

**LAND DEVELOPMENT AGENCY**  
**COMMERCIAL CONTRACT FOR SALE**  
**SCHEDULE**

<b>DATE OF THIS CONTRACT</b>		2014		
<b>LEASE DETAILS</b>				
<b>LAND</b>		Block	Section	Division/District
		<b>a</b>	<b>C3</b>	<b>Moncrieff</b>
<b>OCCUPANCY</b>		Vacant Possession		
<b>CO-OWNERSHIP</b>	Mark one	<input type="checkbox"/> Tenants in common <i>(Show shares)</i>	<input type="checkbox"/> Joint Tenants	
<b>SELLER DETAILS</b>				
<b>SELLER</b>	Full name ACN/ABN	<b>Land Development Agency</b>  ABN: 20 419 925 579		
	Address	Ground Floor, TransACT House,  470 Northbourne Avenue, Dickson ACT 2602		
<b>SELLER'S SOLICITOR</b>	Firm	Meyer Vandenberg Lawyers		
	Ref	Kimberley Baillie/Stephanie Lynch		
	Phone	(02) 6279 4374		
	Fax	(02) 6279 4479		
	Address	GPO Box 764 Canberra City ACT 2601	DX 5647 Canberra	
<b>BUYER DETAILS</b>				
<b>BUYER</b>	Full Name			
	ACN			
	Address			
<b>BUYER'S SOLICITOR</b>	Firm			
	Phone			
	Fax			
	Address			
<b>PAYMENT DETAILS</b>				
<b>PRICE</b>	Price	\$	(The Price is GST inclusive)	
	Less Deposit	\$	<b>(10% of Price) Refer to Special Condition 36</b>	
	Balance	\$		

<b>EARLIEST DATE OF EXPIRY OF DEPOSITBOND OR BANK GUARANTEE</b>	Expiration of bond or bank guarantee must not be earlier than this date	45 Working Days from the Date for Completion	
<b>DEED OF UNCONDITIONAL UNDERTAKING</b>	See Special Conditions		
<b>DATE FOR COMPLETION</b>	<b>In accordance with Special Condition 33</b>		
<b>ESTIMATED DATE RANGE FOR WORKS</b>	See Special Conditions		
<b>ANNEXURES</b>			
<b>STANDARD ANNEXURES</b>	Documents attached to this Contract	Annexure A – Specimen Lease Annexure B – Moncrieff Builders’ Ballot Block Plans Annexure C – Project Delivery Agreement	
<b>SPECIAL CONDITIONS</b>	Indicate whether any special conditions apply	<input checked="" type="checkbox"/> Yes (if applicable)  See Annexure D – Special Conditions	<input type="checkbox"/> No (if applicable)
<b>READ THIS BEFORE SIGNING</b>			
Before signing this contract you should ensure that you understand your rights and obligations. You should get advice from your solicitor.			
Authorised Delegate of the Land Development Agency signature:		Buyer signature:	
Delegate name:		Buyer name:	
Witness signature:		Buyer signature:	
Witness name:		Buyer name:	
		Witness signature:	
		Witness name:	

## **1 GRANT OF THE LEASE**

- 1.1 The Seller, as delegate of the Planning and Land Authority and on behalf of the Commonwealth of Australia will grant, or will procure the grant of, the Lease to the Buyer on Completion.
- 1.2 The Lease will be granted substantially upon the terms and conditions of the Specimen Lease.

## **2 TERMS OF PAYMENT**

- 2.1 On the Date of this Contract, the Buyer must pay the Deposit to the Seller.
- 2.2 The Deposit may be paid by cheque but if it is not paid on time or, if it is paid by cheque which is not honoured on first presentation, the Buyer is in default.
- 2.3 The Deposit is released to the Seller and becomes the Seller's property absolutely (being part payment of the Price).
- 2.4 If the Buyer is in default under clause 2.2, then immediately and without the notice otherwise necessary under clause 20, clause 21 applies.
- 2.5 On Completion the Buyer must pay to the Seller in Canberra the Balance of the Price by unendorsed bank cheque.
- 2.6 Any money payable to the Seller by the Buyer must be paid to the Seller or as the Seller's Solicitor directs in writing and payment in accordance with that direction will be sufficient discharge to the person paying.
- 2.7 If the Contract is:
  - (a) rescinded; or
  - (b) terminated due to the default of the Seller,and the Buyer is entitled to a refund of the Deposit, then the Seller will account to the Buyer for the Deposit paid.
- 2.8 The Seller is not liable to pay interest on any refunded deposit provided that the Deposit is refunded to the Buyer within 15 Working Days of the date the Contract is rescinded or terminated.
- 2.9 The payment of the Deposit by the Buyer to the Seller does not create a charge over the Land to the value of the Deposit.

## **3 DEPOSIT BOND AND BANK GUARANTEE**

- 3.1 The Deposit may be paid by a Deposit Bond or Bank Guarantee provided that at least 3 Working Days prior to the Date of this Contract the Buyer:
  - (a) informs the Seller of their intention to provide a Deposit Bond or Bank Guarantee;
  - (b) provides the Seller with a copy of the proposed Deposit Bond or Bank Guarantee for approval.
- 3.2 The expiry date for the Deposit Bond or Bank Guarantee must not be earlier than the Earliest Date of Expiry of Deposit Bond or Bank Guarantee specified in the Schedule.

- 3.3 Should the Seller vary the last date of the Estimated Date Range under clause 4.4 to a date beyond the expiry date for the Deposit Bond or Bank Guarantee the Seller may notify the Buyer and the Buyer shall, within 5 Working Days of such notice, provide the Seller with a replacement Deposit Bond or Bank Guarantee on the same terms save that the date of the expiry is on or after the date 30 Working Days after the revised last day of the Estimated Date Range and the Earliest Date of Expiry of Deposit Bond or Bank Guarantee shall be varied accordingly.
- 3.4 The Deposit Bond or Bank Guarantee must show the Seller as the beneficiary of the Deposit Bond or Bank Guarantee.
- 3.5 The Buyer must pay the amount stipulated in the Deposit Bond or Bank Guarantee to the Seller by unendorsed bank cheque on Completion.
- 3.6 The Buyer is in default if:
- (a) the Deposit Bond or Bank Guarantee has an expiry date prior to the Earliest Date of Expiry of Deposit Bond or Bank Guarantee and is not renewed to the satisfaction of the Seller at least 10 Working Days prior to the expiry of the Deposit Bond or Bank Guarantee; or
  - (b) the provider of the Deposit Bond or Bank Guarantee is placed under external administration of any nature before Completion and the Buyer has not provided a replacement Deposit Bond or Bank Guarantee to the same value and on the same terms and conditions from a solvent party within 5 Working Days of the provider being placed in such administration.
- 3.7 If the Buyer is in default under clause 3.6 it will be deemed to be a failure by the Buyer to pay the Deposit under clause 2.1 and immediately, and without the notice necessary under clause 20, clause 21 applies.

#### **4 WORKS**

- 4.1 The Buyer acknowledges that at the Date of this Contract the Works have not been completed.
- 4.2 This Contract is subject to and conditional upon:
- (a) Operational Acceptance of the Works; and
  - (b) registration of a deposited plan for the stage.
- 4.3 The Seller must use its best endeavours to obtain Operational Acceptance and register the deposited plan for the Stage by the earlier date in the Estimated Date Range for Works specified in the Schedule.
- 4.4 The Seller may by notice to the Buyer vary the last date of the Estimated Date Range by up to six (6) months (but no more without the express consent of the Buyer) where Operational Acceptance is delayed due to an event or events occurring beyond the Seller's reasonable control, including but not limited to:
- (a) any non-compliance with statutory time frames by any government or regulatory authority that delays Operational Acceptance;
  - (b) weather sufficiently inclement to prevent the Seller obtaining Operational Acceptance by the last date of the Estimated Date Range;

- (c) industrial dispute;
- (d) unavailability of labour, plant or materials; or
- (e) any other reasonable cause or event beyond the control of the Seller.

4.5 Any notice of variation to last date of the Estimated Date Range must be in writing as soon as reasonably practicable and must set out:

- (a) the reasons for the delay to the Operational Acceptance of the Works and how these reasons have affected the Operational Acceptance of the Works ; and
- (b) the amount of additional time required to obtain Operational Acceptance of the Works.

4.6 If Operational Acceptance and registration of the deposited plan for the Stage have not been obtained by the later date in the Estimated Date Range for Works specified in the Schedule, either party may rescind this Contract by notice to the other and the provisions of clause 23 will apply.

