

Date 21 December 2004

PRECINCT DEED

BETWEEN

AUSTRALIAN CAPITAL TERRITORY

AND

THE AUSTRALIAN NATIONAL UNIVERSITY

ANU CITY WEST INTEGRATION PRECINCT

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PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) (“Territory”).

THE AUSTRALIAN NATIONAL UNIVERSITY, a body corporate continuing in existence under section 4(1) of the *Australian National University Act 1991* (Cwlth) (“ANU”).

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

The following definitions apply in this Deed, unless the context otherwise requires. Capitalised expressions in this Deed not defined in this **clause 1.1** have the same meaning as in the draft Development Deed at **Schedule 2** (including in **clause 24** of that document).

Assembly	means the Legislative Assembly of the Territory.
Authority	means the Planning and Land Authority, a body corporate established by section 7 of the <i>Planning and Land Act 2002</i> (ACT).
City West Master Plan	means the City West Master Plan dated May 2004.
Completion Date	means the date 10 years after the date the Disallowable Instrument commences.
Development	means the development the subject of a Development Proposal endorsed by the Precinct Committee.
Development Deed	means a development deed to be entered into between the Land Agency and the ANU substantially in the form of the draft at Schedule 2 .
Development Proposal	means the written proposal for a development within the Precinct submitted in accordance with clause 9 of this Deed.
Disallowable Instrument	means the instrument to be made under the Land Act establishing criteria for the direct grant of Leases in the Precinct in accordance with clause 10 of this Deed that is substantially in the form of the draft at Schedule 3 .
Existing Occupants	means those persons presently occupying premises or

land in the Precinct as set out in **Schedule 5**.

Existing Precinct Sites means those areas occupied by Existing Occupants and land adjacent to the Precinct occupied or leased by other persons.

Force Majeure Event means any of the following causes:

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority;
- (f) any other cause which is not reasonably within the control of the ANU.

gfa means the sum of the area of all floors of the building measured from the external faces of the exterior walls or from the centre lines of walls separating the building from any other building excluding an area used solely for rooftop fixed mechanical plant and/or car parking and non-roofed areas and landscaped internal gardens.

Infrastructure Works means those works necessary or desirable to enable the Precinct to be developed as determined by the Precinct Committee.

Land means land within the Precinct.

Land Agency means the Land Development Agency, a corporation established by section 38 of the *Planning and Land Act 2002* (ACT).

Lease means a lease granted under the *Land (Planning and*

Environment) Act 1991 (ACT) by the Land Agency as delegate of the Authority in accordance with a Development Deed.

Precinct	means the area of land identified in the diagram annexed to the Disallowable Instrument and within which developments are to be undertaken in accordance with the terms of this Deed substantially in the form of the area of the land identified in the diagram at Schedule 4 .
Precinct Committee	means the committee established under clause 6 of this Deed.
Precinct Implementation Plan	means the plan prepared in accordance with clause 8 of this Deed.
Precinct Master Plan	means any plan prepared in accordance with clause 7 of this Deed, including in respect to any Stage or group of Stages.
Relevant Authority	means the Territory, any Minister, the Executive, any administrative unit, section or department of the Territory, statutory authority, Territory owned developer, utility provider, or any other body, which has statutory and/or administrative responsibilities in respect of the Precinct, the Land, the Infrastructure Works or any development within the Precinct.
Services	means the infrastructure services concerning the Precinct including roads, footpaths, cycleways, driveways, traffic control devices, street signs, water supply, water services, stormwater, sewer, telecommunication services, electricity reticulation, substations, street and pathway lighting, gas reticulation, landscaping and paving, and the relocation or augmentation of any of these.
Stages	means those individual developments to be undertaken in the Precinct under the terms of this Deed and in respect of which a Lease is to be granted.
Tax Invoice	has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1995</i> .
Territory	means: (1) when used in a geographical sense, the Australian Capital Territory; and

- (2) when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth).

1.2 General

In this Deed, unless a contrary intention is expressed:

- (1) references to “ANU” includes any employees, agents or subcontractors of the ANU;
- (2) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
- (3) words importing a gender include the others; words in the singular number include the plural and vice versa; and where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (4) “include” is not to be construed as a word of limitation;
- (5) any authority, institute, association or body is:
 - (a) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (b) if that authority, institute, association or body ceases to exist, deemed to refer to the organisation as serves substantially the same purposes or object of that authority, institute, association or body;
- (6) headings have no effect on the interpretation of the provisions; and
- (7) an obligation imposed by this Deed on more than one person binds them jointly and severally.

1.3 Inconsistency

Despite anything to the contrary, to the extent a party is obliged under this Deed to:

- (a) act in conformity with; or

- (b) give an approval or endorsement based on the subject matter for which the approval or endorsement is sought being consistent with,

the Territory Plan and the City West Master Plan, and those plans are inconsistent;

then that party:

- (c) in the case of (a), satisfies the obligation by acting in conformity with the Territory Plan; or
- (d) in the case of (b), satisfies the approval or endorsement requirement by the subject matter for which the approval or endorsement is sought being consistent with the Territory Plan.

2. Background

The Territory:

- (1) has released the Canberra Plan and City West Master Plan which recognise:
 - (a) the importance of initiatives for the revitalisation of the City and innovative research and development industries;
 - (b) an opportunity to build on the intellectual and cultural attributes of the ANU to facilitate the creation of a vibrant precinct;
 - (c) the need for the timely release of land in the City for additional developments; and
 - (d) the City West as a priority area for sustainable urban development to integrate the Australian National University and the City by building on the social, economic and cultural opportunities;
- (2) acknowledges the benefit to the ANU and the City of the ANU obtaining more land to undertake its activities, increase its integration with the social and cultural fabric of the City and the economy of the Australian Capital Territory and to provide an enhanced opportunity for business to participate in, and benefit from, the education, commercial, accommodation and research activities of the University;
- (3) notes that the *Economic White Paper* stressed that “an economic and industry policy framework to achieve sustainable growth and development” in the Australian Capital Territory requires harnessing the City’s many assets and being “a little more clever and strategic in the way we work together”. The purpose of development in City West,

states the Economic White Paper, is “to further exploit economic activity derived from the ANU and other institutions”;

- (4) acknowledges that for the ANU, the additional land and facilities will help to ensure that the ANU remains an internationally attractive university with sufficient room for current and future activities. For the Territory, the improved integration of the ANU into the City will improve the City’s attractiveness and dynamism, while boosting economic development and fostering the national (and international) perspective of Canberra as a hub of innovative activities spinning off university research and development; and
- (5) has identified the Precinct as an area within which to consider development to further the objectives referred to in **subclauses (1) to (4)**.

3. Purpose of Deed

This Deed governs the relationship between the Territory and the ANU in relation to the Precinct and describes the processes for that relationship to create and progress, the development of the Precinct.

4. Duration of Deed

This Deed will commence on the date it is executed by the parties and will expire on the Completion Date unless otherwise agreed.

5. Development of Precinct

5.1 Design of the Development

The ANU must prepare, consistent with the City West Master Plan and the Territory Plan amended as contemplated by this Deed:

- (1) a Precinct Master Plan; and
- (2) a Precinct Implementation Plan,

for the development of the Precinct, and have those plans endorsed by the Territory and submitted to the Authority for approval.

5.2 Staging and grant of leases

Consistent with the Precinct Implementation Plan endorsed by the Territory, the Precinct will be developed in Stages under a Lease granted for each Stage when the conditions for that grant for that Stage under this Deed have been satisfied.

5.3 Infrastructure works

The obligations of the ANU and the Territory with respect to infrastructure works in the Precinct are set out in **clause 17**.

5.4 Existing occupants

The ANU must permit the continued occupancy of the Precinct by the Existing Occupants. Those Existing Occupants may continue in occupation until their sites are required in accordance with **clause 16**.

The ANU must grant new licences to the Territory on identical terms to existing occupancy arrangements in accordance with **clause 16**, subject to any modification as provided in **clause 16**.

5.5 Public access rights and carparking

The Territory is entitled to all car parking revenue generated from the Precinct until such time as (and in respect only of the land the subject of) a Lease is granted. Notwithstanding the grant of a Holding Lease or Consequent Lease (but having regard to the requirements of the development of the Precinct) the ANU will permit access to the Precinct for carparking by the public, and thoroughfare and other public access.

The ANU must consider the provision of public carparking and public thoroughfare and other access when finalising the Precinct Master Plan.

5.6 Timing

The ANU must:

- (1) use its best endeavours to substantially complete the development of the Precinct by the tenth anniversary of the date of this Deed; and
- (2) meet milestones by the dates specified in the Precinct Implementation Plan.

5.7 Territory Plan Variation, roads and due diligence

Each Development:

- (1) is subject to the ANU being satisfied with its due diligence enquiries;
- (2) will require any necessary environmental assessment to be satisfactory and other necessary approvals to be obtained;
- (3) will require, as necessary, the progressive degazettal and gazettal of roads, public places and carparks (**clause 17**); and
- (4) will be consistent with the City West Master Plan for the Precinct and the Territory Plan (**clause 18**).

5.8 Exclusivity

The Territory will not until completion of the Precinct consider a proposal for the development of land within the Precinct by any person other than the ANU. This provision does not apply to land that no longer forms part of the Precinct in accordance with the terms of this Deed.

5.9 Consultation with the Territory

The ANU will consult regularly with the Territory regarding the progress of the Precinct and its development and any matters associated with the Precinct or any Development through the Precinct Committee in accordance with **clause 6** during the course of the development of the Precinct.

5.10 Access for Existing Precinct Sites

The ANU must ensure that it provides reasonable access to and from the Precinct for the benefit of Existing Precinct Sites.

6. Precinct Committee

6.1 Establishment of Precinct Committee

Promptly after the date of the Deed the parties will form a committee, comprising of:

- (1) 2 representatives of the ANU;
- (2) 2 representatives of the Territory;
- (3) an agreed independent chairperson; and
- (4) representatives of other persons or bodies as agreed by the parties,

or their replacements from time to time.

