

SUBURBAN LAND AGENCY
FIRST GRANT CONTRACT – LAND NOT READY
SCHEDULE



ACT
Government

Suburban Land
Agency

DATE OF THIS CONTRACT		[insert]		
LEASE DETAILS				
LAND		Block	Section	Division/District
		[insert]	[insert]	Taylor
STAGE		[insert] as described in the Housing Development Guide		
OCCUPANCY		Vacant Possession		
CO-OWNERSHIP	Mark one <i>See clause 14</i>	<input type="checkbox"/> Tenants in common <i>(Show shares)</i>		<input type="checkbox"/> Joint Tenants
SELLER DETAILS				
SELLER	Full name	Suburban Land Agency		
	ACN/ABN	27 105 505 367		
	Address	TransACT House, 470 Northbourne Avenue, Dickson ACT 2602		
SELLER'S SOLICITOR	Firm	Griffin Legal		
	Ref	Peter McGrath / Peter Hoolihan		
	Phone	02 6198 3100		
	Fax	N/A		
	Address	GPO Box 1789, CANBERRA CITY ACT 2601		
	Email	sla.property@griffinlegal.com.au		
BUYER DETAILS				
BUYER	Full Name	[insert]		
	ACN/ABN	[insert]		
	Address	[insert]		
BUYER'S SOLICITOR	Firm	[insert]		
	Ref	[insert]		
	Phone	[insert]		
	Fax	[insert]		
	DX/Address	[insert]		
	Email	[insert]		
PAYMENT DETAILS				
RESIDENTIAL WITHHOLDING TAX	<i>See clause 0</i>	New Residential Premises?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes
		Potential Residential Premises?	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
		RW Amount required to be paid?	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
PRICE	Price	[insert] (The Price is GST inclusive)		
	Less Deposit	[insert] (10% of Price) Refer to clause 2.2		
	Balance	[insert]		
EARLIEST DATE OF EXPIRY OF DEPOSIT BOND OR BANK GUARANTEE	<i>See clause 3.2</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>	March 2019 to October 2019		

ANNEXURES		
STANDARD ANNEXURES	Documents annexed to this Contract	Annexure A – Housing Development Guide Annexure B – Specimen Crown Lease
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 Suburban Land Agency signature:		Buyer signature:	
Delegate name:		Buyer name:	
Witness signature:		Buyer signature:	
Witness name:		Buyer name:	
		Witness signature:	
		Witness name:	

RW AMOUNT

(Residential Withholding Payment) – Further Details

The supplier will frequently be the Seller. However, sometimes further information will be required as to which entity is liable for GST (eg if the Buyer is part of a GST group where the GST representative has the GST liability). If more than one supplier, provide details for each supplier.

Supplier	Name	Suburban Land Agency		
	ABN	27 105 505 367	Phone	(02) 6205 0600
	Business address	TransACT House, 470 Northbourne Avenue, Dickson ACT 2602		
	Email	suburbanlandaccounts@act.gov.au		
Residential Withholding Tax	Supplier's portion of the RW Amount:	#[insert]		
	RW Percentage:	7%		
	RW Amount (ie the amount that the Buyer is required to pay to the ATO):	#[insert]		
	Is any of the consideration not expressed as an amount in money?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
	If 'Yes', the GST inclusive market value of the non-monetary consideration:	\$		
	Other details (including those required by regulation or the ATO forms):			

1 GRANT OF THE LEASE

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

2 TERMS OF PAYMENT

- 2.1 On the Date of this Contract, the Buyer must pay the Deposit to the Seller.
- 2.2 The Seller agrees to accept payment of the Deposit in two instalments as follows:
- (a) 5% of the Price by cheque or credit card or EFTPOS on the Date of this Contract (**First Instalment**); and
 - (b) the balance of the Deposit (if it has not already been paid) by unendorsed bank cheque on the Date for Completion (**Second Instalment**),

and in every respect time is of the essence of this clause 2.2.

