



## EVALUATION PLAN

### 1. AIM

This Evaluation Plan details the project timetable, the Evaluation Team, its responsibilities, the evaluation methodology, and the evaluation criteria by which offers received will be evaluated. The Request for Tender or other procurement documents **must** include the evaluation criteria and methodology as set out herein.

### 2. EVALUATION TEAM

The Evaluation Team detailed below has been formed to evaluate the responses for the stated project. All members of the Evaluation Team are aware of their responsibilities, and the need to demonstrate confidentiality, impartiality and equity to all respondents.

The Evaluation Team will be responsible for:

- (a) maintaining probity
- (b) evaluating the responses in accordance with the criteria and methodology
- (c) documenting the evaluation process
- (d) preparing an Evaluation Report
- (e) seek Chief Executive or delegate approval to proceed with a contract with the preferred respondent and
- (f) debriefing unsuccessful respondents.

The Evaluation Team will comprise:

Position	Name	Title	Department
Chairperson	Richard Drummond	Project Director	EDD
Member	Phil Liddicoat	Senior Project Officer	Treasury
Member	Ian Wood Bradley	Director Urban Renewal	EDD
Member	Alastair Swain	Government Architect	ESDD

Probity Officer: Dr Loretta Zamprogno  
Deputy Chief Solicitor  
ACT Government Solicitor

These members are experienced and knowledgeable regarding requirements set out in the Request for Tender and the Evaluation Plan. Members of the Evaluation Team are personally appointed and will not be withdrawn or replaced without the written approval of the delegate.

**REQUEST FOR TENDER**  
**BLOCK 20 SECTION 34 DICKSON**

The Evaluation Team may, as required, utilise specialist advice to assist in the evaluation process. The areas of expertise may include:

- (a) technical analysis
- (b) financial assessment
- (c) probity
- (d) legal issues.

### **3. LATE RESPONSES**

Where a late tender is received, the time and date of receipt must be noted on the document and endorsed by the recipient.

Late tenders and incomplete tenders may be admitted for evaluation at the absolute discretion of the Evaluation Team. In deciding whether to admit a late tender to evaluation, the Evaluation Team may take into account any factors it considers relevant, including without limitation:

- (a) whether the late tenderer is likely to have had an opportunity to obtain some unfair advantage from late submission
- (b) how late the tender is, the reasons given for lateness and evidence available
- (c) whether the tender was mishandled by the LDA, by an official postal service, or by a reputable delivery service and
- (d) evidence of unfair practices.

### **4. EVALUATION PROCESS**

All tenders received will be assessed using the methodology outlined below. The methodology takes into consideration possible short listing of tenders and the process that will be used to assess value for money.

#### **Initial Compliance Statement**

The Tender Evaluation Team will examine each offer received against the requirements of the RFT and the evaluation criteria. Clarification or additional information, for example, tenderer contact information, may be sought from tenderers where this information does not materially impact on the compliance of the tender.

#### **Nonconforming Tender**

Any Tender that does not comply with the Request Tender or is incomplete may be deemed to be nonconforming and may be:

- (a) excluded from further consideration
- (b) accepted by ignoring any non-conformance in the tender or
- (c) if possible—accepted after the tenderer corrects the non-conformance.

#### **Alternative Tender**

An alternative tender will only be considered if accompanied by a conforming tender. Alternative tenders will initially be evaluated to determine if the tender could provide a product or service that meets the project objectives achieved by a conforming tender. If such a tender is considered not to provide such benefit, it may be excluded from further consideration.

#### **Additional Information/Clarification**

The Tender Evaluation Team may, in writing, seek additional information or clarification of tenders received where this information neither materially impacts on the conformance of the tender (threshold criteria) nor alters the tendered price. All requests for clarification must be fully documented and appropriately filed.

#### **Public Sector Offers**

Any offers received from government bodies (Local, State, Territory or Commonwealth) will be evaluated using the principle of competitive neutrality as defined by the National Competition Policy i.e. offers should include all commercial costs that private sector organisations would include in their offers.

#### **Evaluation**

Evaluation criteria may be altered as needed by the project officer in accordance with procurement guidelines

All compliant Tenders will be evaluated against the assessment criteria.

Any Proposal that does not meet all the threshold criteria may be excluded from further consideration.

Remaining Tenders received will be evaluated against the selection criteria

Tenders will be reviewed by Evaluation Team members against each criterion. The Evaluation Team will then agree on a consensus score out of 10 for each Tender against each criterion in accordance with the scoring regime. Any Proposal that is rated as marginal or less against any of the Evaluation Criteria may be excluded from further consideration.

The agreed Evaluation Team score will then be multiplied by the criteria weighting to obtain a weighted score for each criterion for each offer. The individual weighted scores for each criterion will then be summed to obtain a total weighted score for each Tender.

The preferred Tenderer with the highest weighted score, offering best value for money having regard to all relevant factors, might not necessarily be the lowest priced Tender. In cases where the scores do not clearly differentiate between the leading tenderers (within one point), they shall be evaluated comparatively against two highly weighted criteria Technical Skills and Methodology.

The Evaluation Team will recommend to the Delegate that the Tenderer with the highest overall weighted score, having regard to all relevant factors, be declared the preferred tenderer.

**Post Tender Negotiations** (if required)

Post tender negotiations will take place solely with the preferred tenderer until such time as: (i) a contract is agreed, (ii) the preferred tenderer withdraws their tender (iii) the capacity to negotiate is exhausted or (iv) the LDA decides to accept no tenders and elects to recall tenders.

**Debriefing**

On formation of a contract or in the event that no tenders are accepted, the unsuccessful tenderers will be notified in writing and offered the opportunity to attend a debriefing session.

**5. EVALUATION CRITERIA**

Apart from the conformity with the requirements of the RFT, the Panel will evaluate Responses in accordance with the criteria outlined below.

	<b>MANDATORY ASSESSMENT CRITERIA</b>	<b>COMPLIES YES/NO</b>
MC 1	Tenderers should provide a schematic development plan for the site showing the floor plans elevations and proposed uses within the development.	Y/N
MC 2	Tenderers shall provide estimated timeframes for redevelopment of the site.	Y/N
MC 3	Tenderers shall demonstrate the compliance of their proposed development with the proposed master plan.	Y/N
MC 4	Tenderers shall provide details of proposed purchase price for the site and payment terms.	Y/N
MC 5	Tenderers shall demonstrate their financial capacity to undertake the development.	Y/N

The Panel is under no obligation to proceed with any one or more Tenderers. This RFT process may be varied or discontinued at any time at the Territory's absolute discretion.

The Territory does not guarantee, warrant or otherwise represent that any business will be contracted with any Tenderer.

No legal obligations arise as a result of this RFT.

**Scoring Regime**

The Evaluation Team will use the numerical scoring scale set out below.

The Evaluation Team will meet, discuss and reach a consensus score for each tender against each project-specific criterion.

If a consensus score cannot be agreed for a tenderer's response to a particular criterion, the individual scores will be averaged to determine the consensus score. The following table contains the scores to be applied. Half scores may be used.

Rating	Description	Score (example)
Excellent	Exceeds requirements in all ways, with very little or no risk	10
Very Good	Meets requirements in all ways, exceeds it in some, little risk involved	8-9
Good	Meets the requirement and is workable, acceptable risk	6-7
Marginal	Nearly meets requirement, workable but may be deficient or limited in some areas, some element of risk	4-5
Poor	Offer is difficult to assess against criteria, high risk	1-3
Non-compliant	Tenderer has either stated non-compliance, demonstrated non-compliance, or there is insufficient information to assess	0

**Criteria Assessment**

Each criterion for each tender will be assessed and rated in terms of risk to the LDA as set out in the following table:

Rating	Description
Acceptable Risk	The proposal represents a low or workable level of risk, typical of what the LDA would be expected to bear for this type of project.
Unacceptable Risk	The proposal represents a level of risk higher than "acceptable risk", contains risks not present in other tenders and would reasonably be anticipated to take longer than the specified time to complete, or pose a greater risk to achieving the specified quality.

**6. ASSESSING THE LEVEL OF RISK**

The Project Team will prepare a Risk Management Plan using the included Risk Assessment Matrix. The matrix identifies the major risk categories for the project and rates them according to their likelihood and consequences to enable a final risk ranking to be allocated to the project.

The Risk Register is the global assessment of all the identified risks associated with the project. It aggregates the likelihood of identified events and their consequences and assigns a risk rating to each event ranked in order of priority from highest to lowest with red indicating very high risk and orange/yellows for high to medium risk.

The Residual Risk Rating will assist in identifying appropriate risk treatment controls.

**Managing the level of risk**

The Risk Treatment Plan details each discrete event identified on the Risk Register and assesses each contributing factor together with control strategies for addressing them to arrive at a comprehensive risk treatment plan with identified personnel, resources and timelines.

The Risk Treatment Plan only applies to events listed on the Risk Register with a level of risk rated as very high or high.

A separate page must be completed for each of these events. If the risk rating after a treatment control has been applied (the residual risk) is still very high or high, risk monitoring must either be elevated to the General Manager or reported upon on a regular basis.

**7. EVALUATION REPORT AND LETTERS OF DECLINE/DEBRIEFINGS**

**Evaluation Report**

The evaluation team will prepare a Tender Evaluation Report to cover the following information as appropriate.

- (a) background to the process;
- (b) the evaluation process,
- (c) the order of preference of tenders;
- (d) value for money;
- (e) proposed methods for management of risks;
- (f) identification of any issues which should be resolved by negotiation; and
- (g) recommendations to the Chief Executive or approving delegate.

### **Debriefing of Unsuccessful Tenderers**

Letters will be sent to all unsuccessful tenderers and should include:

1. thanks for submitting an offer, registration or pre-qualification information
2. regret that they were unsuccessful on this occasion
3. an offer to debrief
4. an encouragement to submit offers in the future.

Any debriefings will be held in accordance with Procurement Circular 2007/05 Debriefing Unsuccessful Tenderers







**ACT**  
Government

**REQUEST FOR TENDER**  
**FOR**  
**SALE OF BLOCK 20 SECTION 34**  
**DICKSON**



**ECONOMIC DEVELOPMENT DIRECTORATE**

**ISSUE DATE: SATURDAY 15 SEPTEMBER 2012**

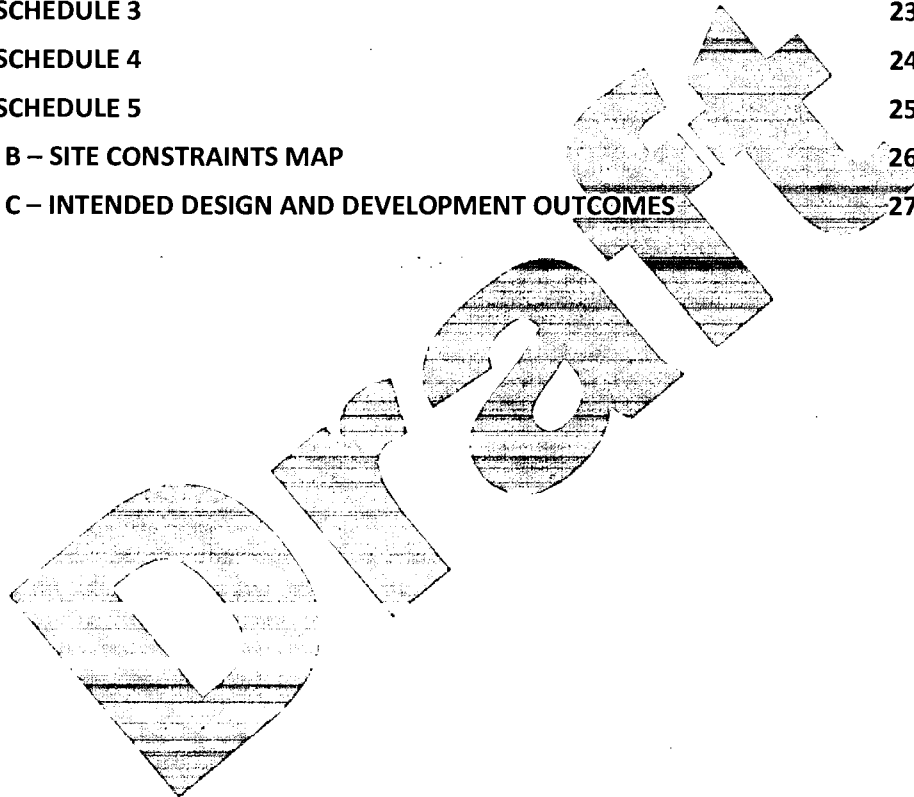
**CLOSING DATE: THURSDAY 15 NOVEMBER 2012**

**CLOSING TIME: 2:00PM CANBERRA TIME**

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**1 DEFINITIONS**

(a) In this RFT:

**Bank Guarantee** means a bank guarantee which satisfies the criteria set out in clause 3 of the Specimen Contract for Sale.

**Certificate of Occupancy** means a certificate of occupancy issued under section 69 of the *Building Act 2004* (ACT).

**Closing Time** means 2.00pm (Canberra time) on Thursday 15 November 2012 (subject to any extension by LDA at its discretion).

**Confidential Information** means information that LDA treats as confidential because it is satisfied that disclosure of the information would:

- (i) be an unreasonable disclosure of personal information about a person;
- (ii) disclose a trade secret;
- (iii) disclose information (other than a trade secret) having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed;
- (iv) be an unreasonable disclosure of information about the business affairs of a person; or
- (v) contravene a requirement imposed under law that requires a party to the contract to keep the information confidential.

**Contact Officer** means the person named as the Contact Officer in clause 15 of this RFT.

**Contract for Sale** means the contract for sale between LDA and the successful tenderer in respect of the Land (in substantially in the terms as the Specimen Contract for Sale in Returnable Schedule 3).

**Crown Lease** means the Crown lease in respect of the Land issued on or before completion of the Contract for Sale in accordance with the Contract for Sale and substantially in the form set out in the Specimen Lease.

**Deposit** has the same meaning as set out in the Contract for Sale.

**Eligible Person** means a person or entity that is:

- (i) a natural person or a company; and
- (ii) is legally capable of entering into the Contract for Sale and Project Delivery Agreement and satisfying all conditions and obligations set out in each of those documents.

**Intended Design and Development Outcomes** means the document titled "Dickson Block 20 Section 34 Intended Design and Development Outcomes" a copy of which is attached at Attachment C.

**Land** means Block 20 Section 34 Division of Dickson.

**LDA** means the Land Development Agency and includes its officers, employees, agents, consultants and advisors.

**Offer Period** means the period commencing at the Closing Time and ending at 5.00pm on the date that is 60 days after the Closing Time.

**Planning Act** means the *Planning and Development Act 2007* (ACT).

**Planning and Land Authority** means the body corporate established under section 10 of the Planning Act.

**Prescribed Conditions** means the prescribed conditions for off site works that will be annexed to the Contract for Sale.

**Project Delivery Agreement** means the Project Delivery Agreement made on the date of the Contract for Sale in relation to the Land.

**Returnable Schedules** means the returnable schedules included in Attachment A.

**RFT** means this Request for Tender, as may be amended by LDA from time to time.

**Site Constraints Map** means the site constraints map that is attached at Attachment B.

**Specimen Contract for Sale** means the specimen contract for sale included in the Returnable Schedules.

**Specimen Lease** means the specimen Crown Lease that will be annexed to the Contract for Sale.

**Specimen Project Delivery Agreement** means the project delivery agreement included in the Returnable Schedules.

**Tender** means an irrevocable offer comprising the Returnable Schedules 1 to 5.

**Territory** means

- (i) when used in a geographical sense the Australian Capital Territory; and
- (ii) when used in any other sense the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth).

**Territory Plan** means the *Territory Plan 2008* as amended and varied from time to time.

**PART A – OVERVIEW****2 THE LAND DEVELOPMENT AGENCY**

- (a) LDA is established by the Planning Act. It undertakes land development, land sales and major development projects on behalf of the ACT Government.
- (b) LDA is a statutory corporation with a strong commercial focus. Along with the requirement to provide a financial return to Government that is consistent with industry benchmarks, LDA assists in the delivery of relevant Government's policy objectives, including affordable housing and achieving quality development outcomes.

**3 THE LAND OFFERED IN THIS RFT**

This RFT is for the granting of a Crown Lease for Block 20 Section 34 Division of Dickson. While tenderers are required to familiarise themselves with the Land and satisfy themselves that it is suitable for their particular requirements prior to submitting a Tender, some of the key features of the Land are:

- (a) It is located in Dickson, an inner north suburb of Canberra. It is bounded by Dickson Place to the north and Badham Street to the west. The site adjoins the Tradesmen's Union Club to the south and the access way into the underground car park servicing the Club to the east.



Figure 1 - Location of site within the Dickson Group Centre

- (b) It is currently zoned CZ1 and is subject to the Dickson Precinct Code. However, the Dickson Centre Master Plan contemplates a variation to the Territory Plan that would affect the Land. All publically available documents can be found on the planning project webpage at:  
[http://www.actpla.act.gov.au/data/assets/pdf\\_file/0003/22944/Dickson\\_master\\_plan\\_web.pdf](http://www.actpla.act.gov.au/data/assets/pdf_file/0003/22944/Dickson_master_plan_web.pdf)
- (c) Draft Territory Plan Variation 311 was recently released for public comments. It proposes to change the planning provisions on development of land within the Dickson group centre and to rezone part of the Land for use as a park and rezone the remainder of the Land to CZ3, increasing the permitted building height to six storeys. The draft variation is to be given interim effect from the start of public consultation under section 65 of the Planning Act.

- (d) The process for consultation and consideration of the Draft Territory Plan Variation and its subsequent incorporation into the Territory Plan are outlined in the Draft Territory Plan Variation and tenderers should refer to that document. General information about variations to the Territory Plan can also be found on the Planning and Land Authority's website at:

[http://www.actpla.act.gov.au/tools\\_resources/legislation\\_plans\\_registers/plans/territory\\_plan/territory\\_plan\\_master\\_page](http://www.actpla.act.gov.au/tools_resources/legislation_plans_registers/plans/territory_plan/territory_plan_master_page)

- (e) The Land is an irregular trapezoid shape with an area of approximately 5,282 square metres. The site boundaries are approximate only and will need to be confirmed by survey as there is no Deposited Plan for the Land.

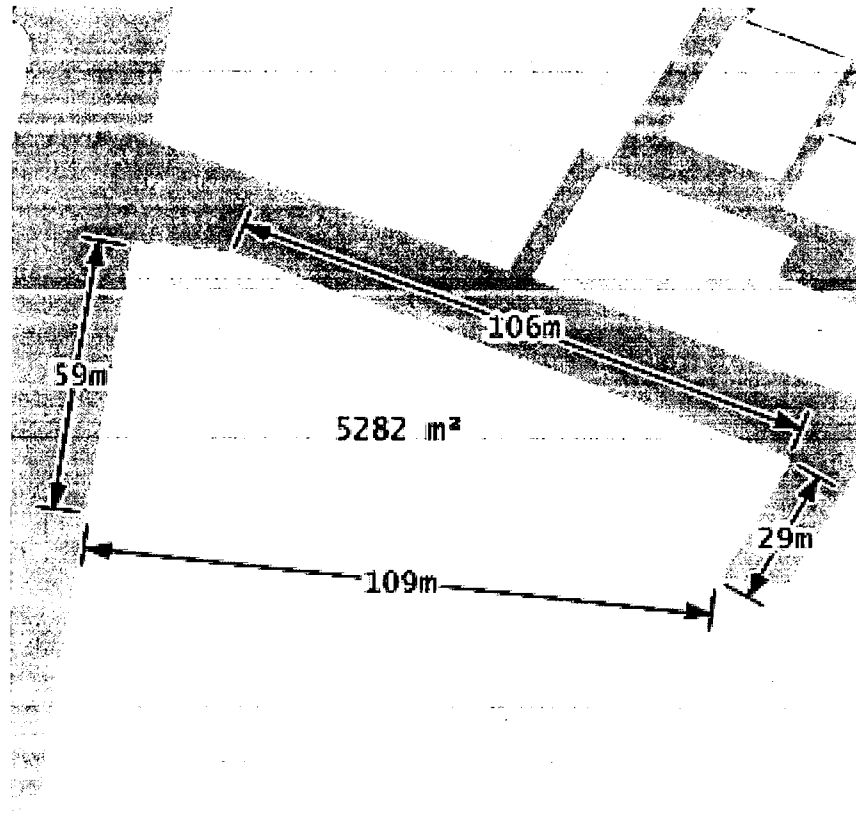


Figure 2 - Block 20, Section 34, Dickson

- (f) The Land has been identified by the Territory as being a necessary source of short term overflow car parking whilst the redevelopment of Block 21 Section 30 Dickson is being undertaken. For this reason, settlement of the Contract for Sale of the Land will not occur until the later of two years from the date of the Contract for Sale or until a Certificate of Occupancy has been issued following the redevelopment of Block 21 Section 30 Dickson. If a Certificate of Occupancy following the redevelopment of Block 21 Section 30 Dickson has not been issued within 4 years of the date of the Contract for Sale, the successful tenderer and LDA will each have the opportunity to rescind the Contract for Sale.
- (g) Prior to redevelopment of the Land, the successful tenderer will be required to provide a temporary traffic management plan and short term car parking strategy to demonstrate how the loss of the public car parking on the site will be provided whilst the Land is being redeveloped.
- (h) The Specimen Lease will be issued as an addendum to this RFT in accordance with clause 13(a). The Specimen Lease:
- (i) will permit the uses of:

- A. business agency, club, community activity centre, drink establishment, financial establishment, indoor entertainment facility, indoor recreation facility, public agency restaurant and shop RESTRICTED TO the ground floor;
  - B. hotel;
  - C. office LIMITED to 4,000 square metres RESTRICTED TO the first floor and above; and
  - D. residential use RESTRICTED TO the first floor and above.
- (ii) will require active frontages along the ground floor of buildings fronting Badham Street and the pedestrian accessway;
  - (iii) will require that a public access easement be provided by the Lessee for the area delineated as parkland;
  - (iv) will provide that the maximum gross floor area of all buildings on the land will be 14,000 square metres; and
  - (v) will provide that the development on the Land must be commenced within 24 months and completed within 36 months of the commencement of the Crown lease or the issue of a Certificate of Occupancy for Block 21 Section 30 Dickson following redevelopment, whichever is later.

If the Territory Plan is not varied in the form of the Draft Territory Plan Variation and, as a result, the 'Purpose' clause of the Crown Lease is not in the same form as the Specimen lease, the successful tenderer and LDA will each have the opportunity to terminate the Contract for Sale.

- (i) There will be Prescribed Conditions and the draft Prescribed Conditions will be issued as an addendum to this RFT in accordance with clause 13(a). The Prescribed Conditions are likely to require as a minimum:
  - (i) stormwater to fully service the Land;
  - (ii) water service to fully service the Land;
  - (iii) sewer services to fully service the Land;
  - (iv) heavy duty driveway crossings in accordance with the Territory and Municipal Services Directorate (TAMSD) standard specifications;
  - (v) footpaths as required by TAMSD;
  - (vi) tree assessment;
  - (vii) tree planting as required by TAMSD;
  - (viii) verge works as required by TAMSD; and
  - (ix) any other works required by TAMSD as a result of an audit of any plans submitted for development approval.

The Prescribed Conditions will be included in the 'Associated Works' clause of the Crown Lease. If the Associated Works required by the Crown Lease are not in the same form as required by the draft Prescribed Conditions, the successful tenderer and LDA will each have the opportunity to terminate the Contract for Sale.

- (j) Tenderers should note that the Specimen Project Delivery Agreement requires the following works:

- (i) The development of a publicly accessible park on the north-west corner of the Land with a minimum area of 1,300 square metres. The park will have a continuous ground plane extending from the back of the Dickson Place kerb to the new building line and will need to comply with TAMSD Design Standards and Specifications and comply with the Intended Design and Development Outcomes. The successful tenderer, as part of their development application, must apply to surrender the Crown Lease and seek a regrant which excises this park from the Land.
- (ii) Requirements for the park include:
- A. The section from the back of kerb to the property boundary must:
- a. Be hard paved;
  - b. Include street trees at about 10m centres that are planted in structural soils and that are naturally irrigated by stormwater runoff; and
  - c. Include new street lighting to AS/NZS 4360.2004 Categories V3 and P1.
- B. The section from the property boundary to the building line must:
- a. Complement the verge treatment to create a fully integrated public place;
  - b. Include hard and soft landscape treatments;
  - c. Include public lighting to AS/NZS 4360.2004 Category P7;
  - d. Include public seating equal to at least six standard 2000 bench seats;
  - e. Include at least 10 bicycle racks in at least two readily accessible and convenient locations;
  - f. Include at least one public drinking fountain;
- C. Hard paving in both the verge and the lease area shall include a minimum of 150 thick reinforced concrete slab.
- D. Oxides, saw cutting and other treatments may be used to create a high quality in-situ concrete finish.;
- E. If a unit paving finish is used, then unit pavers shall be properly fixed to the 150 thick reinforced concrete slab with a paving adhesive such as 'Latercrete'.
- F. Pavers bedded on sand are unacceptable.
- (iii) Establishment of a pedestrian accessway from Badham Street to Dickson Place with a minimum width of 11 metres, consistent with the Site Constraints Map and the Intended Design and Development Outcomes. The successful tenderer will be required to consent to a public access easement across the accessway following its completion. The accessway must be on Section 34 to the south of the building on Block 20. To avoid doubt, it is not necessary that the accessway be located on the Land. Requirements for the pedestrian accessway include:
- A. The section from the property boundary to the building line shall:
- a. complement the verge treatment to create a fully integrated public place;

- b. include hard and soft landscape treatments;
    - c. include public lighting to AS/NZS 4360.2004 Categories P7; and
    - d. include public seating.
  - B. Hard paving in both the verge and the lease area shall include a minimum of 150mm thick reinforced concrete slab. Oxides, saw cutting and other treatments can be used to create a high quality in-situ concrete finish.
  - C. If a unit paving finish is used, then unit pavers shall be properly fixed to the slab. Pavers bedded on sand are unacceptable.
  - D. The section between the new building and the existing buildings to the south and east shall:
    - a. be designed in such a way as to prioritise pedestrian movement and safety;
    - b. include high quality paving material fixed to a reinforced concrete slab;
    - c. include public lighting; and
    - d. use windows and detailing of the facade to minimise blank frontage.
- (k) Tenderers are to make their own enquires regarding site conditions. At the time of release of this RFT the LDA has not undertaken any investigations as to:
  - Engineering site investigations
  - Traffic and parking assessments
  - Environmental and Ecological investigations
  - Heritage
  - Geotechnical
  - Detailed boundary and site suveys
  - Contamination, asbestos and hazard investigation
- (l) Tenderers should be aware that any and all risks associated with the site conditions remain wholly with the tenderer, and that further development conditions and controls may be imposed by Territory authorities or agencies as a result of the assessment of any future development applications lodged with the Planning and Land Authority.

#### 4 ELIGIBLE TENDERERS

- (a) Any Eligible Person is permitted and invited to submit a Tender in respect of this RFT.
- (b) The LDA will accept Tenders from consortiums provided such Tenders comply with the requirements set out in this RFT and complete the relevant Returnable Schedule.
- (c) Tenders may be submitted by Eligible Persons as trustees for trusts.
- (d) Foreign tenderers should note that the Contract for Sale requires them to warrant that the Commonwealth Treasurer cannot prohibit the transfer of the Crown lease to them under the *Foreign Acquisitions and Takeovers Act 1975*. If the successful tenderer is not able to satisfy this requirement, the Contract for Sale may be terminated and the Deposit may be forfeited to LDA.

- (e) Any Eligible Person who is a prospective tenderer may register their interest in this RFT by notifying the Contact Officer in writing. Eligible Persons are not required to register with the Contact Officer to submit a Tender, however, doing so ensures they are provided with any addenda and obtain access to questions and answers submitted during the RFT process.

## 5 RFT TIMEFRAMES

An indicative timetable for the Tender process is set out below. Dates specified in that timetable are subject to change at LDA's absolute discretion.

RFT-Task	Date for Completion of-Task
RFT Release	Saturday 15 September 2012
Last day for asking clarification questions	5.00 pm on [date]
Final responses from the Contact Officer	5.00 pm on [date]
Closing Time	2.00 pm on Thursday 15 November 2012
Notify successful tenderer of execution of Contract for Sale	[date]
Notify unsuccessful tenderers and return the Deposit	[date]

## PART B – HOW TO SUBMIT A TENDER

### 6 DOCUMENTS TO BE SIGNED AND LODGED

Tenderers must complete the Returnable Schedules. In completing the Returnable Schedules all tenderers must ensure that:

- (a) all Returnable Schedules and all attachments and supporting material are written in English;
- (b) measurements (if applicable) are expressed in Australian legal units of measure (metric where applicable) and prices in Australian Dollars; and
- (c) if the tenderer represents a consortium:
  - (i) the Contract for Sale must be executed by a single legal entity; and
  - (ii) the relevant Returnable Schedule must be completed and returned with the Tender.

### 7 FUNDS TO BE PROVIDED WHEN LODGING THE TENDER

- (a) The tenderer must ensure that the Tender is lodged with the Deposit.
- (b) The Deposit may be provided in the form of cheque payable to the "Land Development Agency" or Bank Guarantee.
- (c) Tenderers should note the successful tenderer will be required to pay security in the amount of \$1,000,000 to secure their obligations under the Project Delivery Agreement, however the security will only be payable upon completion of the Contract for Sale and should not be lodged with the Tender.

**8 EXECUTION OF THE TENDER DOCUMENTS**

- (a) If a tenderer is a company it must execute the documents:
  - (i) in accordance with section 127 of the *Corporations Act 2001* (ie, by 2 directors or 1 director and 1 company secretary, except if the company is a sole director/sole secretary entity by that sole director/secretary); or
  - (ii) by attorney of the company pursuant to a power of attorney registered in the ACT.
- (b) If a tenderer is a natural person the documents must be executed:
  - (i) by that person; or
  - (ii) by attorney of that person pursuant to a power of attorney registered in the ACT.

**9 LODGING THE TENDER**

- (a) The Tender must be lodged in a sealed envelope marked as follows:

**LDA Tender Block 20 Section 34 Dickson**

- (b) The Tender must be lodged in:

**The ACT Government's Shared Services Procurement Tender Box**

located at

**Ground Floor, North Building**

**Dame Pattie Menzies House**

**16 Challis Street**

**DICKSON ACT 2602**

**10 TIME OF TENDER LODGEMENT**

- (a) Tenders must be lodged by the Closing Time.
- (b) LDA may, at any time before the Closing Time, change the Closing Time to a later time or date. If LDA changes the Closing Time it will use reasonable endeavours to notify that change to persons who have registered with the Contact Officer as prospective tenderers.
- (c) Tenders must not be lodged via email or facsimile. Any purported Tender submitted by email or facsimile will not be accepted as a Tender. It may be reviewed by LDA but will be excluded from evaluation.
- (d) Any Tender lodged after the Closing Time may be reviewed by LDA but will be excluded from evaluation and will be returned to the tenderer as an unaccepted Tender unless, in the opinion of LDA, there are extenuating circumstances justifying the acceptance of the Tender.
- (e) Any Tender lodged by the Closing Time but otherwise not in compliance with this RFT may be excluded from or admitted to evaluation by LDA at LDA's sole discretion.

**PART C – BRIEFING, QUESTIONS AND ADDENDA****11 BRIEFING**

LDA may convene a briefing on the RFT for prospective tenderers to attend. Details of the date, time and venue of any such briefing will be published by the Contact Officer. Any information provided at the briefing will be provided subject to the terms and conditions of this RFT.

**12 QUESTIONS**

- (a) Following release of this RFT, prospective tenderers may submit questions in writing to LDA seeking clarification or additional details about Land, the Contract for Sale, the Specimen Project Delivery Agreement, the Specimen Lease or any other aspect of the RFT. All such questions must be:
- (i) submitted in writing, including emails;
  - (ii) addressed to the Contact Officer; and
  - (iii) submitted on or before the last day for asking clarification questions set out in the RFT timeframes referred to in clause 5.
- (b) The LDA will provide answers to questions submitted in accordance with this clause, where it deems the questions relevant. However it will not provide answers that:
- (i) may disclose Confidential Information or privileged information;
  - (ii) may, in the opinion of LDA, give an unfair advantage to any prospective tenderer; or
  - (iii) in the opinion of LDA are not in the best interests of LDA or the Territory to disclose.
- (c) The LDA shall publish all questions for which it has provided answers (and the answers) on or before the date for final responses from the Contact Officer referred to in clause 5 in a form reasonably accessible to all prospective tenderers.

**13 ADDENDA**

- (a) LDA may issue addenda to this RFT for the purposes of clarifying or amending it. All addenda issued will become part of the RFT. Tenderers must respond to this RFT as amended by all addenda.
- (b) Tenderers must, on submitting a Tender, acknowledge receipt of each addendum.

**14 LDA CONTACT OFFICER**

- (a) The Contact Officer is the person with whom prospective tenderers should register their interest.
- (b) The Contact Officer is the only LDA point of contact for all matters pertaining to this RFT. Any unauthorised contact by tenderers with other LDA staff in connection with this RFT may result in exclusion of the Tender.
- (c) Any notice given by a tenderer to LDA will be effective upon receipt, and only if in writing and delivered to the Contact Officer at the address specified.
- (d) LDA may deliver any written notification to a tenderer by leaving it or causing it to be left at the address of that tenderer, or by sending it to the email address of that tenderer as specified in their Tender or as otherwise subsequently nominated in writing by the tenderer to the Contact Officer.

**15 THE CONTACT OFFICER ADDRESS AND DETAILS**

Name: Richard Drummond  
Directorate: Economic Development Directorate  
Address: Level 6, 470 Northbourne Avenue  
Phone: 02 6207 0274  
Fax: 02 6207 0123

Mobile: 0402 26 26 26  
 Email: richard.drummond@act.gov.au

## PART D – ASSESSMENT OF TENDERS

### 16 EVALUATION PROCESS

- (a) Tenders will be assessed in accordance with the following criteria:

ASSESSMENT CRITERIA		Weighting
C 1	Tenderers shall provide details of proposed purchase price for the site.	40%
C 2	Tenderers shall demonstrate their financial capacity to undertake the development.	20%
C 3	Tenderers should provide a schematic development plan for the site showing the floor plans, elevations and proposed uses within the development.	20%
C 4	Tenderers shall demonstrate the compliance of their proposed development with the Dickson Centre Master Plan.	10%
C 5	Tenderers shall provide estimated timeframes for redevelopment of the site.	10%

- (b) Tenderers should note that the designs and other information that the successful Tenderer provides in their Proposal against criteria C3, C4 and C5 will be incorporated into the Project Delivery Agreement.
- (c) A Tender may be excluded if it is non-conforming, including if, in the opinion of LDA:
- (i) the Tender is incomplete or non compliant with the requirements of this RFT;
  - (ii) the Tender is subject to any condition or requirement which is contrary to the requirements of this RFT; or
  - (iii) the Tender is subject to a condition or requirement that further due diligence or other investigations must be performed after the Tender is submitted.
- (d) The LDA may at its discretion seek clarification from the tenderer about any matter that may be relevant to the evaluation of the Tender.
- (e) LDA may make independent enquiries about any tenderer or matter that may be relevant to the evaluation of any Tender.

### 17 SELECTION

- (a) At the end of the evaluation process, a Tender may be selected as successful, or one or more Tenders may be selected as preferred or shortlisted by LDA. LDA may conduct further negotiations with any one or more tenderers, or LDA may discontinue the Tender process without selecting any Tender as successful or preferred or for shortlisting.
- (b) LDA is not obliged to accept any Tender, or to select any Tender(s) as preferred or for shortlisting, and may discontinue the Tender process at any time.

**18 AWARDING THE TENDER**

If LDA determines a Tender is successful it may, without any notice or discussion with the successful tenderer:

- (a) sign the Contract for Sale, Project Delivery Agreement and any other documents necessary to effect the execution of the Contract for Sale;
- (b) deal with the Deposit in any ways consistent with the Contract for Sale; and
- (c) notify the successful tenderer and any other tenderers of the result of the RFT.

**PART E – STANDARD TERMS AND CONDITIONS****19 CONTRACTUAL OBLIGATIONS**

- (a) Neither the release of this RFT, nor the submission of any Tender, will create or evidence any contractual or other enforceable obligations or any other binding undertaking of any kind by LDA (including one that could give rise to any promissory estoppel, quantum meruit or on any other contractual, quasi contractual or restitutionary grounds or any rights with a similar legal or equitable basis) in relation to:
  - (i) the conduct of this RFT process; or
  - (ii) whether or not LDA in fact enters into a contract with a tenderer.
- (b) The submission of a Tender by a tenderer constitutes an irrevocable offer by the tenderer to acquire the Crown Lease on the conditions set out in this RFT.

**20 LDA'S RIGHTS**

- (a) LDA may at any time:
  - (i) cancel, add to or amend the information, requirements, terms, procedures or processes set out in this RFT;
  - (ii) provide additional information to tenderers including by way of addenda;
  - (iii) extend the Closing Time;
  - (iv) if any prospective tenderer requests any clarification in respect of this RFT, forward (on a non attributable basis) that request for clarification and any clarification given to any other Eligible Person who has registered their interest with the Contact Officer;
  - (v) suspend or terminate the RFT process;
  - (vi) admit or exclude any Tender or tenderer from the RFT process;
  - (vii) accept or reject or shortlist any Tender, regardless of its compliance or non compliance with this RFT;
  - (viii) request and rely on any clarification or additional information from any tenderer;
  - (ix) enter into negotiations with any one or more tenderers, including but not limited to negotiations as to price;
  - (x) discontinue negotiations with any tenderer;
  - (xi) elect not to proceed to select any successful Tender or any preferred Tender(s) or to shortlist any Tender(s); or

- (xii) in respect of documents lodged by a tenderer, complete and deal with documents in accordance with clause 36 of this RFT.
- (b) Any time or date in this RFT is for the sole convenience of LDA. The establishment of a time or date in this RFT does not create an obligation on the part of LDA, to take any action or extend any right to any tenderer to expect that any action be taken on the date established. LDA may notify tenderers if LDA exercises any of the rights listed in this RFT but will not be obliged to provide any reasons for its actions.
- (c) Where this RFT provides that LDA “may” do a thing, it may do so in its absolute discretion, at any time and without having to notify any tenderer(s) or provide any reason(s).

## 21 EXCLUSIONS OF LIABILITY

- (a) Participation in any stage of this RFT process or in relation to any matter concerning the RFT process will be at each tenderer’s sole risk, cost and expense. LDA will not be liable in any circumstances whatsoever for:
  - (i) any cost, expense, loss, claim or damage arising out of, or in connection with, any tenderer’s participation in this RFT process including attending any briefing, the preparation and submission of a tender, participation in a presentation or interview, arranging and conducting a site visit or the preparation and negotiation of a contract;
  - (ii) any cost, expense, loss, claim or damage arising or resulting from the exercise of any of LDA’s rights referred to in this RFT; or
  - (iii) any failure by LDA to inform tenderers of the exercise of any of LDA’s rights under the RFT.
- (b) The LDA will not be liable to any tenderer on the basis of any promissory estoppel, quantum meruit or on any other contractual, quasi contractual or restitutionary grounds or any rights with similar legal or equitable basis whatsoever or in negligence as a consequence of any matter or thing relating or incidental to a tenderer’s participation in the RFT process, including, without limitation, instances where:
  - (i) LDA varies or terminates this RFT process or any negotiations with a tenderer;
  - (ii) LDA decides not to proceed with or to change any aspect of the RFT;
  - (iii) LDA exercises or fails to exercise any of its rights under or in relation to this RFT; or
  - (iv) LDA makes information available or provides information to a tenderer relating to its assets, procedures, plans, Tender, existing arrangements for the project or any other future arrangements.

## 22 NOTICE AND DISCLAIMER

- (a) This RFT is not an offer by LDA to enter into a Contract for Sale, nor does it constitute any recommendation, and it does not include any investment, accounting, financial, legal or tax advice.
- (b) This RFT has been prepared for tenderers' sole use in deciding whether to respond to this RFT or to undertake further investigation of the opportunity described in it. Any Tender lodged by a tenderer is an irrevocable offer by the tenderer to pay the tendered price for the right to the grant of the Crown Lease on the terms set out in this RFT. A tenderer’s offer is capable of acceptance by LDA at any time within the Offer Period.

- (c) Neither the information in this RFT nor any other information provided to tenderers by LDA, its officers, employees, agents or advisors contains or purports to contain all the information that tenderers would desire or require to assess the opportunity for participation in the RFT process and the projects contemplated by the RFT.
- (d) The LDA:
- (i) is not, and will not be, responsible or liable for the accuracy, currency, reliability or completeness of any information provided to tenderers;
  - (ii) makes no express or implied representation or warranty that any estimate or forecast will be achieved or that any statement as to future matters will prove correct;
  - (iii) expressly disclaims any and all liability arising from all information provided to tenderers including errors or omissions contained in the information;
  - (iv) except so far as liability under any statute cannot be excluded, accepts no responsibility arising in any way from errors in or omissions from this RFT or any information provided to tenderers in negligence;
  - (v) does not represent that they apply any expertise which can be relied upon by tenderers or any other interested party;
  - (vi) has no responsibility to inform tenderers of any matter arising or of which they become aware which may affect or qualify any information provided to tenderers in any way;
  - (vii) accepts no liability for any loss or damage suffered by any person as a result of that person, or any other person, placing any reliance on the contents of this RFT or any information provided to tenderers; and
  - (viii) assumes no duty of disclosure or fiduciary duty to any interested party.
- (e) Tenderers must independently satisfy themselves as to the accuracy of this RFT and all information provided to them and must conduct their own inquiries, investigations, analysis and appraisal of this RFT and must seek appropriate professional advice about this RFT and all information provided to them with respect to:
- (i) the projects contemplated by the RFT; and
  - (ii) all assumptions, uncertainties and contingencies, which may affect the projects contemplated by the RFT.
- (f) Tenderers must decide whether to submit a Tender on the basis of their own due diligence investigations, inquiries, advice and knowledge and LDA and its officers, employees, agents, consultants and advisers are not under any duty at any time to disclose any fact matter or circumstance concerning LDA, the RFT process, the projects contemplated by the RFT or anything else.

## 23 OWNERSHIP OF RFT

- (a) In this RFT the expression "Intellectual Property Rights" means present and future copyright, registered and unregistered trademarks, industrial designs and registered or registrable patents, semiconductor and circuit layout rights, trade, business and company names, trade secrets, or any other proprietary rights and any rights to registration of those rights in Australia or elsewhere.
- (b) All documents in this RFT are the property of LDA. All Intellectual Property Rights contained in this RFT are retained by LDA and/or any third party who has given LDA permission to incorporate

them in this RFT. No part of this RFT may be reproduced, stored in a retrieval system or transmitted in any form, by any method, including electronic, for any purpose, except as expressly permitted under applicable legislation or by permission of LDA. However, tenderers may reproduce any information provided by LDA to them in electronic format as part of this RFT for the sole and exclusive purpose of preparing their Tender.

#### **24 OWNERSHIP OF TENDERS**

Upon lodgement, all Tenders will become the property of LDA. LDA may make further copies of, and use, any Tender for the purpose of conducting the RFT process and evaluating Tenders. However, any Intellectual Property Rights in the information contained in the Tenders will not pass to LDA simply by virtue of the lodgement of that Tender.

#### **25 DISCLOSURE OF CONFIDENTIAL INFORMATION**

- (a) Any requests for information contained in Tenders to be treated as Confidential Information will be considered by LDA in its absolute discretion.
- (b) Notwithstanding this, Confidential Information provided by tenderers as part of their Tenders may be disclosed by LDA:
  - (i) if it is already in the public domain;
  - (ii) as required by law;
  - (iii) to a court or tribunal;
  - (iv) to other agencies of the Territory;
  - (v) to a member of the Legislative Assembly;
  - (vi) to the Auditor-General;
  - (vii) to the responsible Minister;
  - (viii) to LDA's agents, advisors, consultants and employees in order for them to consider the tenders; or
  - (ix) to anybody else with the tenderer's permission to do so.
- (c) In addition to the above disclosures, the successful tenderer's details including their name, the Land details and the purchase price will be made publicly available after execution of the Contract for Sale.
- (d) If LDA provides tenderers with information expressly stated as Confidential Information, the tenderers must not disclose that information to any person other than to their employees or advisors directly involved in the preparation of their Tender. Tenderers must comply with this obligation both during and after the RFT process, for so long as such information is considered by LDA to be Confidential Information.

#### **26 APPLICABLE LAW**

The law applying in the Australian Capital Territory applies to this RFT process.

#### **27 PRESENTATION AND INTERVIEWS**

Tenderers may be required to give a presentation and be interviewed in person as part of the RFT process. If so, LDA may provide tenderers with a protocol for the presentation and interview process.

**28 SECURITY, PROBITY AND FINANCIAL CHECKS**

LDA may perform security or financial (including credit) checks in relation to tenderers, their directors, partners, associates, or related entities including consortium members and their officers or employees. This may also include contact with financial advisers and auditors to clarify information or seek additional information. These checks may require individuals to sign forms verifying information relating to an individual and/or authorising the provision of confidential or personal information. Tenderers must provide, at their cost, all reasonable assistance to LDA in this regard.

**29 RETURN OF INFORMATION**

LDA may, at any stage during the RFT process, require tenderers to:

- (a) return to LDA; or
  - (b) destroy and provide LDA with certification of the destruction of,
- any information supplied by LDA to tenderers, in any material form, in connection with the RFT.

**30 CONFLICTS OF INTEREST**

A conflict of interest may exist, for example, if the tenderer or any of its personnel has a relationship (whether professional, commercial or personal) with another party who is able to influence the RFT process (such as LDA personnel or advisers). Where a tenderer identifies that a conflict of interest exists or might arise in its participation in the RFT process, the tenderer must identify that actual or potential conflict of interest in writing in its Tender and must complete the warranty in the Returnable Schedules in relation to conflict of interest.

