



# PROJECT DELIVERY DEED



	<b>BLOCK 4 SECTION 235 GUNGAHLIN</b>
<b>Parties</b>	<b>SUBURBAN LAND AGENCY</b>
	<b>DEVELOPER</b>
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<b>Version</b>	Final

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**Parties** Suburban Land Agency ABN 27 105 505 367 of 480 Northbourne Avenue, Dickson ACT 2602 being an agency established by section 37 of the *City Renewal Authority and Suburban Land Agency Act 2017* (ACT).

AND

The entity/person(s) named in Item 1 of Schedule 1.

**Developer**

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## **BACKGROUND**

- A. The Suburban Land Agency and the Developer have entered into a Contract for Sale for the Land.
- B. It is a condition of the Contract for Sale that the Parties enter into this Deed.
- C. The Developer has agreed that the Developer will, in developing the Land, comply with the Developer's obligations set out in this Deed.
- D. This Deed includes schedules which outline additional specific obligations which the Developer must comply with.

## **Operative Provisions**

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**IT IS AGREED** by the Parties as follows.

### **1. Interpretation**

#### **1.1. Definitions**

The following definitions apply in this Deed, unless the context otherwise requires.

**Approval** any approval, authorisation, permit, consent, licence, exemption and the like which is required to be issued by, or obtained from, any Relevant Agency, including the Authority, in connection with the development of the Land, the Land or the performance by the Developer of its obligations under this Deed.

**Authority** means the Territory Planning Authority established in accordance with section 16(1) of the Planning Act.

**Claim** any claim or action under, arising out of or in connection with this Deed, the development of the Land or any legislation, including in respect of any tortious act or omission or misrepresentation (excluding any objection or appeal or application that may be lodged concerning any application for an Approval).

**Compliance** means an unconditional certificate issued by the Relevant Agency

<b>Certificate</b>	that the Developer as Crown Lessee under the Crown Lease has complied with all of the building and development covenants under the Crown Lease.
<b>Completion</b>	means completion of the Contract for Sale.
<b>Contract for Sale</b>	means the contract for sale between the Suburban Land Agency (as seller) and the Developer (as buyer) in relation to the Land.
<b>Contract Price</b>	means the purchase price payable by the Developer to the Suburban Land Agency under the Contract for Sale.
<b>Crown Lease</b>	means the Crown lease in respect of the Land.
<b>Date for Completion</b>	has the same meaning as the date for completion in the Contract for Sale.
<b>Deed</b>	means this project delivery deed and all schedules, annexures and attachments to it.
<b>Deed Date</b>	means the date this Deed is entered into by the Parties noted in this Deed.
<b>Developer</b>	includes the Developer’s employees, officers, agents, consultants and contractors.
<b>Development Application</b>	has the same meaning as in the Planning Act and includes any and each variation or amendment to any development application lodged with the Authority.
<b>Development Approval</b>	means approval of a Development Application by the Authority as described in the Planning Act.
<b>Executive</b>	means the Australian Capital Territory Executive created by section 36 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).
<b>Improvements</b>	means the buildings, structures and fixtures erected on and forming part of the Land.
<b>Insolvency Event</b>	<p>(1) in respect of a natural person:</p> <p>(a) any orders, agreements or arrangements are made in respect of the affairs of the person in accordance with the <i>Bankruptcy Act 1966</i> (Cth); or</p> <p>(b) in the reasonable opinion of the Suburban Land Agency the person is likely to be declared bankrupt or lose control of the management of their financial affairs; or</p>

- (2) in respect of all other entities:
- (a) any of the events listed in sub-sections 459C(2)(a) to (f) of the *Corporations Act 2001* (Cth) occur in respect of the entity; or
  - (b) any other event occurs which, in the reasonable opinion of the Suburban Land Agency is likely to result, or has resulted, in the:
    - (i) insolvency;
    - (ii) winding up; or
    - (iii) appointment of a controller (as that term is defined in the *Corporations Act 2001* (Cth)) in respect of part or all of the property,
 of the entity.

For the purposes of subparagraph 2(b), subsections 459C(2)(a) to (f) *Corporations Act 2001* (Cth) are to be read as if applying to all incorporated entities.

