY LIMITED ATF KTC-II UNIT TRUST

KTC-III PTY LIMITED ATF KTC-III UNIT TRUST

KTC-IV PTY LIMITED ATF KTC-IV UNIT TRUST

PETER MANEAS

**DEED OF ASSIGNMENT AND VARIATION OF LEASE
AND LESSOR'S CONSENT**

Deed of Assignment and Variation of Lease and Lessor's Consent

Date 30 September 2016

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

Kogarah Town Centre Pty Limited ACN 134 863 068

Address: 427 King Georges Road, Beverly Hills NSW 2209

Contact: John Digby Lewis

Fax Number: (02) 9570 2295

Assignee

KTC-I Pty Limited ACN 611 172 975 as trustee for KTC-I Unit Trust, KTC-II Pty Limited ACN 611 178 977 as trustee for KTC-II Unit Trust, KTC-III Pty Limited ACN 611 178 986 as trustee for KTC-III Unit Trust, KTC-IV Pty Limited ACN 611 178 995 as trustee for KTC-IV Unit Trust

Address: 30 Montague Street, Balmain NSW 2041

Contact: Richard Manning

Fax Number: (02) 9555 5600

New Guarantor

Name: Peter Maneas

Address: 30 Montague Street, Balmain NSW 2041

Fax Number: (02) 9555 5600

Background

- A. The Lessor is the registered proprietor of the Premises.
- 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. At the request of the New Guarantor, 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 New Guarantor has agreed to indemnify the Lessor for the Assignee's obligations under the Lease and in accordance with this deed.
- E. 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.

"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 leases referred to in Item 3 of Schedule 1.

"New Guarantor" means Peter Maneas.

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

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

"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. Before the Transfer Date, the Assignee must notify the Lessor of the actual Transfer Date.

3. ASSIGNMENT OF LEASE

From the Transfer Date and at the New Guarantor's request:

- (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. RELEASE OF ASSIGNOR AND GUARANTORS

4.1 Release

- (a) Subject to clause 4.1(b), the Lessor releases the Assignor (and any guarantor of the Assignor) from all obligations under the Lease from the Transfer Date.
- (b) Nothing in this deed:
 - (i) releases the Assignor from the Assignor's Covenants for the period during which the Assignor was the lessee under the Lease; or
 - (ii) affects the Lessor's rights against the Assignor under the Lease during the period when the Assignor was lessee 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

- (a) The Assignee must pay to the Lessor all money payable under the Lease which has not been paid by the Assignor, even if the payment is calculated with reference to a period of time beginning before the Transfer Date.
- (b) The Assignor must pay to the Lessor all money payable under the Lease (or any other ancillary document) on or before the date of this deed.

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.

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.

However, the Assignee shall not be liable to indemnify the Lessor under this clause to the extent that such loss or damage is caused by the negligence of the Lessor under this deed or the Lease.

7. **FORMS FOR REGISTRATION**

7.1 **Registration**

- (a) The Assignee must execute both original Variations of Lease (Form 07VL) in the forms attached at Annexure A (each in triplicate) ('**Variation**') and provide them to the Lessor in registrable form on or before the date of this deed.
- (b) The Lessor must execute both original Variations (in triplicate) and provide two original documents for each of them to the Assignee on or before the Transfer Date.
- (c) The Assignee and Assignor must provide to the Lessor (or the Lessor's solicitor) within 2 Business Days after the Transfer Date the following documents:

- (i) a copy of the stamped Transfer of Lease (Form 01TL) executed by the Assignor and Assignee ('**Transfer**');
- (ii) a copy of the Discharge of Mortgage (Form 05DM) in respect of Mortgage AG498622 executed by the mortgagee ('**Discharge of Mortgage**'); and
- (iii) a copy of the Withdrawal of Caveat (Form 08WX) in respect of Caveat AK278567 executed by the caveator ('**Withdrawal of Caveat**').

All of the above documents must be in a registrable form.

- (d) The Lessor must put the certificate of title for lot 2 in DP871296 on deposit at Land and Property Information within a reasonable time of the Assignee's request to do so for the purpose of enabling the Assignee's financiers to lodge the documents referred to in clause 7.1(b), clause 7.1(c) and a Mortgage of Lease (Form 05ML) in respect of a new mortgage in respect of lease N106107 and lease Q999099 to Commonwealth Bank of Australia ('**Mortgage of Lease**') for registration.
- (e) The Assignee must provide the documents referred to in clause 7.1(b) and 7.1(c) to its incoming financier, Commonwealth Bank of Australia, for registration on the Transfer Date.
- (f) The Assignee must ensure the incoming financier registers the documents referred to in clause 7.1(b) and 7.1(c) in the following order:
 - (i) Withdrawal of Caveat;
 - (ii) Discharge of Mortgage;
 - (iii) Transfer;
 - (iv) Variation; and
 - (v) Mortgage of Lease.

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 parties, 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 acknowledges and agrees that it was provided with a copy of the Lease and the Assignee has read and understood its terms prior to entering into this deed.

12. **NEW GUARANTOR**

12.1 **Guarantee**

In consideration of the Lessor consenting to the transfer of the Assignor's interest in the Lease to the Assignee, the New Guarantor unconditionally and irrevocably guarantees to the Lessor the Assignee's due and punctual performance of:

- (a) the Assignor's Covenants;
- (b) the Assignee's obligations under any renewal or extension of the term of the Lease; and
- (c) the Assignee's obligations under this deed.

12.2 **Indemnity**

The New Guarantor indemnifies the Lessor against any loss or damage incurred by the Lessor as a result of:

- (a) the Assignee's breach of its obligations under this deed or the Assignor's Covenants;
- (b) the Assignor's Covenants being unenforceable;
- (c) any money payable by the lessee under the Lease being irrecoverable; or
- (d) the guarantee contained in clause 12.1 being unenforceable.

However, the New Guarantor shall not be liable to indemnify the Lessor under this clause to the extent that such loss or damage is caused by the negligence of the Lessor under this deed or the Lease.

12.3 **Liability of New Guarantor**

Every obligation of the New Guarantor under this deed:

- (a) is a principal obligation and not ancillary or collateral to any other obligation; and
- (b) may be enforced by the Lessor against the New Guarantor even if the Lessor does not enforce:
 - (i) any other security it holds in respect of the Assignor's Covenants; or
 - (ii) any right against the Assignee, Assignor or Original Guarantor.

12.4 **No release**

The New Guarantor's obligations under this deed are not released by:

- (a) the termination of this deed or the Lease;
- (b) the grant to any party of any time, waiver, covenant not to sue or other indulgence; or
- (c) the release of any party from any of its obligations under this deed or the Lease.

12.5 **Payment by New Guarantor**

The New Guarantor must pay any money payable to the Lessor under this deed on demand.

12.6 **Suspension of rights**

The New Guarantor must not do any of the following without the Lessor's consent until the Assignor's Covenants have been fully discharged:

- (a) take any step to enforce any right against the Assignee in respect of any money paid by the New Guarantor to the Lessor under this deed;
- (b) exercise any right as surety in competition with the Lessor; or
- (c) share in, or stand in the place of the Lessor, in respect of:
 - (i) any guarantee in favour of, or any security or right to receive money held by the Lessor; or

- (ii) any money held by the Lessor.

