

Secretary to the Department of Business and Innovation

and

Kew Development Corporation Pty Ltd
ACN 119 766 264

and

Walker Group Holdings Pty Ltd
ACN 001 215 069

Kew Residential Services Development Agreement Second Deed of Variation

Arnold Bloch Leibler
Ref: KAG:01-1606568

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THIS DEED OF VARIATION is made on 13 June 2012

PARTIES

SECRETARY TO THE DEPARTMENT OF BUSINESS AND INNOVATION (formerly the Secretary to the Department of Innovation Industry and Regional Development) acting pursuant to a Nomination Order issued in respect of the Project on 30 August 2005 by the Governor in Council on the recommendation of the Premier, for and on behalf of the Crown in right of the State of Victoria of 121 Exhibition Street, Melbourne, Vic 3000 ("**State**")

and

KEW DEVELOPMENT CORPORATION PTY LTD (ACN 119 766 264) of Level 21, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW 2000 ("**Developer**")

and

WALKER GROUP HOLDINGS PTY LTD (ACN 001 215 069) of Level 21, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW 2000 ("**Guarantor**")

BACKGROUND

A This Deed is supplemental to an agreement titled 'Kew Residential Services Development Agreement' entered between the State, the Developer and the Guarantor dated 27 October 2006 ("**Principal Agreement**") as varied by:

(a) deed of variation dated 28 August 2009; and

(b) deed of release dated 28 August 2009.

B ~~The Vendor and the Purchaser~~ *State, the Developer the Guarantor* have agreed to further vary the Principal Agreement on the terms set out in this Deed. *13/06/2012*

AGREED TERMS

1 Definitions and interpretation

1.1 Capitalised terms which are used but not expressly defined in this Deed have the meanings given in the Principal Agreement.

1.2 The provisions of clauses A1.2 (Construction), A1.11(Delegation), A4.2 (Interpretation of agreement), A7.1 (Representations and warranties), A7.3 (Reliance on Representations and Warranties), A25 (Disputes), A26 (GST), A28 (Confidentiality and publicity), A29 (Communications) and A30 (Miscellaneous) of the Principal Agreement form part of this Deed as if set out at length in this Deed.

2 Variation of Principal Agreement

- 2.1 With effect from the date of this Deed, the Principal Agreement is varied as follows:
- (a) the definition of 'Community Facilities Date for Completion' is deleted and replaced with:

"Community Facilities Date for Completion" means 30 June 2014 (as extended in accordance with this Agreement)".
 - (b) a new definition of "Community Facilities Obligations" is inserted as follows:

"Community Facilities Obligations" means all Obligations of the Developer under this Agreement relating to the Community Facilities, including, without limitation, those provisions in clause B15.
 - (c) The following new definitions are inserted:
 - (i) **"Community Facilities Area"** means that part of the Site comprising the Community Facilities as detailed in the plan attached as schedule 19.
 - (ii) **"Additional Costs"** has the meaning in clause A18A.2.6.
 - (iii) **"Developer CFO Deed"** has the meaning in clause A18.4(g)
 - (iv) **"Additional Project Guarantee"** has the meaning in clause A18.4 (b) (iii)
 - (d) Clause A18.1(a) is deleted and replaced with "not used".
 - (e) Clause A18.1(b) is varied by deleting the words: "After completion of Stage 1, Stage 2, the Initial Stage 2 Community Houses, Stage 3A and the Community Facilities"... in the first line.
 - (f) Clause A18.4(a) is deleted and replaced with:

"(a) the assignee is an experienced developer which has the demonstrated financial capacity and expertise to achieve Completion of the Project in accordance with this Agreement."
 - (g) Clause A18.4(b) is varied by adding, at the end:

"... provided that if, at the date of assignment, the Developer has not Completed the Community Facilities Obligations or the Stage 2 Community Houses:

