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Date **30, 3, 2016**

Kew Residential Services Development Agreement Fifth Deed of Variation

**Secretary to the Department of Economic Development, Jobs, Transport and
Resources**
and

Kew Development Corporation Pty Ltd
ACN 119 766 264
and

Walker Group Holdings Pty Ltd
ACN 001 215 069



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Kew Residential Services Development Agreement Fifth Deed of Variation

Dated 30 / 3 / 2016

Parties

Name	Secretary to the Department of Economic Development, Jobs, Transport and Resources, 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 behalf of the Crown in right of the State of Victoria
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Address	121 Exhibition Street, Melbourne, Vic 3000
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Short name	State
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Name	Kew Development Corporation Pty Ltd ACN 119 766 264
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Address	Level 21, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW 2000
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Short name	Developer
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Name	Walker Group Holdings Pty Ltd ACN 001 215 069
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Address	Level 21, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW 2000
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Short name	Guarantor
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Background

- A. This Deed is supplemental to an agreement titled 'Kew Residential Services Development Agreement' entered into between the State, the Developer and the Guarantor dated 27 October 2006 (**Principal Agreement**) as varied by:
- A.1 Deed of Variation between the State, the Developer and the Guarantor dated 28 August 2009;
 - A.2 Deed of Release between the State, the Developer and the Guarantor dated 28 August 2009;
 - A.3 Second Deed of Variation between the State, the Developer and the Guarantor dated 13 June 2012;
 - A.4 Third Deed of Variation between the State, the Developer and the Guarantor dated 8 April 2013; and



A.5 Fourth Deed of Variation between the State, the Developer and the Guarantor dated 18 June 2014.

B. The State, the Developer and the Guarantor have agreed to further vary the Principal Agreement on the terms and conditions set out in this Deed.

The Parties Agree

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

With effect from the date of this Deed, the Principal Agreement is varied as follows:

2.1 New Definitions

The following new definitions are inserted into the Principal Agreement:

- (a) **'Fifth Deed of Variation'** means the document titled 'Fifth Deed of Variation' between the State, the Developer and the Guarantor;
- (b) **'Additional Interest Payment Guarantee'** has the meaning in clause A23.10;
- (c) **'Expended Amount'** has the meaning in clause B15(b).

2.2 Amended Definitions

The following definitions in the Principal Agreement are amended as follows:

- (a) The definition of 'Revised Development Payment Date' is amended as follows:
'Revised Development Payment Date' means 27 June 2016.
- (b) The definition of 'Project Guarantee' is amended as follows:
'Project Guarantee' means the Bank Guarantees or performance or other bonds for the amounts specified in Schedule 7 and includes the New Project Guarantee, Heritage Guarantee, Initial Stage 2 Community Houses Payment Guarantee, Balance Payment Guarantee, Additional Interest Payment Guarantee and Retention Guarantee.

2.3 Amendments to Clause A23

Clause A23 is amended as follows:

- (a) A new clause A23.8A is inserted as follows:

A23.8A Additional Interest Payment Guarantee

On the date specified in schedule 7, the Developer must deliver to the State the Additional Interest Payment Guarantee.

- (b) A new definition is inserted in clause A23.10 as follows:

Additional Interest Payment Guarantee means the Project Guarantee for \$1,400,000 in favour of the State to be provided by the Developer in accordance with clause A23.8A.

2.4 Marketing and other assistance

The following new clause is inserted into the Principal Agreement:

'C15 Marketing and other assistance

- (a) In this clause C15:

State Retained Areas means the Heritage Buildings and the land surrounding the Heritage Buildings as shown in the plan in Schedule 21 (subject to adjustments required under planning and heritage applications), the Car Park and any other areas of the Site retained by the State and not forming or intending to form a Sale Lot forming part of the Project.

Assistance means the provision of staff and other resources as reasonably necessary or desirable to assist the State in relation to:

- (a) the preparation of plans of subdivision for the State Retained Areas;
- (b) assist in relation to the preparation, supplying all required information and the application for a planning permit or permits and any heritage or other permits required for the use and development of the State Retained Areas;
- (c) preparation of documents required as part of a planning or heritage permit in relation to the proposed use and development of the State Retained Areas. Any external costs incurred in this sub clause will form part of the Expended Amount subject to it being pre-approved by the State;
- (d) preparation and assistance with marketing plans and other relevant documentation in relation to the use and development of the State Retained Areas; and
- (e) all other assistance reasonably necessary or desirable in relation to the proposed use and development of the State Retained Areas.

Relevant Materials means anything created, made, provided, produced or reproduced by or on behalf of the Developer (including by or on behalf of any sub-contractor) in connection with the provision of the Assistance.

- (b) The Developer must provide the State, at no cost to the State, the Assistance in relation to the development and sale by the State of the State Retained Areas.
- (c) The Developer acknowledges and agrees that the State may deal with the State Retained Areas in any manner it considers appropriate and that the

Developer has no interest, pre-emptive or other rights in relation to the State Retained Areas.