12.7 **Privacy**

The New Guarantor acknowledges and agrees that:

- (a) the Lessor has collected or may collect Personal Information about the New Guarantor for the purpose of assessing the New Guarantor's suitability as a guarantor under the Lease;
- (b) the Personal Information may be disclosed to prospective purchasers of the Premises or to an existing or prospective mortgagee;
- (c) the New Guarantor has a right under the Privacy Act 1988 (Cth), subject to certain exceptions, to obtain access to the Personal Information;
- (d) if the Personal Information is not provided to the Lessor, the Lessor will be hindered in deciding whether or not to lease the Premises to the Assignee; and

this clause does not limit or affect any other acknowledgment or agreement that the New Guarantor has given or entered into, or gives or enters into in the future, in relation to the *Privacy Act 1988* (Cth).

12.8 **Limits on guarantee and indemnity**

Despite any other provision in this deed:

- (a) any claim by the Lessor against the New Guarantor under the guarantee or indemnity in this clause 12 is limited to a maximum amount of \$2,500,000 (inclusive of GST) per claim; and
- (b) the guarantee and indemnity provided by the New Guarantor under this clause 12 ceases with effect from the date the Lessor confirms in writing to the Assignee that it has accepted (in its reasonable opinion) the audited financial statements provided to the Lessor by the Assignee which evidence that KTC-I Unit Trust, KTC-II Unit Trust, KTC-III Unit Trust and KTC-IV Unit Trust have net tangible assets (including without limitation the Lease) of at least \$2,500,000 in the aggregate and may not be re-enlivened after that date. The Lessor must give its written opinion to the Assignee within 20 Business Days of receiving the audited financial statements.

13. **BANK GUARANTEE**

- (a) On or before the date of this deed, the Assignee must deliver the bank guarantee for the amount specified in Item 6 to the Lessor (or the Lessor's solicitor).
- (b) The provisions of clause 49 of the Lease registered number N106107 apply to the Assignee save that where any inconsistency between that clause and this deed exists, the provisions of this deed shall prevail.
- (c) If the Assignee does not comply with any of its obligations under the Lease, then the Lessor may call on the bank guarantee without notice to the Assignee.
- (d) If the Lessor changes, then no later than 14 days after the Lessor gives the Assignee a notice asking for it, the Assignee must deliver to the Lessor a replacement bank guarantee in favour of the new Lessor. At the same time, the Lessor must give the Assignee the bank guarantee which is replaced. The parties must co-operate to minimise the cost to the Assignee of obtaining the replacement bank guarantee.

14. **VARIATION OF LEASE**

From the Transfer Date the Lease is amended as specified in Item 7.

Schedule 1 Reference Schedule

Item 1: **Date of deed**
30 September 2016

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 numbers N106107 and Q999099 (as varied)

Item 4A: **Land**

The land comprised in folio identifiers 2/871296

Item 4B: **Premises**

The part of the Land being Lots 1 and 2 in Deposited Plan 558531 and Lots 1, 3, 4 and 6-18 in Deposited Plan 251577 and known as Kogarah Town Centre, Railway Parade, Kogarah.

Item 5: **Transfer Date**

The Transfer Date is the date the contract for sale dated 8 March 2016 between the Assignee and the Assignor completes (being a date not earlier than the date of this deed and no later than 3 months after the date of this deed).

Item 6: **Bank Guarantee**

\$50,000.00 (plus GST)

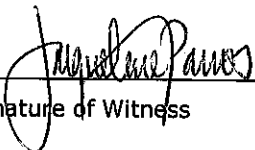
Item 7 **Variation of Lease**

As set out in Annexure A to this document.

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:)
)
)



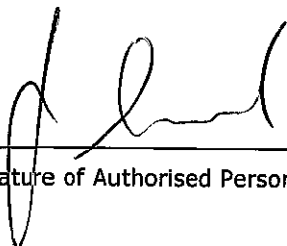
Signature of Witness

JACQUELINE PANOS

Print name of Witness

LEVEL 9, 477 PITT ST, SYDNEY

Address of Witness



Signature of Authorised Person

John Cameron

Print name of Authorised Person

Executed by Assignor

EXECUTED by Kogarah Town Centre Pty Limited ACN 134 863 068 pursuant to s127 Corporations Act 2001:

Signature of director

Print name of director

Signature of director/secretary

Print name of director/secretary

Executed by Assignee

**EXECUTED by KTC-I Pty Limited ACN
611 172 975 as trustee for KTC-I Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

**EXECUTED by KTC-II Pty Limited ACN
611 178 977 as trustee for KTC-II Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

**EXECUTED by KTC-III Pty Limited ACN
611 178 986 as trustee for KTC-III Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

**EXECUTED by KTC-IV Pty Limited ACN
611 178 995 as trustee for KTC-IV Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

Executed by New Guarantor

SIGNED, SEALED and DELIVERED by
PETER MANEAS in the presence of:

Signature of **PETER MANEAS**

Signature of Witness

Print name of Witness

Address of Witness

Annexure A
Variation of Lease

Form: 07VL
Licence: 01-05-063
Licensee: LEAP Legal Software Pty Limited
Firm name: Property

VARIATION OF LEASE

New South Wales
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**

2/871296

(B) **HEAD LEASE**

Number

Torrens Title

(C) **LODGED BY**

Document
Collection
Box

Name, Address or DX, Telephone and Customer Account Number if any

CODE

VL

Reference: MK/TJ/161332

(D) **LESSOR**

RAIL CORPORATION NEW SOUTH WALES ABN 59 325 778 353

(E) **LEASE VARIED**

N106107

(F) **LESSEE**

KTC-I PTY LIMTIED ACN 611 172 975, KTC-II PTY LIMITED ACN 611 178 977, KTC-III PTY LIMITED ACN 611 178 986 AND KTC-IV PTY LIMITED ACN 611 178 995

- (G) 1. The **rent** is \$N/A per N/A on and as from N/A
2. The **term** is N/A years N/A months and N/A days so as to expire on N/A
3. The **option to renew** is Not Applicable
4.. The **provisions** of the lease are varied as set out in annexure A hereto.

DATE

- (H) I certify that I am an eligible witness and that an authorised officer of the lessor signed this dealing in my presence.
[See note * below]

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:

Authorised officer's name: See page 4 of Annexure A

Address of witness:

Authority of officer: See page 4 of Annexure A

Signing on behalf of:

Certified correct for the purposes of the Real Property Act 1900 by the company named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appears(s) below.

