

Malcolm.

TWO DEEDS ENCLOSED FOR COUNCIL TO DATE &
EXECUTE. PLEASE RETURN A SINGLE COPY SO
WE CAN REGISTER ON TITLE.

PLEASE CALL IF YOU NEED TO DISCUSS.

REGARDS.

Mat.

25/5/15.



MERITON

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MERITON GROUP

Level 11 Meriton Tower
528 Kent Street, Sydney NSW 2000
Tel (02) 9287 2888 Fax (02) 9287 2777
meriton.com.au

.Dated

2015

Karimbla Properties (No.38) Pty Ltd
ACN 160 693 229

Council of the City of Ryde
ABN 81 621 292 610

Meriton Properties Pty Ltd
ACN 000 698 626

Deed of Amendment to Voluntary Planning Agreement

Environmental Planning and Assessment Act 1979

PARTIES:

KARIMBLA PROPERTIES (No.38) PTY LTD (ACN 147 667 794) 160 693 229 of Level 11, 528 Kent Street, Sydney NSW (**Developer**)

and

COUNCIL OF THE CITY OF RYDE (ABN 81 621 292 610) of 1 Devlin Street Ryde, NSW (**Council**)

and

MERITON PROPERTIES PTY LTD (ACN 000 698 626) of Level 11, 528 Kent Street, Sydney NSW (**Guarantor**)

INTRODUCTION:

- A. The parties have agreed to amend the Planning Agreement.
- B. The amendment will:
 - (i) amend the timing as to the delivery of the Development Contributions under the terms of the Planning Agreement; and
 - (ii) include the Guarantor as a party to the Planning Agreement for the purpose of providing security as to the delivery of the Development Contributions.

AGREED TERMS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context clearly indicates otherwise:

Effective Date means the date of entry into this Deed; and

Planning Agreement means the agreement between the Council and Motive Properties Pty Limited entered into on 7 November 2013 in relation to the provision of public benefits associated with the Proposed Development on the Land.

1.2 Interpretation

(A) In this Deed,

- (a) headings are for convenience only and do not affect interpretation;
and
- (b) unless the context indicates a contrary intention:
 - (i) a word or expression defined in the Planning Agreement has the same meaning when used in this Deed;
 - (ii) a reference to a clause, schedule, or annexure is a reference to a clause, schedule or annexure to the Planning Agreement;
 - (iii) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (iv) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
 - (v) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (vi) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments, replacements and substitutions;

- (vii) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (viii) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
- (ix) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (x) **"includes"** in any form is not a word of limitation;
- (xi) a reference to **"\$"** or **"dollar"** is to Australian currency;
- (xii) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed; and
- (xiii) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the Act.

2. AMENDMENT OF PLANNING AGREEMENT

2.3 Amendments

- (A) The parties agree that on and from the Effective Date, the Planning Agreement is amended as follows:
 - (i) Clause 1.1 is amended by inserting after the definition of "GST Law" the following additional definitions:
 - "Guarantee means the Guarantor's obligations under the provisions of clause 15 of this Agreement."*
 - "Guaranteed Obligations means all agreements, conditions, covenants, provisions, obligations and liabilities to be performed, observed or complied with by the Developer under or contemplated by this Agreement:*

- (a) *Irrespective of the capacity in which the Developer or the Council enter into this Agreement;*
- (b) *Whether the Developer is liable alone, or jointly, or jointly and severally with another person;*
- (c) *Whether the Council is the original obligee or an assignee of the Guaranteed Obligations and whether or not:*
 - (i) *The assignment took place before or after the delivery of this Agreement;*
 - (ii) *The Developer consented to or was aware of the assignment; or*
 - (iii) *The assigned obligation was secured; and*
 - (v) *Whether the Council is the original obligee or an assignee of the original obligee and whether or not the guarantor or the Developer consented to or was aware of the assignment."*

"Guarantor means Meriton Properties Pty Ltd (ACN 000 698 626)".

- (ii) Clause 1.1 is amended by inserting after the definition of "Explanatory Note" the following additional definition:

"Final Building means that part of the Development that is identified as Block A in the Development Plan."

- (iii) Clause 1.1 is amended by inserting after the definition of "Landscape Plan" the following additional definition:

"Occupation Certificate has the same meaning as in the Act."

- (iv) Clause 1.1 is amended by inserting after the definition of "Public Domain Finishes Plan" the following additional definitions:

"Real Property Act means the Real Property Act 1900 (NSW).

"Register means the Torrens title register maintained under the Real Property Act."