- 2.3 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).
- 2.4 If the Deposit or any instalment of the Deposit is:
- (a) not paid on time and in accordance with clause 2.2; 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 26 applies.

- 2.5 If the Seller does not terminate this Contract in accordance with clause 2.4, then this Contract remains on foot, subject to this clause 2.5, until the Seller terminates the Contract pursuant to clause 2.4 or waives the benefit of clause 2.4 pursuant to clause 2.7.
- 2.6 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.
- 2.7 The Seller may at any time before this Contract is terminated notify the Buyer in writing that the benefit of clause 2.4 is waived.
- 2.8 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.
- 2.9 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.

- 2.10 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.
- 2.11 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 or any other amount.
- 2.12 On Completion the Buyer must pay to the Seller in Canberra the Balance of the Price, together with any other money payable under this Contract, by unendorsed bank cheque.

3 DEPOSIT BOND AND BANK GUARANTEE

- 3.1 The Deposit to be paid pursuant to clause 2.1 may be accepted by way of a Deposit Bond or Bank Guarantee with a value equivalent to 10% of the Price 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 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 5 Working Days of such notice, provide the Seller with a replacement Deposit Bond or Bank Guarantee on the same terms save that the date of the expiry is on or after the date 30 Working Days after the revised last day of the Estimated Date Range for Works and the Earliest Date of Expiry of Deposit Bond or Bank Guarantee shall be varied accordingly.
- 3.4 The Deposit Bond or Bank Guarantee must show the Seller as the beneficiary of the Deposit Bond or Bank Guarantee.
- 3.5 The Buyer must pay the amount stipulated in the Deposit Bond or Bank Guarantee to the Seller by unendorsed bank cheque on Completion.
- 3.6 The Buyer is in default if:
- (a) the Deposit Bond or Bank Guarantee has an expiry date prior to the Earliest Date of Expiry of Deposit Bond or Bank Guarantee and is not renewed to the satisfaction of the Seller at least 10 Working Days prior to the expiry of the Deposit Bond or Bank Guarantee; or
 - (b) the provider of the Deposit Bond or Bank Guarantee is placed under external administration of any nature before Completion and the Buyer has not provided a replacement Deposit Bond or Bank Guarantee to the same value and on the same terms and conditions from a solvent party within 5 Working Days of the provider being placed in such administration.
- 3.7 If the Buyer is in default under clause 3.6 it will be deemed to be a failure by the Buyer to pay the Deposit under clause 2, and immediately, and without the notice necessary under clause 25, clause 26 applies.

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 34 as if it were a notice.
- 4.3 The Seller and the Buyer acknowledge and agree that the Date for Completion:
- (a) cannot be a date before the date that the Seller satisfies the conditions of clause 5.2; and
 - (b) may be a date that is before the earlier date in the Estimated Date Range for Works.
- 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.
- 5.3 The Seller must use its best endeavours to obtain Operational Acceptance and register the Deposited Plan 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 for Works by up to six (6) months (but no more without the express consent of the Buyer) where Operational Acceptance or registration of a Deposited Plan 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 or registration of a Deposited Plan; and
 - (b) the amended Estimated Date Range for Works.
- 5.6 If Operational Acceptance and registration of a Deposited Plan 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 28 will apply.

6 SIGNING OF LEASE

- 6.1 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; and
 - (b) return to the Seller's Solicitor the signed original Lease in duplicate.
- 6.2 The Buyer undertakes to register the Lease following Completion.

7 HOUSING DEVELOPMENT GUIDE

- 7.1 The Housing Development Guide is annexed to this Contract for information only. If there is any variation to the 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.

The Buyer acknowledges that the Land is not ready and is not available for inspection.

- 7.2 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 any matter set out in the Housing Development Guide.
- 7.3 All references to 'Land Development Agency' or 'LDA' in the Housing Development Guide will be taken to be references to the 'Suburban Land Agency'.

