



DEED OF GRANT – AFFORDABLE RENTAL

Date

BLOCK SECTION

Parties

AUSTRALIAN CAPITAL TERRITORY

INSERT RECIPIENT

Prepared by

Version

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Parties **Australian Capital Territory ABN 92 548 663 534** the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988 (Cth)* represented by the Chief Minister, Treasury and Economic Development Directorate.

AND

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

Recipient

BACKGROUND

- A. The Recipient will offer Affordable Rental Dwellings on the Land.
- B. The Recipient has agreed that the Affordable Rental Dwellings will be offered in accordance with the obligations set out in this Deed.
- C. The Territory has agreed to make, and the Recipient has agreed to accept, the Grant for the purpose of the Funded Activity on the terms and conditions of this Deed.

Operative Provisions

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.

Affordable Community Housing Land Tax Exemption means the exemption as determined by the *Land Tax (Affordable Community Housing) Determination 2023 (No 2)* in accordance with section 13A of the *Land Tax Act 2004* or such substituted exemption or measure as determined by the Territory from time to time and notified to the Recipient.

Affordable Rate means for each Affordable Rental Dwelling an amount that is less than 75% of the Market Rent for the Dwelling (as at the most recent Market Rent Determination Date).

Affordable Rental Dwelling means a Development Dwelling which is rented, or offered for rent, by the Recipient under an Affordable Rental Lease at the Affordable Rate.

Affordable Rental Lease means a tenancy agreement in respect of an Affordable Rental Dwelling which complies with the provisions of the *Residential Tenancies Act 1997*.

Included for circumstances where the Recipient intends to engage an Affordable Rental Operator:

Affordable Rental Operator

means Insert or any substitute or replacement thereof approved by the Territory under **clause 4.8.3.**

Affordable Rental Register

means a register current as at the Reporting Date including:

- (1) the number and location of each Affordable Rental Dwelling;
- (2) the Affordable Rate and Market Rent calculations contained in valuations for all Affordable Rental Dwellings;
- (3) details regarding the eligibility of tenants as advised by the Territory to the Recipient from time to time; and
- (4) such other matters as reasonably determined by the Territory and agreed by the Recipient from time to time,

in the form set out in Schedule 2 (or in such form as amended and advised by the Territory, and agreed by the Recipient from time to time).

Agreed Number of Affordable Rental Dwellings

means **insert number** of Development Dwellings.

Bedroom

means a room which is a habitable room in accordance with the Building Code of Australia and the National Construction Code which has natural light (not borrowed) provided by an operable window.

Certificate of Occupancy

has the meaning set out in the *Building Act 2004*.

Claim

means 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.

Community Housing Provider

means a *registered community housing provider* as defined in the Community Housing Provider National Law.

Community Housing Provider National Law

means the appendix to the *Community Housing Providers (Adoption of the National Law) Act 2012* (NSW).

Deed

means this deed and all schedules, annexures and attachments to it.

Deed Date

means the date this Deed is entered into by the Parties noted in this

	Deed.
Development	means any building or other improvements on the Land containing Dwellings.
Development Dwelling	means a Dwelling, constructed or partially constructed, in any Development.
Dwelling	has the meaning set out in section 6 of the <i>Planning (General) Regulation 2023</i> .
Dwelling Mix Requirements	means the following: <ul style="list-style-type: none"> (1) <i>(Insert from Request)</i> of the Affordable Rental Dwellings must be 1 bedroom dwellings; (2) <i>(Insert from Request)</i> of the Affordable Rental Dwellings must be 2 bedroom dwellings; and (3) <i>(Insert from Request)</i> of the Affordable Rental Dwellings must be 3 bedroom dwellings.
Eligibility Criteria	means that the tenant, or tenants, have a combined gross income less than the household composition income limit established by the Territory from time to time and published as part of the Affordable Community Housing Land Tax Exemption.
Eligible Tenant	means a person who meets the Eligibility Criteria.
Included for projects receiving Lease Variation Charge (LVC) assistance: Funded Activity	means the construction and renting of the Agreed Number of Affordable Rental Dwellings on the Land to Eligible Tenants in accordance with the terms of this Deed.
Grant	means the amount specified in Item 4 of Schedule 1 .
Insolvency Event	<ul style="list-style-type: none"> (1) in respect of a natural person: <ul style="list-style-type: none"> (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 (b) in the reasonable opinion of the Territory the person is likely to be declared bankrupt or lose control of the management of their financial affairs; or (2) in respect of all other entities: <ul style="list-style-type: none"> (a) any of the events listed in sub-sections 459C(2)(a) to (f) of the <i>Corporations Act 2001</i> (Cth) occur in respect of the entity; or (b) any other event occurs which, in the reasonable opinion of the Territory 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.

