

Deed of Put and Call Option

Block <<Block>> Section <<Section>>
<<Division>>

Suburban Land Agency
ABN 27 105 505 367

Grantor

The person detailed in Item 1 of Schedule 1

Grantee

The person detailed in Item 2 of Schedule 1

Guarantor

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Deed of Put and Call Option

- Parties**
- Suburban Land Agency ABN 27 105 505 367** of TransACT House,
470 Northbourne Avenue, Dickson ACT 2602
(Grantor)
- The person detailed in Item 1 of Schedule 1**
(Grantee)
- The person detailed in Item 2 of Schedule 1**
(Guarantor)

Background

- A. The Grantor is the custodian of the Land.
- B. The Grantor has agreed to grant to the Grantee a Call Option for the grant of a Crown lease over the Land as set out in this deed.
- C. The Grantee has agreed to grant to the Grantor a Put Option to require the Grantee to acquire a Crown lease over the Land as set out in this deed.
- D. The Grantee may nominate a Nominee to exercise the Call Option and enter into the Contract.
- E. The Guarantor (if any) has agreed to guarantee the obligations of the Grantee.

Operative provisions

1. Definitions and interpretations

1.1 Definitions

The following words have these meanings, unless the contrary intention appears:

Business Day means a day in which Banks are open in the Australian Capital Territory and does not include a Saturday, Sunday or public holiday.

Call Option means the call option granted by the Grantor to the Grantee in accordance with clause 2.1.

Call Option Expiry Date means the date that is 6 months after the Commencement Date.

Call Option Fee means \$10.00, receipt of which is hereby acknowledged.

Call Option Notice means a notice in the form of Annexure A.

Call Option Period means the period starting on the Commencement Date and ending at 5.00pm on the Call Option Expiry Date.

Commencement Date means the date of this deed.

Completion means the date on which completion of the Contract takes place.

Contract means the form of first grant contract - land ready at Annexure C and includes the special conditions, annexures and schedules to the contract for sale and updated in accordance with clause 7.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Default Event means an event of default referred to in clause 14(a).

Deposit means the deposit payable under the Contract, being 10% of the Purchase Price.

Enforcement Action includes:

- (a) a mortgagee of the Land taking any enforcement action pursuant to the mortgage (including entering into possession of the Land);
- (b) the appointment of a Receiver or other Controller to any part of the property of the Grantor;
- (c) the Grantor being under administration or in liquidation; or
- (d) the occurrence otherwise of an event or circumstance which results in the Grantor being insolvent.

Form of Nomination means the form set out in Annexure D.

Grantee's Lawyer means the person detailed in Item 5 of Schedule 1.

Grantor's Lawyer means the person detailed in Item 4 of Schedule 1.

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the land detailed in Item 3 of Schedule 1.

Legal Costs means \$550.00 (GST inclusive) payable by the Grantee under clause 11(a).

Marketing Material means the templates provided by the Grantor relating to the form in which the Land is to be advertised or marketed to the public by the Grantee (including, but not limited to, signage to be erected on the Land, digital content and printed brochures).

Nomination Fee means the sum of \$440.00 (including GST).

Nominee means the person the Grantee nominates in accordance with clause 9.

Option means either the Put Option or the Call Option, as the case may be.

Option Notice means a Call Option Notice and/or a Put Option Notice, as applicable.

Purchase Price means the purchase price payable under the Contract.

Put Option means the put option granted by the Grantee to the Grantor in accordance with clause 2.1(a).

Put Option Expiry Date means the date that is 10 Business Days after the Call Option Expiry Date.

Put Option Fee means \$10.00, receipt of which is hereby acknowledged.

Put Option Notice means a notice in the form of Annexure B.

Put Option Period means the period commencing the day after the Call Option Expiry Date and ending at 5.00pm on the Put Option Expiry Date.

Receiver includes a receiver or receiver and manager.

Security Sum means the amount of 5% of the Purchase Price, being inclusive of GST.