8 VARIATION TO LAND AND HOUSING DEVELOPMENT GUIDE

- 8.1 The Buyer acknowledges that the Specimen Standard Lease, the Housing Development Guide, the Block Details Plan and any other plans in relation to the Land may be affected by one or more of the following:

- (a) the requirements of legislation;
- (b) variations to the Territory Plan;
- (c) the requirements of government authorities; 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; or
- (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 24 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 its own enquiries and satisfy itself 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 PROPERTY ACT

- 10.1 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.

11 NON-CONFORMING TRANSFERS NOT TO BE USED

- 11.1 The Buyer will not be able to use the non-conforming transfer provisions of section 17(3) of the *Duties Act 1999* (ACT) in relation to the Contract, as the grant of the Lease will be the first grant of a Crown Lease over the Land.

12 ENTIRE AGREEMENT

- 12.1 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.

13 NO RELIANCE

- 13.1 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.

14 CO-OWNERSHIP

- 14.1 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 in the Schedule or if one alternative is not marked, as joint tenants.

15 NON-MERGER

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

16 BUYER RELIES ON OWN ENQUIRIES

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

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

17 PRIVACY

- 17.1 The Buyer acknowledges that they have received, read, and understood the Land Auction Privacy Policy and Land Auction Collection Notice, and accepts that any information collected by the Seller pursuant to this Contract, or previously in relation to this Contract, is held and used with in accordance with the Land Auction Privacy Policy and Land Auction Collection Notice.

- 17.2 The Buyer consents to the Seller's use of any personal information provided by the Buyer to reasonably fulfil the purpose of this Contract and any of its functions, including disclosure of personal information to the ACT Revenue Office and other ACT and Commonwealth government agencies.

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) the size of any service ties for the supply of water on or to the Land;
 - (d) any matter contained in the Block Fill Plans or the existence of regrading, fill, contamination of any Substance or other disability of or upon the Land, whether caused by the Commonwealth of Australia, the Seller, previous occupants of the Land or otherwise;
 - (e) any soil classification in relation to the Land; and
 - (f) anything disclosed in this Contract (except an Affecting Interest).
- 18.3 The Buyer acknowledges, understands and accepts that the existence of regrading, fill, contamination of any Substance 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.
- 18.4 The Buyer acknowledges that the Seller makes no warranty or representation as to the environmental condition or state of the soil, ground water, contamination or the existence or non-existence of any Substance on or affecting the Land.

19 SELLER WARRANTIES

- 19.1 The Seller warrants that at the Date of this Contract the Seller:
- (a) will be able to complete at Completion;
 - (b) has no knowledge of any unsatisfied judgment, order or writ issued by a court or tribunal affecting the Land;
 - (c) has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ issued by a court or tribunal affecting the Land; and
 - (d) is not aware of any material change in the matters disclosed in the 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 issued by a court or tribunal affecting the Land;
 - (c) the Seller has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ issued by a court or tribunal affecting the Land; and
 - (d) the Seller is not aware of any encroachments by or upon the Land 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 OF LAND

22.1 The Buyer may on reasonable notice to the Seller inspect the Land during the period 10 Working 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) in full and final settlement if the Buyer suffers a loss as a result of an error of any kind or misdescription, and the Buyer makes a claim for compensation before Completion.

23.2 This clause 23 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 10 Working Days after receiving the notice;
- (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)(ii)) either by agreement or, failing agreement, by an arbitrator appointed by the Parties or, if an appointment is not made within 20 Working Days of Completion, by an arbitrator appointed by the President of the Law Society of the Australian Capital Territory at the request of a Party;
 - (ii) the decision of the arbitrator is final and binding save for:
 - 1. manifest error by the arbitrator obvious on its face in the final determination by the arbitrator;
 - 2. error in the application of law by the arbitrator in making his or her determination; or
 - 3. improper or unlawful conduct by the arbitrator or either Party that affected or might reasonably be thought to affect the arbitrator's determination;
 - (iii) the costs of the arbitration must be shared equally by the Parties unless otherwise determined by the arbitrator;
 - (iv) the Buyer is not entitled, in respect of the claim, to more than the total amount claimed and the costs of the Buyer; 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 or 27 will apply as applicable where the Party served does not comply with the Notice to Complete or the Default Notice issued in accordance 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:
- (a) the time agreed to in the variation remains an essential term; and
 - (b) 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

