

ANNEXURE I – ELIGIBILITY DEED

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DATED:

2024

**Suburban Land Agency ABN 27 105 505 367**

**(Seller)**

**xxxx**

**(Buyer)**

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## **ELIGIBILITY DEED**

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leadership  
in law*

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# ELIGIBILITY DEED

THIS DEED made on 2024

**BETWEEN** Suburban Land Agency ABN 27 105 505 367 of 480 Northbourne Avenue, Dickson in the Australian Capital Territory (the **Seller**)

**AND** XXXX of xxxxx in the Australian Capital Territory (the **Buyer**)

## RECITALS:

- A. By the First Grant Contract, the Seller agreed to sell, and the Buyer agreed to buy the Property.
- B. Pursuant to clause 43 of the First Grant Contract, the Buyer provides the Residency Status Warranty and the Undertakings.
- C. The parties acknowledge and agree that the Residency Status Warranty and Undertakings do not merge on Completion and to preserve the Residency Status Warranty and Undertakings, the Buyer reaffirms the Residency Status Warranty and Undertakings on the terms contained in this Deed.

## IT IS AGREED:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Deed, unless the context requires otherwise:

“**Business Day**” means a day that is not a Saturday, Sunday, bank holiday or public holiday in the Australian Capital Territory.

“**Caveat**” means a caveat in favour of the Seller to be registered over the title for the Property substantially in the form annexed to this Deed as Annexure A.

“**Claim**” means a claim, notice, demand, action, proceeding, litigation, investigation, or judgement however arising, whether present or future, actual or contingent, and whether involving a third party or a party to this Deed.

“**Completion**” means the time at which the First Grant Contract is completed.

“**First Grant Contract**” means the First Grant Contract – Land Ready and Dwelling Construction between the Seller and the Buyer dated xxxx under which the Seller has agreed to sell, and the Buyer has agreed to buy the Property.

“**Deed**” means the agreement between the parties constituted by this Deed and “this Deed” shall have a corresponding meaning and shall include all schedules, appendices, exhibits and annexures to this Deed.

“**Occupation Period**” means the period of twelve (12) months commencing on the date of Completion or the date that the Buyer first takes occupation of the Property, whichever is the earlier.

“**SLA Privacy Policy**” means the privacy policy and/or statement published from time to time on the website managed by the Suburban Land Agency.

**"Property"** means the unexpired residue of the Crown lease granted over the land known as [street address], being Block x Section x in the Division of North Wright, including the improvements erected on the land.

**"Residency Status Warranty"** means the Buyer's warranty that the Buyer is either:

- (a) an Australian Citizen;
- (b) a Permanent Resident residing in Australia; or
- (c) a New Zealand citizen residing in Australia,

and restated in clause 2 of this Deed.

**"Undertakings"** means the undertakings given by the Buyer pursuant to clause 43 of the First Grant Contract and restated under clause 2 of this Deed, being an undertaking;

- (d) to reside in the Property as the Buyer's principal place of residence;
- (e) not to sell, transfer or otherwise dispose of the Property; and
- (f) not to lease, licence or otherwise allow the Property to be occupied by someone else, except where the Buyer resides in the Property during the term of the lease or licence,

within the Occupation Period.

## 1.2 Interpretation

In the interpretation of this Deed, unless contrary intention appears :

- (a) no provision of this Deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed or that provision;
- (b) a reference to "currency", "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
- (c) "including" and similar expressions are not and must not be treated as words of limitation; and
- (d) headings and tables of contents are inserted for convenience only and have no effect on interpretation.

1.3 Any term not defined in this Deed that is defined in the First Grant Contract shall have the meaning given to that term in the First Grant Contract.

## 2. BUYER WARRANTY AND UNDERTAKINGS

### 2.1 Residency Status Warranty

- (a) The Buyer warrants:
  - (i) that the Buyer is either:
    1. an Australian Citizen;
    2. a Permanent Resident residing in Australia; or
    3. a New Zealand citizen residing in Australia,

and that the Buyer has no intention and is not aware of any potential change to the Buyer's residency status; and

- (ii) that the Buyer has not facilitated any sub-sale or on-sale of any part of the Property under the First Grant Contract.
- (b) The Buyer acknowledges that the Seller may request reasonable evidence from the Buyer of the Buyer's compliance with the Residency Status Warranty and the Buyer must comply with the Seller's request promptly.