1.2 General interpretation

In this deed unless the contrary intention appears:

- (a) a reference to a person includes a reference to a body corporate and vice versa;
- (b) a reference to any statutes, regulations, ordinances or by-laws include all amendments, consolidations or replacements of those statutes, regulations, ordinances or by-laws;
- (c) a reference to currency is a reference to Australian currency unless otherwise specifically provided;
- (d) a reference to this deed or to any other agreement or document includes this deed or that other agreement or document as amended, novated, supplemented, varied or replaced from time to time;
- (e) the singular includes the plural and vice versa;
- (f) headings do not affect the interpretation of this deed;
- (g) the word "include" is used without any limitation;
- (h) words defined in the Contract but not defined in this deed have the meaning given in the Contract; and
- (i) if a party comprises more than one entity, the obligations and covenants given by those entities are given by and bind those entities jointly and severally.

1.3 Succession

This deed will be binding upon a Party's successors, legal personal representatives and permitted assigns.

2. Grant of Options

2.1 Call Option

- (a) In consideration of the payment of the Call Option Fee by the Grantee to the Grantor on the date of this deed, the Grantor irrevocably grants to the Grantee the Call Option which is exercisable during the Call Option Period to require the Grantor to procure the grant to the Grantee of a Crown lease over the Land for the Purchase Price and on the terms set out in the Contract.
- (b) The Call Option is to be read and construed as an irrevocable offer rather than a conditional contract.

2.2 Put Option

- (a) In consideration of the payment of the Put Option Fee by the Grantor to the Grantee on the date of this deed, the Grantee irrevocably grants to the Grantor the Put Option which is exercisable during the Put Option Period, to require the Grantee to acquire a Crown lease over the Land for the Purchase Price and on the terms set out in the Contract.

- (b) The Put Option is to be read and construed as an irrevocable offer rather than a conditional contract.

3. Security Sum

- (a) On the date of this deed, the Grantee must pay to the Grantor the Security Sum.
- (b) If an Option is exercised in accordance with clause 8 then the Grantee agrees that the Security Sum must be applied to the Deposit payable under the Contract.
- (c) If:
- (i) an Option is not exercised in accordance with clauses 8 or 9; or
 - (ii) this deed is terminated due to the default of the Grantee,
- the Grantor will be entitled to retain all moneys paid by the Grantee towards the Security Sum.
- (d) If the deed is lawfully terminated due to the default of the Grantor, the Grantor must, within 20 Business Days of the date of receipt of a valid notice of termination, pay the total amount paid by the Grantee towards the Security Sum to the Grantee.

4. Call Option Fee

- (a) The Grantee must pay the Call Option Fee to the Grantor on the Commencement Date, and the Grantor acknowledges receipt of the Call Option Fee on the Commencement Date.
- (b) The Call Option Fee is non-refundable if the Call Option is not exercised and is not taken to be part payment of the Security Sum or the Purchase Price.

5. Put Option Fee

- (a) The Grantor must pay the Put Option Fee to the Grantee on the Commencement Date, and the Grantee acknowledges receipt of the Put Option Fee on the Commencement Date.
- (b) The Put Option Fee is non-refundable if the Put Option is not exercised.

6. Binding Contract for Sale

- (a) If an Option is exercised in accordance with clause 8.1 or 8.2 then:
- (i) the Grantee agrees to buy and the Grantor agrees to sell the Land for the Purchase Price in accordance with the terms of the Contract, and the Contract will be treated as having been entered into on the date of service of the Option Notice; and
 - (ii) the parties will as soon as possible (and in accordance with clause 8.3 if applicable) formally exchange executed counterparts of the Contract; and
 - (iii) the date of exchange for the Contract will be the date of service of the Option Notice.
- (b) Exchange of the Contract in accordance with this clause 6 is intended only to permanently record the detailed terms of the Contract as the parties will be bound by the Contract on the date, and by virtue, of the exercise of an Option.

- (c) If either party fails to execute the Contract in accordance with clause 6(a)(ii), the other party may rely on the terms of this deed, including all annexures and attachments, as sufficient to form a contract for the sale of the Land.