(d) The Developer:

(i) grants to the State; and

(ii) must do all things reasonably necessary to give effect to the grant to the State of,

an irrevocable, nonexclusive, perpetual, transferable, royalty free licence (including the right to sub-licence) all of the Developer's right title and interest to use and exercise the Relevant Materials in or used in relation to the provision of the Assistance for the purpose of the design, construction, completion and sale of the State Retained Areas.

(e) The licensed rights granted pursuant to paragraph (d) will survive termination or expiry of this Agreement.

(f) The Developer must sign all documents and do anything reasonably required by the State to give effect to the licence in paragraph (d).

2.5 Schedule 7

Schedule 7 is amended to read as follows:

Project Guarantee Amount	Delivery Date	Release Date
\$5,000,000 (Existing Project Guarantee)	On or before Operative Date	On delivery of the New Project Guarantee and the Heritage Guarantee in accordance with Clause A23.7 [Note: this Existing Project Guarantee has been released]
\$4,200,000 (New Project Guarantee)	On the date referred to in clause A23.7 [Note: the State is holding the New Project Guarantee]	On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation and the Fifth Deed of Variation) have been paid in full by the Developer and the Developer has provided the Retention Guarantee to the State, (if required) in accordance with clause A23.9.
\$800,000 (Heritage Guarantee)	On the date referred to in clause A23.7 [Note: Heritage Victoria is holding the Heritage Guarantee]	On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation and the Fifth Deed of Variation) have been paid in full by the Developer and the Developer has provided the

		Retention Guarantee to the State, (if required) in accordance with clause A23.9.
\$2,425,000 (Initial Stage 2 Community Houses Payment Guarantee)	On the date the last party executes the Third Deed of Variation [Note: the State is holding the Initial Stage 2 Community Houses Payment Guarantee]	On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation and the Fifth Deed of Variation) have been paid in full by the Developer and the Developer has provided the Retention Guarantee to the State, (if required) in accordance with clause A23.9.
\$1,700,000 (Balance Payment Guarantee)	On the date the last party executes the Fourth Deed of Variation.	On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation and the Fifth Deed of Variation) have been paid in full by the Developer and the Developer has provided the Retention Guarantee to the State in accordance with clause A23.9.
\$1,400,000 (Additional Interest Payment Guarantee)	On the date that the last party executes the Fifth Deed of Variation.	On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation and the Fifth Deed of Variation) have been paid in full by the Developer and the Developer has provided the Retention Guarantee to the State in accordance with clause A23.9.
\$1,000,000 (Retention Guarantee)	On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation) have been paid in full by the Developer.	5 Business Days after the End Date.

2.6 New Schedule 21

A new schedule 21 is inserted in the Principal Agreement in the form attached as Annexure A to this Deed.

3. General

The parties acknowledge and agree that:

- 3.1 the provisions of the Principal Agreement (as expressly varied by this Deed) continue in full force and effect;
- 3.2 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; and
- 3.3 except where specified in this Deed, each of the obligations of the State and the Developer are separate and independent and for the avoidance of doubt, the Developer's obligation to pay the Stage 2 Community Houses Payment, the Liquidated Damages Amount and the Heritage Buildings Repayment are not subject to any pre-conditions unless expressly specified in this Deed.

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.

5. Legal costs

- 5.1 Except as otherwise expressly provided in this Deed or the Development Agreement, each party shall pay their own legal costs in relation to the preparation, negotiation and execution of this Agreement.
- 5.2 The Developer must pay or reimburse the State 50% of the legal costs incurred by the State in the drafting of this Agreement (**Legal Costs Reimbursement**).
- 5.3 The State will provide the Developer with a tax invoice for the Legal Costs Reimbursement (which will include all information reasonably necessary to verify the total legal costs incurred and the amount of the Legal Costs Reimbursement) (**Tax Invoice**). The Developer must pay the Legal Costs Reimbursement to the State within 10 Business Days following receipt by the Developer of the Tax Invoice.

Executed by the parties

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Signature of Witness

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Signature of Director

DAVID RYAN

Print full name

Signature of ~~Director~~ (or Company Secretary)

IAN GRIST

Print full name

))

Signature of Director

DAVID RYAN

Print full name

Signature of ~~Director~~ (or Company Secretary)

IAN GRIST

Print full name



Annexure 1

New Schedule 21 – State Retained Areas Plan



STATE RETAINED AREAS
MAIN DRIVE
KEW

LEGEND

STATE RETAINED AREAS

Sheet: 1 of 1
Date of Issue: 03/02/2016
Drawing File: STATE RETAINED AREAS

Scale 1:2500
0 25 50 75 100 125
Metres
At Size A3

Survey	Drawn	Checked	Reference	Ver
N/A	J.S.	B.O.G	3330-00	1

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