6.2 Invitees to Precinct Committee meetings

Precinct Committee meetings may also be attended by other persons, provided that the attendance of such persons has been approved by the parties prior to the meeting.

6.3 Functions of the Precinct Committee

The functions of the Precinct Committee are to:

- (1) endorse all Development Proposals;
- (2) monitor the progress of the parties in complying with their obligations under this Deed as required;

- (3) provide advice and guidance in relation to conduct of the development of the Precinct and any Development and any associated matters if and when requested to do so by a party or by the parties;
- (4) facilitate collaboration with Territory agencies to monitor market conditions and commercial development activity relevant to the Precinct;
- (5) provide a forum for the discussion of any matters connected with the Precinct and any Development as the ANU or the Territory may from time to time determine as being appropriate for the Precinct;
- (6) review, and where possible resolve, any matters of concern between the parties; and
- (7) administer this Deed including any variations to it.

6.4 Precinct Committee meetings

The Precinct Committee will meet at times reasonably requested by a party, provided that at least 5 Business Days prior, notice has been provided (except in an emergency).

6.5 Conduct of Precinct Committee meetings

A representative of the Territory will convene and chair meetings of the Precinct Committee, prepare the agenda and must prepare and distribute to all members of the Precinct Committee minutes of each meeting promptly after each meeting.

6.6 Quorum for Precinct Committee meetings

A quorum for a Precinct Committee meeting will be constituted by the attendance at the meeting of at least one representative of the ANU and one representative of the Territory.

6.7 Majority vote

Decisions of the Precinct Committee are to be made by majority vote. At any meeting of the Precinct Committee, each representative of a party is entitled to exercise one vote, provided however where only one representative of a party is present, the representative present may exercise all the votes which the party's representatives are collectively entitled.

6.8 Chairperson

The chairperson is entitled to a casting vote at any meeting of the Precinct Committee.

7. Precinct Master Plan

7.1 Establishment of Precinct Master Plan

The ANU will endeavour to prepare and finalise each Precinct Master Plan to be submitted to the Authority for approval as soon as reasonably practicable after the Disallowable Instrument comes into effect and the Territory Plan has been varied as contemplated in **clause 18.1**.

7.2 Description of development

A Precinct Master Plan will stipulate the development to be carried out in the Precinct, a Stage or group of Stages (as applicable) including:

- (1) a written statement of the proposed type and density of the development;
- (2) a written statement of town planning and urban design principles relating to the Precinct a Stage or group of Stages (as applicable) and its interaction with adjacent land uses; and
- (3) a coloured plan showing the broad pattern of land uses throughout the Precinct a Stage or group of Stages (as applicable).

7.3 Endorsement by Territory

A Precinct Master Plan is subject to the endorsement of the Territory. The Territory will not unreasonably withhold or delay its endorsement of any Precinct Master Plan if the Precinct Master Plan prepared is substantially consistent with:

- (1) the City West Master Plan; and
- (2) the Territory Plan, or any proposed variation to the Territory Plan substantially consistent with the City West Master Plan,

and has been endorsed by the Precinct Committee.

7.4 Amendments to Precinct Master Plan

Subject to **clause 7.3** any amendment requested by the Territory to a Precinct Master Plan proposed by the ANU must:

- (1) be reasonable;
- (2) be consistent with justifiable and recognised planning guidelines and concepts; and
- (3) not adversely affect the delivery of the development of the Precinct as a whole.

7.5 Right of rescission

The ANU may rescind the Deed at any time if a Precinct Master Plan is not approved by the Authority in a form reasonably acceptable to the ANU and in the time required by the Precinct Implementation Plan.

7.6 Amendment of Precinct Master Plan after approval

If, at any time after a Precinct Master Plan has been approved by the Authority, the ANU is required by any Relevant Authority or the Assembly to amend that Precinct Master Plan, the Territory will endorse that amendment.

8. Precinct Implementation Plan

8.1 Establishment of Precinct Implementation Plan

The ANU will endeavour to prepare and finalise the Precinct Implementation Plan to be submitted to the Authority for approval as soon as reasonably practicable after the Disallowable Instrument comes into effect and the Territory Plan has been varied as contemplated in **clause 18.1**.

8.2 Endorsement by the Territory

The Precinct Implementation Plan is subject to the endorsement of the Territory. The Territory will not unreasonably withhold or delay its endorsement of the proposed Precinct Implementation Plan or any updates where the proposed Precinct Implementation Plan or any update is substantially consistent with:

- (1) the City West Master Plan; and
- (2) the Territory Plan or any proposed variation to the Territory Plan substantially consistent with the City West Master Plan, and

has been endorsed by the Precinct Committee.

8.3 Amendments to Precinct Implementation Plan

Subject to **clause 8.2** any amendment requested by the Territory to the Precinct Implementation Plan proposed by the ANU must:

- (1) be reasonable;
- (2) be consistent with justifiable and recognised planning guidelines and concepts; and
- (3) not adversely affect the delivery of the development of the Precinct as a whole.

8.4 Updates to Precinct Implementation Plan

The parties agree to update the Precinct Implementation Plan from time to time.

8.5 Variation of Precinct Implementation Plan

The parties acknowledge that the Precinct Implementation Plan may be subject to variation, following the issue of a Lease, and the parties agree to use their reasonable endeavours to agree on any required variation to the Precinct Implementation Plan to be submitted to the Authority for approval.

8.6 Updates due to progress of the Works

The ANU will whenever there is a significant change in the progress of the development of the Precinct submit to the Territory and the Authority marked-up updates of the Precinct Implementation Plan including any alterations to the plan required to be approved by the Authority.

9. Development Proposals

9.1 The ANU may submit a Development Proposal to the Precinct Committee for endorsement.

9.2 A Development Proposal must contain a detailed description of a development that the ANU proposes to undertake within the Precinct.

9.3 Any Development Proposal must:

- (1) be consistent with the Precinct Master Plan and the Precinct Implementation Plan;
- (2) not provide for exclusive general commercial purposes except with the agreement of the Territory;
- (3) limit the amount of commercial floor space for a Lease to less than 10,000 square metres of gfa unless otherwise agreed;
- (4) reflect the Precinct design objectives to ensure the quality of built form outcomes and the contribution to the quality of the public domain;
- (5) describe the commercial impact of the proposed development;
- (6) specify mechanisms for addressing the needs for any community facilities within the proposed development, including the relocation of Existing Occupants;
- (7) address relevant Territory policies, such as affordable housing in new residential areas, environmental performance measures, local area traffic management and car parking;

- (8) identify necessary Infrastructure Works that may be required for completion;
- (9) address any environmental impact requirements; and
- (10) address any other matter required by the Precinct Committee.

9.4 Access to Land

The Territory will permit the ANU at the times reasonably requested by the ANU adequate access to the Precinct and the land adjacent to the Precinct so that the ANU may carry out investigations as to the nature and condition of the land, and its surroundings, and its suitability for any Development Proposal (including the conditions below the surface of the land) on such reasonable conditions as the Territory may require.

- 9.5 The Territory may require the ANU by written notice to submit a Development Proposal in relation to a particular part of the Precinct.
- 9.6 If the ANU does not submit a Development Proposal in accordance with a notice given under **clause 9.5** within 6 months of the date of that notice the Territory may notify the Authority and the land the subject of that notice will no longer form part of the Precinct.
- 9.7 The Territory may not exercise its right under **clause 9.5**:
 - (a) until a Precinct Master Plan has been approved by the Authority for that part of the Precinct on which the development is to be carried out (**Relevant Part**); and
 - (b) unless the Development Proposal can satisfy the requirements in **clause 9.3**.
- 9.8 Where land is excised from the Precinct according to **clause 9.6**, the Territory must:
 - (a) not permit the Relevant Part to be developed otherwise than consistently in all respects with a development which complies with **clause 9.3**; and
 - (b) give notice to the Authority notifying the decision and identifying the land excised.

10. Disallowable Instrument

The Territory must no later than:

- (1) 40 Business Days after the date of the Deed cause the Disallowable Instrument to be:

- (a) prepared; and
 - (b) notified; and
- (2) 6 sitting days after its notification date, present it to the Assembly.

11. Application for Direct Grant of Lease

- 11.1 The ANU may, once the Development Proposal has been endorsed by the Precinct Committee, apply for a direct grant of a Lease within the Precinct in accordance with the Disallowable Instrument.
- 11.2 If a Lease is not granted within 6 months after an application is made due to the default of the ANU under this Deed then the land the subject of that application ceases to form part of the Precinct.

12. Determination of Market Value for Lease

12.1 Where no agreement

Unless the ANU and the Territory otherwise agree:

- (1) the Purchase Price for a Lease will be determined as at the date the draft form of that Lease has been approved by the Authority; and
- (2) it is a condition of the grant of the Lease that the Purchase Price be paid.

12.2 Determination of purchase price

No later than 10 Business Days after the date referred to in **clause 12.1(1)** (unless otherwise agreed) (**Determination Time**), the Territory must request a valuer (**Territory Valuer**) to:

- (1) value that Lease; and
- (2) complete that valuation within 20 Business Days after the request is made.

12.3 Notice to ANU

Promptly on receipt of the valuation from the Territory Valuer (**Territory Valuation**) the Territory must provide the Territory Valuation to the ANU. The amount stated in the Territory Valuation is the Purchase Price for the relevant Lease unless the ANU gives the Territory a notice (**Dispute Notice**) within 20 Business Days after receipt of the Territory Valuation:

- (1) disagreeing with the Territory Valuation; and

- (2) notifying the Territory of a valuer who has been appointed by the ANU to value the relevant Lease (**ANU Valuer**).