- (v) Clause 9 is amended by the insertion of the words “*Subject to cause 15.3*” before the words “*The Parties acknowledge..*”
 - (vi) Clause 14.12 is deleted.
 - (vii) Clause 2(a) of Schedule 1 is amended to read as follows:
 - (a) *The Development Contributions pursuant to Clause 6 and this Schedule 1 must be delivered as follows:*
 - i. *The Development Contributions identified in Items 1, 2, 3, 4, 5 and 6 in the Table to this Schedule 1 are to be completed and dedicated (as the case may be) to Council prior to the earlier occurrence of the occupation of the Final Building and the issue of any Occupation Certificate for the Final Building.*
 - ii. *The Monetary Contributions identified in Items 7 and 8 in the Table to this Schedule 1 are to be paid to Council prior to earlier occurrence of the occupation of any part of the Development and the issue of any Occupation Certificate for the Development.*
- (b) Insert clause 15 as follows:

15 Guarantee

15.1 Guarantor

- (a) *The Guarantor unconditionally and irrevocably guarantees to the Council the punctual performance and observance by the Developer of the Guaranteed Obligations.*
- (b) *If the Developer does not perform or observe the Guaranteed Obligations on time and/or in accordance with the provisions of the Guaranteed Obligations, the Guarantor agrees to perform and observe the Guaranteed Obligations for the benefit of Council on demand from Council.*
- (c) *The Council may make a demand on the Guarantor under clause 15.1(b) at any time if the Council has first:*
 - (i) *notified the Guarantor of the particular non-performance of the relevant Guaranteed Obligation by the Developer; and*

- (ii) *given the Guarantor the same grace period (if any) as the Developer has to remedy the particular matter of concern to Council under clause 11 of this Agreement.*

15.2 Indemnity

- (a) *The Guarantor unconditionally and irrevocably indemnifies the Council for all losses, costs, damages and liabilities which it incurs or suffers because the Developer fails to punctually perform and observe the Guaranteed Obligations.*
- (b) *The indemnity in this clause will be reduced proportionally to the extent only that a negligent act or omission of the Council or a breach of its obligations under this agreement or deed has contributed to the loss, costs, damages or liability which it incurs or suffers.*

15.3 Developer's right to assign or novate

- (a) *If the Development Contributions are yet to be delivered to Council under the terms of this Agreement and the Developer seeks to transfer its title in the Land or sell the Land to a third party (**Incoming Party**), the Developer must, prior to such transfer or sale occurring:*
 - (i) *procure that the Incoming Party provides a replacement Guarantor to the Council in order to ensure that the requirements of clauses 15.1 and 15.2 of this Agreement are satisfied; and*
 - (ii) *procure the execution of an agreement by the Incoming Party with the other parties on terms satisfactory to the other parties who must act reasonably and without delay, under which the Incoming Party agrees to comply with the terms and conditions of this Agreement as though the Incoming Party was a party to this Agreement; and*
 - (iii) *Demonstrate, to the reasonable satisfaction of the Council that the Incoming Party and its Guarantor are solvent.*

(b) *The Developer will pay the Council's reasonable legal costs and expenses incurred under this clause 15.3.*

(B) The amendments to the Original Document take effect on and from the Effective Date.

2.4 Confirmation

The parties ratify and confirm the Planning Agreement as varied by this Deed.

3. COSTS

3.1 Each party is responsible for their own legal and administrative costs and expenses incurred in relation to the negotiation, preparation and execution of this Deed.

4. FURTHER ACTS

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

5. GOVERNING LAW AND JURISDICTION

This Deed is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that state.

6. NO FETTER

Nothing in this Deed will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

7. REPRESENTATIONS AND WARRANTIES

The Parties represent and warrant that they have power to enter into this Deed.

8. GST

8.1 Additional amounts for GST

If a party to this Deed (the "Supplier") makes a supply under or in connection with this Deed and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.

8.2 Reimbursement

If this Deed requires a party to pay for, or reimburse any expense, loss or outgoing ("reimbursable expense") suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.

8.3 Provision of Tax Invoices and other documentation for GST

Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Deed.

8.4 Amounts GST exclusive

Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Deed are GST exclusive.

8.5 No merger

This clause will not merge on completion or termination of this Deed.

9. REGISTRATION ON TITLE

- (a) The Developer will lodge this Deed for registration on the relevant folios of the Register as soon as reasonably practicable, but in any event no later than twenty (20) Business Days after the execution of this Deed by the parties.
- (b) The Developer must promptly comply with any requisition that may be raised with regard to registration of this Deed from Land and Property Information.
- (c) The Developer will notify Council of the registration of this Deed on the relevant folios of the Register and subsequently forward a copy of the registered deed to the Council.