- 26.1 If:
- (a) the Seller serves a notice on the Buyer in accordance with clause 2.4;
 - (b) the Buyer is in default under clause 3.7;
 - (c) the Buyer does not comply with a Notice to Complete or a Default Notice; or
 - (d) the Buyer 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:

- (e) sue the Buyer for breach; or
- (f) re-sell 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.

- 26.2 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.
- 26.3 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 26.1, 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.

27 TERMINATION – SELLER DEFAULT

- 27.1 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.

28 RESCISSION

- 28.1 If this Contract is rescinded, it is rescinded from the beginning, and unless the Parties otherwise agree:
- (a) the Deposit and all other money paid by the Buyer must be refunded to the Buyer immediately without any further authority being necessary; and
 - (b) neither Party is liable to pay the other any amount for damages, costs or expenses.

29 DAMAGES FOR DELAY IN COMPLETION

- 29.1 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 \$660.00 (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.
- 29.2 The Party at fault must pay the amount specified in clause 29.1 in addition to any other damages to which the Party not at fault is entitled both at law and under this Contract.
- 29.3 The Parties agree that:
- (a) the amount of any damages payable under clause 29.1(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.

30 FOREIGN BUYER

- 30.1 The Buyer warrants the Commonwealth Treasurer cannot prohibit and has not prohibited the grant of the Lease under the *Foreign Acquisitions and Takeovers Act 1975* (Cth).
- 30.2 This clause is an essential term.

31 GST

- 31.1 The Buyer and the Seller agree that the Margin Scheme applies to the Supply of the Land.
- 31.2 The Seller warrants that it can use the Margin Scheme and promises that it will.

32 INSOLVENCY

- 32.1 If the Buyer suffers an Insolvency Event, the Buyer must immediately notify the Seller in writing.
- 32.2 If the Seller receives notice that the Buyer has suffered an Insolvency Event (either pursuant to clause 32.1 or by some other means), the Seller may terminate this Contract and clause 26 will apply.

33 POWER OF ATTORNEY

- 33.1 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.

34 NOTICES CLAIMS AND AUTHORITIES

- 34.1 Notices, claims and authorities required or authorised by this Contract must be in writing.
- 34.2 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) send it by email to an email address of that Party's solicitor specified on the Schedule, or otherwise as notified from time to time and, unless 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.
- 34.3 A Party's solicitor may give a notice, claim or authority on behalf of that Party.
- 34.4 If a notice is served in accordance with clause 34.2(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.
- 34.5 If a notice is served in accordance with clause 34.2(b), the notice is taken to have been received on the day 2 Working Days after it was posted.

35 BUSHFIRE PROTECTION

- 35.1 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.

36 CAT CONTAINMENT

- 36.1 The Buyer acknowledges that the Land will become part of an area which is 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.

37 GEOTECHNICAL INFORMATION

- 37.1 The Seller will make available to the Buyer, prior to Completion, a site classification certificate with respect to the Land.
- 37.2 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.

38 BLOCK DETAILS PLAN

- 38.1 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.
- 38.2 Prior to the Date for Completion, the Seller will make a copy of the Deposited Plan for the Land available.

39 SELLER ENTITY

- 39.1 Any reference to any requirement, approval, consent, obligation, action or right (or any purported requirement, approval, consent, obligation, action or right) of the Land Development Agency or LDA in this Contract (or any document referred to in or attached to in this Contract), that may be exercised, accrues, or occurs or is required to occur on or after 1 July 2017 will be taken to be a requirement, approval, consent, obligation, action, occurrence or right of, or in respect of, the Suburban Land Agency, unless the context requires otherwise.