## **5 SIGNING OF LEASE**

Following receipt of the Lease, the Buyer must, no later than 20 Working Days from the date the Seller serves the Lease on the Buyer:

- (a) sign each copy of the Lease;
- (b) lodge an Application to Register a Crown Lease for the Lease with the ACT Revenue Office for stamping and pay any fees required by the ACT Revenue Office;
- (c) collect the Application to Register a Crown Lease for the Lease from the ACT Revenue Office; and
- (d) return to the Seller's Solicitor:
  - (a) the signed Leases; and
  - (b) a copy of the stamped Application to Register a Crown Lease for the Lease.

## **6 VARIATION TO LAND**

6.1 The Buyer acknowledges that the Land, the Specimen Lease, and any plans in relation to the Land may be affected by:

- (a) the requirements of legislation;
- (b) variations to the Territory Plan; and/or
- (c) the requirements of government authorities.

6.2 The Buyer may not rescind or otherwise terminate this Contract nor seek any compensation from the Seller, under clause 19 or otherwise, as a result of any matter referred to in clause 6.1.

## **7 PLANNING CONDITIONS**

7.1 The Buyer acknowledges that the Planning and Land Authority is responsible for all development consents and approvals sought by or on behalf of the Buyer in relation to the

Land and the Buyer therefore releases the Seller from any liability, cause of action or any other claim in relation to disturbance, loss or detriment caused by the Planning and Land Authority granting or denying any consent or approval in relation to the Land.

- 7.2 The Buyer acknowledges the obligation to make the Buyer's own enquiries and satisfy themselves as to the currency and accuracy of information contained in the Territory Plan.
- 7.3 The Buyer acknowledges that the Planning and Land Authority is responsible for the Territory Plan and the Buyer will make no claim against the Seller whatsoever in this regard.
- 7.4 The Buyer acknowledges that nothing in this Contract or the fact of Completion implies or means that any required approvals, consents or licences regarding planning, design, siting and any other matters relating to the Buyer's development of the Land will be granted by the regulatory authorities or other agencies of the Australian Capital Territory with or without conditions.

## **8 ENTIRE AGREEMENT**

The Buyer agrees that this Contract sets out the entire agreement of the parties on the subject matter of this Contract and supersedes any prior agreement, advice, material supplied to the Buyer or understanding on anything connected with the subject matter of this Contract.

## **9 NOT USED**

## **10 BUYER RIGHTS AND LIMITATIONS**

- 10.1 The Buyer is not entitled to make any requisitions on the title to the Land.
- 10.2 The Buyer cannot make a claim or objection or rescind or terminate or make a claim for compensation under clause 19 of this Contract in respect of:
- (a) a Utility Service for the Land being a joint service or passing through another property, or any Utility Service for another property passing through the Land;
  - (b) a promise, representation or statement about this Contract, the Land or the Lease, not made in this Contract;
  - (c) the size of any service ties for the supply of water on or to the Land;
  - (d) the existence of regrading, fill or contamination of or upon the Land, whether caused by the Commonwealth of Australia, the Seller, previous occupants of the Land or otherwise;
  - (e) any soil classification in relation to the Land; and
  - (f) anything disclosed in this Contract.

## **11 CONDITION OF THE LAND**

- 11.1 The Seller gives no warranties as to the present state of repair of any of the Improvements or condition of the Land, except as required by law.
- 11.2 The Buyer acknowledges that the Seller makes no warranty or representation as to the environmental condition or state of the soil, ground water, contamination or the existence or non-existence of any Substance on or affecting the Land.

- 11.3 The Buyer understands and accepts that the existence of regrading, fill, contamination or a soil classification of or upon the Land may result in work for the construction of any building on the Land being more extensive and expensive than it may have been in the absence of such regrading, fill, contamination or soil classification.

## **12 SELLER WARRANTIES**

12.1 The Seller warrants that at the Date of this Contract the Seller:

- (a) will be able to complete at Completion;
- (b) has no knowledge of any unsatisfied judgment, order or writ issued by a court or tribunal affecting the Land; and
- (c) has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ issued by a court or tribunal affecting the Land.

12.2 The Seller warrants that on Completion:

- (a) the Seller will have the capacity to complete;
- (b) there will be no unsatisfied judgment, order or writ issued by a court or tribunal affecting the Land;
- (c) the Seller has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ issued by a court or tribunal affecting the Land; and
- (d) the Seller is not aware of any encroachments by or upon the Land (other than the encroachment of any dividing fence) except as disclosed.

## **13 CO-OWNERSHIP**

Where the Buyer consists of more than one person, as between themselves, they agree to buy the Land in the specified manner of Co-ownership or if one alternative is not marked, as joint tenants.

## **14 NON MERGER**

If any term of this Contract may be given effect to after Completion that term will not merge but will continue in force for as long as necessary to give effect to it.

## **15 ADJUSTMENTS**

As the Lease will be granted on Completion, there will be no adjustments of Income or Land Charges.

## **16 TERMS OF POSSESSION**

The Seller must give the Buyer vacant possession of the Land on Completion unless otherwise marked in the Schedule.

## **17 INSPECTION OF LAND**

17.1 The Buyer may on reasonable notice to the Seller inspect the Land during the period between the date 10 Working Days prior to the Date for Completion and the Date for Completion.

## **18 ERRORS AND MISDESCRIPTIONS**

18.1 The Buyer will be entitled to compensation on Completion (and the Price will be reduced accordingly) for an error of any kind or misdescription if the Buyer makes a claim for compensation before Completion.

18.2 This clause applies even if the Buyer did not take notice of or rely on anything in this Contract containing or giving rise to the error or misdescription.

18.3 The Buyer is not entitled to compensation to the extent the Buyer knew the true position before the Date of this Contract.

## **19 COMPENSATION CLAIMS BY BUYER**

19.1 This clause 19 applies to claims for compensation arising out of this Contract made by the Buyer against the Seller including claims under clause 18.

19.2 To make a claim for compensation (including a claim under clause 18) the Buyer must give notice to the Seller before Completion specifying the amount claimed and;

- (a) the Seller can rescind if in the case of a claim that is not a claim for delay:
  - (i) the total amount claimed exceeds 5% of the Price;
  - (ii) the Seller gives notice to the Buyer of an intention to rescind; and
  - (iii) the Buyer does not give notice to the Seller waiving the claim within 10 Working Days after receiving the notice;
- (b) if the Seller does not rescind under clause 19.2(a), the parties must complete and;
  - (i) the claim must be finalised (subject to clause 19.2(b)(ii)) either by agreement or, failing agreement, by an arbitrator appointed by the parties or, if an appointment is not made within 20 Working Days of Completion, by an arbitrator appointed by the President of the Law Society of the Australian Capital Territory at the request of a party;
  - (ii) the decision of the arbitrator is final and binding save for:
    - a. manifest error by the arbitor obvious on its face in the final determination by the arbitrator;
    - b. error in the application of law by the arbitrator in making his or her determination; or
    - c. improper or unlawful conduct by the arbitrator or either party that affected or might reasonably be thought to affect the arbitrator's determination;
  - (iii) the costs of the arbitration must be shared equally by the parties unless otherwise determined by the arbitrator;



- (iv) the Buyer is not entitled, in respect of the claim, to more than the total amount claimed and the costs of the Buyer;
- (v) the claim lapses if the parties do not appoint an arbitrator and neither party asks the President of the Law Society of the Australian Capital Territory to appoint an arbitrator within 90 days after Completion.

## **20 NOTICE TO COMPLETE AND DEFAULT NOTICE**

- 20.1 If Completion does not take place in accordance with clause 2.5, either party may, at any time after the Date for Completion, serve the other party a Notice to Complete.
- 20.2 A Notice to Complete must appoint a time during business hours and a date being not less than 10 Working Days after service of the Notice to Complete (excluding the date of service) by which and a place in Canberra at which to complete this Contract.
- 20.3 At the time the Notice to Complete is served the party serving the Notice to Complete must:
- (a) not be in default; and
  - (b) be ready, willing and able to complete but for some default or omission of the other party.
- 20.4 Completion at the time, date and place specified in the Notice to Complete is an essential term.
- 20.5 Where one party is in default (other than failing to complete) the other party may at any time after the default serve the party in default a Default Notice.
- 20.6 A Default Notice must:
- (a) specify the default; and
  - (b) require the party served with the Default Notice to rectify the default within 10 Working Days after service of the Default Notice (excluding the date of service).
- 20.7 At the time the Default Notice is served, the party serving the Default Notice must not be in default.
- 20.8 The time specified in a Default Notice to rectify the specified default is an essential term.
- 20.9 Clauses 21 or 22 will apply as appropriate where the party served does not comply with the Notice to Complete or the Default Notice which complies with this clause.
- 20.10 If the party serving a notice under this clause varies the time referred to in the notice at the request of the other party;
- (a) the time agreed to in the variation remains an essential term; and
  - (b) consent to the variation must be in writing and be served on the other party.
- 20.11 The parties agree that the time referred to in clauses 20.2 and 20.6(b) is fair and reasonable.