 - (i) the assignee will not be obliged to Complete the Community Facilities Obligations (but remains obliged to Complete the Stage 2 Community Houses);
 - (ii) the State may exercise its rights against the Developer (but not against the assignee) in accordance with clause A18A in respect of any breach of the Developer's obligations to Complete the Community Facilities Obligations;
 - (iii) the assignee must deliver to the State an Additional Project Guarantee (**Additional Project Guarantee**) for the amount of:
 - (A) \$2 million, where the Initial Stage 2 Community Houses have been Completed;
 - (B) \$2 million, plus \$1 million for each unconstructed Initial Stage 2 Community House (up to a maximum amount of \$4 million), where the Initial Stage 2 Community Houses have not been Completed..
 - (iv) The Additional Project Guarantee to be delivered to the State in accordance with this clause A18.4(b);

- (A) is in addition to the Project Guarantee of \$5 million paid by the Developer and held by the State in accordance with clause A23 of the Agreement pending Completion of the Community Facilities Obligations; and
 - (B) will be held by the State in accordance with the provisions of clauses A23.2 to A23.7 (inclusive) such that the references to "Project Guarantee" in clauses A23.2 to A23.7 (inclusive) will be read to mean "Additional Project Guarantee".
- (v) the State may retain the Project Guarantee of \$5 million paid by the Developer and held by the State as security for Completion of the Community Facilities Obligations in accordance with clause A18A until those Community Facilities Obligations are Completed by the Developer;
 - (vi) the assignee will have no Rights to use or occupy any part of the Site comprising the Community Facilities Area and this Agreement will have no further application to the Community Facilities Area; and
 - (vii) the State may use the Community Facilities Area in any manner it considers desirable and may have access over the balance of the Site as necessary or desirable to complete the Community Facilities Obligations or otherwise use or occupy the Community Facilities Area including granting access to the Developer to enable the Developer to provide or complete the Community Facilities Obligations.
- (h) A new clause A18.4(g) is inserted as follows:
 - "(g) if at the date of assignment the Developer has not Completed the Community Facilities Obligations, the State may require the Developer and the Guarantor to enter into a deed of covenant with the State in relation to the Community Facilities Obligations ("**Developer CFO Deed**"), in a form satisfactory to the State, acting reasonably, under which the Developer agrees to observe the obligations of the Developer solely in respect to the Community Facilities Obligations in accordance with clause A18A and the Guarantor agrees to guarantee the Developer's obligations."
 - (i) Clause A18.6(b)(iv) is varied by adding, at the end

"...provided that in the event that the Financier exercises those step in rights at a time when the Developer has not Completed the Community Facilities Obligations:

 - (A) the Financier will not be obliged to complete the Community Facilities Obligations (to the extent that they have not been completed at the date such step in rights are exercised); and
 - (B) the State may exercise its rights against the Developer (but not against the Financier) under clause A21 (Step In) and A23 (Security) in respect of any breach of the Developer's obligations to complete the Community Facilities Obligations.
 - (j) A new clause A18A is inserted as follows:

"A18A Community Facilities Obligations following Assignment

A18A.1 If this Agreement is assigned in accordance with clause A18.1(b) prior to the Developer having Completed the Community Facilities Obligations, the Developer must:

 - (a) achieve Completion of the Community Facilities Obligations as if the Developer remained the Developer under this

Agreement and assignment under clause A18.1(b) had not occurred; and

(b) enter into the Developer CFO Deed with the State in accordance with clause A18.4(g) in relation to the ongoing performance of the Community Facilities Obligations post assignment.

A18A.2 The Developer CFO Deed to be entered into in accordance with clause A18A.1 and A18.4(g) must provide for the following:

A18A.2.1 the Developer must Complete the Community Facilities Obligations in accordance with the terms and conditions of this Agreement as if those Community Facilities Obligations were set out at length in the Developer CFO Deed;

A18.A.2.2 the State will continue to hold the \$5 million Project Guarantee provided to the State by the Developer in accordance with clause A23.1 of this Agreement, as security for the performance by the Developer of the Community Facilities Obligations;

A18.A.2.3 if the Community Facilities Obligations are not Completed by the Developer, the State may exercise its rights to deliver a Step-in Notice and exercise its Step-in Rights. The provisions of clause A21 of this Agreement will apply as if those provisions were set out at length in the Developer CFO Deed;

A18A.2.4 the State may deduct from the \$5 million Project Guarantee provided to the State by the Developer any costs reasonably incurred by the State in exercising its Step-in Rights or incurred by the State as a consequence of the Community Facilities Obligations not being Completed by the Developer.

