

LAND DEVELOPMENT AGENCY
FIRST GRANT CONTRACT – LAND READY



SCHEDULE

DATE OF THIS CONTRACT				
LAND		Block	Section	Division/District
		«Block»	«Section»	Moncrieff
STAGE		<<insert stage of development>> as described in the Moncrieff Housing Development Guide.		
OCCUPANCY		Vacant Possession		
CO-OWNERSHIP	Mark one <i>See clause 16</i>	<input type="checkbox"/> Tenants in common (<i>Show shares</i>)	<input type="checkbox"/> Joint Tenants	
CROWN LEASE ELECTION	Mark One	<input type="checkbox"/> Standard Lease	<input type="checkbox"/> Land Rent Lease	
SELLER	Full name	Land Development Agency		
	ACN/ABN	20 419 925 579		
	Address	TransACT House, 470 Northbourne Avenue, Dickson ACT 2602		
SELLER'S SOLICITOR	Firm	Meyer Vandenberg Lawyers		
	Ref	Sai Ranjit/Stephanie Lynch		
	Phone	(02) 6279 4444		
	Fax	(02) 6279 4479		
	Address	GPO Box 764 Canberra City ACT 2601 DX 5647 Canberra		
	Email	lda@meyervandenberg.com.au		
BUYER	Full Name			
	ACN/ABN			
	Address			
BUYER'S SOLICITOR	Firm			
	Ref			
	Phone			
	Fax			
	DX/Address			
	Email			
PRICE	Price	\$<<insert>> (The Price is GST inclusive)		
	Less Deposit	\$<<insert>> (10% of Price)		
	Balance	\$<<insert>>		
EARLIEST DATE OF EXPIRY OF DEPOSIT	<i>See clause 3</i>	60 days after the Date for Completion		

BOND OR BANK GUARANTEE		
DATE FOR COMPLETION		3 February 2016
STANDARD ANNEXURES	Documents annexed to this Contract	Annexure A – Moncrieff Housing Development Guide Annexure B – Specimen Crown Lease Annexure C – Application for Land Rent Lease Annexure D – Financial Advice Certificate Annexure E – Statutory Declaration Annexure F – Deposited Plan
SPECIAL CONDITIONS	Indicate whether any special conditions apply	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

READ THIS BEFORE SIGNING

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 On the Date of this Contract the Buyer must elect to be granted:
- (a) a Standard Lease (“Standard Lease Election”); or
 - (b) a Land Rent Lease (“Land Rent Lease Election”).
- 1.2 The Seller will procure the grant of the Lease to the Buyer on Completion.
- 1.3 The Lease will be granted substantially upon the terms and conditions of the:
- (a) Specimen Standard Lease if the Buyer has made a Standard Lease Election; or
 - (b) Specimen Land Rent Lease if the Buyer has made a Land Rent Lease Election.
- 1.4 If the Buyer has not made a Land Rent Lease Election on the Date of this Contract, the Buyer will not be entitled to a Land Rent Lease Election at any time after the Date of this Contract.
- 1.5 If the Buyer has made a Land Rent Lease Election on the Date of this Contract, the Buyer may change the Buyer’s election and elect to be granted a Standard Lease in accordance with clause 7.
- 1.6 If the Buyer has failed to make a Standard Lease Election or a Land Rent Lease Election in the Schedule on the front page of this Contract where specified, the Buyer is deemed to have made a Standard Lease Election on the Date of this Contract.

2 TERMS OF PAYMENT – STANDARD LEASE

- 2.1 Clause 2 applies if the Buyer has made a Standard Lease Election.
- 2.2 On Completion the Buyer must pay to the Seller in Canberra the Balance of the Price by unendorsed bank cheque.
- 2.3 On the Date of this Contract, the Buyer must pay the Deposit to the Seller.
- 2.4 The Seller agrees to accept payment of the Deposit in two instalments as follows:
- (a) 5% of the Price by Deposit Bond, cheque or Bank Guarantee on the date of this Contract (**First Instalment**); and
 - (b) the remainder of the 10% Deposit (if it has not already been paid) by bank cheque on the Date for Completion (**Second Instalment**), and in every respect time is of the essence of this clause 2.4.
- 2.5 The Deposit and all instalments of the Deposit are released to the Seller (when paid) and become the Seller’s property absolutely (being part payment of the Price).
- 2.6 If the Deposit or any instalment of the Deposit is:
- (a) not paid on time and in accordance with clause 2.4; 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 25) and clause 27 applies.