Instalment means an instalment of the Grant as specified in **Item 4 of Schedule 1**.

Invoice Date means, for each Instalment of the Grant, the invoice date specified in **Item 4 of Schedule 1**.

Land means the land described in **Item 2 of Schedule 1**.

Included for projects receiving Lease Variation Charge (LVC) assistance: Lease Variation Charge (LVC) has the meaning given to it in the *Planning Act 2023* as may be amended from time to time or any equivalent charge in any substituted legislation as reasonably determined by the Territory.

Management Regime means the regime for managing Affordable Rental Dwellings provided in **Schedule 4**.

Market Rent means the rent for a Development Dwelling as determined by a Valuer in accordance with **clause 4.4** at the times specified in that clause.

Market Rent Determination Date means, for each Development Dwelling, each of the dates that a Market Rent determination is made in accordance with **clause 4.4.1**.

Parties means the Territory and the Recipient.

Personal Information is personal information as defined in section 8 of the *Information Privacy Act 2014*, namely: information about an identified individual or an individual who is reasonably identifiable:

- (1) whether the information is true or not; and
- (2) whether the information or opinion is recorded in a material form or not,

but does not include personal health information (as defined in the *Health Records (Privacy and Access) Act 1997* about the individual.

Privacy Laws	means the <i>Information Privacy Act 2014</i> and any subordinate legislation as amended from time to time.
Recipient	includes the Recipient's employees, officers, agents, consultants and contractors.
Reporting Date	means the 20 th day of March, June, September, and December each calendar year following commencement of the first Affordable Rental Lease.
Sunset Date	means the date set out in Item 6 of Schedule 1 .
Term	means the term of this Deed described in clause 2 of this Deed.
Territory	when used: <ol style="list-style-type: none">(1) in a geographical sense, the Australian Capital Territory; and(2) in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).
Tenant Eligibility Check	means an assessment of the status of each tenant under an Affordable Rental Lease as an Eligible Tenant.
Valuer	means a fellow or associate of the Australian Property Institute (ACT Division), or such substituted entity as reasonably determined by the Territory or a licensed real estate agent under the <i>Agents Act 2003</i> .
Valuer Selection Criteria	means a Valuer who, in the reasonable opinion of the Territory: <ol style="list-style-type: none">(1) is suitably qualified to carry out a valuation of the nature and dimension required in the Territory;(2) has at least 5 years' experience in the valuation of Dwellings similar to the Development Dwellings;(3) has the ability to meet time requirements; and(4) who has no pecuniary interest that could reasonably be regarded as being capable of affecting their ability to give an unbiased opinion in respect of a valuation they are requested to provide under this Deed.
Working Day	means a day which is not a Saturday, Sunday or public holiday in

the Territory.

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 and where applicable to any substituted 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 termination of this Deed by either Party in accordance with its terms;
or
- (2) 15 years from the date that the first Affordable Rental Lease is entered into.

3. Funded Activity

3.1.1. The Recipient must:

- (1) undertake the Funded Activity at its own cost and risk in accordance with the terms of this Deed and to a high standard of care, skill and diligence;
- (2) ensure that it holds all relevant licences or permits and complies with all laws necessary to undertake the Funded Activity; and
- (3) use the Grant only for the purposes of undertaking the Funded Activity.

4. Affordable Rental Dwellings

4.1. Agreed Number of Affordable Rental Dwellings

- 4.1.1. The Recipient must provide a copy of any Certificate of Occupancy for the Development to the Territory upon issue.
- 4.1.2. Following the issue of a Certificate of Occupancy for the Development, a number of Affordable Rental Dwellings which is no less than the Agreed Number of Affordable Rental Dwellings must be rented, in a manner consistent with this Deed, throughout the Term of this Deed.