12.4 Determination Period

The ANU Valuer and the Territory's Valuer must jointly determine the Purchase Price of the relevant Lease within 30 Business Days after the date the Dispute Notice is given to the Territory (**Determination Period**). If they do not agree, **clause 12.7** applies.

12.5 Valuer requirements

A valuer appointed by the ANU or the Territory must be a member of the Australian Property Institute Incorporated (ACT Division) or its substitute or replacement (**Institute**) with not less than 5 years experience as a valuer of crown leases.

12.6 Open market value

In determining the Purchase Price of the relevant Lease the Territory Valuer, the ANU Valuer and any umpire must determine the open market value at the Determination Time assuming that a buyer of the relevant Lease would be a willing but not anxious buyer and the seller of the relevant Lease would be a willing but not anxious seller.

12.7 If no agreement between valuers

If the valuers do not agree on the Purchase Price of the relevant Lease within the Determination Period then:

- (1) if the value as assessed by the ANU Valuer is more than that assessed by the Territory Valuer, then the value is as determined by the ANU Valuer;
- (2) if the difference between the respective assessments of the valuers is not greater than 5% of one-half of the aggregate of their assessments, then the Purchase Price of the relevant Lease is one-half of the aggregate of the assessments; or
- (3) in all other cases the valuers must agree on and appoint a valuer as the umpire to determine the Purchase Price of the relevant Lease.

12.8 Appointment of umpire

If the valuers do not appoint the umpire under **clause 12.7(3)** within 10 Business Days after the Determination Period, then either valuer or either the ANU or the Territory may ask the President of the Institute to make an appointment of the umpire.

12.9 Umpire requirements

Any umpire appointed under this **clause 12**:

- (1) must be a member of the Institute with not less than 5 years experience as a valuer of crown leases;
- (2) must have due regard to any evidence submitted by the ANU or the Territory (and, in the case of the umpire, by the valuers) as to their assessments of the Purchase Price of the relevant Lease;
- (3) must give his or her determination in writing;
- (4) must as a condition of the appointment agree to make his or her determination of the Purchase Price of the relevant Lease within 20 Business Days of his or her appointment;
- (5) must if appointed by the President of the Institute, not be a person previously nominated by a valuer whose appointment has not been agreed to by the valuers under **clause 12.7(3)**; and
- (6) acts as an expert and not as an arbitrator.

12.10 Umpire's determination

The determination of the umpire is final and binding and is the Purchase Price of the relevant Lease. The umpire's determination must provide complete details of the reasons and basis for the determination including setting out what was taken into account, what was disregarded, their respective weightings and any other adjustments.

12.11 Substitute umpire

If the umpire does not make his or her determination of the Purchase Price of the relevant Lease within the required period, then the ANU or the Territory may ask the President of the Institute to appoint a substitute umpire under **clause 12.8**. On that appointment, the appointment of the previous umpire ends.

12.12 When costs are shared

Where the Purchase Price of the relevant Lease determined by a valuer under this **clause 12** is between 90% and 110% of the amount stated in the Territory Valuation, the ANU and the Territory must bear the costs of the determination of the Purchase Price of the relevant Lease under this **clause 12** equally.

12.13 When the Territory pays costs

Where the Purchase Price of the relevant Lease determined by a valuer under this **clause 12** is less than 90% of the amount stated in the Territory Valuation,

the Territory must bear all costs of the determination of the Purchase Price of the relevant Lease under this **clause 12**.

12.14 When the ANU pays costs

Where the Purchase Price of the relevant Lease is greater than 110% of the amount stated by the in the Territory Valuation, the ANU must bear all costs of the determination of the Purchase Price of the relevant Lease under this **clause 12**.

13. GST

13.1 Payments are GST exclusive

Except where otherwise provided, any payment under this Deed does not include GST.

13.2 GST gross up

If a supply under this Deed is subject to GST the recipient agrees, subject to **clause 13.4(1)** to pay the supplier an additional amount equal to the consideration for the supply multiplied by the prevailing GST rate.

13.3 Time of payment

The additional amount is payable at the same time and in the same manner as the consideration for the supply to which the additional amount relates.

13.4 Supplier's obligations

The supplier agrees to:

- (1) give the recipient a Tax Invoice for the additional amount on or before the date the consideration for the supply is payable; and
- (2) refund any overpayment made by the recipient under this **clause 13** promptly after the supplier receives the benefit of a credit or refund in connection with the overpayment.

13.5 Margin scheme

If required by the ANU, the Territory must (if able) use the Margin Scheme to calculate any GST payable on a supply under, or contemplated by, the Deed.

14. Grant of Lease

When the ANU has satisfied the terms of the Disallowable Instrument and the terms of this Deed the Territory will request the Authority and the Land

Agency to grant the Lease and to enter into a Development Deed with the ANU.

15. Conduct of Development

15.1 The development of the land the subject of a Lease must be undertaken in accordance with the terms of the Development Deed and any Approvals.

15.2 The Development Deed must be consistent with this Deed and in a form and substantially to the effect of the draft Development Deed specified at **Schedule 2**.

16. Licences in the Precinct

16.1 Termination of Existing Licences

Subject to anything determined by the Precinct Committee, the Territory must request the Authority to terminate the occupancy arrangements of Existing Occupants of that part of the Precinct the subject of a proposed Lease no later than the grant date for that Lease.

16.2 Grant of New Licences

Upon grant of a Lease to the ANU over an area referred to in **clause 16.1**, the ANU must grant to the Territory any licences as are requested by the Territory to accommodate Existing Occupants.

16.3 Terms of New Licences

The ANU agrees that the terms and conditions of any licence granted under **clause 16.2** must, as far as is possible having regard to the terms and conditions of this Deed, be in terms to the same effect as the terminated occupancy arrangements provided that each licence allows:

- (1) the ANU to terminate the licence upon six month's notice;
- (2) the Territory to offer a sublicense (subject to the Lessee's reasonable approval) to the relevant Existing Occupant and the use of the land permitted by any such sublicense is identical to the use permitted by the corresponding occupancy arrangement of that land.

16.4 Relocation of Existing Occupants

If the ANU terminates a licence granted under **clause 16.2** then arrangements, as agreed between the Territory and the ANU, must be made to provide suitable accommodation for any Existing Occupant thereby affected. In deciding on the arrangements to be made for suitable accommodation, the ANU and the Territory agree to consider the recommendations of the Precinct Committee.

17. Infrastructure Works

17.1 Obligation to construct

- (1) The ANU must construct the Infrastructure Works that are its responsibility (as determined by the Precinct Committee) and any Approval.
- (2) The Territory must construct the Infrastructure Works that are its responsibility (as determined by the Precinct Committee) and any Approval.
- (3) The Infrastructure Works that are the responsibility of the Territory may be constructed by the ANU at the Territory's cost if the parties agree.

17.2 Stages

The ANU may carry out the Infrastructure Works in stages as determined by the Precinct Committee.

17.3 Territory representations and warranties in relation to Services

The Territory makes no representation or warranty as to the Services provided to the Precinct at the date of the Deed being sufficient in capacity to support the development of the Precinct in accordance with the objectives of this Deed, the Precinct Master Plan and the Deed (**Capacity Requirement**).

17.4 Cost of Territory Infrastructure Works

Prior to commencing the design or construction of any Infrastructure Works for which the Territory is responsible under **clause 17.1(3)** the ANU must obtain the consent of the Territory to the cost of that design or construction. That consent will not be unreasonably delayed or withheld, provided that:

- (1) the ANU has obtained not less than 3 tenders for the design or construction;
- (2) the cost submitted is in accordance with a submitted tender;
- (3) where the submitted cost is not the lowest tendered sum, the ANU demonstrates on reasonable grounds that the cost submitted represents the best value for money; and
- (4) any allowance for the overhead and other direct costs incurred by the ANU in organising and administering the carrying out of the design and construction of those Works is reasonable.

17.5 Payment

The Territory must pay for the cost of the design and construction of the Infrastructure Works for which it is responsible, agreed or determined under this **clause 17**:

- (1) progressively as required by the ANU in sufficient time for the ANU to meet the costs to the ANU of carrying out those works; or
- (2) if the parties agree, by taking into account in the Purchase Price for Leases the costs to the ANU in designing and constructing the Infrastructure Works for which the Territory is responsible.

17.6 Upgrade to Services by the Territory

To the extent that the Services (other than those constructed as part of the Infrastructure Works) are not sufficient (as determined by the Precinct Committee) in capacity to meet the reasonable requirements of the Precinct and any Development Proposal at any time prior to the Completion Date, the Territory will upgrade the Services on terms agreed by the Territory.

17.7 Time for Degazettal

The Territory must ensure that no later than:

- (1) the grant date of a Lease; or
- (1) the time (if any) specified in the Precinct Implementation Plan,

(whichever occurs first) the roads, public places and car parks in that Stage of the Precinct the subject of that Lease or identified in the Precinct Implementation Plan are degazetted (**Degazettal**).

17.8 Maintenance of roads, public places and car parks

- (1) Following the relevant Degazettal, the Territory will remain responsible for the maintenance and repair of the roads, public places and car parks and any associated infrastructure and Services within the Precinct (**Public Places and Services**), until either:
 - (a) a Lease is granted over that part of the Precinct in which those Public Places and Services are located, in which case such responsibility ceases concerning that part of the Precinct; or
 - (b) the ANU closes the road, public place or car park to conduct the Infrastructure Works in which case such responsibility ceases concerning that road, public place or car park (as applicable),

(**Responsibility Transfer**) whichever occurs sooner until the Public Place and Services are returned to the control of the Territory, and

- (2) The Territory is liable for and will indemnify the ANU against any Claim by any person arising from that person's use of the Public Places and Services in the Precinct prior to Responsibility Transfer except to the extent that the claim is caused by the ANU.
- (3) If the ANU causes damage or loss to any Public Places and Services then it is responsible for their repair.

