

## **Deed of Assignment – Planning Agreement – Riverlands Golf Course**

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Demian Holdings Pty Limited (ABN 83 082 158 049) & Riverland Estate Pty Limited (ABN 38 103 833 825) (**Assignors**)

Mirvac Homes (NSW) Pty Ltd (ABN 22 006 922 998) (**Assignee**)

Bankstown City Council (ABN 38 380 045 375) (**Council**)

### **Marsdens Law Group**

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**Deed of Assignment**  
**Planning Agreement – Riverlands Golf Course**  
**Parties**

<b>Council</b>	<b>Name</b>	Bankstown City Council
	<b>Address</b>	Civic Tower, 66-72 Rickard Road, Bankstown NSW 2170
	<b>ABN</b>	38 380 045 375
<b>Assignee</b>	<b>Name</b>	Mirvac Homes (NSW) Pty Ltd
	<b>Address</b>	Level 28, 200 George Street, Sydney NSW 2000
	<b>ABN</b>	22 006 922 998
<b>Assignors</b>	<b>Name</b>	Demian Holdings Pty Limited & Riverland Estate Pty Limited
	<b>Address</b>	Level 2, 7 Charles Street, Parramatta NSW 2124
	<b>ABN</b>	Demian Holdings Pty Limited (ABN 83 082 158 049) & Riverland Estate Pty Limited (ABN 38 103 833 825)

**Background**

- A** The Assignors and Council are parties to the Planning Agreement.
- B** Demian Holdings has, pursuant to the Contract for Sale, agreed to transfer Lot 10 (which is part of the Land) to the Assignee.
- C** The Assignors will remain the registered proprietors of the Residue Land.
- D** Council has, pursuant to the terms of the Planning Agreement, consented to Demian Holdings transferring Lot 10 to the Assignee, as well as the Assignors assigning the Rights and Obligations, to the Assignee.
- E** Council, the Assignors and the Assignee set out in this deed the terms upon which the Rights and Obligations are assigned from the Assignors to the Assignee.

**Operative provisions**

**1 Definitions & interpretation**

**1.1 Defined Terms**

In this deed, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** have the meaning ascribed to them in that schedule.

## **1.2 Interpretation**

The interpretational rules contained in Part 2 of **Schedule 1** apply in the interpretation of this deed.

## **2 Conditions precedent**

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### **2.1 Conditional agreement**

This deed is conditional upon the Transfer being effected in accordance with the Contract for Sale.

### **2.2 Failure of Contract for Sale**

If the Contract for Sale is terminated or rescinded without the Transfer being effected then this deed ends on the date of that termination or rescission.

## **3 Assignment of Rights and Obligations**

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### **3.1 Agreement**

On the date that the Transfer is effected in accordance with the Contract for Sale:

- (1) the Assignors assign the Rights and Obligations to the Assignee;
- (2) the Assignee accepts the Assignors' assignment of the Rights and Obligations; and
- (3) the Council consents to the assignment of the Rights and Obligations.

### **3.2 Effect of the assignment of the Rights and Obligations**

As a consequence of the assignment of the Rights and Obligations the parties agree that, from the date of the Transfer:

- (1) the Assignors are released from the Obligations;
- (2) the Assignee may exercise the Rights as if a reference to the Assignors in the Planning Agreement was a reference to the Assignee; and
- (3) Council must conduct itself in accordance with the Planning Agreement (but only to the extent of the Rights and Obligations) as if a reference to the Assignors were a reference to the Assignee.

### **3.3 Continuing obligations of the Assignors**

Notwithstanding anything else in this deed, the Assignors will remain liable under the Planning Agreement to the Council in respect of all obligations associated with the Residue Land.

## **4 Mutual releases**

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The Assignors and Council release and hold harmless each other against all Claims which arise in relation to the Rights and Obligations and Lot 10 after that date of the Transfer.

## **5 Covenant by the Assignee**

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The Assignee warrants to both the Assignors and Council that the Assignee will enjoy, perform, observe and carry out the Rights and Obligations as if a reference in the Planning Agreement to the Assignors in respect of Lot 10 were a reference to the Assignee.

## **6 Cooperation**

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Each party agrees that it will do all such acts and things as are reasonably necessary to:

- (1) perfect the assignment of the Rights and Obligations; and
- (2) otherwise give effect to the transactions recorded in this deed.

## **7 Administrative provisions**

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### **7.1 Notices**

- (1) Any notice, consent or other communication under this deed must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - (a) delivered to that person's address; or
  - (b) sent by pre-paid mail to that person's address; or
  - (c) transmitted by facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
  - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day; and
  - (b) if sent by pre-paid mail, on the third Business Day after posting; and
  - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this deed or another address of which that person may from time to time give notice to each other person.