**31 FALSE AND MISLEADING CLAIMS**

Tenderers are advised that giving false or misleading information is an offence. LDA may reject any Tender which is found to have made a false or misleading claim or statement.

**32 COLLUSIVE BIDDING**

- (a) Tenderers, consortium members and their respective officers, employees, agents and advisers must not engage in any collusive tendering (other than tendering by consortia to the extent permitted by this RFT), anti-competitive conduct or any other similar unlawful conduct with any other tenderer or any other person in relation to the preparation or lodgement of their Tender.
- (b) In addition to any other remedies available, LDA may reject any Tender lodged by a tenderer that is engaging or has engaged in any collusive bidding, anti-competitive conduct or any similar conduct with any other tenderer or any other person in relation to the preparation or lodgement of its Tender. LDA may also involve the Australian Competition and Consumer Commission to provide assistance to LDA in relation to any competition issues concerning a tenderer or related to a Tender.

**33 UNLAWFUL INDUCEMENTS**

Tenderers and their officers, employees, agents or advisers must not have violated and must not violate any applicable laws or LDA or Territory policies regarding the offering of inducements in connection with the preparation of their tender.

**34 IMPROPER ASSISTANCE**

Tenderers must not communicate with nor solicit information concerning or relating to the RFT process from employees of LDA or of the Territory, except through the Contact Officer.

**35 DEBRIEFING OF TENDERERS**

- (a) Tenderers may request an oral debriefing following the conclusion of the RFT process. Tenderers desiring a debriefing should approach the Contact Officer.
- (b) Any debriefing will be limited to matters relevant to the tenderer's Tender and the evaluation criteria contained in this RFT. Tenderers will not be provided with information concerning other Tenders, except to the extent that such information is already publicly available or comparative statements can be made without breaching confidentiality.

**36 AUTHORITY TO COMPLETE**

- (a) The provisions of this clause 36 shall apply:
  - (i) in respect of any Specimen Contract for Sale or any Specimen Project Delivery Agreement which is lodged with any Tender and, in LDA's opinion, is incomplete or not correctly signed; and
  - (ii) in respect of any discrepancy in information contained in the Tender.
- (b) If a Specimen Contract for Sale or Specimen Project Delivery Agreement submitted by a tenderer does not include any schedule, annexure or other document which the Specimen Contract for Sale of Specimen Project Delivery Agreement requires or contemplates will be included in that document:
  - (i) each document omitted is deemed to be included in and to form part of the relevant document submitted by the tenderer; and
  - (ii) LDA may insert the omitted document(s) in each Specimen Contract for Sale or Specimen Project Delivery Agreement (as applicable) submitted by the tenderer.
- (c) If, in the opinion of LDA, a tenderer has not properly executed the Specimen Contract for Sale or Specimen Project Delivery Agreement lodged with a Tender, LDA may require, or may permit, a tenderer to re-execute the relevant document(s) or execute substitute documents.
- (d) If LDA accepts an offer made by a tenderer and the tenderer has not included relevant particulars of the tenderer or Tender (including any amount) in the Specimen Contract for Sale or the Specimen Project Delivery Agreement lodged with its Tender, LDA may complete those details in the relevant document(s).

## ATTACHMENT A – RETURNABLE SCHEDULES

*The following pages of this RFT should be detached, completed and returned to LDA*

- Returnable Schedule 1 - Checklist and warranty
- Returnable Schedule 2 - Tenderer's details
- Returnable Schedule 3 - Specimen Contract for Sale
- Returnable Schedule 4 - Specimen Project Delivery Agreement
- Returnable Schedule 5 - Consortium details

**RETURNABLE SCHEDULE 1****CHECKLIST AND WARRANTY****Checklist**

In submitting this Tender, the tenderer has:

	Please tick
Completed this Checklist and signed the Warranty (Returnable Schedule 1)	<input type="checkbox"/>
Completed the tenderer's details and acknowledged each addendum to the RFT (Returnable Schedule 2)	<input type="checkbox"/>
Signed the Contract for Sale (Returnable Schedule 3)	<input type="checkbox"/>
Inserted the tendered amount as the "Price" in the Schedule to the Contract for Sale (Returnable Schedule 3)	<input type="checkbox"/>
Signed the Specimen Project Delivery Agreement (Returnable Schedule 4)	<input type="checkbox"/>
Completed the Consortium Members and Details Schedule (if applicable) (Returnable Schedule 5)	<input type="checkbox"/>
Provided information and designs for the LDA's consideration accordance with the assessment criteria in clause 16(a)	<input type="checkbox"/>
Provided the Deposit	<input type="checkbox"/>

Warranty by \_\_\_\_\_

*Print full name and ACN of Tenderer*

With respect to the Request for Tender (RFT) for the Sale of Block 20 Section 34 Dickson (Land), the Tenderer warrants to the Land Development Agency (LDA) that:

- (a) it has undertaken reasonable checks and searches and are not aware of any information, relationships or other matters that may give rise to a conflict of interest or the potential for a conflict of interest in respect of this tender that has not been disclosed to LDA in writing;
- (b) it has read and understood, and its Tender is submitted in accordance with, the RFT;
- (c) it has obtained, or had reasonable opportunity to obtain, appropriate experts' advice in respect of the Land;
- (d) it accepts that it is LDA's usual practice to publish on LDA's website after exchange of contracts the buyer's details including their name, the block and section details and the purchase price ;
- (e) it has submitted the Tender taking into account the matters acknowledged above; and
- (f) all information in this Tender is true and correct at the time of of lodgement.

This Warranty is executed as a deed poll on the date below.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2012

FOR COMPANY:

SIGNED SEALED AND DELIVERED by or for and on )  
behalf of )

\_\_\_\_\_  
*Company name and ACN*

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/ Secretary/ Witness

\_\_\_\_\_  
*Print full name*

\_\_\_\_\_  
*Print full name*



FOR ATTORNEY:

SIGNED SEALED AND DELIVERED for and on behalf of

\_\_\_\_\_  
Company name and ACN

by its duly constituted attorney

\_\_\_\_\_  
Print full name

under Power of Attorney No. \_\_\_\_\_

\_\_\_\_\_  
Signature of Attorney

in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print full name

FOR INDIVIDUAL:

SIGNED SEALED AND DELIVERED for and on behalf of

\_\_\_\_\_  
Company name and ACN

\_\_\_\_\_  
Signature

in the presence of:

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print full name

Notes:

- Company: Must be signed in accordance with section 127 of the Corporations Act 2001 (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the company's constitution.
- Attorney: Full name and registered power of attorney number must be stated, and Attorney's signature witnessed.
- Individual: Must be signed by an authorised individual and witnessed.

**RETURNABLE SCHEDULE 2**

**TENDERER'S DETAILS**

Tenderer's Name (and ACN if Company): \_\_\_\_\_

Registered Office: \_\_\_\_\_

Principal Place of Business: \_\_\_\_\_

Date and Place of Incorporation: \_\_\_\_\_

Trading and Business Names: \_\_\_\_\_

Registered Business Number: \_\_\_\_\_

Australian Business Number: \_\_\_\_\_

Registration for GST:      Yes                       No

Telephone Numbers:      Business Telephone: \_\_\_\_\_      After Hours: \_\_\_\_\_

**Contact Person**

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**We acknowledge receipt of the following addendum / addenda issued by LDA in relation to this RFT:**

**(insert each addendum number)** \_\_\_\_\_

**RETURNABLE SCHEDULE 3**

**SPECIMEN CONTRACT FOR SALE**

**RETURNABLE SCHEDULE 4**

**SPECIMEN PROJECT DELIVERY AGREEMENT**

**RETURNABLE SCHEDULE 5**

**CONSORTIUM MEMBERS AND DETAILS (IF APPLICABLE)**

	Member # 1	Member # 2	Member # 3
Member's Name & ACN:			
Registered Office:			
Principal Place of Business:			
Date and Place of Incorporation:			
Trading and Business Names:			
Registered Business Number:			
Australian Business Number:			
Registration for GST: Yes / No			
Telephone Number			
Business Telephone:			
After Hours:			
Contact Person			
Name:			
Position:			
Address:			
Telephone Number:			
Fax Number:			
Email Address			
<p><b>MEMBER DETAILS (AS ABOVE) MUST TO BE PROVIDED FOR EACH CONSORTIUM MEMBER.</b></p> <p><b>Attach extra pages as required for any additional consortium members.</b></p>			

**Indicate the nature, structure and shareholding of the tenderer and outline the proposed financial arrangements underpinning the consortium:**

ATTACHMENT B – SITE CONSTRAINTS MAP

**ATTACHMENT C – INTENDED DESIGN AND DEVELOPMENT OUTCOMES**

# **Project Delivery Agreement**

**Block 20 Section 34 Dickson.**

**Land Development Agency (LDA)**

**AND**

**The Developer**

**Australian Capital Territory  
Government Solicitor**



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**Project Delivery Agreement dated ..... 20....**

**Parties:            Land Development Agency ABN 20 419 925 579 (LDA)**  
**Developer**

---

**Background**

- A.    The LDA released a Request for Tender for the sale of the right to the grant of a Crown Lease for the Land (RFT). The Developer lodged a tender in response to the RFT and LDA has accepted the Developer's tender for the grant of the Crown Lease for the Land.
  - B.    LDA and the Developer have entered into a Contract for Sale in the course of LDA's acceptance of the Developer's tender.
  - C.    It is a condition of the RFT that the parties also enter this Agreement.
  - D.    LDA and the Developer have agreed that the Land will be developed in the manner set out in this Agreement.
  - E.    The Developer is to provide Security in the Security Amount for the performance of its obligations under this Agreement
- 

**1. Interpretation**

**1.1 Definitions**

In this Agreement unless the context otherwise requires:

**Agreement** means this agreement, including the Schedules and Appendices;

**Business Day** has the meaning given to it in the *Legislation Act 2001* (ACT);

**Certificate of Occupancy and Use** means a certificate issued by the Planning and Land Authority pursuant to the provisions of the *Building Act 2004* (ACT);

**Completion** means completion of the Contract for Sale;

**Compliance Certificate** means an unconditional certificate by the relevant authority that the Developer as Crown lessee under the Crown Lease has complied with all of the building and development covenants under the Crown Lease;

**Compliance Date** means the date by which the Developer, as Crown lessee under the Crown Lease, must comply with all of the building and development covenants under the Crown Lease (excluding any extension of such date after Completion);

**Contract for Sale** means the contract for sale between LDA and the Developer in relation to the Land;

**Crown Lease** means the Crown Lease in respect of the Land;

**Developer** means the person described in Item 1 of the Reference Schedule;

**Development Application** means a development application as defined in the Planning Act in relation to the Land;

**Development Approval** means approval of a Development Application issued by the Planning and Land Authority;

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**GST Law** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Initial Development Application** means a Development Application in respect of the Land endorsed by the LDA and submitted to the Planning and Land Authority in accordance with clause 4;

**Land** means the land described in Item 2 of the Reference Schedule;

**Parkland** means the publicly accessible park of no less than 1,300 square metres on the north-west corner of the Land to be established by the Developer in accordance with this Agreement;

**Parties** means the LDA and the Developer together;

**Planning Act** means the *Planning and Development Act 2007 (ACT)*;

**Planning and Land Authority** means the Territory Authority established in accordance with the Planning Act;

**Reference Schedule** means Schedule 1 to this Agreement;

**Schedule** means the schedules set out in Item 4 of the Reference Schedule;

**Subsequent Development Application** means a Development Application made pursuant to Clause 5;

**Tender** means the tender submitted by the Developer in response to the Territory's request for tender dated 15 September 2012 in respect of the Land;

**TAMSD** means the Territory and Municipal Services Directorate.

## 1.2 General

In this Agreement unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, clause, Schedule or exhibit is to a recital, clause, schedule, annexure, or exhibit of or to this Agreement;
- (f) a recital, Schedule, annexure or a description of the parties forms part of this Agreement;
- (g) a reference to any Agreement or document is to that Agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to this Agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

- 
- (j) a reference to a bankruptcy or winding up includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth)), being subject to administration and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction, and to the procedures, circumstances and events which constitute any of those conditions or matters;
  - (k) words and expressions defined in the GST Law have the same meaning in clauses concerning GST;
  - (l) where an expression is defined anywhere in this Agreement, it has the same meaning throughout;
  - (m) a reference to "dollars" or "\$" is to an amount in Australian currency; and
  - (n) a reference to a matter being "to the knowledge" of a person means that the matter is to the best of the knowledge and belief of that person after making enquiries reasonable in the circumstances.

1.3 In this Agreement, headings are for convenience of reference only and do not affect interpretation.

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## **2. Term**

- 2.1 This Agreement commences upon execution by the Parties.
  - 2.2 This Agreement ceases to have effect upon each of the Parties having complied with all of their obligations under this Agreement.
- 

## **3. Development must accord with this Agreement**

- 3.1 The Developer must develop the Land in accordance with the provisions of this Agreement.
  - 3.2 Each Schedule to this Agreement constitutes a separate and distinct set of obligations and rights from each other Schedule unless specifically stated or the context requires otherwise.
- 

## **4. LDA endorsement of Initial Development Application**

- 4.1 Prior to lodging any Development Application with the Planning and Land Authority the Developer must:
  - (a) consult with the LDA in accordance with clause 6;
  - (b) obtain the endorsement of TAMSD in respect of all improvements to the Parkland that are required as part of the Developer's Works and its agreement to accept responsibility for the Parkland following subdivision of the Land;
  - (c) submit the draft of the Initial Development Application to the LDA for endorsement; and
  - (d) make all changes to the draft Initial Development Application that are required by the LDA.
- 4.2 The LDA will endorse the Developer's draft Initial Development Application if it:
  - (a) complies with this Agreement and all applicable laws;
  - (b) is substantially in accordance with the schematic development plan for the Land provided by the Developer to the Territory in the Tender;
  - (c) contains written endorsement from TAMSD as required under clause 4.1(b); and
  - (d) includes all changes to the draft Initial Development Application that are required by the LDA.

- 
- 4.3 The Developer agrees to submit to the Planning and Land Authority the Development Application in the form endorsed by the LDA in accordance with clause 4.1 (the Initial Development Application).
  - 4.4 If the Planning and Land Authority requires a variation or amendment to the Initial Development Application, the Developer must submit any varied or amended version of the Initial Development Application to the LDA for further endorsement prior to submitting the revised Initial Development Application to the Planning and Land Authority.
  - 4.5 LDA will not request any changes to the revised Initial Development Application which are inconsistent with the Planning and Land Authority's requirements under clause 4.4.

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## **5. LDA Endorsement of Subsequent Development Applications**

- 5.1 The Developer shall not submit any Subsequent Development Applications or any applications for the variation of a Development Approval for the Land for a period of five years from the date of this Agreement, unless such applications have been endorsed by the LDA prior to lodgment with the Planning and Land Authority.
- 5.2 The LDA will endorse an application pursuant to this clause if it:
  - (a) complies with the obligations set out in this Agreement and all applicable laws; and
  - (b) includes any changes to the application that required by the LDA.
- 5.3 If the Planning and Land Authority requires a variation or amendment to an application lodged in accordance with this clause the Developer must submit any varied or amended version of the application to the LDA for endorsement prior to resubmitting the application to the Planning and Land Authority.
- 5.4 LDA will not request any changes to the application which are inconsistent with the Planning and Land Authority's requirements.
- 5.5 The LDA may require the Developer to pay a fee for any endorsements of applications made pursuant to this clause. The fee will be calculated by reference to recovering LDA's costs incurred in the endorsement process (which may include consultant fees) rather than by reference to any statutory fee or charge.

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## **6. Consultation**

- 6.1 Unless otherwise agreed in writing between the Parties, the Developer must:
  - (a) attend an introductory meeting with the LDA to be briefed on the LDA's requirements under this Agreement. Such meeting will occur at the LDA's place of business at a time to be agreed between the Parties but not later than 10 days following Completion;
  - (b) attend a second meeting with the LDA and the Developer's appointed architect to present concept designs to the LDA at the LDA's place of business at a time to be agreed between the Parties but not later than 60 days following Completion;
  - (c) attend a third meeting with the LDA and the Developer's appointed architect to present and discuss the Developer's detailed design at the LDA's place of business at a time to be agreed between the Parties but not later than 180 days following Completion; and
  - (d) attend any further meetings required by the LDA to discuss the Developer's designs in relation to the Land.

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## **7. Sale by Developer**

- 7.1 In this clause:

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**Security** means the security to be provided by the Developer to LDA for the Security Amount pursuant to this Agreement;

**Security Amount** means one million dollars (\$1,000,000)

- 7.2 The Developer must not sell or assign or agree to sell or assign any interest in the Crown Lease or the Land to any person (**Disponee**) before the date on which LDA is required to release the Security (**Release Date**) unless:
- (a) the Disponee is first approved by the LDA;
  - (b) the terms of any agreement to sale or assignment (**Disposition**) are first approved by the LDA.
  - (c) the Disponee has entered into a deed, on terms approved by LDA, that the Disponee shall be bound by and shall comply with all of the obligations on of the Developer under this Agreement which have not been complied with as at the date of Disposition or which otherwise continue to have effect after the date of the Disposition, as if the Disponee were party to this Agreement from its making;
  - (d) on or prior to the Disposition:
    - (i) the Developer authorises LDA to hold the Security (as from the time of the Disposition) as if it had been provided by the Disponee, or
    - (ii) the Disponee provides substitute Security to LDA, in which case LDA shall with five Business Days after receipt of such substitute Security release to the Developer the Security provided by it (to the extent that LDA has not called on, or is not entitled to call on, that Security).
- 7.3 On completion of any Disposition for which LDA consent is required under this clause 7, the Developer must pay to LDA the amount (if any) by which the price payable by the Disponee for the property exceeds the price paid by the Developer to LDA for the Crown Lease.
- 7.4 Notwithstanding the provisions above, the Developer may enter into agreements for sale before the Release Date in respect of dwellings erected or to be erected on the Land, provided that:
- (a) the Developer ensures that any such agreement is subject to and conditional upon the Developer performing its obligations under this Agreement; and
  - (b) each such agreement includes a condition to that effect.
- 7.5 The Developer must promptly, at the request of LDA, provide LDA with:
- (a) such details as LDA requires in respect of any sale or proposed sale relating to the Land or any dwelling on the Land; and
  - (b) a copy of any agreement made by the Developer in relation to any such sale.

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## **8. Costs and expenses**

- 8.1 The Developer must pay to the LDA, within ten Business Days of written notice to do so, the LDA's reasonable costs and expenses (including legal costs) in relation to the exercise or attempted exercise or the preservation of any of the LDA's rights under this Agreement incurred as a consequence of any breach or threatened breach by the Developer.

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## **9. Set-off**

- 9.1 The Developer may not raise any set-off, counterclaim or defence in connection with its liabilities under this Agreement.

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## 10. GST

10.1 In this clause:

**Adjustment, Adjustment Note, GST, GST Group, Input Tax Credits, Representative Member and Tax Invoice** have the meanings given to them in the GST Law; and

**Taxable Supply** has the meaning given to it in the GST Law, excluding section 84-5 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

10.2 In addition to any other consideration, the recipient of a Taxable Supply made under or in connection with this document (**Recipient**) must pay to the party making the Taxable Supply (**Supplier**) the amount of GST in respect of the Taxable Supply. This sub clause does not apply if the consideration specified for the Taxable Supply is expressly agreed to be GST inclusive.

10.3 If the amount paid by the Recipient to the Supplier in respect of GST (whether because of an Adjustment or otherwise):

- (a) is more than the GST on the Taxable Supply, then the Supplier shall refund the excess to the Recipient; or
- (b) is less than the GST on the Taxable Supply, then the Recipient shall pay the deficiency to the Supplier.

10.4 The Recipient is not obliged to pay any amount in respect of GST to the Supplier unless and until the Supplier issues a Tax Invoice to the Recipient in respect of the Taxable Supply. If an Adjustment has occurred, the Supplier must issue an Adjustment Note to the Recipient.

10.5 The amount of a party's entitlement under this Agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the Input Tax Credits to which that party (or the Representative Member of a GST Group of which the party is a member) is entitled in respect of such costs, expenses or liabilities.

10.6 In this Agreement, amounts which are calculated by reference to revenue or profits are calculated on the GST-exclusive component of that revenue or those profits unless expressly provided to the contrary.

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## 11. Notices

11.1 All notices or other communications to or by a party to this Agreement:

- (a) must be in writing;
- (b) are treated as being given or made;
  - (i) if delivered in person or by post, when delivered, received or left at the address of the recipient; or
  - (ii) if by facsimile transmission, on receipt by the sender of an error free transmission report at the end of transmission,

but if delivery or receipt is on a day that is not a Business Day in the place to which the notice or other communication is sent or is later than 4.00pm (local time), it is treated as been given or made at the commencement of business on the next Business Day in that place; and

- (c) must be addressed to the recipient at the address or facsimile number specified in Item 4 of the Reference Schedule or any other address or facsimile number provided in substitution of that address or facsimile number in writing.

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**12. Governing law and jurisdiction**

12.1 The law of the Australian Capital Territory governs this Agreement.

12.2 The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and of the Commonwealth of Australia.

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**13. Counterparts**

13.1 This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

## Schedule 1 – Reference Schedule

<p>Item 1 <b>Developer</b></p>	<p>Name: ACN / ABN:</p>	
<p>Item 2 <b>Land</b></p>	<p>Block 20 Section 34 Dickson in the Australian Capital Territory.</p>	
<p>Item 3 <b>Addresses of Parties</b></p>	<p><b>LDA</b> Address: Level 6 Transact House 470 Northbourne Avenue, Dickson ACT 2602  Fax: 02 6207 5101  For the attention of:  Richard Drummond Consultant Project Manager</p>	<p><b>Developer</b> Address:   Fax:  For the attention of:</p>
<p>Item 4 <b>Schedules</b></p>	<p>Schedule 2 Schedule 3 Schedule 4</p>	<p>Security Developer's Works and Other Obligations Verges and Footpaths</p>

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**Executed as a deed.**

**Executed by the Land Development Agency ABN 20 419 925 579** by its authorised Delegate in the presence of:

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Signature of witness

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Full name of witness

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Signature of Delegate

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Full name of Delegate

**Executed by [Developer Name]**

in accordance with section 127 of the *Corporations Act 2001* (Cth):

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Signature of director

---

Full name of director

---

Signature of company secretary/director

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Full name of company secretary/director

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## Schedule 2 – Security

1. In addition to the definitions set out in clause 1 of the Agreement, unless the context otherwise requires:

**Permitted Substitute Security** means another form of security permitted under this Schedule for the Security Amount;

**Provided Security** means Security paid by the Developer to LDA in accordance with this Schedule;

**Security** means the security to be provided by the Developer to LDA as set out in this Schedule;

**Security Amount** means one million dollars (\$1,000,000)

**Security Undertaking** means an unconditional undertaking or bond by a financial institution or insurer approved by LDA (in its absolute discretion).

2. The Developer must provide the Security or before the date the Contract for Sale is completed (in which respect time is of the essence).
3. The Security must be in the form of:
  - (a) an unconditional irrevocable bank guarantee (without expiry date) from an Australian financial institution and in other terms reasonably required by LDA;
  - (b) a bank cheque in favour of LDA; or
  - (c) a Security Undertaking.
4. The LDA may without notice call on the Security if the Developer breaches any of its obligations under and the Agreement where the breach is incapable of remedy or, where the breach is capable of remedy, where the Developer fails to remedy that breach within 7 days of being required by LDA in writing to do so.
5. To the extent that the Security has not been called upon in accordance with this Schedule and that the Developer has satisfied all of its obligations under this Schedule, the LDA will release to the Developer the Security within 14 days of the later of the following:
  - (a) the date of the issue of the final Certificate of Occupancy;
  - (b) the date of the issue of the Compliance Certificate; and
  - (c) the date of the provision to LDA of a report issued pursuant to Schedule 3 that the Developer has complied with all of its obligations under that Schedule in relation to the Developer's Works (including, if applicable, the rectification of any defects in such works in accordance with that Schedule).
6. Where the Developer has paid Security to LDA in accordance with this Schedule and subsequently wishes to replace the Provided Security with Permitted Substitute Security:
  - (a) the Developer may request LDA to accept the Permitted Substitute Security in place of the Provided Security;
  - (b) LDA shall not unreasonably refuse to accept the Permitted Substitute Security in place of the Provided Security; and
  - (c) the Developer shall pay to LDA on demand all reasonable costs incurred by LDA in relation to the substitution of the Permitted Substitute Security for the Provided Security;
  - (d) upon the Developer delivering the Permitted Substitute Security to LDA:
    - (i) the Permitted Substitute Security shall be substituted for the Provided Security as security for the performance of the Developer's obligations under the Agreement,
    - (ii) the Permitted Substitute Security is "Security" for the purposes of this Agreement; and

- 
- (iii) the Parties' rights and obligations in relation to the Permitted Substitute Security are as set out in this Schedule;
  - (e) LDA shall promptly, after its receipt of the Permitted Substitute Security, release to the Developer the Provided Security (to the extent that LDA has not called on, or is not entitled to call on, that Security).
7. In addition to the Security, the Developer charges in favour of the LDA the whole of the Developer's interest in the Land and Crown Lease as further security for the Developer's performance of its obligations under the Agreement.
  8. The Developer acknowledges that the LDA may register, and consents to the LDA registering, a charge or caveat over the Crown Lease, provided that no such charge or caveat shall prevent the registration of a mortgage by the Developer in respect of the Crown Lease.
  9. The LDA must release any charge, and withdraw any caveat registered by the LDA pursuant to this Schedule, within 14 days after the later of the Developer:
    - (f) having complied with all of its obligations under this Schedule; and
    - (g) requesting the LDA to withdraw the caveat and release of charge.

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### Schedule 3 – Developer’s Works and Other Obligations

1. In addition to the definitions set out in clause 1 of the Agreement, unless the context otherwise requires:

**Defect Notice** means a notice describing any defects in the Developer’s Works;

**Developer’s Works** means the works described in the Table in this Schedule;

**Design Guidelines** means the document titled “[name of document]” attached to this Schedule;

**Environmental Management Plan** means a plan created as a consequence of an environmental audit pursuant to the *Environment Protection Act 1997* (ACT);

**Environment Protection Authority** is the public servant appointed as The Environment Protection Authority pursuant to the *Environment Protection Act 1997* (ACT);

**Expert** means an independent expert who will be appointed to assess and report (at the cost of the Developer) on whether the Developer’s Works have been completed in accordance with the requirements of this Schedule;

**Site Audit Statement** has the meaning ascribed in the *Environment Protection Act 1997* (ACT).

2. The Developer shall, at its own expense, undertake the Developer’s Works in accordance with this Schedule.
3. The Developer’s Works must comply with the Design Guidelines.
4. Upon completion of the Developer’s Works:
  - (a) the Developer must notify LDA of the completion of the Developer’s Works;
  - (b) the Developer and LDA must appoint an Expert agreed to by the Parties; and
  - (c) if the Parties cannot agree upon the Expert within 10 Business Days after the Developer notifies LDA of the completion of the Developer’s Works, the Expert shall be appointed by LDA.
5. If the Expert’s report identifies any non-compliance with the Developer’s obligations under this Schedule:
  - (a) LDA will serve a Defect Notice on the Developer;
  - (b) the Developer must rectify the defects described in the Defect Notice at its own cost within a reasonable time; and
  - (c) clause 4(b) shall apply in respect of further assessment and reporting in respect of such rectification works.
6. The Developer must comply with the Environmental Management Plan (if applicable) and ensure that the Developer’s Works are in accordance with that Plan, the Site Audit Statement and any further requirements of the Environment Protection Authority.
7. The Developer shall, as soon as reasonably practicable after the making of the Agreement and as reasonably necessary thereafter, liaise with the Environment Protection Authority to discuss and ensure the appropriate environmental management of the Land.
8. The Developer must carry out the Developer’s Works after Completion. The Developer must not commence any Developer’s Works prior to Completion.
9. The Developer acknowledges that the design and construction of any buildings on the Land should comply, in order of precedence, with the following:
  - (a) all applicable laws;

- (b) the terms and conditions contained in the Agreement.
10. The Developer must complete the Developer's Works (or, if applicable, a particular part of the Developer's Works):
- (a) within the applicable time period (if any) specified in the Agreement; or
- (b) where a time period is not specified for completion of the Developer's Works or (if applicable) any particular part of the Developer's Works, within a reasonable period after Completion and in any event by no later than the Compliance Date.
11. Where the Developer requires access to any unleased Territory land for the purpose of developing the Land, the Developer must obtain from each relevant authority all licences and other approvals necessary for such access, prior to entering onto the relevant unleased Territory land.

**Table – Developer's Works**

<p>Establishment of Parkland</p>	<ul style="list-style-type: none"> <li>• A continuous ground plane shall extend from the back of the Dickson Place kerb to the new building line.</li> <li>• The combined verge and open space shall be fully accessible to pedestrians and allow for: <ul style="list-style-type: none"> <li>▪ East west pedestrian flow along the street;</li> <li>▪ Street trees;</li> <li>▪ Small scale public events;</li> <li>▪ Public seating;</li> <li>▪ Shaded areas for public seating;</li> <li>▪ Integrated outdoor dining areas;</li> <li>▪ Bicycle parking;</li> <li>▪ Drinking fountain;</li> <li>▪ Public lighting.</li> </ul> </li> <li>• The section from the back of kerb to the property boundary shall: <ul style="list-style-type: none"> <li>▪ Be hard paved;</li> <li>▪ Include street trees at about 10 metre centres that are planted in structural soils and that are naturally irrigated by stormwater runoff;</li> <li>▪ Include new street lighting to AS/NZS 4360.2004 Categories V3 and P1.</li> </ul> </li> <li>• The section from the property boundary to the building line shall: <ul style="list-style-type: none"> <li>▪ Complement the verge treatment to create a fully integrated public place;</li> <li>▪ Include hard and soft landscape treatments;</li> <li>▪ Include public lighting to AS/NZS 4360.2004 Category P7;</li> <li>▪ Include public seating equal to at least six standard 2000 bench seats;</li> <li>▪ Include at least 10 bicycle racks in at least two readily accessible and convenient locations;</li> <li>▪ Include at least one public drinking fountain.</li> </ul> </li> </ul>
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	<ul style="list-style-type: none"> <li>• Hard paving in both the verge and the lease area shall include a minimum of 150 thick reinforced concrete slab. Oxides, saw cutting and other treatments may be used to create a high quality in-situ concrete finish. If a unit paving finish is used, then unit pavers shall be properly fixed to the 150 thick reinforced concrete slab with a paving adhesive such as 'Latercrete'. Pavers bedded on sand are unacceptable.</li> </ul>
Subdivision excising Parkland	<ul style="list-style-type: none"> <li>• Subdivision of the Land to excise the Parkland and surrender it to the Territory, as soon as possible following completion of the above works.</li> </ul>
Establishment of a pedestrian access way from Badham Street to Dickson Place.	<ul style="list-style-type: none"> <li>• Minimum width of 11 metres</li> <li>• The section from the property boundary to the building line shall: <ul style="list-style-type: none"> <li>▪ complement the verge treatment to create a fully integrated public place;</li> <li>▪ include hard and soft landscape treatments;</li> <li>▪ include public lighting to AS/NZS 4360.2004 Categories P7; and</li> <li>▪ include public seating.</li> </ul> </li> <li>• Hard paving in both the verge and the lease area shall include a minimum of 150mm thick reinforced concrete slab. Oxides, saw cutting and other treatments can be used to create a high quality in-situ concrete finish.</li> <li>• If a unit paving finish is used, then unit pavers shall be properly fixed to the slab. Pavers bedded on sand are unacceptable.</li> <li>• The section between the new building and the existing buildings to the south and east shall: <ul style="list-style-type: none"> <li>▪ be designed in such a way as to prioritise pedestrian movement and safety;</li> <li>▪ include high quality paving material fixed to a reinforced concrete slab;</li> <li>▪ include public lighting; and</li> <li>▪ use windows and detailing of the facade to minimise blank frontage.</li> </ul> </li> </ul>

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#### **Schedule 4 – Verges and Footpaths**

- 1.1 If the verges and/or footpaths adjacent to the Land are damaged during construction on the Land, the Developer must repair the damage at its own cost, even if the damage was not caused by the Developer.
- 1.2 Nothing in this clause shall limit the Developer's right to recover its costs, incurred as a consequence of this clause, against any third party who may be responsible for the damage.

**Mundy, Graham**

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**From:** Drummond, Richard  
**Sent:** Wednesday, 19 September 2012 4:29 PM  
**To:** [REDACTED]  
**Subject:** RE: Block 20, Section 34 Dickson  
**Attachments:** RFT Block 20 Section 34 Dickson 13 Sep 2012.pdf; Contract for Sale Block 20 Section 34 Dickson.pdf; Special Conditions Block 20 Section 34 Dickson.pdf; PDA Block 20 Section 34 Dickson 13 Sept 2013.pdf; Proforma Deed of Unconditional Undertaking.pdf; Attachment B - Block 20 Section 30 Dickson - Layout Plan.pdf; Attachment C \_LDA Urban Design Guidelines\_Dickson S34.pdf

Dear [REDACTED]

Further to your enquiry, please find attached documentation relating to the RFT for Block 20 Section 34 Dickson

If you have any queries please forward them by email to myself.

Regards

Richard Drummond | Consultant Project Manager |  
| phone: (02) 6207 0274 | fax: (02) 6207 0123 | mob: 0402 262 626  
Economic Development Directorate | ACT Government |

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**From:** [REDACTED]  
**Sent:** Tuesday, 18 September 2012 10:58 AM  
**To:** Drummond, Richard  
**Subject:** Block 20, Section 34 Dickson

Hi Richard

Could I please obtain a copy of the documentation for Block 20, Section 34 Dickson.

Many thanks

Regards,

[REDACTED]

**AUSTRALIAN CAPITAL TERRITORY**

**COMMONWEALTH OF AUSTRALIA**

**DEED OF UNCONDITIONAL UNDERTAKING**

- (1/2) **WHEREAS**.....  
(hereinafter called “the Lessee”) is or is about to become the Lessee from the Commonwealth of Australia (“the Commonwealth”) of land described as Block 20 Section 34 Dickson in the Australian Capital Territory **AND** **WHEREAS** the Lessee is required to furnish to the Australian Capital Territory (“the Territory) security in respect of construction of works on the Block and/or on land near the Block **NOW THIS DEED WITNESSES** that at the request of the Lessee and in consideration of the Territory accepting the following undertaking in lieu of the lodgement by the Lessee of a cash security deposit
- (3/4) .....(hereinafter) called “the Bank”/”Building Society” / “approved Financial Body”) **UNCONDITIONALLY UNDERTAKES** to pay on demand any sum which may from time to time be demanded by the Territory to a maximum of .....
- (5) ..... Dollars (\$.....) in the aggregate.
- (4) For this amount the Bank/Building Society/approved Financial Body will be responsible until a notification has been received from the Territory that such sum is no longer required by the Territory for the purposes of the
- (4) Lease or until payment is made to the Chief Finance Officer, Environment and Sustainable Development Directorate by the Bank/Building Society/approved Financial Body of the whole of the said sum.

(4) Should the Territory notify the Bank/Building Society/approved Financial Body that it demands payment to be made to the Territory of the whole or any part or parts of the said sum **IT IS UNCONDITIONALLY AGREED** that such payment or payments will be made forthwith to the Chief Finance Officer, Environment and Sustainable Development Directorate or his or her authorised nominee in Canberra without further reference to the Lessee and notwithstanding any notice given by the Lessee to the Bank/Building Society/approved Financial Body not to pay the same, provided that the liability of the Bank/Building Society/approved Financial Body shall not exceed the sum of

(5) ..... dollars (\$.....) in the aggregate.

(4) The bank/Building Society/approved Financial Body reserves the right to terminate its liability hereunder at any time upon payment to the said Manager in Canberra of the said sum of

(5) .....dollars (\$.....) or such lesser amount as may be required and specified by the territory.

(4) The territory shall not assign this Deed without the prior written consent of the Bank/Building Society/Approved Financial Body.

(5) Signed, Sealed and Delivered on the .....  
Day of .....201.....

**NOTE:** Both statements below MUST be completed

**STATEMENT AS TO NON-REVOCATION OF POWER OF ATTORNEY (7)**  
**REGISTERED NO: .....**

- (6) I ..... Donee of power of  
(7) Attorney Registered No. .... Hereby state that I have not  
received any notice of revocation of the Power.

..... (Signature)

..... (Date)

**NOTIFICATION OF RETURN ADDRESS**

- When no longer required by the Territory the Undertaking should be returned  
to the .....  
(4) branch of the .....Bank/Building  
Society/approved Financial Body.

SIGNED SEALED and )  
DELIVERED by )  
 )  
..... )  
in the presence of )  
 )  
..... )  
Witness Name )  
 )  
 )  
..... )  
Witness Signature )

,  
.....  
Attorney for  
.....  
Insert Name of Bank/Building Society/approved  
Financial Body

Executed under Power of Attorney  
Registered No.

**Instructions for Completion Form**

- (1) Insert correct name of Lessee
- (2) Insert correct description of Lease Land
- (3) Insert correct name of Bank, Building Society or  
Approved Financial Body
- (4) Cross out inappropriate words
- (5) Insert correct sum
- (6) Fill in data
- (7) Complete the blank spaces

**LAND DEVELOPMENT AGENCY  
COMMERCIAL CONTRACT FOR SALE  
SCHEDULE**

<b>DATE OF THIS CONTRACT</b>			
<b>LEASE DETAILS</b>			
<b>LAND</b>		Block	Section
		20	34
		Division/District Dickson	
<b>OCCUPANCY</b>		Vacant Possession	
<b>CO-OWNERSHIP</b>	Mark one	<input type="checkbox"/> Tenants in common (Show shares)	<input type="checkbox"/> Joint Tenants
<b>SELLER DETAILS</b>			
<b>SELLER</b>	Full name ACN/ABN Address	Land Development Agency 20 419 925 579 Level 6, TransACT House, 470 Northbourne Avenue, Dickson ACT 2602	
<b>SELLER'S SOLICITOR</b>	Firm	Australian Capital Territory Government Solicitor	
	Ref		
	Phone	02 620 70666	
	Fax	02 620 70650	
	DX/Address	PO Box 260 Civic Square ACT 2608 DX 5602 Canberra	
<b>BUYER DETAILS</b>			
<b>BUYER</b>	Full Name ACN/ABN Address		
<b>BUYER'S SOLICITOR</b>	Firm		
	Ref		
	Phone		
	Fax		
	DX/Address		
<b>PAYMENT DETAILS</b>			
<b>PRICE</b>	Price Less Deposit Balance	\$ \$ \$	(The Price is GST <u>exclusive/inclusive</u> ) (10% of Price)
<b>EARLIEST DATE OF EXPIRY OF DEPOSIT BOND OR BANK GUARANTEE</b>	Expiration of bond or bank guarantee must not be earlier than this date	//insert//days from the Date of this Contract or Date	
<b>DEED OF UNCONDITIONAL UNDERTAKING</b>	See Special Conditions	//insert//	
<b>STAKEHOLDER</b>	Name	Land Development Agency	
<b>DATE FOR COMPLETION</b>		In accordance with Special Condition 32	
<b>ESTIMATED DATE RANGE FOR WORKS</b>	See Special Conditions	//insert//Date range or not applicable//	
<b>ANNEXURES</b>			
<b>STANDARD ANNEXURES</b>	Documents attached to this Contract	Annexure A – Specimen Lease Annexure B – Prescribed Conditions for Associated Works Annexure C – Specimen Project Delivery Agreement Annexure D – Proforma Deed of Unconditional Undertaking	
<b>SPECIAL CONDITIONS</b>	Indicate whether any special conditions apply	<input checked="" type="checkbox"/> Yes (if applicable) See Annexure E – Special Conditions	<input type="checkbox"/> No (if applicable)
<b>READ THIS BEFORE SIGNING</b>			
<del>Before signing this contract you should ensure that you understand your rights and obligations. You should get advice from your solicitor.</del>			
Authorised Delegate of the Land Development Agency signature:		Buyer signature:	
Delegate name:		Buyer name:	
Witness signature:		Buyer signature:	
Witness name:		Buyer name:	
		Witness signature:	
		Witness name:	

## **1 GRANT OF THE LEASE**

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

## **2 TERMS OF PAYMENT**

- 2.1 On the Date of this Contract, the Buyer must pay the Deposit to the Stakeholder.
- 2.2 The Deposit becomes the Seller's property on Completion.
- 2.3 The Deposit may be paid by cheque but if it is not paid on time or, if it is paid by cheque which is not honoured on first presentation, the Buyer is in default.
- 2.4 If the Buyer is in default under clause 2.3, then immediately and without the notice otherwise necessary under clause 19, clause 20 applies.
- 2.5 Completion must take place in Canberra on the Date for Completion or as otherwise determined by the Contract and if not specified or determined, within a reasonable time.
- 2.6 On Completion the Buyer must:
- (a) give the Seller an authority directing the Stakeholder to account to the Seller for the Deposit; and
  - (b) pay to the Seller in Canberra the Balance of the Price, and any GST payable, by unendorsed bank cheque.
- 2.7 Any money payable to the Seller by the Buyer or the Stakeholder must be paid to the Seller or as the Seller's Solicitor directs in writing and payment in accordance with that direction will be sufficient discharge to the person paying.

## **3 DEPOSIT BOND AND BANK GUARANTEE**

- 3.1 The Deposit may be paid by a Deposit Bond or Bank Guarantee provided that at least 3 Working Days prior to the Date of this Contract the Buyer:
- (a) informs the Seller of their intention to provide a Deposit Bond or Bank Guarantee;
  - (b) provides the Seller with a copy of the proposed Deposit Bond or Bank Guarantee for approval; and
  - (c) the Seller has notified the Buyer of the Seller's approval of the Deposit Bond or Bank Guarantee.
- 3.2 The expiry date for the Deposit Bond or Bank Guarantee must not be earlier than the Earliest Date of Expiry of Deposit Bond or Bank Guarantee specified in the Schedule.
- 3.3 The Deposit Bond or Bank Guarantee must show the Seller as the beneficiary of the Deposit Bond or Bank Guarantee.

- 3.4 The Buyer must pay the amount stipulated in the Deposit Bond or Bank Guarantee to the Seller by unendorsed bank cheque on Completion.
- 3.5 The Buyer is in default if:
- (a) the Deposit Bond or Bank Guarantee has an expiry date prior to the Earliest Date of Expiry of Deposit Bond or Bank Guarantee and is not renewed to the satisfaction of the Seller in accordance with clause 3.2 at least 10 Working Days prior to the expiry of the Deposit Bond or Bank Guarantee; or
  - (b) the provider of the Deposit Bond or Bank Guarantee is placed under external administration of any nature before Completion and the Buyer has not provided a replacement Deposit Bond or Bank Guarantee to the same value and on the same terms and conditions from a solvent party within 5 Working Days of the provider being placed in such administration.
- 3.6 If the Buyer is in default under clause 3.5 it will be deemed to be a failure by the Buyer to pay the Deposit under clause 2.1 and immediately, and without the notice necessary under clause 19, clause 20 applies.

#### **4 SIGNING OF LEASE**

- 4.1 Following the receipt of the Lease, the Buyer must, no later than 10 Working Days from the date the Seller serves the Lease on the Buyer:
- (a) sign each copy of the Lease; and
  - (b) return the signed Lease to the Seller's Solicitor.

#### **5 VARIATION TO LAND**

- 5.1 The Buyer acknowledges that the Land, the Specimen Lease, any other plans in relation to the Land may be affected by:
- (a) the requirements of legislation;
  - (b) variations to the Territory Plan; and/or
  - (c) the requirements of government authorities.
- 5.2 The Buyer may not rescind or otherwise terminate this Contract nor seek any compensation from the Seller, under clause 18 or otherwise, as a result of any matter referred to in clause 5.1.

#### **6 PLANNING CONDITIONS**

- 6.1 The Buyer acknowledges that the Planning and Land Authority is responsible for all development consents and approvals sought by or on behalf of the Buyer in relation to the Land and the Buyer therefore releases the Seller from any liability, cause of action or any other claim in relation to disturbance, loss or detriment resulting from the Planning and Land Authority granting or denying any consent or approval in relation to the Land.
- 6.2 The Buyer acknowledges the obligation to make the Buyer's own enquiries and satisfy themselves as to the currency and accuracy of information contained in the Territory Plan.

6.3 The Buyer acknowledges that the Planning and Land Authority is responsible for the Territory Plan and the Buyer will make no claim against the Seller whatsoever in this regard.

6.4 The Buyer acknowledges that nothing in this Contract or the fact of Completion implies or means that any required approvals, consents or licences regarding planning, design, siting and any other matters relating to the Buyer's development of the Land will be granted by the regulatory authorities or other agencies of the Australian Capital Territory with or without conditions.

## **7 ENTIRE AGREEMENT**

7.1 This Contract sets out the entire agreement of the parties on the subject matter of this Contract and supersedes any prior agreement, advice, material supplied to the Buyer or process or understanding on anything connected with the subject matter of this Contract.

## **8 BUYER RELIES ON OWN ENQUIRIES**

8.1 The Buyer acknowledges that it relies on its own enquiries in relation to the Land and warrants that in entering into this Contract the Buyer:

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

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

## **9 BUYER RIGHTS AND LIMITATIONS**

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

9.2 The Buyer cannot make a claim or objection or rescind or terminate or make a claim for compensation under clause 18 of this Contract in respect of:

- (a) a Utility Service for the Land whether or not it is a joint service or passing through another property, or any Utility Service for another property passing through the Land;
- (b) a promise, representation or statement about this Contract, the Land or the Lease, not made in this Contract;
- (c) the size of any service ties for the supply of water on or to the Land;

- (d) the existence of regrading, fill or contamination of or upon the Land, whether caused by the Commonwealth of Australia, the Seller, previous occupants of the Land or otherwise;
- (e) any soil classification in relation to the Land; and
- (f) anything disclosed or disclaimed in this Contract.