Company: See page 4 and 5 of Annexure A
Authority: section 127 of the Corporations Act 2001
Signature of authorised person:

Signature of authorised person:

Name of authorised person: See page 4 and 5 of Annexure A
Office held: Director

Name of authorised person:
Office held: Director

THIS IS ANNEXURE A REFERRED TO IN THE VARIATION OF LEASE BETWEEN RAIL CORPORATION NEW SOUTH WALES ABN 59 325 778 353, AS LESSOR AND KTC-I PTY LIMITED ACN 611 172 975, KTC-II PTY LIMITED ACN 611 178 977, KTC-III PTY LIMITED ACN 611 178 986 AND KTC-IV PTY LIMITED ACN 611 178 995, AS LESSEE AND PETER MANEAS, AS GUARANTOR DATED

As from the date the lease registered dealing number N106107 (**Lease**) is transferred to KTC-I Pty Limited ACN 611 172 975, KTC-II Pty Limited ACN 611 178 977, KTC-III Pty Limited ACN 611 178 986 and KTC-IV Pty Limited ACN 611 178 995 (**Lessee**) (**Transfer Date**), the provisions of the Lease are varied as follows:

1. Insert a new clause 49 as follows:

49. BANK GUARANTEE

- (a) The Lessee must, before the Transfer Date, give to the Lessor, or the Lessor's nominated agent, a bank guarantee which meets all the requirements set out in clause 49(b).
- (b) The bank guarantee must:
- (i) be for an amount of \$50,000 (plus GST);
 - (ii) be drawn in favour of Rail Corporation New South Wales ABN 59 325 778 353 of Level 21, 477 Pitt Street, Sydney NSW 2000 (as the 'beneficiary' under the bank guarantee);
 - (iii) unless otherwise agreed to in writing by the Lessor, specify the Lessee as the party requesting the bank guarantee (as the 'customer' under the bank guarantee);
 - (iv) contain an unconditional and irrevocable undertaking to pay the Lessor on demand;
 - (v) subject to clause 49(e), be for a term of at least five (5) years;
 - (vi) be assignable (unless otherwise agreed to in writing by the Lessor);
 - (vii) be expressed as security for all obligations of the Lessee under this Lease and Lease registered dealing number Q999099 (**'Supplementary Lease'**), and any licensed area or other rights ancillary to this Lease and the Supplementary Lease; and
 - (viii) be issued by a bank or an authorised deposit-taking institution pursuant to the *Banking Act 1959* (Cth) (and, in the case of a bank guarantee issued by an unauthorised deposit-taking institution, the bank guarantee must be approved by the Lessor, acting reasonably).
- (c) If the Lessee defaults under the Lease or and the Supplementary Lease the Lessor may call on the bank guarantee without notice to the Lessee, and apply the proceeds towards remedying the default. If the Lessor calls on all or part of the bank guarantee, the Lessee must give the Lessor an additional or a replacement guarantee so that the amount specified in clause 49(b)(i) is guaranteed.
- (d) If the Lessor has called on the bank guarantee and, after the Lessee's default has been remedied, there are surplus funds held by the Lessor, the Lessor may hold

that surplus as a security deposit until the Lessee replaces the bank guarantee in accordance with clause 49(c).

- (e) At least 12 months prior to the expiry date of the bank guarantee, the Lessee must provide the Lessor with a new bank guarantee that meets all of the requirements set out in clause 49(b).
- (f) If the Lessor (the **transferor**) transfers or assigns its interest in the Premises and or the Land, the Lessor must hand over the bank guarantee to the transferee or Lessee (the **transferee**), and the transferor is unconditionally and irrevocably released from all obligations to the Lessee in relation to the bank guarantee. If requested by the transferee, the Lessee must promptly give to the transferee a replacement bank guarantee in favour of the transferee. If the Lessee does not provide the replacement bank guarantee, the transferor may make demand under the bank guarantee and hand over the proceeds to the transferee to hold as a security deposit instead of the bank guarantee until the Lessee provides the replacement bank guarantee to the transferee.

2. Insert new clause 50 as follows:

50. SIMULTANEOUS ASSIGNMENT

In addition to the requirements set out in clause 11 and 12 of this Lease and subject to the Lessor's written consent, this Lease and Lease registered dealing number Q999099 (as varied) must only be assigned or transferred together and simultaneously to the same assignee or transferee.

3. Insert new clause 51 as follows:

51. MULTIPLE PARTIES

If a party to this Lease is made up of more than one person, or a term is used in this Lease 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.

4. Insert new clause 48.8 as follows:

48.8 The insurance policies set out in clause 48.1 must note the Lessor as an interested party.

Signing Page

EXECUTED as an agreement

We certify this dealing to be correct for the purposes of the *Real Property Act 1900* (NSW).

Lessor

I certify that I am an eligible witness and the Lessor's authorised officer signed this lease in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness

Signature of authorised officer

Name of witness

Authorised officer's name

Address of witness

Authority of officer

Rail Corporation New South Wales
ABN 59 325 778 353

Signing on behalf of

Lessee

We certify this dealing to be correct for the purposes of the *Real Property Act 1900* (NSW).

**EXECUTED by KTC-I Pty Limited ACN
611 172 975 as trustee for KTC-I Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

**EXECUTED by KTC-II Pty Limited ACN
611 172 975 as trustee for KTC-II Unit
Trust** pursuant to s127 Corporations Act
2001:

Signature of sole director

Print name of sole director

**EXECUTED by KTC-III Pty Limited ACN
611 172 975 as trustee for KTC-III Unit
Trust pursuant to s127 Corporations Act
2001:**

Signature of sole director

Print name of sole director

**EXECUTED by KTC-IV Pty Limited ACN
611 172 975 as trustee for KTC-IV Unit
Trust pursuant to s127 Corporations Act
2001:**

Signature of sole director

Print name of sole director

Guarantor

I certify that I am an eligible witness and the
Guarantor signed this Lease in my presence:

Certified correct for the purposes of the *Real
Property Act 1900* by the Lessee:

Signature of witness

Signature of Guarantor

PETER MANEAS

Name of witness

Name of Guarantor

Address of witness

N.B. s.117 of the *Real Property Act 1900* requires that you must have known the signatory for
more than 12 months or have sighted identifying documentation.

Form: 07VL
 Licence: 01-05-063
 Licensee: LEAP Legal Software Pty Limited
 Firm name: Property

VARIATION OF LEASE

New South Wales
 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	2/871296
--------------------------	----------

(B) HEAD LEASE	Number	Torrens Title
-----------------------	--------	---------------

(C) LODGED BY	Document Collection Box	Name, Address or DX, Telephone and Customer Account Number if any	Reference: MK/TJ/161332	CODE VL
----------------------	-------------------------	---	-------------------------	-------------------

(D) LESSOR	RAIL CORPORATION NEW SOUTH WALES ABN 59 325 778 353
-------------------	---

(E) LEASE VARIED	Q999099
-------------------------	---------

(F) LESSEE	KTC-I PTY LIMITED ACN 611 172 975, KTC-II PTY LIMITED ACN 611 178 977, KTC-III PTY LIMITED ACN 611 178 986 AND KTC-IV PTY LIMITED ACN 611 178 995
-------------------	---

- (G) 1. The **rent** is \$N/A per N/A on and as from N/A
 2. The **term** is N/A years N/A months and N/A days so as to expire on N/A
 3. The **option to renew** is Not Applicable
 4. The **provisions** of the lease are varied as set out in annexure A hereto.

DATE

(H) I certify that I am an eligible witness and that an authorised officer of the lessor signed this dealing in my presence.
 [See note * below]

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:

Authorised officer's name: See page 6 of Annexure A

Address of witness:

Authority of officer: See page 6 of Annexure A

Signing on behalf of:

Certified correct for the purposes of the Real Property Act 1900 by the company named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appears(s) below.