18. Territory Plan Variation

18.1 Variation of the Territory Plan

If the Territory Plan is not varied:

- (1) subject to **clause 18.1(2)** and **(3)** to be consistent with the City West Master Plan for the Precinct;
- (2) to include as a permitted use within the Precinct, educational establishment and research; and
- (3) designate Section 20 City as subject to Commercial A "b1" land use policy (including for educational establishment and research),

within 3 years of the date of this Deed then the ANU may rescind this Deed.

18.2 Consultation

The Territory will consult with the ANU as to manner and form of the proposed variation to the Territory Plan and must use its reasonable endeavours to take into account the reasonable comments of the ANU.

18.3 Other Variations to the Territory Plan

The ANU may terminate the Deed if the Territory Plan is subsequently amended in a way that inserts provisions or requirements that are not consistent with the City West Master Plan or any Precinct Master Plan.

19. Force Majeure

19.1 Effects of Force Majeure event

If a party is unable to perform or is delayed in performing an obligation under the Deed (other than an obligation to pay money), which is caused by or which arises or results from a Force Majeure Event and notice has been given in accordance with **clause 19.2**:

- (1) that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event; and

- (2) the affected party will not be responsible for any loss or expense suffered or incurred by any other party as a result of, and to the extent that, the affected party is unable to perform or is delayed in performing its obligations because of the Force Majeure Event.

19.2 Notice of Force Majeure Event

A party affected by a Force Majeure Event must give the other party a written notice which:

- (1) sets out details of the Force Majeure Event;
- (2) identifies the nature and extent of the obligations affected by the Force Majeure Event;
- (3) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations;
- (4) provides details of the action that it has taken or proposes to take to remedy the situation; and
- (5) provides details of all insurance policies on which the affected party considers that it will be able to rely in making good any damage caused by the Force Majeure Event (if applicable).

19.3 Obligations of affected party

A party affected by a Force Majeure Event must:

- (1) take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible; and
- (2) promptly re-commence performing the suspended obligations as soon as reasonably possible.

19.4 Meeting

If after 60 Business Days the Force Majeure Event continues, the parties must meet in good faith to discuss the situation and endeavour to achieve a mutually satisfactory resolution to the matter.

19.5 Alternative arrangements

During the period for which an obligation of the affected party is suspended pursuant to **clause 19.1(1)**, any other party to whom the obligation is owed may (at that party's cost) make alternative arrangements for the performance of the suspended obligation (whether by another person or otherwise), without any liability to the affected party.

20. No Assignment

The ANU must not assign the whole or any part of this Deed.

21. Endorsements and Approvals

The ANU acknowledges that any endorsement or approval given by the Territory or the Precinct Committee does not mean that any required approval, consent or licence will be given by any Relevant Authority, including the Authority.

22. Extensions of Time

22.1 ANU Notification of delays

If the ANU becomes aware of any matter which will, or is likely to, give rise to a delay in achieving a timeframe established in the Precinct Implementation Plan, the ANU must promptly give the Territory and the Authority written notice setting out:

- (1) detailed particulars of the delay; and
- (2) the corrective action which the ANU proposes to take to overcome the effects of the delay.

22.2 Territory notification of delays

If the Territory becomes aware of any matter which will, or is likely to, give rise to a delay in it complying with an obligation under this Deed the Territory must promptly give the ANU written notice setting out:

- (1) detailed particulars of the delay; and
- (2) the corrective action (if any is possible) which the Territory proposes to take to overcome the effects of the delay.

22.3 Extension of Time

If there is, or is likely to be, a delay in achieving a timeframe established in the Precinct Implementation Plan as a result of **(Delays)**:

- (1) a Force Majeure Event;
- (2) an act or omission by the Territory, the Executive, a Minister, a Territory's Agent, the Assembly, the Authority or any other Relevant Authority;
- (3) changes in a Territory law which would alter the ANU's obligations or rights under the Deed;

- (4) any unforeseen or unreasonable delay in the issue of any Approval or the Territory Plan being varied as contemplated in **clause 18.1**;
- (5) a challenge, claim or objection to any decision, act or omission or any proposed decision, act or omission of the Territory, the Executive, a Minister, the Authority, a Relevant Authority, a Territory's Agent or the Assembly (including an Approval) including any court or administrative appeals proceeding;
- (6) an industrial, political, community or civil campaign, protest or disruption or other campaign, protest or disruption aimed at the Precinct, a Development, or the Territory or the ANU which is beyond the reasonable control of the ANU to prevent or resolve;
- (7) a delay beyond 31 March 2005 in the Disallowable Instrument coming into effect;
- (8) any of the lessees, Existing Occupants, or any person representing, or in sympathy with them interfering in any way with the carry out of a development in the Precinct,

and the ANU issues a delay notice (**Delay Notice**) to the Territory, then the timeframes which may be affected and which are nominated by the ANU in its Delay Notice, will be extended by the period of the delay as reasonably nominated by the ANU in its Delay Notice.

23. Mutual Indemnity

23.1 Indemnity

If a Claim is made by a third party against one party to the Deed (**First Party**) in respect of any act or omission committed or omitted by it before a Lease is granted to the ANU, then the other party to this Deed (**Second Party**) will indemnify the First Party to the extent to which the Claim arises from the acts or omissions of the Second Party.

23.2 Objections

Notwithstanding the provisions of **clause 23.1**, neither party will be required to indemnify the other in respect of any Claim arising from or in any way connected to an objection to or an appeal against a Development Application or any other decision relating to a Development Application.

24. Insurance

24.1 ANU's insurance

The ANU must effect and maintain in respect of a Development during the term of a Lease for the Development until construction of the Development is completed:

- (1) all insurance coverage required to be effected by it by law;
- (2) public liability insurance with coverage in the amount of not less than \$20 million in respect of each claim; and
- (3) any other insurance reasonably specified by the Territory,

with an insurer having a Standard and Poor's or Best's Rating A- or better and must produce evidence of that insurance as required by the Territory.

25. Termination

25.1 Default

The Territory may terminate this Deed at any time by written notice to the ANU, if the ANU is in breach of a provision of this Deed, where that breach:

- (1) if capable of being remedied, is not remedied within a reasonable period after receipt of a written notice by the Territory requesting rectification of the breach, or
- (2) is not capable of being remedied.

25.2 No prejudice

Nothing in this **clause 25** prejudices any other rights or remedies of the Territory in respect of any breach of this Deed.

26. Dispute Resolution

26.1 Negotiation of Dispute

If a difference or dispute except under **clause 12** ("Dispute") arises in relation to this Deed, then either party may give written notice to the other that a Dispute exists, which specifies details of the Dispute. The parties agree that, following the issue of that notice, they will endeavour to resolve the Dispute by negotiations, including by referring the Dispute to persons who have authority to intervene and direct some form of resolution.

26.2 Mediation of Dispute

If the Dispute has not been resolved pursuant to **clause 26.1** within 28 days of the notice of the Dispute, then the parties agree that they will undertake a mediation process. The mediator will be an independent mediator agreed by the parties or, failing agreement, nominated by the chairperson of The Institute of Arbitrators and Mediators Australia, ACT Chapter. Unless otherwise agreed, the parties will share the costs of the engagement of the mediator.

26.3 No prejudice

Nothing in this **clause 26** will prejudice the rights of either party to institute proceedings to enforce the Deed or to seek injunctive or urgent declaratory relief in respect of any Dispute.

27. Good Faith

Each party will act in good faith towards the other in relation to carrying out their obligations under the Deed and provide all assistance reasonably required to promptly expedite the development of the Precinct and any Approvals.

28. Assistance

Without limiting the parties' obligations under the Deed, each party will promptly do, or cause others to promptly do, everything reasonably required to finalise anything, and obtain any Approval necessary as promptly as reasonably practical and (in relation to any Approval or administrative decision) within any applicable statutory time frame, concerning the development of the Precinct and the Deed.

29. Costs

Each party must bear:

- (1) its own costs, including professional costs and disbursements, associated with the preparation and execution of the Deed and any subsequent consent, agreement, Approval or waiver; and
- (2) unless the context otherwise provides, the costs associated with the performance of its obligations under the Deed.

SCHEDULE 1

CONTRACT DETAILS

Item 1. Contract Officers For the Territory:

The Chief Executive of the Chief Minister's
Department
Canberra Nara Centre
Corner London Circuit and Constitution Avenue,
Canberra City, ACT
Fax 02 6207 5886

For ANU:

The Vice Chancellor
Chancellery Building
University Administration
East Road
Australian National University
Acton, ACT
Fax 02 6125 5482

SCHEDULE 2
Development Deed

Date _____ 2004

STANDARD

DEVELOPMENT DEED

BETWEEN

LAND DEVELOPMENT AGENCY

AND

THE AUSTRALIAN NATIONAL UNIVERSITY

DEVELOPMENT OF [INSERT
DETAILS]

ACT Government Solicitor
Level 5, 12 Moore Street
CANBERRA CITY ACT 2601
PO Box 260 Civic Square ACT 2608
Ph: 6207 0666
Fax: 6207 0650
Ref: PJFG: 04-3-603982

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THIS DEED is made on

2004

BETWEEN

LAND DEVELOPMENT AGENCY, a corporation established by section 38 of the *Planning and Land Act 2002* (ACT) ("Land Agency")

AND

THE AUSTRALIAN NATIONAL UNIVERSITY, a body corporate continuing in existence under section 4(1) of the *Australian National University Act 1991* (Cwlth) ("Developer").

BACKGROUND:

This Deed sets out:

- (1) the terms and conditions on which the Developer will undertake the Development;
- (2) the terms and conditions on which the Authority will grant the Holding Lease to the Developer.

THE PARTIES NOW AGREE:

1. Definitions and Interpretation

Definitions

1.1 In this Deed, unless the context otherwise requires:

ActewAGL means the joint venture between Australian Capital Territory Electricity and Water Authority as constituted under the *Australian Capital Territory Electricity and Water Act 1988* and AGL that supplies electricity, gas, water and wastewater services to the people of the Territory and region.