- 2.7 If the Seller does not terminate this Contract in accordance with clause 2.6, then this Contract remains on foot, subject to this clause 2.7, until the Seller terminates the Contract pursuant to clause 2.6 or waives the benefit of clause 2.6 pursuant to clause 2.9.
- 2.8 This clause 2 is for the benefit of the Seller and the obligations imposed on the Buyer by this clause 2 are essential. The obligations imposed on the Buyer by this clause 2 bind the Buyer notwithstanding any indulgence, waiver or extension of time by the Seller to the Buyer.
- 2.9 The Seller may at any time before this Contract is terminated notify the Buyer in writing that the benefit of this clause 2 is waived.
- 2.10 If the Deposit is paid in accordance with clause 2.4, the Seller will no longer have the benefit of this clause. 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.
- 2.11 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.
- 2.12 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.
- 2.13 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 – STANDARD LEASE

- 3.1 The Deposit to be paid pursuant to clause 2 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; and
 - (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 The Deposit Bond or Bank Guarantee must show the Seller as the beneficiary of the Deposit Bond or Bank Guarantee.
- 3.4 The Buyer must pay the amount stipulated in the Deposit Bond or Bank Guarantee to the Seller by unendorsed bank cheque on Completion.
- 3.5 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.
- 3.6 If the Buyer is in default under clause 3.5 it will be deemed to be a failure by the Buyer to pay the Deposit under clause 2 and immediately, and without the notice necessary under clause 25, clause 27 applies.

4 TERMS OF PAYMENT – LAND RENT LEASE

- 4.1 Clause 4 applies if the Buyer has made a Land Rent Lease Election.
- 4.2 The Price is not payable on Completion.
- 4.3 On the Date of this Contract the Buyer must pay the Security Payment to the Seller.
- 4.4 The Seller must hold the Security Payment in trust on behalf of the Buyer until Completion or until this Contract is terminated or otherwise ends.
- 4.5 The Security Payment 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.
- 4.6 If the Buyer is in default under clause 4.5, then immediately and without the notice otherwise necessary under clause 25, clause 26 applies.
- 4.7 Notwithstanding the grant of the Land Rent Lease at Completion, the Buyer agrees that the Seller will retain the Land Rent Lease at Completion and will attend to the registration of the Land Rent Lease with the Office of Regulatory Services.
- 4.8 The Buyer acknowledges that:
- (a) the cost of registration of the Land Rent Lease will be payable by the Buyer; and
 - (b) the Buyer will be required to provide all documentation reasonably required by the Seller prior to Completion in order for the Seller to attend to registration of the Land Rent Lease.
- 4.9 Following registration of the Land Rent Lease, the Certificate of Title for the Land and one copy of the Lease will be provided to the Buyer at the address nominated by the Buyer at Completion.
- 4.10 The Buyer waives any interest in respect of the Security Payment from the Date of this Contract to the date ninety (90) days following the Completion or rescission or termination of this Contract.

- 4.11 To the best of the Seller's knowledge, the Price specified in the Schedule will be utilised for the calculation of stamp duty (if payable) by the ACT Commissioner for Revenue where a Land Rent Lease Election has been made by the Buyer.

5 DOCUMENTS TO BE PROVIDED – LAND RENT

- 5.1 This Clause 5 applies if the Buyer has made a Land Rent Lease Election.

Documents to be Provided on the Date of this Contract

- 5.2 On the Date of this Contract the Buyer must provide to the Seller a completed and duly executed Application for Land Rent Lease in the form at Annexure C.

Documents to be provided within 30 Days of the Date of this Contract

- 5.3 Completion of this Contract is subject to and conditional upon the Buyer providing to the Seller, within 30 days of the Date of this Contract:

- (a) a completed and duly executed Statutory Declaration witnessed by the Buyer's Solicitor;
- (b) a completed and duly executed Financial Advice Certificate; and
- (c) evidence of attendance at the CIT Information Session.

- 5.4 Clause 5.3 is an essential term and time is of the essence.

- 5.5 On Completion, the Seller will pay to the Buyer \$300 (including GST), being the Seller's contribution to the Buyer's costs of obtaining legal and financial advice.