Company:

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person: See page 6 and 7 of Annexure A

Name of authorised person:

Office held: Director

Office held: Director

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

THIS IS ANNEXURE A REFERRED TO IN THE VARIATION OF LEASE BETWEEN RAIL CORPORATION NEW SOUTH WALES ABN 59 325 778 353, AS LESSOR AND KTC-I PTY LIMITED ACN 611 172 975, KTC-II PTY LIMITED ACN 611 178 977, KTC-III PTY LIMITED ACN 611 178 986 AND KTC-IV PTY LIMITED ACN 611 178 995, AS LESSEE AND PETER MANEAS, AS GUARANTOR DATED

As from the date the lease registered dealing number Q999099 (**Lease**) is transferred to KTC-I Pty Limited ACN 611 172 975, KTC-II Pty Limited ACN 611 178 977, KTC-III Pty Limited ACN 611 178 986 and KTC-IV Pty Limited ACN 611 178 995 (**Lessee**), the provisions of the Lease are varied as follows:

1. Insert new clause 17 as follows:

17. INSURANCE, RISK AND INDEMNITIES

17.1 Lessee's Insurance obligations

The Lessee must effect and maintain, or cause to be effected and maintained, the following insurances (under one or more policies of insurance) relevant to its obligations under this Lease for the duration of the term:

- (a) public liability insurance written on an occurrence basis which covers the liability of the Lessee, the Lessee's employees, contractors and agents to third parties (and to each other) in respect of:
 - (i) bodily injury of, disease or illness to, and death of any person (other than an employee of the insured); and
 - (ii) loss of, damage to, or loss of use of tangible property;

arising out of or in connection with the Lessee's occupation of the Premises and which has a limit of not less than \$100 million for each and every occurrence in respect of public liability claims or such other amounts as the Lessor may reasonably require from time to time. The policy must insure the Lessor for its vicarious liability for the acts or omissions of the insureds; and

- (b) property insurance which covers the Lessee for loss of or damage to contents of the Premises (including fixtures, fittings and stock) owned by or in the care, custody or control of the Lessee as a result of all insurable risks which a prudent insured with a risk profile similar to that of the Lessee would maintain acting on the advice of a reputable broker, for the full replacement or reinstatement value of the insured property. The policy must insure the interests of the Lessor in the insured property where relevant.

17.2 Evidence of insurance

At any time during the term of this Lease after receiving a written request from the Lessor (but no more than twice per annum), the Lessee must, within 10 business days, provide to the Lessor a copy of the policies and certificates of currency evidencing the insurances effected and maintained, or caused to be effected and maintained, in compliance with clause 17.1.

17.3 Proceeds of Insurance

If any loss or damage occurs which is covered by any insurance the Lessee is required to maintain under this Lease, the Lessee must, unless otherwise agreed in writing by the Lessor:

- (a) apply for the insurance proceeds immediately; and
- (b) use the proceeds to restore, replace, repair or reinstate the loss or damage and must supplement the proceeds with the Lessee's own money to the extent that the proceeds are insufficient.

17.4 Requirements of Insurance

In respect of the insurances required to be effected by the Lessee under clause 17.1, the Lessee shall:

- (a) effect each insurance for a period of 12 months or more and fully pay the premium for the period of insurance on or before the inception of each policy period;
- (b) identify the risk situation as Kogarah Town Centre, 1 Railway Parade, Kogarah;
- (c) ensure that under the terms of each insurance, the insurance shall not cease to provide cover solely by reason of the fact that the named insured has voluntary or external receivers, receivers and managers, or liquidators appointed;
- (d) ensure that insurances insuring more than one person or entity include a full severability clause under which the insurer agrees not to impute the acts, omissions or non-disclosures of one insured to any other insured for the purposes of determining the rights of the other insured to cover under the insurance;
- (e) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
- (f) punctually pay all premiums, statutory charges, excesses and other sums due under the policy;
- (g) comply with and abide by all the terms and conditions of the policies;
- (h) not do, or omit to do, anything that would entitle the insurers to void or cancel the policy or reduce their liability in respect of any claim;
- (i) not cancel, vary or allow any of the insurances to lapse without the Lessor's prior written consent;
- (j) reinstate a policy if it lapses;
- (k) do everything reasonably required to claim and to collect or recover monies due under any policy; and
- (l) ensure that any insurance policy taken out and maintained by the Lessee or on its behalf does not contain an exclusion in respect of risks associated with rail or for premises situated on, near or in railway stations, tracks or other land owned by a rail operator.

17.5 Insurance Adjustment

- (a) If at any time during the term of this Lease the Lessor acting reasonably determines that the claims limit associated with the public liability insurance policy which the Lessee must maintain in accordance with clause 17.1 is insufficient, then the Lessor may by written notice to the Lessee require the Lessee to increase the claims limit to the amount nominated by the Lessor (**Insurance Notice**).

- (b) The Lessee must, within 60 days of receipt of an Insurance Notice, notify the Lessor in writing if the Lessee disputes the reasonableness of the Insurance Notice (**Insurance Dispute Notice**).
- (c) The Lessor may not issue an Insurance Notice more than once in any 5 year period.

17.6 Resolution of Disputes

- (a) If the Lessee issues an Insurance Dispute Notice, then, within 60 days of the date upon which the Lessee issues an Insurance Dispute Notice the Lessor and the Lessee must negotiate in good faith to agree whether the increase in the claims limit sought by the Lessor associated with the public liability insurance policy which the Lessee must maintain in accordance with clause 17.1 is reasonable.
- (b) If the parties cannot resolve the dispute within 60 days, then either party may refer the matter to the President of the Law Society of New South Wales, who shall be requested to nominate an expert (Expert) to determine whether or not any increase in the claims limit associated with the public liability insurance policy which the Lessee must maintain in accordance with clause 17.1 is reasonable.

17.7 Rules of Expert Determination

- (a) The following rules shall apply to Expert determination:
 - (i) the Expert acts as an expert and not as an arbitrator;
 - (ii) the Expert's decision is final, conclusive and binding on the parties except in the case of manifest error;
- (b) The parties may make written submissions to the expert. If a party makes a written submission, it must give the other party a copy.
- (c) The parties must give every assistance reasonably requested by the Expert (including providing documents).
- (d) The Expert may inquire into the dispute as that person thinks fit.
- (e) The costs of the determination are to be paid in the shares decided by the Expert or if there is no decision about costs, equally.

2. Insert new clause 18 as follows:

18. SIMULTANEOUS ASSIGNMENT

In addition to the requirements set out in clause 11 and 12 of the Head Lease (being dealing number N106107) and subject to the Lessor's written consent, this Lease and the Head Lease (as varied) must only be assigned or transferred together and simultaneously to the same assignee or transferee.

3. Insert new clause 19 as follows:

19. MULTIPLE PARTIES

If a party to this Lease is made up of more than one person, or a term is used in this Lease 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.

4. Insert new clause 17.8 as follows:

17.8 The insurance policies set out in clause 17.1 must note the Lessor as an interested party.

**EXECUTED by KTC-III Pty Limited ACN 611
172 975 as trustee for KTC-III Unit Trust**
pursuant to s127 Corporations Act 2001:

Signature of sole director/secretary

Print name of sole director/secretary

**EXECUTED by KTC-IV Pty Limited ACN 611
172 975 as trustee for KTC-IV Unit Trust**
pursuant to s127 Corporations Act 2001:

Signature of sole director/secretary

Print name of sole director/secretary

Guarantor

I certify that I am an eligible witness and the
Guarantor signed this Lease in my presence:

Certified correct for the purposes of the *Real
Property Act 1900* by the Lessee:

Signature of witness

Signature of Guarantor

PETER MANEAS

Name of witness

Name of Guarantor

Address of witness

N.B. s.117 of the *Real Property Act 1900* requires that you must have known the signatory for
more than 12 months or have sighted identifying documentation.