## **21 TERMINATION – BUYER DEFAULT**

- 21.1 If the Buyer does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential term then the Seller may by notice served on the Buyer terminate and may then keep, or recover and keep, the Deposit (except so much of it as exceeds 10% of the Price) and either:

- (a) sue the Buyer for breach; or
  - (b) resell the Land and any deficiency arising on the resale and all expenses of and incidental to the resale or attempted resale and the Buyer's default are recoverable by the Seller from the Buyer as liquidated damages provided the Seller has entered into a contract for the resale of the Land within 12 months of termination.
- 21.2 In addition to any money kept or recovered under clause 21.1, the Seller may retain on termination any other money paid by the Buyer as security for any damages awarded to the Seller arising from the Buyer's default provided that proceedings for the recovery of damages are commenced within 12 months of termination.

## **22 TERMINATION – SELLER DEFAULT**

- 22.1 If the Seller does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential term the Buyer may by notice served on the Seller either:
- (a) terminate and seek damages; or
  - (b) enforce without further notice any other rights and remedies available to the Buyer.

## **23 RESCISSION**

If this Contract is rescinded, it is rescinded from the beginning, and unless the parties otherwise agree:

- (a) the Deposit and all other money paid by the Buyer must be refunded to the Buyer immediately without any further authority being necessary; and
- (b) neither party is liable to pay the other any amount for damages, costs or expenses.

## **24 DAMAGES FOR DELAY IN COMPLETION**

- 24.1 If Completion does not occur by the Date for Completion, due to the default of the Buyer then the Buyer must pay the Seller as liquidated damages on Completion:
- (a) interest on the Price at the rate of 10% per annum calculated on a daily basis from the Date for Completion to Completion; and
  - (b) the amount of \$1,100 (GST inclusive) to be applied towards any legal costs and disbursements incurred by the Seller if Completion occurs later than 5 Working Days after the Date for Completion.
- 24.2 The Buyer agrees that:
- (a) the amount of any damages payable under clause 24.1 to the Seller is a genuine and honest pre-estimate of loss to that party for the delay in Completion; and
  - (b) the damages must be paid on Completion.

## **25 FOREIGN BUYER**

- 25.1 The Buyer warrants the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer of the Lease under the *Foreign Acquisitions and Takeovers Act 1975*.
- 25.2 This clause is an essential term.

## **26 GST**

- 26.1 The Buyer and Seller agree that the Margin Scheme applies to the supply of the Land.
- 26.2 The Seller warrants that it can use the Margin Scheme and promises that it will.

## **27 POWER OF ATTORNEY**

- 27.1 Any party who signs this Contract or any document in connection with it under a power of attorney must, on request and without cost, provide the other party with a true copy of the registered power of attorney.

## **28 NOTICES CLAIMS AND AUTHORITIES**

- 28.1 Notices, claims and authorities required or authorised by this Contract must be in writing.
- 28.2 To serve a notice a party must:
- (a) leave it at; or
  - (b) send it by a method of post requiring acknowledgement of receipt by the addressee to,  
  
the address of the person to be served as stated in the Schedule or as notified by that person to the other as that person's address for service under this Contract; or
  - (c) serve it on that party's solicitor in any of the above ways; or
  - (d) by delivering it to an appropriate place in the facilities of a document exchange system in which the recipient solicitor has receiving facilities (and in the latter case service is deemed effected on the Working Day following delivery); or
  - (e) send it by facsimile to a party's solicitor, unless it is not received a notice is taken to have been received at the time shown in the transmission report that the whole facsimile was sent.
- 28.3 A party's solicitor may give a notice, claim or authority on behalf of that party.
- 28.4 If a notice is served in accordance with clause 28.2(a), the notice is taken to have been received on the day that it is delivered or, if not delivered before 5:00pm on a Working Day, on the next Working Day.
- 28.5 If a notice is served in accordance with clause 28.2(b), the notice is taken to have been received on the day 2 Working Days after it was posted.
- 28.6 In addition to the means stipulated in clause 28.2, the Seller may serve a notice by electronic mail to the Buyer's or the Buyer's Solicitor's email address (whether the Buyer's Solicitor's firm generally or specifically to the practitioner specified in the Schedule) as notified by the Buyer or the Buyer's Solicitor from time to time.
- 28.7 If a notice is served in accordance with clause 28.6, the notice is taken to have been received on the day shown in the delivery receipt produced by the electronic mail system used to send the message or if not sent before 5:00pm on a Working Day, on the next Working Day.

## **29 NO TRUST**

The Buyer confirms that, other than as disclosed in the description of the Buyer on the front page of this Contract, it is not acting as trustee of any trust

### **30 SPECIAL CONDITIONS**

30.1 Special Conditions, if any, set out in this Contract forming part of this Contract take priority over other terms and conditions set out herein. In the event of any inconsistency between any Special Condition and any other provision of this Contract then, to the extent of any inconsistency, the Special Condition will prevail.

### **31 DEFINITIONS**

31.1 Definitions appear in the Schedule and as follows:

**Balance of the Price** means the Price less the Deposit;

**Bank Guarantee** means a bank guarantee issued by a bank operating in Australia in a form satisfactory to the Seller;

**Buyer** means the purchaser of the Land under this Contract as specified in the Schedule;

**Buyer's Solicitor** means the legal practitioners or firm of legal practitioner's acting for the Buyer in respect of this Contract;

**Completion** means the time at which this Contract is completed;

**Contract** means the Schedule, terms and conditions and any annexure, additional clauses and attachments forming part of this Contract;

**Date for Completion** means the date as specified or calculated for such in the Schedule;

**Default Notice** means a notice in accordance with clauses 20.5 and 20.6;

**Deposit** means the deposit forming part of the Price;

**Deposit Bond** means a deposit insurance bond issued to the Seller at the request of the Buyer in a form satisfactory to the Seller;

**Development** has the meaning in the Planning Act;

**Earliest Date for Expiry of Deposit Bond or Bank Guarantee** means the date as specified or calculated for such in the Schedule;

**Encumbrance** includes an unregistered or statutory encumbrance, but does not include an encumbrance that is to be released or discharged on or before Completion;

**Estimated Date Range for Works** means the date or period by which the Seller estimates that the Works will have reached the stage of Operational Acceptance;

**GST** has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Improvements** means the buildings, structures and fixtures erected on and forming part of the Land;

**Income** means the rents and profits derived from the Land;

**Land** means the land described in the Schedule and to be the subject of the Lease;

**Land Charges** means rates, land rent, land tax and other taxes and outgoings of a periodic nature in respect of the Land;

**Lease** means a Crown lease to be granted under the Planning Act and in accordance with Clause 1 of this Contract, in a form substantially in accordance with the relevant Specimen Lease;

**Margin Scheme** has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Moncrieff Builders' Ballot Block Plans** means the Moncrieff Builders' Ballot Block Plans annexed to this Contract or as amended from time to time;

**Notice to Complete** means a notice in accordance with clauses 20.1 and 20.2 requiring a party to complete;

**Operational Acceptance** means that the Works are complete to the satisfaction of TAMS, ActewAGL and the Seller;

**Planning Act** means the *Planning and Development Act 2007* (ACT);

**Planning and Land Authority** means the body corporate established in accordance with the Planning Act;

**Price** means the purchase price payable by the Buyer under this Contract;

**Schedule** means the schedule to this Contract;

**Seller** means the vendor of the Land under this Contract as specified in the Schedule;

**Seller's Solicitor** means the legal practitioners or firm of legal practitioner's acting for the Seller in respect of this Contract;

**Special Conditions** means such terms, if any, attached to and forming part of this Contract at Annexure D;

**Standard Annexures** means any and all of the documents attached to and forming part of this Contract as Annexures A-C inclusive;

**Specimen Lease** means the draft crown lease annexed to this Contract at Annexure A;

**Substance** means any substance or thing which is or may be an emission to the environment or harmful to the environment or the health or safety of any person or may cause damage to property and includes: asbestos, polychlorinated biphenyls, heavy metals, chemicals, contaminants and any other matter whether in solid, liquid or gaseous form, or whether naturally occurring or man-made;

**TAMS** means the Territory and Municipal Services Directorate or its successors;

**Territory Plan** means the Territory Plan 2008 as amended and varied from time to time;

**Utility Service** includes drainage, electricity, garbage collection, gas, sewerage, telecommunications or water;

**Working Days** has the meaning given to it by the *Legislation Act 2001* (ACT); and

**Works** means the works that the Seller is required to undertake in order to comply with the development application in relation to, and obtain Operational Acceptance for, the Land.