7. Updating attached Contract

- (a) If, before an Option is exercised, the Grantor's Lawyer gives the Grantee's Lawyer any one or more of the following:
- (i) a document that, by a change in the law since the date of this deed, is required to be attached to a contract for sale of land;
 - (ii) an updated version of any of the documents attached to the form of the Contract that is Annexure C; or
 - (iii) an updated description of the title to the Land,
- then before the form of Contract that is Annexure C is executed, the Grantee or the Nominee (as applicable) must ensure that the Grantee's Lawyer attaches, or replaces with the updated version, the documents, or update the description of the title, as the case may be.
- (b) The updated documents referred to in clause 7(a)(i)-(iii) must not be substantially different from the documents annexed as Annexure C or Annexure D on the date of this deed in a way that is materially detrimental to the Grantee.

8. Exercise of Call Option and Put Option

8.1 Call Option

To exercise the Call Option, the Grantee must:

- (a) serve a Call Option Notice on the Grantor's Lawyer, at the address in Item 4 of Schedule 1 during the Call Option Period;
- (b) provide to the Grantor's Lawyer an unendorsed bank cheque in favour of the Grantor for the amount due, if any, in respect of the Deposit; and
- (c) deliver to the Grantor's Lawyer at the address in Item 4 of Schedule 1, the original Contract executed by the Grantee and, if applicable, the Guarantor, dated on the date of service of the Call Option Notice.

8.2 Put Option

To exercise the Put Option, the Grantor must:

- (a) serve a Put Option Notice on the Grantee's Lawyer, at the address shown in Item 6 of Schedule 1 during the Put Option Period; and
- (b) deliver to the Grantee's Lawyer at the address shown in Item 5 of Schedule 1 an executed original of the Contract dated on the date of service of the Put Option Notice.

8.3 Grantee obligations for Put Option

If the Grantor exercises the Put Option in accordance with clause 8.2, the Grantee must provide to the Grantor within 2 Business Days after delivery of the Put Option Notice:

- (a) an original Contract executed by the Grantee; and

- (b) an unendorsed bank cheque in favour of the Grantor for the amount due in respect of the Deposit, if any.

8.4 Options not exercisable

Neither the Call Option nor the Put Option may be exercised prior to the commencement of the Call Option Period and the Put Option Period respectively.

8.5 Failure to exercise Option

- (a) If the Call Option is not exercised in accordance with clause 8.1 the Call Option will lapse.
- (b) If the Put Option is not exercised in accordance with clause 8.2, the Put Option will lapse.

9. Nominee

9.1 Nominee exercises Call Option

Despite clause 8.1, if:

- (a) the Grantee has not exercised the Call Option;
- (b) the Grantee is not in default under this deed;
- (c) the Call Option Period has not expired; and
- (d) this deed has not been terminated or rescinded,

the Grantee may at the time the Call Option is exercised nominate the Nominee by delivering to the Grantor's Lawyer all of the following:

- (e) the Nomination Fee;
- (f) the Form of Nomination executed by the Grantee and the Nominee specifying the Nominee's name, address, email address, phone number and address for service of notices;
- (g) an original Contract executed by the Nominee and, if the Nominee is a corporation, a guarantee of that corporation's performance of its obligations under the Contract given by each of its directors in the form of Annexure E; and
- (h) an unendorsed bank cheque in favour of the Grantor for the amount of the Deposit, as referred to in clause 10(a)**Error! Reference source not found..**

9.2 Contract made with Nominee

If the Nominee exercises the Call Option:

- (a) then at the time the items set out in clause 9.1 are delivered, the Contract is made and the Grantor is bound to sell and the Nominee is bound to buy the Land for the Purchase Price on the terms in the Contract;
- (b) all references to the "Grantee" in this deed, (except for clause 9.3, 10 and 13) and any ancillary documents will be deemed to be references to the "Nominee", and by the Nominee exercising the Call Option the Nominee will be deemed to be a party to this deed and any ancillary documents (if any) in place of the Grantee; and

- (c) the Nominee will enter into the form of the Contract .