RAIL CORPORATION NEW SOUTH WALES

KOGARAH TOWN CENTRE PTY LIMITED

KTC-I PTY LIMITED ATF KTC-I UNIT TRUST

KTC-II PTY LIMITED ATF KTC-II UNIT TRUST

KTC-III PTY LIMITED ATF KTC-III UNIT TRUST

KTC-IV PTY LIMITED ATF KTC-IV UNIT TRUST

PETER MANEAS

**DEED OF ASSIGNMENT AND VARIATION OF LEASE
AND LESSOR'S CONSENT**

Deed of Assignment and Variation of Lease and Lessor's Consent

Date 30 September 2016

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 Kogarah Town Centre Pty Limited ACN 134 863 068

Address: 427 King Georges Road, Beverly Hills NSW 2209

Contact: John Digby Lewis

Fax Number: (02) 9570 2295

Assignee KTC-I Pty Limited ACN 611 172 975 as trustee for KTC-I Unit Trust, KTC-II Pty Limited ACN 611 178 977 as trustee for KTC-II Unit Trust, KTC-III Pty Limited ACN 611 178 986 as trustee for KTC-III Unit Trust, KTC-IV Pty Limited ACN 611 178 995 as trustee for KTC-IV Unit Trust

Address: 30 Montague Street, Balmain NSW 2041

Contact: Richard Manning

Fax Number: (02) 9555 5600

New Guarantor Name: Peter Maneas

Address: 30 Montague Street, Balmain NSW 2041

Fax Number: (02) 9555 5600

Background

- A. The Lessor is the registered proprietor of the Premises.
- 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. At the request of the New Guarantor, 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 New Guarantor has agreed to indemnify the Lessor for the Assignee's obligations under the Lease and in accordance with this deed.
- E. 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.

"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 leases referred to in Item 3 of Schedule 1.

"New Guarantor" means Peter Maneas.

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

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

"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. Before the Transfer Date, the Assignee must notify the Lessor of the actual Transfer Date.

3. ASSIGNMENT OF LEASE

From the Transfer Date and at the New Guarantor's request:

- (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. **RELEASE OF ASSIGNOR AND GUARANTORS**

4.1 **Release**

- (a) Subject to clause 4.1(b), the Lessor releases the Assignor (and any guarantor of the Assignor) from all obligations under the Lease from the Transfer Date.
- (b) Nothing in this deed:
 - (i) releases the Assignor from the Assignor's Covenants for the period during which the Assignor was the lessee under the Lease; or
 - (ii) affects the Lessor's rights against the Assignor under the Lease during the period when the Assignor was lessee 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**

- (a) The Assignee must pay to the Lessor all money payable under the Lease which has not been paid by the Assignor, even if the payment is calculated with reference to a period of time beginning before the Transfer Date.
- (b) The Assignor must pay to the Lessor all money payable under the Lease (or any other ancillary document) on or before the date of this deed.

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.

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.

However, the Assignee shall not be liable to indemnify the Lessor under this clause to the extent that such loss or damage is caused by the negligence of the Lessor under this deed or the Lease.

7. **FORMS FOR REGISTRATION**

7.1 **Registration**

- (a) The Assignee must execute both original Variations of Lease (Form 07VL) in the forms attached at Annexure A (each in triplicate) ('**Variation**') and provide them to the Lessor in registrable form on or before the date of this deed.
- (b) The Lessor must execute both original Variations (in triplicate) and provide two original documents for each of them to the Assignee on or before the Transfer Date.
- (c) The Assignee and Assignor must provide to the Lessor (or the Lessor's solicitor) within 2 Business Days after the Transfer Date the following documents:

- (i) a copy of the stamped Transfer of Lease (Form 01TL) executed by the Assignor and Assignee (**'Transfer'**);
- (ii) a copy of the Discharge of Mortgage (Form 05DM) in respect of Mortgage AG498622 executed by the mortgagee (**'Discharge of Mortgage'**); and
- (iii) a copy of the Withdrawal of Caveat (Form 08WX) in respect of Caveat AK278567 executed by the caveator (**'Withdrawal of Caveat'**).

All of the above documents must be in a registrable form.

- (d) The Lessor must put the certificate of title for lot 2 in DP871296 on deposit at Land and Property Information within a reasonable time of the Assignee's request to do so for the purpose of enabling the Assignee's financiers to lodge the documents referred to in clause 7.1(b), clause 7.1(c) and a Mortgage of Lease (Form 05ML) in respect of a new mortgage in respect of lease N106107 and lease Q999099 to Commonwealth Bank of Australia (**'Mortgage of Lease'**) for registration.
- (e) The Assignee must provide the documents referred to in clause 7.1(b) and 7.1(c) to its incoming financier, Commonwealth Bank of Australia, for registration on the Transfer Date.
- (f) The Assignee must ensure the incoming financier registers the documents referred to in clause 7.1(b) and 7.1(c) in the following order:
 - (i) Withdrawal of Caveat;
 - (ii) Discharge of Mortgage;
 - (iii) Transfer;
 - (iv) Variation; and
 - (v) Mortgage of Lease.

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 parties, 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 acknowledges and agrees that it was provided with a copy of the Lease and the Assignee has read and understood its terms prior to entering into this deed.

12. **NEW GUARANTOR**

12.1 **Guarantee**

In consideration of the Lessor consenting to the transfer of the Assignor's interest in the Lease to the Assignee, the New Guarantor unconditionally and irrevocably guarantees to the Lessor the Assignee's due and punctual performance of:

- (a) the Assignor's Covenants;
- (b) the Assignee's obligations under any renewal or extension of the term of the Lease; and
- (c) the Assignee's obligations under this deed.

12.2 Indemnity

The New Guarantor indemnifies the Lessor against any loss or damage incurred by the Lessor as a result of:

- (a) the Assignee's breach of its obligations under this deed or the Assignor's Covenants;
- (b) the Assignor's Covenants being unenforceable;
- (c) any money payable by the lessee under the Lease being irrecoverable; or
- (d) the guarantee contained in clause 12.1 being unenforceable.

However, the New Guarantor shall not be liable to indemnify the Lessor under this clause to the extent that such loss or damage is caused by the negligence of the Lessor under this deed or the Lease.

12.3 Liability of New Guarantor

Every obligation of the New Guarantor under this deed:

- (a) is a principal obligation and not ancillary or collateral to any other obligation; and
- (b) may be enforced by the Lessor against the New Guarantor even if the Lessor does not enforce:
 - (i) any other security it holds in respect of the Assignor's Covenants; or
 - (ii) any right against the Assignee, Assignor or Original Guarantor.

12.4 No release

The New Guarantor's obligations under this deed are not released by:

- (a) the termination of this deed or the Lease;
- (b) the grant to any party of any time, waiver, covenant not to sue or other indulgence; or
- (c) the release of any party from any of its obligations under this deed or the Lease.