<b>Land</b>	means the land described in <b>Item 3</b> of Schedule 1.
<b>Minimum Rating</b>	means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited.
<b>Minister</b>	means a Minister for the Territory appointed under section 41 of the <i>Australian Capital Territory (Self Government) Act 1988</i> (Cth)
<b>Parties</b>	means the Suburban Land Agency and the Developer.
<b>Permitted Substitute Security</b>	means a replacement Security in the form described in <b>clause 4.1.1</b> provided in accordance with <b>clause 4.1.8</b> .
<b>Planning Act</b>	means the <i>Planning Act 2023</i> .
<b>Provided Security</b>	means Security provided under <b>clause 4</b> .
<b>Release Date</b>	within 20 Working Days after the Developer has notified the Suburban Land Agency (with sufficient evidence as required by Suburban Land Agency) of the Developer having complied with all of their obligations under this Deed.
<b>Relevant Agency</b>	means the Territory, the Minister, the Executive, any administrative unit, section or Directorate of the Territory, statutory authority, utility provider or any other body which has statutory and/or administrative responsibilities in respect of the approval of development of the Land, the Land or any other obligations of the Developer under this Deed.

<b>Security</b>	has the meaning set out in <b>clause 4</b> of this Deed and includes any Permitted Substitute Security.
<b>Security Amount</b>	means \$60,000.00
<b>Term</b>	as described in <b>clause 2</b> of this Deed.
<b>Territory</b>	when used: <ul style="list-style-type: none"> <li>(1) in a geographical sense, the Australian Capital Territory; and</li> <li>(2) in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).</li> </ul>
<b>Territory Plan</b>	means the notifiable instrument created under section 45 of the Planning Act, as amended and varied from time to time.
<b>Working Day</b>	means a day which is not a Saturday, Sunday or public holiday in Canberra, ACT.

## 1.2. General

In this Deed, unless a contrary intention is expressed:

- (1) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
- (2) words in the singular include the plural and vice versa;
- (3) headings are for convenience only and do not affect the construction or interpretation of this Deed;
- (4) an obligation imposed on more than one person binds them jointly and severally;
- (5) “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; and
- (6) the word “include” and any derivation is not to be construed as a word of limitation.

## 2. Term

2.1.1. The Term of this Deed commences on the Deed Date and continues until the earlier of:

- (1) the fulfilment of all of the Parties’ obligations under this Deed; or

- (2) the termination of this Deed by either Party in accordance with its terms;  
or
- (3) 10 years from the date of Completion.

### **3. Design and Development Outcomes**

- 3.1.1. The Developer must design and construct all buildings on the Land consistent with:
  - (1) all applicable laws;
  - (2) the terms and conditions contained in this Deed.
- 3.1.2. To the extent of any inconsistency between **sub-clauses 3.1.1(1)-(2)**, any obligations in any preceding sub-clause will take precedence over any obligations in subsequent sub-clauses and, to the extent of that inconsistency only, the Developer shall be relieved of obligations in subsequent sub-clauses.

### **4. Security**

#### **4.1. Security**

- 4.1.1. As security for the performance of the Developer's obligations under this Deed the Developer must provide to the Suburban Land Agency on Completion, the Security in a sum equal to the Security Amount (in respect of which time is of the essence), in the form of:
  - (1) an unconditional irrevocable bank guarantee (without an expiry date) from an Australian financial institution that satisfies the Minimum Rating and on terms acceptable to the Suburban Land Agency;
  - (2) a bank cheque in favour of the Suburban Land Agency; or
  - (3) an insurance bond from an Australian institution that satisfies the Minimum Rating and on terms acceptable to the Suburban Land Agency.
- 4.1.2. The Developer must provide a copy of any bank guarantee or insurance bond it proposes to use as the Security to the Suburban Land Agency no less than 5 Working Days prior to the Date for Completion. The Suburban Land Agency may advise the Developer in writing prior to Completion the bank guarantee or insurance bond is not acceptable to the Suburban Land Agency providing reasons why the bank guarantee or insurance bond is unacceptable.
- 4.1.3. If notified the bank guarantee or insurance bond is not acceptable by the Suburban Land Agency, the Developer must provide an acceptable bank guarantee or insurance bond to the Suburban Land Agency prior to Completion, or pay the Security by bank cheque in favour of the Suburban Land Agency on Completion.
- 4.1.4. The Parties have agreed the sum of the Security represents a genuine pre-estimate of the loss of the Suburban Land Agency if this Deed is terminated by the Suburban

Land Agency as a result of the Developer failing to comply with its obligations under this Deed.