4.2. Location and Mix of Affordable Rental Dwellings

- 4.2.1. Prior to submission of a development application for the construction of any Development, the Recipient must:
- (1) prepare a plan of the Development identifying the location and type of Dwellings that are intended to be Affordable Rental Dwellings (**Dwelling Plan**); and
 - (2) provide a copy of the Dwelling Plan to the Territory for approval.
- 4.2.2. The Dwelling Plan must comply with the Dwelling Mix Requirements.
- 4.2.3. Where the Territory advises that the Dwelling Plan submitted under **clause 4.2.1(1)** is not approved, the Recipient must amend the Dwelling Plan to be consistent with this Deed and advice from the Territory, and provide the same for the Territory to review. The process in this **clause 4.2.3** must continue until the Dwelling Plan is approved.
- 4.2.4. Prior to the renting of any Development Dwellings, the Recipient must resubmit the Dwelling Plan to the Territory. Any proposed changes to the location and configuration of the Affordable Rental Dwellings from that identified on the Dwelling Plan previously approved by the Territory must be clearly identified.
- 4.2.5. The Territory may, on provision of reasonable notice to the Recipient, request to inspect the Dwellings identified on the Dwelling Plan submitted under **clause 4.2.4** in considering whether or not to approve the Dwelling Plan, and the Recipient must do all things reasonably required to facilitate the inspection of the Dwellings by the Territory in this **clause 4.2.5**.
- 4.2.6. Where the Territory advises that the Dwelling Plan submitted under **clause 4.2.4** is not approved, the Recipient must amend the Dwelling Plan to be consistent with this Deed and advice from the Territory, and provide the same for the Territory to review. The process in this **clause 4.2.6** must continue until the Dwelling Plan is approved.

Version of 4.2.7 for mixed tenure developments:

- 4.2.7. Subject to **clause 4.2.8**, the configuration of the Affordable Rental Dwellings must, at all times during the Term of this Deed, be in accordance with an approved Dwelling Plan.
- 4.2.8. The Recipient may request the Territory to approve a variation of the configuration of the Affordable Rental Dwellings (**Changed Dwelling Configuration**). In considering whether or not to approve the Changed Dwelling Configuration

request, the Territory, in its absolute discretion, may consider matters such as the distribution of the dwellings and compliance with the Dwelling Mix Requirements.

4.3. Affordable Rate

- 4.3.1. The Affordable Rental Dwellings must only be rented to Eligible Tenants and only at the Affordable Rate.
- 4.3.2. No rent escalators or rent reviews are to be applied during the term of an Affordable Rental Lease such that the rent charged for the Affordable Rental Dwelling exceeds the Affordable Rate.

4.4. Market Rent Determination

- 4.4.1. The Recipient must appoint a Valuer to determine the Market Rent of each proposed Affordable Rental Dwelling, or Affordable Rental Dwelling as follows:
 - (1) as close as practicable to the date estimated by the Recipient that the first Affordable Rental Lease is or will be entered into for that dwelling; and
 - (2) prior to entering into any new Affordable Rental Lease with a new Eligible Tenant for a dwelling; and
 - (3) once an Affordable Rental Lease has been entered into under **clause 4.4.1(1)** or **clause 4.4.1(2)**, as applicable, thereafter once every year during the term of that Affordable Rental Lease (see example).

Example for the purpose of clause 4.4.1(3) – an Affordable Rental Lease is entered into on 1 July 2024. On the assumption there is no change to the Eligible Tenant(s) a new Market Rent will be determined on or before 1 July 2025 and each subsequent year - 1 July 2026 etc.

- 4.4.2. The Recipient must only appoint a Valuer who meets the Valuer Selection Criteria.
- 4.4.3. The Recipient must instruct the Valuer to determine Market Rent as the estimated rent payable by a tenant of the relevant Affordable Rental Dwelling as at the referable Market Rent Determination Date on the terms and conditions set out in the proposed or existing residential tenancy agreement (as applicable), which for the avoidance of doubt excludes any reference to an Affordable Rate:
 - (1) assuming a willing but not anxious lessor and a willing but not anxious tenant on the proposed lease terms in an arm's length transaction with each party acting knowledgeably, prudently and without compulsion;
 - (2) assuming the residential tenancy agreement was offered to the market with reasonable publicity;
 - (3) without regard to any particular characteristics, abilities or disabilities of the proposed tenant; and
 - (4) accordance with the valuation standards adopted by the Australian Property Institute from time to time (unless inconsistent with the subclauses **4.4.3(1)-(3)**).