12.5 Payment by New Guarantor

The New Guarantor must pay any money payable to the Lessor under this deed on demand.

12.6 Suspension of rights

The New Guarantor must not do any of the following without the Lessor's consent until the Assignor's Covenants have been fully discharged:

- (a) take any step to enforce any right against the Assignee in respect of any money paid by the New Guarantor to the Lessor under this deed;
- (b) exercise any right as surety in competition with the Lessor; or
- (c) share in, or stand in the place of the Lessor, in respect of:
 - (i) any guarantee in favour of, or any security or right to receive money held by the Lessor; or

- (ii) any money held by the Lessor.

12.7 **Privacy**

The New Guarantor acknowledges and agrees that:

- (a) the Lessor has collected or may collect Personal Information about the New Guarantor for the purpose of assessing the New Guarantor's suitability as a guarantor under the Lease;
- (b) the Personal Information may be disclosed to prospective purchasers of the Premises or to an existing or prospective mortgagee;
- (c) the New Guarantor has a right under the Privacy Act 1988 (Cth), subject to certain exceptions, to obtain access to the Personal Information;
- (d) if the Personal Information is not provided to the Lessor, the Lessor will be hindered in deciding whether or not to lease the Premises to the Assignee; and

this clause does not limit or affect any other acknowledgment or agreement that the New Guarantor has given or entered into, or gives or enters into in the future, in relation to the *Privacy Act 1988* (Cth).

12.8 **Limits on guarantee and indemnity**

Despite any other provision in this deed:

- (a) any claim by the Lessor against the New Guarantor under the guarantee or indemnity in this clause 12 is limited to a maximum amount of \$2,500,000 (inclusive of GST) per claim; and
- (b) the guarantee and indemnity provided by the New Guarantor under this clause 12 ceases with effect from the date the Lessor confirms in writing to the Assignee that it has accepted (in its reasonable opinion) the audited financial statements provided to the Lessor by the Assignee which evidence that KTC-I Unit Trust, KTC-II Unit Trust, KTC-III Unit Trust and KTC-IV Unit Trust have net tangible assets (including without limitation the Lease) of at least \$2,500,000 in the aggregate and may not be re-enlivened after that date. The Lessor must give its written opinion to the Assignee within 20 Business Days of receiving the audited financial statements.

13. **BANK GUARANTEE**

- (a) On or before the date of this deed, the Assignee must deliver the bank guarantee for the amount specified in Item 6 to the Lessor (or the Lessor's solicitor).
- (b) The provisions of clause 49 of the Lease registered number N106107 apply to the Assignee save that where any inconsistency between that clause and this deed exists, the provisions of this deed shall prevail.
- (c) If the Assignee does not comply with any of its obligations under the Lease, then the Lessor may call on the bank guarantee without notice to the Assignee.
- (d) If the Lessor changes, then no later than 14 days after the Lessor gives the Assignee a notice asking for it, the Assignee must deliver to the Lessor a replacement bank guarantee in favour of the new Lessor. At the same time, the Lessor must give the Assignee the bank guarantee which is replaced. The parties must co-operate to minimise the cost to the Assignee of obtaining the replacement bank guarantee.

14. **VARIATION OF LEASE**

From the Transfer Date the Lease is amended as specified in Item 7.

Schedule 1 Reference Schedule

Item 1: **Date of deed**
30 September 2016

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 numbers N106107 and Q999099 (as varied)

Item 4A: **Land**

The land comprised in folio identifiers 2/871296

Item 4B: **Premises**

The part of the Land being Lots 1 and 2 in Deposited Plan 558531 and Lots 1, 3, 4 and 6-18 in Deposited Plan 251577 and known as Kogarah Town Centre, Railway Parade, Kogarah.

Item 5: **Transfer Date**

The Transfer Date is the date the contract for sale dated 8 March 2016 between the Assignee and the Assignor completes (being a date not earlier than the date of this deed and no later than 3 months after the date of this deed).

Item 6: **Bank Guarantee**

\$50,000.00 (plus GST)

Item 7 **Variation of Lease**

As set out in Annexure A to this document.

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:)
)
)

Signature of Witness

Signature of Authorised Person

Print name of Witness

Print name of Authorised Person

Address of Witness

Executed by Assignor

EXECUTED by **Kogarah Town Centre Pty Limited ACN 134 863 068** pursuant to s127 Corporations Act 2001:

Signature of director

Signature of director/secretary

Print name of director

Print name of director/secretary

Executed by Assignee

**EXECUTED by KTC-I Pty Limited ACN
611 172 975 as trustee for KTC-I Unit
Trust pursuant to s127 Corporations Act
2001:**

Signature of sole director

PETER MANCAS

Print name of sole director

**EXECUTED by KTC-II Pty Limited ACN
611 178 977 as trustee for KTC-II Unit
Trust pursuant to s127 Corporations Act
2001:**

Signature of sole director

PETER MANCAS

Print name of sole director

**EXECUTED by KTC-III Pty Limited ACN
611 178 986 as trustee for KTC-III Unit
Trust pursuant to s127 Corporations Act
2001:**

Signature of sole director

PETER MANCAS

Print name of sole director

**EXECUTED by KTC-IV Pty Limited ACN
611 178 995 as trustee for KTC-IV Unit
Trust pursuant to s127 Corporations Act
2001:**

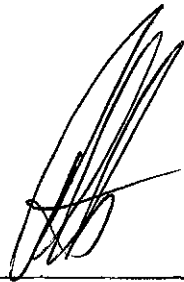
Signature of sole director

PETER MANCAS

Print name of sole director

Executed by New Guarantor

SIGNED, SEALED and DELIVERED by
PETER MANEAS in the presence of:



Signature of **PETER MANEAS**



Signature of Witness

John Georgian

Print name of Witness

15 Alexander Rd Dalton, GA

Address of Witness



Annexure A

Variation of Lease

Form: 07VL
 Licence: 01-05-063
 Licensee: LEAP Legal Software Pty Limited
 Firm name: Property

VARIATION OF LEASE

New South Wales
 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

2/871296

(B) HEAD LEASE

Number

Torrens Title

(C) LODGED BY

Document
Collection
Box

Name, Address or DX, Telephone and Customer Account Number if any

CODE

Reference: MK/TJ/161332

VL

(D) LESSOR

RAIL CORPORATION NEW SOUTH WALES ABN 59 325 778 353

(E) LEASE VARIED

N106107

(F) LESSEE

KTC-I PTY LIMITED ACN 611 172 975, KTC-II PTY LIMITED ACN 611 178 977, KTC-III PTY LIMITED ACN 611 178 986 AND KTC-IV PTY LIMITED ACN 611 178 995

- (G)** 1. The **rent** is \$N/A per N/A on and as from N/A
 2. The **term** is N/A years N/A months and N/A days so as to expire on N/A
 3. The **option to renew** is Not Applicable
 4. The **provisions** of the lease are varied as set out in annexure A hereto.

DATE

(H) I certify that I am an eligible witness and that an authorised officer of the lessor signed this dealing in my presence.
 [See note * below]

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:

Authorised officer's name: See page 4 of Annexure A

Address of witness:

Authority of officer: See page 4 of Annexure A

Signing on behalf of:

Certified correct for the purposes of the Real Property Act 1900 by the company named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appears(s) below.