Documents to be provided on Completion

- 5.6 Completion of this Contract is subject to and conditional upon the ACT Revenue Office determining that the Buyer complies with the Eligibility Criteria.

- 5.7 The Buyer acknowledges that the ACT Revenue Office determination required at clause 5.6:

- (a) is only valid for 60 days from the date of the determination; and
- (b) must be valid on Completion.

6 ELIGIBILITY CRITERIA – LAND RENT

Compliance Check – Seller authorisation

- 6.1 The Buyer authorises the Seller and the ACT Revenue Office to, at any time:

- (a) check whether the Buyer complies with the Eligibility Criteria;
- (b) make any enquiries they see fit, to determine the Buyer's compliance with the Eligibility Criteria, including enquiries of financial institutions, the Australian Taxation Office and land title registers; and
- (c) confirm with the Canberra Institute of Technology the Buyer's attendance at an Information Session.

Compliance – Buyer responsibility

- 6.2 The Buyer must commence the process of obtaining a determination from the ACT Revenue Office that the Buyer satisfies the Eligibility Criteria and must provide to the ACT Revenue Office, no later than 20 Working Days before the Date for Completion (i.e. after receipt of the Leases in accordance with clause 8):
- (a) evidence of the total income for the 12 months prior to the date of this Contract for the Buyer, the Domestic Partner of the Buyer, and any other person who joined the application;
 - (b) a copy of the last income tax return prior to the date of this Contract for the most recent income tax year lodged by the Buyer, the Domestic Partner of the Buyer, and any other person who joined the application;
 - (c) if the Buyer is self-employed, a copy of Business Activity Statements (BAS) for the 12 month period prior to the date of this Contract;
 - (d) if the Buyer has dependent children, a certified copy of the youngest child's birth certificate; and
 - (e) any other information or documents requested by the Seller or the ACT Revenue Office for the purpose of determining the Buyer's compliance with the Eligibility Criteria.
- 6.3 If requested by the Seller or the ACT Revenue Office to do so, the Buyer must provide any authorisation required by the Seller or the ACT Revenue Office to enable the Seller or the ACT Revenue Office to make any enquiries it determines it should make in its absolute discretion for the purpose of determining the Buyer's compliance with the Eligibility Criteria.
- 6.4 The Buyer authorises the ACT Revenue Office and the Seller, for the purposes of this Contract and of any legislation, to communicate any information concerning the Buyer's compliance with the Eligibility Criteria to:
- (a) each other;
 - (b) the Seller's legal advisers; and
 - (c) the Buyer's legal advisers.

Buyer acknowledgements

- 6.5 The Buyer agrees that:
- (a) the Buyer submitted the Application for Land Rent Lease to the Seller pursuant to which the Buyer entered into this Contract;
 - (b) despite entering into this Contract, the Buyer is not eligible for the grant of the Land Rent Lease under this Contract unless the Buyer complies with the Eligibility Criteria;
 - (c) if the ACT Revenue Office determines that the Buyer does not comply with the Eligibility Criteria:
 - (i) the Seller will notify the Buyer of the determination;

- (ii) the Buyer may change their election to a Standard Lease Election by providing the Seller with a notice in accordance with clause 7.1 within 5 Working Days of receiving the notification; and
- (iii) if the Buyer does not change their election in accordance with clause 5.6(c)(ii), the Seller may rescind the Contract in accordance with clause 29;
- (d) if the ACT Revenue Office determines that the Buyer has deliberately supplied false or misleading information in the Application for Land Rent Lease, the Seller:
 - (i) will terminate this Contract without the notice otherwise necessary under clause 25; and
 - (ii) may retain the Security Payment; and
- (e) if the Buyer completes the Contract, is granted a Land Rent Lease and subsequently becomes ineligible, the provisions of s16AA of the Land Rent Act will apply.

Buyer Change in Circumstances

- 6.6 If, after the Date of this Contract but before the Buyer’s eligibility is assessed by the ACT Revenue Office, the Buyer becomes aware of changes to their circumstances that may result in the Buyer not meeting the Eligibility Criteria, the Buyer must, no later than 5 Working Days after the change:
- (a) notify the Seller of the change; and
 - (b) elect to either:
 - (i) change their election to a Standard Lease Election in accordance with clause 7; or
 - (ii) request a rescission of the Contract from the Seller, who’s approval may not be unreasonably withheld.
- 6.7 If the Buyer does not comply with the Buyer’s obligations under this clause 6 the Seller may terminate this Contract without the notice otherwise necessary under clause 25 and retain the Security Payment.