## **10 CONDITION OF THE LAND**

- 10.1 The Seller gives no warranties as to the present state of repair of any of the Improvements or condition of the Land, except as required by law.
- 10.2 The Buyer acknowledges that the Seller makes no warranty or representation as to the environmental condition or state of the soil, ground water, contamination or the existence or non-existence of any Substance on or affecting the Land.
- 10.3 The Buyer understands and accepts that the existence of regrading, fill, contamination or a soil classification of or upon the Land may result in work for the construction of any building on the Land being more extensive and expensive than it may have been in the absence of such regrading, fill, contamination or soil classification.

## **11 SELLER WARRANTIES**

- 11.1 The Seller warrants that at the Date of this Contract the Seller:
  - (a) will be able to complete at Completion;
  - (b) has no knowledge of any unsatisfied judgment, order or writ issued by a court or tribunal affecting the Land; and
  - (c) has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ issued by a court or tribunal affecting the Land.
- 11.2 The Seller warrants that on Completion:
  - (a) the Seller will have the capacity to complete;
  - (b) there will be no unsatisfied judgment, order or writ issued by a court or tribunal affecting the Land;
  - (c) the Seller has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ issued by a court or tribunal affecting the Land except as disclosed to the Buyer; and
  - (d) the Seller is not aware of any encroachments by or upon the Land (other than the encroachment of any dividing fence) except as disclosed to the Buyer.

## **12 CO-OWNERSHIP**

If the Buyer consists of more than one person, as between themselves, they agree to buy the Land in the specified manner of co-ownership or if one alternative is not marked, as joint tenants.

**13 NON MERGER**

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

**14 ADJUSTMENTS**

As the Lease will be granted on Completion, there will be no adjustments of Income or Land Charges.

**15 TERMS OF POSSESSION**

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

**16 INSPECTION OF LAND**

The Buyer may on reasonable notice to the Seller inspect the Land not more than 10 Working Days prior to the Date for Completion.

**17 ERRORS AND MISDESCRIPTIONS**

17.1 Subject to clause 17.3, the Buyer will be entitled to compensation on Completion (and the Price will be reduced accordingly) for an error of any kind or misdescription if the Buyer makes a claim for compensation before Completion.

17.2 Subject to clause 17.3, this clause applies even if the Buyer did not take notice of or rely on anything in this Contract containing or giving rise to the error or misdescription.

17.3 The Buyer is not entitled to compensation:

- (a) to the extent the Buyer knew the true position before the Date of this Contract; and
- (b) unless the Buyer can quantify the loss or detriment suffered.

**18 COMPENSATION CLAIMS BY BUYER**

18.1 This clause 18 applies to claims for compensation arising out of this Contract made by the Buyer against the Seller including claims under clause 17.

18.2 To make a claim for compensation the Buyer must give notice to the Seller before Completion specifying the amount claimed and:

- (a) the Seller can rescind if in the case of a claim that is not a claim for delay:
  - (i) the Seller gives notice to the Buyer of an intention to rescind; and
  - (ii) the Buyer does not give notice to the Seller waiving the claim within 14 days after receiving the notice; and
- (b) if the Seller does not rescind under clause 18.2(a), the parties must complete and:
  - (i) the lesser of the total amount claimed and 5% of the Price must be paid out of the Price to, and held by, the Stakeholder until the claim is finalised or lapses;

- (ii) the amount held is to be invested by the Stakeholder (at the risk of the party who becomes entitled to it) with an Australian bank in an interest bearing account at call in the name of the Stakeholder in trust for the Seller and the Buyer;
- (iii) the claim must be finalised by an arbitrator appointed by the parties or, if an appointment is not made within 28 days of Completion, by an arbitrator appointed by the President of the Law Society of the Australian Capital Territory at the request of a party;
- (iv) the decision of the arbitrator is final and binding save for:
  - a. manifest error by the arbitrator obvious on its face in the final determination by the arbitrator;
  - b. error in the application of law by the arbitrator in making his or her determination; or
  - c. improper or unlawful conduct by the arbitrator or either party that affected or might reasonably be thought to affect the arbitrator's determination;
- (v) the costs of the arbitration must be shared equally by the parties unless otherwise determined by the arbitrator;
- (vi) the Buyer is not entitled, in respect of the claim, to more than the total amount claimed and the costs of the Buyer;
- (vii) interest on the amount held, after deduction of all taxes and bank charges, Stakeholder administration fee and other similar charges and expenses, must be paid to the parties equally or as otherwise determined by the arbitrator; and
- (viii) the claim lapses if the parties do not appoint an arbitrator and neither party asks the President of the Law Society of the Australian Capital Territory to appoint an arbitrator within 90 days after Completion and the amount held by the Stakeholder must be paid immediately to the Seller without any further authority being necessary.

## **19 NOTICE TO COMPLETE AND DEFAULT NOTICE**

- 19.1 If Completion does not take place in accordance with clause 2.5, either party may, at any time after the Date for Completion, serve the other party a Notice to Complete.
- 19.2 A Notice to Complete must appoint a time during business hours and a date being not less than 10 Working Days after service of the Notice to Complete (excluding the date of service) by which and a place in Canberra at which to complete this Contract.
- 19.3 At the time the Notice to Complete is served the party serving the Notice to Complete must:
  - (a) not be in default; and
  - (b) be ready, willing and able to complete but for some default or omission of the other party.

- 19.4 Completion at the time, date and place specified in the Notice to Complete is an essential term.
- 19.5 If one party is in default (other than failing to complete) the other party may at any time after the default serve the party in default a Default Notice.
- 19.6 A Default Notice must:
- (a) specify the default; and
  - (b) require the party served with the Default Notice to rectify the default within 10 Working Days after service of the Default Notice (excluding the date of service).
- 19.7 At the time the Default Notice is served, the party serving the Default Notice must not be in default.
- 19.8 The time specified in a Default Notice to rectify the specified default is an essential term.
- 19.9 Clauses 20 or 21 will apply as appropriate where the party served does not comply with the Notice to Complete or the Default Notice which complies with this clause.
- 19.10 If the party serving a notice under this clause varies the time referred to in the notice at the request of the other party:
- (a) the time agreed to in the variation remains an essential term; and
  - (b) consent to the variation must be in writing and be served on the other party.
- 19.11 The parties agree that the time referred to in clauses 19.2 and 19.6(b) is fair and reasonable.

## **20 TERMINATION – BUYER DEFAULT**

- 20.1 If the Buyer does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential term then the Seller may by notice served on the Buyer terminate and may then keep, or recover and keep, the Deposit (except so much of it as exceeds 10% of the Price) and either:
- (a) sue the Buyer for breach; or
  - (b) resell the Land and any deficiency arising on the resale and all expenses of and incidental to the resale or attempted resale and the Buyer's default are recoverable by the Seller from the Buyer as liquidated damages provided the Seller has entered into a contract for the resale of the Land within 12 months of termination.
- 20.2 In addition to any money kept or recovered under clause 20.1, the Seller may retain on termination any other money paid by the Buyer as security for any damages awarded to the Seller arising from the Buyer's default provided that proceedings for the recovery of damages are commenced within 12 months of termination.

## **21 TERMINATION – SELLER DEFAULT**

If the Seller does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential term the Buyer may by notice served on the Seller either:

- (a) terminate and seek damages; or

- (b) enforce without further notice any other rights and remedies available to the Buyer.

## **22 RESCISSION**

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

- (a) the Deposit and all other money paid by the Buyer must be refunded to the Buyer immediately without any further authority being necessary; and
- (b) neither party is liable to pay the other any amount for damages, costs or expenses.

## **23 DAMAGES FOR DELAY IN COMPLETION**

23.1 If Completion does not occur by the Date for Completion, due to the default of the Buyer then the Buyer must pay the Seller as liquidated damages on Completion:

- (a) interest on the Price at the rate of 10% per annum calculated on a daily basis from the Date for Completion to Completion; and
- (b) the amount of \$1,100 (GST inclusive) to be applied towards any legal costs and disbursements incurred by the Seller if Completion occurs later than 5 Working Days after the Date for Completion.

23.2 The Buyer agrees that:

- (a) the amount of any damages payable under clause 23.1 to the Seller is a genuine and honest pre-estimate of loss to that party for the delay in Completion; and
- (b) the damages must be paid on Completion.

## **24 FOREIGN BUYER**

24.1 The Buyer warrants the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer of the Lease under the *Foreign Acquisitions and Takeovers Act 1975*.

24.2 This clause is an essential term.

## **25 GST**

25.1 The Price for the Land is exclusive of GST.

25.2 The sale of the Land is a taxable supply.

25.3 The Buyer must pay to the Seller on Completion an amount equal to the GST payable by the Seller in relation to the supply.

25.4 On Completion the Seller must give the Buyer a tax invoice for any taxable supply by the Seller by or under this Contract.

## **26 POWER OF ATTORNEY**

Any party who signs this Contract or any document in connection with it under a power of attorney must, on request and without cost, provide the other party with a true copy of the registered power of attorney.

## **27 NOTICES CLAIMS AND AUTHORITIES**

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

27.2 To serve a notice a party must:

- (a) leave it at; or
- (b) send it by a method of post requiring acknowledgement of receipt by the addressee to,

the address of the person to be served as stated in the Schedule or as notified by that person to the other as that person's address for service under this Contract; or

- (c) serve it on that party's solicitor in any of the above ways; or
- (d) by delivering it to an appropriate place in the facilities of a document exchange system in which the recipient solicitor has receiving facilities (and in the latter case service is deemed effected on the Working Day following delivery); or
- (e) send it by facsimile to a party's solicitor, unless it is not received a notice is taken to have been received at the time shown in the transmission report that the whole facsimile was sent.

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

27.4 If a notice is served in accordance with clause 27.2(a), the notice is taken to have been received on the day that it is delivered or, if not delivered before 5:00pm on a Working Day, on the next Working Day.

27.5 If a notice is served in accordance with clause 27.2(b), the notice is taken to have been received on the day 2 Working Days after it was posted.

27.6 In addition to the means stipulated in clause 27.2, the Seller may serve a notice by electronic mail to the Buyer's or the Buyer's Solicitor's email address (whether the Buyer's Solicitor's firm generally or specifically to the practitioner specified in the Schedule) as notified by the Buyer or the Buyer's Solicitor from time to time.

27.7 If a notice is served in accordance with clause 27.6, the notice is taken to have been received on the day shown in the delivery receipt produced by the electronic mail system used to send the message or if not sent before 5:00pm on a Working Day, on the next Working Day.

## **28 NO TRUST**

The Buyer confirms that, other than as disclosed in the description of the Buyer in the Schedule, it is not acting as trustee of any trust.

## **29 SPECIAL CONDITIONS**

Special Conditions, if any, set out in this Contract forming part of this Contract take priority over other terms and conditions set out herein. In the event of any inconsistency between any Special Condition and any other provision of this Contract then, to the extent of any inconsistency, the Special Condition will prevail.

## 30 DEFINITIONS

Definitions appear in the Schedule and as follows:

**Balance of the Price** means the Price less the Deposit;

**Bank Guarantee** means a bank guarantee issued by a bank operating in Australia in a form satisfactory to the Seller;

**Buyer** means the purchaser of the Land under this Contract as specified in the Schedule;

**Buyer's Solicitor** means the legal practitioner or firm of legal practitioners acting for the Buyer in respect of this Contract;

**Completion** means the time at which this Contract is completed;

**Contract** means the Schedule, terms and conditions and any annexure, additional clauses and attachments forming part of this Contract;

**Date for Completion** means the date as specified or calculated for such in the Schedule;

**Default Notice** means a notice in accordance with clauses 19.5 and 19.6;

**Deposit** means the deposit forming part of the Price;

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

**Development** has the meaning in the Planning Act;

**Earliest Date for Expiry of Deposit Bond or Bank Guarantee** means the date as specified or calculated for such in the Schedule;

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

**Estimated Date Range for Works** means the date or period by which the Seller estimates that the Works will have reached the stage of Operational Acceptance;

**GST** has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

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

**Income** means the rents and profits derived from the Land;

**Land** means the land described in the Schedule and to be the subject of the Lease;

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

**Lease** means the Crown lease to be granted to the Buyer in accordance with clause 1 this Contract;

**Notice to Complete** means a notice in accordance with clauses 19.1 and 19.2 requiring a party to complete;

**Planning Act** means the *Planning and Development Act 2007* (ACT);

**Planning and Land Authority** means the body corporate established in accordance with the Planning Act;

**Price** means the purchase price payable by the Buyer under this Contract;

**Schedule** means the schedule to this Contract;

**Seller** means the vendor of the Land under this Contract as specified in the Schedule;

**Seller's Solicitor** means the legal practitioner or firm of legal practitioners acting for the Seller in respect of this Contract;

**Special Conditions** means such terms, if any, attached to and forming part of this Contract at Annexure D;

**Specimen Lease** means the draft crown lease annexed to this Contract at Annexure A;

**Stakeholder** means the person referred to in the Schedule as such;

**Standard Annexures** means any and all of the documents attached to and forming part of this Contract as Annexures A-D inclusive;

**Substance** means any substance or thing which is or may be an emission to the environment or harmful to the environment or the health or safety of any person or may cause damage to property and includes: asbestos, polychlorinated biphenyls, heavy metals, chemicals, contaminants and any other matter whether in solid, liquid or gaseous form, or whether naturally occurring or man-made;

**Territory Plan** means the Territory Plan 2008 as amended and varied from time to time;

**Utility Service** includes drainage, electricity, garbage collection, gas, sewerage, telecommunications or water; and

**Working Days** has the meaning given to it by the *Legislation Act 2001 (ACT)*.

## 31 INTERPRETATION

### 31.1 In this Contract:

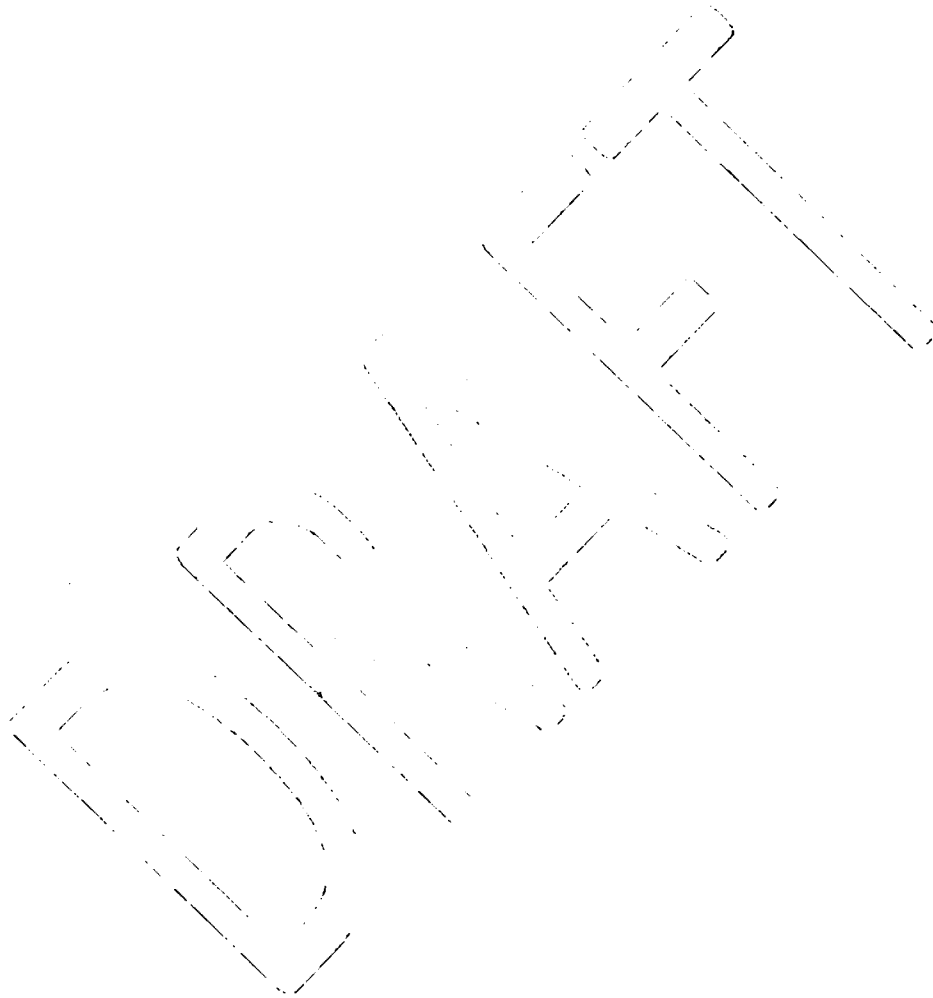
- (a) a reference to the Seller or to the Buyer includes the executors, administrators and permitted assigns of any of them, if an individual, and the successors or permitted assigns of any of them, if a corporation;
- (b) the singular includes the plural, and the plural includes the singular;
- (c) a reference to a person includes a body corporate;
- (d) a term not otherwise defined has the meaning in the *Legislation Act 2001 (ACT)*; and
- (e) a reference to an Act includes a reference to any subordinate legislation made under it or any Act which replaces it.

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

31.3 If the time for something to be done or to happen is not a Working Day, the time is extended to the next Working Day, except in the case of clause 2.1.

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

**ANNEXURE A – SPECIMEN LEASE**



**ANNEXURE B – PRESCRIBED CONDITIONS FOR ASSOCIATED WORKS**

**ANNEXURE C – SPECIMEN PROJECT DELIVERY AGREEMENT**

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**ANNEXURE E – SPECIAL CONDITIONS**





## ANNEXURE E – SPECIAL CONDITIONS

### 31 INTEREST

- 31.1 If the Deposit is provided in the form of cash or a cheque it is to be invested (at the risk of the party who will become entitled to the Deposit) with a bank, credit union or permanent building society in an interest bearing account in the Australian Capital Territory, with interest to be reinvested. The interest, after all deductions for government taxes and financial institution charges, will be paid to the party who becomes entitled to the Deposit.

### 32 DATE FOR COMPLETION

- 32.1 The Date for Completion of this Contract will be 21 days from the later of:
- (a) two years from the date of this Contract for Sale; and
  - (b) the issue of the a certificate of occupancy from the Planning and Land Authority for the Redevelopment of Block 21 Section 30 Dickson to the Crown Lessee of that block.
- 32.2 If a certificate of occupancy from the Planning and Land Authority for the Redevelopment of Block 21 Section 30 Dickson to the Crown Lessee of that block has not been issued to the Crown Lessee of that block within 4 years of the date of this Contract, the Buyer or the Seller may terminate this Contract, without breach, by notice to the other party and each party will be relieved of any further obligation under this Contract.

### 33 GRANT OF THE LEASE

- 33.1 Despite clause 1, if clause 3(c) of the Lease ("Associated Works") or clause 3(e) of the Lease ("Purpose") are not in the same form as the Specimen Lease, the Buyer or the Seller may terminate the Contract by notice to the other party.

### 34 DEED OF UNCONDITIONAL UNDERTAKING

- 34.1 If required by the Prescribed Conditions for Associated Works, no later than 5 Working Days prior to the Date for Completion, the Buyer must provide to the Seller the completed but unexecuted Deed of Unconditional Undertaking substantially in the form of the Proforma Deed of Unconditional Undertaking for submission to the Planning and Land Authority for approval in the sum specified in the Prescribed Conditions for Associated Works.
- 34.2 If required by the Prescribed Conditions for Associated Works, prior to or on Completion, the Buyer must provide to the Seller the executed Deed of Unconditional Undertaking in the form approved by the Planning and Land Authority in accordance with Special Condition 34.1.

### 35 IDENTIFIER FOR THE LAND

- 35.1 The Seller advises and the Buyer acknowledges that the Current Identifier may change upon registration of a Deposited Plan.
- 35.2 The Seller agrees to advise the Buyer of the New Identifier within a reasonable time of the Seller being notified of the New Identifier by the Authority.

35.3 The Buyer agrees that the references to the Current Identifier in the Contract and other documentation will be a reference to the New Identifier once issued and that the Lease will be granted with the New Identifier.

### **36 VARIATION TO LAND**

36.1 Clause 5 of the Contract is deleted.

36.2 The Buyer acknowledges that the Specimen Lease and any other plans in relation to the Land may be affected by:

- (a) the requirements of legislation;
- (b) variations to the Territory Plan;
- (c) the requirements of government authorities; and/or
- (d) physical conditions affecting the Works

and may result in one or more of the following:

- (e) minor redefinition of the boundaries of the Land;
- (f) minor road re-alignment or dedication; and
- (g) minor variations of the easements relating to the provision of Utility Services.

36.3 Any redefinition, road realignment or dedication or variation of easements will be deemed to be minor if it does not materially and detrimentally affect the use of the Land.

36.4 The Buyer cannot make a claim or objection or rescind or terminate or make a claim for compensation under clause 18 of this Contract in respect of any matter set out in Special Condition 36.2.

### **37 PROPERTY ACT**

37.1 The parties acknowledges that the Property Act does not apply to this Contract as this Contract is not a sale of residential Property and the grant of the Lease will be the first grant of a Crown lease over the Land.

### **38 PROJECT DELIVERY AGREEMENT**

38.1 This Contract is contingent upon the parties entering into the Project Delivery Agreement prior to completion of this Contract and the Seller may (in its absolute discretion) terminate this Contract at any time should the Buyer complete this Contract without executing the Project Delivery Agreement.

38.2 The Buyer must comply with all of its obligations under the Project Delivery Agreement.

38.3 The Buyer acknowledges and accepts that restrictions on dealing with the Land apply until the Buyer has complied with its obligations under the Project Delivery Agreement, as set out in the Project Delivery Agreement.

38.4 Except as otherwise provided in the Project Delivery Agreement, the Buyer must not complete any agreement for the sale of, or permit any transfer to be registered in respect of, the whole or any part of the Land or any dwelling erected or to be erected

on the Land, prior to the Buyer having complied with all of its obligations under the relevant Project Delivery Agreement.

- 38.5 The Buyer acknowledges and agrees that the Seller may retain and use the Security in respect of the performance by the Buyer of its obligations under this Contract and the Project Delivery Agreement.
- 38.6 The Buyer acknowledges that the Seller may register, and consents to the Seller registering, a charge or caveat over the Lease provided that such a caveat must not prevent the registration of a mortgage by the Buyer in respect of the Lease.
- 38.7 The Seller must release the Charge, and withdraw any caveat registered by the Seller pursuant to clause 38.6, within 14 days after the later of:
- (a) the Buyer having complied with all of its obligations under this Contract and the Project Delivery Agreement; and
  - (b) the Buyer requesting the Seller to withdraw the caveat.

### 39 DEFINITIONS

39.1 The following definitions are in addition to the definitions in clause 30 of the Contract:

**Current Identifier** means the numerical block and section identifier used to describe the Land at the date of this Contract;

**Deed of Unconditional Undertaking** means the deed of unconditional undertaking in the form approved by the Planning and Land Authority to be provided to the Seller in accordance with Special Condition 34.1;

**Deposited Plan** means the plan prepared by a registered surveyor and registered by the registrar-general under section 7 of the *Districts Act 2002* (ACT);

**New Identifier** means the numerical block and section identifier for the Land on the Deposited Plan;

**Proforma Deed of Unconditional Undertaking** means the proforma deed of unconditional undertaking annexed to this Contract at Annexure D;

**Project Delivery Agreement** means the project delivery agreement in relation to the Land, substantially in the form and substance annexed to the RFT to be entered into between the Seller and the Buyer.

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

**Redevelopment** means:

- (a) building, altering or demolishing any existing building or structure on the Land;
- (b) carrying out earthworks or other construction work on or under the Land;
- (c) carrying out work that would affect the landscape of the Land;

**Security** means any amounts payable by the Buyer to Seller as security under the Project Delivery Agreement.

DICKSON

BLOCK 20 | SECTION 34

INTENDED DESIGN AND  
DEVELOPMENT OUTCOMES

2012



**ACT**  
Government  
Economic Development



Land  
Development  
Agency

CANBERRA FIRST

**Disclaimer:** The Land Development Agency (LDA) makes no warranty to the accuracy or completeness of information in this press and recommends obtaining independent legal, financial and accounting advice before considering purchasing land or making an offer to purchase land.

This document has been prepared to illustrate an intended design and development outcome for Section 34, that could be achievable under the Territory Plan. This document has not been approved by ESDD.



# TABLE OF CONTENTS

3 PROJECT OVERVIEW

6 DESIGN PRINCIPLES

10 URBAN OPEN SPACE



1

PROJECT OVERVIEW

## PROJECT OVERVIEW

The Design Guidelines for Dickson Block 20, Section 34 provide a framework for development on this key development site within the Dickson Group Centre.

This development opportunity is located in the centre of the Dickson Group Centre. The development site is approximately 5,282m<sup>2</sup>.

The development on the site is to be mixed use, delivering a ground floor that activates the public domain with residential and/or commercial uses at upper levels. The development site is zoned Commercial Zone 1 - Core Zone (CZ1); however this site is subject to a current Territory Plan Variation (DVP) process. The DVP proposes that the site be re-zoned to Commercial 3 Zone - Services (CZ3) and with a component of Urban Open Space (PRZ1).

The future development context of the wider Dickson Group Centre is currently being reviewed by Environment and Sustainable Development Directorate (ESDD), the content of which is contained with Draft Variation 311, released in July 2012. The Draft Variation proposes rezoning of land within the Group Centre, and the introduction of a Precinct Code. It can be viewed at <http://www.actpla.act.gov.au/dickson>.



IMAGE 1 existing condition



IMAGE 2 existing condition



IMAGE 3 existing condition

## OBJECTIVES

### The Dickson Group Centre vision

Dickson centre will be a multicultural, progressive and safe hub with a diversity of services and amenities for the local and wider community, a place where people live, work and play.

Dickson Centre presents a new typology for mixed use centres in the ACT that seeks to pursue an active centre that is focussed on pedestrians, cyclists and provides an attractive and amenable public domain. Dickson Block 20 Section 34 should respond to objectives contained within the Dickson Group Centre – Draft Variation to the Territory Plan 311. The following objectives inform development on Section 34:

- To create the developed as a destination with extended hours of use and a strong sense of place through its connection to a new, high quality urban park that generates activity and promotes social interaction and economic vitality.
- To produce conditions that encourage use of the public space. Designs should contribute to a sense of comfort and amenity for people by providing weather protection and street furniture.
- To encourage a mix of uses, including high density residential components, which contributes to an active and diverse character;
- To encourage activity at street frontage level which contributes to pedestrian activity and social interaction composed mostly of entertainment venues such as restaurants and bars but may have some retail space;
- To induce life and activity by the establishment of a useable and observable public domain;
- To create safe and convenient zones for pedestrians & cyclists; To promote 24 hour natural surveillance with overlooking residential uses accessed from the public domain;
- To provide Dickson Group Centre with a contemporary character;
- To provide a development that is environmentally sensitive and incorporates best practice sustainable design elements;
- To avoid exposing public parking to the pedestrian orientated public domain;
- To support sustainable transport;
- To promote opportunities for energy efficiency through good solar access; and
- To ameliorate adverse climate impacts e.g. NW winds.

# DESIGN PRINCIPLES

with the public domain, providing ease of access and transition between the built form and the street.

Private entries to residential apartments will be clearly demarcated from the public areas, well lit and safe. The residential entries will be separated from other ground floor uses such as shops or restaurants.

DEVELOPMENT OF BLOCK 20 SECTION 34 WITHIN THE DICKSON GROUP CENTRE MUST BE RESPONSIVE TO THE INTENT OF THE PRECINCT CODE CONTAINED WITHIN DRAFT VARIATION 311 TO THE TERRITORY PLAN, WHICH IMPLEMENTS THE *DICKSON CENTRE MASTER PLAN* (2010).

## SITE + VEHICULAR ACCESS

A new access way is required to be constructed at the southern edge of Block 20 Section 34 in order to facilitate access to the Tradies Club (refer to [FIGURE 1](#) overleaf). It is a low speed, low volume traffic environment to be designed as a shared way providing for both pedestrian and vehicular access.

## STREETSCAPE

Badham Street borders the development site to the west. It is designed for safe movement for all users, being convenient for cars, buses, pedestrians and cyclists alike. The intent of Badham Street is to enhance the pedestrian experience, creating an activated and attractive street.

Vehicle ramp widths will be kept to a minimum and will prioritise pedestrian movement when crossing verges, through elements such as material selection.

Vehicular movement into the site will be from Dickson Place. The access ramps for on-site parking are to be clearly differentiated from the service vehicle entry.

Dickson Place borders the development site to the north and is to be maintained for safe movement of pedestrians and cyclists, as well as vehicular access to the site.

## SERVICES

Servicing areas are required to be internalised within the built form and fully screened from public view. Service areas are not to visually or materially impact the streetscape or adjacent sites.

The new public plaza to be constructed by the purchaser, will provide a pedestrian link from Badham Street and Dickson Place. This connection is expressed through a widened pedestrian verge which is integrated with the predominantly paved (hardscape) application to the open space.

## MASSING

The massing of the building will be developed in response to internal uses, adjacent built form, streetscape outcomes, climate and views.

At no point along any existing or proposed streets will the basement car park extend above the finished footpath level.

Overall the building form will be articulated at a scale appropriate to its context, and be engaging and expressive.

## PEDESTRIAN ENTRIES

All entry points will be clearly expressed through the built form and provide at-grade interface

## STREET LEVEL

The ground floor will promote public permeability, encourage interaction with the street, provide enticing access points and be generous in its finished floor level to finished ceiling level.

Blank frontages are discouraged to Badham Street and Dickson Place. The use of clear glazing along these frontages will promote passive surveillance and add to the sense of street activity.

Blank frontage along the proposed street will be minimised as much as possible along the length of the access way. Lighting, windows and designed detailing to the facade is encouraged to promote both a safe and aesthetically pleasing environment.

## UPPER LEVELS + ROOFTOP

The upper levels of the built form will be composed with a balance of solid and void, projecting and recessed and opaque and transparent elements to provide high amenity internal and external living spaces. The treatment will maximise passive surveillance of streets, public thoroughfares, and communal open spaces below. The facades will be visually engaging through articulated projection of walls, balconies, terraces and windows.

The roof line will provide modulation for visual interest, and its setback will be considered in relation to its impact upon the streetscape. Plan and lift over-runs should be an integral part of the roof design of buildings.

Terrace/balcony gardens are encouraged for use by the residents.

## MATERIALS

Materials will be selected for permanence, durability and low on-going maintenance. Weathering effects will be considered and used as a tool for enhancement, allowing ongoing change without reduction in the inherent quality of that material.

Materials will enhance architectural expression and enhance visual, audible and tactile experiences in streets and public spaces.

Embodied energy, thermal properties and potential for future recycling capabilities will influence a material selection. Selected material will avoid being highly reflective to avoid glare and focussed heat transfer.

## AMENITY + SUSTAINABILITY

In order to achieve a built form that is functional and amenable, best practice Environmentally Sustainable Design (ESD) principles will be followed. They will optimise cross ventilation, and where cross ventilation is not possible corners of buildings and articulated elements will be utilised to provide through ventilation.

Plan depths will optimise ventilation and natural day light, reducing dependence upon air conditioning and artificial lighting.

Energy efficient lighting will be installed and consideration given to the use of solar devices such as solar panels, solar hot water systems and the like.

Sustainable transport choices should be promoted by facilitating access to efficient public transport, cycling facilities, shelters and providing clear and direct lines of travel.

# DESIGN PRINCIPLES

THE DEVELOPMENT OF BLOCK 20 SECTION 34 IS REQUIRED TO RESPOND TO THE DESIGN PRINCIPLES WITHIN THIS DOCUMENT, AND HAVE REGARD FOR THE PROPOSED PRECINCT CODE CONTAINED WITHIN THE DRAFT VARIATION 311 TO THE TERRITORY PLAN.

FIGURE 1

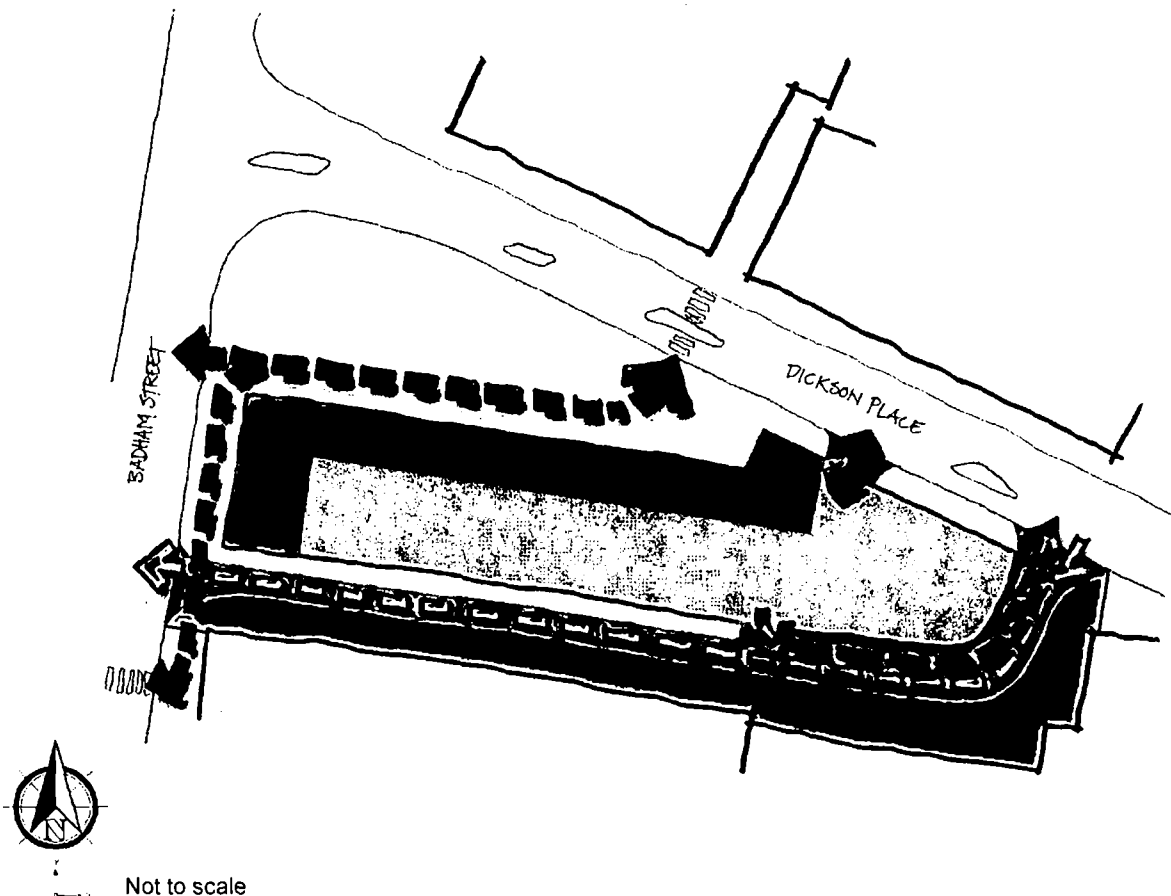




IMAGE 4 active ground floor uses, with residential components provided above












IMAGE 5 active ground floor uses and provision of outdoor seating



IMAGE 6 activated ground floor uses, with residential components provided above

## LEGEND

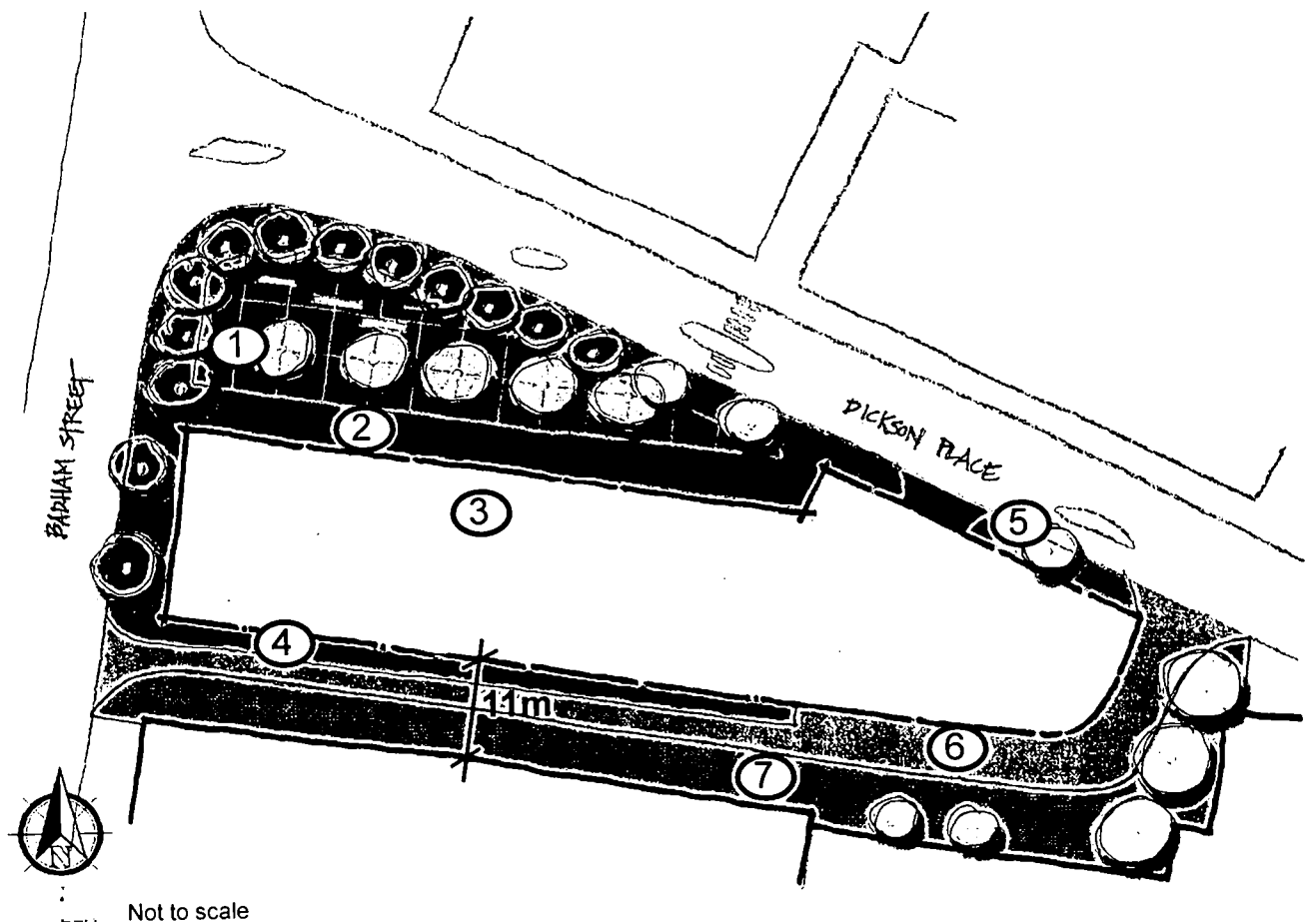
-  Active uses to building frontage
-  Non-active uses acceptable
-  High quality paved public realm
-  Shared vehicle/pedestrian way
-  Pedestrian connection
-  One-way through traffic
-  One-way exiting traffic
-  Vehicle entry/exit
-  Pedestrian and vehicle access to Tradie's Cub

# URBAN OPEN SPACE

## PUBLIC PLAZA

THE LANDSCAPED URBAN OPEN SPACE WILL BE AN INTEGRAL COMPONENT OF ANY DEVELOPMENT ON BLOCK 20 SECTION 34.

FIGURE 2



## DESIGN STANDARDS

Establishment of a publicly accessible park shall consider the following:

- a continuous ground plane shall extend from the back of Dickson Place to the new building line
- The combined verge and open space shall be fully accessible to pedestrians and allow for:
  - east west pedestrian flow along the street;
  - street trees;
  - small scale public events;
  - public seating;
  - shaded areas for public seating;
  - integrated outdoor dining area;
  - bicycle parking drinking fountain;
  - public lighting

The section from the back of the kerb to the property boundary shall:

- be hard paved;
- include street trees at approximately 10m centres; and
- include new street lighting to AS/NZS 4360.2004 Categories V3 & P1.



IMAGE 7 Public plaza, with active uses fronting the public space



IMAGE 8 hardscaped plaza, with provision of public seating and intermittent soft landscaping

### LEGEND

- 1 Plaza space with high quality stone paving on concrete sub-base. Largely hard paved surface allows for public seating as well as cafe seating under shade trees.
- 2 Pedestrian circulation zone
- 3 Active building frontage at ground level
- 4 Shared pedestrian and vehicle access
- 5 High quality pedestrian verge with clearly defined vehicle crossing
- 6 Rear lane service access
- 7 Maintain pedestrian and vehicular access to existing Tradie's Club entrance and car park. Allow for new parallel kerb side parking.

## URBAN OPEN SPACE

The section from the property boundary to the building line shall:

- complement the verge treatment to create a fully integrated public place;
- include hard and soft landscape treatments;
- include public lighting to AS/NZS 4360.2004 Categories P7; and
- include public seating.

Hard paving in both the verge and the lease area shall include a minimum of 150mm thick reinforced concrete slab. Oxides, saw cutting and other treatments can be used to create a high quality in-situ concrete finish.

If a unit paving finish is used, then unit pavers shall be properly fixed to the slab. Pavers bedded on sand are unacceptable.

The section between the new building and the existing buildings to the south and east shall:

- be designed in such a way as to prioritise pedestrian movement and safety;
- include high quality paving material fixed to a reinforced concrete slab;
- include public lighting; and
- use windows and detailing of the facade to minimise blank frontage.

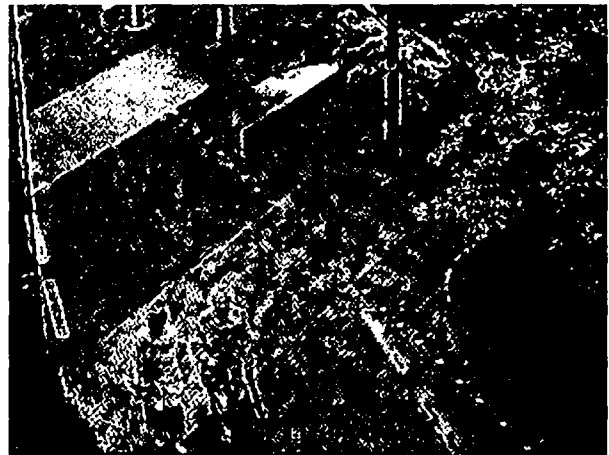


IMAGE 9 hardscaped plaza, facilitating pedestrian movements

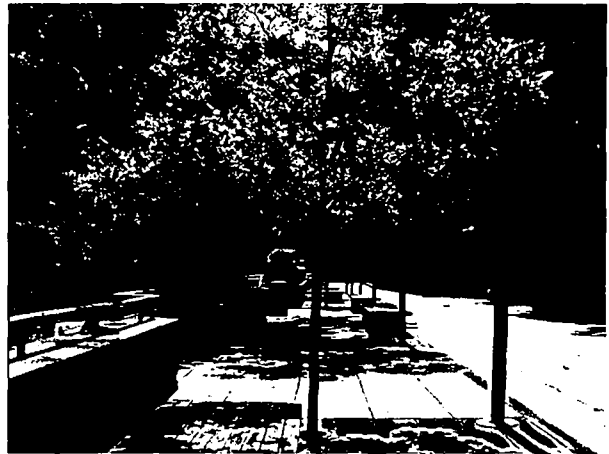


IMAGE 10 hardscaped plaza, facilitating pedestrian movements, and provision of seating



IMAGE 11 multi- use lane, facilitating pedestrian movements, and provision of vehicular service

- End of document -



# **EVALUATION REPORT**

**REQUEST FOR TENDER**

**BLOCK 20 SECTION 34**

**DICKSON**

***ECONOMIC DEVELOPMENT DIRECTORATE***  
***11 December 2012***

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## 1. PURPOSE

To select a preferred Tenderer for the sale of Block 20 Section 34 Dickson.

## 2. PROJECT BACKGROUND

In early 2012, the ACT Government agreed to the sale of Block 20 Section 34 Dickson by way of Request for Tender (RFT) to develop the subject site.

A Request for Expressions of Interest (REOI) was released on 15 September 2012 and 20 parties registered their interest to receive the RFT documentation.

During the RFT period a number of addenda and clarifications were sent to each of the 20 respondents and these covered:

- a) A copy of Draft Variation 311 and attendant documentation;
- b) Extension to the closing date to 26 November 2012;
- c) Issue of Draft Crown Lease;
- d) Response to 47 questions raised by one of the respondents;
- e) Further clarification of 9 further issues raised by one of the respondents; and
- f) Issue of the Site Investigation Report prepared for LDA by Indesco.

The REOI closed at 2:00pm on 26 November 2012 and two responses were received through the ACT Government Shared Services Tender Box.

## 3. PROJECT DETAILS

### Program

The following timetable is being applied to the project:

Stage	Event	Proposed Date
	Issue RFT	15 September 2012
	Submissions for RFT close	26 November 2012
	Selection of preferred Tenderer	14 December 2012

## 4. PROBITY, DISCLOSURE OF CONFLICTS OF INTEREST & CONFIDENTIALITY

All members of the Tender Evaluation Team (TET) have been asked to disclose any conflict of interest or association they might have with the Respondents for the project. A copy of the signed disclosures are on file.

All documents and proceedings of the Evaluation Team have been treated as confidential.

## 5. REOI RESPONSES RECEIVED

The following responses were received:

- [REDACTED]
- Canberra Tradesmen's Union Club Limited.

## 6. EVALUATION

Responses were evaluated in accordance with following criteria.

