



# SALE OF BUSINESS ASSETS

Date

7-1-2016

Parties

**LAND DEVELOPMENT AGENCY**

**JE & MS PTY LTD  
ACN 118 844 885**

Business

**MR SPOKES BIKE HIRE**

Prepared by

ACT Government Solicitor  
Level 6, 12 Moore Street  
Canberra City ACT 2601  
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Ref: KM: 626515

Version

Final – 22/12/2015

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DATED:

**PARTIES:** **LAND DEVELOPMENT AGENCY**, a corporation established by section 31 of the *Planning and Development Act 2007* (ACT) (**Buyer**).

**JE & MS PTY LTD ACN 118 844 885** of [REDACTED] (**Seller**) acting in its own capacity and as trustee of the JE & MS Trust ABN 70 783 414 557; and

**JILLIAN EDWARDS** and **MARTIN PATRICK SHANAHAN** both of [REDACTED] both individually and collectively the **Covenantor**).

## BACKGROUND

- A The Seller carries on the Business in the Australian Capital Territory on the Land.
- B The Seller wishes to sell the Business Assets to the Buyer and the Buyer wishes to purchase the Business Assets on the terms and conditions set out in this agreement.

## OPERATIVE PART

### 1. Defined terms and rules of interpretation

#### 1.1 In this agreement unless the context requires otherwise:

- (a) **ACTPLA** means the Planning and Land Authority established under section 10(1) of the *Planning and Development Act 2007* (ACT).
- (b) **Business Day** means a day on which trading banks are open for ordinary business in the Australian Capital Territory.
- (c) **Business Hours** means between 9.00am and 5.00pm on a Business Day.
- (d) **Confidential Information** means all information of and relating to a party and its business including:
- (i) trade secrets, drawings, know-how, techniques;
  - (ii) business and marketing plans and projections;
  - (iii) arrangements and agreements with third parties; and
  - (iv) concepts not reduced to material form, designs, plans and models,
- except Confidential Information excludes information which is public knowledge.
- (e) **Confidential Text** means any text of this agreement that, for the purposes of the Procurement Act, either party proposes should not be published and which is specified in Item 13 of the Reference Schedule.
- (f) **Deed of Surrender** means the deed of surrender of Crown lease entered into by the Australian Capital Territory, the Planning and Land Authority and the Seller on or about the date of this agreement in respect of the Land.

- (g) **Equipment** means the equipment listed at Annexure B.
- (h) **Lease** means the Crown lease under which the Seller occupies the Land.
- (i) **PPSR** means the Personal Property Securities Register administered by the Australian Financial Security Authority on behalf of the Commonwealth.
- (j) **Procurement Act** means the *Government Procurement Act 2001* (ACT).
- (k) **Reference Schedule** means the schedule of information contained in Annexure A of this agreement.
- (l) **Rights** includes authority, benefit, power, privilege, remedy, right and cause of action.
- (m) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

1.2 In the interpretation of this agreement, unless the contrary intention appears:

- (a) The term "this agreement" means this document and includes all schedules, appendices, exhibits and annexures.
- (b) Words in the Reference Schedule have the same meaning adjacent to them.
- (c) A reference to this agreement or to any other deed, agreement or document includes, respectively, this agreement or that other deed, agreement or document as amended, novated, supplemented, varied or replaced.
- (d) A reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this agreement.
- (e) The headings do not form part of this agreement and shall not be taken into account in its construction or interpretation.
- (f) Where words or phrases are given a defined meaning, any other part of speech or other grammatical form of those words or phrases shall have a corresponding meaning.
- (g) The terms "parties" or "party" means the parties or a party to this agreement.
- (h) A reference to a party includes its executors, administrators, successors and permitted assigns, substitutes and persons taking by way of novation.
- (i) Where a party is comprised of more than one person, the obligations and covenants of that party bind any two or more of those persons jointly and each of them severally.
- (j) References to any person shall, in the event of that person ceasing to exist or being reconstituted, renamed or replaced or its powers or functions being transferred to any other person, refer respectively to the person established or constituted in its place or succeeding to its powers or functions.
- (k) A reference to any thing includes the whole or any part of that thing and a reference to a group of things or persons shall include each thing or person in that group.
- (l) Any covenant or deed by a party not to do an act or thing shall be deemed to include an obligation not to permit such act or thing to be done and to use its best endeavours to prevent such act or thing being done by another person.