- 4.1.5. If the Developer breaches any of its obligations under this Deed, the Suburban Land Agency may, without notice to the Developer, call on the Security for all costs or losses reasonably incurred by the Suburban Land Agency in respect of or in connection with any loss or damage suffered, arising from the Developer's breach of this Deed and includes any loss or costs in respect of the Suburban Land Agency:
- (1) carrying out their respective obligations; and/or
  - (2) enforcing their respective rights under this Deed.
- 4.1.6. If the Suburban Land Agency calls on the Security, the Developer must within 5 Working Days of notice by the Suburban Land Agency (in respect of which time is of the essence), renew the Security to the Security Amount and provide the same to the Suburban Land Agency.
- 4.1.7. The Developer agrees, if:
- (1) the Developer has not performed its obligations under this Deed within 10 years of the date of Completion; or
  - (2) this Deed is terminated under **clause 13.1**,
- the Developer releases the Security and any amount payable under the Security absolutely to the Suburban Land Agency.
- 4.1.8. On the Release Date, to the extent that the Suburban Land Agency has not called on or is not entitled to call on the Security under **clause 4.1.5**, the Suburban Land Agency will release to the Developer the Security (or the balance of the Security, if part of it has been released in accordance with **clause 4.1.5**) provided under this **clause 4**.
- 4.1.9. If the credit rating of an Australian financial institution or Australian institution (as applicable) providing the Security falls below the Minimum Rating, the Developer must provide a replacement Security (being a Permitted Substituted Security) from an Australian financial institution or Australian institution (as applicable) with at least the Minimum Rating, at the Developer's cost, to the Suburban Land Agency within 10 Working Days of the credit rating falling below the Minimum Rating. A replacement Security under this clause will be effective from the date of receipt.
- 4.1.10. If the Security has an expiry date which has less than 3 months remaining at any point during the Term, the Developer must provide a replacement Security (being a Permitted Substituted Security) from an Australian financial institution or Australian institution (as applicable) with at least the Minimum Rating, at the Developer's cost, to the Suburban Land Agency no later than 10 Working Days



after the date which is 3 months from the expiry date of the Security. A replacement Security under this clause will be effective from the date of receipt.

- 4.1.11. If a replacement Security under **clause 4.1.9** or **clause 4.1.10** has an expiry date, the expiry date must be no earlier than 1 year from the date the replacement Security is provided by the Developer to the Suburban Land Agency.
- 4.1.12. If the Developer fails to provide a replacement Security under **clause 4.1.9** or **clause 4.1.10** by the required date it will be a breach of this Deed and the Suburban Land Agency shall be immediately entitled to draw on the Security, hold the proceeds and apply such proceeds as it may apply Security under this Deed.
- 4.1.13. Where, following the Suburban Land Agency drawing on the Security under **clause 4.1.12**, the Developer provides a replacement Security from an Australian financial institution or Australian institution (as applicable) with at least the Minimum Rating, at the Developer's cost, to the Suburban Land Agency, the Suburban Land Agency must, subject to any recourse to the proceeds permitted under this Deed, return to the Developer the proceeds from drawing down on the relevant Security less any reasonable costs incurred as a result of the Developer's delay in providing the replacement Security.
- 4.1.14. Subject to the rights given under this clause, if the Developer disputes the Suburban Land Agency's entitlement to exercise a right in respect of the Security under this **clause 4** then such dispute will be referred for resolution under **clause 16** but will not prevent the Suburban Land Agency having recourse to the proceeds of the Security.
- 4.1.15. If the Suburban Land Agency makes a call on the Security, the Suburban Land Agency:
  - (1) does not hold the amount received under the call on trust for the Developer; and
  - (2) is not obliged to pay the Developer interest on that amount.
- 4.1.16. The Developer must not take any steps whatsoever to restrain:
  - (1) the Suburban Land Agency from making any call on the Security; or
  - (2) the issuer of the Security from complying with any such call.
- 4.1.17. The Developer agrees that damages will be an adequate remedy if the Suburban Land Agency makes any call on the Security which it is not entitled to make.
- 4.1.18. If the Developer wishes to replace the Provided Security with a Permitted Substitute Security:
  - (1) the Developer may request the Suburban Land Agency to accept the Permitted Substitute Security in place of the Provided Security;
  - (2) the Suburban Land Agency will not unreasonably refuse to accept the Permitted Substitute Security in place of the Provided Security;

