



ACT
Government

Suburban Land
Agency

WEST BELCONNEN JOINT VENTURE AMENDING DEED No.2

Date

7TH JUNE 2019

Parties

AUSTRALIAN CAPITAL TERRITORY
(Territory)

RIVERVIEW DEVELOPMENTS (ACT) PTY
LIMITED ACN 165 870 557
(Riverview)

REID & STEVENS PTY LIMITED
ACN 008 445 994
(Reid & Stevens)

CORKHILL BROS PTY LIMITED
ACN 008 431 043
(Corkhill)

PARTIES: **THE AUSTRALIAN CAPITAL TERRITORY** the body politic established by section 7 of the Australian Capital Territory (Self-government) Act 1988 (Cth) as represented by the Environment, Planning and Sustainable Development Directorate (**Territory**)

AND

RIVERVIEW DEVELOPMENTS (ACT) PTY LIMITED ACN 165 870 557, c/- Riverview Projects (ACT) Pty Ltd of Unit 3, 28 Bougainville Street, Manuka ACT 2603 (**Riverview**)

AND

REID & STEVENS PTY LIMITED ACN 008 445 994, of Level 1, 65 Canberra Avenue, Griffith ACT 2603 (**Reid & Stevens**)

AND

CORKHILL BROS PTY LIMITED ACN 008 431 043, of Level 1, 65 Canberra Avenue, Griffith ACT 2603 (**Corkhill**)

(collectively **parties**)

RECITALS

- A. The Territory, Riverview, Reid & Stevens and Corkhill entered into a joint venture agreement dated 19 May 2016 to develop the Land, comprising the ACT Land, the NSW Land and the Additional Land, consistent with the Project Objectives.
 - B. The JV Agreement was amended by deed dated 28 April 2017.
 - C. The parties wish to make various amendments to the JV Agreement and to clarify the funding arrangements for the Joint Venture.
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IT IS AGREED by the Parties as follows.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

- (1) any term which is defined in the JV Agreement (as amended by this Deed) and not specifically defined in this Deed has the meaning specified in the JV Agreement;
- (2) **JV Agreement** means the West Belconnen Joint Venture Agreement between the Parties dated 19 May 2011 as amended by deed dated 28 April 2017.

1.2 Interpretation

The provisions of clause 2.2 of the JV Agreement (as amended by this Deed) apply to this Deed.

2. AMENDMENTS TO THE JV AGREEMENT

The parties agree to make the following amendments to the JV Agreement with effect on and from the date of execution of this Deed:

- (1) Delete the definition of "BBSW" where it appears in clause 2.1 and replace it with:
"BBSW means the 3 month Mid 11am Bank Bill Swap Rate published by the Australian Stock Exchange (or if that rate ceases to exist the rate that most closely represents this rate)."
- (2) Delete "clause 4.4" where it appears in the definition of "Interest" in clause 2.1 and insert "clause 4.5".
- (3) Delete the definition of "LDA" in clause 2.1.
- (4) Insert a new definition in clause 2.1 as follows:
"SLA means the Suburban Land Agency established by section 37 of the *City Renewal Authority and Suburban Land Agency Act 2017* (ACT)."
- (5) The word "and" at the end of clause 2.2(5) is deleted, the full stop at the end of clause 2.2(6) is deleted and replaced with: "; and" and a new clause 2.2(7) is added as follows:
"the word "include" and all of its derivations are not to be construed as words of limitation."
- (6) Delete "LDA" where it appears in the JV Agreement and replace with "SLA".

3. JOINT VENTURE FINANCING ARRANGEMENTS

The parties acknowledge and agree that:

- (1) With effect on and from 27 June 2018 all loan monies currently held on account of the Territory in the books of the Joint Venture will be treated as an equity contribution by the Territory and credited to the Equity Account of the Territory.
- (2) With effect on and from 28 June 2018 any additional contributions made by the Territory to the Joint Venture in addition to that set out in clause 3(1) of this Deed will be treated as contributions of equity by the Territory.
- (3) Irrespective of the provisions of clause 13.1(6) of the JV Agreement, Riverview will not be required by the Territory to make any contribution to correct any equity imbalance arising as a result of the equity contributions made by the Territory in accordance with clauses 3(1) and 3(2) of this Deed and no interest is payable on the equity imbalance.
- (4) At the time set out in clause 3(5) of this Deed, in addition to the amount of the equity imbalance and all amounts the Territory is otherwise entitled to in accordance with the operation of the terms of the JV Agreement (including clauses 4.5 and 15.2 of the JV Agreement), the Territory will be paid a sum by the Joint Venture calculated on a daily basis from the first day the imbalance arises to the day before the imbalance ceases as follows (**Additional Sum**):

$$A = \frac{PR}{365} \times (EI + Ac)$$

Where:

A = the daily amount of the Additional Sum to be paid to the Territory.