Company: See page 4 and 5 of Annexure A
 Authority: section 127 of the Corporations Act 2001
 Signature of authorised person:

Signature of authorised person:

Name of authorised person: See page 4 and 5 of Annexure A
 Office held: Director

Name of authorised person:
 Office held: Director

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

THIS IS ANNEXURE A REFERRED TO IN THE VARIATION OF LEASE BETWEEN RAIL CORPORATION NEW SOUTH WALES ABN 59 325 778 353, AS LESSOR AND KTC-I PTY LIMITED ACN 611 172 975, KTC-II PTY LIMITED ACN 611 178 977, KTC-III PTY LIMITED ACN 611 178 986 AND KTC-IV PTY LIMITED ACN 611 178 995, AS LESSEE AND PETER MANEAS, AS GUARANTOR DATED

As from the date the lease registered dealing number N106107 (**Lease**) is transferred to KTC-I Pty Limited ACN 611 172 975, KTC-II Pty Limited ACN 611 178 977, KTC-III Pty Limited ACN 611 178 986 and KTC-IV Pty Limited ACN 611 178 995 (**Lessee**) (**Transfer Date**), the provisions of the Lease are varied as follows:

1. Insert a new clause 49 as follows:

49. BANK GUARANTEE

- (a) The Lessee must, before the Transfer Date, give to the Lessor, or the Lessor's nominated agent, a bank guarantee which meets all the requirements set out in clause 49(b).
- (b) The bank guarantee must:
 - (i) be for an amount of \$50,000 (plus GST);
 - (ii) be drawn in favour of Rail Corporation New South Wales ABN 59 325 778 353 of Level 21, 477 Pitt Street, Sydney NSW 2000 (as the 'beneficiary' under the bank guarantee);
 - (iii) unless otherwise agreed to in writing by the Lessor, specify the Lessee as the party requesting the bank guarantee (as the 'customer' under the bank guarantee);
 - (iv) contain an unconditional and irrevocable undertaking to pay the Lessor on demand;
 - (v) subject to clause 49(e), be for a term of at least five (5) years;
 - (vi) be assignable (unless otherwise agreed to in writing by the Lessor);
 - (vii) be expressed as security for all obligations of the Lessee under this Lease and Lease registered dealing number Q999099 (**'Supplementary Lease'**), and any licensed area or other rights ancillary to this Lease and the Supplementary Lease; and
 - (viii) be issued by a bank or an authorised deposit-taking institution pursuant to the *Banking Act 1959* (Cth) (and, in the case of a bank guarantee issued by an unauthorised deposit-taking institution, the bank guarantee must be approved by the Lessor, acting reasonably).
- (c) If the Lessee defaults under the Lease or and the Supplementary Lease the Lessor may call on the bank guarantee without notice to the Lessee, and apply the proceeds towards remedying the default. If the Lessor calls on all or part of the bank guarantee, the Lessee must give the Lessor an additional or a replacement guarantee so that the amount specified in clause 49(b)(i) is guaranteed.
- (d) If the Lessor has called on the bank guarantee and, after the Lessee's default has been remedied, there are surplus funds held by the Lessor, the Lessor may hold

that surplus as a security deposit until the Lessee replaces the bank guarantee in accordance with clause 49(c).

- (e) At least 12 months prior to the expiry date of the bank guarantee, the Lessee must provide the Lessor with a new bank guarantee that meets all of the requirements set out in clause 49(b).
- (f) If the Lessor (the **transferor**) transfers or assigns its interest in the Premises and or the Land, the Lessor must hand over the bank guarantee to the transferee or Lessee (the **transferee**), and the transferor is unconditionally and irrevocably released from all obligations to the Lessee in relation to the bank guarantee. If requested by the transferee, the Lessee must promptly give to the transferee a replacement bank guarantee in favour of the transferee. If the Lessee does not provide the replacement bank guarantee, the transferor may make demand under the bank guarantee and hand over the proceeds to the transferee to hold as a security deposit instead of the bank guarantee until the Lessee provides the replacement bank guarantee to the transferee.

2. Insert new clause 50 as follows:

50. SIMULTANEOUS ASSIGNMENT

In addition to the requirements set out in clause 11 and 12 of this Lease and subject to the Lessor's written consent, this Lease and Lease registered dealing number Q999099 (as varied) must only be assigned or transferred together and simultaneously to the same assignee or transferee.

3. Insert new clause 51 as follows:

51. MULTIPLE PARTIES

If a party to this Lease is made up of more than one person, or a term is used in this Lease 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.

4. Insert new clause 48.8 as follows:

48.8 The insurance policies set out in clause 48.1 must note the Lessor as an interested party.

Signing Page

EXECUTED as an agreement

We certify this dealing to be correct for the purposes of the *Real Property Act 1900* (NSW).

Lessor

I certify that I am an eligible witness and the Lessor's authorised officer signed this lease in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness

Signature of authorised officer

Name of witness

Authorised officer's name

Address of witness

Authority of officer

Rail Corporation New South Wales
ABN 59 325 778 353

Signing on behalf of

Lessee

We certify this dealing to be correct for the purposes of the *Real Property Act 1900* (NSW).

EXECUTED by **KTC-I Pty Limited ACN 611 172 975 as trustee for KTC-I Unit Trust** pursuant to s127 Corporations Act 2001:

Signature of sole director

Print name of sole director

EXECUTED by **KTC-II Pty Limited ACN 611 172 975 as trustee for KTC-II Unit Trust** pursuant to s127 Corporations Act 2001:

Signature of sole director

Print name of sole director

EXECUTED by **KTC-III Pty Limited ACN 611 172 975 as trustee for KTC-III Unit Trust** pursuant to s127 Corporations Act 2001:

Signature of sole director

Print name of sole director

EXECUTED by **KTC-IV Pty Limited ACN 611 172 975 as trustee for KTC-IV Unit Trust** pursuant to s127 Corporations Act 2001:

Signature of sole director

Print name of sole director

Guarantor

I certify that I am an eligible witness and the Guarantor signed this Lease in my presence:

Certified correct for the purposes of the *Real Property Act 1900* by the Lessee:

Signature of witness

Signature of Guarantor

Name of witness

PETER MANEAS
Name of Guarantor

Address of witness

N.B. s.117 of the *Real Property Act 1900* requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Form: 07VL
 Licence: 01-05-063
 Licensee: LEAP Legal Software Pty Limited
 Firm name: Property

VARIATION OF LEASE

New South Wales
 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

2/871296

(B) HEAD LEASE

Number

Torrens Title

(C) LODGED BY

Document
Collection
Box

Name, Address or DX, Telephone and Customer Account Number if any

CODE

Reference: MK/TJ/161332

VL

(D) LESSOR

RAIL CORPORATION NEW SOUTH WALES ABN 59 325 778 353

(E) LEASE VARIED

Q999099

(F) LESSEE

KTC-I PTY LIMITED ACN 611 172 975, KTC-II PTY LIMITED ACN 611 178 977, KTC-III PTY LIMITED ACN 611 178 986 AND KTC-IV PTY LIMITED ACN 611 178 995

- (G)** 1. The **rent** is \$N/A per N/A on and as from N/A
 2. The **term** is N/A years N/A months and N/A days so as to expire on N/A
 3. The **option to renew** is Not Applicable
 4. The **provisions** of the lease are varied as set out in annexure A hereto.