40 SERVICE PROVIDERS

- 40.1 The Buyer acknowledges and understands that the Seller is not a Utility Service provider and Works in the Contract for Sale do not include actual connections to services, substations or transformers that may be required for such connections.
- 40.2 The Buyer will be responsible for contacting all relevant service providers for Utility Services as soon as practicable to arrange servicing of the Land by those service providers to avoid delays to their Developments caused as a consequence of being unable, for example, to access water or power.
- 40.3 The Seller does not routinely provide and will not warrant the location of any future substations.

41 RESIDENTIAL WITHHOLDING TAX

Warning: The following clauses 41.1 to 41.14 are subject to the Withholding Law, and do not encompass all obligations under the Withholding Law.

- 41.1 In this clause 0 the following words have the following meanings:
- ATO** means the Australian Taxation Office, and includes the Commissioner for Taxation;
- RW Amount** means the amount which must be paid under section 14-250 of the Withholding Law;
- RW Amount Information** means the information set out in the table entitled "RW Amount (Residential Withholding Payment) — Further Details" set out in this Contract; and as provided or updated under this Contract.
- RW Percentage** means the percentage amount stated in section 14-250(6), (8) and (9) of the Withholding Law, as applicable to the supply of the Land from the Seller to the Buyer; and
- Withholding Law** means Subdivision 14 of Schedule 1 of the Taxation Administration Act 1953 (Cth) and associated provisions.
- 41.2 The Seller must provide the Buyer with the RW Amount Information no later than 28 days prior to the Date for Completion.
- 41.3 If the 'Buyer required to make a withholding payment?' option on the Schedule is selected 'no' or if no selection is made, the Seller warrants to the Buyer that the Buyer is not required to make a payment under section 14-250 in relation to the supply of the Land from the Seller to the Buyer.
- 41.4 The following clauses 41.5 to 41.14 inclusive only apply if the 'Buyer required to make a withholding payment?' option on the Schedule is selected 'yes'.
- 41.5 Subject to any adjustments to the Price or non-monetary consideration that may arise after the date Contract for Sale Taylor

that the RW Amount Information is provided in accordance with clause 41.2 and which affect the RW Amount, the Seller warrants to the Buyer on the date that the RW Amount Information is provided to the Buyer that the Seller has provided the Buyer with the information required under section 14-255 of the Withholding Law in relation to the supply of the Land from the Seller to the Buyer, and that this information is true and correct to the Seller's knowledge.

- 41.6 The Buyer must provide the Seller with a copy of the 'GST property settlement withholding notification online form' confirmation email (or emails, if applicable) issued to the Buyer by the ATO at least 10 Working Days prior to the Date for Completion.
- 41.7 The Buyer must provide the Seller with evidence of submission by the Buyer to the ATO of the 'GST property settlement date confirmation online form', with such evidence to be provided prior to or on Completion.
- 41.8 The Seller irrevocably instructs the Buyer to draw as part of the Price, and the Buyer must draw and give to the Seller on Completion, an unendorsed bank cheque payable to the ATO for the RW Amount.
- 41.9 The Seller must forward the unendorsed bank cheque provided under clause 41.8 to the ATO within 5 Working Days following Completion and provide the Buyer with evidence of payment of the RW Amount to the ATO.
- 41.10 The Buyer and Seller must comply with all ATO requirements in relation to the Withholding Law and must also assist and co-operate with each other in order to ensure that those requirements are met. If necessary to give effect to this clause, the Buyer appoints the Seller as its agent of the purpose of completing any notification required to be given by the Buyer to the ATO.
- 41.11 The Seller may provide the Buyer with updated RW Amount Information at any time, and (if necessary) on more than one occasion, prior to Completion. If the Seller provides the Buyer with updated RW Amount Information in accordance with this clause, the Buyer must, within 3 Working Days of receipt of the RW Amount Information, provide the Seller with a copy of the 'GST property settlement withholding notification online form' confirmation email (or emails, if applicable) issued to the Buyer by the ATO including the updated RW Amount Information.
- 41.12 The Seller indemnifies the Buyer against the amount of any penalties or interest charges imposed by the ATO on the Buyer (or the relevant recipient of the supply) arising from any failure by the Seller to forward the unendorsed bank cheque required by clause 41.8 to the ATO.