Approval means any approval, authorisation, permit, consent, licence, exemption and the like which are required to be issued by or obtained from any Relevant Authority in connection with the Development, the Land or the performance by the Developer of its obligations under this Deed including each Development Approval.

Authority means the Planning and Land Authority, a body corporate established by section 7 of the *Planning and Land Act 2002*.

Block	means a block nominated by the Developer forming part of the Land.
Business Day	means a day on which banks are open for business generally in Canberra.
Certificate of Practical Completion for the Developer Associated Works	means a certificate given to the Developer by a Relevant Authority confirming that the Developer Associated Works required to be undertaken by the Developer in accordance with this Deed have reached Practical Completion.
City West Master Plan	means the City West Master Plan dated May 2004.
Claim	means any claim or action under, arising out of or with respect to this Deed, the Development, or any legislation, including in respect of any tortious act or omission, or misrepresentation (excluding any objection or appeal or application that may be lodged concerning any application for an Approval).
Completion Date	means [insert date].
Consequent Lease	means a 99 year crown lease issued by the Authority under the Land Act and pursuant to this Deed to the Developer or its nominee for each Block nominated by the Developer and the form of crown lease will be the usual form of crown lease issued for similar purposes by the Authority (not being inconsistent with this Deed) and containing the purpose clause and gfa limits contemplated by this Deed).
Developer	includes the Developer's Agents (unless the contrary intention appears).
Developer Associated Works	means the works identified in the document at Attachment 4.
Developer's Agents	means the Developer's employees, officers, agents, authorised persons, consultants and contractors.
Developer's Representative	means the person nominated by the Developer under clause 25.1(2).
Development	means the development to be constructed on the Land under the terms of this Deed and the Holding Lease.

Development Application	means each development application to be submitted for the Development in accordance with the Land Act and prepared by, or on behalf of, the Developer, at its cost.
Development Approval	means a development approval of the Authority granted in accordance with the Land Act in respect of a Development Application.
Development Proposal	means the written proposal for the conduct of the Development endorsed by the Precinct Committee under the Precinct Deed set out at Attachment 2.
Force Majeure	means: <ul style="list-style-type: none"> (1) an act of God; (2) war declared or undeclared, act of a public enemy, revolution, sabotage, civil commotion or disturbance; (3) strike, protest, lockout, unavailability of equipment or transport or other interference with the Development or the Works; (4) inclement weather; (5) lightning, fire, earthquake, storm, flood, cyclone or explosion; or (6) any other cause which is not reasonably within the control of the Developer.
gfa	means the sum of the area of all floors of the building measured from the external faces of the exterior walls or from the centre lines of walls separating the building from any other building excluding an area used solely for rooftop fixed mechanical plant and/or car parking and non-roofed areas and landscaped internal gardens.
Holding Lease	means the holding lease to be granted over the Land by the Authority to the Developer under the Land Act as set out in Attachment 3.
Land	means [insert details] Division of [insert] identified in Deposited Plan [insert details] - a copy of which is included in Attachment 1.
Land Act	means the <i>Land (Planning and Environment) Act 1991</i> (ACT).

Land Agency	includes the Land Agency's Agents (unless the contrary intention appears).
Land Agency Associated Works	means the works identified in the document at Attachment 6.
Land Agency's Agents	means the Land Agency's employees, officers, agents, authorised persons, consultants and contractors.
Land Agency's Representative	means the person nominated by the Land Agency under clause 25.1(2).
Lease Conditions and Development Requirements	means the conditions and requirements relating to the Development as set out in Attachment 5.
Manager Quality Co-ordination	means the person carrying out the duties of the Manager of the Quality Co-ordination Section of City Management Department of Urban Services who is authorised by City Management Branch to act on its behalf.
Minister	means any minister of the Executive relevant to this Deed, the Development or any Approval.
Planning Minister	means the Minister for purposes of the Land Act.
Plan of Survey	means a plan prepared by the Developer in accordance with the current Survey Practice Directions and the current associated Standards and Specifications for Deposited Plans as added to or varied from time to time.
Practical Completion	means the date when the Developer Associated Works or the Land Agency Associated Works (as applicable) are substantially completed in accordance with this Deed.
Precinct Committee	has the same meaning as in the Precinct Deed;
Precinct Deed	means the Precinct Deed entered into between the Territory and the Developer dated [insert details].
Prescribed Conditions for Land Agency Associated Works	means the terms and conditions that relate to the construction of the Land Agency Associated Works as set out in Attachment 6.

Prescribed Conditions for Developer Associated Works	means the terms and conditions that relate to the construction of the Developer Associated Works as set out in Attachment 4.
Proposal	means the proposal set out in clause 4 and more particularly in the Development Proposal.
Purchase Price	means the amount to be paid by the Developer for the grant of the Holding Lease and any Consequent Lease.
Quality Co-ordination	means the Quality Co-ordination Section of City Management Branch, Department of Urban Services.
Relevant Authority	means the Territory, any Minister, the Executive, any administrative unit, section or department of the Territory, statutory authority, Territory owned Developer, utility provider, or any other body, which has statutory and/or administrative responsibilities in respect of the Development, the Land, the Works or the performance by the Developer of its obligations under this Deed.
Residential	means an apartment.
Specialty Retail and Commercial	means any of the permitted uses as set out in the Lease Conditions and Development Requirements at Attachment 5 (other than Residential).
Stage	means an area nominated by the Developer within the Land to be surrendered for the purpose of a Consequent Lease being granted over that area.
Substantial Completion and Substantially Complete	means a certificate of occupancy under the <i>Building Act 1972</i> has issued in respect of that relevant stage of the Development.
Territory	means: <ul style="list-style-type: none"> (i) when used in a geographical context, the Australian Capital Territory, and (2) when referred to in any other context, the body politic established under the <i>Australian Capital Territory (Self-Government) Act 1988</i> (C'th).
Urban Design Contribution	means the amount so defined in clause 7.1.

Utility means a provider of electricity, gas, telecommunication, street lighting, stormwater, water or sewer services.

Works means all work, tasks and everything else required to be performed by the Developer under this Deed in respect of the Development, including planning, design, construction and commissioning of the Development.

Interpretation

1.2 In this Deed unless the context otherwise requires:

- (1) the expression “person” includes an individual, body politic, a corporation and a statutory or other authority or association (incorporated or unincorporated);
- (2) a reference to any authority, institute, association or body is:
 - (a) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (b) if that authority, institute, association or body ceases to exist, deemed to refer to the organisation as serves substantially the same purposes or object of that authority, institute, association or body;
- (3) a reference to this Deed or to any other deed, agreement, document or instrument includes, respectively, this Deed or such other deed, agreement, document or instrument as amended, supplemented, varied or replaced from time to time;
- (4) a reference to this Deed includes all schedules, annexures and attachments;
- (5) a reference to the Territory or Authority doing or approving any thing or receiving any document or thing from the Developer, includes a reference to the Executive or any Minister of the Territory doing that thing or receiving that document or thing, pursuant to any direction of the Territory or any applicable legislation, and vice versa;
- (6) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
- (7) a reference to a month is a reference to a calendar month;
- (8) a reference to a clause, schedule, annexure or attachment, is a reference to a clause, schedule, annexure or attachment of or to this Deed;

- (9) a reference to any legislation or to any section or provision of it includes any statutory modification or re-enactment or any statutory provision substituted for it and all subordinate laws and other statutory instruments issued under it;
- (10) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day such sum must be paid and such act, matter or thing must be done on the immediately subsequent Business Day;
- (11) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (12) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (13) headings are for convenience only and do not affect the interpretation of this Deed; and
- (14) a reference to a person includes a reference to the person's executors, administrators, successors, and permitted assigns pursuant to the terms of this Deed;
- (15) the verb "include" (in all its parts, tenses and variants) is not used as, nor is it to be interpreted as, a word of limitation; and
- (16) the words "including", "for example" or "such as" do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

Inconsistency

1.3 Despite anything to the contrary, to the extent a party is obliged under this Deed to:

- (a) act in conformity with; or
- (b) give an approval or endorsement based on the subject matter for which the approval or endorsement is sought being consistent with,

the Territory Plan and the City West Master Plan, and those plans are inconsistent;

then that party:

- (c) in the case of (a), satisfies the obligation by acting in conformity with the Territory Plan; or

- (d) in the case of (b), satisfies the approval or endorsement requirement by the subject matter for which the approval or endorsement is sought being consistent with the Territory Plan.

2. Duration of Deed

This Deed will commence on the date it is executed by the parties and will expire on the fulfilment of the parties' obligations or exhaustion of the parties' rights under this Deed whichever is the later.

3. Development of the Land by the Developer

- 3.1 The Developer will, at its own cost, design, construct and complete the Development in accordance with the Development Proposal and in accordance with and subject to the terms of:

- (1) this Deed;
- (2) the Holding Lease;
- (3) the Lease Conditions and Development Requirements;
- (4) the Prescribed Conditions for the Developer Associated Works;
- (5) the principles and policies set out in the Territory Plan, the City West Master Plan, relevant guidelines, practices and laws of the Territory; and
- (6) any Approvals obtained by the Developer,

according to the application of those matters during the course of undertaking the Development.

- 3.2 If there is any inconsistency between the terms of the Development Proposal and the terms of the Lease Conditions and Development Requirements, then the [terms of the Development Proposal or Lease Conditions and Development Requirements] will prevail.

- 3.3 In the event of any delay occurring in approving or undertaking the Development or in carrying out any other obligation under this Deed which is beyond the reasonable control of:

- (1) the Developer, then the Developer may give written notice to the Land Agency;
- (2) the Land Agency, then the Land Agency may give written notice to the Developer,

of such delay as soon as practicable. The Land Agency or the Developer (as applicable) will if it is reasonable to do so extend any time limit provided by this Deed and may do so from time to time for any reason that it thinks fit notwithstanding that the Developer or the Land Agency (as applicable) has not made any application for an extension.