7 CHANGING LAND RENT LEASE ELECTION

- 7.1 Notwithstanding the Buyer’s Land Rent Lease Election, the Buyer may at any time from the Date of this Contract up to 14 days prior to the Date for Completion provide the Seller with a notice that the Buyer no longer elects for the Lease to be a Land Rent Lease and on Completion the Buyer elects to be granted a Standard Lease.
- 7.2 Where the Buyer provides a notice in accordance with clause 7.1:
- (a) clause 2 will apply provided that the time for paying the Deposit at clause 2.4 of this Contract is amended to payment in accordance with clause 7.2(b);
 - (b) the Buyer must pay, on the date of providing the notice to the Seller pursuant to clause 7.2:
 - (i) the Deposit; or

- (ii) an amount equal to the difference between the Deposit and the amount paid by the Buyer to the Seller as the Security Payment, as well as provide the Seller with written authorisation for the Security Payment being held on trust under clause 4.3 to be applied to the Deposit.
 - (c) the Deposit and Price will be as specified in the Schedule;
 - (d) clauses 27, 28 and 31 will apply; and
 - (e) following the payment of the Deposit:
 - (i) clauses 4, 5, 6 and 29 will cease to apply to the Buyer; and
 - (ii) the Seller will return the Security Payment to the Buyer if not authorised to use it as part of the Deposit.
- 7.3 If the Buyer has provided a notice in accordance with clause 7.1 and the Deposit is not paid in accordance with clause 7.2, the Buyer will be in default under the terms of this Contract and the provisions of clause 2.6 will apply.

8 SIGNING OF LEASE

- 8.1 The Seller will serve the Lease on the Buyer within 14 days of this Contract, 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 of the Commerce and Works Directorate (“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:
 - (i) the signed Leases; and
 - (ii) a copy of the stamped Application to Register a Crown Lease for the Lease.

9 MONCRIEFF HOUSING DEVELOPMENT GUIDE

- 9.1 The Housing Development Guide is annexed to this Contract for information only. If there is any variation to the Moncrieff Housing Development Guide 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 prior to Completion.
- 9.2 The Buyer acknowledges that the Land is ready and available for inspection.
- 9.3 The Buyer enters into this Contract in reliance upon the Deposited Plan annexed to this Contract and on the Buyer’s own enquiries.

- 9.4 The Buyer cannot make a claim or objection or rescind or terminate or make a claim for compensation under clause 24 of this Contract in respect of any matter set out in the Moncrieff Housing Development Guide.
- 9.5 In any event, that there is an inconsistency between the Moncrieff Housing Development Guide and the Deposited Plan, the Deposited Plan prevails.

10 VARIATION TO LAND AND MONCRIEFF HOUSING DEVELOPMENT GUIDE

- 10.1 The Buyer acknowledges that the Specimen Crown Lease, the Moncrieff Housing Development Guide, the 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.
- 10.2 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.
- 10.3 The Buyer cannot make a claim or objection or rescind or terminate or make a claim for compensation under clause 24 of this Contract in respect of any matter set out in clause 10.1.

11 PLANNING CONDITIONS

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 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.

12 PROPERTY ACT

12.1 The Property Act does not apply to this Contract as this Contract is not a sale of residential property and the grant of the Lease will be the first grant of a crown lease over the Land.

13 NON COMPLYING TRANSFERS NOT TO BE USED

13.1 The Buyer will not be able to use the non complying transfer provisions of section 17 of the *Duties Act 1999 (ACT)* in relation to this Contract as this Contract will be the first grant of the Lease.

14 ENTIRE AGREEMENT

14.1 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.

15 NO RELIANCE

15.1 Each party has entered into this Contract without reliance upon any representation, statement or warranty (including sales and marketing material and preliminary artwork) except as set out in this Contract.

16 CO OWNERSHIP

16.1 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.

17 NON MERGER

17.1 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.