## **32 INTERPRETATION**

### **32.1** In this Contract:

- (a) a reference to the Seller or to the Buyer includes the executors, administrators and permitted assigns of any of them, if an individual, and the successors or permitted assigns of any of them, if a corporation;

- (b) the singular includes the plural, and the plural includes the singular;
- (c) a reference to a person includes a body corporate;
- (d) a term not otherwise defined has the meaning in the *Legislation Act 2001* (ACT); and
- (e) a reference to an Act includes a reference to any subordinate legislation made under it or any Act which replaces it.

32.2 Headings are inserted for convenience only and are not part of this Contract.

32.3 If the time for something to be done or to happen is not a Working Day, the time is extended to the next Working Day, except in the case of clause 2.1.

32.4 If there is more than one buyer or more than one seller the obligations which they undertake bind them jointly and individually.

**ANNEXURE A – SPECIMEN LEASE**

# DRAFT

Entered in Register Book Vol

Folio

**This is a market value lease -  
s238(2) (a) (ii) Planning  
and Development Act 2007**

## **AUSTRALIAN CAPITAL TERRITORY**

### **PLANNING AND DEVELOPMENT ACT 2007**

### **Australian Capital Territory (Planning and Land Management) Act 1988 (C'th) ss 29, 30 & 31**

LEASE GRANTED pursuant to the Planning and Development Act 2007 and the Regulations made under that Act on the                      day of                      Two thousand and fourteen WHEREBY THE PLANNING AND LAND AUTHORITY (“the Authority”) ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA

**LESSEE** (“the Commonwealth”) in exercising its functions grants to «Lessee» having its registered office at «Lessee» in the Australian Capital Territory (“the Lessee”)

**LAND** ALL THAT piece or parcel of land situate in the Australian Capital Territory containing an area of «BlockArea» square metres or thereabouts and being **Block a«block» Section C3 Division of Moncrieff** as delineated on **Deposited Plan Number**                      in the Registrar-General's Office at Canberra in the said Territory (“the land”) RESERVING unto the Territory all minerals and the right to the use, flow and control of ground water under the surface of the land

**TERM** TO HOLD unto the Lessee for the term of ninety nine years commencing on the                      day of                      Two thousand and fourteen (“the date of the commencement of the lease”) to be used by the Lessee for the purpose set out in Clause 3(b) of this lease only YIELDING AND PAYING THEREFOR rent in the amount and in the manner and at the times provided for in this lease and UPON AND SUBJECT TO the covenants conditions and agreements contained in this lease.



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INTERPRETATION 1. IN THIS LEASE unless the contrary intention appears:

- (a) “Authority” means the Planning and Land Authority established by section 10 of the Planning and Development Act 2007;
- (b) “building” means any building or structure constructed or partially constructed or to be constructed, as the context permits or requires, on or under the land;
- (c) “class” for a building or structure, means the class of building or structure under the building code as defined in the Building Act 2004;
- (d) “dual occupancy housing” means the use of land that was originally used or leased for the purposes of single dwelling housing for two dwellings;
- (e) “dwelling”:
  - (i) means a class 1 building, or a self-contained part of a class 2 building, that:
    - (A) includes the following that are accessible from within the building, or the self-contained part of the building:
      - (1) not more than 2 kitchens;
      - (2) at least 1 bath or shower;
      - (3) at least 1 toilet pan; and
    - (B) does not have access from another building that is either a class 1 building or the self-contained part of a class 2 building; and
  - (ii) includes any ancillary parts of the building and any class 10a buildings associated with the building;
- (f) “Lessee” shall:
  - (i) where the Lessee consists of one person be deemed to include the Lessee and the executors administrators and assigns of the Lessee;

# DRAFT

- (ii) where the Lessee consists of two or more persons be deemed to include in the case of a tenancy in common the said persons and each of them and their and each of their executors administrators and assigns and in the case of a joint tenancy be deemed to include the said persons and each of them and their and each of their assigns and the executors administrators and assigns of the survivor of them; and
  - (iii) where the Lessee is a corporation be deemed to include such corporation its successors and assigns;
  - (g) “multi-unit housing” means the use of land for more than one dwelling and includes but is not limited to dual occupancy housing;
  - (h) “premises” means the land and any building or other improvements on the land;
  - (i) “Territory” means:
    - (i) when used in a geographical sense the Australian Capital Territory; and
    - (ii) when used in any other sense the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (C’th);
  - (j) words in the singular include the plural and vice versa;
  - (k) words importing one gender include the other genders;
  - (l) a reference in this lease to any statute or statutory provision shall include a reference to any statute or statutory provision that amends, extends, consolidates or replaces the statute or statutory provision and to any other regulation, instrument or other subordinate legislation made under the statute.
2. THE LESSEE COVENANTS WITH THE COMMONWEALTH as follows:
- (a) That the Lessee shall pay to the Authority rent at the rate of five cents per annum if and when demanded payable within one

RENT

# DRAFT

month of the date of any demand made by the Authority relating thereto and served on the Lessee;

## MANNER OF PAYMENT OF RENT

- (b) That any rent or other moneys payable by the Lessee to the Authority under this lease shall be paid to such person as may be authorised by the Authority for that purpose at Canberra in the said Territory without any deduction whatsoever.

### 3. THE LESSEE FURTHER COVENANTS WITH THE COMMONWEALTH as follows:

## COMPLETION OF DEVELOPMENT

- (a) That the Lessee shall within forty eight (48) months from the date of the commencement of the lease or within such further time as may be approved in writing by the Authority complete the erection of an approved development on the land in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority and in accordance with every Statute Ordinance or Regulation applicable to such development;

## PURPOSE

- (b) To use the land for the purpose of multi-unit housing of not more than fifty (50) dwellings;

## EASEMENTS

- (c) That:
- (i) the Authority, on behalf of the Commonwealth, grants over that part of the land ("Land") identified as an easement for services on the Deposited Plan an easement ("Easement") in favour of:
    - (A) the Territory and its successors;
    - (B) ACTEW Corporation Limited A.C.N. 069 381 960 and its successors;
    - (C) ActewAGL Distribution ABN 76 670 568 688 a partnership of ACTEW Distribution Limited A.C.N. 073 025 224 and Jemena Networks (ACT) Pty Ltd ACN 008 552 663 and its successors;

(collectively or separately referred to as the "service provider");

## DRAFT

- (ii) the service provider may:
  - (A) provide, maintain and replace services supplied by that service provider through the Land within the site of the Easement; and
  - (B) do anything reasonably necessary for that purpose, including without limitation:
    - (1) entering or passing through the Land;
    - (2) taking anything on to the Land; and
    - (3) carrying out work, including without limitation, constructing, placing, repairing or maintaining pipes, poles, wires, cables, conduits, structures and equipment;
- (iii) in exercising the powers in Clause 3(c)(ii), the service provider must take all reasonable steps to:
  - (A) ensure that the work carried out on the Land causes as little disruption, inconvenience and damage as is practicable; and
  - (B) ensure that the Land is restored as soon as practicable to a condition that is similar to its condition before the work was carried out;
- (iv) Clause 3(c)(iii)(B), does not require the service provider to restore:
  - (A) the Land to a condition that would result in:
    - (1) an interference with:
      - (i) any service on or through the Land; or
      - (ii) access to any service on or through the Land; or
    - (2) a contravention of a law of the Territory; or
  - (B) any building or structure placed or constructed on any part of the Land comprising the Easement;

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- (v) the Lessee must not place or construct, nor permit to be placed or constructed, a building or structure or any part of a building or structure on any part of the Land comprising the Easement;
- (vi) for the purposes of the Easement, “services”, includes, without limitation, the supply of water, gas, electricity and discharge or drainage of water, stormwater and sewage; and
- (vii) nothing in this clause diminishes or affects any rights or powers of a service provider conferred under any statute, regulation or law;

## PROVISION OF HYDRAULIC MAINS STORMWATER DRAINS AND SEWER LINES

- (d) That the Lessee shall provide and thereafter maintain hydraulic mains stormwater drains sewer lines hydraulic fire mains and hydrants on the land in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority;

