

**LAND DEVELOPMENT AGENCY
FIRST GRANT CONTRACT – LAND NOT READY
SCHEDULE**



ACT
Government
Economic Development

Land Development Agency
CANBERRA FIRST

DATE OF THIS CONTRACT			
LAND		Block	Section
		«Block»	«Section»
		Division/District	
		Moncrieff	
STAGE		<<insert stage of development>> as described in the Moncrieff Housing Development Guide.	
OCCUPANCY		Vacant Possession	
CO-OWNERSHIP	Mark one <i>See clause 15</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 <i>See clauses 17 - 21</i>
SELLER	Full name ACN/ABN Address	Land Development Agency 20 419 925 579 TransACT House, 470 Northbourne Avenue, Dickson ACT 2602	
SELLER'S SOLICITOR	Firm	Meyer Vandenberg Lawyers	
	Ref	Christina Berlis	
	Phone	(02) 6279 4359	
	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 BOND OR BANK GUARANTEE	<i>See clause 10.2</i>	60 days after the last date in the Estimated Date Range for Works	
DATE FOR COMPLETION	<i>See clause 4</i>	Subject to clause 4.3, 30 Working Days from the date the Seller serves the Lease on the Buyer.	
ESTIMATED DATE RANGE FOR WORKS	<i>See clause 5</i>	<<insert>> to <<insert>>	
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	
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 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:

- (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.

2 DEPOSIT BY INSTALMENTS

2.1 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 Deposit 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 bank cheque on the Date for Completion (**'Second Instalment'**),

and in every respect time is of the essence for the payment of the First Instalment in this clause 2.1.

2.2 Release

On the Date of this Contract, the First Instalment is released to the Seller and becomes the Seller's property absolutely (being part payment of the Price).

2.3 Failure to pay First Instalment

If the First Instalment of the Deposit is:

- (a) not paid on time and in accordance with clause 2.1; 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 29) and clause 30 applies. If the Seller does not terminate this Contract in accordance with this clause 2.3, then this Contract remains on foot, subject to this clause 2, until the Seller terminates the Contract pursuant to this clause 2.3 or waive the benefit of this clause 2 pursuant to clause 2.6.

2.4 Failure to pay Second Instalment

- (a) If the Second Instalment of the Deposit is 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 29) and clause 30 applies. If the Seller does not terminate this Contract in accordance with this clause 2.4, then this Contract remains on foot, subject to this clause 2.4, until either the Seller terminates the

Contract pursuant to this clause 2.4, or waives the benefit of this clause 2.4 pursuant to clause 2.6.

- (b) If the Second Instalment of the Deposit is not paid on time in accordance with clause 2.1, then the Seller cannot immediately terminate the Contract for the Buyer's breach of an essential condition. The Seller must make timing of the payment of the Second Instalment an essential condition of the Contract by serving on the Buyer a Default Notice requiring the Buyer to pay the Second Instalment within 14 days after service of the Default Notice (excluding the date of service).
- (c) For clarity, the Buyer must pay the full Price to the Seller, on or before Completion.

2.5 Benefit of clause

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.

2.6 Waiver

The Seller and the Developer may at any time before this Contract is terminated notify the Buyer in writing that the benefit of this clause 2 is waived.

2.7 Payment

If the Deposit is paid in accordance with clause 2.1, the Seller will no longer have the benefit of this clause.

2.8 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.

2.9 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.

2.10 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.

3 BALANCE OF PRICE

3.1 On Completion the Buyer must pay to the Seller in Canberra the Balance of the Price by unendorsed bank cheque.

3.2 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.

4 DATE FOR COMPLETION

4.1 Completion must take place in Canberra on the Date for Completion or as otherwise determined by the Contract and if not specified or determined, within a reasonable time.

- 4.2 Subject to clause 4.3, 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 38 as if it were a notice.
- 4.3 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 5.2.
- 4.4 For the avoidance of any doubt, the Seller shall not be liable to the Buyer for any damage or loss caused to the Land after Completion, including building waste, save where caused by the negligent or deliberate action or omission of the Seller, its employees, agents or contractors.