- (m) Words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies, and vice versa.
- (n) The singular includes the plural and vice versa.
- (o) Words importing one gender include every gender.
- (p) A reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State or Territory legislation, as applicable.
- (q) 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 subordinate legislation.
- (r) A reference to a consent or approval of a party means the prior written consent or approval of that party.
- (s) The term "notice" shall include notice, authorisation, request, nomination, notification and any other form of communication between the parties.
- (t) The expressions "deliver", "provide" and "handover" includes procure the delivery or provision or handing over.
- (u) A reference to "currency", "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency.
- (v) A reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.
- (w) No provision of this agreement shall be construed against a party by reason of that provision having been drafted by that party.

## 2. Sale of Business Assets

The Seller agrees to sell and the Buyer agrees to purchase the right, title and interest of the Seller in the Business Assets for the Purchase Price.

## 3. GST

### 3.1 GST definitions

In this clause:

- (a) **GST, Taxable Supply, Input Tax Credit, Supply and Tax Invoice** have the same meaning as in the Act;
- (b) **GST Rate** means 10% or if the rate at which GST is calculated under the GST Act changes, the rate applicable at the relevant time.
- (c) **Payment** includes consideration in the form of money given or received and in a form other than money given or received.

### 3.2 Payment of GST

A party making Payment to another party for a Taxable Supply under this agreement 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.

### 3.3 Reimbursements

When calculating the amount of:

- (a) any reimbursement to a party under this agreement; and
- (b) the indemnification under this agreement of an expense, loss or liability incurred or to be incurred by that party,
- (c) 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.

### 3.4 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.

## 4. Payment

The Purchase Price shall be paid by the Buyer to the Seller as follows:

- (a) The Deposit upon signing this agreement directly to the Seller. The Deposit may be paid by cheque but if the cheque is not honoured on presentation the Buyer shall immediately and without notice be in default and the Seller may at its option terminate this agreement and the default provisions shall apply; and
- (b) The balance of the Purchase Price shall be paid to the Seller or at its direction by government cheque on the Completion Date.

## 5. Completion

5.1 Completion shall take place on the Completion Date at the same time and place as completion under the Deed of Surrender between the parties.

5.2 On the Completion Date:

- (a) the Seller must give the Buyer unencumbered title to, and ownership of the Business Assets, and place the Buyer in effective possession and control of the Business Assets and, to this end (without limitation) the Seller must give the Buyer:
  - (i) any documents reasonably required by the Buyer for vesting in the Buyer, the full possession and benefit of the Business Assets;
  - (ii) possession of the Business Assets; and
  - (iii) a release of the PPSR Interests in so far as they relate to the Business Assets.
- (b) the Buyer shall:
  - (i) pay the balance of the Purchase Price to the Seller or as the Seller directs, by way of government cheque;
  - (ii) take possession of the Business Assets;
  - (iii) accept all documents which the Seller gives to the Buyer; and
  - (iv) do and execute all other acts and documents that this agreement requires the Buyer to do or execute at the Completion Date.

**6. Not Used**

**7. Maintenance of Business**

Until Completion the Seller must:

- (a) use the Equipment and the Business Assets with reasonable care; and
- (b) notify the Buyer immediately upon the happening of an event which has a material and adverse effect on the Business Assets.

**8. Not used**

**9. Business Name**

9.1 The Seller covenants and agrees to:

- (a) register to transfer the Business Name to the Buyer using ASIC Connect before Completion; and
- (b) provide the ASIC generated transfer number to the Buyer on or before Completion.

9.2 The Buyer covenants to complete the transfer of the Business Name with ASIC within 14 days of the Completion Date.

**10. Not Used**

**11. Not Used**

**12. Not Used**

**13. Equipment**

13.1 The Seller gives no warranty as to the working order of the Equipment.

13.2 The Buyer acknowledges having relied on its own enquiries and inspections of the Equipment before entering into this agreement.

**14. Acknowledgements as to Non-reliance**

The Buyer acknowledges that:

- (a) in entering into this agreement it has not relied on any statement, representation, promise, warranty, conduct or inducement made or given or offered by Seller or any person or agent on behalf of Seller other than as expressly contained in this agreement; and
- (b) it has conducted, and has entered into this agreement in reliance on, its own enquiries, inspections and investigations in relation to the subject matter of this agreement.