- 4.4.4. The Recipient must promptly provide all information or documentation required by the Valuer in completing their valuation.
- 4.4.5. The Recipient must include information on the calculations in the valuation for the Market Rent and the Affordable Rate for each Affordable Rental Dwelling in the Affordable Rental Register on the next Reporting Date following receipt of the valuation.
- 4.4.6. The costs of any Valuer appointed pursuant to this clause are to be borne by the Recipient solely.

4.5. Eligibility for tenants of Affordable Rental Dwellings

- 4.5.1. Affordable Rental Dwellings must only be rented to Eligible Tenants.
- 4.5.2. The Recipient must ensure that a Tenant Eligibility Check for each tenant of an Affordable Rental Lease is undertaken no less than once per annum from commencement of the Affordable Rental Lease.
- 4.5.3. Eligible Tenants must be identified and selected in accordance with the process set out in **Schedule 3** of this Deed.
- 4.5.4. The process for identifying and selecting Eligible Tenants as set out in **Schedule 3** of this Deed may only be amended with the written consent of the Territory.

4.6. Changes to Eligibility Status

- 4.6.1. Where a tenant ceases to be an Eligible Tenant the Dwelling occupied by the tenant:
 - (1) ceases to be an Affordable Rental Dwelling for the purposes of this Deed; and
 - (2) will not count towards compliance with the Agreed Number of Affordable Rental Dwellings.
- 4.6.2. Notwithstanding **clause 4.6.1(2)**, a tenant who has ceased to be an Eligible Tenant will continue to count towards compliance with the Agreed Number of Affordable Rental Dwellings if the Territory is satisfied, in its discretion, that all reasonable steps have been undertaken to ensure that the Agreed Number of Affordable Rental Dwellings are rented to Eligible Tenants, which may include but is not limited to:
 - (1) as soon as reasonably practicable after the tenant ceases to be an Eligible Tenant the tenant is given a notice to vacate in accordance with the *Residential Tenancies Act 1997*; and
 - (2) if the tenant does not vacate the Dwelling in accordance with the notice to vacate, as soon as reasonably practicable an application is made for a termination and possession order in accordance with the *Residential Tenancies Act 1997*.

4.7. Included for mixed tenure developments only: Access to Facilities and Services

Version of 4.7 for mixed tenure market and affordable rental dwellings:

- 4.7.1. Tenants of Affordable Rental Dwellings must have the same access to any common areas, common facilities, common services, and common infrastructure available to tenants of other Development Dwellings, and on the same terms and conditions as those other tenants.
- 4.7.2. Tenants of Affordable Rental Dwellings must not be required to pay any charge or fee in addition to the Affordable Rate for access to any onsite services or facilities in the Development in excess of the charges imposed on other tenants for the same access to the same services or facilities.
- 4.7.3. The processes and procedures for ensuring compliance with **clause 4.7.1** are required to be in accordance with the process set out in **Schedule 3** of this Deed.
- 4.7.4. The process set out in **Schedule 3** of this Deed may only be amended with the written consent of the Territory.

4.8. Commercial Structure and Management of Affordable Rental Dwellings

Version of 4.8 for circumstances where the Recipient intends to engage a registered Community Housing Provider to operate the dwellings

- 4.8.1. Prior to the renting of any Affordable Rental Dwellings the Recipient must engage the Affordable Rental Operator to manage the Affordable Rental Dwellings, including the administration of the Affordable Rental Leases and operation and maintenance of the Affordable Rental Dwellings in compliance with the requirements of this Deed, for a period expiring no earlier than expiry of the Term of this Deed.
- 4.8.2. The Recipient must provide the Territory with evidence of the engagement of the Affordable Rental Operator, to the satisfaction of the Territory, prior to the renting of any Affordable Rental Dwellings.
- 4.8.3. The Recipient must not appoint an alternative or replacement operator as the Affordable Rental Operator, or otherwise cease using the Affordable Rental

Operator, without the written consent of the Territory, which may be given or withheld at the Territory's absolute discretion.

- 4.8.4. The Recipient warrants that from (Insert date) to the end of the Term of this Deed, Insert correct parties (the Recipient and/or the Affordable Rental Operator) will be a Community Housing Provider.
- 4.8.5. Irrespective of the appointment of the Affordable Rental Operator, the Recipient expressly acknowledges and agrees that it remains wholly responsible for ensuring compliance with the requirements of this Deed.
- 4.8.6. The Recipient must ensure that the processes, and any requirements, for the management of the Affordable Rental Dwellings outlined in the Management Regime (**Schedule 4**) are followed during the Term of this Deed.
- 4.8.7. Amendments to the Management Regime (**Schedule 4**) can only be made with the written consent of the Territory, such consent not to be unreasonably withheld.