4. Proposal for Development

4.1 The Development includes:

(1) **[insert details]**

4.2 Elements of the Development include:

(1) **[insert details]**

4.3 Sustainability objectives to be incorporated in the Development (where required) include:

(1) **[insert details]**

4.4 Landscape design objectives for the proposal for Development are, where required:

(1) **[insert details]**

4.5 The Development is to be undertaken in the following stages (each subject to obtaining the relevant Approvals):

(1) **[insert details]**

4.6 Community engagement process, including any consultation required by law, to achieve:

[example]

(1) Provision of clear and accurate information on the planning and development of the Proposal to the community and stakeholders;

(2) Provision of a mechanism for the local community and other stakeholders to make input to this planning and development, including identifying the priority issues that need to be addressed at the outset of the process; contributing their views and ideas; and providing feedback on preferred options prior to the scheme's finalisation; and

(3) Progressive refinement of planning in response to this information.

4.7 The Land Agency:

[example]

- (1) acknowledges that the Developer may wish to structure the title to the Consequent Leases in accordance with the *Units Title Act 2001* or the *Community Title Act 2001* or both; and
- (2) has no objection to the Developer structuring the title to the Consequent Leases in accordance with subclause (1).

4.8 The Developer must complete the Development on or before the Completion Date.

4.9 If:

- (1) the Developer has not complied with its obligations in clause 4.8; and
- (2) the Land Agency has issued a written notice to the Developer (**Completion Notice**) requiring it to comply with clause 4.8 within a reasonable period of time, given the nature and extent of the Development to be completed as at the date of the Completion Notice; and
- (3) the Developer has failed to comply with the Completion Notice,

then the Land Agency may terminate this Deed in accordance with clause 16.

5. [Not Used]

6. Developer Associated Works and Land Agency Associated Works

[example only]

- 6.1 The Developer must construct the Developer Associated Works in accordance with the terms and conditions set out in this Deed and in Attachment 4.
- 6.2 The Developer has agreed to contribute \$[insert details] (inclusive of GST) (**Agency Works Contribution**) to the Land Agency Associated Works.
- 6.3 The Developer will pay the Agency Works Contribution on execution of this Deed and upon receipt of a Tax Invoice from the Land Agency.
- 6.4 The Land Agency will spend all the Agency Works Contribution on the Land Agency Associated Works.
- 6.5 The Land Agency must complete the Land Agency Associated Works on or before [insert details] and in accordance with, and otherwise comply with, the obligations referred to in Attachment 6.

7. Contribution to works in the public domain

7.1 [Insert details]

8. Consultation with the Land Agency and Approval of Plans

8.1 The Developer will consult closely and regularly with the Land Agency during the course of the Development and must:

- (1) obtain the consent of the Land Agency to detailed plans, and
- (2) obtain the prior written approval of the Land Agency to any plans submitted to any Relevant Authority.

8.2 If the Developer is required to seek the consent of the Land Agency in accordance with clause 8.1, then the Land Agency must:

- (1) not unreasonably withhold or delay its consent; and
- (2) if consent is not granted or granted conditionally, then set out clearly the grounds upon which the Land Agency will grant its consent.

9. Adjoining Properties

The Developer will:

- (1) fully co-operate with the Land Agency and adjacent lessees and will **[include obligations]**, provided that this does not unreasonably prevent the Developer carrying out the Works and fulfilling its obligations under this Deed; and
- (2) consult with adjoining lessees as to the conduct of the Works so as to minimise any interruption to adjacent lessees.

10. Holding Lease and Consequent Leases [if Holding Lease to be granted]

Grant of Holding Lease

10.1 The Land Agency will cause the Authority to grant the Holding Lease upon payment by the Developer of the Purchase Price.

Grant of Consequent Leases

10.2 The Land Agency will cause the Authority to grant Consequent Leases to the Developer:

- (1) after the date of the Development Approval;
- (2) after receipt of an application from the Developer to issue those leases;
- (3) upon lodgement of:

- (a) detailed lease conditions and development requirements for each proposed Consequent Lease (if appropriate) and proposed by the Developer;
- (b) a plan of survey showing clearly the land to be surrendered from the Holding Lease, and the land intended to remain in the Holding Lease (if appropriate);
- (c) a plan of survey of a Block intended to be the subject of individual Consequent Leases;
- (d) a completed Memorandum of Surrender of Crown Lease for the relevant Stage;
- (e) certification from a registered surveyor that all the bench and survey marks are in place to ACT Survey Office specifications;
- (f) a security for the Developer Associated Works during the defects liability period as set out in Attachment 4; and
- (g) a reasonable security for any uncompleted Developer Associated Works.

10.3 When a Consequent Lease is granted under clause 10.2, the Land Agency will cause the Authority to grant a new Holding Lease to the Developer for the balance of the Land (excluding the relevant Stage).

10.4 On the issue of a Consequent Lease for a Stage, this Deed will cease to operate in respect of that Stage. This clause 10.4 does not affect the accrued rights and liabilities of the parties prior to the issue of the Consequent Lease.

10.5 The Land Agency will procure that any Consequent Lease granted to the Developer does not impose any conditions which are inconsistent with, or not specifically contemplated by, this Deed except as required by any Approval.

OR

10. Crown Lease [if no Holding Lease to be granted]

The Land Agency will cause the Authority to grant the Crown Lease upon payment by the Developer of the Purchase Price. **[other amendments will be required in this event]**

11. Suitability of the Land and Existing Building

11.1 The Developer acknowledges, agrees and warrants that neither the Land Agency nor the Authority is responsible for the accuracy, adequacy or relevance of information either has caused to be provided to the Developer before the date of

this Deed relating to the conditions and characteristics on, in or under, the Land and its surroundings.

11.2 If the Developer becomes aware of:

- (1) latent conditions on, in or under the Land; or
- (2) contamination and environmental protection issues in or with respect to the Land; or
- (3) endangered flora or fauna in or under the Land; or
- (4) any other matter that may adversely affect or cause an increase in costs of the Development,

and the occurrence subjects the Developer to delay in carrying out the Development, or any of its obligations under this Deed, then the time for satisfying any obligation imposed on the Developer is extended by the period of that delay.

Risk of Latent Conditions

11.3 The Developer releases the Land Agency, the Territory and the Authority from liability for all costs, losses, expenses and damages the Developer may suffer or incur arising out of or in connection with all and any of the conditions and characteristics of, on, in, under, near, or in connection with the Land and its surroundings.

11.4 The Developer acknowledges and warrants to the Land Agency, the Territory and the Authority that it:

- (1) has not relied upon the completeness and accuracy of, any information, statement or representation, written or oral, made, provided or given by the Land Agency, the Territory, the Authority or any agent of the Land Agency, the Territory or the Authority to the Developer prior to the date of this Deed in connection with conditions and characteristics of, on, in, under, near or in connection with, the Land; and
- (2) has had the opportunity to examine and been given access to the Land and its surroundings for the purpose of carrying out investigations and testing to determine the conditions and characteristics on, in, under, near or in connection with, the Land.

Native Title Application

11.5 If there is an application relating to native title (**Native Title Application**) with respect to the Land or any part of it, then if a Native Title Application subjects the Developer to delay in carrying out the Development, the time for satisfying any

obligation imposed on the Developer under this Deed is extended by the period of that delay.

Heritage and National Trust

- 11.6 If there is any action or proceeding commenced with respect to the Land or any part of it under heritage or national trust legislation, then if that action or proceeding subjects the Developer to delay in carrying out the Development, the time for satisfying any obligation imposed on the Developer under this Deed is extended by the period of that delay.

Artefacts

- 11.7 All artefacts (including any matter or thing of historical, geological, scientific or other value, whether fossils or other artefacts) (**Artefacts**) discovered on or under the surface of the Land shall as between the Territory and the Developer be the absolute property of the Territory.
- 11.8 The Developer will:
- (1) at all times permit and allow the Land Agency, the Territory or any person authorised by the Land Agency or the Territory to watch or examine any excavations on the Land provided that such person does not unreasonably interfere with the carrying out of the Developer's rights and obligations under this Deed and does not delay completion of any part of the Works or the Development;
 - (2) at the cost of the Land Agency or the Territory, take every precaution to prevent Artefacts being removed or damaged; and
 - (3) immediately upon discovery of any Artefact notify the Land Agency or the Territory of such discovery and carry out at the cost of the Land Agency or the Territory the Territory's orders as to the delivery up or disposal of such Artefact.

- 11.9 In the event that the Development is delayed by reason of the discovery or the removal of Artefact, the time for satisfying any obligation imposed on the Developer under this Deed is extended by the period of that delay.

Land Agency Warranties

- 11.10 The Land Agency warrants that to the best of its knowledge on the date of this Deed:
- (1) there are no:
 - (a) latent conditions;
 - (b) contamination and/or environmental protection issues;

- (c) endangered flora and fauna;
 - (d) Artefacts,
- on, in, under or concerning the Land;
- (2) there is no Native Title Application;
 - (3) the Land and any tree or plant or improvement on or concerning them, are not affected by any heritage or national trust legislation, proceeding or claim.

12. Development Applications and Approvals

- 12.1 The Developer will lodge a Development Application for the Development and the Developer Associated Works in accordance with the requirements of the Land Act.
- 12.2 The Land Agency will lodge a development application (**Land Agency Associated Works DA**) in accordance with the Land Act with the Authority for the Land Agency Associated Works.
- 12.3 The Land Agency must obtain the prior written consent of the Developer to the Land Agency Associated Works DA and its related plans and specifications. The Developer will not unreasonably withhold or delay its consent, and, in any event, must notify the Land Agency of its decision within 7 days of receipt of the Land Agency Associated Works DA.
- 12.4 The Developer acknowledges that any approval given by the Land Agency to any plan in accordance with this Deed does not mean that any required approval, consent or licence will be given by any Relevant Authority.