- (3) the Developer will pay to the Suburban Land Agency on demand all reasonable costs incurred by the Suburban Land Agency in relation to the substitution of the Permitted Substitute Security for the Provided Security;
- (4) upon the Developer delivering the Permitted Substitute Security to the Suburban Land Agency:
  - (a) the Permitted Substitute Security will be substituted for the Provided Security as security for the performance of the Developer's obligations under this Deed;
  - (b) the Permitted Substitute Security is then the "Security" for the purposes of this Deed; and
  - (c) the Parties rights and obligations in relation to the Permitted Substitute Security are as set out in this Deed, including in this **clause 4**; and
- (5) the Suburban Land Agency will promptly, after its receipt of the Permitted Substitute Security, release to the Developer the Provided Security (to the extent that the Suburban Land Agency has not called on, or is not entitled to call on, the Provided Security).

## **4.2. Specific performance**

- 4.2.1. The Parties agree that nothing in this **clause 4** prejudices any other rights or remedies of the Parties in respect of any breach of this Deed.
- 4.2.2. Without limiting **clause 4.2.1** the Developer agrees that damages are an insufficient remedy in respect of a breach of this Deed and, noting **clause 4.2.1**, agrees that the Suburban Land Agency may seek orders for specific performance requiring the Developer to undertake any obligation under this Deed and/or injunctive relief preventing the Developer from taking any action contrary to or inconsistent with this Deed including the filing or lodging of any document with any party.
- 4.2.3. This Deed may be pleaded as a bar to any proceedings brought by the Developer against the Territory, Authority or Suburban Land Agency in respect of any costs or losses suffered by the Developer in connection with the Suburban Land Agency enforcing its rights as a result of the Developer's breach of this Deed.

## **5. Costs of Development and Approvals**

### **5.1. Development Costs**

- 5.1.1. Subject to the contrary in any Schedule, the Developer acknowledges that it is responsible for the costs of planning, designing, constructing, certifying or operating on/of or in relation to the Land or any Improvements and the Suburban Land Agency is not responsible for meeting any part of those costs.
- 5.1.2. Without limiting **clause 5.1.1**, the Developer shall not make any Claim, seek any compensation or reimbursement in respect of any costs in respect of the planning,

designing, constructing, certifying or operating on/of or in relation to the Land or any Improvements within it that arise as a result of:

- (1) requirements of the Suburban Land Agency under this Deed or Contract for Sale or any subsequent variations to those documents agreed between the Parties;
- (2) any required changes to any Development Application that the Authority or any Relevant Agency requires during the Development Approval process; or
- (3) any changes that the Developer initiates.

5.1.3. For the avoidance of doubt, the Developer must not make any Claim, seek any compensation or reimbursement in respect of any costs in respect of the planning, designing, constructing, certifying or operating on/of or in relation to the Land or any Improvements as a result of a change even where the Authority or the Suburban Land Agency requires that change.

## **5.2. Approvals of Relevant Agencies**

5.2.1. The Developer must, at its cost, submit applications to and obtain from the Authority and Relevant Agencies all Approvals necessary for the carrying out of the development of the Land. This includes obtaining all planning Approvals or endorsements from the Authority, including:

- (1) approved Development Applications for all improvements within the Land; and
- (2) any Approvals.

## **6. Sale of property**

6.1.1. The Developer must not sell or assign or agree to sell or assign any interest in the Crown Lease or the Land to any person (**Disponee**) before the Release Date unless:

- (1) the Disponee is first approved by the Suburban Land Agency;
- (2) the terms of any agreement to sale or assignment (**Disposition**) are first approved by the Suburban Land Agency;
- (3) the Disponee has entered into a deed, on terms approved by Suburban Land Agency, that the Disponee shall be bound by and shall comply with all of the obligations of the Developer under this Deed which have not been complied with as at the date of Disposition or which otherwise continue to have effect after the date of the Disposition, as if the Disponee were party to this Deed from its making; and
- (4) on or prior to the Disposition:
  - (a) the Developer authorises Suburban Land Agency to hold the Security (as from the time of the Disposition) as if it had been provided by the Disponee; or