## 2.2 Undertakings

- (a) The Buyer hereby undertakes:
  - (i) during the Occupation Period:
    1. to reside in the Property continuously as the Buyer's principal place of residence;
    2. not to sell, transfer or otherwise dispose of the Property; and
    3. not to lease, licence or otherwise allow the Property to be occupied by someone else, except where the Buyer resides in the Property during the term of the lease or licence; and
  - (ii) to inform the Seller:
    1. of any change to the Buyer's residency status; and
    2. of any breach or potential breach of any Undertakings,  
  
within 14 calendar days of the Buyer becoming aware of the change, breach or potential breach (as applicable); and
  - (iii) to disclose the terms of this Deed to the Buyer's financier, lender and/or mortgagee (if any).
- (b) The Buyer acknowledges that the Seller may request reasonable evidence from the Buyer of the Buyer's compliance with the Undertakings and the Buyer must comply with the Seller's request promptly.

## 3. CAVEAT

- 3.1 As security for the Buyer's compliance with the Undertakings, the Buyer hereby irrevocably authorises and consents to the Seller lodging the Caveat over the Property.
- 3.2 The Seller must, within 10 Working Days of either:
  - (a) the Occupation Period expiring; or
  - (b) the Property being sold pursuant to a power of sale by the Buyer's mortgagee and the mortgagee submitting a written request with the Seller for the withdrawal of the Caveat,prepare and lodge a withdrawal of the Caveat.
- 3.3 If the Buyer requests that the Caveat is removed prior to the expiry of the Occupation Period and the Seller agrees, the Buyer must pay to the Seller on demand the Seller's costs associated with the withdrawal of the Caveat.

3.4 The Seller must:

- (a) not lodge the Caveat in priority to the mortgage to be registered on the Property title immediately following Completion in favour of the Buyer's mortgagee (if any); and
- (b) except if the Buyer is or will be in breach of the Residency Status Warranty or the Undertakings, consent to the lodgement of any dealing on title within 10 working days of the Buyer submitting a written request with the Seller.

#### **4. DEFAULT & TERMINATION**

4.1 If the Buyer:

- (a) breaches any of the warranties given by the Buyer pursuant to clause 2.1(a);
- (b) breaches any one or more of the Undertakings given by the Buyer pursuant to clause 2.2; or
- (c) is otherwise in breach of any other provision of this Deed,

regardless of whether the Buyer has given notice to the Seller in accordance with clause 2.2(a)(ii), the Seller may at any time thereafter terminate this Deed at the Seller's election by giving written notice to the Buyer.

4.2 If the Buyer is in breach of this Deed:

- (a) the Buyer must compensate the Seller for the loss or damages suffered by reason of the Buyer's breach;
- (b) the Seller may recover from the Buyer damages arising from the Buyer's breach; and/or
- (c) the Seller may impose restrictions or prohibitions on the Buyer participating in any future offerings of land.

#### **5. PRIVACY**

5.1 The Buyer acknowledges that they have received, read, and understood the SLA Privacy Policy and accepts that any information collected by the Seller pursuant to this Deed, or previously in relation to this Deed, is held and used in accordance with the SLA Privacy Policy.

5.2 The Buyer:

- (a) consents to the Seller's use of any personal information provided by the Buyer to reasonably fulfil the purpose of this Deed and any of its functions, including but not limited to disclosure of personal information to the ACT Revenue Office and other relevant Authorities; and
- (b) to the extent SLA has complied with the SLA Privacy Policy, releases the SLA from any claim and/ or liability arising from the improper use of the Buyer's information by a third party following the provision of the Buyer's information by the SLA as contemplated under clause 5.2(a).

#### **6. MISCELLANEOUS**

6.1 No Waiver

- (a) Any delay or failure to enforce any term of this Deed will not be deemed to be a waiver.
- (b) There is no implied waiver by either party in respect of any term of this Deed and any waiver granted by either party shall be without prejudice to any other rights.

- (c) Any waiver must be in writing and does not cover subsequent breaches of the same or a different kind.
- (d) A waiver by a party of its rights under this Deed is only effective in relation to the particular obligation or breach in respect of which it is given.

## 6.2 Costs

The Buyer shall pay its own costs and expenses including legal costs in connection with the negotiation, and execution of this Deed.

## 6.3 Stamp Duty

- (a) The Buyer must pay all stamp duty and other similar taxes, including fines and penalties, which may be payable to or required to be paid by any Authority or determined to be payable in connection with the execution, delivery, performance or enforcement of the First Grant Contract and this Deed or any payment, receipt or other transaction or document contemplated by the First Grant Contract and this Deed.
- (b) Despite any other term of this Deed or the First Grant Contract, the Buyer indemnifies the Seller and will keep the Seller indemnified against any loss or liability incurred or suffered by it as a result of any delay or failure by the Buyer to pay any taxes in accordance with clause 6.3(a).