ASSESSMENT CRITERIA		Weighting
C 1	Tenderers shall provide details of proposed purchase price for the site.	40%
C 2	Tenderers shall demonstrate their financial capacity to undertake the development.	20%
C 3	Tenderers should provide a schematic development plan for the site showing the floor plans, elevations and proposed uses within the development.	20%
C 4	Tenderers shall demonstrate the compliance of their proposed development with the Dickson Centre Master Plan.	10%
C 5	Tenderers shall provide estimated timeframes for redevelopment of the site.	10%

### Evaluation Summary

#### a) Overview

Both respondents lodged fully conforming responses to the RFT.

- Price

[REDACTED] offered a price of \$1,600,000 excluding GST with settlement in 2015 consistent with the terms of the sales contract.

It should be noted that the schematic plans for the [REDACTED] only appears to provide 100 replacement car spaces but this was not conditioned as part of its offer and therefore they would be bound to provide the full replacement car parking as assessed. The value of the shortfall in car parking

would equate to \$350,000 excluding gst if they sought to contract with only 100 replacement car parks.

The Canberra Tradesmen's Union Club Limited (the Club) offered a price of \$2,420,000 inclusive of GST (\$2,200,000 exclusive of GST) with settlement 30 days after exchange of contracts. Its offer was conditional on only being required to provide 84 replacement car spaces

In order to fairly evaluate both offers the offers need to be standardised to a common position, taken as a presumed settlement 30 days after exchange adjusted for any reduction in car parking.

Both offers are below the MMJ Real Estate valuation commissioned for the RFT which valued the land at \$3.180 million exclusive of GST based on a settlement due in 2015 and a requirement to provide 139 replacement car parks.

MMJ Real Estate has indicated that it would discount the purchase price by 5% compounded over two years to equalise the settlement terms and MMJ Real Estate values the reduction to 84 spaces in requirement for car parking at around \$500,000 and to 100 car parks at around \$350,000.

On an standardised basis, the offers would then be   \$1,101,247 ex gst and The Club \$1,700,000 ex gst.

Any consideration of The Club offer would also need to be adjusted for the loss of revenue to the Territory over the two year period unless they agreed to the Territory retaining this income.

The MMJ Real Estate revised valuation would be of the order of \$3.65 to \$3.7 million

- Financial Capacity



The Club's offer was made by the Canberra Tradesmen's Union Club Limited and was supported by a letter of support from Westpac and copies of the most recent audit accounts for the Club. A review of the accounts shows that the club held sufficient cash on hand to settle the purchase out of its cash reserves.

- Schematic Development Plans

Both parties submitted schematic plans with the [REDACTED] proposal showing a single storey retail development comprised mainly of a [REDACTED] and two levels of basement car parking.

The Club proposal depicted a six storey building with retail uses on the ground floor and residential units on the upper level.

- Dickson Master Plans

Both respondents addressed the merits of their proposal against the Dickson Masterplan.

- Time frame for development

Both parties acknowledged that they would not commence development until the development of Block 21 Section 30 was completed to a stage that replacement car parking was available on that site.

[REDACTED] estimated it would take 10 to 12 months to construct its scheme from the time a contractor took possession of the site for construction.

The Club advised that the development of Block 20 would be rolled into a comprehensive master plan of all the adjoining sites that are owned by the Club which would result in a comprehensive redevelopment of the whole of that Section within the Dickson Group Centre.

**b) Evaluation summary**

ASSESSMENT CRITERIA		Weighting		Tradesmen's Union Club
C 1	Tenderers shall provide details of proposed purchase price for the site.	40%	25%	35%
C 2	Tenderers shall demonstrate their financial capacity to undertake the development.	20%	18%	15%
C 3	Tenderers should provide a schematic development plan for the site showing the floor plans, elevations and proposed uses within the development.	20%	15%	18%
C 4	Tenderers shall demonstrate the compliance of their proposed development with the Dickson Centre Master Plan.	10%	6%	8%
C 5	Tenderers shall provide estimated timeframes for redevelopment of the site.	10%	7%	7%
TOTAL		100%	71%	83%

The panel concluded that the proposal from the Club was superior in terms of the tendered price and overall solution for the site. While the panel rated [redacted] as slightly superior in terms of financial capacity on the basis of relative size of the two respondents, the panel concluded that the Club had sufficient financial capacity to raise the necessary finance to undertake the proposed development. The panel noted the Club's financial statements showed [redacted] in equity, significant cash reserves and strong operating cash flows.

undertake the proposed development. The panel noted the Club's financial statements showed [REDACTED] in equity, significant cash reserves and strong operating cash flows.

**7. EQUAL EMPLOYMENT OPPORTUNITY**

The Evaluation Team confirms that the successful respondent is not listed on the following website –

[http://www.eowa.gov.au/Reporting\\_And\\_Compliance/What\\_Happens\\_if\\_my\\_Report\\_does\\_not\\_Co\\_mply/List\\_of\\_Non\\_Compliant\\_Organisations.asp](http://www.eowa.gov.au/Reporting_And_Compliance/What_Happens_if_my_Report_does_not_Co_mply/List_of_Non_Compliant_Organisations.asp)

**8. DEBRIEFING OF UNSUCCESSFUL RESPONDENTS**

Letters will be sent to any unsuccessful respondents and will include:

- Appreciation for submitting a Tender;
- Regret that they were unsuccessful on this occasion.

**9. RECOMMENDATION**

The Evaluation Panel recommends that

- a) The Canberra Tradesmen's Union Club Limited is selected as the preferred Tenderer.
- b) MMJ Valuers be requested to provide an updated valuation on the basis that settlement occurs 30 days after exchange and only 84 car spaces are replaced.
- c) EDD be given authority to negotiate with the Club to achieve a sales price consistent with the updated valuations.



**Richard  
Drummond**

**Chairperson**  
10/12/2012



**Floyd Kennedy**

**Member**

10/12/2012



**Ian Wood Bradley**

**Member**  
10/12/2012



**Alastair Swain**

**Member**  
10/12/2012

**10. DIVISIONAL APPROVAL**

Evaluation Panel recommendation

**Approved** / Not Approved / Requires Clarification

Signature:  
Greg Ellis



Date: 11/12/12

**11. DELEGATE APPROVAL**

**10.1 Recommendation**

Evaluation Panel recommendation:

**Approved** / Not Approved / Requires Clarification.

Signature



Date: 20/12/12

David Dawes  
Director General  
Economic Development Directorate



**ACT**

Government

Economic Development

*Date due with  
Minister's  
Office*

*Date due  
With D-G*

*Tracking  
Numbers*  
  
BM12/2351

*Any other critical date and reason*

**Subject: Preferred tendered for Block 20 Section 34 Dickson**

Contact Officer: Pierre Huetter

Extension: ext 53585  
61292

Cleared by Director, SLS: Greg Ellis

19/12/12  
Date:

Cleared by A/g Deputy Director-General, LS&F: Chris Reynolds

Date:

Cleared by Director-General: David Dawes

Date: 19/12/12



**ACT**  
Government

Economic Development

# BRIEF

Ref: BM12/2351

**SUBJECT: Preferred tenderer for Block 20 Section 34 Dickson**

To: Minister for Economic Development

- Director-General, Economic Development Directorate DD 20/12/12
- A/g DDG, Land Development, Strategy and Finance

From: Director, Sustainable Land Strategy

Date: 19 December 2012

## Purpose

To advise you of the preferred tenderer for Block 20 Section 34 Dickson.

## Background

A request for tender for Block 20 Section 34 Dickson was released on 15 September 2012. 20 parties registered to receive the tender documentation. 2 tenders were submitted: Woolworths and Dickson Tradesmen's Union Club (Dickson Tradies).

## Issues

Of the two tenders (Woolworths and the Dickson Tradies), the latter scored the highest against the assessment criteria noting that neither tender reached the reserve price. The Dickson Tradies is therefore the preferred tenderer.

Consistent with market practice, EDD will now negotiate with the preferred tenderer. If the reserve cannot be reached, the second tenderer (Woolworths) will be offered the opportunity to meet the reserve. If the second tenderer does not reach the reserve price, the block will be made available as an over the counter sale.

The tender evaluation is at Attachment A.

## Financial

Woolworths offered \$1.76m (GST inclusive). The Dickson Tradies offered \$2.42m (GST inclusive). Excluding GST the offers are thus \$1.6m (Woolworths) and \$2.2m (Tradies). The Tradies' offer is thus 40% higher in nominal terms.

## Time Value of Money

It should be noted, furthermore, that while the terms of the RFT only required settlement in 2015, the Tradies offer to settle one month after exchange of contracts, provides the Territory

with an additional real value in terms of the time value of money. Discounting Woolworths offer by two years, its \$1.6m offer to be paid by 2015, represents \$1.45m in 2013 Net Present Value (NPV) terms.

The Reserve Price

While the Tradies offer is thus clearly superior to the Woolworths offer, it is still well short of the reserve price. That price – determined by an independent valuation from MMJ – is \$3.18m excluding GST based on a 2015 settlement date and a requirement to provide 139 replacement car parks.

Assuming that settlement occurs in early 2013, the NPV of that estimate is just under \$2.9m.

Discounting for insufficient parking

Neither Woolworths' nor the Tradies' offers meet the RFT requirement for 139 carspaces.

Although this number of spaces will not necessarily be mandated by the Planning Authority, it is relevant in terms of assessing the value of the offer.

As the Tradies offer includes only 84 spaces, the value of the offer should be discounted by 55 spaces. MMJ has used an estimate of \$9,090 per space, this brings the Tradies offer down to \$1.7m i.e. \$1.2m below the \$2.9m NPV reserve.

Were negotiations with the Tradies to be unsuccessful, it would be open to the government to negotiate with Woolworths. However, it should be noted that its adjusted offer, taking into account the time value of money and the shortfall of 39 car spaces would mean the NPV of their offer is \$1,101m, almost \$1.8m short of the NPV adjusted reserve price.

**Media**

There may be some media interest in the issue.

**RECOMMENDATION**

That you note the contents of the brief.



Greg Ellis

Andrew Barr MLA ..  ..... 21/12/12

**NOTED/PLEASE DISCUSS**

Action Officer: Pierre Huetter (51292)



**ACT**  
Government

Economic Development

**BRIEF**

Bm13/2165

**SUBJECT: Sale of Block 20 Section 34 Dickson – Canberra  
Tradesmen's Union Club Ltd**

To: Director-General

- Deputy Director-General, Land Strategy and Financial Services

From: Director, Sustainable Land Strategy

Date: 13 December 2013

**Purpose**

To secure your formal endorsement to the financial reconciliation of the negotiated outcome for the sale of Block 20 Section 34. Your formal agreement is required for the LDA's record to enable the sale to be transacted.

**Background**

The LDA issued a Request for Tender (RFT) for the sale of Block 20 Section 34 on 15 September 2012. Of the two tenders received, the Canberra Tradesmen's Union Club Ltd (the 'Tradies') were the preferred tender. **You approved the Evaluation Report for the RFT on 20 December 2012** (copy attached).

The original valuation by MMJ was \$3.18 million (exclusive of GST). This was considerably higher than the Tradies' initial offer based on advice from their valuers, Knight Frank (Mr Steven Flannery), of \$2.2 million (GST exclusive). Consistent with market practice, EDD commenced negotiations with the preferred tenderer to achieve the reserve price. The Minister for Economic Development was advised of this on 21 December 2012 (ref: BM12/2351).

**Issues**

**Method of Payment**

Rather than pay cash for the purchase of Block 20 Section 34, the Tradies proposed payment through the sale to the Territory of its land assets on Section 72 Dickson. These are Blocks 6 and 25. Block 25 is a concessional lease. Block 6 is a commercial site with considerable improvements, including an apprentice training facility and childcare centre.

Based on your instructions that these sites could be considered as payment, their value was considered within the negotiation. To arbitrate on the valuations you also agreed to the appointment of Mr Paul Powderly of Colliers International Ltd to assist in EDD's negotiation with the Tradies. There was agreement between the respective valuers, Colliers and Knight Frank, that the total value of the two sites is \$3,595,000.

A (Block 25 at \$45,000 and Block 6 at \$3,550,000). The purchase of Block 6 includes a 40 month rent free component to the Tradies.

Taken together the value of these sites is thus \$415,000 greater the reserve price the Territory will receive for Block 20 Section 34.

This payment would see the Tradies meet their obligation to pay the reserve price for Block 20 Section 34; and would see the purchase of two sites on Section 72 that the Territory can consolidate for future development.

Clarifications

The Tradies raised three issues requiring clarification.

1. That car parking is a permitted use on Block 20 Section 34. The Tradies were concerned that this was not listed on the permitted uses in the specimen lease. However, car park is not listed only because we would not accept this as the sole purpose. ACTGS (Brendan Ding) has confirmed (5 December 2013) that car parking is, however, an ancillary use and so car parks can be built to support the development.
2. That there would be no requirement to replace 36 car spaces lost due to the mandatory creation of a 'pocket park' would not need to be replaced. Paul Isaks has confirmed that the additional parking provided by the Tradies in their existing basement can be used to account for these.
3. That the requirement to build a road between the Tradies existing site and Block 20 Section 34 is not mandatory. This was only a mandatory requirement if the adjoining land owners were different parties.

**Recommendations**

That you accept the Tradies offer to pay the reserve price of \$3,180,000 (GST exclusive) for Block 20 Section 34, through a transaction involving:

- the purchase by the Territory of Block 25 Section 72, Dickson for \$45,000 (GST exclusive);
- the purchase by the Territory of Block 6 Section 72, Dickson for \$3,550,000 (GST exclusive); and
- the waiver of 40 months rental payments on the premises for Block 6 Section 72.

Greg Ellis

[Redacted Signature]

David Dawes ..... 17/12/13

AGREED/NOT AGREED/NOTED/PLEASE DISCUSS

3595.000  
3180  
415

\* what is happening with the  
- Manicare site?  
Have the agreed to move?

DD  
17/12/13

**LAND DEVELOPMENT AGENCY  
COMMERCIAL CONTRACT FOR SALE  
SCHEDULE**

DATE OF THIS CONTRACT		15 December 2017	
<b>LEASE DETAILS</b>			
LAND		Block	Section
		30	34
		Division/District Dickson	
OCCUPANCY		Vacant Possession	
CO-OWNERSHIP	Mark one	<input type="checkbox"/> Tenants in common (Show shares)	<input type="checkbox"/> Joint Tenants
<b>SELLER DETAILS</b>			
SELLER	Full name ACN/ABN Address	Land Development Agency 20 419 925 579 TransACT House, 470 Northbourne Avenue, Dickson ACT 2602	
SELLER'S SOLICITOR	Firm	Australian Capital Territory Government Solicitor (Attention: Brendan Ding)	
	Ref	621909	
	Phone	02 620 70666	
	Fax	02 620 70650	
	DX/Address	PO Box 260 Civic Square ACT 2608 DX 5602 Canberra	
<b>BUYER DETAILS</b>			
BUYER	Full Name ACN/ABN Address	Canberra Tradesmen Union Club Limited 098 615 760 2 Badham Street Dickson ACT 2602	
BUYER'S SOLICITOR	Firm	Clayton Utz	
	Ref	[REDACTED]	
	Phone	[REDACTED]	
	Fax	[REDACTED]	
	DX/Address	GPO Box 1940, Canberra ACT 2601	
<b>PAYMENT DETAILS</b>			
PRICE	Price Less Deposit Balance	\$3,180,000.00 \$318,000.00 \$2,862,000.00	(The Price is GST exclusive) (10% of Price) See Special Condition 35
EARLIEST DATE OF EXPIRY OF DEPOSIT BOND OR BANK GUARANTEE	Expiration of bond or bank guarantee must not be earlier than this date	3 years after the Date of this Contract	
DEED OF UNCONDITIONAL UNDERTAKING	See Special Conditions		
DATE FOR COMPLETION		In accordance with Special Condition 32	
ESTIMATED DATE RANGE FOR WORKS	See Special Conditions	N/A	
<b>ANNEXURES</b>			
STANDARD ANNEXURES	Documents attached to this Contract	Annexure A – Specimen Lease	
SPECIAL CONDITIONS	Indicate whether any special conditions apply	<input checked="" type="checkbox"/> Yes (if applicable) See Annexure B – Special Conditions	<input type="checkbox"/> No (if applicable)
<b>READ THIS BEFORE SIGNING</b> Before signing this contract you should ensure that you understand your rights and obligations. You should get advice from your solicitor.			
Authorised Delegate of the Land Development Agency signature:		Buyer signature:	[REDACTED]
Delegate name:		Buyer name:	
Witness signature:		Buyer signature:	
Witness name:		Buyer name:	
		Witness signature:	
		Witness name:	

## **1 GRANT OF THE LEASE**

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

## **2 TERMS OF PAYMENT**

- 2.1 On the Date of this Contract, the Buyer must pay the Deposit to the Stakeholder.
- 2.2 The Deposit becomes the Seller's property on Completion.
- 2.3 The Deposit may be paid by cheque but if it is not paid on time or, if it is paid by cheque which is not honoured on first presentation, the Buyer is in default.
- 2.4 If the Buyer is in default under clause 2.3, then immediately and without the notice otherwise necessary under clause 19, clause 20 applies.
- 2.5 Completion must take place in Canberra on the Date for Completion or as otherwise determined by the Contract and if not specified or determined, within a reasonable time.
- 2.6 On Completion the Buyer must:
- (a) give the Seller an authority directing the Stakeholder to account to the Seller for the Deposit; and
  - (b) pay to the Seller in Canberra the Balance of the Price, and any GST payable, by unendorsed bank cheque.
- 2.7 Any money payable to the Seller by the Buyer or the Stakeholder must be paid to the Seller or as the Seller's Solicitor directs in writing and payment in accordance with that direction will be sufficient discharge to the person paying.

## **3 DEPOSIT BOND AND BANK GUARANTEE**

- 3.1 The Deposit may be paid by a Deposit Bond or Bank Guarantee provided that at least 3 Working Days prior to the Date of this Contract the Buyer:
- (a) informs the Seller of their intention to provide a Deposit Bond or Bank Guarantee;
  - (b) provides the Seller with a copy of the proposed Deposit Bond or Bank Guarantee for approval; and
  - (c) the Seller has notified the Buyer of the Seller's approval of the Deposit Bond or Bank Guarantee.
- 3.2 The expiry date for the Deposit Bond or Bank Guarantee must not be earlier than the Earliest Date of Expiry of Deposit Bond or Bank Guarantee specified in the Schedule.
- 3.3 The Deposit Bond or Bank Guarantee must show the Seller as the beneficiary of the Deposit Bond or Bank Guarantee.
- 3.4 The Buyer must pay the amount stipulated in the Deposit Bond or Bank Guarantee to the Seller by unendorsed bank cheque on Completion.
- 3.5 The Buyer is in default if:
- (a) the Deposit Bond or Bank Guarantee has an expiry date prior to the Earliest Date of Expiry of Deposit Bond or Bank Guarantee and is not renewed to the satisfaction of

the Seller in accordance with clause 3.2 at least 10 Working Days prior to the expiry of the Deposit Bond or Bank Guarantee; or

- (b) the provider of the Deposit Bond or Bank Guarantee is placed under external administration of any nature before Completion and the Buyer has not provided a replacement Deposit Bond or Bank Guarantee to the same value and on the same terms and conditions from a solvent party within 5 Working Days of the provider being placed in such administration.

3.6 If the Buyer is in default under clause 3.5 it will be deemed to be a failure by the Buyer to pay the Deposit under clause 2.1 and immediately, and without the notice necessary under clause 19, clause 20 applies.

#### **4 SIGNING OF LEASE**

4.1 Following the receipt of the Lease, the Buyer must, no later than 10 Working Days from the date the Seller serves the Lease on the Buyer:

- (a) sign each copy of the Lease; and
- (b) return the signed Lease to the Seller's Solicitor.

#### **5 VARIATION TO LAND**

5.1 The Buyer acknowledges that the Land, the Specimen Lease, any other plans in relation to the Land may be affected by:

- (a) the requirements of legislation;
- (b) variations to the Territory Plan; and/or
- (c) the requirements of government authorities.

5.2 The Buyer may not rescind or otherwise terminate this Contract nor seek any compensation from the Seller, under clause 19 or otherwise, as a result of any matter referred to in clause 5.1.

#### **6 PLANNING CONDITIONS**

6.1 The Buyer acknowledges that the Planning and Land Authority is responsible for all development consents and approvals sought by or on behalf of the Buyer in relation to the Land and the Buyer therefore releases the Seller from any liability, cause of action or any other claim in relation to disturbance, loss or detriment resulting from the Planning and Land Authority granting or denying any consent or approval in relation to the Land.

6.2 The Buyer acknowledges the obligation to make the Buyer's own enquiries and satisfy themselves as to the currency and accuracy of information contained in the Territory Plan.

6.3 The Buyer acknowledges that the Planning and Land Authority is responsible for the Territory Plan and the Buyer will make no claim against the Seller whatsoever in this regard.

6.4 The Buyer acknowledges that nothing in this Contract or the fact of Completion implies or means that any required approvals, consents or licences regarding planning, design, siting and any other matters relating to the Buyer's development of the Land will be granted by the regulatory authorities or other agencies of the Australian Capital Territory with or without conditions.

**7 ENTIRE AGREEMENT**

7.1 This Contract sets out the entire agreement of the parties on the subject matter of this Contract and supersedes any prior agreement, advice, material supplied to the Buyer or process or understanding on anything connected with the subject matter of this Contract.

**8 BUYER RELIES ON OWN ENQUIRIES**

8.1 The Buyer acknowledges that it relies on its own enquiries in relation to the Land and warrants that in entering into this Contract the Buyer:

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

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

**9 BUYER RIGHTS AND LIMITATIONS**

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

9.2 The Buyer cannot make a claim or objection or rescind or terminate or make a claim for compensation under clause 19 of this Contract in respect of:

- (a) a Utility Service for the Land whether or not it is a joint service or passing through another property, or any Utility Service for another property passing through the Land;
- (b) a promise, representation or statement about this Contract, the Land or the Lease, not made in this Contract;
- (c) the size of any service ties for the supply of water on or to the Land;
- (d) the existence of regrading, fill or contamination of or upon the Land, whether caused by the Commonwealth of Australia, the Seller, previous occupants of the Land or otherwise;
- (e) any soil classification in relation to the Land; and
- (f) anything disclosed or disclaimed in this Contract.

**10 CONDITION OF THE LAND**

10.1 The Seller gives no warranties as to the present state of repair of any of the Improvements or condition of the Land, except as required by law.

10.2 The Buyer acknowledges that the Seller makes no warranty or representation as to the environmental condition or state of the soil, ground water, contamination or the existence or non-existence of any Substance on or affecting the Land.

10.3 The Buyer understands and accepts that the existence of regrading, fill, contamination or a soil classification of or upon the Land may result in work for the construction of any building

on the Land being more extensive and expensive than it may have been in the absence of such regrading, fill, contamination or soil classification.

## **11 SELLER WARRANTIES**

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

- (a) will be able to complete at Completion;
- (b) has no knowledge of any unsatisfied judgment, order or writ issued by a court or tribunal affecting the Land; and
- (c) has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ issued by a court or tribunal affecting the Land.

11.2 The Seller warrants that on Completion:

- (a) the Seller will have the capacity to complete;
- (b) there will be no unsatisfied judgment, order or writ issued by a court or tribunal affecting the Land;
- (c) the Seller has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ issued by a court or tribunal affecting the Land except as disclosed to the Buyer; and
- (d) the Seller is not aware of any encroachments by or upon the Land (other than the encroachment of any dividing fence) except as disclosed to the Buyer.

## **12 CO-OWNERSHIP**

12.1 If the Buyer consists of more than one person, as between themselves, they agree to buy the Land in the specified manner of co-ownership or if one alternative is not marked, as joint tenants.

## **13 NON MERGER**

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

## **14 ADJUSTMENTS**

14.1 As the Lease will be granted on Completion, there will be no adjustments of Income or Land Charges.

## **15 TERMS OF POSSESSION**

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

## **16 INSPECTION OF LAND**

16.1 The Buyer may on reasonable notice to the Seller inspect the Land not more than 10 Working Days prior to the Date for Completion.

## **17 ERRORS AND MISDESCRIPTIONS**

17.1 Subject to clause 17.3, the Buyer will be entitled to compensation on Completion (and the Price will be reduced accordingly) for an error of any kind or misdescription if the Buyer makes a claim for compensation before Completion.

17.2 Subject to clause 17.3, this clause applies even if the Buyer did not take notice of or rely on anything in this Contract containing or giving rise to the error or misdescription.

17.3 The Buyer is not entitled to compensation:

- (a) to the extent the Buyer knew the true position before the Date of this Contract; and
- (b) unless the Buyer can quantify the loss or detriment suffered.

## 18 COMPENSATION CLAIMS BY BUYER

18.1 This clause 18 applies to claims for compensation arising out of this Contract made by the Buyer against the Seller including claims under clause 17.

18.2 To make a claim for compensation the Buyer must give notice to the Seller before Completion specifying the amount claimed and:

- (a) the Seller can rescind if in the case of a claim that is not a claim for delay:
  - (i) the Seller gives notice to the Buyer of an intention to rescind; and
  - (ii) the Buyer does not give notice to the Seller waiving the claim within 14 days after receiving the notice; and
- (b) if the Seller does not rescind under clause 18.2(a), the parties must complete and:
  - (i) the lesser of the total amount claimed and 5% of the Price must be paid out of the Price to, and held by, the Stakeholder until the claim is finalised or lapses;
  - (ii) the amount held is to be invested by the Stakeholder (at the risk of the party who becomes entitled to it) with an Australian bank in an interest bearing account at call in the name of the Stakeholder in trust for the Seller and the Buyer;
  - (iii) the claim must be finalised by an arbitrator appointed by the parties or, if an appointment is not made within 28 days of Completion, by an arbitrator appointed by the President of the Law Society of the Australian Capital Territory at the request of a party;
  - (iv) the decision of the arbitrator is final and binding save for:
    - a. manifest error by the arbitrator obvious on its face in the final determination by the arbitrator;
    - b. error in the application of law by the arbitrator in making his or her determination; or
    - c. improper or unlawful conduct by the arbitrator or either party that affected or might reasonably be thought to affect the arbitrator's determination;
  - (v) the costs of the arbitration must be shared equally by the parties unless otherwise determined by the arbitrator;
  - (vi) the Buyer is **not** entitled, in respect of the claim, to more than the total amount claimed and the costs of the Buyer;
  - (vii) interest on the amount held, after deduction of all taxes and bank charges, Stakeholder administration fee and other similar charges and expenses, must be paid to the parties equally or as otherwise determined by the arbitrator; and

- (viii) the claim lapses if the parties do not appoint an arbitrator and neither party asks the President of the Law Society of the Australian Capital Territory to appoint an arbitrator within 90 days after Completion and the amount held by the Stakeholder must be paid immediately to the Seller without any further authority being necessary.

## **19 NOTICE TO COMPLETE AND DEFAULT NOTICE**

- 19.1 If Completion does not take place in accordance with clause 2.5, either party may, at any time after the Date for Completion, serve the other party a Notice to Complete.
- 19.2 A Notice to Complete must appoint a time during business hours and a date being not less than 10 Working Days after service of the Notice to Complete (excluding the date of service) by which and a place in Canberra at which to complete this Contract.
- 19.3 At the time the Notice to Complete is served the party serving the Notice to Complete must:
  - (a) not be in default; and
  - (b) be ready, willing and able to complete but for some default or omission of the other party.
- 19.4 Completion at the time, date and place specified in the Notice to Complete is an essential term.
- 19.5 If one party is in default (other than failing to complete) the other party may at any time after the default serve the party in default a Default Notice.
- 19.6 A Default Notice must:
  - (a) specify the default; and
  - (b) require the party served with the Default Notice to rectify the default within 10 Working Days after service of the Default Notice (excluding the date of service).
- 19.7 At the time the Default Notice is served, the party serving the Default Notice must not be in default.
- 19.8 The time specified in a Default Notice to rectify the specified default is an essential term.
- 19.9 Clauses 20 or 21 will apply as appropriate where the party served does not comply with the Notice to Complete or the Default Notice which complies with this clause.
- 19.10 If the party serving a notice under this clause varies the time referred to in the notice at the request of the other party:
  - (a) the time agreed to in the variation remains an essential term; and
  - (b) consent to the variation must be in writing and be served on the other party.
- 19.11 The parties agree that the time referred to in clauses 19.2 and 19.6(b) is fair and reasonable.

## **20 TERMINATION – BUYER DEFAULT**

- 20.1 If the Buyer does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential term then the Seller may by notice served on the Buyer terminate and may then keep, or recover and keep, the Deposit (except so much of it as exceeds 10% of the Price) and either:
  - (a) sue the Buyer for breach; or
  - (b) resell the Land and any deficiency arising on the resale and all expenses of and incidental to the resale or attempted resale and the Buyer's default are recoverable

by the Seller from the Buyer as liquidated damages provided the Seller has entered into a contract for the resale of the Land within 12 months of termination.

- 20.2 In addition to any money kept or recovered under clause 20.1, the Seller may retain on termination any other money paid by the Buyer as security for any damages awarded to the Seller arising from the Buyer's default provided that proceedings for the recovery of damages are commenced within 12 months of termination.

## 21 TERMINATION – SELLER DEFAULT

- 21.1 If the Seller does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential term the Buyer may by notice served on the Seller either:

- (a) terminate and seek
  - (i) all money paid by the Buyer to be refunded to the Buyer; and
  - (ii) damages; or
- (b) enforce without further notice any other rights and remedies available to the Buyer.

## 22 RESCISSION

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

- (a) the Deposit and all other money paid by the Buyer must be refunded to the Buyer immediately without any further authority being necessary; and
- (b) neither party is liable to pay the other any amount for damages, costs or expenses.

## 23 DAMAGES FOR DELAY IN COMPLETION

- 23.1 If Completion does not occur by the Date for Completion, due to the default of the Buyer then the Buyer must pay the Seller as liquidated damages on Completion:

- (a) interest on the Price at the rate of 10% per annum calculated on a daily basis from the Date for Completion to Completion; and
- (b) the amount of \$1,100 (GST inclusive) to be applied towards any legal costs and disbursements incurred by the Seller if Completion occurs later than 5 Working Days after the Date for Completion.

- 23.2 The Buyer agrees that:

- (a) the amount of any damages payable under clause 23.1 to the Seller is a genuine and honest pre-estimate of loss to that party for the delay in Completion; and
- (b) the damages must be paid on Completion.

## 24 FOREIGN BUYER

- 24.1 The Buyer warrants the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer of the Lease under the *Foreign Acquisitions and Takeovers Act 1975*.

- 24.2 This clause is an essential term.

## 25 GST

- 25.1 The Price for the Land is exclusive of GST.

- 25.2 The sale of the Land is a taxable supply.

25.3 The Buyer must pay to the Seller on Completion an amount equal to the GST payable by the Seller in relation to the supply.

25.4 On Completion the Seller must give the Buyer a tax invoice for any taxable supply by the Seller by or under this Contract.

## 26 POWER OF ATTORNEY

26.1 Any party who signs this Contract or any document in connection with it under a power of attorney must, on request and without cost, provide the other party with a true copy of the registered power of attorney.

## 27 NOTICES CLAIMS AND AUTHORITIES

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

27.2 To serve a notice a party must:

(a) leave it at; or

(b) send it by a method of post requiring acknowledgement of receipt by the addressee to,

the address of the person to be served as stated in the Schedule or as notified by that person to the other as that person's address for service under this Contract; or

(c) serve it on that party's solicitor in any of the above ways; or

(d) by delivering it to an appropriate place in the facilities of a document exchange system in which the recipient solicitor has receiving facilities (and in the latter case service is deemed effected on the Working Day following delivery); or

(e) send it by facsimile to a party's solicitor, unless it is not received a notice is taken to have been received at the time shown in the transmission report that the whole facsimile was sent.

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

27.4 If a notice is served in accordance with clause 27.2(a), the notice is taken to have been received on the day that it is delivered or, if not delivered before 5:00pm on a Working Day, on the next Working Day.

27.5 If a notice is served in accordance with clause 27.2(b), the notice is taken to have been received on the day 2 Working Days after it was posted.

27.6 In addition to the means stipulated in clause 27.2, the Seller may serve a notice by electronic mail to the Buyer's or the Buyer's Solicitor's email address (whether the Buyer's Solicitor's firm generally or specifically to the practitioner specified in the Schedule) as notified by the Buyer or the Buyer's Solicitor from time to time.

27.7 If a notice is served in accordance with clause 27.6, the notice is taken to have been received on the day shown in the delivery receipt produced by the electronic mail system used to send the message or if not sent before 5:00pm on a Working Day, on the next Working Day.

## 28 NO TRUST

28.1 The Buyer confirms that, other than as disclosed in the description of the Buyer in the Schedule, it is not acting as trustee of any trust.

## 29 SPECIAL CONDITIONS

- 29.1 Special Conditions, if any, set out in this Contract forming part of this Contract take priority over other terms and conditions set out herein. In the event of any inconsistency between any Special Condition and any other provision of this Contract then, to the extent of any inconsistency, the Special Condition will prevail.

## 30 DEFINITIONS

Definitions appear in the Schedule and as follows:

**Balance of the Price** means the Price less the Deposit;

**Bank Guarantee** means a bank guarantee issued by a bank operating in Australia in a form satisfactory to the Seller;

**Buyer** means the purchaser of the Land under this Contract as specified in the Schedule;

**Buyer's Solicitor** means the legal practitioner or firm of legal practitioner's acting for the Buyer in respect of this Contract;

**Completion** means the time at which this Contract is completed;

**Contract** means the Schedule, terms and conditions and any annexure, additional clauses and attachments forming part of this Contract;

**Date for Completion** means the date as specified or calculated for such in the Schedule;

**Default Notice** means a notice in accordance with clauses 19.5 and 19.6;

**Deposit** means the deposit forming part of the Price;

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

**Development** has the meaning in the Planning Act;

**Earliest Date for Expiry of Deposit Bond or Bank Guarantee** means the date as specified or calculated for such in the Schedule;

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

**Estimated Date Range for Works** means the date or period by which the Seller estimates that the Works will have reached the stage of Operational Acceptance;

**GST** has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

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

**Income** means the rents and profits derived from the Land;

**Land** means the land described in the Schedule and to be the subject of the Lease;

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

**Lease** means the Crown lease to be granted to the Buyer in accordance with clause 1 this Contract;

**Notice to Complete** means a notice in accordance with clauses 19.1 and 19.2 requiring a party to complete;

**Planning Act** means the *Planning and Development Act 2007* (ACT);

**Planning and Land Authority** means the body corporate established in accordance with the Planning Act;

**Price** means the purchase price payable by the Buyer under this Contract;

**Schedule** means the schedule to this Contract;

**Seller** means the vendor of the Land under this Contract as specified in the Schedule;

**Seller's Solicitor** means the legal practitioner or firm of legal practitioner's acting for the Seller in respect of this Contract;

**Special Conditions** means such terms, if any, attached to and forming part of this Contract at Annexure B;

**Specimen Lease** means the draft crown lease annexed to this Contract at Annexure A;

**Stakeholder** means the person referred to in the Schedule as such;

**Standard Annexures** means any and all of the documents attached to and forming part of this Contract as Annexures A-B inclusive;

**Substance** means any substance or thing which is or may be an emission to the environment or harmful to the environment or the health or safety of any person or may cause damage to property and includes: asbestos, polychlorinated biphenyls, heavy metals, chemicals, contaminants and any other matter whether in solid, liquid or gaseous form, or whether naturally occurring or man-made;

**Territory Plan** means the Territory Plan 2008 as amended and varied from time to time;

**Utility Service** includes drainage, electricity, garbage collection, gas, sewerage, telecommunications or water; and

**Working Days** has the meaning given to it by the *Legislation Act 2001 (ACT)*.

## **31 INTERPRETATION**

### **31.1 In this Contract:**

- (a) a reference to the Seller or to the Buyer includes the executors, administrators and permitted assigns of any of them, if an individual, and the successors or permitted assigns of any of them, if a corporation;
- (b) the singular includes the plural, and the plural includes the singular;
- (c) a reference to a person includes a body corporate;
- (d) a term not otherwise defined has the meaning in the *Legislation Act 2001 (ACT)*; and
- (e) a reference to an Act includes a reference to any subordinate legislation made under it or any Act which replaces it.

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

31.3 If the time for something to be done or to happen is not a Working Day, the time is extended to the next Working Day, except in the case of clause 2.1.

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

**This is a market value  
lease - s238(2)(a)(ii) Planning  
and Development Act 2007**

**AUSTRALIAN CAPITAL TERRITORY**

**PLANNING AND DEVELOPMENT ACT 2007**

**Australian Capital Territory (Planning and Land  
Management) Act 1988 (C'th) (ss 29, 30 & 31)**

LEASE GRANTED pursuant to the Planning and Development Act 2007 and the  
Regulations made under that Act on the \_\_\_\_\_ day of \_\_\_\_\_

Two thousand and fourteen WHEREBY THE PLANNING AND LAND  
AUTHORITY ("the Authority") ON BEHALF OF THE COMMONWEALTH OF  
AUSTRALIA ("the Commonwealth") in exercising its functions grants to

LESSEE

**CANBERRA TRADESMEN'S UNION CLUB LIMITED A.C.N. 098 615 760**

a company having its registered office at 2 Badham Street Dickson in the

LAND

Australian Capital Territory, ("the Lessee") ALL THAT piece or parcel of land

situate in the Australian Capital Territory containing an area of 5,250 square  
metres or thereabouts and being **Block 30 Section 34 Division of Dickson** as

delineated on **Deposited Plan Number 11101** in the Registrar-General's Office at

Canberra in the said Territory ("the land") RESERVING unto the Territory all

TERM

minerals and the right to the use, flow and control of ground water under the

surface of the land TO HOLD unto the Lessee for the term of ninety nine years

commencing on the \_\_\_\_\_ day of \_\_\_\_\_ **Two**

**thousand and fourteen** ("the date of the commencement of the lease") to be used

by the Lessee for the purpose set out in Clause 3(b) of this lease only **YIELDING**

**AND PAYING THEREFOR** rent in the amount and in the manner and at the times

provided for in this lease and **UPON AND SUBJECT TO** the covenants conditions

and agreements contained in this lease.

## INTERPRETATION

1. IN THIS LEASE unless the contrary intention appears:

- (a) “apartment” means a dwelling located within a building containing two or more dwellings and which is not an attached house;
- (b) “Authority” means the Planning and Land Authority established by section 10 of the Planning and Development Act 2007;
- (c) “building” means any building or structure, constructed or partially constructed or to be constructed, as the context permits or requires, on or under the land;
- (d) “bulky goods retailing” means a shop which includes a loading dock within the building, and where the goods or materials sold or displayed are of such a size, shape or weight as to require:
- (i) a large area for handling, storage or display; and/or
  - (ii) direct vehicular access to the site by members of the public, for the purpose of loading goods or materials into their vehicles after purchase, but does not include any shop used primarily for the sale of food or clothing;
- (e) “business agency” means the use of land for the purpose of providing a commercial service directly and regularly to the public;
- (f) “club” means the use of land as a meeting place for persons associated, or for a body incorporated, for a social, sporting, athletic, literary, political or other like purpose, and which is a licensed premise under the Liquor Act 2010;
- (g) “child care centre” means the use of land for the purpose of educating, supervising or caring for children of any age throughout a specified period of time in any one day, which is registered under the Children and Young People Act 2008 or authorised pursuant to the Education and Care Services National Law (ACT) Act 2011 and which does not include residential care;
- (h) “commercial accommodation use” means commercial accommodation unit, guest house, hotel, motel, serviced apartment and tourist resort but does not include a caravan park/camping ground or a group or organised camp;

- (i) "commercial accommodation unit" means a room or suite of rooms that is made available on a commercial basis for short-term accommodation. A commercial accommodation unit may comprise a dwelling but not a room or suite of rooms within a dwelling. It does not include any associated facility such as a restaurant, bar or functions room, which may be used by the occupants of the premises but, which is also available for use by non occupant members of the public;
- (j) "community activity centre" means the use of land by a public authority or a body of persons associated for the purpose of providing for the social well being of the community;
- (k) "community theatre" means the use of land for a theatre, cinema, concert hall, auditorium or theatre run by non-profit organisations;
- (l) "community use" means child care centre, community activity centre, community theatre, cultural facility, educational establishment, health facility, hospital, place of worship and religious associated use;
- (m) "cultural facility" means the use of land for the purpose of cultural activities to which the public normally has access, but does not include a shop for art, craft or sculpture dealer;
- (n) "department store" means a shop in which goods are sold by separate departments within the shop and from which a significant amount or proportion of retail sales occur from at least four of the following types of goods: furniture and floor coverings; fabrics and household textiles; clothing; footwear; household appliances; china, glassware and domestic hardware;
- (o) "drink establishment" means the use of land for the sale of alcoholic beverages and spirits to members of the public primarily for consumption on the premises, and which is a licensed premise under the Liquor Act 2010;
- (p) "dual occupancy housing" means the use of land that was originally used or leased for the purposes of single dwelling housing for two dwellings;
- (q) "dwelling":
- (i) means a class 1 building, or a self-contained part of a class 2 building, that:

- (A) includes the following that are accessible from within the building, or the self-contained part of the building:
- (1) not more than 2 kitchens;
  - (2) at least 1 bath or shower;
  - (3) at least 1 toilet pan; and
- (B) does not have access from another building that is either a class 1 building or the self-contained part of a class 2 building; and
- (ii) includes any ancillary parts of the building and any class 10a buildings associated with the building;
- (r) “educational establishment” means the use of land for the purpose of tuition, training or research directed towards the discovery or application of knowledge, whether or not for the purposes of gain, and may include associated residential accommodation;
- (s) “financial establishment” means the use of land for the primary purpose of providing finance, investing money, and providing services to lenders, borrowers and investors on a direct and regular basis;
- (t) “gross floor area” 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 any area used solely for rooftop fixed mechanical plant and/or basement car parking;
- (u) “guest house” means the use of land for one or more commercial accommodation units and where common or shared facilities are provided for the provision of services such as meals and laundry to occupants of the premises but not to non occupant members of the public;
- (v) “health facility” means the use of land for providing health care services (including diagnosis, preventative care or counselling) or medical or surgical treatment to out-patients only;
- (w) “hospital” means the use of land for the medical care (including diagnosis, preventative care and counselling) of in-patients, whether or not out-patients are also provided with care or treatment, and may include associated residential accommodation;

(x) "hotel" means the use of land for one or more commercial accommodation units and where the premise is licensed under the Liquor Act 2010. It may also include associated facilities such as a restaurant, bar or functions room, which may be used by the occupants of the premises but, which are also available for use by non occupant members of the public;

(y) "indoor entertainment facility" means the use of land for entertainment where such use is primarily indoors;

(z) "indoor recreation facility" means the use of land for sporting activities where such use is primarily indoors;

(aa) "Lessee" shall:

(i) where the Lessee consists of one person be deemed to include the Lessee and the executors administrators and assigns of the Lessee;

(ii) where the Lessee consists of two or more persons be deemed to include in the case of a tenancy in common the persons and each of them and their and each of their executors administrators and assigns and in the case of a joint tenancy be deemed to include the said persons and each of them and their and each of their assigns and the executors administrators and assigns of the survivor of them; and

(iii) where the Lessee is a corporation be deemed to include such corporation its successors and assigns;

(bb) "motel" means the use of land for one or more commercial accommodation units and where the units are provided with convenient space for parking of motor vehicles. It may also include associated facilities such as a restaurant, bar or functions room, which may be used by the occupants of the premises but, which are also available for use by non occupant members of the public. A motel may be licensed under the Liquor Act 2010;

(cc) "multi-unit housing" means the use of land for more than one dwelling and includes but is not limited to dual occupancy housing;

(dd) "non retail commercial use" means business agency, financial establishment, office and public agency;

- (ee) "office" means the use of land for the purpose of administration, clerical, technical, professional or like business activities, including a government office, which does not include dealing with members of the public on a direct and regular basis except where this is ancillary to the main purpose of the office;
- (ff) "pedestrian plaza" means an open or sheltered area other than part of a building, used principally for free pedestrian movement in which vehicular traffic is forbidden or limited;
- (gg) "personal service" means a shop used primarily for selling services and in which the sale of goods is ancillary to the service provided;
- (hh) "premises" means the land and any building or other improvements on the land;
- (ii) "place of worship" means the use of land for the primary purposes of religious worship and associated activities by a congregation, religious group or members of the public whether or not the premises are also used for religious instruction, tuition, meetings, training and other community activities;
- (jj) "public agency" means the use of land for the purpose of providing a public service directly and regularly to the public and includes a government agency, which provides a commercial service to the public;
- (kk) "religious associated use" means the use of land for the activities conducted by religious organisations other than for worship or for offices and may include residential accommodation by ministers of religion;
- (ll) "residential use" means caretaker's residence, multi-unit housing, residential care accommodation, retirement village, retirement village scheme, secondary residence, single dwelling housing and supportive housing;
- (mm) "restaurant" means the use of land for the primary purpose of providing food for consumption on the premises whether or not the premises are licensed premises under the Liquor Act 2010 and whether or not entertainment is provided;
- (nn) "retail plant nursery" means a shop used for the propagation and sale of plants, shrubs, trees and garden supplies;
- (oo) "serviced apartment" means an apartment that is used as a commercial accommodation unit;

- (pp) "shop" means the use of land for the purpose of selling, exposing or offering the sale by retail or hire, goods and personal services and includes bulky goods retailing, department store, personal service, retail plant nursery, supermarket and take-away food shop;
- (qq) "supermarket" means a large shop selling food and other household items where the selection of goods is organised on a self service basis;
- (rr) "take-away food shop" means a shop, which is predominantly for the preparation of food and refreshments for consumption elsewhere;
- (ss) "Territory" means:
- (i) when used in a geographical sense the Australian Capital Territory; and
  - (ii) when used in any other sense the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (Cth);
- (tt) "tourist resort" means the use of land for one or more commercial accommodation units together with a wide range of recreational and/or cultural facilities in a resort style setting. It may also include associated facilities such as a restaurant, bar or functions room, which may be used by the occupants of the premises but which are also available for use by non occupant members of the public. A tourist resort may be licensed under the Liquor Act 2010;
- (uu) words in the singular include the plural and vice versa;
- (yy) words importing one gender include the other genders;
- (ww) a reference in this lease to any statute or statutory provision shall include a reference to any statute or statutory provision that amends, extends, consolidates or replaces the statute or statutory provision and to any other regulation, instrument or other subordinate legislation made under the statute.