- (b) the Disponee provides substitute Security to Suburban Land Agency, in which case Suburban Land Agency shall within five Working Days after receipt of such substitute Security release to the Developer the Security provided by it (to the extent that Suburban Land Agency has not called on, or is not entitled to call on, that Security).
- 6.1.2. On completion of any Disposition for which Suburban Land Agency consent is required under this clause, the Developer must pay to Suburban Land Agency the amount (if any) by which the price payable by the Disponee for the property exceeds the price paid by the Developer to Suburban Land Agency for the Crown Lease.
- 6.1.3. Notwithstanding the provisions above, the Developer may enter into agreements for sale before the Release Date in respect of dwellings erected or to be erected on the Land, provided that:
  - (a) the Developer ensures that any such agreement is subject to and conditional upon the Developer performing its obligations under this Deed; and
  - (b) each such agreement includes a condition to that effect.
- 6.1.4. The Developer must promptly, at the request of Suburban Land Agency, provide such details as Suburban Land Agency requires in respect of any sale or proposed sale relating to the Land or any dwelling on the Land and a copy of any agreement made by the Developer in relation to any such sale.
- 6.1.5. This **clause 6** does not apply:
  - (a) to a mortgagee exercising a power of sale; or
  - (b) to a liquidator or receiver exercising powers under the Corporations Act 2001 (Cth).

## **7. Construction completion**

- 7.1.1. The Developer must, within 48 months after Completion:
  - (1) complete construction of a development on the Land; and
  - (2) obtain a Compliance Certificate.

## **8. Indemnity**

- 8.1.1. The Developer indemnifies the Suburban Land Agency and shall keep it indemnified from and against any Claim, expense, costs, loss or damage suffered by the Suburban Land Agency arising out of any failure by the Developer to perform its obligations under this Deed.

## **9. Preservation of the Suburban Land Agency's rights and Developer's obligations**

- 9.1.1. The Parties agree that:
  - (1) any variation, amendment, waiver, credit or other concession must be in

writing;

- (2) silence or delay on the part of the Suburban Land Agency does not constitute acquiesce or waiver; and
- (3) any variation, amendment, waiver, credit or other concession is specific only to the matter set out in writing and does not constitute a general variation of the relevant Party's rights.

## **10. Developer's representations and warranties**

10.1.1. The Developer represents and warrants to the Suburban Land Agency that:

- (1) if the Developer is incorporated, it is incorporated in accordance with the laws of its place of incorporation, validly exists under those laws and has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted;
- (2) the Developer it is authorised to execute this Deed and comply with all obligations under this Deed;
- (3) the unconditional execution and delivery of, and compliance with its obligations under, this Deed does not contravene its constitution or any law applying to it;
- (4) it is aware of and will comply with its obligations under the *Work Health and Safety Act 2011 (ACT)*; and
- (5) it is aware of and will comply with its obligations under the *Building Act 2004 (ACT)* and the Building Code of Australia.

## **11. Costs and expenses**

11.1.1. The Developer must pay to the Suburban Land Agency within 10 Working Days after demand all of the Suburban Land Agency's reasonable costs and expenses of or relating to any exercise or attempted exercise or the preservation of any of the Suburban Land Agency's rights under this Deed.

11.1.2. Subject to **clause 11.1.1**, the Developer and the Suburban Land Agency must bear:

- (1) their own costs, including professional costs and disbursements, associated with the preparation and execution of this Deed and any subsequent consent, agreement, approval or waiver hereunder or amendment thereto; and
- (2) the costs associated with their performance of their obligations under this Deed.

## **12. Set-off**

12.1.1. The Developer may not raise any set-off, counterclaim or defence in connection with its liabilities under this Deed.

## **13. Default and Termination**

### **13.1. Termination by the Suburban Land Agency**

13.1.1. The Suburban Land Agency may terminate this Deed, at any time by notice to the Developer, if:

- (1) the Contract for Sale is terminated; or
- (2) the Developer permanently abandons the development of the Land; or
- (3) the Developer is the subject of an Insolvency Event; or
- (4) the Developer is in breach of a provision of this Deed, where that breach:
  - (a) if capable of being remedied, is not remedied within 20 Working Days of receipt of written notice specifying the default; or
  - (b) is not capable of being remedied.