**15. Seller Warranties**

15.1 The Seller and each Covenantor warrants in respect of the Business Assets that at the Completion Date:

- (a) the Business Assets shall be the sole and unencumbered property of the Seller and that no other person shall have any interest in them;
- (b) the Business Assets shall be free from any hire purchase agreement, lease, bill of sale, lien or other encumbrance; and

- (c) that there are no outstanding notices issued by any competent authority affecting the Business Assets.
- 15.2 The Seller and each Covenantor covenants to comply at its expense with any notice served or received up to and including the Completion Date.
- 15.3 The Buyer shall at its expense comply with all notices from and all requirements of any competent authority received after the Completion Date affecting or relating to the Business.
- 16. Buyer's default**
- If the Seller terminates this agreement due to the Buyer's breach of an essential term or repudiation of this agreement:
- (a) the Deposit is forfeited to the Seller;
  - (b) the Seller may recover possession of the Business Assets if the Buyer is in occupation;
  - (c) the Seller may retain or resell the Business Assets; and
  - (d) the Seller may recover any damages from the Buyer for breach of this agreement and for repudiation.
- 17. Seller's default**
- If this agreement is terminated by the Buyer upon the Seller's breach of an essential term or repudiation of this agreement, the Buyer is entitled to recover from the Seller:
- (a) return of the Deposit and any other money paid by the Buyer on account of the Purchase Price;
  - (b) the Buyer's legal and other costs and disbursements which are reasonably incurred before and during the abortive purchase; and
  - (c) general damages in respect of the loss or damage suffered by the Buyer, but the Buyer is not entitled to recover and the Seller is exempted from liability for prospective loss of profits and for other damages consequential on the Business Assets not being acquired by the Buyer.
- 18. Rescission**
- 18.1 If this agreement is rescinded by either party pursuant to an express right to rescind contained in this agreement:
- (a) it is a rescission ab initio and the parties shall be restored, as far as possible, to the position as if they had not entered into this agreement;
  - (b) the deposit and any other money paid by the Buyer towards the Purchase Price, shall be refunded to the Buyer, together with the interest earned on the deposit if it was invested;
  - (c) each party will bear its own costs and expenses of entering into and participating in this agreement and the rescission;
  - (d) neither party will be liable to the other party for any damages or claims under or relating to this agreement.
- 18.2 This clause does not apply to the termination of this agreement, by either party, for breach or for repudiation.

## **19. Notices**

19.1 All notices given under this agreement shall be in writing and may be validly given by any one of the following means:

- (a) by sending it by prepaid post or by document exchange to the address of the party to be served or its solicitor;
- (a) by facsimile transmission to the facsimile number of the party to be served or its solicitor; or
- (b) by delivering it to the party to be served or to its solicitor.

19.2 A notice shall be deemed to be given and received:

- (a) If sent by pre-paid post or by document exchange, two (2) Business Days after it has been posted or has been delivered to the Document Exchange Centre;
- (b) If sent by facsimile during Business Hours, on the day it was sent; and if sent by facsimile outside Business Hours, on the first Business Day after the day it was sent;
- (c) If delivered during Business Hours, on the day of delivery; and if delivered outside Business Hours, on the first Business Day after the day of delivery.

19.3 The address and facsimile number of each of the parties for service is as set out in the Reference Schedule.

19.4 A notice given or a document signed or served on behalf of any party by any director or company secretary or solicitor of that party shall be deemed to have been given, signed or served by that party personally.

19.5 Any activity report or transmission advice slip issued by a facsimile machine to any party seeking to serve any other party by facsimile shall constitute sufficient and good proof of service for the purposes of this agreement.

## **20. Costs & Stamp Duty**

Except as otherwise provided in this agreement or the Deed of Surrender, each of the parties shall pay its own costs and expenses (including legal fees) of and incidental to the preparation, negotiation, execution and (where applicable) the stamping and registration of this agreement and any document or transaction contemplated by this agreement.

## **21. Governing Law**

This agreement is to be governed by the laws of the Australian Capital Territory. The parties submit to the jurisdiction of the Courts of the Territory and any Courts that have jurisdiction to hear any appeals from those Courts.

## **22. Non-Merger**

Any provision of this agreement which imposes any obligation or confers any right on a party after completion, or which remains to be performed or is capable of having effect following completion, shall not merge on completion but shall remain in full force and effect.

## **23. Error or misdescription**

No error or misdescription of the Business Assets, Business Name or Equipment shall annual this sale and compensation, if demanded in writing before Completion but not otherwise, shall be made or given as the case may require, the amount to be settled in the case of any difference by the President of the Australian Property Institute of the Australian Capital Territory or his nominee, acting as an expert and not as an arbitrator.