13. Representations and Warranties

Representations and Warranties by the Developer

- 13.1 The Developer makes the following continuing representations and warranties for the benefit of the Land Agency:
 - (1) it has in full force and effect all authorisations necessary to enter into and perform its obligations in accordance with this Deed and the Holding Lease;
 - (2) it has power to enter into and perform its obligations in accordance with this Deed and the Holding Lease, to undertake the matters or transactions which those documents contemplate will be carried out by it and to carry on its business, and the entry into of each such document is a proper exercise of power;

- (3) its obligations under the Holding Lease are valid and binding and are enforceable against it and in accordance with their respective terms subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditors' rights;
- (4) its execution, delivery and performance of the Holding Lease in accordance with this Deed and the matters to be undertaken by it under each of them do not:
 - (a) violate its constituent legislation, or
 - (b) cause a limitation on its powers or the powers of its officers to be exceeded;
- (5) at the date of this Deed, no litigation (which has not been disclosed to the Developer in writing prior to the date of this Deed), arbitration, tax claim, dispute or administrative or other proceeding has been commenced or, to its knowledge, threatened against it which will have a material adverse effect upon it or its ability to perform its financial or other obligations under any development documentation to which it is expressed to be a party.

Representations and Warranties by the Land Agency

13.2 The Land Agency makes the following continuing representations and warranties for the benefit of the Developer:

- (1) it has all necessary power and holds all authorisations necessary to enter into and perform its obligations in accordance with this Deed and the Holding Lease;
- (2) its execution, delivery and performance of the Holding Lease in accordance with this Deed and the matters to be undertaken by it under each of them do not:
 - (a) violate its constituent legislation, or
 - (b) cause a limitation on its powers or the powers of its officers to be exceeded;
- (3) at the date of this Deed, no litigation (which has not been disclosed to the Developer in writing prior to the date of this Deed), arbitration, tax claim, dispute or administrative or other proceeding has been commenced or, to its knowledge, threatened against it which will have a material adverse effect upon it or its ability to perform its financial or other obligations under this Deed; and
- (4) to the extent that obligations or other undertakings or assurances are provided in this Deed on the part of the Authority, the Land Agency has all relevant authority to enter into them on behalf of the Authority.

14. Mutual Indemnity

- 14.1 If a Claim is made by a third party against one party to this Deed (“First Party”) in respect of any act or omission committed or omitted by it before the Holding Lease is granted to the Developer, then the other party to this Deed (“Second Party”) will indemnify the First Party to the extent to which the Claim arises from the acts or omissions of the Second Party.
- 14.2 Notwithstanding the provisions of clause 14.1, the Developer will not be required to indemnify the Land Agency in respect of any claim arising from an objection to or an appeal against a Development Application.

15. Intellectual Property Rights

- 15.1 The Developer warrants to the Land Agency that it has title to, intellectual property rights (including copyright) in or adequate licences and consents for the Developer to use all documentation for the Development and that neither it nor (as far as using them in relation to the Development) the Land Agency, the Territory nor the Authority are or will be in breach of any third party’s intellectual property rights in that documentation by virtue of anything provided in this Deed or to be undertaken pursuant to this Deed.

16. Default and Termination

Termination by the Land Agency

- 16.1 Subject to the terms of this Deed, if:
- (1) the Developer defaults in a material respect in the due observance and performance of any of its material obligations under this Deed and (if remediable) the Developer does not commence to remedy such default to the reasonable satisfaction of the Land Agency within 30 days of receipt of written notice specifying the default; or
 - (2) the Developer permanently abandons the Development otherwise than in accordance with this Deed,

then the Land Agency may by written notice require the Developer to show cause as to why this Deed shall not be terminated. Unless the Developer shall show adequate cause within a period of 14 days to the reasonable satisfaction of the Land Agency then the Land Agency may by written notice terminate this Deed but shall not in any event do so unreasonably or vexatiously.

- 16.2 If a breach by the Land Agency of its obligations under this Deed is a material or contributing cause of the occurrence of an event set out in clause 16.1 or delays or prevents the Developer’s ability to remedy such an event, the Land Agency will not exercise any of the rights and remedies otherwise given to it under clause 16 until the Land Agency has remedied the breach of its obligation.

Termination by the Developer

16.3 Subject to the terms of this Deed, if:

- (1) the Land Agency defaults in a material respect in the due observance and performance of any of its material obligations under this Deed and (if remediable) the Land Agency does not commence to remedy such default to the reasonable satisfaction of the Developer within 30 days of receipt of written notice specifying the default; or
- (2) the Holding Lease or any Consequent Lease is not granted in accordance with this Deed;

then the Developer may by written notice require the Land Agency to show cause as to why this Deed shall not be terminated. Unless the Land Agency shall show adequate cause within a period of 14 days to the reasonable satisfaction of the Developer then the Developer may by written notice terminate this Deed but shall not in any event do so unreasonably or vexatiously.

16.4 If a breach by the Developer of its obligations under this Deed is a material cause of the occurrence of an event set out in clause 16.3 or delays or prevents the Land Agency's ability to remedy such an event, the Developer will not exercise any of the rights and remedies otherwise given to it under clause 16 until the Developer has remedied the breach of its obligation.

Other Rights

16.5 Nothing in this clause 16 prejudices any other rights or remedies of the parties in respect of any breach of this Deed.

16.6 If this Deed is terminated for any reason the Authority may terminate the Holding Lease (if granted) in accordance with its terms and pursuant to law (but may not terminate any Consequent Lease granted) without prejudicing any rights or remedies the Developer may have in respect of the termination of this Deed.

17. Dispute Resolution

17.1 If a difference or dispute ("Dispute") arises in relation to this Deed either party may give written notice to the other that a Dispute exists and giving details of the Dispute. The parties agree that, following the issue of such a notice, they will endeavour to resolve the Dispute by negotiations, including by referring the Dispute to persons who have authority to intervene and direct some form of resolution.

17.2 If the Dispute has not been resolved under subclause 17.1 within 28 days of the notice of the Dispute, then the parties agree that they will undertake a mediation process. The mediator will be an independent mediator agreed by the parties or, failing agreement, nominated by the chairperson of the Institute of Arbitrators and

Mediators Australia, ACT Chapter. Unless otherwise agreed, the parties will share the costs of the engagement of the mediator.

- 17.3 Nothing in this clause will prejudice the rights of either party to institute proceedings to enforce the Deed or to seek injunctive or urgent declaratory relief in respect of any Dispute.

18. No Agency, Joint Venture, Partnership etc.

- 18.1 Nothing contained or implied in this Deed constitutes a party the partner, agent, joint venturer, or legal representative of another party for any purpose or creates any partnership, agency, joint venture or trust, and no party has any authority to bind another party in any way.

19. Assignment

Rights in this Deed

- 19.1 The Developer may assign its rights under this Deed (in whole or part) with the consent of the Land Agency provided:
- (1) the Land Agency is satisfied (acting reasonably) that the assignee is capable and has the financial capacity to comply with the obligations being assigned; or
 - (2) the Land Agency is provided with a performance bond in a form reasonably acceptable to the Land Agency or a guarantee and indemnity in a form reasonably acceptable to the Land Agency representing the amount of the value of the Developer Associated Works to be completed in accordance with this Deed.

Following any assignment, the Developer will be released (except in respect of an assignment to a related body provided for in clause 19.2) from any further obligations to the extent of its rights assigned.

Assignment to related body

- 19.2 The Developer may, on not less than 10 Business Days' prior notice to the Land Agency, assign its rights under this Deed (in whole or in part) to an entity wholly owned or controlled by it and the consent of the Land Agency is not required, however, the Developer will not be released from its obligations.

20. Good Faith

- 20.1 Each party will act in good faith towards the other in relation to carrying out their obligations under this Deed and provide all assistance reasonably required to promptly expedite the Development and any Approvals.

21. Assistance

21.1 Without limiting the parties' obligations under this Deed, each party will promptly do, or cause others to promptly do, everything reasonably required to finalise anything, and obtain any Approval necessary as promptly as reasonably practical and (in relation to any Approval or administrative decision) within any applicable statutory time frame, concerning the Development and this Deed.

22. Force Majeure

22.1 Subject to clause 22.2, where the Developer is unable, wholly or in part, by reason of a Force Majeure event, to carry out any obligation in accordance with the time specified or as otherwise specified in, or permitted pursuant to, this Deed, and the Developer:

- (1) gives the Land Agency prompt notice of that Force Majeure event with reasonably full particulars and, insofar as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- (2) uses all reasonable endeavours to overcome that Force Majeure event as quickly as possible,

then the Developer shall be relieved of any liability which would otherwise arise as a result of such inability and/or any consequent default or breach which may (but for this clause) arise either pursuant to this Deed or at law and (where relevant) the time for compliance with the relevant and consequential obligations is extended by the period of the delay attributable the Force Majeure event.

22.2 If after 90 days the Force Majeure event continues, the parties must meet in good faith to discuss the situation and endeavour to achieve a mutually satisfactory resolution of the problem.

23. Costs

23.1 Each party must bear:

- (1) its own costs, including professional costs and disbursements, associated with the preparation and execution of this Deed and any subsequent consent, agreement, approval or waiver hereunder or amendment thereto; and
- (2) unless the context otherwise provides, the costs associated with the performance of its obligations under this Deed.

24. GST

24.1 The Purchase Price does not include GST.

24.2 If GST is imposed on any supply made by a party (First Party) to the other party (Second Party) under this Deed, the Holding Lease, a Consequent Lease or otherwise related to or connected with the Development, then the Second Party must pay in addition to any consideration payable or to be provided by the Second Party, an additional amount calculated by multiplying the prevailing GST Rate by the consideration for the relevant supply.