## PROVISION OF STORAGE AREAS CARPARKING AND ILLUMINATION

- (e) That the Lessee shall provide and thereafter maintain storage areas covered carparking hardstanding carparking adequately illuminated vehicle access roads pedestrian pathways and vehicle access drives on the land to a standard acceptable to the Authority in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority;

## PROVISION OF FACILITIES FOR ELECTRICAL AND TELEPHONE CABLES

- (f) That the Lessee shall provide facilities on the land to a standard acceptable to the Authority to enable electrical and telephone cables and wires to be installed underground;

## LANDSCAPING

- (g) That the Lessee shall provide and thereafter maintain landscaping on the land to a standard acceptable to the Authority in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority;

## PRESERVATION OF TREES

- (h) That the Lessee shall not, without the previous consent in writing of the Territory, remove any tree:

## DRAFT

(i) that has been identified in a development approval for retention during the period allowed for construction of the building; or

(ii) to which the Tree Protection Act 2005, applies;

### SERVICE AREAS

(i) That the Lessee shall screen and keep screened all service areas to the satisfaction of the Authority and shall ensure that all plant and machinery contained within the premises is suitably screened from public view;

### BUILDING SUBJECT TO APPROVAL

(j) That the Lessee shall not without the previous approval in writing of the Authority, except where exempt by law, erect any building, or make any structural alterations to any building, on the land;

### REPAIR

(k) That the Lessee shall at all times during the said term maintain repair and keep in repair the premises to the satisfaction of the Authority;

### FAILURE TO REPAIR

(l) If and whenever the Lessee is in breach of the Lessee's obligations to maintain repair and keep in repair the premises the Authority may by notice in writing to the Lessee specifying the repairs and maintenance needed require the Lessee to effect the necessary work in accordance with the notice. If the Authority is of the opinion that a building or some other improvement on the land is beyond reasonable repair the Authority may by notice in writing to the Lessee require the Lessee to remove the building or improvement and may require the Lessee to construct a new building or improvement in place of that removed within the time specified in the notice. If the Lessee does not carry out the required work within the time specified by the Authority any person or persons duly authorised by the Authority with such equipment as is necessary may enter the premises and carry out the necessary work and all costs and expenses incurred by the Authority in carrying out the work shall be paid by the Lessee to the Authority on demand and from the date of such demand until paid shall for all purposes of this lease be a debt due and payable to the Authority by the Lessee;

### RIGHT OF INSPECTION

(m) Subject to the provisions of the Planning and Development Act 2007 to permit any person or persons authorised by the Authority to enter and inspect the premises at all reasonable times and in any reasonable manner;

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## RATES AND CHARGES

- (n) To pay all rates charges and other statutory outgoings assessed levied or payable in respect of the premises as and when they are due for payment.

## QUIET ENJOYMENT

- 4. THE COMMONWEALTH COVENANTS WITH THE LESSEE as follows:

That the Lessee paying the rent and all other money due and observing and performing the covenants and stipulations on the part of the Lessee to be observed and performed shall quietly enjoy the premises without interruption by the Authority or any person lawfully claiming from or under or in trust for the Authority.

- 5. IT IS MUTUALLY COVENANTED AND AGREED as follows:

## TERMINATION

- (a) That if:
  - (i) any rent or other moneys payable under this lease shall remain unpaid for three months next after the date appointed for payment thereof (whether such rent shall have been formally demanded or not); or
  - (ii) an approved development in accordance with Clause 3(a) of this lease is not completed within the period specified in the said Clause; or
  - (iii) after completion of an approved development as aforesaid the said land is at any time not used for a period of one year for the purpose for which this lease is granted; or
  - (iv) the Lessee shall fail to observe or perform any other of the covenants contained in this lease on the part of the Lessee to be observed or performed and shall have failed to remedy such breach within a period of six months from the date of service on the Lessee of a notice in writing from the Authority specifying the nature of such breach

the Authority on behalf of the Commonwealth may terminate this lease but without prejudice to any claim which the Authority or the Commonwealth may have against the Lessee in respect of any breach of the covenants on the part of the Lessee to be observed or performed;

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## ACCEPTANCE OF RENT

- (b) That acceptance of rent or other moneys by the Authority during or after any period referred to in Clauses 5(a) (i), (ii), (iii) or (iv) of this lease shall not prevent or impede the exercise by the Authority of the powers conferred upon it by the said Clauses;

## FURTHER LEASE

- (c) Subject to the Lessee paying all money required to be paid under the provisions of the Planning and Development Act 2007 the Lessee shall be entitled to a further lease of the land for such further term and at such rent and subject to such conditions as may then be provided or permitted by Statute Ordinance or Regulation;

## NOTICES

- (d) That any notice requirement demand consent or other communication to be given to or served upon the Lessee under this lease shall be deemed to have been duly given or served if signed by or on behalf of the Authority and delivered to or sent in a prepaid letter addressed to the Lessee at the registered office of the Lessee in the said Territory BUT if for any reason the Lessee does not have a registered office in the said Territory then at the usual or last-known address of the Lessee or affixed in a conspicuous position on the premises;

## EXERCISE OF POWERS

- (e) Any and every right, power or remedy conferred on the Commonwealth or Territory in this lease, by law or implied by law may be exercised on behalf of the Commonwealth or the Territory or as the case may be by:
  - (i) the Authority;
  - (ii) an authority or person for the time being authorised by the Authority or by law to exercise those powers or functions of the Commonwealth or Territory; or
  - (iii) an authority or person to whom the Authority has delegated all its powers or functions under the Planning and Development Act 2007.



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IN WITNESS whereof the Authority on behalf of the Commonwealth and the Lessee have executed this lease.

Signed by )  
a delegate authorised to execute this lease )  
on behalf of the Commonwealth in the )  
presence of )

.....

Delegate

.....

Witness

Signed by )  
by: )

.....

Signature

.....

Signature

.....

Name in full

.....

Name in full

.....

Director/Secretary

.....

Director/Secretary

**ANNEXURE B – MONCRIEFF BUILDERS' BALLOT BLOCK PLANS**

Please refer to Seperate File

**ANNEXURE C – PROJECT DELIVERY AGREEMENT**

# **Project Delivery Agreement**

## **Block a Section C3 Division of Moncrieff**

**Land Development Agency  
(LDA)**

**[Developer]**

**ACN [XXX XXX XXX]**

**(Developer)**

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**Parties**                    **Land Development Agency ABN 20 419 925 579**  
**(LDA)**  
**The person(s) named in Item 1 of Schedule 1**  
**(Developer)**

## **Background**

- A.        The LDA and the Developer have entered into the Contract for Sale.
- B.        The Developer has agreed that the Developer will, in developing the Land, comply with the Developer's obligations set out in this Agreement.

## **Operative provisions**

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### **1. Interpretation**

#### **1.1 Definitions**

In this Agreement unless the context otherwise requires:

**Affordable Housing** means new dwellings (including any land components) for which the sale price (per dwelling) does not exceed the Affordable Housing Thresholds.

**Affordable Housing Thresholds** means the affordable housing thresholds determined by the ACT Government's *Affordable Housing Action Plan* applicable as at the date of this Agreement or any thresholds the ACT Government subsequently determines prior to the sale of any dwelling to meet the Affordable Housing requirements of this Agreement.

**Agreement** means this agreement, including schedules, annexure and attachments.

**Alphabetical Identifier** means the alphabetical block and section identifier for the Land set out in the Schedule to the Contract for Sale.

**Charge** means the charge in favour of the LDA given by the Developer under clause 6.7.

**Completion** means completion of the Contract for Sale.

**Compliance Certificate** means an unconditional certificate by the relevant authority that the Developer as Crown Lessee under the Crown Lease has complied with all of the building and development covenants under the Crown Lease.

**Compliance Date** means the date by which the Developer, as Crown Lessee under the Crown Lease, must comply with all of the building and development covenants under the Crown Lease (excluding any extension of such date after Completion).

**Contract for Sale** means the contract for sale between the LDA (as seller) and the Developer (as buyer) in relation to the Land.

**Crown Lease** means the Crown Lease in respect of the Land.

**Development Application** has the same meaning as in the Planning Act.

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

**Moncrieff Builders' Ballot Block Plans** means the document titled Moncrieff Builders' Ballot Block Plans annexed to this Agreement at Annexure A;

**Numerical Identifier** means a numerical block and section identifier for the Land specified in the Deposited Plan;

**Permitted Substitute Security** means a replacement Security consistent with clause 6.1 provided in accordance with clause 6.6.