PR = BBSW plus 300 basis points.

EI = the amount of the equity imbalance on the relevant day.

Ac = the sum of all daily sums payable to the Territory as at the day immediately before the relevant day.

- (5) The Additional Sum and (as applicable) the equity imbalance is to be paid as follows:
- (a) Upon the occurrence of either of the events set out in clauses 3(6)(a) or 3(6)(b) of this Deed the Additional Sum will be paid to the Territory before any distribution is made to the Participants in accordance with clause 15.2(2) of the JV Agreement.
 - (b) Upon the occurrence of the event set out in clause 3(6)(c) of this Deed the amount of the equity imbalance at that time and the Additional Sum will be paid to the Territory on or about the time funding is received by the Joint Venture from a Finance Facility.
- (6) The provisions of clause 3(3) of this Deed cease to have effect upon the first to occur of:
- (a) Riverview making sufficient equity contributions to the Joint Venture so there ceases to be any imbalance in the equity accounts of the Participants; or
 - (b) The equity imbalance is paid out by distribution of Joint Venture Revenue to the Territory in accordance with clause 15.2(1) of the JV Agreement; or
 - (c) Funding is received by the Joint Venture from a Finance Facility.

4. INDEMNITY

The Territory agrees to indemnify Riverview against any liability for the payment of an amount of income tax that it incurs solely and directly as a result of the transactions arising in the books of Riverview from the operation of clauses 3(1) of this Deed (**Tax Liability**) up to a maximum amount of \$680,000 provided:

- (1) Riverview does all things necessary to mitigate and/or eliminate the Tax Liability; and
- (2) Riverview makes available to the Territory all of its books and records reasonably requested by the Territory to evidence the Tax Liability.

5. GENERAL

5.1 Entire Agreement

This Deed (including any references to the JV Agreement) comprises the entire agreement between the Parties about its subject matter and supersedes any prior representations, negotiations, writings, memoranda and agreements on that subject matter.

5.2 Variation

No amendment or variation of this Deed is valid or binding on the Parties unless made in accordance with the provisions of this Deed or otherwise in writing executed by the Parties.

5.3 No waiver

Failure or omission by a Party at any time to enforce or require strict or timely compliance with any provision of this Deed will not affect or impair that provision in any way or the

EXECUTED as a deed on

2019

SIGNED for and on behalf of the
AUSTRALIAN CAPITAL TERRITORY in
the presence of:

[Redacted signature area]

Signature of witness

CAROLYN O'NEILL
Print name

[Redacted signature area]

Signature of Territory delegate

BENJAMIN PONTON
Print name

SIGNED by RIVERVIEW
DEVELOPMENTS (ACT) PTY LIMITED
ACN 165 870 557 in accordance with s127
of the Corporations Act 2001 (Cwth) in the
presence of:

[Redacted signature area]

Signature of Director / Secretary

THOMAS CORKHILL
Print name

[Redacted signature area]

Signature of Director

DAVID MAXWELL-DIRECTOR
Print name and position

SIGNED by **CORKHILL BROS PTY LIMITED ACN 008 431 043** in accordance with s127 of the *Corporations Act 2001* (Cwth) in the presence of:



Signature of Director / Secretary

THOMAS CORKHILL

Print name



Signature of Director

DAVID MAXWELL - DIRECTOR

Print name and position

SIGNED by **REID & STEVENS PTY LIMITED ACN 008 445 994** in accordance with s127 of the *Corporations Act 2001* (Cwth) in the presence of::



Signature of Director / Secretary

THOMAS CORKHILL

Print name



Signature of Director

DAVID MAXWELL - DIRECTOR

Print name and position