2. THE LESSEE COVENANTS WITH THE COMMONWEALTH as follows:

RENT

- (a) That the Lessee shall pay to the Authority rent at the rate of five cents per annum if and when demanded payable within one month of the date of any demand made by the Authority relating thereto and served on the Lessee;

MANNER OF  
PAYMENT  
OF RENT

- (b) That any rent or other moneys payable by the Lessee to the Authority under this lease shall be paid to such person as may be authorised by the Authority for that purpose at Canberra in the said Territory without any deduction whatsoever.

3. THE LESSEE FURTHER COVENANTS WITH THE  
COMMONWEALTH as follows:

COMPLETION  
OF DEVELOPMENT

- (a) That the Lessee shall within forty eight (48) months from the date of the commencement of the lease or within such further time as may be approved in writing by the Authority complete the erection of an approved development on the land in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority and in accordance with every Statute Ordinance or Regulation applicable to such development. The approved development must include a pedestrian plaza at a cost of no less than the sum of four hundred and eighty six thousand six hundred and sixty dollars (\$486,660.00);

PURPOSE

- (b) To use the land for the purpose of a pedestrian plaza on the corner of Badham Street and Dickson Place with a minimum area of 1 300 square metres and IN ADDITION the premises may also be used for one or more of the following purposes:
- (i) club;
  - (ii) commercial accommodation use;
  - (iii) community use;
  - (iv) drink establishment;
  - (v) indoor entertainment facility;
  - (vi) indoor recreation facility;
  - (vii) non retail commercial use PROVIDED THAT the combined maximum gross floor area for office shall not exceed 4,000 square metres RESTRICTED TO the first floor and above;
  - (viii) residential use LIMITED TO multi-unit housing RESTRICTED TO the first floor and above;
  - (ix) restaurant; and

(x) shop PROVIDED THAT the maximum gross floor area of any supermarket or shop selling food shall not exceed 300 square metres;

GROSS FLOOR  
AREA

(c) That the combined gross floor area of all buildings erected on the land shall not exceed 14,000 square metres;

PEDESTRIAN  
ACCESS

(d) That the Lessee shall at all times provide and maintain pedestrian access over and along the ground floor of the part of the land shown by hatching identified as 'B' on the legend on the plan annexed hereto ("the plan"). The Lessee must permit members of the public to pass and repass from time to time for all lawful purposes over and along the pedestrian access provided;

EASEMENT FOR  
ACCESS

(e) That the Lessee shall at all times provide and maintain access over and along the ground floor of the part of the land described as "proposed easement for access 3 wide" and "proposed easement for access variable width" on Deposited Plan Number 11101. The Lessee must permit members of the public to pass and repass from time to time with or without vehicles over and along the easement for access provided;

EASEMENT FOR  
SERVICES

(f) That:

(i) the Authority, on behalf of the Commonwealth, grants over that part of the land identified as a services easement on the Deposited Plan an easement ("Easement") in favour of:

(A) the Territory and its successors;

(B) ACTEW Corporation Limited A.C.N. 069 381 960 and its successors; and

(C) ActewAGL Distribution A.B.N. 76 670 568 688 a partnership of ACTEW Distribution Ltd A.C.N. 073 025 224 and Jemena Networks (ACT) Pty Ltd A.C.N. 008 552 663 and their successors;

(collectively or separately referred to as the "service provider");

(ii) the service provider may:

(A) provide, maintain and replace services supplied by that service provider through the land within the site of the Easement; and

(B) do anything reasonably necessary for that purpose, including without limitation:

- (1) entering or passing through the land;
- (2) taking anything on to the land; and
- (3) carrying out work, including without limitation, constructing, placing, repairing or maintaining pipes, poles, wires, cables, conduits, structures and equipment;
- (iii) in exercising the powers in Clause 3(f)(ii), the service provider must take all reasonable steps to:
- (A) ensure that the work carried out on the land causes as little disruption, inconvenience and damage as is practicable; and
- (B) ensure that the land is restored as soon as practicable to a condition that is similar to its condition before the work was carried out;
- (iv) Clause 3(f)(iii)(B), does not require the service provider to restore:
- (A) the land to a condition that would result in:
- (1) an interference with:
- (i) any service on or through the land; or
- (ii) access to any service on or through the land; or
- (2) a contravention of a law of the Territory; or
- (B) any building or structure placed or constructed on any part of the land comprising the Easement;
- (v) the Lessee must not place or construct, nor permit to be placed or constructed, a building or structure on any part of a building or structure on any part of the land comprising the Easement;
- (vi) for the purposes of the Easement, "services", includes, without limitation, the supply of water, gas, electricity and discharge or drainage of water, stormwater and sewerage; and

- (vii) nothing in this clause diminishes or affects any rights or powers of a service provider conferred under any statute, regulation or law;
- CARPARKING (g) That the Lessee shall provide and maintain an approved drained and sealed car parking area on the land to a standard acceptable to the Authority in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority;
- LANDSCAPING (h) That the Lessee shall provide and maintain landscaping on the land to a standard acceptable to the Authority in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority;
- LIGHTING (i) That the Lessee shall illuminate and keep illuminated all public access areas, car parks and driveways on the land at the Lessee's cost during the evening hours of operation to a standard acceptable to the Authority in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority;
- LOADING AND UNLOADING OF VEHICLES (j) That the Lessee shall provide and maintain an area for the loading and unloading of vehicles on the land to a standard acceptable to the Authority in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority;
- PRESERVATION OF TREES (k) That the Lessee shall not, without the previous consent in writing of the Territory, remove any tree:
- (i) that has been identified in a development approval for retention during the period allowed for construction of the building; or
- (ii) to which the Tree Protection Act 2005, applies;
- FACILITIES AND ACCESS FOR PERSONS WITH A DISABILITY (l) That the Lessee shall provide and maintain facilities and access on the land for persons with a disability in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority;
- SERVICE AREAS (m) That the Lessee shall screen and keep screened all service areas to the satisfaction of the Authority and shall ensure that all plant and machinery contained within the premises is suitably screened from public view;

BUILDING  
SUBJECT TO  
APPROVAL

(n) That the Lessee shall not without the previous approval in writing of the Authority, except where exempt by law, erect any building, or make any structural alterations to any building, on the land;

REPAIR

(o) That the Lessee shall at all times during the said term maintain repair and keep in repair the premises to the satisfaction of the Authority;

FAILURE TO  
REPAIR

(p) If and whenever the Lessee is in breach of the Lessee's obligations to maintain repair and keep in repair the premises the Authority may by notice in writing to the Lessee specifying the repairs and maintenance needed require the Lessee to effect the necessary work in accordance with the notice. If the Authority is of the opinion that a building or some other improvement on the land is beyond reasonable repair the Authority may by notice in writing to the Lessee require the Lessee to remove the building or improvement and may require the Lessee to construct a new building or improvement in place of that removed within the time specified in the notice. If the Lessee does not carry out the required work within the time specified by the Authority any person or persons duly authorised by the Authority with such equipment as is necessary may enter the premises and carry out the necessary work and all costs and expenses incurred by the Authority in carrying out the work shall be paid by the Lessee to the Authority on demand and from the date of such demand until paid shall for all purposes of this lease be a debt due and payable to the Authority by the Lessee;

RIGHT OF  
INSPECTION

(q) Subject to the provisions of the Planning and Development Act 2007 to permit any person or persons authorised by the Authority to enter and inspect the premises at all reasonable times and in any reasonable manner;

RATES AND  
CHARGES

(r) To pay all rates charges and other statutory outgoings assessed levied or payable in respect of the premises as and when they are due for payment.

4. THE COMMONWEALTH COVENANTS WITH THE LESSEE as follows:

QUIET  
ENJOYMENT

That the Lessee paying the rent and all other money due and observing and performing the covenants and stipulations on the part of the Lessee to be observed and performed shall quietly enjoy the premises without interruption by the Authority or any person lawfully claiming from or under or in trust for the Authority.

5. IT IS MUTUALLY COVENANTED AND AGREED as follows:

TERMINATION

(a) That if:

- (i) any rent or other moneys payable under this lease shall remain unpaid for three months next after the date appointed for payment thereof (whether such rent or other moneys shall have been formally demanded or not); or
- (ii) an approved development in accordance with Clause 3(a) of this lease is not completed within the period specified in the said Clause; or
- (iii) after completion of an approved development as aforesaid the said land is at any time not used for a period of one year for the purpose for which this lease is granted; or
- (iv) the Lessee shall fail to observe or perform any other of the covenants herein contained in this lease on the part of the Lessee to be observed or performed and shall have failed to remedy such breach within a period of six months from the date of service on the Lessee of a notice in writing from the Authority specifying the nature of such breach

the Authority on behalf of the Commonwealth may terminate this lease but without prejudice to any claim which the Authority or the Commonwealth may have against the Lessee in respect of any breach of the covenants on the part of the Lessee to be observed or performed;

ACCEPTANCE OF RENT

(b) That acceptance of rent or other moneys by the Authority during or after any period referred to in Clauses 5(a) (i), (ii), (iii) or (iv) of this lease shall not prevent or impede the exercise by the Authority of the powers conferred upon it by the said Clauses;

FURTHER LEASE

(c) Subject to the Lessee paying all money required to be paid under the provisions of the Planning and Development Act 2007 the Lessee shall be entitled to a further lease of the land for such further term and at such rent and subject to such conditions as may then be provided or permitted by Statute Ordinance or Regulation;

NOTICES

(d) That any notice requirement demand consent or other communication to be given to or served upon the Lessee under this lease shall be deemed to have been duly given or served if signed by or on behalf of the Authority and delivered to or sent in a prepaid letter addressed to the Lessee at the registered office of the Lessee in the said Territory BUT if for any reason

the Lessee does not have a registered office in the said Territory then at the usual or last-known address of the Lessee or affixed in a conspicuous position on the premises;

**EXERCISE OF POWERS**

- (e) Any and every right, power or remedy conferred on the Commonwealth or Territory in this lease, by law or implied by law may be exercised on behalf of the Commonwealth or the Territory or as the case may be by:
  - (i) the Authority;
  - (ii) an authority or person for the time being authorised by the Authority or by law to exercise those powers or functions of the Commonwealth or Territory; or
  - (iii) an authority or person to whom the Authority has delegated all its powers or functions under the Planning and Development Act 2007.

IN WITNESS whereof the Authority on behalf of the Commonwealth and the Lessee have executed this lease.

Signed by  
a delegate authorised to execute this lease  
on behalf of the Commonwealth in the  
presence of

.....  
Delegate

.....  
Witness

Signed by **CANBERRA TRADESMEN'S )  
UNION CLUB LIMITED )  
(A.C.N. 098 615 760) by: )**

.....  
Signature

.....  
Signature


.....  
Name in full

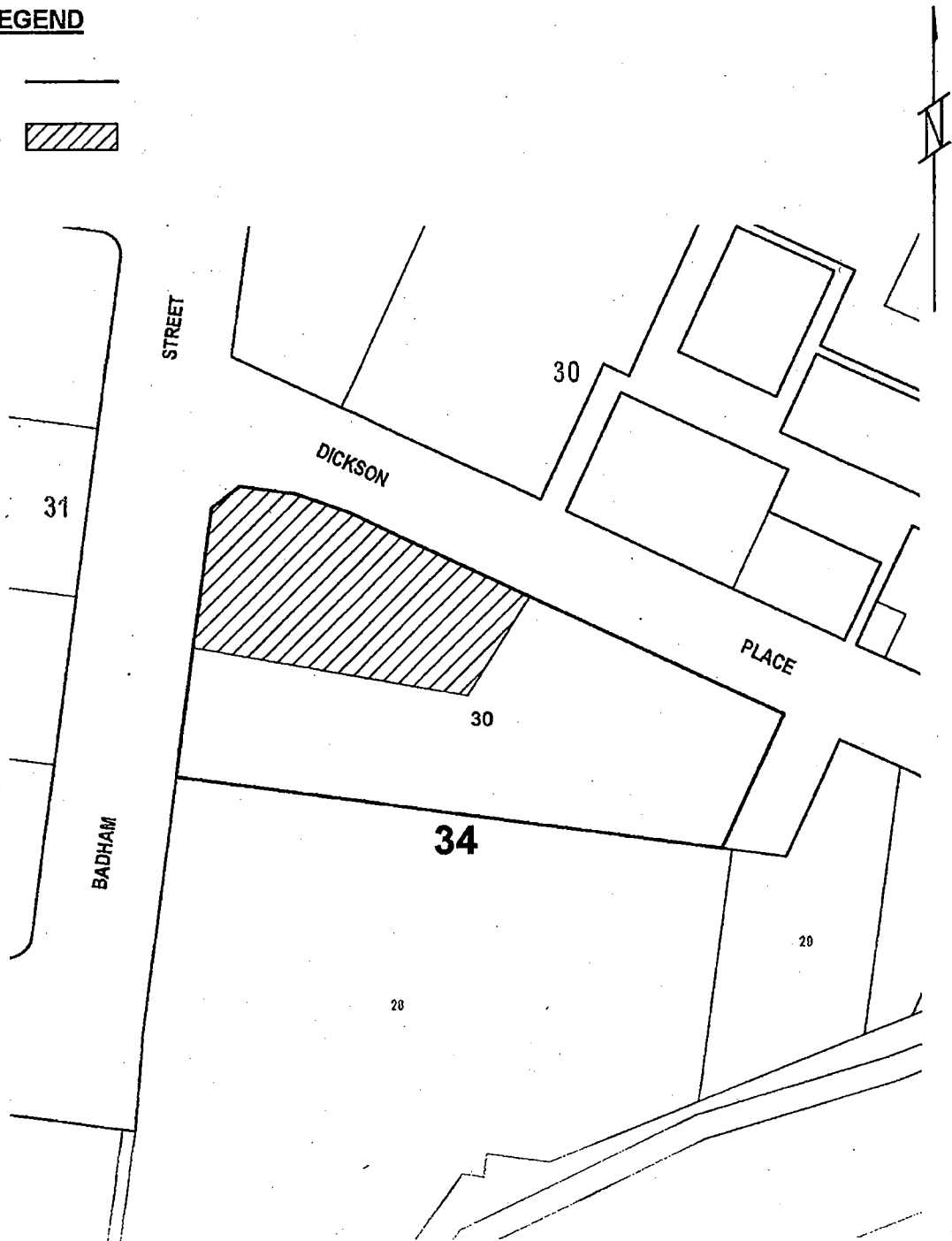
.....  
Name in full

.....  
Director/Secretary

.....  
Director/Secretary

**LEGEND**

- A ———
- B 



Scale 1:1000

This is the plan referred to in the lease of  
Blocks 30 Section 34 Division of DICKSON  
granted on the            day of            2014  
as being annexed thereto.

## ANNEXURE B – SPECIAL CONDITIONS

### 32 DATE FOR COMPLETION

- 32.1 The Date for Completion of this Contract will be 30 Working Days from the date the Seller serves the Lease on the Buyer, in accordance with clause 27 as if it were a notice.
- 32.2 The Seller shall serve the Lease on the Buyer within 30 Working Days of receiving notice from the Planning and Land Authority that a Certificate of Occupancy has been issued in respect of improvements that include a public carpark on Block 21 Section 30 Dickson.

### 33 VARIATION TO LAND

- 33.1 Clause 5 of the Contract is deleted.
- 33.2 The Buyer acknowledges that the Specimen Lease and any other plans in relation to the Land may be affected by:
- (a) the requirements of legislation;
  - (b) variations to the Territory Plan;
  - (c) the requirements of government authorities; and/or
  - (d) physical conditions affecting the Works
- and may result in one or more of the following:
- (e) minor redefinition of the boundaries of the Land;
  - (f) minor road re-alignment or dedication; and
  - (g) minor variations of the easements relating to the provision of Utility Services.
- 33.3 Any redefinition, road realignment or dedication or variation of easements will be deemed to be minor if it does not materially and detrimentally affect the use of the Land.
- 33.4 The Buyer cannot make a claim or objection or rescind or terminate or make a claim for compensation under clause 18 of this Contract in respect of any matter set out in Special Condition 33.2.

### 34 PROPERTY ACT

The parties acknowledges that the Property Act does not apply to this Contract as this Contract is not a sale of residential Property and the grant of the Lease will be the first grant

### 35 DEPOSIT BY INSTALMENTS

- 35.1 Clauses 2.1-2.4 of this Contract are deleted.
- 35.2 The Buyer must pay the Deposit to the Seller.
- 35.3 The Seller agrees to accept payment of the Deposit in two instalments as follows:
- (a) 5% of the Price by cash, cheque or Bank Guarantee on the date of this Contract (First Instalment); and
  - (b) the remainder of the 10% Deposit (if it has not already been paid) by cash or bank cheque on the Date for Completion (Second Instalment),
- and in every respect time is of the essence of this Special Condition 35.3.
- 35.4 The Deposit and all instalments of the Deposit are released to the Seller (when paid) and become the Seller's property absolutely (being part payment of the Price).

- 35.5 If the Deposit or any instalment of the Deposit is:
- (a) not paid on time and in accordance with Special Condition 35.3; or
  - (b) paid by cheque and the cheque is not honoured on first presentation,
- the Buyer is in default and the Seller may terminate this Contract immediately by written notice to the Buyer (without the notice otherwise necessary under clause 19) and clause 20 applies.
- 35.6 If the Seller does not terminate this Contract in accordance with Special Condition 35.5, then this Contract remains on foot, subject to this Special Condition 35.6, until the Seller terminates the Contract pursuant to Special Condition 35.5 or waives the benefit of this Special Condition 35 pursuant to Special Condition 35.8.
- 35.7 This Special Condition 35 is for the benefit of the Seller and the obligations imposed on the Buyer by this Special Condition 35 are essential. The obligations imposed on the Buyer by this Special Condition 35 bind the Buyer notwithstanding any indulgence, waiver or extension of time by the Seller to the Buyer.
- 35.8 The Seller may at any time before this Contract is terminated notify the Buyer in writing that the benefit of this Special Condition 35 is waived.
- 35.9 If the Deposit is paid in accordance with Special Condition 35.3, the Seller will no longer have the benefit of this clause.

### **36 EASEMENT**

- 36.1 The Buyer acknowledges the Lease requires it to provide and maintain access over and along the ground floor of the part of the Land described as "proposed easement for access 3 wide" and "proposed easement for access variable width" ("**Easement**") on the Deposited Plan.
- 36.2 The Buyer may, prior to Completion, request the Planning and Land Authority issue a Lease without the Easement clause and amend the Deposited Plan to remove the corresponding Easement.
- 36.3 The Seller will not object to the Buyer seeking changes to either the Deposited Plan or Lease consistent with this clause 36.
- 36.4 The parties acknowledge that the Price does not include any allowance for, or deduction in value, based on the existence of the Easement.

### **37 DEFINITIONS**

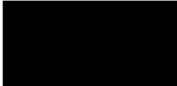
The following definitions are in addition to the definitions in clause 30 of the Contract:

Certificate of Occupancy has the same meaning as set out in the *Building Act 2004* (ACT);

**Deposited Plan** means the plan prepared by a registered surveyor and registered by the registrar-general under section 7 of the *Districts Act 2002* (ACT); and

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

THE LAW SOCIETY OF THE AUSTRALIAN CAPITAL TERRITORY  
**Contract for Sale**  
**SCHEDULE**

<b>LAND</b>	The unexpired term of the Lease	Unit	UP No.	Block	Section	Division/District
				25	72	Dickson
and known as 8 Hawdon Place, Dickson ACT 2602						
<b>SELLER</b>	Full name ACN/ABN Address	Hadwon Pty Limited 114 173 634 2 Badham Street, Dickson ACT 2602				
<b>SELLER SOLICITOR</b>	Firm Ref Phone Fax DX/Address	Clayton Utz  GPO Box 1940, Canberra ACT 2601				
<b>STAKEHOLDER</b>	Name	Clayton Utz Lawyers				
<b>SELLER AGENT</b>	Firm Ref Phone Fax DX/Address					
<b>RESTRICTION ON TRANSFER</b>	Mark one	<input checked="" type="checkbox"/> Nil <input type="checkbox"/> s. 251 <input type="checkbox"/> s. 265 <input type="checkbox"/> s. 298				
<b>LAND RENT</b>	Mark one	<input type="checkbox"/> Non-Land Rent Lease <input type="checkbox"/> Land Rent Lease				
<b>OCCUPANCY</b>	Mark one	<input checked="" type="checkbox"/> Vacant possession <input type="checkbox"/> Subject to tenancy				
<b>BREACH OF COVENANT OR UNIT ARTICLES</b>	Description (Insert other breaches)	As disclosed in the Required Documents and				
<b>GOODS</b>	Description					
<b>DATE FOR REGISTRATION OF UNITS PLAN</b>						
<b>DATE FOR COMPLETION</b>		On or before 12 months from the date of this contract				

An agent may only complete the details in this black box and exchange this contract. See page 3 for more information.

<b>BUYER</b>	Full Name ACN/ABN Address	Land Development Agency 20 419 925 579 TransACT House, 470 Northbourne Avenue, Dickson ACT 2602				
<b>BUYER SOLICITOR</b>	Firm Ref Phone Fax DX/Address	ACT Government Solicitor's Office Brendan Ding Level 5, 12 Moore Street, Canberra ACT 2601				
<b>PRICE</b>	Price Less Deposit Balance	\$49,500.00 (GST inclusive unless otherwise specified) \$4,950.00 (10% of Price) \$44,550.00				
<b>DATE OF THIS CONTRACT</b>		15 December 2014				

<b>CO-OWNERSHIP</b>	Mark one (Show shares)	<input type="checkbox"/> Joint tenants <input type="checkbox"/> Tenants in common in the following shares:				
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**READ THIS BEFORE SIGNING**

Before signing this contract you should ensure that you understand your rights and obligations. You should read the important notes on page 3. You should get advice from your solicitor.

Seller signature <b>See execution page</b>	Buyer signature <b>See execution page</b>
Seller Witness signature	Buyer Witness signature

**REQUIRED DOCUMENTS (RESIDENTIAL PROPERTIES ONLY)**

The following marked documents are attached and form part of this Contract. The Buyer acknowledges that by execution of this Contract the Buyer certifies in writing that the Buyer received the marked documents prior to entering into this Contract.

- Crown lease of the Land (including variations)
- Current edition of the certificate of title for the crown lease
- Deposited Plan for the Land
- Energy Efficiency Rating Statement
- Encumbrances shown on the certificate of title (excluding any mortgage or other encumbrance to be discharged)
- If there is an encumbrance not shown on the certificate of title - a statement about the encumbrance complying with the Civil Law (Sale of Residential Property) Regulations
- Lease Conveyancing Inquiry Documents for the Property
- Building Conveyancing Inquiry Document (except if:
  - the Property is a Class A Unit
  - the residence on the Property has not previously been occupied or sold as a dwelling; or
  - this Contract is an "off-the-plan purchase")
- Building and Compliance Inspection Report(s) (except if s. 9(2)(a)(ii) or s. 9(2)(a)(iii) of the Sale of Residential Property Act applies). The inspection must have been carried out no earlier than 3 months before the Property was advertised or offered for sale, and if the Seller has obtained 2 or more reports in that period, each report.
- Pest information (except if the property is a Class A Unit, or is a residence that has never been occupied): Pest Inspection Report(s). The inspection must have been carried out no earlier than 3 months before the Property was advertised or offered for sale if the Seller has obtained 2 or more reports in the period 6 months before advertising or offering for sale, each report.
  - If the Property is off-the-plan
    - proposed plan
    - inclusions list
  - If the Property is a Unit where the Units Plan has registered:
    - Units Plan concerning the Property
    - current editions of the certificate of title for the Common Property
    - (if the unit is a Class A Unit) minutes of meetings of the Owners Corporation and executive committee for the 2 years before the Property was advertised or offered for sale
    - Section 119 Certificate
    - registered variations to the articles of the Owners Corporation
  - If the Property is a Unit where the Units Plan has not registered:
    - proposed Units Plans or sketch plan
    - inclusions list
    - the Default Rules
    - details of any contract the Developer intends the Owners Corporation to enter, including—
      - the amount of the Buyer's General Fund Contribution that will be used to service the contract; and
      - any personal or business relationship between the Developer and another party to the contract
    - the Developer's estimate, based on reasonable grounds, of the Buyer's General Fund Contribution for 2 years after the Units Plan is registered
    - if a Staged Development of the Units is proposed—the proposed Development Statement and any amendment to the statement
  - If the Property is a Lot that is part of a Community Title Scheme:
    - Section 67 Statement, as first or top sheet
    - Community Title Master Plan
    - Community Title Management Statement
  - If the Property is a Lot that will form part of a Community Title Scheme:
    - proposed Community Title Master Plan or sketch plan
    - proposed Community Title Management Statement

**GST**

- Not applicable
- Input taxed supply of residential premises
- Taxable supply (including new residential premises)
- GST-free supply of going concern
- Buyer and Seller agree to apply margin scheme

**ANNEXURES**

- Annexure A - Subject to Finance
- Annexure B - Deposit by Instalments

**TENANCY**

- Tenancy Agreement
- No written Tenancy Agreement exists

**INVOICES**

- Building and Compliance Inspection Report
- Pest Inspection Report

**ASBESTOS**

- Asbestos Advice
- Current Asbestos Assessment Report

**TENANCY SUMMARY**

Premises		Expiry date	
Tenant Name		Rent	
Commencement date		Rent review date	
Term		Rent review mechanism	

**MANAGING AGENT DETAILS FOR OWNERS CORPORATION OR COMMUNITY TITLE SCHEME (if no managing agent, secretary)**

Name		Phone	
Address			

## COOLING OFF PERIOD (for residential property only)

- 1 The Buyer may rescind this Contract at any time before 5 p.m. on the 5th working day after the day this Contract is made except if any circumstance in paragraph 2 applies.
- 2 There is no cooling off period if:
  - the Buyer is a corporation; or
  - the Property is sold by tender; or
  - the Property is sold by auction; or
  - before signing this Contract, the Buyer gives the Seller a certificate in the form required by the Sale of Residential Property Act signed by the Buyer Solicitor; or
  - this Contract is made on the same day the Property was offered for sale by auction but passed in and the Buyer was recorded in the bidders record as a bidder or a person for whom a bidder was bidding.
- 3 A Buyer exercising the cooling off right by rescinding this Contract forfeits 0.25% of the Price. The Seller is entitled to recover the amount forfeited from the Deposit and the Buyer is entitled to a refund of any balance.

## WARNINGS

- 1 The Lease may be affected by the *Residential Tenancies Act 1997* or the *Leases (Commercial & Retail) Act 2001*.
- 2 If a consent to transfer is required by law, see cl. 4 as to the obligations of the parties.
- 3 As some risks associated with the Property pass from the Seller to Buyer on the Date of this Contract, (except if the Property is a Unit) the Buyer should take out insurance on the Property on the Date of this Contract.
- 4 The Buyer will usually have to pay stamp duty on this Contract. The Buyer may incur penalties if the Buyer does not pay the stamp duty within the required time.
- 5 There are serious risks to a Buyer releasing the Deposit before Completion. The Buyer should take legal advice before agreeing to release the Deposit.
- 6 The Buyer should consider the application of the Territory Plan and other planning and heritage issues before signing this Contract.
- 7 If the Lease is a concessional lease then restrictions on transfer and other dealings may apply.

## DISPUTES

If there is a dispute, the Law Society encourages the use of informal procedures such as negotiation, independent expert appraisal or mediation to resolve the dispute.

## EXCHANGE OF CONTRACT

- 1 An Agent, authorised by the Seller, may:
  - insert:
    - the name and address of, and contact details for, the Buyer;
    - the name and address of, and contact details for, the Buyer Solicitor;
    - the Price;
    - the Date of this Contract,
  - insert in, or delete from, the Goods; and
  - exchange this Contract.
- 2 An Agent must not otherwise insert, delete or amend this Contract.
- 3 The Agent must not exchange this Contract unless expressly authorised by the Seller or (if a solicitor is acting for the Seller) by the Seller or the Seller Solicitor.

The Seller agrees to sell and the Buyer agrees to buy the Property for the Price on these terms:

## 1 Definitions and interpretation

1.1 Definitions appear in the Schedule and as follows:

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

**Agent** has the meaning in the Sale of Residential Property Act;

**Balance of the Price** the Price less the Deposit;

### Breach of Covenant

- a Development not approved under the Planning Act including a development for which design and siting approval has not been obtained;
- a breach of the Building and Development Provision;
- a breach of any obligation of the Seller in a registered restrictive covenant affecting the Lease;
- a breach of any other term of the Lease;
- a breach of the articles of the Owners Corporation (if the Property is a Unit);
- an Unapproved Structure;

**Building Act** the *Building Act 2004*;

**Building and Development Provision** has the meaning in the Planning Act;

**Building Conveyancing Inquiry Document** has the meaning in the Sale of Residential Property Act;

**Building and Compliance Inspection Report** has the meaning in the Sale of Residential Property Act;

**Business Day** any day other than a Saturday, Sunday, public holiday or bank holiday in the Australian Capital Territory;

**Class A Unit** has the meaning in the Sale of Residential Property Act;

**Common Property** for a Unit has the meaning in the Unit Titles Act;

**Common Property** for a Lot that forms part of a Community Title Scheme has the meaning in the Community Title Act;

**Community Title Act** the *Community Title Act 2001*;

**Community Title Body Corporate** the entity referred to as such in the Community Title Act;

**Community Title Management Statement** has the meaning in the Community Title Act;

**Community Title Master Plan** has the meaning in the Community Title Act;

**Community Title Scheme** has the meaning in the Community Title Act;

**Completion** the time at which this Contract is completed;

**Compliance Certificate** a certificate issued for the Lease under s.296 of the Planning Act or under s. 28 of the *City Area Leases Act 1936*; or s. 180 of the Land Act

**Covenant** includes restrictive covenant;

**Default Notice** a notice in accordance with cl. 18.5 and cl. 18.6;

**Default Rules** has the meaning in the Unit Titles Management Act;

**Deposit** the deposit forming part of the Price;

**Developer** in respect of a Unit has the meaning in the Unit Titles Act; in respect of a Lot has the meaning in the Community Title Act;

**Developer Control Period** has the meaning in the Unit Titles Management Act;

**Development** has the meaning in the Planning Act;

**Development Statement** has the meaning in the Unit Titles Act;

**Encumbrance** has the meaning in the Sale of Residential Property Act but excludes a mortgage;

**Energy Efficiency Rating Statement** has the meaning in the Sale of Residential Property Act;

**General Fund Contribution** has the meaning in s. 78(1) of the Unit Titles Management Act;

**GST** has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999*;

**GST Rate** the prevailing rate of GST specified as a percentage;

**Improvements** the buildings, structures and fixtures erected on and forming part of the Land;

**Income rents and profits** derived from the Property;

**Land Act** the *Land (Planning & Environment) Act 1991*;

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

**Land Rent Act** the *Land Rent Act 2008*;

**Land Rent Lease** a Lease that is subject to the Land Rent Act;

**Lease** the lease of the Land having the meaning in the Planning Act;

**Lease Conveyancing Inquiry Document** has the meaning in the Sale of Residential Property Act;

**Legislation Act** the *Legislation Act 2001*;

**Liability of the Owners Corporation** any actual or contingent liability of the Owners Corporation attributable to the Unit on a Unit Entitlement basis (other than normal operating expenses) or expenditure to be made by the Owners Corporation to fulfil its obligations under the Unit Titles Management Act;

**Lot** has the meaning in the Community Title Act;

**Non-Land Rent Lease** a Lease that is not subject to the Land Rent Act;

**Notice to Complete** a notice in accordance with cl. 18.1 and cl. 18.2 requiring a party to complete;

**Owners Corporation** the Owners Corporation for the Unit constituted or to be constituted under the Unit Titles Management Act following registration of the Units Plan;

**Pest Inspection Report** has the meaning in the Sale of Residential Property Act;

**Pest Treatment Certificate** has the meaning in the Sale of Residential Property Act;

**Planning Act** the *Planning and Development Act 2007*;

**Planning and Land Authority** has the meaning in the Legislation Act;

**Prescribed Building** has the meaning in the Building Act;

**Prescribed Terms** has the meaning in the *Residential Tenancies Act 1997*;

**Property** the unexpired term of the Lease, the Improvements and the Goods, or (if the Land is a Unit) the unexpired term of the Unit Lease, the Improvements and the Goods;

**Required Documents** has the meaning in the Sale of Residential Property Act and includes a Section 119 Certificate but excludes a copy of this Contract;

**Rescission Notice** has the meaning in the Sale of Residential Property Act;

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

**Section 119 Certificate** a certificate for the Unit issued under s. 119 of the Unit Titles Management Act;

**Section 56 Certificate** a certificate for a Lot issued under s. 56 of the Community Title Act;

**Section 67 Statement** a statement for a Lot complying with s. 67(2)-(4) of the Community Title Act;

**Service** includes air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water service;

**Staged Development** – see s. 17(3) of the Unit Titles Act;

**Tenancy Agreement** includes a lease for any term and whether for residential purposes or otherwise;

**Unapproved Structure** has the meaning in the Sale of Residential Property Act;

**Unit** the Unit referred to in the Schedule and which has the meaning in the Unit Titles Act;

**Unit Entitlement** for the Unit has the meaning in the Unit Titles Act;

**Unit Title** is the Lease together with the rights of the registered lessee of the Unit;

**Unit Titles Act** the *Unit Titles Act 2001*;

**Unit Titles Management Act** the *Unit Titles (Management) Act 2011*;

**Units Plan** all the documents relating to the subdivision of the Land registered as the Units Plan for the Unit under the *Land Titles (Unit Titles) Act 1970*.

1.2

In this Contract:

- a reference to the Seller or to the Buyer includes the executors,

administrators and permitted assigns of any of them, if an individual, and the successors or permitted assigns of any of them, if a corporation;

- the singular includes the plural, and the plural includes the singular;
- a reference to a person includes a body corporate;
- a term not otherwise defined has the meaning in the Legislation Act;
- a reference to an Act includes a reference to any subordinate legislation made under it or any Act which replaces it.

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

1.4 If the time for something to be done or to happen is not a Business Day, the time is extended to the next Business Day, except in the case of cl. 2.1.

1.5 A reference to "this Contract" extends to the Schedule, any annexure, additional clauses and attachments forming part of this Contract.

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

1.7 Where the Buyer consists of more than one person, as between themselves, they agree to buy the Property in the specified manner of Co-ownership or if one alternative is not marked, as joint tenants.

## 2 Terms of payment

2.1 The Buyer must pay the Deposit on the Date of this Contract, to the Stakeholder or, if no Stakeholder is named, then to the Seller.

2.2 The Deposit becomes the Seller's property on Completion.

2.3 The Deposit may be paid by cheque or cash but if it is not paid on time or, if it is paid by cheque which is not honoured on first presentation, the Buyer is in default.

2.4 If the Buyer is in default under cl. 2.3, then immediately and without the notice otherwise necessary under cl. 18, cl. 19 applies.

2.5 On Completion the Buyer must give the Seller an authority directing the Stakeholder to account to the Seller for the Deposit.

2.6 On Completion the Buyer must pay to the Seller in Canberra the Balance of the Price by unendorsed bank cheque, or in cash (up to \$200).

2.7 Any money payable to the Seller by the Buyer or the Stakeholder must be paid to the Seller or as the Seller Solicitor directs in writing and payment in accordance with that direction will be sufficient discharge to the person paying.

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

## 3 Title to the Lease

3.1 The Lease is or will before Completion be granted under the Planning Act.

3.2 The Lease is transferred subject to its provisions.

3.3 The title to the Lease is or will before Completion be registered under the *Land Titles Act 1925*.

3.4 The title to the Lease must be transferred free from all Affecting Interests except as otherwise provided.

3.5 The Buyer cannot insist on any Affecting Interests being removed from the title to the Lease before Completion provided, on Completion, the Seller gives the Buyer any documents and registration fees necessary to remove the Affecting Interests.

## 4 Restrictions on transfer

4.1 The Lease is not subject to any restrictions on transfer other than any Restriction on Transfer.

4.2 If the Lease is subject to a Restriction on Transfer under the Planning Act due to non-compliance with the Building and Development Provision then this Contract is subject to the grant of the unconditional consent referred to in s. 298 of the Planning Act. A Restriction on Transfer referring to "s. 298" refers to this restriction.

4.3 If the Lease is granted under the Planning Act and is a lease of the type referred to in s.251 of the Planning Act then this Contract is subject to the grant of the unconditional consent in s. 251 and s. 252 of the Planning Act. A Restriction on Transfer referring to "s. 251" refers to this restriction.

4.3A If the Lease is subject to a Restriction on Transfer under s.265 of the Planning Act, then this Contract is subject to the grant of the unconditional consent in ss. 265 and 266 of the Planning Act. A Restriction on Transfer referring to "s. 265" refers to this restriction.

4.4 Immediately after the Date of this Contract the Seller must do everything reasonably necessary to remove the restriction or obtain

the consent required. If requested in writing, the Buyer must join in any application of the Seller and must do everything reasonably necessary to enable the Seller to obtain the consent. The Seller must pay all associated fees in connection with the application.

- 4.5 If the consent referred to in cl. 4.2, cl. 4.3 or cl. 4.3A is not granted by the Date for Completion then either party may rescind this Contract (provided that the party seeking to rescind is not then in default) and cl. 21 applies.

## 5 Particulars of title and submission of transfer

- 5.1 Unless cl. 5.3 applies the Seller need not provide particulars of title.

- 5.2 Within 7 days after the Date of this Contract the Seller must give the Buyer a transfer of the Lease executed by the Seller in the form prescribed by the *Land Titles Act 1925* to be held by the Buyer on trust for the Seller until Completion only for the purpose of:

- 5.2.1 signing;
- 5.2.2 completing the Buyer details and Co-ownership in accordance with this Contract; and
- 5.2.3 stamping by the Buyer,

and the Buyer must immediately return the transfer if the Seller demands it.

- 5.3 If the Seller is not the registered proprietor of the Lease at the Date of this Contract, the Seller must give to the Buyer no later than 14 days before the Date for Completion a copy of the instrument and any other documents necessary to enable the Seller to be registered as proprietor.

## 6 Buyer rights and limitations

- 6.1 If the Buyer establishes before Completion that except as disclosed in this Contract there is any Unapproved Structure on the Property, then the Buyer may:

- 6.1.1 require the Seller to arrange for the Unapproved Structure to be approved before Completion; and
- 6.1.2 if the Unapproved Structure is not approved before Completion, rescind or complete and sue the Seller for damages.

- 6.2 If the Buyer establishes, immediately before Completion, that, except as disclosed in this Contract:

- 6.2.1 the Property is subject to an encumbrance other than the

encumbrances shown on the title to the Lease; or

- 6.2.2 the Buyer is not entitled to vacant possession,

then the Buyer may either:

- 6.2.3 rescind; or
- 6.2.4 complete and sue the Seller for damages.

- 6.3 The Buyer is not entitled to make any requisitions on the title to the Property.

- 6.4 The Buyer cannot make a claim or objection or rescind or terminate in respect of:

- 6.4.1 a Service for the Property being a joint service or passing through another property, or any Service for another property passing through the Property;
- 6.4.2 a wall being or not being a party wall or the Property being affected by an easement for support or not having the benefit of an easement for support;
- 6.4.3 any change in the Property due to fair wear and tear before Completion;
- 6.4.4 a promise, representation or statement about this Contract, the Property or the Lease, not made in this Contract;
- 6.4.5 any Breach of Covenant described in the Schedule or disclosed elsewhere in this Contract;
- 6.4.6 the ownership or location of any dividing fence;
- 6.4.7 the ownership of any fuel storage tank; and
- 6.4.8 anything disclosed in this Contract (except an Affecting Interest).

## 7 Seller warranties

- 7.1 The Seller warrants that at the Date of this Contract:

- 7.1.1 the Seller will be able to complete at Completion;
- 7.1.2 the Seller has no knowledge of any unsatisfied judgment, order or writ affecting the Property;
- 7.1.3 the Seller has no knowledge of any current or threatened claims, notices or proceedings that may

lead to a judgment, order or writ affecting the Property; and

- 7.1.4 the Seller is not aware of any material change in the matters disclosed in the Required Documents.

7.2 The Seller warrants that on Completion:

- 7.2.1 the Seller will be or will be able to be the registered proprietor of the Lease and will own the rest of the Property free from any Affecting Interests;
- 7.2.2 the Seller will have the capacity to complete;
- 7.2.3 there will be no unsatisfied judgment, order or writ affecting the Property;
- 7.2.4 the Seller has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment order or writ affecting the Property;
- 7.2.5 the Seller is not aware of any encroachments by or upon the Property except as disclosed. This warranty does not extend to the location of any dividing fence;
- 7.2.6 there will be no Breach of Covenant except as disclosed in this Contract; and
- 7.2.7 unless disclosed in the Schedule or elsewhere in this Contract, the Lease is a Non-Land Rent Lease and not a Land Rent Lease.

- 7.3 The Seller gives no warranties as to the present state of repair of any of the Improvements or condition of the Land, except as required by law.

## 8 Adjustments

8.1 Subject to cl. 8.2:

- 8.1.1 the Seller is entitled to the Income and is liable for all Land Charges up to and including Completion after which the Buyer will be entitled to the Income and liable for the Land Charges; and
- 8.1.2 the parties must pay any adjustment of the Income and Land Charges calculated under this clause on Completion.

- 8.2 If the Property is liable to land tax, the Seller must pay it on or before Completion and no adjustment of land tax will be made if the Buyer warrants (in writing if the Seller

requires it) that the Buyer is or will on Completion be entitled to an exemption from land tax.

- 8.3 Any concessional Land Charges must be adjusted on the concessional amount of those Land Charges.

- 8.4 If any of the Land Charges have not been assessed on Completion, the Buyer will be entitled to retain in the Buyer Solicitor trust account from the Balance of the Price an amount sufficient to pay the Seller's proportion of those Land Charges.

- 8.5 Attached are copies of the relevant invoices for the cost of obtaining the Building and Compliance Inspection Report and Pest Inspection Report. The Buyer must pay to the Seller the cost of obtaining the Building and Compliance Inspection Report and the Pest Inspection Report as required by s. 18 of the Sale of Residential Property Act on Completion.

## 9 Terms of possession

- 9.1 The Seller must give the Buyer vacant possession of the Property on Completion unless otherwise marked in the Schedule.

- 9.2 If the Property is sold subject to a tenancy, the Seller has:

- 9.2.1 attached to this Contract a copy of the signed Tenancy Agreement; or
- 9.2.2 completed the tenancy summary on page 2.

- 9.3 If the Property is sold subject to a tenancy:

- 9.3.1 the Seller warrants that except as disclosed in this Contract:
- (a) if applicable, the rental bond has been provided in accordance with the *Residential Tenancies Act 1997*;
- (b) if applicable, the Seller has complied with the *Residential Tenancies Act 1997*;
- (c) if applicable, the Seller has no notice of any application by the tenant for the release of the rental bond;
- (d) no notices relating to the tenancy have been served on the Seller or any agent of the Seller or on the tenant other than as disclosed in this Contract and there are no

outstanding claims or disputes with the tenant;

- (e) there is no unremedied breach of the Tenancy Agreement by the tenant or the Seller; and
- (f) if applicable, the Tenancy Agreement incorporates:

- (i) the Prescribed Terms; and
- (ii) any other terms approved by the Residential Tenancies Tribunal

9.3.2 The Seller must hand to the Buyer on Completion:

- (a) any written Tenancy Agreement to which this Contract is subject;
- (b) a notice of attornment;
- (c) if applicable, any notice required to be signed by the Seller to transfer the rental bond by the Office of Rental Bonds to the Buyer; and
- (d) if applicable, any other notice required to be signed by the Seller under the *Residential Tenancies Act 1997*.

9.3.3 The Buyer indemnifies the Seller in relation to any liability which the Seller incurs or to which the Seller is subject under the tenancy because of matters occurring after Completion.

## 10 Inspection and condition of Property

10.1 The Buyer may on reasonable notice to the Seller and at reasonable times inspect the Property before Completion.

10.2 The Seller must leave the Property clean and tidy on Completion.

## 11 Inspection of building file

11.1 The Seller must, if requested by the Buyer, give to the Buyer all authorities necessary to enable the Buyer (or Buyer's nominee) to inspect and obtain at the Buyer's expense, copies of:

- 11.1.1 any document in relation to the Land and Improvements held by any government or statutory authority; and
- 11.1.2 any notices issued by any authority in relation to the Land and Improvements.

## 12 Additional Seller obligations

12.1 Except for any Breach of Covenant disclosed in this Contract, the Seller must before Completion:

12.1.1 comply with any notice issued by any authority before the Date of this Contract which requires work to be done or money to be spent on or in relation to the Property or the Lease;

12.1.2 obtain approval for any Development conducted on the Land;

12.1.3 comply with the Lease to the extent to which the Seller is required to comply up to Completion;

12.1.4 comply with any obligations on the Seller in a registered restrictive covenant affecting the Lease; and

12.1.5 give the Buyer notice of any material change (other than fair wear and tear) the Seller becomes aware of in the matters disclosed in the Required Documents, since the date of each of the relevant Required Documents.