**Planning Act** means the *Planning and Development Act 2007* (ACT).

**Planning and Land Authority** means the body corporate established in accordance with the Planning Act.

**Provided Security** means Security provided under clause 6.6.

**Release Date** has the meaning given in clause 6.4.

**Security** means the security provided by the Developer under clause 6 of this Agreement and includes any security provided by the Developer in accordance with this Agreement in substitution for any security previously provided by the Developer.

**Security Amount** means an amount equal to 2.5% of the Contract Price.

**Specimen Lease** means the Specimen Lease at Annexure A of the Contract for Sale.

**Subsequent Development Application** means any Development Application in respect of the Land submitted to the Authority after the Initial Development Application (including any variation of the Initial Development Application) has been submitted.

**Working Day** means a day which is not a Saturday, Sunday or public holiday in Canberra, ACT.

## 1.2 General

In this Agreement unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure, or exhibit of or to this Agreement;
- (f) a recital, schedule, annexure or a description of the parties forms part of this Agreement;
- (g) a reference to any deed or document is to that deed or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;

- (h) a reference to any party to this Agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) a reference to a bankruptcy or winding up includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth)), being subject to administration and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction, and to the procedures, circumstances and events which constitute any of those conditions or matters;
- (k) words and expressions defined in the GST Law have the same meaning in clauses concerning GST;
- (l) where an expression is defined anywhere in this Agreement, it has the same meaning throughout;
- (m) a reference to "dollars" or "\$" is to an amount in Australian currency; and
- (n) a reference to a matter being "to the knowledge" of a person means that the matter is to the best of the knowledge and belief of that person after making enquiries reasonable in the circumstances.

1.3 In this Agreement, headings are for convenience of reference only and do not affect interpretation.

1.4 If there is any inconsistency between any provision of the Contract for Sale and this Agreement, this Agreement shall prevail to the extent of the inconsistency.

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## **2. Term**

This Agreement commences on the date of this Agreement and ends when each of the parties has complied with all of its obligations under this Agreement.

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## **3. Moncrieff Builders' Ballot Block Plans**

3.1 The Developer must design and construct all buildings on the Land consistent with:

- (a) all applicable laws;
- (b) the Moncrieff Builders' Ballot Block Plans; and
- (c) the terms and conditions contained in this Agreement.

3.2 To the extent of any inconsistency between sub-clauses 3.1(a)-(c), 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. Construction of Driveway Works**

4.1 Driveway works:



- (a) must meet the requirements of the LDA, TAMS and the Planning and Land Authority;
- (b) must be performed by the Developer in accordance with plans and specifications prepared by the Buyer and previously submitted to and approved in writing by the Planning and Land Authority; and
- (c) cannot commence until approval of the Development Application that includes the Driveway Works has been obtained.

4.2 All costs associated with the relocation and restoration of verge works will be the responsibility of the Developer.

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## **5. Affordable Housing**

5.1 The Developer must sell not less than 20% of all dwellings erected on the Land as Affordable Housing.

5.2 If the Developer subdivides the Land into one or more parcels, the Developer must sell not less than 20% of all dwellings erected on each of those parcels as Affordable Housing.

5.3 The Developer is required to produce documentation to the satisfaction of the LDA that confirms clause 5.1 has been satisfied.

5.4 The Parties note that, at the date of execution of the Agreement, the Affordable Housing Thresholds were as follows:

- (a) homes up to 80m<sup>2</sup> will be subject to a threshold of \$291,000;
- (b) homes between 81-105m<sup>2</sup> will be subject to a threshold of \$341,000; and
- (c) homes larger than 105m<sup>2</sup> will be subject to a threshold of \$374,000.

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## **6. Security**

6.1 As security for the performance of the Developer's obligations under this Agreement the Developer must provide to the LDA on Completion (in respect of which time is of the essence), the Security in a sum equal to the Security Amount, in the form of:

- (a) an unconditional irrevocable bank guarantee (without expiry date) from an Australian financial institution and in other terms reasonably required by the LDA;
- (b) a bank cheque in favour of the LDA; or

6.2 If the Developer breaches any of its obligations under this Agreement, the LDA may (but is not obliged to) remedy the breach at the expense of the Developer and, without notice, call on the Security for all costs reasonably incurred for or in connection with the LDA remedying the breach where the Developer fails to remedy that breach within seven (7) days of being advised by the LDA in writing to do so.

6.3 If the LDA calls on the Security, the Developer must within 5 Working Days after request by the LDA, top-up the Security to the Security Amount.

6.4 The Release Date is the date as soon as practicable but in any event within 20 Working Days after the Developer has notified the LDA, and provided sufficient evidence as required by LDA, that they have complied with all of their obligations under this Agreement. On the Release Date, to the extent that the LDA has not called on or is not entitled to call on the Security under clause 6.2, the LDA will release to the Developer the security provided under this clause 6.

- 6.5 If the Developer has not sought release of the Security under this Agreement within 5 (five) years of the date of this Agreement, the Developer releases the Security absolutely to the LDA, notwithstanding that the Developer may subsequently comply with their obligations under this Agreement.
- 6.6 Where the Developer has provided Security to the LDA in accordance with clause 6.1 and subsequently wishes to replace that Provided Security with Permitted Substitute Security:
- (a) the Developer may request the LDA to accept the Permitted Substitute Security in place of the Provided Security;
  - (b) the LDA will not unreasonably refuse to accept the Permitted Substitute Security in place of the Provided Security;
  - (c) the Developer will pay to the LDA on demand all reasonable costs incurred by the LDA in relation to the substitution of the Permitted Substitute Security for the Provided Security; and
  - (d) upon the Developer delivering the Permitted Substitute Security to the LDA:
    - (i) the Permitted Substitute Security will be substituted for the Provided Security as security for the performance of the Developer's obligations under this Agreement,
    - (ii) the Permitted Substitute Security is "Security" for the purposes of this Agreement; and
    - (iii) the parties' rights and obligations in relation to the Permitted Substitute Security are as set out in this Agreement, including in this clause 5; and
  - (e) the LDA will promptly, after its receipt of the Permitted Substitute Security, release to the Developer the Provided Security (to the extent that the LDA has not called on, or is not entitled to call on, the Provided Security).
- 6.7 In addition to the Security, the Developer charges in favour of the LDA the whole of the Developer's interest in the Land and Crown Leases as security for the Developer's performance of its obligations under this Agreement and the Contract for Sale.
- 6.8 The Developer acknowledges that the LDA may register and maintain, and consents to the LDA registering and maintaining, a Charge or caveat over the Crown Lease until such time as the Developer's obligations under this Agreement, the Contract for Sale and the Crown Lease have been fully performed. No such Charge or caveat shall prevent the registration of a mortgage of the Crown Lease to a third party financier where that financier provides funding for the development of the Land. LDA agrees it will provide its consent under the charge or caveat to enable the registration of any such mortgage by the financier. Provided the funding is used for the development of the Land only, LDA's consent is not required for changes to the financing arrangements which may affect the amount of funding or the terms and conditions of the financing arrangements.
- 6.9 The Seller must release the Charge, and withdraw any caveat registered by the Seller pursuant to clause 6.8, within 14 days after:
- (a) the Buyer having complied with all of its obligations under the Crown Lease, the Contract for Sale and this Agreement; and
  - (b) the Buyer requesting the Seller to withdraw the caveat.

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## **7. Sale of property**

- 7.1 The Developer must not sell or assign or agree to sell or assign any interest in the Crown Lease or Land to any person (**disponee**) before the Release Date unless:
- (a) the Developer procures that its disponee covenants by agreement in favour of the LDA, on terms approved by the LDA acting reasonably, that the disponee shall be bound by and shall comply with all of the obligations of the Developer under this Agreement 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 Agreement from its making;
  - (b) the Developer delivers such agreement of covenant to the LDA prior to the disposition; and
  - (c) on or prior to the disposition, and as required by the LDA in its absolute discretion, either:
    - (i) the Developer authorises the LDA to hold the Security (as from the time of the disposition) as if it had been provided by the disponee, or
    - (ii) the disponee provides substitute security to the LDA (for the Security Amount and in the form of security permitted under clause 6.1), in which case the LDA shall within 5 Working Days after receipt of such substitute security release to the Developer the Security provided by it (to the extent that the LDA has not called on, or is not entitled to call on, that Security).
- 7.2 The LDA and the Developer agree and acknowledge that, despite any other provision in this Agreement, the Developer is entitled to market product in any development it proposes to construct on the Land and enter into and complete contracts for the sale of product in that development, provided that:
- (a) the terms of any such sale contract do not permit settlement to occur prior to the Developer completing the Contract for Sale and becoming the lessee under the Crown Lease; and
  - (b) the Developer is not in breach of this Agreement or the Contract for Sale.
- 7.3 The Developer must promptly, at the request of LDA, provide LDA with:
- (a) such details as LDA requires in respect of any sale or proposed sale relating to the Land or any dwelling on the Land; and
  - (b) a copy of any agreement made by the Developer in relation to any such sale.