## 6.4 Indemnity

The Buyer indemnifies the Seller and will keep the Seller indemnified in respect of any stamp duty or other tax payable in relation to the First Grant Contract, and any claim, costs, loss, damages, or liability arising from a breach of this Deed by the Buyer.

## 6.5 Variation

No variation to this Deed (including this clause) by any party is effective unless confirmed in writing and signed by the parties. A variation is effective only to the extent for which it is made or given.

## 6.6 Entire Agreement

This Deed:

- (a) is the entire agreement of the parties concerning everything connected with the subject matter of this Deed; and
- (b) supersedes any prior representations, statements, promises or understanding on anything connected with that subject matter.

## 6.7 Governing Law

This Deed shall be governed by and construed in accordance with the laws of the Australian Capital Territory and the Commonwealth of Australia, and the parties submit themselves to the exclusive jurisdiction of the Courts of those jurisdictions and those that have jurisdiction to hear any appeals from them.

## 6.8 Severability

If any provision of this Deed is void, unenforceable or illegal in the jurisdiction governing this Deed, then it is to be read down so as to be valid and enforceable or if it cannot be read down, the provision (or where possible the offending words), is severed from this Deed and the rest of this Deed remains in force.

## 6.9 Counterparts

This Deed may be executed in any number of counterparts, all of which taken together constitute one and the same document.





## Annexure A



## CAVEAT

Form 036 - X

Land Titles Act 1925

LODGING PARTY DETAILS				
Name	Email Address	Customer Reference Number	Contact Telephone Number	
TITLE AND LAND DETAILS				
Volume & Folio	District/Division	Section	Block	Unit
	North Wright			
REGISTERED PROPRIETOR/S (Surname Last) (ACN required for all companies)		FULL POSTAL ADDRESS (including postcode)		
CAVEATOR (Surname Last) (ACN required for all companies)		FULL POSTAL ADDRESS (including postcode)		
Suburban Land Agency		480 Northbourne Avenue, Dickson ACT 2602		
FORM OF TENANCY – (to be completed where more than one Caveator is listed)				
<input type="checkbox"/> Joint Tenants <input type="checkbox"/> Tenants in Common in (the following shares) - (Please state Caveator's name and shares out in full)				
ADDRESS FOR SERVICE OF NOTICES FOR THE CAVEATOR (Must be an address in the Australian Capital Territory – including postcode)		EMAIL ADDRESS FOR SERVICE OF NOTICES FOR THE CAVEATOR (optional)		
C/- BAL Lawyers, Level 9, 40 Marcus Clarke Street, Canberra ACT 2601		<a href="mailto:SLA@ballawyers.com.au">SLA@ballawyers.com.au</a>		
NATURE OF THE ESTATE OR INTEREST IN THE LAND (for information, see guidance notes)				
Pursuant to clause 3 of the Eligibility Deed between the Caveator and the Registered Proprietor dated _____.				
REPRESENTING SOLICITOR DETAILS FOR CAVEATOR (Complete if applicable – otherwise state below "Not Applicable")				
Name of Firm	Solicitor Email Address		Solicitor Name	
BAL Lawyers	<a href="mailto:SLA@ballawyers.com.au">SLA@ballawyers.com.au</a>		Benjamin Grady	

**ACTION REQUIRED BY THIS CAVEAT** (Tick the appropriate box – one box must be Ticked)

- (a) Prevention of all instruments with the land (note the statutory exceptions at *S104(4) Land Titles Act 1925*)
- (b) Prevention of all instruments with the land other than those dealings as identified at *S104(5) Land Titles Act 1925*
- (c) Prevention of instruments as follows; .....

**CERTIFICATION** \*Delete the inapplicable

**Caveator**

- \*The Certifier has taken reasonable steps to verify the identity of the Caveator or his, her or its administrator or attorney.
- \*The Certifier has retained the evidence to support this Registry Instrument or Document.
- \*The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant law and any Prescribed Requirement.

Signed By:

<Name of certifying party>  
<Capacity of certifying party>

for: <Company name>

on behalf of the Caveator

**OFFICE USE ONLY**

Lodged by		Registered date / by	
Data entered by		Attachments/Annexures	