Version of 4.8 for circumstances where the Recipient is a registered Community Housing Provider and will operate the dwellings

- 4.8.8. The Recipient must manage the Affordable Rental Dwellings, including the administration of the Affordable Rental Leases and operation and maintenance of the Affordable Rental Dwellings in compliance with the requirements of this Deed, for a period expiring no earlier than expiry of the Term of this Deed.
- 4.8.9. The Recipient warrants that from (Insert date) to the end of the Term of this Deed, the Recipient will make all reasonable efforts to be and remain a Community Housing Provider.
- 4.8.10. If the Recipient ceases to be a Community Housing Provider at any time, it must immediately notify the Territory. If this occurs, the Territory, in its absolute discretion, may negotiate with the Recipient an alternative process for the Recipient to fulfill their obligations under this Deed.
- 4.8.11. Notwithstanding **clause 4.8.10**, the Territory reserves its rights under **clause 11.1** of this Deed.

5. Grant

5.1. Eligibility for Grant

- 5.1.1. Subject to the Recipient's compliance with the terms of this Deed, the Territory must pay to the Recipient the Grant in the Instalments.
- 5.1.2. *TBA - Insert clauses relevant to the Grant assistance requested as per the Response Form. This may include:*
- (1) *Upfront Financial Assistance (direct monetary assistance prior to commencement of the Affordable Rental Dwellings), with details of the amount and purpose;*
 - (2) *Upfront Financial Assistance (LVC assistance with details of the amount and per cent of LVC liability);*
 - (3) *Ongoing Financial Assistance (subsidy grants to cover the gap between market rent and affordable rent), with details of the amount and the per*

cent of the gap between 74.9 per cent of market rent and affordable rent)

(4) *Ongoing Financial Assistance (scheduled or availability payments, recurring to cover operational costs), with details of the amount, the schedule of assistance, and the indexation rate.*

(5) *LVC deferral (interest free until the Certificate of Occupancy and Use)*

5.2. Payment of Grant

5.2.1. Subject to **clause 5.1**, each Instalment of the Grant will be paid to the Recipient within 28 days of provision of a valid tax invoice.

5.2.2. Invoices may only be rendered for an Instalment on or after the relevant Invoice Date.

5.2.3. The Grant will be paid via electronic funds transfer into the account nominated by the Recipient in writing.

5.3. Breach of Agreed Number of Affordable Rental Dwellings

5.3.1. *TBA - Insert clauses relevant to the Financial Assistance requested as per the Response Form.*

(1) *Depending on the type of Financial Assistance requested and the nature and severity of the breach and whether it is able to be remedied, the Territory may consider financial penalty options including, but not limited to, terminating any further Financial Assistance, reducing/adjusting the amount of any further Financial Assistance, withholding any security held by the Territory or requiring repayment of Financial Assistance already provided.*

(2) *The Territory will also consider whether there were reasons beyond the Recipient's reasonable control it could not comply with the requirement in applying any monetary amount.*

(3) *Notwithstanding **clause 5.3.1(1)**, the Territory reserves its rights under **clause 11.1** of this Deed.*

6. Reporting Obligations

6.1. Affordable Rental Register

6.1.1. On each Reporting Date the Recipient must provide the Territory with an Affordable Rental Register current as at that Reporting Date.

Included for circumstances where the Recipient intends to engage a registered Community Housing Provider to operate the dwellings

6.1.2. The Affordable Rental Register provided to the Territory by the Recipient under **clause 6.1.1** must contain a statement from the Recipient that Section 4.7 (**Access to Facilities and Services**) has been complied with.

6.1.3. The Recipient remains responsible for the provision of, and warrants the accuracy of, the Affordable Rental Register notwithstanding that it may be prepared by the Affordable Rental Operator.

6.2. Final Report and Grant Acquittal

6.2.1. The Recipient must provide to the Territory a final report confirming the completion of the Funded Activity and an acquittal of the Grant.

6.2.2. If requested, the Recipient must provide to the Territory as soon as practically possible, all records necessary or which are requested by the Territory to substantiate the expenditure of the Grant.