9.3 Restriction on finder's fee and price increase

- (a) If the Nominee exercises the Call Option, the Grantee must not:
 - (i) require the Nominee to pay:
 - A. the Grantee a fee for the Nominee securing the Land; or
 - B. more than the Purchase Price for the Land; or
 - (ii) obtain a monetary benefit arising from the Nominee entering into the Contract, other than the Grantee constructing a dwelling on the Land
- (b) If clause 9.3(a) is breached, the Call Option will be deemed to not have been validly exercised by the Nominee.

10. Deposit

- (a) Notwithstanding the amount of the Deposit, the Grantor agrees to accept payment of the Deposit in the following instalments:
 - (i) an amount equal to 5% of the Purchase Price payable on exchange of the Contract; and
 - (ii) the balance of the Deposit must be paid on completion of the Contract; and
- (b) If the Grantee defaults under this deed or the Contract, the balance of the Deposit is a debt due and payable to the Grantor.

11. Costs

- (a) On the Commencement Date, the Grantee must pay the Grantor's Legal Costs for the preparation of this deed.
- (b) The Grantee must pay all stamp duties payable in connection with this deed, the Contract and any transaction arising out of this deed.
- (c) The Nominee must pay all stamp duties payable in connection the Contract.

12. Marketing

12.1 Marketing of Land

This clause 12 applies if the Grantee intends to advertise or market the Land to the public.

12.2 Marketing Materials

- (a) The Grantor will make available to the Grantee the Marketing Materials.
- (b) The Grantee must ensure that its advertising or marketing of the Land to the public is consistent with the Marketing Materials.

12.3 Advertising or marketing not contemplated by Marketing Materials

The Grantee must not put into the public domain any advertising or marketing material in a form not contemplated by the Marketing Materials without the prior written approval of the Grantor.

13. Maintenance of Land by Grantee

From the Commencement Date until:

- (a) Completion - if an Option is exercised; or;
- (b) the Put Option Expiry Date - if an Option is not exercised,

the Grantee must keep the Land clean, tidy and free of rubbish, loose topsoil and spoil.

14. Default

- (a) A Default Event means:
 - (i) the failure by a party to perform a material obligation in accordance with the terms of this deed;
 - (ii) the appointment of a Receiver, manager, liquidator (including a provisional liquidator), statutory manager or any similar person appointed (whether by a Court or by other persons) to the Grantee;
 - (iii) the bankruptcy, insolvency or entering into a scheme of arrangement (whether formal or informal) with creditors by the Grantee; or
 - (iv) the assignment of property by the Grantee for the benefit of creditors.
- (b) Each party undertakes to the other that it will promptly provide written notification to the other party of any Default Event occurring in respect of the first party.
- (c) If a Default Event occurs, clauses 24, 25 and 26 of the Contract will apply in relation to the Default Event as if the Default Event was a default by the defaulting party under the Contract and as if the references to the Contract or "this Contract" in those clauses were references to this deed.
- (d) If the Grantee is in default under this deed, the Grantee shall be deemed to be in default under the Contract.
- (e) If the Grantor is in default under this deed, the Grantor shall be deemed to be in default under the Contract.
- (f) If the Nominee is in default under this deed, the Nominee shall be deemed to be in default under the Contract.
- (g) For the avoidance of doubt, the occurrence of an Enforcement Action does not constitute a default by the Grantor.

15. Rescission

- (a) If this deed is rescinded it is rescinded from the beginning, and no party will be liable to pay the other any sum for damages, costs and expenses.
- (b) Upon rescission of this deed the Grantor hereby irrevocably directs the Stakeholder to release to the Grantee the Security Sum without deduction under this deed.

16. GST

All amounts expressed or described in this deed are GST inclusive amounts.

17. Addresses

The address for service of Option Notices or other notices under this deed is as follows:

- (a) Grantor's Lawyer: to the address detailed in Item 4 of Schedule 1.
- (b) Grantee's Lawyer: to the address detailed in Item 5 of Schedule 1.