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## **8. Indemnity**

The Developer indemnifies the LDA and shall keep it indemnified from and against any claim, expense, loss or damage suffered by the LDA arising out of any failure by the Developer to duly and punctually perform its obligations under this Agreement.

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## **9. Preservation of the LDA's rights and Developer's obligations**

- 9.1 The Developer's obligations and the LDA's rights under this Agreement are not affected by anything that might abrogate, prejudice or limit them or the effectiveness of this Agreement, including:

- (a) any variation of any of the obligations hereby imposed;
- (b) the granting of any forbearance, time, waiver, credit or other concession to the Developer;
- (c) an arrangement, composition or compromise with, or absolute or partial discharge or release of the Developer;
- (d) the appointment of a liquidator, provisional liquidator, receiver, receiver and manager or voluntary administration to the Developer or any of its assets;
- (e) the legal incapacity or dissolution or change in status or lack of authority of any party;
- (f) a disposal or novation by the Developer of all or any part of its interest in the Land or Crown Lease or any attendant rights; and
- (g) any delay, acquiescence, mistake, negligence or other act or omission of the LDA.

9.2 The Developer warrants and represents to the LDA that:

- (a) it has made and relied on its own enquiries in entering into the Contract for Sale and this Agreement;
- (b) it has examined and obtained all necessary advice in respect of the Moncrieff Builders' Block Plans and
- (c) except as expressly provided in the Contract for Sale or this Agreement, the Developer has entered into this the Contract for Sale and this Agreement without relying on any information or advice given or statement made by the LDA or any person purporting to represent the LDA.

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## 10. Developer's representations and warranties

The Developer represents and warrants to the LDA that:

- (a) it is incorporated in accordance with the laws of its place of incorporation, validly exists under those laws and has the capacity to sue in its own name and to own its property and conduct its business as it is being conducted;
- (b) it either:
  - (i) does not enter into this Agreement in any capacity as a trustee or a responsible entity; or
  - (ii) if it has entered into or will enter into the Contract for Sale or this Agreement as the trustee of any trust, it enters into and is bound by this Agreement in its own right and in its capacity of such trust;
- (c) this Agreement is valid, binding and enforceable in accordance with its terms and is not void or voidable;
- (d) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with its obligations under, this Agreement;
- (e) each authorisation necessary to enable it to unconditionally execute and deliver and comply with its obligations under this Agreement has been obtained, effected, and complied with; and

- (f) the unconditional execution and delivery of, and compliance with its obligations under, this Agreement does not contravene its constitution or any law applying to it.

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**11. Costs and expenses**

The Developer must pay to the LDA within ten Working Days after demand all of the LDA's reasonable costs and expenses of or relating to any exercise or attempted exercise or the preservation of any of the LDA's rights under this Agreement.

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**12. Alphabetical Identifier for the Land**

- 12.1 The Seller advises and the Buyer acknowledges that the Alphabetical Identifier for the Land in the Schedule:
- (a) is a temporary identifier for the Land; and
  - (b) describes the Land with the same Alphabetical Identifier in the Block Details Plan.
- 12.2 The Seller agrees to advise the Buyer of the Numerical Identifier for the Land within a reasonable time of the Seller being notified of the Numerical Identifier by the Planning and Land Authority.
- 12.3 The Buyer agrees that the reference to the Alphabetical Identifier in the Block Details Plan will be a reference to the Numerical Identifier once issued and that the Lease will be granted with the Numerical Identifier.

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**13. Set-off**

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

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**14. GST**

- 14.1 In addition to any other consideration, the recipient of a Taxable Supply made under or in connection with this document ("Recipient") must pay to the party making the Taxable Supply ("Supplier") the amount of GST in respect of the Taxable Supply. This subclause does not apply if the consideration specified for the Taxable Supply is expressly agreed to be GST inclusive.
- 14.2 If the amount paid by the Recipient to the Supplier in respect of GST (whether because of an Adjustment or otherwise):
- (a) is more than the GST on the Taxable Supply, then the Supplier shall refund the excess to the Recipient; or
  - (b) is less than the GST on the Taxable Supply, then the Recipient shall pay the deficiency to the Supplier.
- 14.3 The Recipient is not obliged to pay any amount in respect of GST to the Supplier unless and until the Supplier issues a Tax Invoice to the Recipient in respect of the Taxable Supply. If an Adjustment has occurred, the Supplier must issue an Adjustment Note to the Recipient.
- 14.4 The amount of a party's entitlement under this document to recovery or compensation for any of its costs, expenses or liabilities is reduced by the Input Tax Credits to which that party (or the Representative Member of a GST Group of which the party is a member) is entitled in respect of such costs, expenses or liabilities.

14.5 For the purposes of this clause:

- (a) **GST Law** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) **Adjustment, Adjustment Note, GST, GST Group, Input Tax Credits, Representative Member and Tax Invoice** have the meanings given to them in the GST Law; and
- (c) **Taxable Supply** has the meaning given to it in the GST Law, excluding section 84-5 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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**15. Supervening legislation**

15.1 Any present or future legislation that operates:

- (a) to lessen or vary the Developer's obligations in connection with this Agreement; or
  - (b) to postpone, stay, suspend or curtail any rights of the LDA under this Agreement,
- is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

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**16. Notices**

16.1 All notices or other communications to or by a party to this Agreement:

- (a) must be in writing;
- (b) must be signed by an authorised officer of, or lawyer of, the sender;
- (c) are treated as being given or made:
  - (i) if delivered in person or by post, when delivered, received or left at the address of the recipient; or
  - (ii) if by electronic mail or facsimile transmission, on receipt by the sender of an error free transmission report at the end of transmission,but if delivery or receipt is on a day that is not a Working Day in the place to which the notice or other communication is sent or is later than 4.00 pm (local time), it is treated as been given or made at the commencement of business on the next Working Day in that place; and
- (d) must be addressed to the recipient at the address or facsimile number specified in Item 3 of Schedule 1 or such other address or facsimile number notified by a party as its address or facsimile number for service.

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**17. Governing law and jurisdiction**

17.1 The law of the Australian Capital Territory governs this Agreement.

17.2 The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and of the Commonwealth of Australia.

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**18. Counterparts**

This document may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same.

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**19. Execution by attorney**

If an attorney executes this document, the attorney declares that the attorney has no notice of revocation, termination or suspension of the power of attorney under which the attorney executes this document.

# Schedule 1

<p>Item 1 <b>Developer</b></p>	<p>Name: ACN</p>	
<p>Item 2 <b>Land</b></p>	<p>Block a Section C3 Moncrieff in the Australian Capital Territory</p>	
<p>Item 3 <b>Parties' addresses</b></p>	<p><b>LDA</b> Address: TransACT House 470 Northbourne Avenue DICKSON ACT 2602  Fax: 02 6207 5101 For the attention of:  Director (Sales)</p>	<p><b>Developer</b> Address:   Fax: For the attention of:</p>



**Executed as a deed.**

**Executed by Land Development Agency  
ABN 20 419 925 579 by**

and in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Authorised Person

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Name of Authorised Person in full

**Executed by [Developer] ACN XXX XXX  
XXX** in accordance with section 127(1) of the  
*Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of sole secretary/director

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**Annexure A – Moncrieff Builders’ Ballot Block Plans**

## ANNEXURE D - SPECIAL CONDITIONS

### 33 DATE FOR COMPLETION

- 33.1 Subject to Special Condition 33.2, the Date for Completion of this Contract will be 30 Working Days from the date the Seller serves the Lease on the Buyer, in accordance with clause 28 as if it were a notice.
- 33.2 The Seller and the Buyer acknowledge and agree that the Date for Completion cannot be a date before the date that the Seller satisfies the conditions of clause 4.