## 24. Confidentiality

The terms of this agreement and all information exchanged between the parties under this agreement during the negotiations preceding this agreement are confidential to them. A party must not disclose any of those terms or information, or any other Confidential Information, to any other person except:

- (a) to employees, legal advisers, accountants, auditors and other consultants of the party or its related bodies corporate requiring the information for the purposes of this agreement; or
- (b) with the consent of the party who supplies the information; or
- (c) if the information is, at the date of this agreement, lawfully in the possession of the recipient of the information through sources other than the party who supplied the information; or
- (d) if required by law or a stock exchange; or
- (e) if strictly and necessarily required in connection with legal proceedings relating to this agreement; or
- (f) if the information is generally and publicly available other than as a result of breach of confidence by the person receiving the information.

## 25. Confidential text under the Procurement Act

- 25.1 In giving effect to the principles of open and accountable government, the Buyer may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this agreement may be a notifiable contract under the Procurement Act and, if so, the Buyer will be required to make the text of this agreement available to the public, including by publication on a public contracts register.
- 25.2 If Item 12 of the Reference Schedule states that this agreement is a notifiable contract under the Procurement Act and specifies Confidential Text, the grounds on which the text is confidential are set out in Item 13 of the Reference Schedule, and clause 25.3 applies.
- 25.3 Except as provided in this agreement, the Buyer must not disclose Confidential Text to any person without the prior written consent of the Seller (which consent will not be unreasonably withheld) except to the extent that Confidential Text:
- (a) is required or authorised to be disclosed under law;
  - (b) is reasonably necessary for the enforcement of the criminal law;
  - (c) is disclosed to the Buyer's solicitors, auditors, insurers or advisers;
  - (d) is generally available to the public;
  - (e) is in the possession of the Buyer without restriction in relation to disclosure before the date of receipt from the Seller;
  - (f) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
  - (g) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.



## **27. Interdependent Contracts**

- 27.1 This agreement is interdependent and conditional upon the Deed of Surrender.
- 27.2 If either party breaches any provisions of this agreement that will constitute a breach of the Deed of Surrender.
- 27.3 If either party breaches any provision of the Deed of Surrender that will constitute a breach by that party of this agreement.
- 27.4 If either party is entitled to rescind or terminate this agreement then that party will be entitled to rescind or terminate (as the case may be) the Deed of Surrender
- 27.5 If either party is entitled to rescind or terminate the Deed of Surrender then that party will be entitled to rescind or terminate (as the case may be) this agreement.
- 27.6 Completion of this agreement must take place simultaneously with the completion of the Deed of Surrender.
- 27.7 If any party issues a Notice to Complete under this agreement or under the Deed of Surrender, they must simultaneously issue Notices to Complete for the Deed of Surrender appointing the same time and date for completion in all Notices.

## **28. Variation of agreement**

This agreement can only be varied by the parties in writing.

## **29. Severability**

If any provision of this agreement is illegal, void or unenforceable, that provision is to be treated as removed from this agreement but the rest of the agreement is not affected.

## **30. Waiver**

A waiver by a party of its Rights under this agreement is only effective if it is in writing and is only effective in relation to the particular obligation or breach in respect of which it is given.

## **31. Further Assurance**

Each party must do anything (including signing any documents) reasonably required to give full effect to this agreement and the transactions it contemplates.



**32. Consents and Approvals**

Subject to any law to the contrary, where the doing or execution of any act, matter or thing is dependent on the consent or approval of a party, that consent or approval may be given or withheld in the absolute discretion of that party, unless this agreement expressly provides otherwise.

**33. No assignment**

A party must not assign any of its Rights under this agreement to any person without the written consent of the other parties. Any such consent may be given or withheld in the absolute discretion of the relevant party.

**34. Counterparts**

This agreement may be executed in any number of counterparts, all of which taken together constitute one and the same document.

EXECUTED as an agreement.