13.1.2. If a breach by the Suburban Land Agency of its obligations under this Deed is a material cause of the occurrence of an event set out in **clause 13.1.1** or delays or prevents the Developer's ability to remedy such an event, if the default can be remedied, the Suburban Land Agency may not exercise any of the rights and remedies otherwise given to it under **clause 13.1.1** until the Suburban Land Agency has remedied the breach of its obligation.

### **13.2. Termination by the Developer**

13.2.1. Subject to the terms of this Deed, if the Suburban Land Agency defaults in a material respect in the performance of any of its material obligations under this Deed and the Suburban Land Agency does not remedy such default to the reasonable satisfaction of the Developer within 30 Working Days of receipt of written notice specifying the default, the Developer may by written notice terminate this Deed.

13.2.2. If a breach by the Developer of its obligations under this Deed is a material cause of a breach or default of this Deed by the Suburban Land Agency or delays or prevents the Suburban Land Agency's ability to remedy such an event, and if the default may be remedied, the Developer may not exercise any of the rights and remedies otherwise given to it under **clause 13.2.1** until the Developer has remedied the breach of its obligation.

### **13.3. Future restrictions resulting from termination by the Suburban Land Agency**

13.3.1. Where the Suburban Land Agency terminates this Deed under **clause 13.1**, the Suburban Land Agency, the Territory and/or the Authority may impose restrictions or prohibitions on the participation of:

- (1) the Developer;
- (2) any "associated entity" (as defined in *Corporations Act 2001* (Cth) – see section 9 and 50AAA) of the Developer; and
- (3) any Person that the Suburban Land Agency considers (in its absolute

discretion) colluded with, encouraged or facilitated the failure to comply by the Developer,

in any future offerings of land (including the offering of Crown leases in respect of land) for up to 4 years from the date of notification to the Developer and or other Person of the restriction or prohibition.

- 13.3.2. The Developer agrees it will raise no objection and will not take any action against the Suburban Land Agency, the Authority, the Territory or any other body should the Developer, or any other Person, be restricted or prohibited from involvement in future offerings of land as result of the application of this clause.

#### **13.4. Other Rights**

Nothing in this **clause 13** prejudices any other rights or remedies of the Parties in respect of any breach of this Deed.

### **14. Parties' Representatives and Notices**

#### **14.1. Parties' Representatives**

- 14.1.1. The Parties nominated representatives (**Representatives**) are set out in **Item 4 of Schedule 1**. If a Party has not nominated a Representative in this Deed, it must do so within 10 Working Days of the Deed Date. This appointment must be in writing.
- 14.1.2. Any direction given by a Party shall, if given to the Representative of the other Party, be deemed to be issued or given to or served upon that other Party.
- 14.1.3. A Party may change its Representative by notice to the other Party given in accordance with **clause 14.2**.

#### **14.2. Notices**

- 14.2.1. Any notice, including any other communication, required to be given or sent to either Party under this Deed must be in writing and given to the Party or its Representative. A notice will be deemed to have been given:
- (1) if delivered by hand, on delivery;
  - (2) if sent by prepaid mail, on the expiration of 2 Working Days after the date on which it was sent; or
  - (3) if sent by electronic mail, on whichever of the following occurs first:
    - (a) the other Party's acknowledgement of receipt by any means;
    - (b) the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address;
    - (c) the expiration of 2 Working Days after the date on which it was sent without receipt of a notification that the delivery failed,
- and if given in two or more ways, on the first of paragraphs (1) to (3) occurring.

- 14.2.2. A Party's Representative may give a notice, claim or authority on behalf of that Party.

## **15. Governing law and jurisdiction**

This Deed will be governed by and construed in accordance with the laws of the Territory, and the Parties submit to the non-exclusive jurisdiction of the courts of the Territory.

## **16. Dispute Resolution**

- 16.1.1. If a difference or dispute (**Dispute**) arises in relation to this Deed either Party may give notice to the other that a Dispute exists, which specifies details of the Dispute, and the Parties agree that they will endeavour to resolve the Dispute by negotiations, or, if the Dispute has not been resolved within 15 Working Days of the issue of the notice, refer the matter to appropriate senior executives with authority to resolve the matter.
- 16.1.2. Nothing in this **clause 16** will prejudice the rights of either Party to institute proceedings to enforce this Deed or to seek injunctive or urgent declaratory relief in respect of any Dispute.