5 WORKS

- 5.1 The Buyer acknowledges that at the Date of this Contract the Works may not have been completed.
- 5.2 This Contract is subject to and conditional upon:
- (a) Operational Acceptance of the Works; and
 - (b) registration of a deposited plan for the Stage.
- 5.3 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 if it has not done so already on the Date of this Contract.
- 5.4 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 for Works;
 - (c) industrial dispute;
 - (d) unavailability of labour, plant or materials; or
 - (e) any other reasonable cause or event beyond the control of the Seller.
- 5.5 Any notice of variation to the last date of the Estimated Date Range for Works 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
 - (b) the amended Estimated Date Range for Works.
- 5.6 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 or as amended, either party may rescind this Contract by notice to the other and the provisions of clause 32 will apply.

6 SIGNING OF LEASE

- 6.1 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 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.

7 MONCRIEFF HOUSING DEVELOPMENT GUIDE

7.1 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.

8 VARIATION TO LAND AND MONCRIEFF HOUSING DEVELOPMENT GUIDE

8.1 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.

8.2 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.

8.3 The Buyer cannot make a claim or objection or rescind or terminate or make a claim for compensation under clause 28 of this Contract in respect of any matter set out in clause 8.1.

9 PLANNING CONDITIONS

9.1 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.

9.2 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.

- 9.3 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.
- 9.4 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.

10 DEPOSIT BOND AND BANK GUARANTEE

- 10.1 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; and
 - (b) provides the Seller with a copy of the proposed Deposit Bond or Bank Guarantee for approval.
- 10.2 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.
- 10.3 Should the Seller vary the last date of the Estimated Date Range for Works under clause 5.4 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 seven (7) 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 for Works and the Earliest Date of Expiry of Deposit Bond or Bank Guarantee shall be varied accordingly.
- 10.4 The Deposit Bond or Bank Guarantee must show the Seller as the beneficiary of the Deposit Bond or Bank Guarantee.
- 10.5 The Buyer must pay the amount stipulated in the Deposit Bond or Bank Guarantee to the Seller by unendorsed bank cheque on Completion.
- 10.6 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 14 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.
- 10.7 If the Buyer is in default under clause 10.6 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 29, clause 30 applies.

11 PROPERTY ACT

- 11.1 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.

12 NON COMPLYING TRANSFERS NOT TO BE USED

12.1 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.

13 ENTIRE AGREEMENT

13.1 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.

14 NO RELIANCE

14.1 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.

15 CO OWNERSHIP

15.1 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.

16 NON MERGER

16.1 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.

17 LAND RENT LEASE ELECTION

- 17.1 Clauses 17.4, 18, 19, 20 and 21 only apply if the Buyer has made a Land Rent Lease Election or if the Buyer is in the process of changing its election in accordance with clause 19.2.
- 17.2 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 and clauses 17.1, 17.4, 18, 19, 20 and 21 will not apply to the Buyer.
- 17.3 If the Buyer has made a Land Rent Lease Election on the Date of this Contract and then has changed its election in accordance with clause 19.2, the Buyer will not be entitled to a further election of a Land Rent Lease at any time after the election in accordance with clause 19.2 has been made.
- 17.4 To the best of the Seller's knowledge, the Price specified in the Schedule will be utilised for the calculation of stamp duty by the ACT Commissioner for Revenue where a Land Rent Lease Election has been made by the Buyer, however the Price is not payable under this Contract where the Buyer has made a Land Rent Lease Election unless the Buyer gives notice under clause 19.2.
- 17.5 If the Buyer has failed to make any election for a Standard Lease or a Land Rent Lease in the Schedule on the front page of this Contract where specified, the Buyer is deemed to have elected a Standard Lease on the Date of this Contract.

18 COMPLIANCE WITH ELIGIBILITY CRITERIA

Conditional Contract

18.1 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.

- 18.2 Completion of this Contract is subject to and conditional upon:
- (a) the Buyer providing to the Seller, within 90 days of the Date of this Contract:
 - (i) a completed and duly executed Statutory Declaration witnessed by the Buyer's Solicitor;
 - (ii) a completed and duly executed Financial Advice Certificate; and
 - (iii) evidence of attendance at the CIT Information Session; and
 - (b) the ACT Revenue Office determining that the Buyer complies with the Eligibility Criteria.