18. Assignment

The Grantee must not assign its rights under this deed without the prior written consent of the Grantor.

19. Jurisdiction

- (a) This deed is governed by the laws of the Australian Capital Territory.
- (b) Any proceedings in respect of any cause or action arising under this deed will be heard and determined in a Court of the Australian Capital Territory or other Court with jurisdiction to hear those proceedings.

20. Confidentiality and announcements

- (a) The terms of this deed and all information exchanged between the parties under this deed or during the negotiations preceding the formation of this deed are confidential to them and may not be disclosed to any person except:
 - (i) to the parties' consultants, advisers and financiers (as required) in order to obtain advice in respect of, or to give effect to, the parties' rights and obligations under this deed;
 - (ii) for the purposes of this deed or otherwise with the consent of the party who supplied the information (which consent must not be unreasonably withheld or delayed);
 - (iii) if required by law or a stock exchange (and then only after the other is previously informed of such proposed disclosure and has had an opportunity to negotiate the terms of that disclosure in good faith);
 - (iv) in connection with legal proceedings relating to this deed; or
 - (v) if the information is generally and publicly available otherwise than as a result of a breach of this special condition.
- (b) A party must not issue any press release or disclose any information to the media about this deed without the written consent of the other party, which consent must not be unreasonably withheld or delayed.

21. Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party will not in any way preclude, or operate as a waiver of, any

exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.

- (b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.

22. Counterparts

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts.
- (b) Each counterpart constitutes an original of this deed, all of which together constitute one agreement.

23. Non-merger

None of the terms of this deed, or any act, matter or thing done by virtue of or in connection with this deed, will operate as a merger of any of the rights and remedies of the parties under this deed, and those rights and remedies will at all times continue in full force and effect.

24. Variations

This deed can only be varied by a deed signed by both parties.

25. Entire agreement

To the extent permitted by law, in relation to the subject matter of this deed, this deed and the Contract:

- (a) embody the entire understanding of the parties, and constitute the entire terms agreed on between the parties; and
- (b) supersede any prior written or other agreement between the parties.

26. Director's Guarantee

- (a) Where the Grantee is a corporation, all directors of that corporation must guarantee that corporation's performance of its obligations under this deed.
- (b) The guarantee is to be in the form attached as Annexure E.

Schedule 1 Contract particulars

Date of this deed	[insert]
Item 1 Grantee	[insert]
Item 2 Guarantor	[insert]
Item 3 Land	Block [insert] Section [insert] Division of [insert]
Item 4 Grantor's Lawyer and address for service of notices	[insert] Attention: [insert] [insert] Phone: [insert] Facsimile: [insert] Email: [insert]
Item 5 Grantee's Lawyer and address for service of notices	[insert] Attention: [insert] [insert] Phone: [insert] Facsimile: [insert] Email: [insert]

Annexure A - Call Option Notice

Deed:	Deed of Put and Call Option dated [insert date]
Land:	[insert details]
Date:	[insert details]
Grantor:	Suburban Land Agency ABN 27 105 505 367 of TransACT House, 470 Northbourne Avenue, Dickson ACT 2602
Grantee:	[insert details]

In accordance with the Deed:

1. the Grantee notifies the Grantor that the Grantee irrevocably exercises the Call Option; and
2. the Grantor must sell the Land to the Grantee in accordance with the Contract annexed to the Deed.

Executed by Grantee

Executed by **[insert Grantee's name and ACN]**
in accordance with section 127 of the
Corporations Act 2001 (Cth):

Full name of sole director and company secretary who
states that he or she is the sole director and sole
company secretary

Signature of sole director and sole company
secretary

Executed by **[insert Grantee's name and ACN]**
in accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

**Signed, sealed and delivered by [insert
Grantee's name]** in the presence of:

Signature of witness

Signature

Full name of witness

Annexure B - Put Option Notice

Deed:	Deed of Put and Call Option dated [insert date]
Land:	[insert details]
Date:	[insert details]
Grantor:	Suburban Land Agency ABN 27 105 505 367 of TransACT House, 470 Northbourne Avenue, Dickson ACT 2602
Grantee:	[insert details]

In accordance with the Deed:

1. the Grantor notifies the Grantee that the Grantor irrevocably exercises the Put Option; and
2. the Grantee must purchase the Land from the Grantor in accordance with the Contract annexed to the Deed.