18 BUYER RIGHTS AND LIMITATIONS

18.1 The Buyer is not entitled to make any requisitions on the title to the Land.

18.2 The Buyer cannot make a claim or objection or rescind or terminate or make a claim for compensation under clause 24 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) any matter contained in the Block Fill Plans or the existence of regrading, fill or other disability of or upon the Land, whether caused by the Commonwealth of Australia, the Seller, previous occupants of the Land or otherwise; and
- (d) anything disclosed in this Contract (except an Affecting Interest).

18.3 The Buyer acknowledges, understands and accepts that the existence of regrading, fill or other disability 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 otherwise have been in the absence of such regrading, fill, contamination of any substance or other disability.

19 SELLER WARRANTIES

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

- (a) the Seller will be able to complete at Completion;
- (b) the Seller has no knowledge of any unsatisfied judgment, order or writ 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 affecting the Land; and
- (d) the Seller is not aware of any material change in the matters disclosed in the Moncrieff Housing Development Guide.

19.2 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 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 affecting the Land; and
- (d) the Seller is not aware of any encroachments by or upon the Land except as disclosed. This warranty does not extend to the location of any dividing fence.

19.3 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.

20 ADJUSTMENTS

20.1 The Lease will be granted on Completion. As a result, there will be no adjustments of Income or Land Charges.

21 TERMS OF POSSESSION

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

22 INSPECTION AND CONDITION OF LAND

22.1 The Buyer may on reasonable notice to the Seller inspect the Land during the period 14 days prior to the Date for Completion.

22.2 The Seller must leave the Land clean and tidy on Completion.

23 ERRORS AND MISDESCRIPTIONS

23.1 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.

23.2 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.

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

24 COMPENSATION CLAIMS BY BUYER

24.1 This clause 24 applies to claims for compensation arising out of this Contract made by the Buyer against the Seller including claims under clause 23.

24.2 To make a claim for compensation (including a claim under clause 23) 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 14 days after receiving the notice; and
- (b) if the Seller does not rescind under clause 24.2(a), the parties must complete and:
 - (i) the claim must be finalised (subject to clause 24.2(b)(v)) either by agreement or, failing agreement, by an arbitrator appointed by the parties or, if an appointment is not made within 28 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;
 - (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; and
 - (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.

25 NOTICE TO COMPLETE AND DEFAULT NOTICE

25.1 If Completion does not take place by the Date for Completion, either party may, at any time after the Date for Completion, serve on the other party a Notice to Complete.

25.2 A Notice to Complete must appoint a time during business hours and a date being not less than 14 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.

25.3 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.
- 25.4 Completion at the time, date and place specified in the Notice to Complete is an essential term.
- 25.5 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.
- 25.6 A Default Notice must:
 - (a) specify the default; and
 - (b) require the party served with the Default Notice to rectify the default within 14 days after service of the Default Notice (excluding the date of service).
- 25.7 At the time the Default Notice is served, the party serving the Default Notice must not be in default.
- 25.8 The time specified in a Default Notice to rectify the specified default is an essential term.
- 25.9 Clauses 26 to 29 will apply as applicable where the party served does not comply with the Notice to Complete or the Default Notice which complies with this clause.
- 25.10 If the party serving a notice under this clause varies the time referred to in the notice at the request of the other party, the time agreed to in the variation remains an essential term. The consent to the variation must be in writing and be served on the other party.
- 25.11 The parties agree that the time referred to in clauses 25.2 and 25.6(b) is fair and reasonable.

26 TERMINATION – BUYER’S DEFAULT - LAND RENT LEASE

- 26.1 This clause applies if the Buyer has made a Land Rent Lease Election.
- 26.2 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 this Contract and:
 - (a) claim the Land Rent Lease Liquidated Damages and offset them against the Security Payment;
 - (b) sue the Buyer for breach; or
 - (c) 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.
- 26.3 In addition to any money kept or recovered under clause 26.1, 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.

26.4 The parties agree that the amount of the Land Rent Lease Liquidated Damages payable to the Seller under clause 26.2(a) is a genuine and honest pre-estimate of loss to the Seller for termination by the Buyer.

27 TERMINATION – BUYER DEFAULT - STANDARD LEASE

27.1 This clause applies if the Buyer has made a Standard Lease election or has changed their election pursuant to clause 7.

27.2 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 this Contract 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.

27.3 In addition to any money kept or recovered under clause 27.1, 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.