### 34 ALPHABETICAL IDENTIFIER FOR THE LAND

- 34.1 The Seller advises and the Buyer acknowledges that the Alphabetical Identifier for the Land in the Schedule:
- (a) is a temporary identifier for the Land; and
  - (b) describes the Land with the same Alphabetical Identifier in the Block Details Plan.
- 34.2 The Seller agrees to advise the Buyer of the Numerical Identifier for the Land within a reasonable time of the Seller being notified of the Numerical Identifier by the Planning and Land Authority.
- 34.3 The Buyer agrees that the reference to the Alphabetical Identifier in the Block Details Plan will be a reference to the Numerical Identifier once issued and that the Lease will be granted with the Numerical Identifier.

### 35 BLOCK DETAILS PLAN

- 35.1 The Buyer acknowledges that the area of the Land specified in the Block Details Plan is subject to final survey and is subject to change.
- 35.2 The Seller will provide the Buyer with a copy of the Deposited Plan for the Land prior to the Date for Completion.

### 36 VARIATION TO LAND

- 36.1 Clause 6 of the Contract is deleted.
- 36.2 The Buyer acknowledges that the Specimen Lease, Block Details Plan and any other plans in relation to the Land may be affected by:
- (a) the requirements of legislation;
  - (b) variations to the Territory Plan;
  - (c) the requirements of government authorities; and/or
  - (d) physical conditions affecting the Works
- and may result in one or more of the following:
- (e) minor redefinition of the boundaries of the Land;
  - (f) minor road re-alignment or dedication; and
  - (g) minor variations of the easements relating to the provision of electricity, gas, water, sewerage and stormwater services.

36.3 Any redefinition, road realignment or dedication or variation of easements will be deemed to be minor if it does not materially and detrimentally affect the use of the Land.

36.4 The Buyer cannot make a claim or objection or rescind or terminate or make a claim for compensation under clause 19 of this Contract in respect of any matter set out in Special Condition 36.2.

### **37 DEPOSIT**

37.1 Payment of Deposit by instalments

The Buyer must pay the Deposit to the Seller. The Seller agrees to accept the payment of the Deposit in two instalments as follows:

- (a) 5% of the Price by cash or cheque or a Bank Guarantee or Bond for the full 10% Deposit on the Date of this Contract ('First Instalment'); and
- (b) the remainder of the 10% Deposit (if it has not already been paid) by cash or bank cheque on the Date for Completion ('Second Instalment'),

and in every respect time is of the essence of this Special Condition 37.1.

37.2 The First Instalment is released to the Seller and becomes the Seller's property absolutely (being part payment of the Price).

37.3 If the Deposit or any instalment of the Deposit is:

- (a) not paid on time and in accordance with clause 37.1; or
- (b) paid by cheque and the cheque is not honoured on first presentation,

the Buyer is in default and the Seller may terminate this Contract immediately by written notice to the Buyer (without the notice otherwise necessary under clause 20) and clause 21 applies. If the Seller does not terminate this Contract in accordance with this clause 37.3, then this Contract remains on foot, subject to this clause, until the Seller terminates the Contract pursuant to this clause 37.3 or waives the benefit of this clause pursuant to clause 37.5.

37.4 This clause is for the benefit of the Seller and the obligations imposed on the Buyer by this clause are essential. The obligations imposed on the Buyer by this clause bind the Buyer notwithstanding any indulgence, waiver or extension of time by the Seller to the Buyer.

37.5 The Seller may at any time before this Contract is terminated notify the Buyer in writing that the benefit of this clause is waived.

37.6 If the Deposit is paid in accordance with clause 37.1, the Seller will no longer have the benefit of this clause.

37.7 If the Contract is:

- (a) rescinded; or
- (b) terminated due to the default of the Seller,

and the Buyer is entitled to a refund of any part of the Deposit paid, then the Seller will account to the Buyer for whatever part of the Deposit that has been paid.

37.8 The Seller is not liable to pay interest on any refunded Deposit provided that it is refunded to the Buyer within 15 Working Days of the date the Contract is rescinded or terminated.

37.9 The payment of the Deposit or part of it by the Buyer to the Seller does not create a charge over the Land to the value of the Deposit.

### **38 BUYER RELIES ON OWN ENQUIRIES**

38.1 The Buyer acknowledges that it relies on its own enquiries in relation to the Land and warrants that in entering into this Contract the Buyer:

- (a) has not relied on any express or implied statement, warranty or representation whether oral, written or otherwise made by or on behalf of the Seller to the Buyer in connection with the Land;
- (b) has not relied on any documentation made available by or on behalf of the Seller to the Buyer in relation to the Land other than documentation forming part of this Contract; and
- (c) is satisfied as to the nature, quality and condition of the Land and the purposes for which the Land may be used.

38.2 The Seller makes no warranty as to the accuracy or completeness of any document made available by or on behalf of the Seller to the Buyer in connection with the Land other than documentation forming part of this Contract.

### **39 MONCRIEFF BUILDERS' BALLOT BLOCK PLANS**

39.1 If there is any variation to the Moncrieff Builders' Ballot Block Plans affecting the Buyer prior to Completion, the Seller may notify the Buyer and provide:

- (a) a copy of the final form of the amended document; or
- (b) the variations,

to the Buyer in electronic form or hard copy prior to Completion.

### **40 CONSTRUCTION COSTS**

The Buyer acknowledges and agrees that the following requirements which may be required by law may increase the Buyer's costs of construction:

- (a) bushfire requirements;
- (b) external noise mitigation requirements;
- (c) solar water heating requirements;
- (d) water efficiency fixtures; and
- (e) dwelling height restrictions.

### **41 BUSHFIRE PROTECTION**

The Buyer acknowledges that the Land may be affected by legislation and regulations in connection with bushfire protection and that those requirements are subject to change.

### **42 CAT CONTAINMENT**

The Land is part of an area which may be declared to be a cat curfew area under the Domestic Animals Act 2000 (ACT) and cats located within areas declared to be cat curfew areas must be confined to their keeper's or carer's premises at all times.

#### **43 PROJECT DELIVERY AGREEMENT**

- 43.1 This Contract is contingent upon the parties entering into the Project Delivery Agreement prior to or at the same time they entered into this Contract and the Seller may terminate (at its absolute discretion) this Contract at any time should the Buyer execute this Contract without executing the Project Delivery Agreement.
- 43.2 The Seller is not obliged to execute the Project Delivery Agreement after the execution of this Contract, however, despite Special Condition 43.1, should the parties execute the Project Delivery Agreement subsequent to the execution of this Contract, the Seller shall not terminate this Contract under that Special Condition.
- 43.3 The Buyer must comply with all of its obligations under the Project Delivery Agreement.
- 43.4 The Buyer acknowledges and accepts that restrictions on dealing with the Land apply until the Buyer has complied with its obligations under the Project Delivery Agreement, as set out in the Project Delivery Agreement.
- 43.5 Except as otherwise provided in the Project Delivery Agreement, the Buyer must not complete any agreement for the sale of, or permit any transfer to be registered in respect of, the whole or any part of the Land or any dwelling erected or to be erected on the Land, prior to the Buyer having complied with all of its obligations under the relevant Project Delivery Agreement.
- 43.6 The Buyer acknowledges and agrees that the Seller may retain and use the Security in respect of the performance by the Buyer of its obligations under this Contract and the Project Delivery Agreement.
- 43.7 The Buyer acknowledges that the Seller may register, and consents to the Seller registering, a charge or caveat over the Lease in relation to the Charge, provided that such a caveat must not prevent the registration of a mortgage by the Buyer in respect of the Lease.
- 43.8 The Seller must release the Charge, and withdraw any caveat registered by the Seller pursuant to clause 43.7, within 14 days after the later of:
- (a) the Buyer having complied with all of its obligations under this Contract and the Project Delivery Agreement; and
  - (b) the Buyer requesting the Seller to withdraw the caveat.

#### **44 DEFINITIONS**

The following definitions are in addition to the definitions in clause 31 of the Contract:

**ActewAGL** means a joint venture company that owns, operates and maintains the electricity, gas, water and sewage services on behalf of ACTEW Corporation Limited (ACN 069 381 960);

**Alphabetical Identifier** means the alphabetical block and section identifier for the Land set out in the Schedule to this Contract;

**Block Details Plan** means the plan described as such in the Moncrieff Builders' Ballot Block Plans;

**Compliance Certificate** has the meaning given in the Project Delivery Agreement;

**Deposited Plan** means the plan of survey delineating the Land, registered with the Office of Regulatory Services;

**Numerical Identifier** means a numerical block and section identifier for the Land specified in the Deposited Plan;

**Project Delivery Agreement** means the project delivery agreement (or deed) made on the date of this Contract between the Seller and the Buyer in relation to the Land; and

**Security** means any amounts payable by the Buyer to Seller as security under the Project Delivery Agreement.