SIGNED for and on behalf of the LAND DEVELOPMENT AGENCY in the presence of:

[Redacted Signature]

Signature of Witness

LAURA MARCANTONIO  
Name of Witness

[Redacted Signature]

Signature of Land Development Agency delegate

DAVID DAVIS  
Name of Land Development Agency delegate

EXECUTED by JE & MS PTY LTD  
ACN 118 844 885 in accordance with section 127  
of the Corporations Act 2001 (Cth):

[Redacted Signature]

Signature of Director

Jillian Edwards  
Name of Director

[Redacted Signature]

Signature of Director/Company Secretary

MARTIN SHANAHAN  
Name of Director/Company Secretary

SIGNED by JILLIAN EDWARDS  
in the presence of:

[Redacted Signature]

Signature of Witness

[Redacted Name]

Print name

[Redacted Signature]

Signature of Jillian Edwards

SIGNED by MARTIN PATRICK SHANAHAN  
in the presence of:

[Redacted Signature]

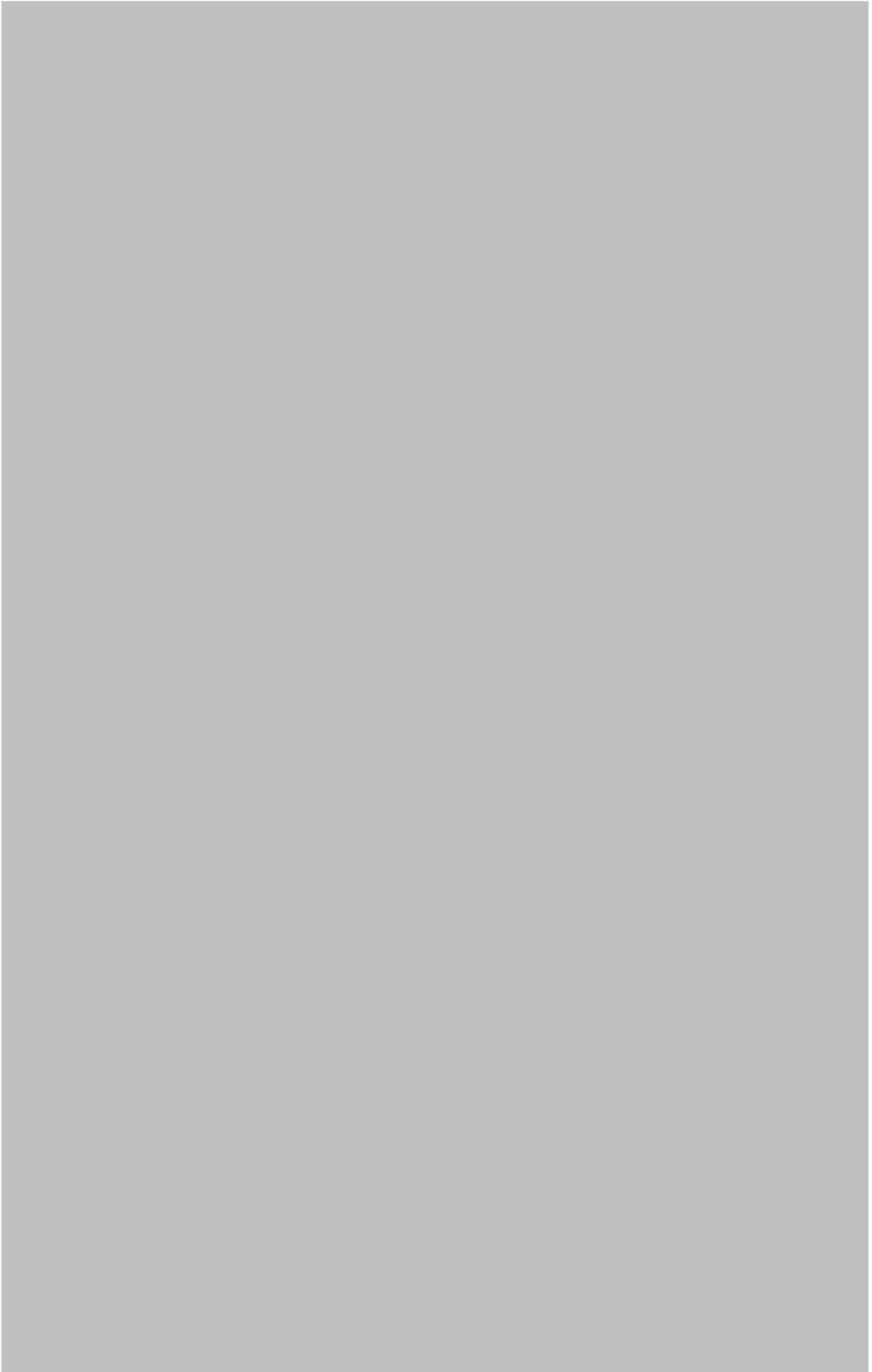
Signature of Witness

[Redacted Name]

Print name

[Redacted Signature]