A18A.2.5 the provisions of clauses A23.4 to A23.7 (inclusive) of this Agreement will apply in the Developer CFO Deed as if set out at length in the Developer CFO Deed but clause A23.4(a) must be amended as follows: "The \$5 million Project Guarantee shall be released to the Developer on the date being 5 Business Days after Completion of the Community Facilities Obligations";

A18A.2.6 if the State incurs any costs contemplated at clause A18A.2.4 which are not fully recoverable from the \$5 million Project Guarantee provided by the Developer to the State ("**Additional Costs**") those Additional Costs will be a debt due and payable by the Developer to the State. Interest will be payable on any Additional Costs at the rate specified in clause A27 of the Development Agreement as if set out at length in the deed;

A18A.2.7 the Guarantor will guarantee the obligations of the Developer under the Developer CFO Deed on the same terms and conditions as the Guarantee and Indemnity at Part E of this Agreement; and

A18A.2.8 the State will grant the Developer access to the Community Facilities Area as necessary to enable the Community Facilities Obligations to be Completed by the Developer.

- (k) Clause B15.1(b)(i) is amended to read "a 15 metre lap pool;".
- (l) Schedule 18 is amended by deleting the Recreation Centre Specifications contained in Schedule 18 and replacing it with a copy of the Recreation Centre Specifications attached as Attachment 1 to this Deed;
- (m) A new schedule 19 is inserted in the form of Attachment 2 to this Deed.

3 General

- 3.1 Each party must bear and pay their own legal costs relating to the preparation, negotiation and execution of this Deed. All stamp duty payable on or in respect of this Deed must be paid by the Developer.
- 3.2 The parties acknowledge and agree that:
 - (a) the provisions of the Principal Agreement (as expressly varied by this Deed) continue in full force and effect; and
 - (b) the provisions of the Principal Agreement shall be read and construed so as to give effect to the provisions of this Deed, and in the event of conflict or inconsistency the latter shall prevail.

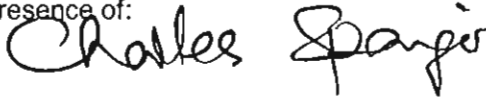
4 Consent and Acknowledgement of Guarantor

- 4.1 The Guarantor acknowledges and consents to the provisions of this Deed and the variation of the Principal Agreement made by this Deed.
- 4.2 The Guarantor acknowledges that the guarantee in Part E of the Principal Agreement continues in full force and effect following execution of this Deed and extends and applies to the Developer's obligations under this Deed.

EXECUTED as a DEED

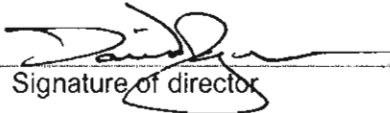
SIGNED by: )
)

Tim Bamford, Executive Director, Major Projects Victoria in his capacity as authorised delegate of the Secretary to the Department of Business and Innovation for and on behalf of the Crown in right of the State of Victoria in the presence of:



CHARLES SPANJER

Signature of witness (print)

EXECUTED by KEW DEVELOPMENT CORPORATION PTY LTD)
)



Signature of director

DAVID RYAN
Name of director (print)

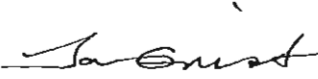

Signature of director/company secretary (delete as applicable)

IAN GRIST
Name of director/company secretary (print)

EXECUTED by WALKER GROUP HOLDINGS PTY LTD)
)


Signature of director

DAVID RYAN
Name of director (print)


Signature of director/company secretary (delete as applicable)

IAN GRIST
Name of director/company secretary (print)

Attachment 1

Schedule 18 - Recreation Centre Specifications

Attachment 2

Schedule 19 – Community Facilities Area

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LEGEND

-  PROPOSED STREET TREE PLANTING TO REFLECT HISTORICAL ALIGNMENT
-  EXISTING TREE TO BE RETAINED
-  PUBLIC OPEN SPACE
-  COMMUNITY FACILITIES AREA



B1 SHEET



COMMUNITY FACILITIES AREA PLAN

KEW MAIN DRIVE
21st MAY 2012 REV 'D'