Executed by the Grantor
Executed by Suburban Land Agency ABN 27 105 505 367 in the presence of:

 Signature of witness

 Signature of authorised delegate

 Full name of witness

 Full name of authorised delegate

Specimen

Annexure D - Form of Nomination

For the attention of: **Suburban Land Agency ABN 27 105 505 367** of TransACT House,
470 Northbourne Avenue, Dickson ACT 2602

[insert Grantee details] nominates:

Name of Nominee:
Primary Contact:
Address:
Phone Number:
Email address:

to be its nominee to exercise the Call Option contained in the Deed of Put and Call Option dated **[insert date]** in relation to Block <<Block>> Section <<Section>> <<Division>>

[NOTE: Failure to complete all of these details will result in the Nomination being rejected]

Dated: **[insert date]**

Grantee

Executed by [insert Grantee's name and ACN]
in accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

..... **[Nominee]** hereby
accept the nomination and exercises the Call Option pursuant to the Deed of Put and Call Option referred
to above.

Nominee (Individual)

**Signed, sealed and delivered by [insert
Nominee's name]** in the presence of:

Signature of witness

Signature/s

Full name of witness

Nominee (Company)

**Executed by [insert Nominee's name and
ACN]** in accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Annexure E - Directors Guarantee

I/We, (name of Director/s).....

of (address)

..... agree as follows:

- 1. I/We am/are a Director/s of the Grantee.
- 2. In consideration of the Grantor entering into this deed at my/our request, I/we agree to guarantee to the Grantor:
 - (a) the performance and observance by the Grantee of all its obligations under this deed, before, on and after Completion of this deed; and
 - (b) the payment of all money payable to the Grantor or to third parties under this deed or otherwise.
- 3. This is a continuing guarantee and binds me/us notwithstanding:
 - (a) my/our subsequent death, bankruptcy or liquidation or the subsequent death, bankruptcy or liquidation of any one or more of the Grantee or the Grantee's Directors;
 - (b) any indulgence, waiver or extension of time by the Grantor to the Grantee or to me/us or to the Grantee's Directors; and
 - (c) Completion of this deed.
- 4. In the event of any breach by the Grantee covered by this guarantee, including in the payment of any money payable to the Grantor or to third parties under this deed or otherwise, the Grantor may proceed to recover the amount claimed as a debt or as damages from me/us without having instituted legal proceedings against the Grantee or any other of the Grantee's Directors and without first exhausting the Grantor's remedies against the Grantee.
- 5. I /we agree to keep the Grantor indemnified against any liability, loss, damage or claim due to the default of the Grantee which the Grantor may incur in respect of this deed.

Dated this day of 20__.

Signed sealed and delivered by
in the presence of:

Signature of Witness

Signature

Name of Witness in full

Signed sealed and delivered by
in the presence of:

Signature of Witness

Signature

Name of Witness in full

NOTE: All directors of the Grantee are to sign this guarantee. If the Grantee is a sole director company please write "Sole Director" after that director's signature.

Executed as a deed.

Grantor

Executed by **Suburban Land Agency ABN 27 105 505 367** in the presence of:

Signature of witness

Signature of authorised delegate

Full name of witness

Full name of authorised delegate

Grantee

Executed by **[insert Grantee's name and ACN]** in accordance with section 127 of the Corporations Act 2001 (Cth):

Full name of sole director and company secretary who states that he or she is the sole director and sole company secretary

Signature of sole director and sole company secretary

Executed by **[insert Grantee's name and ACN]** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Signed, sealed and delivered by **[insert Grantee's name]** in the presence of:

Signature of witness

Signature

Full name of witness