## 13 Compliance Certificate

13.1 The Seller must give to the Buyer on Completion a Compliance Certificate unless:

13.1.1 the Lease does not contain a Building and Development Provision; or

13.1.2 the Lease is sold subject to non compliance with the Building and Development Provision within the meaning of cl. 4.2; or

13.1.3 a Compliance Certificate has issued before the Date of this Contract and is either noted on the certificate of title for the Lease or the Seller gives to the Buyer other evidence acceptable to the Registrar General that a Compliance Certificate has issued.

13.2 The Seller must give to the Buyer on Completion evidence of approval to conduct any Development on the Land unless:

13.2.1 approval for the Development has been granted by the relevant authority before the Date of this Contract; or

13.2.2 the Development is disclosed as a Breach of Covenant in this Contract.

## 14 Off the plan purchase

14.1 If the Lease contains a Building and Development Provision which has not been complied with at the Date of this Contract, and cl. 4.2 does not apply, before the Date for Completion, the Seller must at the Seller's expense complete the construction of the Improvements promptly and in a good and workmanlike manner substantially in accordance with the proposed plan, specifications and inclusions list attached.

## 15 Goods

15.1 The Seller gives no warranties as to the present state of repair of any of the Goods except as required by law.

15.2 The Goods are included in the Price.

15.3 The Seller warrants that the Goods are unencumbered and that the Seller has the right to sell them.

15.4 The Goods become the Buyer's property on Completion.

15.5 Except for fair wear and tear, the Seller must give the Goods to the Buyer on Completion in the same state of repair they are in at the Date of this Contract.

## 16 Errors and misdescriptions

16.1 If, before Completion, the Buyer becomes aware of an error in the description of the Property the Buyer may:

16.1.1 identify whether the error is material or not material, and ask the Seller to arrange for the error to be corrected before Completion; and

16.1.2 if the error is not corrected before Completion:

(a) for an error that is material - rescind this Contract, or complete this Contract and make a claim for compensation; and

(b) for an error that is not material - complete this Contract and make a claim for compensation.

16.2 This clause applies even if the Buyer did not take notice of or rely on anything in this Contract containing or giving rise to the error or misdescription.

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

## 17 Compensation claims by Buyer

17.1 To make a claim for compensation (including a claim under cl. 16) the Buyer must give notice to the Seller before Completion specifying the amount claimed and:

17.1.1 the Seller can rescind if in the case of a claim that is not a claim for delay:

(a) the total amount claimed exceeds 5% of the Price;

(b) the Seller gives notice to the Buyer of an intention to rescind; and

(c) the Buyer does not give notice to the Seller waiving the claim within 14 days after receiving the notice; and

17.1.2 if the Seller does not rescind under cl. 17.1.1, the parties must complete and:

(a) the lesser of the total amount claimed and 5% of the Price must be paid out of the Price to, and held by, the Stakeholder until the claim is finalised or lapses;

(b) the amount held is to be invested by the Stakeholder (at the risk of the party who becomes entitled to it) with an Australian bank in an interest bearing account at call in the name of the Stakeholder in trust for the Seller and the Buyer;

(c) the claim must be finalised by an arbitrator appointed by the parties or, if an appointment is not made within 28 days of Completion, by an arbitrator appointed by the President of the Law Society of the Australian Capital Territory at the request of a party;

- (d) the decision of the arbitrator is final and binding;
- (e) the costs of the arbitration must be shared equally by the parties unless otherwise determined by the arbitrator. For clarity, the arbitrator has the power to award indemnity costs on a legal basis against either party;
- (f) the Buyer is not entitled, in respect of the claim, to more than the total amount claimed and the costs of the Buyer;
- (g) interest on the amount held, after deduction of all taxes and bank charges, Stakeholder administration fee and other similar charges and expenses, must be paid to the parties equally or as otherwise determined by the arbitrator; and
- (h) the claim lapses if the parties do not appoint an arbitrator and neither party asks the President of the Law Society of the Australian Capital Territory to appoint an arbitrator within 90 days after Completion and the amount held by the Stakeholder must be paid immediately to the Seller without any further authority being necessary.

## 18 Notice to Complete and Default Notice

- 18.1 If Completion does not take place in accordance with cl. 2.8, either party may, at any time after the Date for Completion, serve the other party a Notice to Complete.
- 18.2 A Notice to Complete must appoint a time during business hours and a date being not less than 14\* days after service of the Notice to Complete (excluding the date of service) by which and a place in Canberra at which to complete this Contract.
- 18.3 At the time the Notice to Complete is served the party serving the Notice to Complete must:

18.3.1 not be in default; and

18.3.2 be ready willing and able to complete but for some default or omission of the other party.

18.4 Completion at the time date and place specified in the Notice to Complete is an essential term.

18.5 Where one party is in default (other than failing to complete) the other party may at any time after the default serve the party in default a Default Notice.

18.6 A Default Notice:

18.6.1 must specify the default;

18.6.2 must require the party served with the Default Notice to rectify the default within 7\* days after service of the Default Notice (excluding the date of service); and

18.6.3 cannot be used to require a party to complete this Contract.

*\*Alter as necessary*

18.7 At the time the Default Notice is served, the party serving the Default Notice must not be in default.

18.8 The time specified in a Default Notice to rectify the specified default is an essential term.

18.9 Cl. 19 or cl. 20 will apply as appropriate where the party served does not comply with the Notice to Complete or the Default Notice which complies with this clause.

18.10 If the party serving a notice under this clause varies the time referred to in the notice at the request of the other party, the time agreed to in the variation remains an essential term. The consent to the variation must be in writing and be served on the other party.

18.11 The parties agree that the time referred to in cl. 18.2 and cl. 18.6.2 is fair and reasonable.

## 19 Termination - Buyer default

19.1 If the Buyer does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential term then the Seller may by notice served on the Buyer terminate and may then keep, or recover and keep, the Deposit (except so much of it as exceeds 10% of the Price) and either:

19.1.1 sue the Buyer for breach; or

19.1.2 resell the Property and any deficiency arising on the resale and all expenses of and incidental to the resale or attempted resale and the Buyer's default are recoverable by the Seller from the Buyer as

liquidated damages provided the Seller has entered into a contract for the resale of the Property within 12 months of termination.

- 19.2 In addition to any money kept or recovered under cl. 19.1, the Seller may retain on termination any other money paid by the Buyer as security for any damages awarded to the Seller arising from the Buyer's default provided that proceedings for the recovery of damages are commenced within 12 months of termination.

## 20 Termination - Seller default

- 20.1 If the Seller does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential term the Buyer may by notice served on the Seller either:

- 20.1.1 terminate and seek damages; or  
20.1.2 enforce without further notice any other rights and remedies available to the Buyer.

- 20.2 If the Buyer terminates, the Stakeholder is authorised to refund to the Buyer immediately any money paid on account of the Price.

## 21 Rescission

- 21.1 Unless s. 15 of the Sale of Residential Property Act applies, if this Contract is rescinded, it is rescinded from the beginning, and unless the parties otherwise agree:

- 21.1.1 the Deposit and all other money paid by the Buyer must be refunded to the Buyer immediately without any further authority being necessary; and  
21.1.2 neither party is liable to pay the other any amount for damages, costs or expenses.

## 22 Damages for delay in Completion

- 22.1 If Completion does not occur by the Date for Completion, due to the default of either party, the party who is at fault must pay the other party as liquidated damages on Completion:

- 22.1.1 if the defaulting party is the Seller interest on the Price at the rate of % per annum calculated on a daily basis from the date 7 days after the Date for Completion to Completion;

\*Insert percentage

- 22.1.2 if the defaulting party is the Buyer interest on the Price at the rate of % per annum calculated on a daily basis from the date 7 days

\*Insert percentage

\*Alter as necessary

after the Date for Completion to Completion; and

- 22.1.3 the amount of \$440\* (including GST) to be applied towards any legal costs and disbursements incurred by the party not at fault if Completion occurs later than 7 days after the Date for Completion.

- 22.2 Whether or not percentages are inserted in cl. 22.1.1 or cl. 22.1.2 the party at fault must pay the amount specified in cl. 22.1.3 in addition to any other damages to which the party not at fault is entitled both at law and under this Contract.

- 22.3 The parties agree that:

- 22.3.1 the amount of any damages payable under cl 22.1.1 or cl 22.1.2 to the party not in default is a genuine and honest pre-estimate of loss to that party for the delay in Completion, and

- 22.3.2 the damages must be paid on Completion.

## 23 Foreign Buyer

- 23.1 The Buyer warrants the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer of the Lease under the *Foreign Acquisitions and Takeovers Act 1975*.

- 23.2 This clause is an essential term.

## 24 GST

- 24.1 If a party must pay the Price or provide any other consideration to another party under this Contract, GST is not to be added to the Price or amount, unless this Contract provides otherwise.

- 24.2 If the Price is stated in the Schedule to exclude GST and the sale of the Property is a taxable supply, the Buyer must pay to the Seller on Completion an amount equal to the GST payable by the Seller in relation to the supply.

- 24.3 if under this Contract a party (Relevant Party) must make an adjustment, pay an amount to another party (excluding the Price but including the Deposit if it is released or forfeited to the Seller) or pay an amount payable by or to a third party:

- 24.3.1 the Relevant Party must adjust or pay at that time any GST added to or included in the amount; but

- 24.3.2 if this Contract says this sale is a taxable supply, and payment would entitle the Relevant Party to claim

an input tax credit, the adjustment or payment is to be worked out by deducting any input tax credit to which the party receiving the adjustment or payment is or was entitled multiplied by the GST Rate.

24.4 If this Contract says this sale is the supply of a going concern;

24.4.1 the parties agree the supply of the Property is the supply of a going concern;

24.4.2 the Seller must on Completion supply to the Buyer all of the things that are necessary for the continued operation of the enterprise;

24.4.3 the Seller must carry on the enterprise until Completion;

24.4.4 The Buyer warrants to the Seller that on Completion the Buyer will be registered or required to be registered;

24.4.5 If for any reason (and despite cl. 24.1 and 24.4.1) the sale of the Property is not the supply of a going concern but is a taxable supply:

(a) the Buyer must pay to the Seller on demand the amount of any GST payable by the Seller in respect of the sale of the Property; and

(b) the Buyer indemnifies the Seller against any loss or expense incurred by the Seller in respect of that GST and any breach of cl. 24.4.5(a).

24.5 If this Contract says the Buyer and Seller agree that the margin scheme applies to the supply of the Property, the Seller warrants that it can use the margin scheme and promises that it will.

24.6 If this Contract says the sale is a taxable supply, does not say the margin scheme applies to the sale of the Property, and the sale is in fact not a taxable supply, then the Seller must pay the Buyer on Completion an amount of one-eleventh of the Price.

24.7 On Completion the Seller must give the Buyer a tax invoice for any taxable supply by the Seller by or under this Contract.

## 25 Power of attorney

25.1 Any party who signs this Contract or any document in connection with it under a

power of attorney must, on request and without cost, provide the other party with a true copy of the registered power of attorney.

## 26 Notices claims and authorities

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

26.2 To serve a notice a party must:

(a) leave it at; or

(b) send it by a method of post requiring acknowledgment of receipt by the addressee to,

the address of the person to be served as stated in the Schedule or as notified by that person to the other as that person's address for service under this Contract; or

(c) serve it on that party's solicitor in any of the above ways; or

(d) by delivering it to an appropriate place in the facilities of a document exchange system in which the recipient solicitor has receiving facilities (and in the latter case service is deemed effected on the Business Day following delivery); or

(e) send it by facsimile to a party's solicitor, unless it is not received (a notice is taken to have been received at the time shown in the transmission report that the whole facsimile was sent).

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

## 27 Unit title

27.1 The following clauses 28 to 39 inclusive apply if the Property is a Unit.

## 28 Definitions and interpretation

28.1 A reference in these clauses 28 to 39 inclusive to a section or Part is a reference to a section or Part of the Unit Titles Management Act.

28.2 For the purposes of a claim for compensation pursuant to cl. 39, the provisions of cl. 17 will apply provided that cl. 17.1.1(c) is amended to read "the Buyer does not give notice to the Seller waiving the claim, or so much of it as exceeds 5% of the Price within 14 days after receiving the notice".

## 29 Title to the Unit

29.1 Cl. 3.1, cl. 3.2 and cl. 3.3 do not apply.

29.2 The Unit Title is or will before Completion be granted under the Planning Act and is or will before Completion be registered under the Land Titles (Unit Titles) Act 1970.

29.3 The Unit Title is transferred subject to the Units Plan under which the lease to the Unit is held.

### 30 Buyer rights limited

30.1 In addition to cl. 6, the Buyer cannot make any requisition on title or make a claim for compensation in respect of any Breach of Covenant of the Unit Title, any breach of the lease of the Common Property or breach of rules of the Owners Corporation disclosed in this Contract.

### 31 Adjustment of contribution

31.1 Any adjustment under cl. 8 must include an adjustment of the contributions to the Owners Corporation under s.78 and s.89.

### 32 Inspection of Unit

32.1 For the purposes of cl. 10.1 Property includes the Common Property.

### 33 Seller warranties

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

33.1.1 To the Seller's knowledge, there are no unfunded latent or patent defects in the Common Property or Owners Corporation assets, other than the following:

- (a) Defects arising through fair wear and tear; and
- (b) Defects disclosed in this Contract;

33.1.2 The Owners Corporation records do not disclose any defects to which the warranty in cl. 33.1.1 applies;

33.1.3 to the Seller's knowledge, there are no actual, contingent or expected unfunded liabilities of the Owners Corporation that are not part of the Owners Corporation's normal operating expenses, other than liabilities disclosed in this Contract;

33.1.4 the Owners Corporation records do not disclose any liabilities of the Owners Corporation to which the warranty in cl. 33.1.3 applies;

33.1.5 the Seller or any occupier of the Unit has not committed any act or omission which may cause the

Owners Corporation to incur any costs or perform any repairs;

33.1.6 there is no amount payable to the Owners Corporation by the Seller other than a contribution due under s. 78 and s. 89; and

33.1.7 except for an unregistered Units Plan, the rules of the Owners Corporation are, as appropriate:

- (a) as set out in Schedule 4 to the Unit Titles Management Act; or
- (b) in respect of a corporation established under the Unit Titles Act 1970 (repealed) and that was in existence immediately prior to 30 March 2012, the articles in force immediately prior to 30 March 2012; or
- (c) in respect of a corporation established under the Unit Titles Act and that was in existence immediately prior to 30 March 2012, the articles in force immediately prior to 30 March 2012;

except for any alterations to those rules registered under s. 108.

33.2 For clauses 33.1.1 to 33.1.4 inclusive, a Seller is taken to have knowledge of a thing if the Seller has actual knowledge, or ought reasonably to have knowledge, of that thing.

33.3 The Seller warrants that at Completion:

33.3.1 to the Seller's knowledge, there are no circumstances (other than circumstances disclosed in this Contract) in relation to the affairs of the Owners Corporation likely to materially prejudice the Buyer.

33.4 For the purposes of cl. 7, Property includes the Common Property.

33.5 These warranties are in addition to those given in cl. 7.

### 34 Damage or destruction before Completion

34.1 If the Unit is destroyed or substantially damaged before Completion not due to the fault of either party then either party may by notice to the other rescind and cl. 21 applies.

34.2 For the purposes of cl. 34.1, the Unit is deemed to be substantially damaged if though not destroyed is unfit for the use to

which it was being put at the Date of this Contract or, if not being used at that time, for the purpose permitted by the Unit Title.

### 35 Notice to Owners Corporation

- 35.1 The parties must comply with the rules of the Owners Corporation in relation to notification of the sale and purchase of the Unit.

### 36 Section 119 Certificate

- 36.1 On Completion the Buyer must pay to the Seller the fee as determined by the Minister pursuant to s. 119(5) for the Section 119 Certificate attached.

### 37 Unregistered Units Plan

- 37.1 This clause 37 applies if at the Date of this Contract, the Units Plan has not been registered.
- 37.2 The Seller must attach a copy of the proposed Units Plan or a sketch plan showing the location and dimensions of the Unit sufficient to enable the Buyer to determine the location and dimensions of the Unit in relation to other units and the Common Property in the proposed development.
- 37.3 If the Units Plan is not registered by the date specified in the Schedule, or elsewhere in this Contract, the Buyer may at any time after that date by notice served on the Seller require that the Units Plan be registered within 14 days of the service of the notice. If the Units Plan is not registered within the time limited by the notice the Buyer may at any time after expiry of the time in the notice rescind and cl. 21 will apply.
- 37.4 If the Seller notifies the Buyer that the Units Plan is registered before rescission under this clause, the Buyer will not be entitled to rescind under this clause.
- 37.5 The Buyer cannot make any objection or requisition on title or claim for compensation in respect of:

- 37.5.1 any minor variations to the Unit between the plan attached, and the Units Plan registered by the Registrar General; or
- 37.5.2 any minor alterations required by an authority or the Registrar General in the number, size, location or Unit Entitlement of any other unit in the Units Plan or in or to the Common Property provided the proportion of the Unit Entitlement of the Unit to the other units in the Units Plan is not varied.

In this clause, a minor variation is any variation less than 5% to either

the size or value of the Unit described in the plan attached.

- 37.6 After the Owners Corporation has been constituted under s. 8, the Seller must cause the Owners Corporation to comply with the rules of the Owners Corporation and with Parts 2, 3, 4, 5 and 7 to the extent to which the Owners Corporation is required by law to comply with those provisions up to the Date for Completion.
- 37.7 The Seller must not permit the Owners Corporation to vary the rules of the Owners Corporation from those set out in Schedule 4 of the Unit Title Management Act.
- 37.8 If cl. 37.1 applies, the Seller must give to the Buyer a Section 119 Certificate at the Buyer's expense at least 7 days before Completion.
- 37.9 The parties acknowledge that the following must form part of this Contract:
- 37.9.1 the Default Rules;
- 37.9.2 details of any contract the Developer intends the Owners Corporation to enter, including—
- (a) the amount of the Buyer's General Fund Contribution that will be used to service the contract; and
- (b) any personal or business relationship between the Developer and another party to the contract;
- 37.9.3 the Developer's estimate, based on reasonable grounds, of the Buyer's General Fund Contribution for 2 years after the Units Plan is registered;
- 37.9.4 if a right to approve the keeping of animals during the Developer Control Period is reserved—details of the reservation, including the kind and number of animals; and
- 37.9.5 if a Staged Development of the Units is proposed—the proposed Development Statement and any amendment to the statement.
- 37.10 The Developer warrants that the information disclosed under the items referred to in clauses 37.9.1 to 37.9.5 inclusive is accurate.
- 37.11 The Buyer may, by written notice given to the Developer, cancel this Contract before Completion if:
- 37.11.1 the information disclosed within the items referred to in clauses 37.9.1

to 37.9.5 inclusive is incomplete or inaccurate; and

37.11.2 the Buyer is significantly prejudiced because the disclosure is incomplete or inaccurate.

### 38 Cancellation of Contract

38.1 The Buyer may, by written notice given to the Seller, cancel this Contract if there would be a breach of a warranty provided in any of clauses 33.1.1, 33.1.2, 33.1.3, 33.1.4 or 33.3.1, were this Contract completed at the time it is cancelled.

38.2 A notice under cl. 38.1 must be given:

38.2.1 if this Contract is entered before the Units Plan for the Unit is registered – not later than 3 days before the Buyer is required to complete this Contract; or

38.2.2 in any other case – not later than 14 days after the later of the following happens:

- (a) the Date of this Contract;
- (b) another period agreed between the Buyer and Seller ends.

38.3 If the Buyer cancels this Contract, the Seller must repay any amount paid to the Seller towards the purchase of the Unit and otherwise the provisions of cl. 21 will apply.

### 39 Claims for compensation

39.1 This clause 39 applies if, before Completion, the Buyer reasonably believes that, except as disclosed in this Contract, there would be a breach of a warranty established under any of clauses 33.1.1, 33.1.2, 33.1.3, 33.1.4 or 33.3.1 were this Contract to be completed.

39.2 The Buyer may, by written notice given to the Seller:

39.2.1 tell the Seller:

- (a) about the breach; and
- (b) that the Buyer will complete this Contract; and

39.2.2 claim compensation for the breach.

39.3 A notice under cl. 39.2 must be given:

39.3.1 if this Contract is entered before the Units Plan for the Unit is registered – not later than 3 days

before the Buyer is required to complete this Contract; or

39.3.2 in any other case – not later than 14 days after the later of the following happens:

- (a) the Buyer's copy of the Contract is received by the Buyer;
- (b) another period agreed between the Buyer and Seller ends.

### 40 Community title

40.1 The following clauses 41 to 50 inclusive apply if the Property is, or will on Completion form, a Lot within a Community Title Scheme.

### 41 Definitions and interpretation

41.1 A reference in these clauses 40 to 50 inclusive to a section or Part is a reference to a section or Part of the Community Title Act.

### 42 Buyer rights limited

42.1 In addition to cl. 6, the Buyer cannot make any requisition on title or make a claim for compensation in respect of any breach of the lease of the Common Property or breach of rules or by-laws of the Community Title Body Corporate disclosed in this Contract.

### 43 Adjustment of contribution

43.1 Any adjustment under cl. 8 must include an adjustment of the contributions to the fund under s.45.

### 44 Inspection of property

44.1 For the purposes of cl. 10.1 Property includes the Common Property.

### 45 Unregistered Community Title Scheme

45.1 This clause 45 applies if at the Date of this Contract, the Community Title Scheme has not registered.

45.2 The Seller must attach a copy of the proposed Community Title Master Plan, or a sketch plan showing the location and dimensions of the Lot sufficient to enable the Buyer to determine the location and dimensions of the Lot in relation to other lots and the Common Property in the proposed scheme.

The Seller must attach a copy of the proposed Community Title Management Statement.

45.4 The Buyer cannot make any objection or requisition on title or claim for compensation in respect of:

45.4.1 any minor variations to the Lot between the plan attached, and the registered Community Title Master Plan; or

45.4.2 any minor alterations required by an authority or the Registrar General in the number, size, location or entitlement of any other Lot in the Community Title Scheme or in or to the Common Property provided the proportion of the entitlement of the Lot to the other lots in the Community Title Scheme is not varied; or

45.4.3 any minor variations between the proposed Community Title Management Statement and the registered Community Title Management Statement;

In this clause, a minor variation is any variation less than 5% to either the size or value of the Lot described in the plan attached and referred to in the proposed Community Title Management Statement.

45.5 The Seller must not permit the Community Title Body Corporate to vary the by-laws of the Community Title Scheme from those set out in Schedule 1 of the Community Title Act, unless otherwise disclosed in this Contract.

45.6 After the Community Title Body Corporate has been constituted under s. 30, the Seller must cause the Community Title Body Corporate to comply with Part 8 to the extent to which the Community Title Body Corporate is required by law to comply with those provisions up to the Date for Completion.

**46 Incomplete development of Community Title Scheme**

46.1 This clause 46 applies if at the Date of this Contract, development of the Community Title Scheme has not completed.

46.2 Until the development of a Community Title Scheme is finished, the Developer warrants to the Buyer that the development will be carried out in accordance with the scheme.

46.3 Without limiting the damages recoverable for breach of the warranty in cl. 46.2, the Buyer may recover damages for the loss of a

reasonably expected capital appreciation of the Lot that would have resulted from completion of the development in accordance with the terms of the Community Title Scheme.

**47 Incomplete development of Lot**

47.1 This clause 47 applies if at the Date of this Contract, the Lot is to be developed or further developed in accordance with the Community Title Scheme. For clarity, this clause does not apply if an unconditional Compliance Certificate has issued before the Date of this Contract and the Seller gives to the Buyer evidence acceptable to the Registrar General that an unconditional Compliance Certificate has issued for the Lot, or if the Seller gives an unconditional Compliance Certificate to the Buyer on Completion.

47.2 The Buyer becomes bound to develop the Lot in accordance with the Community Title Scheme;

47.3 The Seller must give written notice of the proposed sale of the Lot to the Planning and Land Authority;

47.4 The Buyer must:

47.4.1 give to the Planning and Land Authority a written undertaking to develop the Lot in accordance with the Community Title Scheme (if a form is approved for an undertaking, the form must be used); and

47.4.2 give the Planning and Land Authority any security required by the Planning and Land Authority, within 28 days after notice of the transaction was given to the Planning and Land Authority, for the development of the Lot in accordance with the Community Title Scheme.

**48 Required first or top sheet**

48.1 The Seller must give to the Buyer, before the Buyer enters into this Contract, a Section 67 Statement.

48.2 The Section 67 Statement must:

48.2.1 state that the Lot is included in a Community Title Scheme that imposes obligations on the owner of the Lot;

48.2.2 state the name and address of:

(a) the body corporate of the scheme; or

- (b) if it is the duty of the Community Title Body Corporate manager to act for the Community Title Body Corporate in supplying Section 56 Certificates - the manager;

48.2.3 state the amount of annual contributions currently fixed by the Community Title Body Corporate as payable by the owner of the Lot;

48.2.4 identify improvements on common property of the scheme for which the owner of the Lot is responsible;

48.2.5 be signed by the Seller or a person authorised by the Seller; and

48.2.6 be substantially complete.

48.3 The Seller must attach to this Contract, as a first or top sheet, a copy of the Section 67 Statement given to the Buyer under cl. 48.1.

48.4 The Buyer may rescind this Contract if:

48.4.1 the Seller has not complied with clauses 48.1 and 48.3; and

48.4.2 Completion has not taken place.

#### **49 Notice to Community Title Body Corporate**

49.1 The parties must comply with the rules and by-laws of the Community Title Body Corporate in relation to notification of the sale and purchase of the Lot.

#### **50 Section 56 Certificate**

50.1 The Seller must give to the Buyer a Section 56 Certificate at least 7 days before Completion.

50.2 On Completion, the Buyer must pay to the Seller the fee charged for the Section 56 Certificate.

## Additional clauses

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## 51. Definitions and interpretations

### 51.1 Definitions

In this contract:

**Building Controller** means the ACT Building Controller referred to in the *Building Act 1972* (ACT) and/or the Constructions Occupations Registrar referred to in the *Building Act 2004* (ACT), as the case may be.

**Canberra Building Legislation** means the *Building Act 1972* (ACT), *Building Act 2004* (ACT), the *Canberra Building Regulations*, the *City Area Leases Act 1936* (ACT), the *Buildings (Design and Siting) Act 1964* (ACT), the *Land (Planning and Environment) Act 1991* (ACT), the *Australian Capital Territory (Planning and Land Management) Act 1988* (ACT), the *Planning and Development Act 2007* (ACT) and the *National Lands Ordinance 1989* or their predecessors or substitutes.

**Completion Date** means the date of completion of this Contract.

**Contract** means this contract for sale and includes all clauses, the Disclosure Schedule, other schedules, annexures and attachments.

**Contract Date** means the date of this Contract.

**Crown Lease** means the Crown Lease for the Land being Volume 1533 : Folio 55 which is included in the Disclosure Schedule.

**Disclosure Schedule** means the disclosure schedule in Annexure A (including documents in or described in that Annexure A).

**Environment** has the same meaning as in the *Environment Protection Act 1997* (ACT).

**Environmental Law** includes any common law or statute, regulation, by-law, ordinance, proclamation or other regulation of government authority that has as its object, purpose or effect any one or more of:

- (a) the protection of the environment;
- (b) the prevention, control, abatement or investigation of pollution or contamination of air, land or water, or their effects;
- (c) the regulation of waste, dangerous goods or hazardous substances;
- (d) the regulation of carrying out of works on, in or under, the subdivision of, or the erection of any structure on, in or under, land;
- (e) the protection of the health and safety of any person in connection with the use or occupation of land or activities on that land;
- (f) the control of land use and development or occupation of land or buildings; and/or
- (g) heritage preservation, protection, exploration, exploitation, development or conservation of natural or cultural resources.

**Inclusions** means the fixtures and fittings which are situated on the Property.

**Land** means the land demised by the Crown Lease, described in the Schedule.

**Land Act** means the *Planning and Development Act 2007* (ACT).

**Property** means, collectively, the Crown Lease and any other thing included in the sale under this Contract, including the improvements on the Land and the Inclusions.

**Service** means a service for the Land or Property being a joint service or passing through another property, or any service for another property passing through the Land or Property and includes air, communication, drainage, sewerage, water, electricity, garbage, gas, oil, radio, telephone, television, cable and internet services.

**Schedule** means the SCHEDULE comprising part of this Contract.

**Standard Terms** means the standard Law Society of the Australian Capital Territory Contract for Sale (2013 Edition) clauses forming part of this Contract.

## 51.2 Interpretation

In this Contract:

- (a) headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:
- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) an agreement, obligation, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- (d) an agreement, obligation, representation or warranty on the part of 2 or more persons binds them jointly and severally;
- (e) a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;
- (f) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (g) a reference to a clause, clause, schedule, Exhibit, attachment or annexure is a reference to a clause, clause, schedule, exhibit, attachment or annexure to or of this Contract, and a reference to this contract includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation; and
- (j) a reference to "\$" or "dollar" is to Australian currency.

## 51.3 Acknowledgement

The parties acknowledge that the Sale of Residential Property Act does not apply to this Contract.

---

## 52. Standard Terms

### 52.1 Amendments to the Standard Terms

Despite anything to the contrary, the following clauses in the Standard Terms are varied or deleted (as applicable) as follows:

(a) in clause 1.1, the following definitions are deleted and do not apply:

- (i) Building and Compliance Inspection Report;
- (ii) Energy Efficiency Rating Statement;
- (iii) Lease Conveyancing Inquiry Document;
- (iv) Pest Inspection Report;
- (v) Pest Treatment Certificate;
- (vi) Prescribed Building;
- (vii) Prescribed Terms;
- (viii) Required Documents;
- (ix) Service; and
- (x) Unapproved Structure.

(b) the following clauses are deleted and do not apply:

- (i) clause 2.5;
- (ii) clause 4;
- (iii) clause 5.1;
- (iv) clause 5.3;
- (v) clause 6.1;
- (vi) clause 6.2;
- (vii) clause 7.1.4;
- (viii) clause 7.2.3;
- (ix) clause 7.2.4;
- (x) clause 7.2.5;
- (xi) clause 7.2.6;
- (xii) clause 8.4;
- (xiii) clause 8.5;
- (xiv) clause 9.2;
- (xv) clause 9.3;
- (xvi) clause 12 to 16 inclusive;
- (xvii) clause 22; and
- (xviii) clause 27 to 50 inclusive.

(c) clause 6.4.5 is deleted and replaced by:

*"any Breach of Covenant"*.

**52.2 Conflict**

If there is any conflict between these additional clauses and the Standard Terms then the additional clauses will prevail.

---

**53. Buyer's acknowledgements**

**53.1 Acknowledgements**

- (a) The Buyer acknowledges and warrants to the Seller that in entering into this Contract the Buyer:
  - (i) has not relied upon any warranty or representation made or any other conduct engaged in by the Seller or any person on behalf of the Seller except as expressly provided in this Contract;
  - (ii) has relied entirely upon the Buyer's own enquiries and inspection of the Property; and
  - (iii) is satisfied in all respects as to the nature, quality, condition and state of repair of the Property (including the soil and sub-strata of the Land), the purposes for which the Property may be lawfully used, and matters relevant to any development of the Property.
- (b) The Buyer acknowledges and agrees that the Property is sold and accepted by the Buyer subject to all defects (whether latent or patent) in the state of repair, condition, dilapidation and infestation.

**53.2 No warranty or representation by Seller**

The Buyer acknowledges and agrees that no warranty or representation (either express or implied) is given by the Seller or anyone on behalf of the Seller as to:

- (a) any financial return or income that can be derived from the Property;
- (b) any use permitted by law or any development to which the Property may be put;
- (c) the amenity or neighbourhood in which the Property is located;
- (d) any item of plant, equipment or other Inclusion included in the Property being in working order or condition or fit for any purpose or of merchantable quality or fitting its description or otherwise complying with any law including any health or safety law, regulation or ordinance;
- (e) any rights and privileges relating to the Property; or
- (f) whether any Environmental Law applies to the Property, or the effect of any applicable Environmental Law upon the Property.

**53.3 Buyer's searches and inquiries**

The Buyer warrants to the Seller that it has made and relied on its own searches and enquiries and satisfied itself in all respects as to and agrees to take title subject to each of the following matters affecting the Property:

- (a) the physical nature, state, composition of the soil and its sub-strata and groundwater and the presence of any contaminant, substance, chemical, residue or foreign substance in the soil, its sub-strata and groundwater;
- (b) the nature, composition and content of all building materials, substances or components located or existing within the improvements and any waste located or existing on the Property including any environmentally hazardous material, waste or contamination;
- (c) the existence (if any) of any liability for any order, notice, penalty, fine or request under any law or regulation relating to the condition, content or contamination (if any) of the soil, its sub-strata or groundwater or relating to any building material, substance or components on the Property;
- (d) the listing of the Land or Improvements on any Heritage Register under the *Land Act*;
- (e) any non-compliance or alleged non-compliance with the Canberra Building Legislation or any Environmental Law;
- (f) any approval under the *Land Act*, or any application for approval under the *Land Act*;
- (g) any order under the *Land Act*; and
- (h) any application under the *Native Title Act 1993 (Cth)* or the *Native Title Act 1994 (ACT)* in respect to the Land.
- (i) any easement affecting the Property or Common Property which has been disclosed by the Seller or which is ascertainable by survey or by search of any publicly available document or register;
- (j) any non-compliance or alleged non-compliance with the Canberra Building Legislation or any Environmental Law;
- (k) any approval under the Canberra Building Legislation, or any application for approval under the Canberra Building Legislation;
- (l) any order under the Canberra Building Legislation;
- (m) the terms and conditions of the Units Plan and the articles of the Owners Corporation.

**53.4 No requisition or claim**

- (a) The Buyer is not entitled to rescind, terminate or delay completion of this Contract, nor to object, requisition or make any claim in connection with any matter, fact or thing arising from, or referred to or contained in clauses 29.1 to 29.3 (inclusive).
- (b) Without limiting the preceding provisions, the Buyer will not require the Seller to apply for or to obtain any approvals or certificates under the Canberra Building Legislation in respect of the Improvements or any part or any addition or alteration to the Improvements.

---

## 54. Seller's agent

The Buyer represents and warrants that it was not introduced to the Property or to the Seller either directly or indirectly by any real estate agent, or other person entitled to claim commission or fee from the Seller, other than the Stakeholder.

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## 55. Survey

The Buyer acknowledges that the Seller has no current site identification survey of the Property and the Buyer is not entitled to rescind, terminate or delay completion of this Contract, nor to object, requisition or make any claim (including a claim under clause 17) if it is found on survey that:

- (a) there are any encroachments by or upon the Property or other survey irregularities; or
- (b) there are any contraventions of the Canberra Building Legislation or the *Building Code of Australia*.

---

## 56. Remediation of Property

### 56.1 Definitions

"**Site Assessment Report**" means the Phase 2 environmental site assessment report undertaken by Robson Pty Ltd and included in the Disclosure Schedule;

"**Site Audit Report**" means an independent review of an assessment or remediation by a contaminated land auditor endorsed by the Environment Protection Authority (ACT); and

"**Site Audit Statement**" means a statement summarising the findings of the Site Audit Report.

### 56.2 Remediation

(a) The Seller must undertake all works to remediate any contamination identified in the Site Audit Report within nine (9) months of the date of this Contract to a standard suitable for the Land to be rendered fit for the purposes described in the Lease and shall provide a Site Audit Statement from an accredited contamination land auditor endorsed by the Environment Protection Authority (ACT) certifying the Land has been remediated in accordance with Site Assessment Report.

(b) In addition to the requirements of clause 56.2(a), if the Seller discovers any contamination on the Land not identified in the Site Assessment Report, it shall remediate it in accordance with clause 56.2(a), unless the Seller believes, acting reasonably, that the cost of such work is likely to exceed the value of the Contract Price, in which case it shall advise the Buyer and the Buyer may elect to rescind the Contract with 14 days of such notice.

(c) If the Buyer fails to rescind Contract under clause 56.2(b), the Seller will pay the Buyer an amount equal to the Contract Price less any amount already paid to third parties in respect of the its obligations under clause 56.2(a) and 56.2(b).

(d) If the Buyer rescinds under clause 56.2(a), it shall not be liable for any costs incurred by the Seller in respect of the remediation of the Land.

- (e) If the Seller does not comply with clause 56.2(a) or 56.2(b), the Buyer may undertake such remediation work. The Seller shall reimburse the Buyer for the full cost of such works up to the value of the Contract Price, less any amount already paid to third parties in respect of its obligations under clause 56.2(a) and 56.2(b), within seven (7) days of the Buyer serving a request for payment for such work.

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## **57. Services**

The Buyer takes title subject to and is not entitled to rescind, terminate or delay completion of this Contract, nor to object, requisition or make any claim (including a claim under clause 17) in respect of or arising out of any of the following matters:

- (a) the nature, location, non-availability or availability of any of the Services (including pipes, cables and wires) in relation to the Property including the future availability and timing of any installation of any Services where those Services are currently not available to the Property;
- (b) the existence of any defects in any Services (including pipes, cables and wires) where available to the Property;
- (c) any Services (including pipes, cables and wires) as to the terms, existence or non-existence of any easements, privileges or rights (whether statutory or otherwise) in respect of those Services affecting or benefiting the Property or in respect of any entitlement to use those Services;
- (d) the presence of any sewer, manhole or vent on the Property; or
- (e) any water or sewerage main or any underground or surface storm water drain passing through, over or under the Property.

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## **58. Canberra Building Legislation**

### **58.1 No obligation**

Despite anything else to the contrary in this Contract, the Buyer acknowledges that the Seller is not obliged to provide to the Buyer any certificates of occupancy, certificates of regularisation or certificates of compliance, including a compliance certificate issued in respect of the Property.

### **58.2 No requisition or claim by Buyer**

The Buyer will not:

- (a) make any objection, requisition, claim for compensation or delay completion in respect of any alleged non-compliance with the Canberra Building Legislation;
- (b) require the Seller to apply for or obtain any further approvals or certificates under the Canberra Building Legislation in respect of the Improvements or any part or any addition or alteration to the Improvements; or
- (c) object if the Building Controller:
  - (i) requires any work to be carried out as a condition for the issue of a certificate of occupancy; or
  - (ii) refuses to issue any certificate of occupancy.

---

**59. Buyer's warranties**

**59.1 Warranties and representations**

- (a) The Buyer warrants and represents to the Seller that:
- (i) prior to entering into this Contract, it has obtained all relevant approvals, licences and consents that may be required under any law or policy for the acquisition of the Property;
  - (ii) the execution and delivery of this Contract has been properly authorised;
  - (iii) the Buyer has full power and lawful authority to execute and deliver this Contract and to consummate and perform or cause to be performed its obligations under this Contract;
  - (iv) this Contract constitutes a legal, valid and binding obligation on the Buyer enforceable in accordance with its terms by the appropriate legal remedy; and
  - (v) there are no actions, claims, proceedings or investigations pending or threatened against the Buyer or to the Buyer's knowledge by, against or before any person which may have a material effect on this Contract and its completion;
- (the Buyer Warranties).**
- (b) Each of the Buyer's Warranties is made as at the Contract Date and as at the Completion Date except that, where a warranty refers to only one such date or time, the warranty is given only as at that date or time.
- (c) Each of the Buyer's Warranties is to be treated as a separate warranty and representation.

---

**60. Inclusions**

**60.1 No encumbrance**

The Seller acknowledges that included in the sale are the Inclusions free from any encumbrance.

**60.2 No requisition of claim**

The Buyer acknowledges that it has satisfied itself as to the nature and extent of the Inclusions and acknowledges that the Buyer is not entitled to rescind, terminate or delay completion of this Contract, nor to object, requisition or make any claim (including a claim under clause 17) by reason of any matter, fact or thing relating to the nature, ownership, condition or existence of the Inclusions.

**60.3 Walk-in/walk-out**

The Buyer acknowledges and agrees that this sale is made on a "walk-in/walk-out" basis and that in particular (but without limitation) the Buyer must not require the Seller to remove any

item of plant and equipment or any fixtures or fittings from the Property nor alter, renovate or repair in any way whatsoever the Property.

#### **60.4 Implied warranties**

- (a) Subject to clause 60.4(b) and to the extent permitted by law the parties exclude from this Contract any implied or statutory warranties relating to the sale of the Inclusions which apply under any legislation.
- (b) Certain legislation, including the *Competition and Consumer Act 2010* (Cth), may imply warranties or conditions or impose obligations under the Seller relating to the sale of the Inclusions which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. This Contract must be read subject to any such statutory provisions.

#### **60.5 Liability of Seller**

The Seller is not to be responsible for any damage, loss or breakdown however arising in respect of the Property or any Inclusions occurring after the Contract Date and the Buyer must accept any Inclusions forming part of the Property in their condition at the Completion Date.

#### **60.6 Delivery of Inclusions**

Any Inclusions may be delivered to the Buyer on Completion by being left at the Property.

---

### **61. Disclosures**

#### **61.1 No right to rescind etc**

The Buyer is not entitled to rescind, terminate or delay completion of this Contract nor to object, requisition or make any claim (including a claim under clause 17) in connection with any matter, fact or thing:

- (a) disclosed by the Seller to the Buyer before the making of this Contract (including any matter disclosed or referred to in the Disclosure Schedule or elsewhere in this Contract); or
- (b) ascertainable by survey or from any publicly available document or register.

---

### **62. General provisions**

#### **62.1 Entire agreement**

- (a) This Contract sets out the entire agreement of the parties on the subject matter of this Contract and supersedes any prior agreement, advice or material supplied to the Buyer or understanding on anything connected with the subject matter of this Contract.
- (b) Each party has entered into this Contract without reliance upon any representation, statement or warranty (including sales and marketing material), except as set out in this Contract.

#### **62.2 Severance**

If any provision of this Contract is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement without regard

to the invalid provision, are, and continue to be, valid and enforceable in accordance with their terms.

**62.3 Assignment before the Completion Date**

The Buyer must not, prior to the Completion Date, assign or transfer any of its rights or obligations under this Contract without the prior consent in writing of the Seller.

**62.4 Further assurance**

Each party must:

- (a) do all acts; and
- (b) sign, execute and deliver all documents, deeds and instruments,

as may be reasonably required by another party to give full effect to this Contract, to the rights and obligations of the parties under this Contract, and to all documents and transactions to be entered into pursuant to this Contract.

**62.5 Costs**

Except as otherwise specifically provided by this Contract, each party must bear its own costs and expenses in relation to the preparation and execution of this Contract and any document executed under or contemplated by this Contract.

**Executed as an agreement**

**Executed by Seller**

**Executed by Hadwon Pty Limited ACN 114 173 634** in accordance with section 127 of the Corporations Act 2001 (Cth):

S 

*DEAN HALL*

Full name of director

**Executed by Buyer**

**Executed by Land Development Agency** by its duly authorised delegate in the presence of:

Signature of witness

Full name of witness

Position of witness

  
Signature of

*Stephen Brennan*

Full name of company secretary/director

Signature of authorised delegate

Full name of authorised delegate

Position held by authorised delegate

## Annexure A - Disclosure Schedule

	Disclosure / Document	
1.	Certificate of Title - the Land (Volume 1533 : Folio 55)	copy attached
2.	Crown Lease	copy attached
3.	Deposited Plan	copy attached
4.	Lease Conveyancing Enquiry	copy attached
5.	Caveat registered no. 1427578 dated 27 June 2005	copy attached
6.	Asbestos Report	copy attached
7.	Phase 2 Environmental Site Assessment	copy attached

1.	Certificate of Title - the Land (Volume 1533 : Folio 55)
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AUSTRALIAN CAPITAL TERRITORY

## TITLE SEARCH

Dickson Section 72 Block 25 on Deposited Plan 9235  
Lease commenced on 28/04/1997, granted on 19/05/1998, term TERMINATING 05-JUL-2020  
Area is 6968 square metres or thereabouts

**Sole Proprietor:**  
Hadwon Pty Ltd  
of C/- Walter Turnbull 44 Sydney Avenue Barton ACT 2600

Registered Date	Dealing Number	Description
		Original title is Volume 1533 Folio 55 Purpose Clause: Refer Crown Lease
07/07/2005	1427578	Registrar's Caveat (Deed Deposited) <i>End of interests</i>

2.	<b>Crown Lease</b>
----	--------------------

**ORIGINAL**

Entered in Register Book Vol. 1533 Folio 55

- 9 JUL 1998

**AUSTRALIAN CAPITAL TERRITORY**

**LAND (PLANNING AND ENVIRONMENT) ACT 1991**

**Australian Capital Territory (Planning and  
Land Management) Act 1988 (C'th) ss 29, 30 & 31**

LEASE GRANTED pursuant to the Land (Planning and Environment)  
Act 1991 and the Regulations thereunder on the ~~Nineteenth~~ <sup>Twenty</sup> day of  
~~May~~ <sup>May</sup>. One thousand nine hundred and ninety seven ~~eight~~ <sup>eight</sup>

WHEREBY THE AUSTRALIAN CAPITAL TERRITORY  
EXECUTIVE ON BEHALF OF THE COMMONWEALTH OF  
AUSTRALIA (hereinafter called "the Commonwealth") grants to the  
LESSEE CANBERRA TRADESMEN'S UNION CLUB INCORPORATED an  
Association incorporated under the Associations Incorporated Act 1991  
and having its registered address at 2 Badham Street Dickson in the  
Australian Capital Territory (hereinafter called "the Lessee") ALL THAT  
LAND piece or parcel of land situate in the Australian Capital Territory  
containing an area of 6,968 square metres or thereabouts and being  
Block 25 Section 72 Division of Dickson as delineated on Deposited  
Plan Number 9235 in the Registrar-General's Office at Canberra in  
the said Territory (hereinafter referred to as "the land") RESERVING unto  
the Territory all minerals TO HOLD unto the Lessee for a term  
TERM commencing on the Twenty eighth day of April One thousand nine  
hundred and ninety seven (hereinafter referred to as "the date of the  
commencement of the lease") and terminating on the fifth day of July Two  
thousand and twenty to be used by the Lessee for the purpose set forth in  
sub-clause (a) of Clause 3 of this lease only YIELDING AND PAYING  
THEREFOR rent in the amount and in the manner and at the times  
hereinafter provided and UPON AND SUBJECT TO the covenants  
conditions and agreements hereinafter contained.