### **7.2 Entire Agreement**

This deed is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this deed.

### **7.3 Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

### **7.4 Cooperation**

Each party must sign, execute and deliver all deeds, documents, instruments and act reasonably and effectively to carry out and give full effect to this deed and the rights and obligations of the parties under it.

### **7.5 Counterparts**

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

**7.6 Amendment**

This deed may only be amended or supplemented in writing signed by the parties.

**7.7 Unenforceability**

Any provision of this deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this deed or affecting the validity or enforceability of that provision in any other jurisdiction.

**7.8 Power of Attorney**

Each attorney who executes this deed on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

**7.9 Governing law**

The law in force in the State of New South Wales governs this deed. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this deed; and
  - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
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## Execution page – Deed of Assignment

### Executed as a deed

Dated:

Signed, sealed and delivered by Bankstown City Council by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated in the presence of:

General Manager (Signature)

Matthew Stewart

Name of General Manager (Print Name)

Mayor (Signature)

Heidi Wenham

Name of Mayor (Print Name)

Signed, sealed and delivered by the Assignee in accordance with section 126 of the Corporations Act 2001 (Cth).

Authorised Officer (Signature)

Adam Thomas Perrott

Name of Authorised Officer (Print Name)

Project Director

Position Title

Authorised Officer (Signature)

Daniel Seraglio

Authorised Officer (Print Name)

Project Director

Position Title

Signed, sealed and delivered by the Assignors in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors.

Sole Director/Secretary (Signature) of  
Demian Holdings Pty Ltd  
ACN 082 158 049

Name of Director/ Secretary (Print Name)

Sole

Sole Director/Secretary (Signature) of  
Riverland Estate Pty Ltd  
ACN 103 833 825

Name of Director/Secretary (Print Name)

Sole Secretary

## **Schedule 1: Defined terms and Interpretation**

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### **Part 1 - Definitions**

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**Assignors** means Demian Holdings & Riverland Estate Pty Limited (ABN 38 103 833 825).

**Claim** against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Contract for Sale** means the contract for sale of land in respect of Lot 10 between the Assignors and Assignee dated 8 October 2019.

**Demian Holdings** means Demian Holdings Pty Limited (ABN 83 082 158 049).

**Land** means the following allotments:

<b>Address</b>	<b>Lot</b>	<b>DP</b>
56 Prescott Parade, Milperra	10	731859
123A Raleigh Road, Milperra	1	813006
123 Raleigh Road, Milperra	1	625013
67 Auld Avenue, Milperra	23 - 27	7304
67A Auld Avenue, Milperra	1	813007
80A Auld Avenue, Milperra	232	805826
80 Auld Avenue, Milperra	231	805826
80 Auld Avenue, Milperra	38 - 41	7304
80 Auld Avenue, Milperra	50 - 59	7304
90 Auld Avenue, Milperra	22	749985
100 Auld Avenue, Milperra	21	749985

**Lot 10** means 56 Prescott Parade, Milperra NSW 2214, being Lot 10 in Deposited Plan 731859.

**Obligations** means the obligations of the Assignee under the Planning Agreement which are to be performed on Lot 10.

<b>Planning Agreement</b>	means the planning agreement entered into between Council, and the Assignors with respect to the Land being registered dealing AK313351 (as varied by registered dealing AM684455) and in accordance with which this deed has been entered into.
<b>Residue Land</b>	means all of the Land other than Lot 10.
<b>Rights</b>	means the rights of the Assignee under the Planning Agreement in so far as they relate to Lot 10.
<b>Transfer</b>	means registration at the NSW Land Registry Services of the form of transfer transferring Lot 10 from Demian Holdings to the Assignee.

## **Part 2 - Interpretational Rules**

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<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed.
<b>variations or replacements</b>	a document (including this deed) includes any variation or replacement of it.
<b>reference to statutes</b>	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>person</b>	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	an accounting term is a reference to that term as it is used in accounting standards under the <i>Corporations Act 2001</i> (Cth) or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.



**reference to a group of persons**

a group of persons or things is a reference to any two or more of them jointly and to each of them individually.

**meaning not limited**

the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

**next day**

if an act under this deed to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.

**next Business Day**

if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

**time of day**

time is a reference to Sydney time.

**headings**

headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

**agreement**

a reference to any agreement, deed or instrument includes the same as varied, supplemented, novated or replaced from time to time.

**gender**

a reference to one gender extends and applies to the other and neuter gender.