18.3 Clause 18.2 is an essential term and time is of the essence.

18.4 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.

Buyer Acknowledgements

18.5 The Buyer acknowledges that the ACT Revenue Office determination required at clause 18.2(b):

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

18.6 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 19.2 within 5 Working Days of receiving the notification; and
 - (iii) if the Buyer does not change their election in accordance with clause 18.5(c)(ii), the Seller may rescind the Contract in accordance with clause 32;
- (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 29; 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.

Compliance Check

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

- (a) check whether the Buyer complies with the Eligibility Criteria; and
 - (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.
- 18.8 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 4.2):
- (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.
- 18.9 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.
- 18.10 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 Change in Circumstances

- 18.11 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 19.2; or
 - (ii) request a rescission of the Contract from the Seller, who's approval may not be unreasonably withheld.

18.12 If the Buyer does not comply with the Buyer's obligations under this clause 18, the Seller may terminate this Contract without the notice otherwise necessary under clause 29 and retain the Security Payment.

19 LAND RENT LEASE CONDITIONS

19.1 If the Buyer has made a Land Rent Lease Election:

- (a) clauses 2 and 3 will not apply;
- (b) clauses 10, 30, 31 and 33 will not apply; and
- (c) the Lease granted by the Seller on Completion must be a Land Rent Lease.

19.2 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 will be granted a Standard Lease.

19.3 Where the Buyer provides a notice in accordance with clause 19.2:

- (a) clauses 2, 3 and 10 will apply provided that the time for paying the Deposit at clause 2.1 of this Contract is amended to payment in accordance with clause 19.3(b);
- (b) the Buyer must pay:
 - (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 20.2 to be applied to the Deposit,

within 14 days of the notice being given, subject to payment of the Deposit being at least 14 days prior to Completion;
- (c) the Deposit and Price will be as specified in the Schedule;
- (d) clauses 30, 31 and 33 will apply; and
- (e) following the payment of the Deposit:
 - (i) clauses 18, 19.1, 19.6, 19.7, 19.8, 19.9, 20 and 21 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.

19.4 If the Buyer has provided a notice in accordance with clause 19.2 and the Deposit is not paid in accordance with clause 19.3, the Buyer will be in default under the terms of this Contract and the provisions of clause 2.3 will apply.

19.5 The Buyer consents to the Seller confirming with the Canberra Institute of Technology the Buyer's attendance at an Information Session.

19.6 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 registration of the Land Rent Lease with the Office of Regulatory Services.

19.7 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.

19.8 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.

19.9 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.

20 SECURITY PAYMENT

20.1 If the Buyer made a Land Rent Lease Election, on the Date of this Contract the Buyer must pay the Security Payment to the Seller.

20.2 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.

20.3 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.

20.4 If the Buyer is in default under clause 20.3, then immediately and without the notice otherwise necessary under clause 29, clause 21 applies.

20.5 The Buyer irrevocably directs the Seller that upon Completion the Seller must:

- (a) pay the amount of the Security Payment paid by the Buyer, to the Commissioner for Revenue in respect of present or future Land Rent payable on the Land by the Buyer; and
- (b) notify the Buyer of such payment.

20.6 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.

21 TERMINATION – BUYER’S DEFAULT LAND RENT LEASE

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 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.

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.

21.3 The parties agree that the amount of the Land Rent Lease Liquidated Damages payable to the Seller under clause 21.1(a) is a genuine and honest pre-estimate of loss to the Seller for termination by the Buyer.

22 BUYER RIGHTS AND LIMITATIONS

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

22.2 The Buyer cannot make a claim or objection or rescind or terminate or make a claim for compensation under clause 28 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).

22.3 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.

23 SELLER WARRANTIES

23.1 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.

23.2 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.

23.3 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.