6.2.3. The Recipient must inform the Territory of all matters likely to materially and adversely affect the timing, scope and cost of the Funded Activity or the Recipient's ability to carry on or complete the Funded Activity in accordance with this Deed.

7. Indemnity

7.1.1. The Recipient indemnifies the Territory and shall keep it indemnified from and against any Claim, expense, costs, loss or damage suffered by the Territory arising out of:

- (1) any failure by the Recipient to perform its obligations under this Deed; and
- (2) any information submitted to the Territory under this Deed on which the Territory has relied on in performing its obligations under this Deed.

8. Recipient's representations and warranties

8.1.1. The Recipient represents and warrants to the Territory that:

- (1) if the Recipient 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) 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*; and

- (5) it is aware of and will comply with its obligations under the *Building Act 2004* and the Building Code of Australia.

9. Costs and expenses

9.1.1. The Recipient must pay to the Territory within 10 Working Days of demand all of the Territory's reasonable costs and expenses of or relating to any exercise or attempted exercise or the preservation of any of the Territory's rights under this Deed.

9.1.2. Subject to **clause 9.1.1**, the Recipient and the Territory 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 under this Deed or amendment to this Deed; and
- (2) the costs associated with their performance of their obligations under this Deed.

10. Set-off

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

11. Default and Termination

11.1. Termination by the Territory

11.1.1. The Territory may terminate this Deed, at any time by notice to the Recipient, if:

- (1) the Recipient permanently abandons the development of the Land; or
- (2) the Recipient is the subject of an Insolvency Event;
- (3) the Recipient has failed to both obtain a Certificate of Occupancy for the Development and commence its first Affordable Rental Lease by the Sunset Date; or
- (4) the Recipient 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.

11.1.2. If a breach by the Territory of its obligations under this Deed is a material cause of the occurrence of an event set out in **clause 11.1.1** or delays or prevents the Recipient's ability to remedy such an event, if the default can be remedied, the Territory may not exercise any of the rights and remedies otherwise given to it under **clause 11.1.1** until the Territory has remedied the breach of its obligation.

11.2. Termination by the Recipient

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

11.2.2. If a breach by the Recipient of its obligations under this Deed is a material cause of a breach or default of this Deed by the Territory or delays or prevents the Territory's ability to remedy such an event, and if the default may be remedied, the Recipient may not exercise any of the rights and remedies otherwise given to it under **clause 11.2.1** until the Recipient has remedied the breach of its obligation.

11.3. Repayment of Grant

11.3.1. If this Deed is terminated at any time following the payment of **Insert relevant upfront grant instalments** (see **Item 4 of Schedule 1**) as a result of a breach or default of the Recipient, the Recipient must repay to the Territory the first Instalment calculated on a pro-rata basis, as a debt due and payable, as set out in **Item 5 of Schedule 1**.

11.4. Other Rights

11.4.1. Nothing in this **clause 11** prejudices any other rights or remedies of the Parties in respect of any breach of this Deed.

12. Parties' Representatives and Notices

12.1. Parties' Representatives

12.1.1. The Parties nominated representatives (**Representatives**) are set out in **Item 3 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.

12.1.2. 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.

12.1.3. A Party may change its Representative by notice to the other Party given in accordance with **clause 12.2**.

12.2. Notices

12.2.1. 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 5 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.

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

13. 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.

14. Miscellaneous

14.1. *Included for community housing proposals only: Community Housing Assets*

14.1.1. The Recipient must ensure that the Affordable Rental Dwellings are included in the *(Insert relevant entity- Recipient's and/or Affordable Rental Operator's)* community housing assets for the purposes of reporting to the National Regulatory System for Community Housing (NRSCH).

14.2. Schedules

14.2.1. The Schedules set out additional and specific obligations and requirements which the Recipient must comply with.

14.2.2. The terms in the Schedules are subordinate to 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 other provision of this Deed will prevail.

14.3. No Agency, Joint Venture, Partnership etc.

The Parties agree:

- (1) nothing contained or implied in this Deed constitutes the Territory as a party, the partner, agent, joint venture or legal representative of another party to this Deed for any purpose or creates any partnership, agency, joint venture or trust;
- (2) the Territory has no authority to bind the Recipient in any way; and
- (3) the Recipient has no authority to bind the Territory in any way.

14.4. Assignment

14.4.1. The Recipient may not assign its rights under this Deed without the consent of the Territory 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.