EXECUTED as a Deed

Executed for and on behalf of the **Council**)
of the City of Ryde by Gail Connolly,)
 General Manager, under delegated)
 authority in accordance with Section 377)
 of the Local Government Act 1993 in the)
 presence of:)
)
)

 Signature of Witness


 Signature of General Manager

 Name of Witness

 Name of General Manager

 Address of Witness


Executed by Karimbla Properties (No.38))
Pty Ltd (ACN 160 693 229) in accordance)
 with section 127 of the Corporations Act::)
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 Signature of Director

James Sialepis

 Name of Director

 Signature of Director / Secretary

Robyn McCully

 Name of Director / Secretary

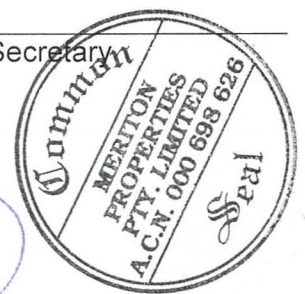
Executed by Meriton Properties Pty Ltd)
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)
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.Dated

2015

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ACN 160 693 229

Council of the City of Ryde
ABN 81 621 292 610

Meriton Properties Pty Ltd
ACN 000 698 626

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*"**Guarantor** means Meriton Properties Pty Ltd (ACN 000 698 626)".*

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- (b) *The indemnity in this clause will be reduced proportionally to the extent only that a negligent act or omission of the Council or a breach of its obligations under this agreement or deed has contributed to the loss, costs, damages or liability which it incurs or suffers.*

15.3 Developer's right to assign or novate

- (a) *If the Development Contributions are yet to be delivered to Council under the terms of this Agreement and the Developer seeks to transfer its title in the Land or sell the Land to a third party (**Incoming Party**), the Developer must, prior to such transfer or sale occurring:*
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 - (ii) *procure the execution of an agreement by the Incoming Party with the other parties on terms satisfactory to the other parties who must act reasonably and without delay, under which the Incoming Party agrees to comply with the terms and conditions of this Agreement as though the Incoming Party was a party to this Agreement; and*
 - (iii) *Demonstrate, to the reasonable satisfaction of the Council that the Incoming Party and its Guarantor are solvent.*

(b) *The Developer will pay the Council's reasonable legal costs and expenses incurred under this clause 15.3.*

(B) The amendments to the Original Document take effect on and from the Effective Date.

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3.1 Each party is responsible for their own legal and administrative costs and expenses incurred in relation to the negotiation, preparation and execution of this Deed.

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The Parties represent and warrant that they have power to enter into this Deed.

8. GST

8.1 Additional amounts for GST

If a party to this Deed (the "Supplier") makes a supply under or in connection with this Deed and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.

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If this Deed requires a party to pay for, or reimburse any expense, loss or outgoing ("reimbursable expense") suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.

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Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Deed are GST exclusive.

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This clause will not merge on completion or termination of this Deed.

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- (c) The Developer will notify Council of the registration of this Deed on the relevant folios of the Register and subsequently forward a copy of the registered deed to the Council.

EXECUTED as a Deed

Executed for and on behalf of the **Council**)
of the City of Ryde by Gail Connolly,)
 General Manager, under delegated)
 authority in accordance with Section 377)
 of the Local Government Act 1993 in the)
 presence of:)
)
)
)

 Signature of Witness

 Signature of General Manager

 Name of Witness

 Name of General Manager

 Address of Witness

Executed by **Karimbla Properties (No.38)**)
Pty Ltd (ACN 160 693 229) in accordance)
 with section 127 of the Corporations Act::)

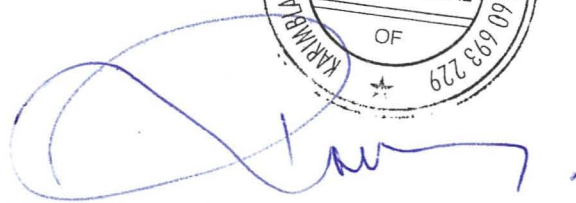


 Signature of Director

James Sialepis

 Name of Director



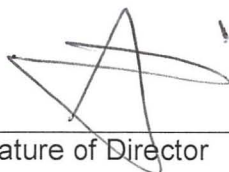


 Signature of Director / Secretary

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 Signature of Director

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