## **17. Miscellaneous**

### **17.1. No Agency, Joint Venture, Partnership etc.**

Nothing contained or implied in this Deed constitutes a party, the partner, agent, joint venture or legal representative of another party for any purpose or creates any partnership, agency, joint venture or trust, and no Party has any authority to bind another Party in any way.

### **17.2. Assignment**

The Developer may not assign its rights under this Deed without the consent of the Suburban Land Agency which may give or withhold its consent in its absolute discretion and subject to any conditions it may see fit, including the provision of financial security by the proposed assignee.

### **17.3. Waiver**

A failure to exercise or enforce or a delay in exercising or enforcing or a partial exercise or enforcement of any right, remedy, power or privilege under this Deed by either Party will not in any way preclude or operate as a waiver of any further exercise or enforcement of it or the exercise or enforcement of any other right, remedy, power or privilege under this Deed or provided by law.

### **17.4. Further assurance**

Each Party must at its cost and expense immediately on demand by the other Party perform all such acts and execute all such agreements, assurances and other documents and instruments as the other Party reasonably requires to perfect the rights and powers afforded, created or intended by the Parties to be afforded to or created in favour of that other, by this Deed.

### **17.5. Severability of provisions**



Any provision of this Deed that is illegal, void or unenforceable will not form part of this Deed to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Deed will not be invalidated by an illegal, void or unenforceable provision.

**17.6. Australian Currency and measurements**

- 17.6.1. All prices and sums of money referred to in, and payments required to be made under, this Deed shall be in the lawful currency of the Commonwealth of Australia.
- 17.6.2. All measurements of physical quantities will be in Australian legal units of measurements in accordance with the *National Measurement Act 1960* (Cth).

**17.7. Approvals not to affect obligations**

The giving of any approval or the making of any direction or appointment or the exercise of any authority or discretion or the exercise, giving or making of any other matter or thing of any nature hereunder by a Party shall not, except where this Deed expressly provides to the contrary, relieve the other Party from its obligations under this Deed.

**17.8. Non-merger**

None of the terms, or conditions of this Deed or the warranties or indemnities in this Deed nor any act, matter or thing done under or by virtue of or in connection with this Deed shall operate as a merger of any of the rights and remedies of the Parties in or under this Deed, all of which will continue in full force and effect until the respective rights and obligations of the Parties under this Deed have been fully performed and satisfied.

**18. Schedules**

- 18.1.1. The Schedules set out additional specific obligations and requirements which the Developer must comply with.
- 18.1.2. The terms in the Schedules take priority over other terms, conditions and definitions in the Deed. In the event of any inconsistency between any Schedules and any other provision of this Deed then, to the extent of any inconsistency, the Schedules will prevail.



## Schedule 1 - Details

<p>Item 1 <b>Buyer/Developer</b></p>	<p>ACN</p>	
<p>Item 2 <b>Seller</b></p>	<p><b>Suburban Land Agency</b> <b>ABN 27 105 505 367</b></p>	
<p>Item 3 <b>Land</b></p>	<p>Block 4 Section 235 Gungahlin in the Australian Capital Territory</p>	
<p>Item 4 <b>Parties' addresses</b></p>	<p><b>Suburban Land Agency</b> <b>Address:</b> 480 Northbourne Avenue DICKSON ACT 2602  For the attention of: <b>Representative:</b> Narelle Sargent <b>Email:</b> suburbanland@act.gov.au  <b>Telephone:</b> 02 6205 0600</p>	<p><b>Developer</b> <b>Address:</b>  For the attention of:  <b>Representative:</b>  <b>Email:</b>  <b>Telephone:</b></p>
<p>Item 5 <b>Schedules</b></p>	<p>Schedule 1 – Details</p>	
	<p>Schedule 2 – Verges and Footpaths</p>	
	<p>Schedule 3 – Sustainability Requirements</p>	



## **Schedule 2 – Verges and Footpaths**

- 1.1.1. If the verges and/or footpaths adjacent to the Land are damaged during the term of this Deed, the Developer must repair the damage at its own cost, even if the damage was not caused by the Developer.
- 1.1.2. Nothing in this clause shall limit the Developer's right to recover its costs, incurred as a consequence of this clause, against any third party who may be responsible for the damage.