14.4.2. A change in the control of the Recipient or a company that controls the Recipient (except a company listed on an Australian stock exchange) is taken to be an assignment of this Deed, the term “control” including the direct or indirect holding of more than 50% of the share capital of a corporation.

14.4.3. In addition to the circumstances set out in **clause 14.4.2**, and for the purposes of **clause 14.4.2**, “control” includes the direct or indirect possession of the power (whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights) to:

- (1) directly or indirectly control the membership of the board of directors of the corporation; or
- (2) otherwise directly or indirectly direct or cause the direction of the management and policies of that corporation,

whether by means of trusts, agreements, arrangements, understandings, practices, greater industry experience, the ownership of any interest in shares or stock of that corporation or otherwise.

14.5. 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.

14.6. 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.

14.7. 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.

14.8. Australian Currency and measurements

- 14.8.1. 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.
- 14.8.2. All measurements of physical quantities will be in Australian legal units of measurements in accordance with the *National Measurement Act 1960* (Cth).

14.9. 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.

14.10. 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.

14.11. Personal Information

- 14.11.1. The Recipient must:
- (1) use Personal Information only for the purposes of fulfilling its obligations under this Deed, and as legally required;
 - (2) take all reasonable measures to ensure that Personal Information is protected against loss and unauthorised access, use, modification, disclosure or other misuse and that only authorised personnel have access to the information; and
 - (3) comply with all Privacy Laws.

14.12. Counterparts

- 14.12.1. This Deed may be entered into in any number of counterparts.
- 14.12.2. Either Party may execute this Deed by signing any counterpart.
- 14.12.3. All counterparts, taken together, constitute one instrument.

Schedule 1 - Details

Item 1 Recipient	<i>To insert</i>																													
Item 2 Land	<i>To insert</i>																													
Item 3 Parties' addresses	Territory Address: Level 1, 220 London Circuit, Canberra, ACT, 2601 For the attention of: <i>to insert</i> Representative: Email: Telephone:	Recipient Address: <i>to insert</i> For the attention of: Representative: Email: Telephone:																												
Item 4 Grant	Total amount: <i>[\$[TBA]]</i> (GST exclusive). The Grant is payable in the following instalments:																													
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">Instalment</th> <th style="width: 33%;">Amount</th> <th style="width: 33%;">Invoice Date</th> </tr> </thead> <tbody> <tr> <td>First Instalment</td> <td><i>TBA</i></td> <td><i>TBA</i></td> </tr> <tr> <td><i>TBA</i></td> <td><i>TBA</i></td> <td><i>TBA</i></td> </tr> </tbody> </table>		Instalment	Amount	Invoice Date	First Instalment	<i>TBA</i>	<i>TBA</i>	<i>TBA</i>	<i>TBA</i>	<i>TBA</i>																			
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Item 5 – <i>where required</i> Calculation of repayment of Grant	Where clause 11.3.1 applies, the amount to be repaid by the Recipient to the Territory is as follows:																													
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	Year 14	13.333 per cent
	Year 15	6.667 per cent
Item 6 Sunset Date	<i>TBA – estimated 18 months from anticipated completion (based on Response)</i>	

EXAMPLE DEED

Schedule 2 – Specimen Affordable Rental Register

The document titled “Affordable Rental Register”.

EXAMPLE DEED

Schedule 3 – Tenancy Management processes

Insert the relevant fields and any attachments from the response to the Response Form
Section 9 *Intended Property and Tenancy Management Processes*

EXAMPLE DEED

Schedule 4 – Commercial Structure and Management Regime

Insert the relevant fields and any attachments from the response to the Response Form
Section 9 *Intended Property and Tenancy Management Processes*

EXAMPLE DEED

DATE OF THIS DEED _____

The parties:

- (i) accept that this Deed may be signed by electronic means by the Recipient using an agreed process that provides a suitable record identifying the person signing;
- (ii) state that the Recipient may make use of the option to sign electronically and will be bound by its electronic signature;
- (iii) agree that a personal email address is to be used for access to the document to be signed and in communications by the person signing electronically.

SIGNED AS A DEED

SIGNED, SEALED AND DELIVERED)
for and on behalf of the)
AUSTRALIAN CAPITAL TERRITORY) Signature of authorised officer
in the presence of:

.....
Signature of witness)
.....
Print name

.....
Print name

Executed by **INSERT** in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth):) Signature of director

.....
Signature of director/ secretary)
.....
Print name

.....
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.

EXAMPLE DEED