24 ADJUSTMENTS

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

25 TERMS OF POSSESSION

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

26 INSPECTION AND CONDITION OF LAND

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

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

27 ERRORS AND MISDESCRIPTIONS

27.1 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.

27.2 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.

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

28 COMPENSATION CLAIMS BY BUYER

28.1 This clause 28 applies to claims for compensation arising out of this Contract made by the Buyer against the Seller including claims under clause 27.

28.2 To make a claim for compensation (including a claim under clause 27) 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 28.2(a), the parties must complete and:
 - (i) the claim must be finalised (subject to clause 28.2(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.

29 NOTICE TO COMPLETE AND DEFAULT NOTICE

- 29.1 If Completion does not take place in accordance with clause 4.1, either party may, at any time after the Date for Completion, serve on the other party a Notice to Complete.
- 29.2 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.
- 29.3 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.
- 29.4 Completion at the time, date and place specified in the Notice to Complete is an essential term.
- 29.5 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.
- 29.6 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).
- 29.7 At the time the Default Notice is served, the party serving the Default Notice must not be in default.
- 29.8 The time specified in a Default Notice to rectify the specified default is an essential term.
- 29.9 Clauses 19.9, 30 and 31 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.
- 29.10 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.
- 29.11 The parties agree that the time referred to in clauses 29.2 and 29.6(b) is fair and reasonable.

30 TERMINATION – BUYER DEFAULT STANDARD LEASE

- 30.1 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 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.
- 30.2 In addition to any money kept or recovered under clause 30.1, 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.

30.3 For the avoidance of doubt, if the Deposit is paid by Deposit Bond or Bank Guarantee in accordance with clause 10, and the Seller is entitled to terminate in accordance with clause 30.1, 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.

31 TERMINATION – SELLER DEFAULT

31.1 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.

32 RESCISSION

32.1 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.

33 DAMAGES FOR DELAY IN COMPLETION

33.1 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 \$550 (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.

33.2 The party at fault must pay the amount specified in clause 33.1 in addition to any other damages to which the party not at fault is entitled both at law and under this Contract.

33.3 The parties agree that:

- (a) the amount of any damages payable under clauses 33.1(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.

34 FOREIGN BUYER

34.1 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*.

34.2 This clause is an essential term.

35 GST

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

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

36 INSOLVENCY

- 36.1 If the Buyer suffers an Insolvency Event, the Buyer must immediately notify the Seller in writing.
- 36.2 If the Seller receives notice that the Buyer has suffered an Insolvency Event (either pursuant to clause 36.1 or by some other means), the Seller may terminate this Contract and clause 21 or 30 applies as applicable.

37 POWER OF ATTORNEY

- 37.1 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.

38 NOTICES CLAIMS AND AUTHORITIES

- 38.1 Notices, claims and authorities required or authorised by this Contract must be in writing.
- 38.2 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.
- 38.3 A party's solicitor may give a notice, claim or authority on behalf of that party.
- 38.4 If a notice is served in accordance with clause 38.2(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.
- 38.5 If a notice is served in accordance with clause 38.2(b), the notice is taken to have been received on the day 2 Working Days after it was posted.

39 ALPHABETICAL IDENTIFIER FOR THE LAND

- 39.1 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.
- 39.2 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.
- 39.3 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.

40 BLOCK DETAILS PLAN

- 40.1 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.
- 40.2 Prior to the Date for Completion, the Seller will make a copy of the Deposited Plan for the Land available.

41 BUSHFIRE PROTECTION

- 41.1 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.

42 CAT CONTAINMENT

- 42.1 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.

43 GEOTECHNICAL INFORMATION

- 43.1 The Seller will make available to the Buyer, prior to Completion, a site classification certificate with respect to the Land.
- 43.2 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.

44 DEFINITIONS

- 44.1 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;

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

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;

Block Fill Plans 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 29.5 and 29.6;

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)*;

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) 19.2 at the time of termination; and
- (b) the Contract has been terminated under clause 21;

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 29.1 and 29.2 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;

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

Operational Acceptance means that the Works are complete to the satisfaction of TAMSD, 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;

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.

45 INTERPRETATION

45.1 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.

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

45.3 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.

45.4 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

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