Potential Residential Land

- 41.13 If the 'Subdivision of potential residential land?' option on the Schedule is selected 'yes' and the Buyer (or the relevant recipient for GST purposes) is:
- (a) registered for GST purposes; and
 - (b) acquiring the Land for a creditable purpose;
- the Buyer must provide the Seller with a statement to that effect on the earlier of:
- (c) 10 Working Days before the Date for Completion; or
 - (d) 20 Working Days after the Date of this Contract.
- 41.14 Where the Buyer has provided the statement referred to in clause 41.13 the Buyer indemnifies the Seller against the amount of any penalties or interest charges imposed by the ATO on the Seller (or the relevant entity making the supply of the Land).

42 DEFINITIONS

- 42.1 Definitions appear in the Schedule and as follows:

ACT Revenue Office means the ACT Revenue Office of the Chief Minister, Treasury and Economic Development Directorate;

ActewAGL means a joint venture company that owns, operates and maintains the electricity, gas,
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water and sewage services on behalf of Icon Water Limited (ACN 069 381 960) or its successors and permitted assigns;

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

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 Housing Development Guide;

Block Fill Plans means the plans described as such in the Housing Development Guide;

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;

Crown Lease means a crown lease that will be granted in accordance with the Planning Act in a form similar to the Specimen Standard Lease;

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

Deposit means the amount specified in the Schedule which is 10% of the Price and which:

- (a) forms part of the Price; and
- (b) must be paid by the Buyer to the Seller in accordance with clause 2 or 3 as applicable;

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;

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);

Housing Development Guide means the Taylor Housing Development Guide at Annexure A or as amended from time to time;

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

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 Auction Collection Notice means the collection notice provided by the Suburban Land Agency to a registrant in the auction for the Property in accordance with the *Information Privacy Act 2014* (ACT) and which can be found at www.suburbanland.act.gov.au;

Land Auction Privacy Policy means the privacy policy provided by the Suburban Land Agency to a registrant in the auction for the Property in accordance with the *Information Privacy Act 2014* (ACT) and which can be found at www.suburbanland.act.gov.au;

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

Land Development Agency means the agency established under section 31 of the Planning Act, which ceased to exist on 30 June 2017;

Lease means a Crown Lease granted in accordance with the Planning Act in a form similar to the Specimen Standard Lease as applicable to this Contract which may, where the Land is affected by an easement identified in the Housing Development Guide, include an annexure or additional provisions detailing the terms of the easement;

Margin Scheme has the meaning in the GST Law;

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;

Operational Acceptance means that the Works are complete to the satisfaction of the Australian Capital Territory, ActewAGL and the Seller;

Party means a party to this Contract and **Parties** has the corresponding meaning;

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);

Schedule means the schedule to this Contract;

Specimen Standard Lease means the specimen standard lease at Annexure B;

Suburban Land Agency means the agency established under section 37 of the *City Renewal Authority and Suburban Land Agency Act 2017* (ACT);

Substance means any substance or thing which is or may be an emission to the environment or harmful to the environment or the health or safety of any person or may cause damage to property and includes:

- (a) asbestos;
- (b) polychlorinated biphenyls;
- (c) heavy metals;
- (d) chemicals;
- (e) contaminants; and
- (f) any other matter whether solid, liquid or gaseous form, or whether naturally occurring or man-made;

Supply has the meaning in the GST Law;

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 Land.

43 INTERPRETATION

43.1 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.

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

43.3 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.

43.4 If there is more than one Buyer or more than one Seller the obligations which they undertake bind them jointly and individually.