24.3 If required by the Developer, the Land Agency must (if able) use the Margin Scheme to calculate any GST payable on a supply under, or contemplated by this Deed.

24.4 For the purposes of this clause 24:

GST means any tax however described imposed in any circumstances on the supply of goods services or anything else;

GST Rate means the rate of GST expressed as a percentage; and

Margin Scheme has its meaning in *A New Tax System (Goods and Services Tax) Act 1999*.

25. Miscellaneous

Notices

25.1 Every notice or other communication of any nature whatsoever required to be served, given or made under or arising from this Deed:

- (1) must be in writing ;
- (2) must be left at the address of the addressee set out below or sent by prepaid ordinary post to the address of the addressee set out below or sent by facsimile to the facsimile number set out below or if the addressee notifies another address or facsimile number then to that address or facsimile number:

Land Agency

Address: Land Development Agency
27 Wentworth Avenue
KINGSTON ACT 2604

Facsimile: (02) [Insert]
Attention: [Insert]

Developer

Address: The Australian National University
Chancelry Building

University Administration
East Road
Australian National University
Canberra ACT 0200

Facsimile: (02) 6125 5482
Attention: [Insert]

- (3) must be marked for the attention of the person referred to in paragraph 25.1(2);
- (4) is taken to be given, served or made in relation to a party in any relevant jurisdiction;
 - (a) in the case of delivery by hand, on delivery;
 - (b) in the case of prepaid mail, on the third Business Day after the date of posting;
 - (c) in the case of facsimile, on receipt of a transmission report confirming successful receipt at the conclusion of the transmission; and
- (5) will be sufficient if executed by the party giving, serving or making the same or on its behalf by any attorney, director, secretary, other duly authorised officer or solicitor of such party.

Waiver

- 25.2 A failure to exercise or enforce or a delay in exercising or enforcing or a partial exercise or enforcement of any right, remedy, power or privilege under this Deed by either party will not in any way preclude or operate as a waiver of any further exercise or enforcement of it or the exercise or enforcement of any other right, remedy, power or privilege under this Deed or provided by law.

Further Assurance

- 25.3 Each party must at its cost and expense immediately on demand by the other party perform all such acts and execute all such agreements, assurances and other documents and instruments as the other party reasonably requires to perfect the rights and powers afforded, created or intended by the parties to be afforded to or created in favour of that other, by this Deed.

Variation

- 25.4 This Deed may only be varied by the written agreement of the parties.

Severability of Provisions

25.5 If the whole or any part of a provision of this Deed is void, unenforceable or illegal then (if required by the Developer) it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the Developer reasonably determines the severance:

- (1) alters the basic nature of this Deed; or
- (2) is contrary to public policy.

Parties' Representative

25.6 The parties will within seven days of the date of this Deed give notice in writing to each other in which they nominate the persons that will act as a representative of and be authorised to act on behalf of them in discharging their functions under this Deed. A party may nominate more than one person, and if so, it must in its written notice specify the functions which each person is authorised to discharge. A party may replace its representative by notifying the other party in writing.

Counterparts

25.7 This Deed may be executed in a number of counterparts and all such counterparts taken together will be deemed to constitute one and the same agreement.

Australian Currency and Measurements

25.8 All prices and sums of money referred to in, and payments required to be made under, this Deed shall be in the lawful currency of the Commonwealth of Australia.

25.9 All measurements of physical quantities will be in Australian legal units of measurements in accordance with the *National Measurement Act 1960* (C'th).

Governing Law

25.10 This Deed will be governed by and construed in accordance with the laws of the Territory, and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

Approvals not to affect obligations

25.11 The giving of any approval or the making of any direction or appointment or the exercise of any authority or discretion or the exercise, giving or making of any other matter or thing of any nature hereunder by a party shall not, except where this Deed expressly provides to the contrary, relieve the other party from its obligations under this Deed.

Non-merger

- 25.12 None of the terms, or conditions of this Deed or the warranties or indemnities in this Deed nor any act, matter or thing done under or by virtue of or in connection with this Deed shall operate as a merger of any of the rights and remedies of the parties in or under this Deed, all of which will continue in full force and effect until the respective rights and obligations of the parties under this Deed have been fully performed and satisfied.

Developer's other rights

- 25.13 Nothing in this Deed limits or adversely affects any other rights the Developer may have (including under the *Land Act* or the *Building Act*) in relation to an act, omission or decision of the Land Agency, the Territory, a Minister, the Land Agency's Agents, the Land Agency's Representative, the Territory's agents, the Authority, a Relevant Authority or the Assembly including without limitation an Approval.

Approvals or Consents

- 25.14 Except where otherwise provided in this Deed, where the approval or consent of the Land Agency is required that approval or consent will not be unreasonably withheld or delayed. Any approval or consent given by the Land Agency does not mean that any required approval, consent or licence will be given by any Relevant Authority, including the Authority.

Indemnities

- 25.15 The indemnities in this Deed are continuing obligations, independent from the other obligations of the parties under this Deed and continue after this Deed ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Deed.

SIGNED as a deed on the date first above written.

SIGNED SEALED AND DELIVERED by)

)

)

For and on behalf of the **LAND**)

DEVELOPMENT AGENCY)

)

)

.....

.....
Signature of Witness)

.....
Name of Witness

THE COMMON SEAL of)

THE AUSTRALIAN NATIONAL)

UNIVERSITY was duly affixed in the)

presence of:)

)

)

)

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Signature

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Signature

)

.....
Print name

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Print Name

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Office held

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Office held

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ATTACHMENT 1

Plan of Land/Development Site

ATTACHMENT 2

Development Proposal

ATTACHMENT 3

Holding Lease

ATTACHMENT 4

Prescribed Conditions for Developer Associated Works

ATTACHMENT 5

Lease Conditions and Development Requirements

ATTACHMENT 6

Land Agency obligations for Land Agency Associated Works

SCHEDULE 3
Disallowable Instrument

Australian Capital Territory

Land (Planning and Environment) Direct Lease Grants in (City West) Precinct Criteria 2004

Disallowable instrument DI2004-XX

made under the

Land (Planning and Environment) Act 1991 section 161 (7) (Granting of leases)

The criteria for the direct grant of a lease in the City West Precinct are as set out in this instrument.

Commencement

This instrument commences on the day after its notification day.

Interpretation

In this Instrument:

“Act” means the *Land (Planning and Environment) Act 1991*;

“Authority” means the Planning and Land Authority, a body corporate established by section 7 of the *Planning and Land Act 2002*;

“City West Precinct” means that area of land contained in **[insert title details]** and shaded on the diagram annexed to this Instrument;

“Development Deed” means a deed entered into between the Land Development Agency and the University in accordance with the terms of the Precinct Deed;

“Development Proposal” means a proposal for the development of the lease that has been endorsed by the Territory and the University in accordance with the terms of the Precinct Deed;

“land” means land situate within the City West Precinct;

“lease” includes the right to the grant of a lease of land under the Act;

“market value” means the value determined in accordance with the Precinct Deed; and

“Precinct Deed” means the Precinct Deed entered into between the Territory and the University dated **[insert date]** that governs the establishment and development of the City West Precinct.

“University” means the Australian National University, an institution pursuant to the *Australian National University Act 1991* (Cth) of Acton, in the Australian Capital Territory;

Application

1. The University may apply for the direct grant of a lease within the City West Precinct.
2. The University must:
 - (1) complete and sign an application for the lease in the required form that
 - (a) provides full details of the land in respect of which a lease is sought, and
 - (b) demonstrates that each of the criteria has been or will be met before the grant of the lease;
 - (2) accompany the application with a Development Proposal;
 - (3) pay any applicable fees and charges notified by the Authority.

Criteria

1. The University must pay the market value for the lease as notified by the Authority.
2. The University must enter into a Development Deed.
3. The University must demonstrate the financial capacity to undertake the servicing and construction program and to develop and manage the land.
4. The University must demonstrate the non-financial capacity, including expertise, experience and resources, to undertake the development and manage the land.

Application of this Instrument

1. This instrument does not affect the operation of any other instrument made under section 161(7) of the Act.
2. This instrument ceases to apply to land in the City West Precinct if, on an application under this instrument, the Authority does not grant a lease of the land within 6 months after the day of the application because of a default by the University.
3. Also, this instrument ceases to apply to land in the City West Precinct if, in the absence of any application by the University for the direct grant of a lease of the land the Territory gives the Authority written notice in accordance with the Precinct

Deed that the land specified in the notice ceases to be land in the City West Precinct.

Expiry

This instrument expires 10 years after the day it commences.

Minister for
December 2004

Minister for
December 2004

SCHEDULE 5
Existing Occupants

A person who occupies a part of the Precinct at the date of this Deed under a licence from the Territory or the Authority.

DATE OF THIS DEED 21 December 2004

SIGNED for and on behalf of the
AUSTRALIAN CAPITAL TERRITORY
in the presence of:

[Redacted Signature]

Signature of Witness

G. FRIEDEWALD

Print name

[Redacted Signature]

Signature of Territory Delegate

JON SHANHOPE

Print Name

CHIEF MINISTER

SIGNED for and on behalf of
THE AUSTRALIAN NATIONAL
UNIVERSITY

in the presence of:

[Redacted Signature]

Signature of Witness

K. J. GRIME

Print name

[Redacted Signature]

Signature of authorised officer*

*delete whichever is not applicable (see note below)

IAN CUTHBERT VICE CHANCELLOR

Print name and position

Signature of second authorised officer*

*see note below

Print name and position



Note:

Date: Must be dated on the date the last party signs the Deed or, if signed counterparts of the Deed are exchanged, the date of exchange. Also date the cover page.

Individual: Must be signed by the individual and witnessed.

Incorporated Association: Must be signed in accordance with the Association's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

Company: Must be signed in accordance with section 127 of the Corporations Act 2001 (Cwlth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Company's constitution.