INTERPRETATION 1. IN THIS LEASE unless the contrary intention appears:

- (a) "Australian Capital Territory Executive" means the Executive established by section 36 of the Australian Capital Territory (Self Government) Act 1988 (C'th);
- (b) "building" means the building or any buildings on the land at the date of the commencement of the lease or any building or buildings constructed on the land in accordance with the covenants of this lease or any building or buildings replacing the same together with all fittings fixtures (including floor coverings) plant machinery and appurtenances thereof and therein contained or if the context so permits any part thereof;
- (c) "Lessee" shall -
  - (i) where the Lessee shall consist of one person be deemed to include the Lessee and the executors administrators and assigns of the Lessee;
  - (ii) where the Lessee consists of two or more persons be deemed to include in the case of a tenancy in common the persons and each of them and their and each of their executors administrators and assigns and in the case of a joint tenancy be deemed to include the said persons and each of them and their and each of their assigns and the executors administrators and assigns of the survivor of them; and
  - (iii) where the Lessee is a corporation be deemed to include such corporation and its successors and assigns;
- (d) "premises" means the land building and all other improvements on the land;
- (e) "Territory" means-
  - (i) when used in a geographical sense the Australian Capital Territory; and
  - (ii) when used in any other sense the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (C'th).



2. THE LESSEE COVENANTS WITH THE COMMONWEALTH as follows:

RENT

(a) That the Lessee shall pay to the Territory rent at the rate of 5 cents per annum if and when demanded payable within one month of the date of any demand made by the Territory relating thereto and served on the Lessee;

MANNER OF PAYMENT OF RENT

(b) That any rent or other moneys payable by the Lessee to the Territory under this lease shall be paid to such person as may be authorised by the Territory for that purpose at Canberra in the said Territory without any deduction whatsoever.

3. THE LESSEE FURTHER COVENANTS WITH THE COMMONWEALTH as follows:

PURPOSE

(a) To use the said land for the purpose only of a club conducted in accordance with the memorandum and articles of the Lessee for the time being in force but not for the purpose of letting any building or part of a building on the said land for any trading or commercial purpose PROVIDED THAT the land as delineated by the colour blue on the attached plan shall only be used for the purpose of carparking and/or landscaping;

LIGHTING

(b) That the Lessee shall provide and maintain external lighting to the satisfaction of the Territory;

LANDSCAPING

(c) That the Lessee shall provide and maintain landscaping on the land and adjoining verge in accordance with an approved landscape plan submitted to and approved in writing by the Territory;

FENCING

(d) That the Lessee shall provide and maintain fencing around the areas used for carparking to the satisfaction of the Territory to prevent ingress and egress to and from the said land by vehicles and club patrons otherwise than by means of driveways and footpaths provided by the Lessee;

SERVICE AREAS

(e) That the Lessee shall screen and keep screened all service areas to the satisfaction of the Territory and shall ensure that all plant and machinery contained within the premises is suitably screened from public view;

BUILDING SUBJECT TO APPROVAL

(f) That the Lessee shall not without the previous approval in writing of the Territory erect any building on the land or make any structural alterations to the premises;



REPAIR

(g) That the Lessee shall at all times during the said term maintain repair and keep in repair the premises to the satisfaction of the Territory;

FAILURE TO REPAIR

(h) If and whenever the Lessee is in breach of the Lessee's obligations to maintain repair and keep in repair the premises the Territory may by notice in writing to the Lessee specifying the repairs and maintenance needed require the Lessee to effect the necessary work in accordance with the notice. If the Territory is of the opinion that a building or some other improvement on the land is beyond reasonable repair the Territory may by notice in writing to the Lessee require the Lessee to remove the building or improvement and may require the Lessee to construct a new building or improvement in place of that removed within the time specified in the notice. If the Lessee does not carry out the required work within the time specified by the Territory any person or persons duly authorised by the Territory with such equipment as is necessary may enter upon the land and carry out the necessary work and all costs and expenses incurred by the Territory in carrying out the work shall be paid by the Lessee to the Territory on demand and from the date of such demand until paid shall for all purposes of this lease be a debt due and payable to the Territory by the Lessee;

RIGHT OF INSPECTION

(i) Subject to the provisions of the Land (Planning and Environment) Act 1991 to permit any person or persons authorised by the Territory to enter and inspect the premises at all reasonable times and in any reasonable manner;

RATES AND CHARGES

(j) To pay all rates charges and other statutory outgoings assessed levied or payable in respect of the premises as and when the same fall due;

4. THE COMMONWEALTH COVENANTS WITH THE LESSEE as follows:

QUIET ENJOYMENT

(a) that the Lessee paying the rent and observing and performing the covenants and stipulations on the part of the Lessee to be observed and performed shall quietly enjoy the premises without interruption by the Territory or any person lawfully claiming from or under or in trust for the Territory.



EXERCISE OF  
COMMONWEALTH  
AND TERRITORY  
POWERS

- (e) Any and every right power and or remedy conferred on the Commonwealth the Territory or the respective Ministers hereunder or implied by law may be exercised on behalf of the Commonwealth the Territory or the respective Ministers as the case may be by:
- (i) the Australian Capital Territory Executive;
  - (ii) the Minister for the time being administering the Land (Planning and Environment) Act 1991 or any Act Statute or Ordinance substituted therefor;
  - (iii) an authority or person for the time being authorised by the Australian Capital Territory Executive or the Minister referred to in (i) or (ii) above or by law to exercise those powers or functions of the Commonwealth the Territory or the relevant Minister; or
  - (iv) the person to whom the Minister referred to in (ii) above has delegated his powers or functions under the said Land (Planning and Environment) Act 1991 or any Statute Act or Ordinance in substitution therefor.

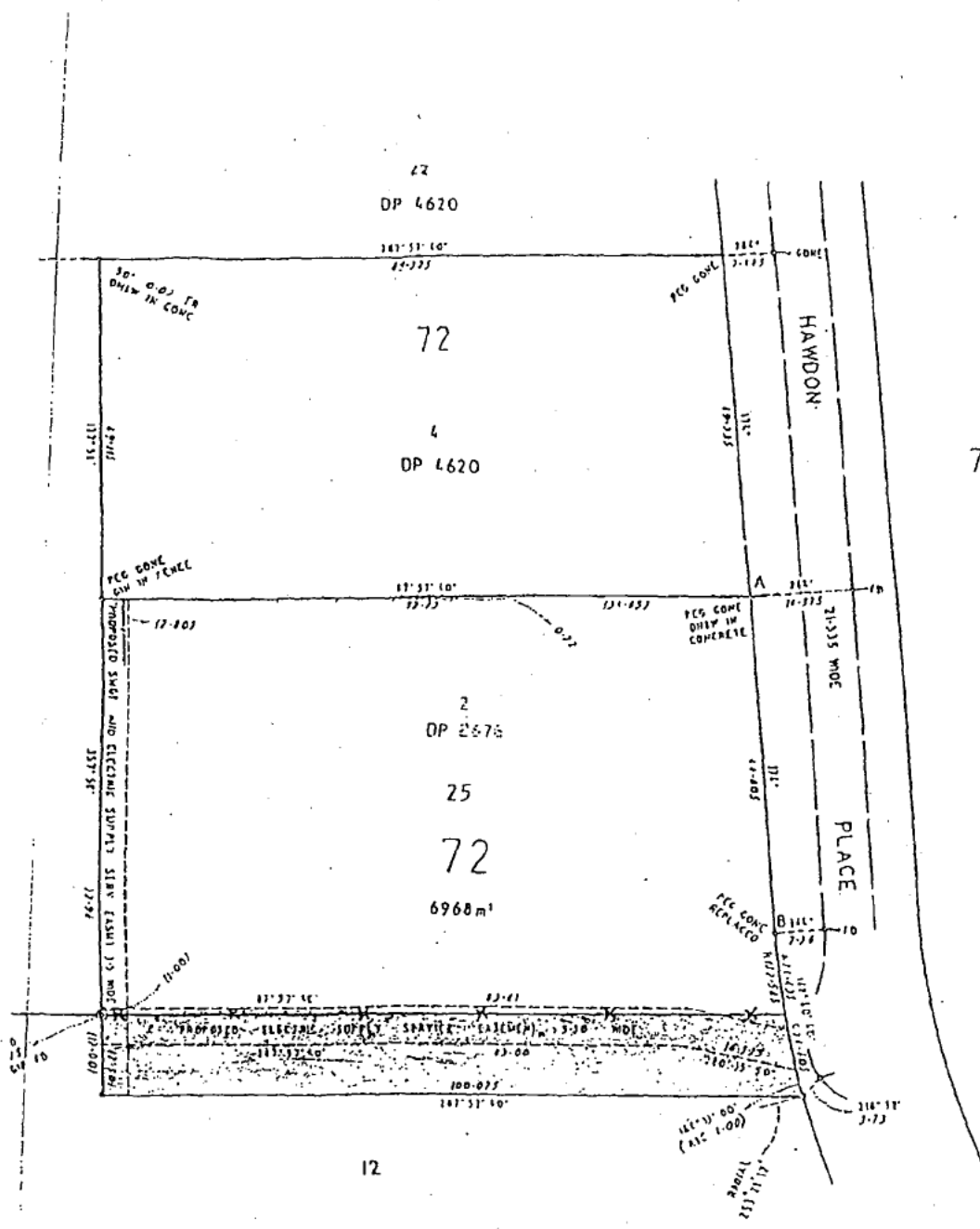
IN WITNESS whereof the Australian Capital Territory Executive on behalf of the Commonwealth and the Lessee have executed this lease.

SIGNED SEALED AND DELIVERED )  
by )  
a person duly authorised by the )  
Australian Capital Territory Executive )  
for and on behalf of the Commonwealth )  
in the presence of: *Tommy Reed* )

Servant of 5 Years  
Canberra

The Common Seal of CANBERRA )  
TRADESMEN'S UNION CLUB )  
INCORPORATED was hereunto affixed )  
in accordance with its Articles of )  
Association in the presence of: )





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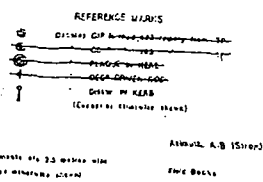
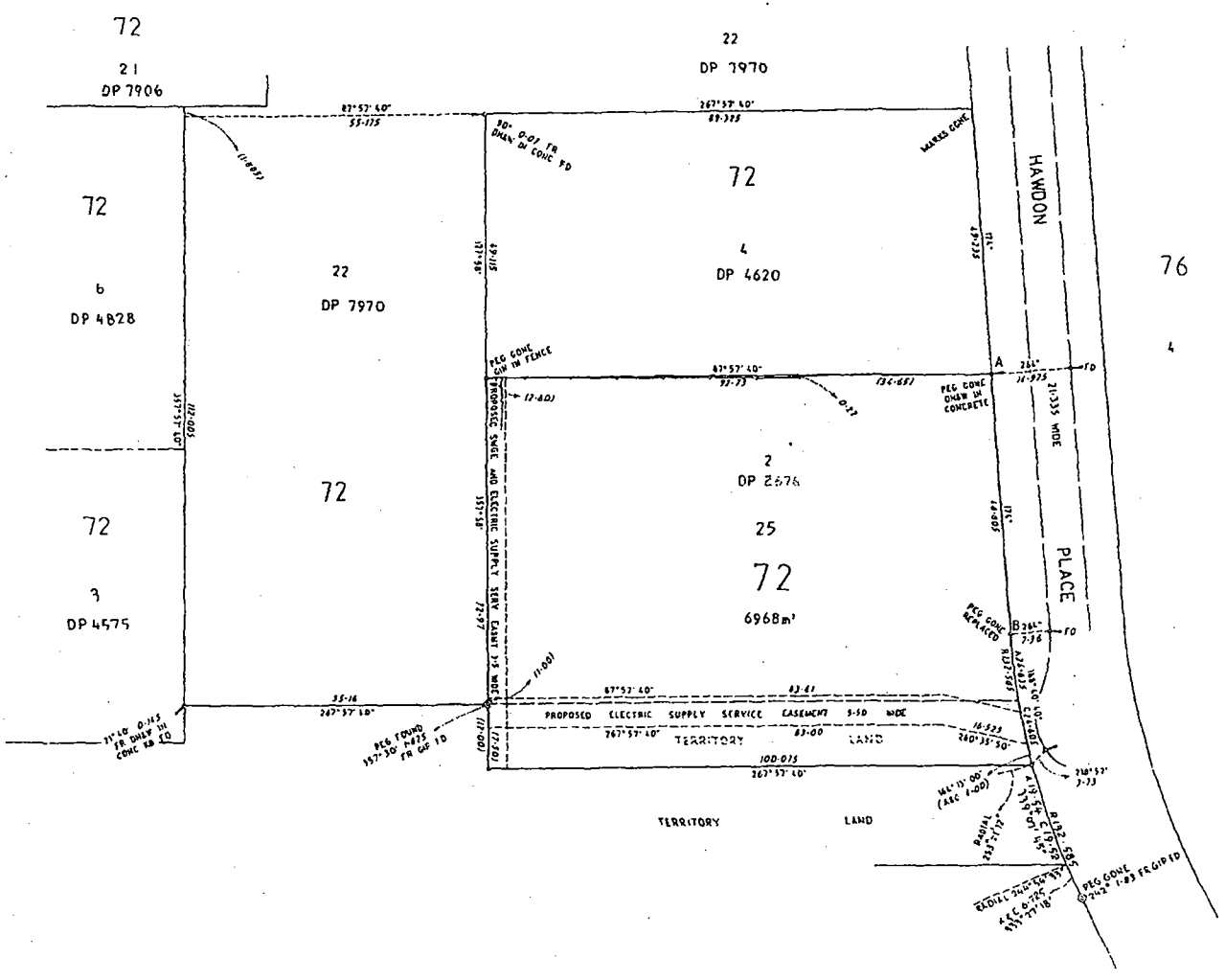
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12

This is the plan referred to in the lease of Block 25 Section 72 Division of DICKSON granted on the ~~NINETEEN~~ day of ~~MAY~~ 19~~20~~ as being annexed thereto.



3.	<b>Deposited Plan</b>
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I, **TERED MICHAEL GATLEY** of **CANBERRA**  
 a licenced Surveyor under the Survey Act 1910, hereby certify that the  
 survey represented on this plan in accordance with the Survey Act 1910  
 and the Survey Regulations 1911, and that the same has been approved by me  
 as licenced Surveyor under the Survey Act 1910.

*Tered Michael Gatley*  
 Licenced Surveyor under the Survey Act 1910  
 31 JULY 1997

*W. M. Morris* 26/11/1997  
 District Surveyor of the ACT Government

PLAN OF  
**BLOCK 25 SECTION 72**  
**BEING A CONSOLIDATION OF BLOCK 2**  
**SECTION 72 AND TERRITORY LAND**

DIVISION: DICKSON  
 DISTRICT: CANBERRA CENTRAL  
 AUSTRALIAN CAPITAL TERRITORY

SCALE 1:500  
 0 5 10 20 30 40 METRES

DEPOSITED BY THE OFFICE OF THE DISTRICT SURVEYOR IN CANBERRA &  
 BY AUTHORITY OF THE DISTRICT SURVEYOR ON **NINTH**  
 DAY OF **JULY** 1997 IN  
 ACCORDANCE WITH THE ACT

*W. M. Morris*  
 DISTRICT SURVEYOR  
 AUSTRALIAN CAPITAL TERRITORY

DEPOSITED PLAN  
**9235**  
 AVENUE DP 2676

MR. J. ADX

716131

4.	Lease Conveyancing Enquiry
----	----------------------------



**ACT**  
Government

Environment and  
Sustainable Development

CUSTOMER SERVICE CENTRE  
DAME PATTIE MENZIES HOUSE  
16 CHALLIS STREET  
DICKSON ACT 2602

PHONE: 62071923  
FACSIMILE: 62071925

## LEASE CONVEYANCING ENQUIRY

Your response is sought to the following questions in relation to:

**LAND:** Please provide details of the land you are enquiring about.

<b>Unit</b>	0	<b>Block</b>	25	<b>Section</b>	72	<b>Suburb</b>	DICKSON
-------------	---	--------------	----	----------------	----	---------------	---------

Leased by the Australian Capital Territory on behalf of the Commonwealth under the Land (Planning and Environment) Act 1991 and Planning & Development Act 2007

- |   | No    | Yes    |
|---|-------|--------|
| 1. Have any notices been issued relating to the Crown Lease?  | ( X ) | ( )    |
| 2. Is the Lessor aware of any notice of a breach of the Crown Lease?  | ( X ) | ( )    |
| 3. Has a Certificate of Compliance been issued?<br>(N/A ex-Government House) <input type="text" value="N/A"/> | ( )   | ( )    |
| Certificate Number:   |       | Dated: |

**Please note: There are no Development Covenants within the latest Crown Lease Volume: 1533 Folio: 55, therefore a Compliance Certificate it not applicable.**

- |  |              |
|--|--------------|
| 4. Has an application for Subdivision been received under the Unit Titles Act?   | (see report) |
| 5. Has the Property been nominated for provisional registration, provisionally registered or registered in accordance with provisions of the Heritage Act 2004?  | (see report) |
| 6. If an application has been determined, is the land subject to a Preliminary Assessment, an Assessment or an Enquiry under Party IV of the Land Act 1991, or an Environmental Impact Statement under Chapter 8 of the Planning & Development Act 2007? | (see report) |
| 7. Has a development application been received, or approval granted for development under the Land Act 1991, or the Planning & Development Act 2007 in respect of the Land?  | (see report) |
| 8. Has an application been received or approved for Dual Occupancy? (applications lodged prior to 2 April 1992 will not be included)   | (see report) |
| 9. Has an Order been made in respect of the Land pursuant to Section 254, 254A, 255 and 256 of the Land Act 1991 or Part 11.3 of the Planning & Development Act 2007?  | (see report) |
| 10 Contaminated Land Search - Is there information recorded by Environment ACT regarding the contamination status of the land?   | (see report) |

Customer Service Centre  
ACT Planning and Land Authority

Date: 10-DEC-13 13:46:52

Applicant's Name : Clayton Utz Lawyers  
E-mail Address : ency@claytonutz.com

Fax Number :

Client Reference : 60100609 CTUCL:General

Did you know? Lease Conveyancing enquiries can be lodged electronically at [www.canberraconnect.act.gov.au](http://www.canberraconnect.act.gov.au)  
For further information, please contact the Lease Conveyancing Officer on 62071923



**ACT**  
Government

Environment and  
Sustainable Development

Dame Pattie Menzies Building  
16 Challis Street  
Dickson, ACT 2602

---

10-DEC-2013 13:46

PLANNING AND LEASE MANAGER (PaLM)  
LEASE CONVEYANCING ENQUIRY REPORT

Page 1 of 4

---

**INFORMATION ABOUT THE PROPERTY**

---

**DICKSON Section 72/Block 25**

**Area(m2):** 6,968.5

**Unimproved Value:** \$713,000

**Year:** 2013

**Subdivision Status:** Application not received under the Unit Titles Act.

**Heritage Status:** Nil.

**Assessment Status:** The Land is not subject to a Preliminary Assessment, an Assessment or an Enquiry under Part IV of the Act concerning the Land.



**ACT**  
Government

Environment and  
Sustainable Development

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16 Challis Street  
Dickson, ACT 2602

10-DEC-2013 13:46

**PLANNING AND LEASE MANAGER (PaLM)  
LEASE CONVEYANCING ENQUIRY REPORT**

Page 2 of 4

**DEVELOPMENT APPLICATIONS ON THE PROPERTY (SINCE APRIL 1992)**

Application DA20007451 Lodged 29-DEC-00 Type Non-residential

**-- Application Details -----**

**Description**

Alterations and additions to Downer Club

**-- Site Details -----**

District	Division	Section	Block(s)	Unit
Canberra Central	Dickson	72	25-25	

**-- Involved Parties -----**

**Role**

**Name**

Applicant

Munns Sly Architects Pty Ltd

**-- Activities -----**

**Activity Name**

**Status**

Da - Public Notification (Dap)

Refused

Application DA992522 Lodged 03-MAY-99 Type Non-residential

**-- Application Details -----**

**Description**

Further development and revitalization of existing non approved structures.

**-- Site Details -----**

District	Division	Section	Block(s)	Unit
Canberra Central	Dickson	72	25-25	

**-- Involved Parties -----**

**Role**

**Name**

Lessee

Canberra Tradesmans Union Club

Applicant

Munns & Sly Scott Bohanna Moss

Contact

Lync

**-- Activities -----**

**Activity Name**

**Status**

Da - With Dap. (Level 2)

Approved



**ACT**  
Government

Environment and  
Sustainable Development

Dame Pattie Menzies Building  
16 Challis Street  
Dickson, ACT 2602

10-DEC-2013 13:46

**PLANNING AND LEASE MANAGER (PaLM)  
LEASE CONVEYANCING ENQUIRY REPORT**

Page 3 of 4

Application DA983787 Lodged 11-AUG-98 Type Non-residential

**-- Application Details -----**

**Description**

Alterations to the Canberra Tradesmens Club and Planetarium: relocate space ship; upgrade carpark; install new roof over existing and cover enclosure; internal alterations.

**-- Site Details -----**

District	Division	Section	Block(s)	Unit
Canberra Central	Dickson	72	25-25	

**-- Involved Parties -----**

Role	Name
Applicant	Munns Sly Architects

**-- Activities -----**

Activity Name	Status
Da - With Dap.(Public Notif)	Transferred

**DEVELOPMENT APPLICATIONS ON THE ADJACENT PROPERTIES (LAST 2 YEARS ONLY)**

The information on development applications on adjacent blocks is to assist purchasers to be aware of possible nearby development activity. Copies of development application(s) can be inspected at ACTPLA's Customer Service Centre, please contact ACTPLA on 6207 1923 to ensure plans are readily available.

**PLEASE NOTE:** This information does not cover all development activity.

Since the introduction of the Planning and Development Act 2007 a significant range of development activity can now be undertaken without development approval. The full list of activities that are exempt from development approval can be found in the Planning and Development Regulation 2008. Activities that are exempt from development approval include, but are not limited to, new or additions to single residences that comply with relevant Territory Plan codes, certain sheds, carports, pergolas etc. This report does not cover such exempt development activity. For more information on exempt development activities refer to [www.actpla.act.gov.au](http://www.actpla.act.gov.au) or contact ACTPLA on the number above.

**LAND USE POLICIES**

To check the current land use policy in the suburb that you are buying a property in, please check the Territory Plan online at <http://www.legislation.act.gov.au/nl/2008-27/current/default.asp>



**ACT**  
Government

Environment and  
Sustainable Development

Dame Pattie Menzies Building  
16 Challis Street  
Dickson, ACT 2602

10-DEC-2013 13:46

PLANNING AND LEASE MANAGER (PaLM)  
LEASE CONVEYANCING ENQUIRY REPORT

Page 4 of 4

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### CONTAMINATED LAND SEARCH

Records held by the Environment Protection Unit (EPU), Environment ACT for the land indicate the following:

The block is not recorded on the Register of contaminated sites under section 21(A) of the Environment Protection ACT 1997.

At present the EPU has no information on the contamination of the land. However, this does not absolutely rule out the possibility of contamination and should not be interpreted as a warranty that there is no contamination.

I appreciate that this does not absolutely rule out the existence of contamination of the soils. If you or your clients wish to be completely sure you, or they, should arrange to conduct independent tests.

### ASBESTOS SEARCH

Records held by ACTPLA indicate that loose asbestos was not identified in the ceiling cavities of these premises (but not including any shed or garage on the property) during the government programme conducted in the early 1990's. However, ACTPLA cannot say anything about the presence or otherwise of loose asbestos on these premises since that program was conducted.

Notwithstanding the above, ACTPLA gives no warranty or assurance in relation to the accuracy of the information provided above and the enquirer should make their own enquiries and obtain their own reports in relation to the presence or otherwise of asbestos on these premises.

----- END OF REPORT -----

5.	Caveat registered no. 1427578 dated 27 June 2005
----	--

1427578



**RX**  
Form 017

Lodging Party  
Registrar-General

**REGISTRAR-GENERAL'S CAVEAT**

**PRIVACY COLLECTION STATEMENT (PRIVACY ACT 1988 (C'WLTH)) OVERLEAF**

The Registrar-General for the Australian Capital Territory hereby forbids the registration of any instrument affecting the land described in Item 1 below.

**1. LAND**

Vol:Fol	District/Division	Section	Block	Unit
1533:55	DICKSON	72	25	

**2. NATURE OF CAVEAT**

Prevention of dealings as a result of (ie. Deed, Guardianship and Management Orders)

**TRUST DEED DEPOSITED**

**3. DATE**

27/6/2005

**4. EXECUTION**

Signed in my presence by the Deputy Registrar-General  <b>CATHERINE MATTHEWS</b> <b>DEPUTY REGISTRAR-GENERAL</b>  Full name of Deputy-Registrar-General _____  Signature of Deputy Registrar-General	Full Name of witness _____  Signed in my presence _____  Signature of witness
--	---

**5. OFFICE USE ONLY**

Lodged by	[Redacted]	Certificates Lodged	_____
Data Entered by		Attachments Lodged	<i>annexure</i>
Examined by			
Registered by		Registration Date	07 JUL 2005

DATED

27<sup>th</sup> JUNE

2005

BETWEEN:  
**GARY ALAN ROBB**  
The Founder

AND:  
**HADWON PTY LTD**  
The Trustee

AND:  
**CANBERRA TRADESMEN'S UNION CLUB**  
The Unit Holder

---

**UNIT TRUST DEED**

**HAWDON PLACE TRUST**

---

**GARY ROBB & ASSOCIATES**  
Barristers & Solicitors  
29 Torrens Street  
BRADDON ACT 2601

GPO Box 162  
CANBERRA CITY ACT 2601

Telephone: (02) 5257 1922  
Facsimile: (02) 6257 1806

THIS DEED OF TRUST is made the <sup>9<sup>th</sup></sup> day of <sup>JUNE</sup> 2005

BETWEEN: The party of the first part set forth in Part 1 of the First Schedule to this Deed (hereinafter called "the Founder")

AND: The party of the second part set forth in Part 2 of the First Schedule to this Deed (hereinafter called "the Trustee")

AND: The party of the third part set forth in Part 3 of the First Schedule to this Deed together with all other persons who hereafter sign an application for units or are transferees of units as hereinafter mentioned (hereinafter called "the unit-holders")

WHEREAS:

- A. It is intended by this Deed to establish a trust to be known by the name set forth in Part 4 of the first Schedule to this Deed (hereinafter called "the Trust")
- B. The Founder has paid or intends on the execution hereof to pay to the Trustee the initial sum referred to in Part 5 of the first Schedule to this Deed (hereinafter called "the Initial Sum")
- C. The Initial Sum is to form part of the Trust Fund as hereinafter defined and the Trustee has consented to hold the Trust Fund upon the trusts and subject to the terms hereinafter contained
- D. This Deed is made with the intention that not only the Founder and the Trustee but also the unit-holders shall be bound thereby and the unit-holders who are registered as hereinafter provided shall be entitled to the benefits hereof to the extent hereinafter provided
- E. It is desired that the Trustee shall have the most absolute discretion permitted by law in relation to the administration of the Trust Fund

NOW THIS DEED WITNESSETH:

DEFINITIONS

- 1 In this Deed and all documents referred to herein unless there be something in the subject or context inconsistent therewith the following terms shall have the following meanings:
- (i) "Accounting Period" means each period of twelve months ending on 30th June in each year BUT
    - (a) the period commencing on the date of this Deed and ending on 30th June next is an Accounting Period, and
    - (b) the period commencing on 1st July immediately prior to the Vesting Day is an Accounting Period
  - (ii) "Authorised Investments" means all property whether real or personal movable or immovable of all kinds whatsoever and without limiting the foregoing includes:

**LAND TITLES**  
 OFFICE OF REGULATORY SERVICES  
 ACT Justice and Community Safety Directorate

**SUBLEASE**

Land Titles Act 1925



SL\$1962954 19/03/2015 12:23:30 BUCKT

**1962954**



Justice and Community Safety

Form 072 - SL

LODGING PARTY DETAILS		
Name	Postal Address	Contact Telephone Number
ACT Government Solicitor	PO Box 260 Civic Square ACT 2608	6207 0593

TITLE AND LAND DETAILS				
Volume & Folio	District/Division	Section	Block	Unit
2108:29	Dickson	72	6	

<b>FULL NAME OF LESSOR/OWNER</b> (Surname Last) (ACN required for all companies)	<b>FULL POSTAL ADDRESS OF LESSOR</b>
Australian Capital Territory Land Development Agency	PO Box 260 Civic Square ACT 2608

<b>FULL NAME OF LESSEE/TENANT</b> (Surname Last) (ACN required for all companies)	<b>FULL POSTAL ADDRESS OF LESSEE</b>
Canberra Tradesmen's Union Club Limited ACN 098 615 760	2 Badham Street DICKSON ACT 2602

**TENANCY OF LESSEE** (Only complete if more than one Lessee)

Joint Tenants / Tenants in Common (in the following shares) -

AREA BEING LEASED		
<input checked="" type="checkbox"/> Whole of the Land	OR	Area/Shop/Tenancy on Sublease Plan/s No.s

<b>SUBLEASE COMMENCEMENT DATE</b>	<b>SUBLEASE TERMINATION DATE</b>
19 /12/2014	18 /06/ 2018

CONDITIONS (Tick whichever is applicable – At least one box will apply)	
The covenants implied at sections 119 and 120 of the <i>Land Titles Act 1925</i> are hereby negated.	<input type="checkbox"/>
The provisions set forth in the registered Memorandum of Provisions (MOP) to be incorporated herein / as modified by annexure as attached. Please provide registered MOP number below.	<input type="checkbox"/>
The covenants and conditions set out in the annexure attached are deemed to be incorporated	<input checked="" type="checkbox"/>
Provide registered MOP number	<input type="checkbox"/>



<b>CONSENTING PARTY – SUPPORTING DOCUMENTATION</b> (One form required for each party required to consent)	<b>DATE</b>
<input type="checkbox"/> Please complete and attach – Form 042 – C – Consent	19 December 2014

<b>LESSOR'S EXECUTION</b>	
Print full name of Lessor Land Development Agency Australian Capital Territory DANIEL STEWART DEPUTY DIRECTOR-GENERAL / DEPUTY EXECUTIVE	Print full name and address of witness Katrina Andon's Solicitor PO BOX 260 Civic Square ACT 2601
Signature or common seal of Lessor	Signature of witness

<b>LESSEE'S EXECUTION</b>	
Print full name of Lessee Canberra Tradesmen's Union Club Limited ACN 098 615 760 Signature of Director/Secretary	Print full name and address of witness Signature of witness
Signature or common seal of Lessee	Signature of witness

<b>OFFICE USE ONLY</b>			
Lodged by	T3	Certificate of title lodged	2108: 29(1)
Data entered by		Certificates attached to title	CANCELLED CP
Registered by		Attachments / Annexures	ANNEXURE
Registration date	1 APR 2015	Production number	



**ACT**  
Government

# SUBLEASE

---

Date

19 December 2014

Parties

~~AUSTRALIAN CAPITAL TERRITORY~~  
LAND DEVELOPMENT AGENCY 

**CANBERRA TRADESMEN'S UNION  
CLUB LIMITED ACN 098 615 760**

**CITEA, 3 ROSEVEAR DICKSON ACT  
2602**

Prepared by

ACT Government Solicitor  
Level 6, 12 Moore Street  
Canberra City ACT 2601  
Ph: 6205 3717  
Fax: 6207 0539  
Ref: BD:621909

Version

Final: 11 December 2014



**ACT**  
Government

Justice and Community Safety

LAND TITLES  
OFFICE OF REGULATORY SERVICES  
ACT Justice and Community Safety Directorate

## ANNEXURE

Form 029 - ANN

Land Titles Act 1925

TITLE AND LAND DETAILS				
Volume & Folio	District/Division	Section	Block	Unit
2108:29	Dickson	72	6	

ANNEXURE TO (insert dealing type)	TOTAL NUMBER OF PAGES IN ANNEXURE
Sublease to Canberra Tradesmen's Union Club Limited ACN 098 615 760	43

PARTIES TO DOCUMENT (Please state all parties this annexure relates to/supports)
Canberra Tradesmen's Union Club Limited ACN 098 615 760 and <del>Australian Capital Territory</del> Land Development Agency

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LAND DEVELOPMENT AGENCY, established by section 31 of the Planning & Development Act 2007 (Lessor). *AS*

**PARTIES:**

~~AUSTRALIAN CAPITAL TERRITORY, the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (Cth) (Lessor) represented by Economic Development Directorate.~~

**CANBERRA TRADESMEN'S UNION CLUB LIMITED ACN 098 615 760** of 2 Badham Street DICKSON ACT 2602 (Lessee).

IT IS AGREED by the parties as follows:

**1. Interpretation**

**1.2 Definitions**

In this Sublease unless the context otherwise requires:

**Air-Conditioning System** means the plant, equipment, machinery or ducting for heating, cooling and/or circulating air supplied by the Lessor.

**Building** means any building on the Land in which the Premises are located.

**Bond** means a bond provided by the Lessee in the amount specified in Item 16.

**Commencement Date** means the date set out in Item 5.

**Common Area** means those parts of the Building and Land which are not let or licensed and are intended by the Lessor to be for the common use of occupiers of the Land.

**Contact Officer** means, in relation to each party, the representative whose name and contact details are specified in Item 15, or as notified in writing from time to time by one party to the other.

**Disclosure Statement** means a disclosure statement referred to in the Leases Act.

**General Charges** means those items set out in section 3 of Schedule 2.

**Insolvency Event** means:

(a) in respect of a natural person:

(i) any orders or agreements made in respect of the affairs of the person in accordance with

the *Bankruptcy Act 1966*; or

- (ii) in the reasonable opinion of the Territory the person is likely to be declared bankrupt or lose control of the management of their financial affairs; or
- (b) in respect of all other entities:
- (i) any of the events listed in s 459C of the *Corporations Act 2001* occur in respect of the entity; or
  - (ii) any other event occurs which, in the reasonable opinion of the Territory is likely to result, or has resulted, in the:
    - (a) insolvency;
    - (b) winding up; or
    - (c) appointment of a controller (as that term defined in the *Corporations Act 2001*) in respect of part or all of the assets.

<b>Item</b>	means an item in Schedule 1.
<b>Land</b>	means the land described in Item 2.
<b>Leases Act</b>	means the <i>Leases (Commercial and Retail) Act 2001</i> (ACT) as amended or varied from time to time.
<b>Lessee</b>	means the person or organisation named in Item 1 and, if a natural person or persons, their respective executors, administrators and permitted assigns, and if a company or incorporated association, its successors and permitted assigns.
<b>Lessee's Property</b>	means each of the following, as applicable: <ul style="list-style-type: none"><li>(1) any improvements including buildings or other structures:<ul style="list-style-type: none"><li>(a) constructed or placed in or on the Premises by the Lessee; or</li><li>(b) constructed or placed in or on the Premises at the Lessee's expense and/or direction;</li></ul></li><li>(2) any fittings, fixtures or goods erected, installed or placed in or on the Premises by the Lessee including any partitions or devices for heating or cooling or fire prevention;</li><li>(3) any light bulbs, light fittings, fluorescent tubes or</li></ul>

- (4) other illuminating devices in the Premises; or anything in or on the Premises which is not Lessor's Property.

<b>Lessor</b>	means the Territory, its successors and assigns.
<b>Lessor's Property</b>	means each of the following, as applicable: <ul style="list-style-type: none"><li>(1) the physical structure of the Buildings comprising the Premises supplied by the Lessor, including the roof, walls, ceilings and lifts;</li><li>(2) any improvements forming part of the Premises erected at the expense of the Lessor;</li><li>(3) any fittings, fixtures, or goods in or on the Premises erected, installed or placed by the Lessor; or</li><li>(4) any systems installed in the Premises by the Lessor including the Air-Conditioning System and fire and sprinkler systems.</li></ul>
<b>Option Term</b>	means a sublease for a further term for the period set out in Item 13.
<b>Premises</b>	means the premises described in Item 3.
<b>Prescribed Insurer</b>	means an insurer that is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia and is rated AA or better by Standard and Poors.
<b>Rent</b>	is the rent per annum in Item 7 as varied from time to time in accordance with this Sublease.
<b>Rent Review Dates</b>	means the dates set out in Item 8(a).
<b>Rules</b>	means the rules attached in Schedule 3.
<b>Schedule</b>	means any schedule forming part of this Sublease.
<b>Service Charges</b>	means those items set out in section 2 of Schedule 2.
<b>Statutory Outgoings</b>	means those items set out in section 1 of Schedule 2.
<b>Sublease</b>	means this agreement and all Schedules and attachments.
<b>Term</b>	means the term specified in Item 4, or if extended under clause 2.2, the initial term and the extended term.
<b>Territory</b>	means:

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

### **1.3 General**

In this Sublease, unless a contrary intention is expressed:

- (1) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations, determinations and instruments issued under the legislation;
- (2) 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;
- (3) "include" is not to be construed as a word of limitation;
- (4) headings have no effect on the interpretation of the provisions;
- (5) an obligation imposed by this Sublease on more than one person binds them jointly and severally;
- (6) words and expressions importing natural persons include body corporates, associations, government and local authorities and agencies;
- (7) any provisions in a Schedule form part of this Sublease; and
- (8) the parties will not be bound by the standard provisions referred to in section 20(3) of the Leases Act.

## **2. Sublease**

### **2.1 Grant**

From the Commencement Date, the Lessor grants a Sublease over the Premises to the Lessee for the Term, at the Rent on the terms set out in this Sublease.

### **2.2 Holding Over**

2.2.1 If the Lessee continues to occupy the Premises after the expiration of the Term, with the consent of the Lessor, the Lessee:

- (1) is a monthly lessee;

- (2) at the monthly Rent applying at the end of the Term, reviewed annually on the day referred to in Item 8(a) in accordance with the method of review set out in Item 8(b), and calculated in accordance with the formula set out in Schedule 4; and
- (3) occupies the Premises upon the conditions of this Sublease.

2.2.2 The monthly tenancy may be ended by either party giving one month's written notice to the other and the notice may be given at any time.

### **3. Option to renew**

3.1.1 This clause applies if Item 13 has been completed with an Option Term and the Lessee wishes to take a further sublease of the Premises for that Option Term after the expiry of the Term.

3.1.2 The right to exercise the option under this clause is conditional upon the Lessee:

- (1) punctually paying the Rent and observing the covenants throughout the Term;
- (2) not being in breach of the sublease at the time of exercise of the option; and
- (3) serving on the Lessor, written notice no more than six months but no less than three months before the date of expiry of the Term.

3.1.3 Subject to clause 3.1.2, the Lessee may, by service of the notice referred to in this clause, accept the offer by the Lessor to grant a renewal of a sublease and the new sublease will issue for the Option Term, at a rental to be reviewed to market in accordance with the provisions of Schedule 4 and upon terms and conditions then appearing in any standard sublease issued by the Lessor at that time, provided that the new sublease will not include this clause.

### **4. Rent**

#### **4.1 Rent**

4.1.1 The Lessee must pay the Rent by equal monthly instalments in advance from the Commencement Date and thereafter on the first day of every month for the Term.

4.1.2 If an instalment is for a period of less than one month, then that instalment is equal to the amount calculated by dividing the Rent by the number of days in the sublease year in which the period commences and multiplying the result by the number of days in the period.

## **4.2 Review of Rent**

The Rent will be reviewed on the Rent Review Dates in accordance with the corresponding method of rent review in Item 8(b) and in accordance with Schedule 4.

## **4.3 Interest on Overdue Monies**

4.3.1 If the Rent or any other monies payable by the Lessee are not paid by the due date, then the Lessee must pay to the Lessor interest at the rate per annum shown in Item 14 on those monies from the date on which they fall due until the date of payment or recovery.

4.3.2 The Lessor is entitled to recover the interest from the Lessee as if it was Rent in arrears. Nothing in this clause restricts or prejudices any right of the Lessor in respect of the monies due.

## **5. Other Payments**

### **5.1 Statutory Outgoings, Service Charges, General Charges**

5.1.1 The Lessee must promptly pay;

- (1) all charges for gas, electricity, oil and water separately metered or supplied and consumed in or on the Premises;
- (2) all charges in respect of any telephone or other communication services connected to the Premises; and
- (3) all other charges for the supply of any service separately supplied to the Premises.

5.1.2 If water and/or electricity consumption is not separately metered to the Premises, the Lessee must pay a proportion of the amount of consumption charges metered to the Land as the Lessor deems appropriate, acting reasonably, having regard to the size of the Premises, other occupants on the Land, the respective use by all occupants on the Land (including the Lessee) and any other factor which is relevant.

5.1.3 The Lessee must, within 30 days of receipt of a written request from the Lessor, pay to the Lessor all charges and expenses for Statutory Outgoings, Service Charges and General Charges that are payable by the Lessee as set out in Schedule 2. For convenience, the respective percentage of contributions to be met by each party is specified in Schedule 2. Where there is any discrepancy between the provisions of this clause and Schedule 2, the provisions of Schedule 2 will apply.

## **5.2 Lessor's report**

The Lessor must, if required by the Leases Act, give the Lessee a report, within three months after the end of each accounting period in accordance with the Leases Act, which:

- (1) details the Lessor's expenditure for that accounting period on account of applicable Services Charges or General Charges to which the Lessee is required to contribute; and
- (2) complies with the provisions of section 66 of the Leases Act.

## **5.3 After hours use of Air-Conditioning System**

If the Lessee uses the Air-Conditioning System outside the hours stated in the Rules, the Lessee must pay the Lessor, on demand, the Lessor's costs of operating the Air-Conditioning System during those additional hours, such costs to be calculated using the hourly rate notified by the Lessor to the Lessee from time to time and reflecting the Lessor's reasonable costs of operating the Air-Conditioning System including, without limitation, allowances for maintenance, repair and replacement of the Air-Conditioning System.

## **6. Air-Conditioning and Heating**

### **6.1 No interference**

The Lessee will at all times comply with the reasonable requirements of the Lessor in relation to the Air-Conditioning System. The Lessee will not do or permit or suffer to be done, anything which, in the reasonable opinion of the Lessor, might interfere with or impair the efficient operation of the Air-Conditioning System including the use of any heating or cooling devices or any other devices.

### **6.2 Failure of Air-Conditioning System**

Should the Air-Conditioning System fail to function for any reason, the Lessee will not, by reason of any such failure, be entitled to terminate this Sublease, nor will the Lessee have any right of action or claim for compensation or damages against the Lessor, except in accordance with section 81 of the Leases Act.

### **6.3 Maintenance and repair of Air-Conditioning System**

The Lessor must maintain and repair the Air-Conditioning System.

### **6.4 Lessee air-conditioning or heating**

The obligations imposed on the Lessor by this clause will not apply to any plant, machinery, ducting or unit for air-conditioning and/or heating purposes installed by the Lessee.

## **7. Legal Costs and Disbursements**

### **7.1 Cost of Sublease preparation**

The Lessor and Lessee will each bear their own costs (including legal costs and disbursements) in relation to the negotiation, preparation and execution of this Sublease.

### **7.2 Stamp duty**

The Lessor will pay all stamp duty (if any is payable) assessed with respect to the Sublease.

### **7.3 Lessee's additional costs**

In addition to all costs and expenses for which the Lessee is liable at law or in equity to pay, the Lessee will pay to the Lessor, on demand, the Lessor's reasonable costs and expenses (including reasonable legal costs assessed on a solicitor and client basis and registration fee and taxes, which may be payable):

- (1) for, and incidental to, any variation, surrender or termination of this Sublease;
- (2) in respect of any consent by the Lessor required under this Sublease;
- (3) incurred by or on behalf of the Lessor in consequence of, or arising out of, any default in the due observance or performance of any covenant or obligation on the part of the Lessee;
- (4) incurred by the Lessor in consequence of any request of, or application by, the Lessee; or
- (5) incurred by the Lessor as a result of the exercise, or attempted exercise, of any of the Lessor's rights or powers.

### **7.4 Registration costs**

The Lessee must pay the cost of registration of this Sublease.

## **8. Bond**

### **8.1 Provision of Bond**

If the Lessor requires payment of a Bond, the Lessee must deliver the Bond to the Lessor on or before the Commencement Date.

## **8.2 Use of Bond**

The Lessor may use the Bond if the Lessee does not comply with any of its obligations under this Sublease (including any extension or holding over), and the Lessor may have recourse to the Bond without notice to the Lessee.

## **8.3 Return of bond**

Within 30 days of the expiry of this Sublease (or any holding over, renewal or extension of this Sublease) or the Lessee vacating the Premises, whichever is the later, the Lessor must repay to the Lessee, the Bond (or so much as the Lessor has not previously called upon).

## **8.4 Bank guarantee**

In substitution for the Bond, the Lessee may elect to provide an unconditional and irrevocable written undertaking by a bank, in favour of the Lessor and containing terms and conditions reasonably required by the Lessor for the same amount.

## **8.5 Additional bond or bank guarantee**

If the Lessor has recourse to any amount of the Bond or calls on the bank guarantee, then, no later than seven days after the Lessor gives the Lessee a notice asking for it, the Lessee must deliver to the Lessor an amount equal to the Bond moneys called upon or a replacement or additional bank guarantee so that the amount guaranteed is equal to the amount of the original Bond or bank guarantee.