27.4 For the avoidance of doubt, if the Deposit is paid by Deposit Bond or Bank Guarantee in accordance with clause 3, and the Seller is entitled to terminate in accordance with clause 27.1, the Buyer acknowledges that the Seller is entitled to, and will, call upon the Deposit Bond or Bank Guarantee immediately after serving the termination notice.

28 TERMINATION – SELLER DEFAULT – STANDARD LEASE

28.1 This clause applies if the Buyer has made a Standard Lease election or has changed their election pursuant to clause 7.

28.2 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.

29 TERMINATION – SELLER DEFAULT – LAND RENT LEASE

29.1 This clause applies if the Buyer has made a Land Rent Lease Election.

29.2 Where the Seller does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential condition of this Contract then the Buyer may by notice in writing served on the Seller terminate this Contract and no penalty, damages or costs will be payable by the Seller to the Buyer.

30 RESCISSION

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

- (a) the Deposit or Security Payment (as applicable) 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.

31 DAMAGES FOR DELAY IN COMPLETION – STANDARD LEASE

31.1 If Completion does not occur by the Date for Completion, due to the default of either party, the party who is at fault must pay the other party 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 7 days after the Date for Completion to Completion;
and
- (b) the amount of \$660 (including GST) to be applied towards any legal costs and disbursements incurred by the party not at fault if Completion occurs later than 7 days after the Date for Completion.

31.2 The party at fault must pay the amount specified in clause 31.1 in addition to any other damages to which the party not at fault is entitled both at law and under this Contract.

31.3 The parties agree that:

- (a) the amount of any damages payable under clauses 31.1(a) to the party not in default 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.

32 FOREIGN BUYER

32.1 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*.

32.2 This clause is an essential term.

33 GST

33.1 The Buyer and the Seller agree that the Margin Scheme applies to the Supply of the Land.

33.2 The Seller warrants that it can use the Margin Scheme and promises that it will.

34 INSOLVENCY

34.1 If the Buyer suffers an Insolvency Event, the Buyer must immediately notify the Seller in writing.

34.2 If the Seller receives notice that the Buyer has suffered an Insolvency Event (either pursuant to clause 34.1 or by some other means), the Seller may terminate this Contract and clause 26 or 27 applies as applicable.

35 POWER OF ATTORNEY

35.1 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.

36 NOTICES CLAIMS AND AUTHORITIES

36.1 Notices, claims and authorities required or authorised by this Contract must be in writing.

36.2 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, and 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; or
- (f) send it by email to an email address of the party's solicitor (whether to the solicitor's firm generally or specifically to the practitioner specified on the Schedule) as notified from time to time and, unless it is not received, or the receiving party indicates by immediate automatic response that the email address is unattended, the notice is taken to have been received at the time it was sent and if not sent before 5:00pm on a Working Day, on the next Working Day.

36.3 A party's solicitor may give a notice, claim or authority on behalf of that party.

36.4 If a notice is served in accordance with clause 36.2(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.

36.5 If a notice is served in accordance with clause 36.2(b), the notice is taken to have been received on the day 2 Working Days after it was posted.

37 BUSHFIRE PROTECTION

37.1 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.

38 CAT CONTAINMENT

38.1 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.

39 GEOTECHNICAL INFORMATION

39.1 The Seller will make available to the Buyer, prior to Completion, a site classification certificate with respect to the Land.

39.2 The Seller warrants that any fill placed on the Land arising out of undertaking the Works will be compacted to "Level 1 Inspection and Testing" in accordance with Australian Standard AS3798-2007.

40 DEFINITIONS

40.1 Definitions appear in the Schedule and as follows:

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) or its successors and permitted assigns;

Affecting Interests means any mortgage, Encumbrance, lease, lien, charge, notice, order, caveat, writ or other interest;

Application for Land Rent Lease means the Application for Land Rent Lease at Annexure C;

Application to Register a Crown Lease means the prescribed form approved under the *Land Titles Act 1925* (ACT) - Form 31 – ACL - Application to register crown lease, or any form that replaces it;

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;

Block Details Plan means the plan described as such in the Moncrieff Housing Development Guide;

CIT Information Session means a course or information session that an applicant is required to attend under the *Land Rent Regulation 2008* prior to being granted a Land Rent Lease;

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;

Covenant includes restrictive covenant;

Default Notice means a notice in accordance with clauses 25.5 and 25.6;