DATE

- (H)** I certify that I am an eligible witness and that an authorised officer of the lessor signed this dealing in my presence.
 [See note * below]

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:

Authorised officer's name: See page 6 of Annexure A

Address of witness:

Authority of officer: See page 6 of Annexure A

Signing on behalf of:

Certified correct for the purposes of the Real Property Act 1900 by the company named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appears(s) below.

Company:

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person: See page 6 and 7 of Annexure A

Name of authorised person:

Office held: Director

Office held: Director

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

THIS IS ANNEXURE A REFERRED TO IN THE VARIATION OF LEASE BETWEEN RAIL CORPORATION NEW SOUTH WALES ABN 59 325 778 353, AS LESSOR AND KTC-I PTY LIMITED ACN 611 172 975, KTC-II PTY LIMITED ACN 611 178 977, KTC-III PTY LIMITED ACN 611 178 986 AND KTC-IV PTY LIMITED ACN 611 178 995, AS LESSEE AND PETER MANEAS, AS GUARANTOR DATED

As from the date the lease registered dealing number Q999099 (**Lease**) is transferred to KTC-I Pty Limited ACN 611 172 975, KTC-II Pty Limited ACN 611 178 977, KTC-III Pty Limited ACN 611 178 986 and KTC-IV Pty Limited ACN 611 178 995 (**Lessee**), the provisions of the Lease are varied as follows:

1. Insert new clause 17 as follows:

17. INSURANCE, RISK AND INDEMNITIES

17.1 Lessee's Insurance obligations

The Lessee must effect and maintain, or cause to be effected and maintained, the following insurances (under one or more policies of insurance) relevant to its obligations under this Lease for the duration of the term:

- (a) public liability insurance written on an occurrence basis which covers the liability of the Lessee, the Lessee's employees, contractors and agents to third parties (and to each other) in respect of:

- (i) bodily injury of, disease or illness to, and death of any person (other than an employee of the insured); and

- (ii) loss of, damage to, or loss of use of tangible property;

arising out of or in connection with the Lessee's occupation of the Premises and which has a limit of not less than \$100 million for each and every occurrence in respect of public liability claims or such other amounts as the Lessor may reasonably require from time to time. The policy must insure the Lessor for its vicarious liability for the acts or omissions of the insureds; and

- (b) property insurance which covers the Lessee for loss of or damage to contents of the Premises (including fixtures, fittings and stock) owned by or in the care, custody or control of the Lessee as a result of all insurable risks which a prudent insured with a risk profile similar to that of the Lessee would maintain acting on the advice of a reputable broker, for the full replacement or reinstatement value of the insured property. The policy must insure the interests of the Lessor in the insured property where relevant.

17.2 Evidence of insurance

At any time during the term of this Lease after receiving a written request from the Lessor (but no more than twice per annum), the Lessee must, within 10 business days, provide to the Lessor a copy of the policies and certificates of currency evidencing the insurances effected and maintained, or caused to be effected and maintained, in compliance with clause 17.1.

17.3 Proceeds of Insurance

If any loss or damage occurs which is covered by any insurance the Lessee is required to maintain under this Lease, the Lessee must, unless otherwise agreed in writing by the Lessor:

- (a) apply for the insurance proceeds immediately; and
- (b) use the proceeds to restore, replace, repair or reinstate the loss or damage and must supplement the proceeds with the Lessee's own money to the extent that the proceeds are insufficient.

17.4 Requirements of Insurance

In respect of the insurances required to be effected by the Lessee under clause 17.1, the Lessee shall:

- (a) effect each insurance for a period of 12 months or more and fully pay the premium for the period of insurance on or before the inception of each policy period;
- (b) identify the risk situation as Kogarah Town Centre, 1 Railway Parade, Kogarah;
- (c) ensure that under the terms of each insurance, the insurance shall not cease to provide cover solely by reason of the fact that the named insured has voluntary or external receivers, receivers and managers, or liquidators appointed;
- (d) ensure that insurances insuring more than one person or entity include a full severability clause under which the insurer agrees not to impute the acts, omissions or non-disclosures of one insured to any other insured for the purposes of determining the rights of the other insured to cover under the insurance;
- (e) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
- (f) punctually pay all premiums, statutory charges, excesses and other sums due under the policy;
- (g) comply with and abide by all the terms and conditions of the policies;
- (h) not do, or omit to do, anything that would entitle the insurers to void or cancel the policy or reduce their liability in respect of any claim;
- (i) not cancel, vary or allow any of the insurances to lapse without the Lessor's prior written consent;
- (j) reinstate a policy if it lapses;
- (k) do everything reasonably required to claim and to collect or recover monies due under any policy; and
- (l) ensure that any insurance policy taken out and maintained by the Lessee or on its behalf does not contain an exclusion in respect of risks associated with rail or for premises situated on, near or in railway stations, tracks or other land owned by a rail operator.

17.5 Insurance Adjustment

- (a) If at any time during the term of this Lease the Lessor acting reasonably determines that the claims limit associated with the public liability insurance policy which the Lessee must maintain in accordance with clause 17.1 is insufficient, then the Lessor may by written notice to the Lessee require the Lessee to increase the claims limit to the amount nominated by the Lessor (**Insurance Notice**).

Signing Page

EXECUTED as an agreement

We certify this dealing to be correct for the purposes of the *Real Property Act 1900* (NSW).

Lessor

I certify that I am an eligible witness and the Lessor's authorised officer signed this lease in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness

Signature of authorised officer

Name of witness

Authorised officer's name

Address of witness

Authority of officer

**Rail Corporation New South Wales
ABN 59 325 778 353**

Signing on behalf of

Lessee

We certify this dealing to be correct for the purposes of the *Real Property Act 1900* (NSW).

**EXECUTED by KTC-I Pty Limited ACN 611
172 975 as trustee for KTC-I Unit Trust**
pursuant to s127 Corporations Act 2001:

Signature of sole director/secretary

Print name of sole director/secretary

**EXECUTED by KTC-II Pty Limited ACN 611
172 975 as trustee for KTC-II Unit Trust**
pursuant to s127 Corporations Act 2001:

Signature of sole director/secretary

Print name of sole director/secretary

**EXECUTED by KTC-III Pty Limited ACN 611
172 975 as trustee for KTC-III Unit Trust**
pursuant to s127 Corporations Act 2001:

Signature of sole director/secretary

Print name of sole director/secretary

**EXECUTED by KTC-IV Pty Limited ACN 611
172 975 as trustee for KTC-IV Unit Trust**
pursuant to s127 Corporations Act 2001:

Signature of sole director/secretary

Print name of sole director/secretary

Guarantor

I certify that I am an eligible witness and the
Guarantor signed this Lease in my presence:

Certified correct for the purposes of the *Real
Property Act 1900* by the Lessee:

Signature of witness

Signature of Guarantor

PETER MANEAS

Name of witness

Name of Guarantor

Address of witness

N.B. s.117 of the *Real Property Act 1900* requires that you must have known the signatory for
more than 12 months or have sighted identifying documentation.