## **9. Use of Premises**

### **9.1 Use of Premises**

The Lessee must not use or occupy the Premises except for the use set out in Item 9 or any such other purpose consented to by the Lessor in writing.

### **9.2 Crown lease**

The Lessee must not use the Premises for any purpose other than as permitted by the Crown lease for the Land or any superior lease of the Premises.

### **9.3 No interference**

The Lessee must not do anything in or about the Premises or the Building which, in the reasonable opinion of the Lessor:

- (1) is noisy, obnoxious, immoral, offensive or a nuisance or disturbance to the Lessor or other persons using the Building;
- (2) may be the cause of damage or excessive vibration; or

- (3) interferes with the orderly operation of the Building.

#### **9.4 No warranty as to suitability**

- 9.4.1 The Lessee acknowledges that no promise, representation, warranty or undertaking has been given by or on behalf of the Lessor as to the suitability of the Premises, the Building or the Land for any purposes or as to the fittings, finishing, facility and amenities of the Premises, the Building or the Land, except as contained in this Sublease. The Lessee must satisfy itself in respect to the use to which the Premises may be put and acceptance of this Sublease acknowledges full knowledge of any prohibitions or restrictions on the use of the Premises, including any imposed by law.
- 9.4.2 Where the permitted use of the Premises requires the consent of any authority, the Lessee must obtain that consent at its own expense. The Lessee must keep current the licenses and permits required to carry on its activities from the Premises.

#### **9.5 Signs**

The Lessee must not fix or place any sign, notice, advertisement or other thing on any part of the Premises or the Building without the consent in writing of the Lessor and then only in such colour, size and style and in such places as approved by the Lessor, such approval not to be unreasonably withheld.

#### **9.6 Compliance with laws**

The Lessee must comply, at its expense, with all laws and the requirements of any authority in connection with the Lessee's use or occupation of the Premises.

#### **9.7 Keep clean**

The Lessee must:

- (1) keep the Premises and immediate surroundings clean and tidy, and free from refuse and vermin; and
- (2) allow reasonable access to the Premises by the Lessor and its employees, agents and contractors to enable it to carry out any obligation required by this Sublease.

#### **9.8 Statutory notices**

- 9.8.1 If the Lessee receives a notice from any authority in respect of the Premises, the Lessee must immediately notify the Lessor in writing.
- 9.8.2 The Lessee must comply promptly with all notices received from any authority in respect of the Premises except such notices as would have been given irrespective of the Lessee's use and occupation of the Premises.

## **9.9 Notice of defect**

The Lessee must immediately give notice to the Lessor of any damage to the Premises and any accident affecting water, gas or oil pipes, electrical wiring, the Air-Conditioning System or any defect in them and any other fittings, fixtures or facilities provided by the Lessor.

## **9.10 Infectious illnesses**

If any infectious illness occurs in the Premises, the Lessee must immediately notify the Lessor and have the Premises fumigated and disinfected by a suitably certified contractor, at the expense of the Lessee, to the satisfaction of any relevant authority.

## **9.11 Rubbish**

The Lessee will keep the Premises free from rubbish including placing all rubbish in proper receptacles that the Lessee will install. The Lessee will arrange for the regular clearing of the receptacles and the regular removal of all rubbish. The Lessee will not create any rubbish or deposit any rubbish on the Common Area except for collection in such proper receptacles as are approved by the Lessor from time to time.

## **9.12 Flammable liquids and substances**

- 9.12.1 The Lessee must not store or use chemicals or flammable, volatile or explosive substances on the Premises except for substances used in the normal course of the Lessee's business and must not in any way create any actual or potential fire hazard in the Premises.
- 9.12.2 If the Lessee stores or uses chemicals or flammable, volatile or explosive substances in the normal course of the Lessee's business, the Lessee must keep those substances in a safe and secure manner consistent with all laws and guidelines of all relevant authorities.
- 9.12.3 The Lessee must permit the Lessor to enter the Premises at any time to control any actual or potential fire hazard and if the hazard, in the reasonable opinion of the Lessor, results from the use of the Premises by the Lessee, the Lessee must pay to the Lessor immediately on notification, the costs of the Lessor in carrying out that work.

## **10. Alterations and Fitout**

### **10.1 No alterations without consent**

- 10.1.1 The Lessee will not, without the prior written consent of the Lessor, make any alterations or additions in or to the Premises or permit or suffer the same to be made. The Lessor may, in its absolute discretion, refuse to consent to any proposed alterations or additions.

10.1.2 The Lessee will not mark, paint, drill or in any way deface or damage the walls, partitions, ceiling, floor or surrounds of the Premises without the Lessor's consent.

10.1.3 The Lessee must, in the course of any alterations or additions:

- (1) comply with the requirements of the Lessor and all relevant authorities;
- (2) if required, use persons nominated or approved by the Lessor to carry out the work; and
- (3) not interfere with the quiet enjoyment of any other users of the Land.

## **10.2 Installing equipment**

The Lessee will not, without the prior written consent of the Lessor, install any water, electrical or gas fixture or appliance or any apparatus for light, air, heating or cooling.

## **10.3 Heavy installation**

The Lessee will not bring in or on the Premises any fixtures or goods:

- (1) of such nature, weight or size; or
- (2) creating such noise or vibration in their operation,

such as to cause or, in the reasonable opinion of the Lessor, be likely to cause, any structural or other damage to the floors or walls or any other part of the Premises. Any damage to the Premises caused by the movement or placement of any such items will be made good at the Lessee's expense.

## **10.4 Grease trap**

10.4.1 If the Premises are at any time connected to a grease trap or a triple interceptor, the Lessor must regularly clean, service, maintain, repair and empty it. The Lessee must pay the Lessor the cost of any cleaning, servicing, maintenance, repair or emptying of the grease trap or triple inceptor within 14 days of receiving a request for payment from the Lessor.

10.4.2 If the Premises are not connected to a grease trap, triple interceptor or similar device and the Lessee's use of the Premises requires them to be connected to such a device, then the Lessee must, at its' expense, promptly install such a device, upon receiving the consent of the Lessor (which may be reasonably withheld where installation is, in the opinion of the Lessor, impractical or may interfere with other users of the Land) and otherwise comply with this clause.

10.4.3 The Lessor will not be liable for any loss or damage sustained by the Lessee arising from the Lessor's decision not to consent to the installation of a grease trap, triple inceptor or similar device.

## **10.5 No obstruction of light or air**

The Lessee must not obstruct the flow of air to or from or the admission of light to the Premises except for curtains or blinds approved by the Lessor, which approval will not be unreasonably withheld.

## **11. Repairs, Maintenance and Replacement**

### **11.1 Inconsistency**

Where there is an inconsistency between this clause and Schedule 2, Schedule 2 will prevail.

### **11.2 Acknowledgement**

The Lessee acknowledges that, at the Commencement Date and the date of first occupation of the Premises by the Lessee (if applicable), the Premises and the Lessor's Property in it were in good repair and condition.

### **11.3 Repair obligations**

11.3.1 Subject to clauses 11.3.3, 11.3.4 and 11.3.5, the Lessor must keep the Lessor's Property in good and tenable repair and condition having regard to the condition of the Premises at the Commencement Date.

11.3.2 The Lessee must maintain and keep the Lessee's Property in good and tenable repair.

11.3.3 The Lessor's obligation to repair under subclause 11.3.1 will not apply when the requirement for repair arises as a result of the negligence or act or omission of the Lessee or the Lessee's employees, agents, contractors or invitees. The Lessee must repair or replace any item of Lessor's Property requiring repair or replacement as a result of the negligence or act or omission of the Lessee or the Lessee's employees, agents, contractors or invitees.

11.3.4 The Lessor may require the Lessee to contribute an amount for each item of repair of the Lessor's Property as set out in Item 12. The Lessor will be under no obligation to repair unless and until the required contribution is made by the Lessee to the Lessor.

11.3.5 The Lessee must maintain the Lessor's Property to a standard equivalent to that at the date of first occupation by the Lessee (or, if the Lessor has upgraded the Lessor's Property, to the upgraded standard).

### **11.4 Replacement obligations**

11.4.1 Subject to subclause 11.4.2, the Lessor will replace any Lessor's Property which, in the Lessor's reasonable opinion, requires replacement.

11.4.2 The Lessor's obligation to replace the Lessor's Property will not apply when the requirement to replace arises as a result of the negligence or act or omission of the Lessee, or the Lessee's employees, agents, contractors or invitees or the failure of the Lessee to maintain the Lessor's Property.

11.4.3 The Lessee will be responsible for the replacement of the Lessee's Property.

#### **11.5 Make Good**

The Lessee must, at the time of, or immediately before, the expiration of the Lessee's occupancy (and in this regard time is of the essence):

- (1) carry out repairs as required by this clause;
- (2) paint the inside of the Premises, if reasonably required by the Lessor;
- (3) reinstate all floor coverings, light and power outlets, switches, telephone outlets, fire sprinklers and air-conditioning and any other fixtures or fittings of the Lessor (fair wear and tear excepted);
- (4) remove all signs, notices, advertisements, ornaments or other things placed by the Lessee on the Premises;
- (5) remove the Lessee's Property and make good any damage arising as a result of the removal;
- (6) leave the Premises in a clean and tidy condition, free from all rubbish; and
- (7) peaceably surrender and yield up the Premises.

#### **11.6 Notices to repair**

11.6.1 The Lessor may, at any time, serve on the Lessee a notice in writing of any defect which the Lessee is required to repair. The Lessee will repair the defect within 21 days of the date of service of the notice (or such other period as agreed). The Lessor may specify a period of less than 21 days within which to repair the defect if the defect is likely to cause damage to the Premises or Building or may cause injury to any person.

11.6.2 Where the Lessor is required to repair, due to the default of the Lessee, the Lessee must pay to the Lessor the cost of those repairs and any associated expenses within 7 days of notification of the amount.

#### **11.7 Leaving Lessee's Property goods or fixtures behind**

To the extent permitted by law, if the Lessee leaves any Lessee's Property, goods or fixtures in the Premises for more than 21 days after the expiry or termination of this Sublease, the Lessor may dispose of them in any way the Lessor sees fit. In addition, any such Lessee's Property, goods or fixtures will,

at the Lessor's election, become the Lessor's property absolutely and the Lessor may deal with them without accounting to the Lessee or being required to compensate the Lessee.

#### **11.8 Leaving Lessee's Property goods or fixtures behind**

To the extent permitted by law, if the Lessee leaves any Lessee's Property, goods or fixtures in the Premises for more than 21 days after the expiry or termination of this Sublease, the Lessor may dispose of them in any way the Lessor sees fit. In addition, any such Lessee's Property, goods or fixtures will, at the Lessor's election, become the Lessor's property absolutely and the Lessor may deal with them without accounting to the Lessee or being required to compensate the Lessee.

#### **11.9 Other services**

11.9.1 During the Term, and any extension or renewal of it, the Lessor must maintain in good working order the lifts, fire services and any other services within the Premises and the Building which are the responsibility of the Lessor.

11.9.2 If any of the services specified in this subclause:

- (1) malfunction;
- (2) become unsafe; or
- (3) are otherwise incapable of being operated as a result of any cause,

the Lessor will, within a reasonable time after receipt of written notification from the Lessee, repair or replace the services (or part of the services) with services of an equivalent type and quality.

11.9.3 The Lessor will not be required to repair or replace any of the services referred to in subclause 11.9.1 where the repair or replacement arises as a result of the negligence or default of the Lessee or the Lessee's employees, agents, contractors or invitees unless the Lessee has first paid to the Lessor, the estimated cost of the repair or replacement.

#### **11.10 Lessor's right to enter**

The Lessor and persons authorised by the Lessor have the right to enter the Premises with necessary materials and equipment at reasonable times, and on reasonable notice (but without any notice in any case which the Lessor considers an emergency):

- (1) to view the state of repair and condition of the Premises and conduct investigations;
- (2) to carry out any work or make any repairs or alterations or additions to the Premises or the Building;

- (3) to carry out repairs as the Lessor thinks fit;
- (4) where the Lessee has failed to repair any defect in accordance with any notice served by the Lessor; or
- (5) to comply with the terms of any present or future law affecting the Premises or any notice served on the Lessor or the Lessee by the Territory or any competent authority.

## **12. Insurance**

### **12.1 Public Liability**

The Lessee, during the Term and any holding over under this Sublease, must keep current a public risk liability policy with a Prescribed Insurer for an amount for any single occurrence of not less than the amount referred to in Item 11. The policy must indemnify the Lessor against all actions and demands of any kind arising from the use and occupation by the Lessee and/or the Lessee's employees, agents, contractors and invitees of the Premises. The policy must note the Lessor's interest.

### **12.2 Other Insurance**

The Lessee will be responsible for insuring the Lessee's Property and all other property of the Lessee in the Premises.

### **12.3 General obligations not to increase Lessor's insurance**

The Lessee must not do, or permit to be done, anything that would result in any insurance in relation to the Premises being:

- (1) unenforceable;
- (2) voidable; or
- (3) likely to increase the rate of premium on any insurance taken out by the Lessor (except with the approval of the Lessor in writing).

### **12.4 Fire Regulations**

12.4.1 The Lessee must comply with the insurance, sprinkler and fire alarm regulations in relation to any partitions and other permitted fixtures or fittings which may be erected by or on behalf of the Lessee on the Premises.

12.4.2 The Lessee must pay the Lessor the cost of any alterations to the sprinkler or fire alarm installations which may become necessary by reason of a non-compliance by the Lessee with the relevant Australian Standards (determined by Standards Australia or any substituted body), the directions or orders of any relevant authority or the requirements of the insurer.

## **12.5 Production of policy**

The Lessee, in respect of any policy of insurance to be taken out by the Lessee, must, on request, produce to the Lessor either a:

- (1) policy of insurance; or
- (2) certificate of currency for the policy.

## **13. Indemnity and Release**

### **13.1 Risk**

The Lessee will occupy, use and keep the Premises at its own risk.

### **13.2 Indemnity**

The Lessee indemnifies the Lessor, its employees, agents and contractors against liability in respect of all claims, costs and expenses and for all loss, damage, injury or death to persons or property caused or contributed to by the Lessee and/or its employees, agents, contractors or invitees in connection with this Sublease, except to the extent that the Lessor, through negligence or unlawful act or omission, has caused the relevant loss, damage or injury.

### **13.3 Claims to be made good**

The Lessee must, at its expense, make good the amount of all claims, loss, damage, costs and expenses, the subject of the indemnity in clause 13.2.

### **13.4 Release**

To the full extent permitted by law, the Lessee hereby releases the Lessor, its employees, agents and contractors from all claims and demands of every kind and from all liability which may arise in respect of any death or injury to any person or any accident or damage to property of any kind or nature, in or near the Premises or the Land other than as may be caused by the wilful or negligent act of the Lessor, its employees, agents or contractors.

## **14. Quiet Enjoyment**

If the Lessee pays the Rent and other monies payable under this Sublease and observes the covenants and terms of this Sublease, the Lessee may use the Premises without interruption or disturbance from the Lessor or any person claiming under the Lessor, save as specifically provided for in this Sublease.

## **15. Damage or Destruction to the Premises**

### **15.1 Damage or destruction to the Premises**

If the Premises or the Building or both are materially damaged or destroyed, and as a result, the Lessee cannot use or access the Premises, then the Lessor must, within 2 months, tell the Lessee whether or not the Lessor proposes to repair the Premises or the Building and if so, the approximate start and finish dates for the work. Meanwhile the Lessee must continue to use any part of the Premises that is useable, safe and accessible, and to obey this Sublease as far as possible.

### **15.2 Termination by Lessor**

If:

- (1) the Lessor gives the Lessee a notice under subclause 15.1 that the Lessor does not intend to repair the Premises or Building; and
- (2) one of the following applies:
  - (a) the Premises or Building has to be, or has been, demolished because of the damage;
  - (b) the damage extends to more than 50% of the Premises or Building;
  - (c) it is impracticable to repair or reinstate the Premises or Building within one year of the date of damage; or
  - (d) the Lessee cannot use the Premises and this Sublease expires within 2 years of the damage occurring and there is no option for a further term;

then the Lessor may terminate this Sublease by 30 days' written notice to the Lessee.

### **15.3 Termination by Lessee**

If one of the following applies:

- (1) the Lessor gives the Lessee a notice under subclause 15.1 that the Lessor does not intend to repair the Premises or Building;
- (2) the Lessor gives the Lessee a notice under subclause 15.1 that the Lessor does intend to repair the Premises or Building but the Lessor unreasonably departs from the proposed start and finish dates; or
- (3) the Lessee will not be able to use the Premises within a reasonable period or for more than one year after the day, or last day, the damage happened;

then the Lessee may give a written notice terminating the Sublease on 30 days' notice and specifying the reason for that termination.

**15.4 No payment of Rent**

While the Lessee cannot use the Premises due to damage to the Premises or the Building, the Lessee is not required to pay Rent and any other money payable under this Sublease unless the Lessor and the Lessee otherwise agree or unless the Court orders otherwise.

**15.5 Payment of Rent continues**

If the Premises or the Building are damaged but the Lessee is still able to use the Premises (in full or in part), then the Lessee must continue to pay Rent and other money payable under this Sublease unless the Lessor and the Lessee otherwise agree or unless the Court orders otherwise.

**15.6 Agreement to end Sublease**

The Lessor and the Lessee may also agree to end this Sublease without the Lessor giving the notice under subclause 15.1.

**15.7 Obligation to repair or reconstruct**

Other than as set out in this clause, nothing in this Sublease imposes an obligation upon the Lessor to repair or reconstruct the Premises or the Building in the event of damage to or destruction as described in this clause.

**16. Assignment**

**16.1 No assignment**

The Lessee must not assign or transfer its rights in respect of this Sublease or the Premises.

**16.2 Underletting or mortgage**

The Lessee may only underlet the Premises or grant a mortgage over this Sublease with the written consent of the Lessor and may not license or otherwise part with possession of the Premises.

**16.3 Lessee to seek consent**

Where the Lessee wishes to underlet or grant a mortgage, the Lessee must notify the Lessor in writing of the intention and apply for consent. The procedure for assessing any request to underlet or mortgage will be in accordance with Part 11 of the Leases Act.

## **16.4 Planning Act Application**

In addition, where any restriction on subletting or underletting under the *Planning and Development Act 2007* applies to the Crown lease for the Land, the Lessor must obtain the consent of the ACT Planning and Land Authority to any proposed subletting or underletting of the Premises. If the ACT Planning and Land Authority does not grant consent either this Sublease will be of no force and effect or the Lessee must not sublet or underlet, as applicable.

## **17. Default and Re-entry**

### **17.1 Default by Lessee**

Where the Lessee is in breach of any condition in this Sublease, the Lessor may remedy the breach at any time without notice to the Lessee and without limiting the rights of the Lessor as a consequence of that breach. Where the Lessor so acts, all reasonable costs and expenses incurred by the Lessor (including reasonable legal costs on a solicitor and client basis) in remedying any breach, must be paid by the Lessee to the Lessor immediately upon written notification of the amount and, in default, the amount may be recovered in a court of competent jurisdiction.

### **17.2 Termination for breach**

Where:

- (1) any instalment of the Rent or other money payable by the Lessee to the Lessor is 21 days in arrears (in case of the Rent whether or not demand has been made for it);
- (2) a notice has been served on the Lessee by, or on behalf of, the Lessor specifying a breach of this Sublease and, if applicable, that breach has not been remedied or compensated for in accordance with the notice, provided the notice has allowed at least 21 days in which to remedy or compensate; or
- (3) the Lessee:
  - (a) becomes bankrupt or is subject to an Insolvency Event;
  - (b) makes any assignment for the benefit of creditors, or makes any arrangement with creditors for liquidation of the debts of the Lessee by composition or otherwise; or
  - (c) being a company or an incorporated association, goes into liquidation either voluntarily or compulsorily, (except for the purpose of reconstruction or amalgamation), or is wound up dissolved or placed under official management or a receiver or manager any of its assets is appointed or an inspector is appointed under the *Corporations Act 2001* (Cth),

the Lessor may, at any time thereafter give written notice to the Lessee that the Lessor intends to terminate this Sublease (the "Termination Notice").

### **17.3 Date of termination**

17.3.1 The termination referred to in the Termination Notice takes effect on the earlier of:

- (1) the date that the Lessee agrees to the termination by notice in writing to the Lessor; or
- (2) the date 14 days after the service of the Termination Notice (the "time period") provided that the Lessee does not contest the termination by application to the Magistrate's Court within the time period.

17.3.2 If the Lessee contests the termination in accordance with subclause 17.3.1(2), the termination has effect on the date ordered to be the date on which the termination takes effect by the Magistrate's Court.

## **18. Fixtures Remaining after Breach**

### **18.1 Application**

This clause applies:

- (1) where this Sublease has been terminated or the Lessor has re-entered the Premises; and
- (2) in relation to any fixtures or goods in the Premises which do not, on termination or re-entry, pass to the Lessor and which remain in the Premises for 14 days after the date of termination or re-entry.

### **18.2 Removal by Lessor**

The Lessor may:

- (1) remove any fixtures or goods to which this clause applies from the Premises and store them in such place and manner as the Lessor thinks fit;
- (2) on reasonable notice to the Lessee, place any fixtures or goods outside the Premises; and/or
- (3) sell the fixtures and goods and deduct from the proceeds, the Lessor's costs in removing, storing and selling them, and account to the Lessee for the balance.

### **18.3 Payment of costs**

The Lessee must pay to the Lessor, on demand, all reasonable costs and expenses of the Lessor in removing or storing fixtures or goods.

## **19. Essential Terms**

### **19.1 Essential Terms**

Each of the following covenants by the Lessee is an essential term of this Sublease:

- (1) subclause 4.1 relating to payment of Rent and subclauses 5.1 and 5.3 regarding other payments to be made by the Lessee;
- (2) clauses 9.1 and 9.2 relating to use of the Premises;
- (3) clause 10.1 relating to alterations and additions;
- (4) clauses 11.3 and 11.5 relating to repair, maintenance and make good;
- (5) clauses 12.1 and 12.3 relating to insurance;
- (6) clause 16.1 relating to assignment, underletting and mortgaging; and
- (7) clause 24.2 relating to payment of GST.

### **19.2 Acceptance of arrears**

The acceptance by the Lessor of arrears or the late payment of Rent or other monies does not constitute a waiver of the essential and continuing obligation of the Lessee to pay Rent and other moneys during the Term on the dates specified in the Sublease.

### **19.3 Breach of an essential term**

The Lessee must compensate the Lessor in respect of any breach of an essential term of this Sublease and the Lessor is entitled to recover damages from the Lessee in respect of such breaches. The Lessor's entitlement under this clause is in addition to any other remedy or entitlement (including the right to terminate this Sublease).

### **19.4 Loss on repudiation or breach**

Where the Lessee's conduct (whether acts or omissions) constitutes:

- (1) a repudiation of the Sublease; or
- (2) a breach of any covenant contained in the Sublease,

the Lessee will compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.

#### **19.5 Quantum of damages recoverable**

The Lessor is entitled to recover damages against the Lessee in respect of repudiation or breach of covenant for the damage suffered by the Lessor during the entire Term.

#### **19.6 Certain events of no effect**

The Lessor's entitlement to recover damages is not affected or limited by any of the following:

- (1) if the Lessee abandons or vacates the Premises;
- (2) if the Lessor elects to re-enter or to terminate the Sublease;
- (3) if the Lessor accepts the Lessee's repudiation; or
- (4) if the party's conduct constitutes a surrender by operation of law.

#### **19.7 Lessor may remedy defaults**

The Lessor may remedy without notice, any default by the Lessee under this Sublease and whenever the Lessor elects to do so, all costs and expenses incurred by the Lessor (including legal costs and expenses) are to be paid by the Lessee immediately on notification.

### **20. Early Termination**

This Sublease may be terminated, without cause, by either party giving the other party six months' written notice or notice for such shorter period as agreed by the parties in writing. Subject to clause 11.5, neither party will have any action against the other in respect of termination of this Sublease pursuant to this clause. The right to terminate early will not prejudice a claim by a party in respect of any breach of the Sublease arising prior to termination.

### **21. Rules**

#### **21.1 Rules**

The Lessee must comply with the Rules and the Lessee acknowledges that, if it fails to comply with any of the Rules, the failure constitutes a breach of this Sublease.

#### **21.2 Compliance with Rules**

The Lessee must take all reasonable steps to ensure that its employees, agents, contractors and invitees comply with the Rules.

### **21.3 Variation of Rules**

The Lessor may delete, vary or add to the Rules provided that the Lessor notifies the Lessee of the changes within 30 days of making the changes.

## **22. Common Area**

### **22.1 Common Area**

Subject to subclause 22.2, the Lessee and all persons authorised by it, will, at all times, have the right to use the Common Area as ancillary to its occupation of the Premises and, in common with other persons having rights to be on the Land:

- (1) to enter and leave the Premises;
- (2) to load or unload vehicles in any area designated for the purpose by the Lessor;
- (3) to park private motor vehicles or cycles in such a place and for such a time as the Lessor designates from time to time;
- (4) to use the toilets and washrooms as allocated by the Lessor from time to time; and
- (5) to place rubbish in such proper receptacles as are approved by the Lessor from time to time.

### **22.2 Control of Common Area**

The Common Area will, at all times, be subject to the control of the Lessor who has, subject to this Sublease, the right from time to time to establish, modify and enforce reasonable rules in this regard.

## **23. Superior Lease**

### **23.1 Sublease**

Where the Lessor is the Crown Lessee;

- (1) this Sublease will be read and construed as a sublease;
- (2) the Lessor covenants punctually to make all payments due and owing under the Crown lease and to observe the covenants contained in the Crown lease;
- (3) subject to the terms and conditions of this Sublease, the Lessee covenants to observe the covenants contained in the Crown lease on the part of the

lessee named in that Crown lease, except for the payment of money by the lessee required by the Crown lease.

## **23.2 Underlease**

Where the Lessor is a sublessee:

- (1) this Sublease will be read and construed as an underlease;
- (2) the Lessor covenants punctually to make all payments due and owing under the sublease and to observe the covenants in the sublease and the Crown lease;
- (3) The Lessee covenants to observe the covenants contained in the sublease and the Crown lease on the part of the lessee named in the sublease and the Crown lease, except for the payment of money by the lessee as required by the sublease or Crown lease.

## **24. GST**

### **24.1 GST definitions**

24.1.1 In this clause:

**Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (as amended) and any regulation made under that Act;

**GST, Taxable Supply, Input Tax Credit, Supply and Tax Invoice** have the same meaning as in the Act;

**GST Rate** means 10% or if the rate at which GST is calculated under the Act changes, the rate applicable at the relevant time.

**Payment** includes consideration in the form of money given or received and in a form other than money given or received.

### **24.2 Payment of GST**

A party making Payment to another party for a Taxable Supply under this Sublease must pay to the other party at the same time, an additional amount equal to the amount of the Payment multiplied by the GST Rate.

### **24.3 Reimbursements**

When calculating the amount of:

- (a) any reimbursement to a party under this Sublease; and
- (b) the indemnification under this Sublease of an expense, loss or liability incurred or to be incurred by that party,

the other party may include the GST paid or payable on the Supply giving rise to the amount, but if that party includes the GST that party must deduct the amount of any Input Tax Credit from the amount paid.

#### **24.4 Tax invoice**

A party receiving a Payment of GST under this clause must provide a Tax Invoice to the party making the Payment before or at the same time as the Payment is received.

### **25. Application of Leases Act**

#### **25.1 Disclosure Statement**

The Lessee warrants that a Disclosure Statement complying with the Leases Act, was supplied to the Lessee at least 14 days before the Sublease was entered into.

#### **25.2 Approved handbook**

The Lessee warrants that the Lessee was advised of the existence of the approved handbook and of its availability, as early as practicable in negotiations relating to this Sublease.

#### **25.3 Standard provisions**

The standard provisions in any regulations prescribed under the Leases Act do not apply to this Sublease.

#### **25.4 Term of Lease less than 5 years**

Where the Term (including any prior option period or option contained in this Sublease) is less than 5 years (as is otherwise required by the Leases Act), the Lessee warrants:

- (1) that it has been independently advised by a lawyer (as defined in the Leases Act and not acting for the Lessor) of the Lessee's rights pursuant to section 104 of the Leases Act; and
- (2) that the lawyer has provided a certificate as required by section 104 of the Leases Act.

### **26. Special conditions**

#### **26.1 Variation of provisions**

The parties agree that the provisions of this Sublease may be varied as set out in Item 17.

## **26.2 Inconsistency**

Where there is any inconsistency between the terms of this Sublease and Item 17, the provisions of Item 17 will prevail.

## **27. Miscellaneous**

### **27.1 No waiver**

Failure or omission by the Lessor at any time to enforce or require strict or timely compliance with any provision of this Sublease will not:

- (1) affect or impair that provision in any way;
- (2) affect the right or remedy that the Lessor may have in respect of that provision; or
- (3) act as a waiver of any other breach by the Lessee.

### **27.2 Entire Agreement**

This Sublease contains the entire agreement between the parties in relation to the Premises and supersedes any prior representation, negotiations, writing, memoranda and agreements.

### **27.3 Variation**

This Sublease may be varied only by the written agreement of the parties prior to the expiration of this Sublease.

### **27.4 Severability**

Any provision of this Sublease that is illegal, void or unenforceable will not form part of this Sublease to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Sublease will not be invalidated by an illegal, void or unenforceable provision.

### **27.5 Governing law**

This Sublease is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

### **27.6 Compliance with laws**

The Lessee must comply with the laws from time to time in force in the Territory.

### **27.7 Notices**

27.7.1 Any notice, including any other communication, required to be given or sent to

either party under this Sublease must be in writing. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent; or
- (3) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address.

27.7.2 In addition, where a notice is given by either party to repair or replace, the notice may be sent by electronic mail to an electronic mail address provided to the transmitting party and is deemed to be served at the time the email was sent.

**27.8 Authority to complete**

The Lessee authorises the Lessor and its solicitors to complete any blanks with a proper date or details and to make any formal correction necessary to this Sublease.

## Schedule 1

- Item 1:** Lessee: Canberra Tradesmen's Union Club Limited  
ACN 098 615 760
- Item 2:** Land: Block 6 Section 72 Division of Dickson
- Item 3:** Premises: Whole of the Land
- Item 4:** Term: 42 months
- Item 5:** Commencement Date: 19 December 2014
- Item 6:** Expiry Date: 18 June 2018
- Item 7:** Rent: \$1 per annum if and when demanded (inclusive of GST)
- Item 8:** Rent Review
- (a) Rent Review Date: At the expiry of the Term and commencement of any holding over period allowed by the Lessor
- (b) Method of Rent Review: Market Rent review refer to schedule 4
- Item 9:** Use of Premises: Uses consistent with the Crown lease for the Land
- Item 10:** Outgoings: Refer to schedule 2
- Item 11:** Public Liability Insurance: \$20 Million
- Item 12:** Repair contribution: Not Applicable
- Item 13:** Option Term: Not applicable
- Item 14:** Interest Rate: 10%
- Item 15:** Address for Notices: Lessor:  
Land Development Agency  
GPO Box 158  
Canberra City ACT 2601  
Contact Officer:  
Director, Sales, Marketing & Land Management
- Lessee:  
2 Badham Street  
Dickson Act 2602  
Contact Officer: Chief Executive Officer
- Item 16:** Bond: Not applicable
- Item 17:** Variations: The standard terms of this Sublease are varied as

## Schedule 2

### DISTRIBUTION OF LESSOR AND LESSEE RESPONSIBILITIES IN RELATION TO STATUTORY OUTGOINGS, SERVICE CHARGES AND GENERAL CHARGES

Details of Charges	Percentage of Lessor responsibility (A)	Percentage of Lessee responsibility (B)
<b>SECTION 1 - STATUTORY OUTGOINGS</b>		
Land Tax	0%	100%
General rates	0%	100%
Water and Sewerage rates	0%	100%
<b>SECTION 2 - SERVICE CHARGES</b>		
Electricity	0%	100%
Gas	0%	100%
Water Usage	0%	100%
Telephone and Communications	0%	100%
Cleaning - General	0%	100%
Cleaning – Toilet requisites	0%	100%
Cleaning - windows Internal	0%	100%
Cleaning - windows external	0%	100%
Rubbish removal/tradewaste bins	0%	100%
Grease trap/triple inceptor – cleaning and emptying	0%	100%
Insurance - Plate glass	0%	100%
Insurance - Public Liability	0%	100%
Landscaping/Gardening	0%	100%
After hours Air-Conditioning	0%	100%
Air-Conditioning Repairs	0%	100%
Security system - Premises	0%	100%
Pest Control	0%	100%

<b>SECTION 3 - GENERAL CHARGES</b>		
Insurance - Building	0%	100%
Fire Brigade Monitoring	0%	100%
Fire Protection & Fire Extinguishers	0%	100%
Signage - Internal	0%	100%
Painting	0%	100%
Lifts	0%	100%
Locks and Keys	0%	100%
Floor coverings	0%	100%

### Schedule 3 – Rules

1. All requests for consents or approvals required from the Lessor, all notices required to be given by the Lessee to the Lessor and all enquiries, complaints and suggestions which the Lessee may wish to communicate to the Lessor, are to be in writing to the Contact Officer named in Item 15.
2. The Lessee must keep all doors and other means of access to the Premises securely fastened when the Premises are left unoccupied. The Lessor reserves the right to enter the Premises and fasten them if they are left insecurely fastened.
3. The Lessee must ensure that, at all times, the Lessor has a current address and telephone number at which the Lessee, or a responsible representative of the Lessee, can be reached when the Lessee or representative is not in the Premises.
4. No curtains, window blinds, window screens or awnings may be erected without the approval of the Lessor.
5. The Lessee must not cause obstruction in the Common Area.
6. No rubbish or waste may, at any time, be burnt on the Premises or in the Building.
7. The Lessee may not conduct, or permit to be conducted, on the Premises any auction, bankrupt or fire sale.
8. The Lessee may not use or permit the Common Area to be used for any business or commercial purpose or the display or advertisement of any goods or services.
9. The Lessee must, at the Lessee's own expense, replace all electrical light bulbs and globes and tubes which may become damaged or broken or fail to light in the Premises.
10. The Lessee must not use the Premises as a residence or sleeping place.
11. The Lessee must not keep on the Premises any animals, fishes, reptiles or birds.
12. The Lessee may not smoke or permit any person to smoke any form of tobacco or similar substance in or within 15 metres of the Premises or the Building.
13. The Lessee must comply with any fire management plan produced by the Lessor which is made known to the Lessee or, if reasonably required by the Lessor, the Lessee will produce its own fire management plan.
14. The Lessee will participate in any fire management exercise conducted by the Lessor, of which the Lessee has received reasonable notice.

## Schedule 4 – Rent Review

1. The Rent will be reviewed effective from each Rent Review Date in accordance with the method of rent review noted next to the relevant Rent Review Date in Item 8.
  2. Each method of rent review will have the meaning and procedure set out in this Schedule.
- A. (1) **“WPI”** means a rent adjustment in accordance with the following Wage Price Index formula:

$$\text{NYLF} = \text{OYLF} \times \frac{\text{NWPI}}{\text{OWPI}}$$

Where:

- “NYLF” is the new Rent payable by the Licensee to the Licensor commencing from the Rent Review Date;
- “OYLF” is the Rent payable by the Licensee to the Licensor immediately preceding the Rent Review Date;
- “NWPI” is the last published Wage Price Index prior to the Rent Review Date;
- “OWPI” is the Wage Price Index as published prior to the date upon which the Rent was most recently reviewed, varied or set pursuant to the terms of the Sublease or any previous Sublease (or previous Subleases) which contained an option to renew (or a chain of options to renew) which gave rise to this Sublease.

- (2) **“Wage Price Index”** means the Wage Price Index for the Australian Capital Territory as published by the Australian Statistician (or such person or office which fulfils the relevant function fulfilled by the Australian Statistician at the commencement of the Sublease). In the event that the Wage Price Index is adjusted (for example by changing the base index number or changing the year of the base index number), or there is any suspension or discontinuance of the Wage Price Index by the Australian Statistician, then the Wage Price Index will mean such index figure or statistic published at the relevant dates in the Australian Statistician’s summary of Australian statistics which reflects fluctuations in the wages in Canberra and which the parties may mutually agree upon, and if they are unable to agree then such index figure or statistic as may be determined by the President for the time being of the Australian Property Institute or some person nominated by the President whose decision will be conclusive and binding. This definition will apply notwithstanding that there may be significant changes over time in the composition and weighting of the items by reference to which the Wage Price Index is calculated.

- (3) The Licensee must continue to pay the current instalments of the Rent due until the new Rent is determined. Within 21 days after the Licensor has notified the Licensee of the new Rent, the Licensee must adjust and pay the amount due to the Licensor as Rent from the Rent Review Date.

- (4) The Licensee must continue to pay the current instalments of the Rent due until the new Rent is determined. Within 21 days after the Licensor has notified the Licensee of the new Rent, the Licensee must adjust and pay the amount due to the Licensor as Rent from the Rent Review Date.

- B. (1) **“CPI Rent”** means a Rent adjustment in accordance with the following Consumer Price Index formula:

$$\text{NYR} = \text{OYR} \times \frac{\text{NCPI}}{\text{OCPI}}$$

Where:

- “NYR” is the new Rent payable by the Lessee to the Lessor commencing from the Rent Review Date;
- “OYR” is the Rent payable by the Lessee to the Lessor immediately preceding the Rent Review Date;
- “NCPI” is the last published Consumer Price Index prior to the Rent Review Date;
- “OCPI” is the Consumer Price Index as published prior to the date upon which the Rent was most recently reviewed, varied or set pursuant to the terms of the Sublease or any previous sublease (or previous subleases) which contained an option to renew (or a chain of options to renew) which gave rise to this Sublease.

- (2) **“Consumer Price Index”** means the Consumer Price Index for Canberra (All Groups) as published by the Australian Statistician (or such person or office which fulfils the relevant function fulfilled by the Australian Statistician at the commencement of the Sublease). In the event that the Consumer Price Index is adjusted (for example by changing the base index number or changing the year of the base index number), or there is any suspension or discontinuance of the Consumer Price Index by the Australian Statistician, then the Consumer Price Index will mean such index figure or statistic published at the relevant dates in the Australian Statistician’s summary of Australian statistics which reflects fluctuations in the cost of living in Canberra and which the parties may mutually agree upon, and if they are unable to agree then such index figure or statistic as may be determined by the President for the time being of the Australian Property Institute or some person nominated by the President whose decision will be conclusive and binding. This definition will apply notwithstanding that there may be significant changes over time in the composition and weighting of the items by reference to which the Consumer Price Index is calculated.

- (3) The Lessee must continue to pay the current instalments of the Rent due until the new Rent is determined. Within 21 days after the Lessor has notified the Lessee of the new Rent, the Lessee must adjust and pay the amount due to the Lessor as Rent from the Rent Review Date.

- C. (1) **“Rent Increase by X%”** (where X% is a specified percentage figure) means a Rent adjustment in accordance with the following formula:

$$\text{NYR} = \text{OYR} \times \frac{100 + X}{100}$$

Where:

- “NYR” is the new Rent payable by the Lessee to the Lessor commencing from the Rent Review Date;
- “OYR” is the Rent payable by the Lessee to the Lessor immediately preceding the Rent Review Date;
- “X” is the specified percentage in Item 8.

- (2) The Lessee must continue to pay the current instalments of the Rent due until the new Rent is determined. Within 21 days after the Lessor has notified the Lessee of the new Rent, the Lessee will adjust and pay the amount due to the Lessor as Rent from the Rent Review Date.

D. (1) **“Market Rent”** means an adjustment to the Rent that could reasonably be expected to be paid for the Premises if unoccupied and offered for rent for the use set out in Item 9.

- (2) Either party may at any time, but not earlier than 4 months prior to the Rent Review Date to which Market Rent applies, give notice in writing to the other party stating the amount which, in that party’s opinion, is the Market Rent for the Premises as at that Rent Review Date.

(3) If:

- (a) 2 months after a party has given a notice under subclause (2), the parties have not agreed upon the Market Rent applicable from the Rent Review Date; or
- (b) 14 days after either party tells the other party that it disputes the proposed Rent applicable from the Rent Review Date;

either party may notify the Magistrates Court that that party wishes to have the matter referred to mediation under section 52(2) of the Leases Act.

- (4) If a Market Rent cannot be agreed, the parties agree to follow the procedure set out in Part 8 of the Leases Act regarding determination of the Market Rent.

- (5) If, 14 days after the Lessee tells the Lessor that the Lessee disputes the proposed Rent applicable from the Rent Review Date either party may ask the President of the Australian Property Institute (Canberra Chapter) to appoint a valuer with at least 5 years’ experience to determine the Market Rent having regard to the current market rental.

- (6) The valuer must act as an independent expert and not as an arbitrator, and give written reasons for the decision. The parties must share the valuer’s costs equally.

- (7) The valuation of the Market Rent must take into account:

- (a) the terms of the Sublease;

- (b) other matters relevant to the assessment of current market rental;
- (c) the use of the Premises under the Sublease; and
- (d) rent concessions or other benefits frequently or generally offered to prospective lessees of similar Premises,

and must assume that the Premises are unoccupied, but it must not take into account the value of any goodwill or the Lessee's Improvements.

- (8) Until the dispute is resolved, or a right is lost, the Lessee must pay the old Rent. Any adjustment is calculated from the Market Review Date. The Lessee must pay any adjustment, or the Lessor must credit the Lessee with it, when the next monthly payment is due.

## **Schedule 5 – Variations to standard terms of Sublease**

1. Clause 6.3 is amended to read as follows:
  - 6.3 The Lessee must maintain and repair the Air-Conditioning System.
2. Clause 7.2 is amended to read as follows:
  - 7.2 The Lessee will pay all stamp duty (if any is payable) assessed with respect to the Sublease.
3. Clause 9.5 does not apply to any signs within the Premises which are not viable from outside the Building.
4. Clause 10.4 is deleted and replaced as follows:
  - 10.4.3 If the Premises are at any time connected to a grease trap or a triple interceptor, the Lessee must regularly clean, service, maintain, repair and empty it at its own cost.
  - 10.4.4 If the Premises are not connected to a grease trap, triple interceptor or similar device and the Lessee's use of the Premises requires them to be connected to such a device, then the Lessee must, at its' expense, promptly install such a device, upon receiving the consent of the Lessor (which may be reasonably withheld where installation is, in the opinion of the Lessor, impractical or may interfere with other users of the Land) and otherwise comply with this clause.
  - 10.4.3 The Lessor will not be liable for any loss or damage sustained by the Lessee arising from the Lessor's decision not to consent to the installation of a grease trap, triple inceptor or similar device.
5. Clause 11 .2 is deleted and replaced as follows:

The Lessee accepts the Premises and the Lessor's Property in the condition and state of repair they are in at the commencement of this Sublease and will raise no claim in respect of the fitness, adequacy, safety or risk associated with any part of the Premises or Lessor's Property.
6. Clause 11.3.1 is amended to read as follows:
  - 11.3.1 Subject to Clause 11.3.5, the Lessee must keep the Lessor's Property in good and tenable repair and condition having regard to the condition of the Premises at the Commencement Date.
7. Clauses 11.3.3 - 11.3.4 are deleted.
8. Clause 11.4 is deleted.
9. Clause 11.5(1)-(5) is deleted.
10. Clause 11.6.2 is deleted.
11. Clause 11.9.1 is amended to read as follows:
  - 11.9.1 During the Term, the Lessee must maintain in good working order the

lifts, fire services and any other services within the Premises and the Building.

12. Clause 11.9.2 is amended to read as follows:

11.9.2 If any of the services specified in this subclause:

- (1) malfunction;
- (2) become unsafe; or
- (3) are otherwise incapable of being operated as a result of any cause,

the Lessee will, within a reasonable time, repair or replace the services (or part of the services) with services of an equivalent type and quality.

13. Clause 11.9.3 is deleted.

14. Clause 15.2 is amended to read as follows:

15.2 If the Lessor gives the Lessee a notice under subclause 15.1 that the Lessor does not intend to repair the Premises or Building then the Lessor may terminate this Sublease by 30 days' written notice to the Lessee.

**Schedule 6**

**CERTIFICATE**

I.....  
of Clayton Utz Lawyers.....

certify:

1. I am a solicitor of the Supreme Court of the Australian Capital Territory.
2. I do not act for the Licensor.
3. Before the Licensee executed this Licence, at the request of the Licensee I explained:
  - a) the effect of this clause in this Licence and of this Certificate;
  - b) how section 30 of the Leases Act would apply in relation to the Licence if the Licence did not include this clause;
  - c) the effect of section 104 of the Leases Act and that the giving of this Certificate will result in the Licence being for a term (including any options for renewal) of less than five years.
4. The Licensee told me that:
  - a) the Licensee was not acting under coercion or undue influence in asking for or agreeing to the inclusion of this clause (including this Certificate) in this Licence;
  - b) the Licensee was not required by the Licensor to use a lawyer acting for or nominated by the Licensor; and
  - c) the Licensee was aware of, and had chosen to waive, the time limits under section 30 of the Leases Act.

DATED this 19th day of December 2014

Signed

.....

Solicitor, A.C.T.

.....

Executed as an Agreement

DATE OF THIS AGREEMENT 19 December 2014

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

[Redacted signature] Signature of Territory delegate

[Redacted signature] Signature of witness

DANIEL STEWART Print name

Katrina Andrić Print name

SIGNED by or for and on behalf of CANBERRA TRADESMEN'S UNION CLUB LIMITED ACN 098 615 760 in accordance with section 127 of the Corporations Act 2001:

[Redacted signature] Signature of director\*

DEAN HALL - Director Print name and position

[Redacted signature] Signature of director/secretary\*

STEPHAN BRENNAN - Secretary Print name and position

- Note:
Date: Must be dated on the date the last party signs the Agreement or, if signed counterparts of the Agreement 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 (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the constitution but is generally not required.