Domestic Partner has the meaning in the *Legislation Act 2001* (ACT);

Deposit means the deposit forming part of the Price specified in the Schedule;

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

Deposited Plan means plan relating to the Land and registered under Section 7 of the *Districts Act 2002* (ACT), marked at Annexure F in this Contract;

Development has the meaning in the Planning Act;

Eligibility Criteria means the criteria at paragraph 1 of the Application for Land Rent Lease;

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

Financial Advice Certificate means the Financial Advice Certificate at Annexure D;

GST has the meaning ascribed to it under the GST Law and, where appropriate, includes voluntary and Notional GST. Expressions used in this Contract of Sale which are defined in the GST Law have the same meaning as given to them in the GST Law;

GST Law means 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;

Insolvency Event means the following:

- (a) where the Buyer is a natural person and:
 - (i) the Buyer authorises a registered trustee or solicitor to call a meeting of his or her creditors and enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
 - (ii) a third party who holds a security interest in the assets of the Buyer enters into possession, or takes control of those assets, or attempts by any means to do the same; or
 - (iii) the Buyer commits an act of bankruptcy; or
- (b) where the Buyer is a body corporate and:
 - (i) the Buyer becomes, or attempts are made for the Buyer to become an externally administered body corporate in accordance with the Corporations Act 2001 (Cth); or
 - (ii) a controller (as defined by the Corporations Act 2001 (Cth)) is appointed, or attempts are made to have a controller appointed for any of the Buyer's assets.

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;

Land Rent Act means the *Land Rent Act 2008* (ACT);

Land Rent Lease means a crown lease subject to the provisions of the Land Rent Act that will be granted in accordance with the Planning Act in a form similar to the Specimen Land Rent Lease;

Land Rent Lease Election means an election by the Buyer on the Schedule of this Contract to be granted a Land Rent Lease;

Land Rent Lease Liquidated Damages means the sum of two thousand dollars (\$2,000) being the Seller's genuine pre-estimate of the loss and damage suffered by the Seller if:

- (a) at the time of termination; and
- (b) the Contract has been terminated under clause 26;

Lease means a Standard Lease or a Land Rent Lease as applicable to this Contract which may, where the Land is affected by an easement identified in the Moncrieff Housing Development Guide, include an annexure or additional provisions detailing the terms of the easement;

Moncrieff Housing Development Guide means the Moncrieff Housing Development Guide annexed to this Contract or as amended from time to time;

Notice to Complete means a notice in accordance with clauses 25.1 and 25.2 requiring a party to complete;

Notional GST means, where the supplier is the Commonwealth and an obligation exists to make voluntary or notional GST payments under section 177-1 of the GST Law, those voluntary or notional payments are made by or on behalf of the Commonwealth. For the avoidance of doubt Notional GST amounts will be calculated as if the GST Law applies to the relevant supplies;

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;

Property Act means the *Civil Law (Sale of Residential Property) Act 2003 (ACT)*;

Security Payment means a payment of two thousand dollars (\$2,000) payable by the Buyer to secure its obligations under this Contract where they have made a Land Rent Lease Election;

Specimen Crown Lease means the Specimen Land Rent Lease and the Specimen Standard Lease;

Specimen Land Rent Lease means the specimen land rent lease annexed to this Contract;

Specimen Standard Lease means the specimen standard lease annexed to this Contract;

Standard Lease means a crown lease that is not subject to the provisions of the Land Rent Act that will be granted in accordance with the Planning Act in a form similar to the Specimen Standard Lease;

Standard Lease Election means an election by the Buyer on the Schedule of this Contract or in accordance with this Contract to be granted a Standard Lease;

Statutory Declaration means the Statutory Declaration at Annexure E;

TAMSD means the Territory and Municipal Services Directorate or its successors or permitted assigns;

Territory Plan means the *Territory Plan 2008 (ACT)* 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 Stage.

41 INTERPRETATION

41.1 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.

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

41.3 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.

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

ANNEXURE A – MONCRIEFF HOUSING DEVELOPMENT GUIDE

ANNEXURE B – SPECIMEN CROWN LEASE

ANNEXURE C – APPLICATION FOR LAND RENT LEASE

ANNEXURE D – FINANCIAL ADVICE CERTIFICATE

ANNEXURE E – STATUTORY DECLARATION

ANNEXURE F – DEPOSITED PLAN