## Schedule 3 – Sustainability Requirements

### 1 Sustainability Requirements

#### 1.1 Definitions

The following definitions apply to this Schedule and when applicable to any other part of this Deed.

**Agency Sustainability Strategy 2021-25** means the document set out in **Annexure A**.

**Canberra’s Living Infrastructure Plan: Cooling the City (2019)** means the document set out in **Annexure B**.

#### 1.2 Design Documents to be consistent with Sustainability Requirements

1.2.1 The Developer agrees that it must design and develop the Land consistent with:

- (1) Agency Sustainability Strategy 2021-25; and
- (2) Canberra’s Living Infrastructure Plan: Cooling the City (2019).

1.2.2 The Developer must ensure that every Design Document submitted to the Agency by the Developer is, in the opinion of the Developer (acting reasonably), consistent with all requirements and standards set out in the documents referred to in **clause 1.2.1**.

1.2.3 For the avoidance of doubt, the Agency may decline to issue and Endorsement Notice in respect of any Design Document where the Agency determines the Design Document is inconsistent with the requirements of this **clause 1.2**.

#### 1.3 No Gas Connections

1.3.1 Without limiting **clause 1.2.1** in this Schedule, the Developer must not connect (or permit connection of) any development on the Land to any form of supply of gas for heating, cooking, hot water or other systems.

#### 1.4 Electric Vehicle Charging

1.4.1 The Developer must comply with requirements of National Construction Code section J9D4 ‘Facilities for electric vehicle charging equipment’ with the following departures:

- (1) One 10A socket outlet is to be provided for every six bicycle, scooter and motorbike parking spaces to accommodate electric charging;
- (2) The parties acknowledge while the Developer must install infrastructure that enables the charging of electric vehicles as specified above, the Developer is not obliged to install or connect charging stations; and
- (3) In the event of any inconsistency between these clauses and any laws in force in the Territory (including the Territory Plan), then, to the

extent of any only inconsistency, the law(s) will prevail.

## **1.5 Building Thermal Performance**

- 1.5.1 The Developer must ensure that energy efficiency ratings (NatHERS) must achieve an average of at least 7.5 stars across multiple dwellings, and a minimum of 6.5 stars for each dwelling.

## **1.6 Climate Resilient Landscaping**

- 1.6.1 Landscape drawings prepared as part of the Development Application must include:

- (1) Greater than 60% of plants (as a proportion of total) used in landscaping to be either indigenous, native or climate resilient exotic (suited to the future expected climate) species;
- (2) Deep soil areas with at least 1m deep of high quality soil totalling 16m<sup>2</sup> for medium trees and 36m<sup>2</sup> for large trees (>9m canopy width and 12m in height); and
- (3) At minimum, 20% tree canopy cover (at maturity) of the block, with canopy trees planted in deep soil zone in communal areas

## **Annexure A – Agency Sustainability Strategy 2021-25**



## **Annexure B – Canberra’s Living Infrastructure Plan: Cooling the City (2019)**

**DATE OF THIS DEED** \_\_\_\_\_

**SIGNED AS A DEED**

**SIGNED, SEALED AND DELIVERED** )  
for and on behalf of the ) .....  
**SUBURBAN LAND AGENCY** ) Signature of authorised officer  
in the presence of:

.....  
Signature of witness Print name

.....  
Print name

**SIGNED, SEALED AND DELIVERED** by or )  
for and on behalf of ) .....  
Signature of director/ authorised  
officer/ individual\*  
*\*DELETE whichever is not applicable (see note below)*

ACN  
.....  
Print name

in accordance with section 127 of the  
Corporations Act 2001 (Cth) in the presence  
of \*  
*\*DELETE whichever is not applicable (see note below)*  
:  
.....  
Signature of second authorised officer\*  
*\*only use if Incorporated Association (see note below)*

.....  
Signature of director/ secretary/ witness\*  
*\*DELETE whichever is not applicable (see note below)*  
.....  
Print name



**Note:**  
Date: Must be dated on the date the last Party signs the Deed or, if signed counterparts of the Deed are exchanged, the date of exchange. Also date the cover page.  
Company: Must be signed in accordance with section 127 of the Corporations Act 2001 (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Supplier's constitution.  
Individual: Must be signed by the individual Supplier and witnessed.  
Incorporated Association: Must be signed in accordance with the Supplier's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.