Signature of Martin Patrick Shanahan





**ANNEXURE B**  
**Equipment**



## Caveat Brief

# COMPLETED

Ref: BM15/1761

To Minister for Urban Renewal  
Cc: Head of Service

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From Chief Executive Officer, Land Development Agency

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Subject West Basin – Strategic Acquisition

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- As you would be aware, Ms Jillian Edwards and Mr Martin Shanahan are the Crown lessees and operate a bicycle hire business on Block 13 Section 33 Acton. The land will eventually be required by the government for a future stage in the redevelopment of West Basin.
- The Land Development Agency (LDA) has attempted to negotiate a strategic purchase of Block 13 with Ms Edwards and Mr Shanahan since mid-2014. A strategic (rather than compulsory) acquisition has been the preference as it avoids the complicated, prescriptive and adversarial nature of compulsory acquisition.

- As necessary prerequisites to valuing the business and Crown lease and responding to their offer, Ms Edwards and Mr Shanahan have denied valuers access to their premises, refused to provide financial records or to meet with the LDA to discuss relocation. Valuations have nevertheless been completed without the cooperation of Ms Edwards or Mr Shanahan, based on a set of older trading figures provided by the Planning and Land Authority.

- Following discussions in July 2015, Ms Edwards and Mr Shanahan have since agreed to meet with me in August 2015. I have asked that the necessary valuations and advice be prepared as a basis to discuss a possible offer of compensation and relocation. The most suitable locations identified for relocation included a new building as part of the redevelopment of the West Basin foreshore, or an addition to the proposed Canberra Visitors Centre (at the National Capital Exhibition). The Director of the National Museum of Australia (NMA – ) has also provided written support for the relocation of Mr Spokes to a site adjacent to the NMA. At this early stage however, is unable to provide a precise location.

- [REDACTED]
- [REDACTED], the preference remains to negotiate a strategic acquisition of Mr Spokes and the Crown lease, or relocation (with an element of compensation) and I will enter discussions with that objective in mind. The process will need to align with the policy, risk and value for money principles set out in the Planning and Development Land Acquisition Policy Framework. This is considered a less prescriptive process than compulsory acquisition.
- If strategic acquisition is not successful and relocation is rejected, then it remains to trigger the process of compulsory acquisition (this would be done by the Director General of the Environment and Planning Directorate) which would follow a strict legal framework outside the influence of the LDA or other agency. Alternatively, and my recommendation, the redevelopment of West Basin can proceed around Mr Spokes and the land acquired at a later stage, or when the Crown lease expires (March 2027).
- Separately, on 30 July 2015 I made an offer of \$0.5 million to the operators of Lake Burley Griffin Boat Hire (Mr and Mrs Jim and Cony Seears) to acquire their business interests. Mr Seears is seeking professional advice and I expect to be able to advise further by the end of August 2015. The Crown lessee of the block (Block 16 Section 33 Acton – Dobel Boat Hire Pty Ltd) is currently considering an offer to relocate to new premises on the West Basin Waterfront to establish a restaurant and possibly function centre. If accepted, the new arrangements would mean some compensation for business interruption and a long term tenancy arrangement in keeping with the vision for the waterfront.

David Dawes  
7 August 2015

**From:** [Wilson, Chris](#)  
**To:** [Santosuosso, Daniel](#); [Round, Jessica](#); [Howell, Elizabeth](#)  
**Subject:** Acton purchases  
**Date:** Friday, 5 May 2017 4:48:08 PM

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All,

I've searched through my records (and David's) and there is no single approval document related to the Acton purchases. The territory (through the City to the Lake team) made contact with the owners of the boat and bike hire businesses in early 2014. At that stage, discussion centred around alerting them to the development that would be happening in the area and how this may impact their businesses. This discussion included future opportunities to set up in the new pavilions.

The owners expressed an interest in selling their properties/business, so negotiations started down that path. The negotiations took a long time and were led by CTTL with DD being kept informed. [REDACTED] Once terms were finally agreed, the sales went through.

Because of the way this played out there wasn't a single 'decision point' on seeking to acquire the businesses, so we can't put a date on that. We will have a date that the contracts were signed, but I'm not sure that's the info we're after.

Let me know your thoughts on the best way to reflect this in the paperwork.

Chris

Chris Wilson | Director | Office of the Director-General, Economic Development and Chief Executive Officer, Land Development Agency  
Chief Minister, Treasury and Economic Development Directorate | Land Development Agency | ACT Government  
☎ 02 6205 2697 | Fax: 02 6205 0386 | ✉ [chris.wilson@act.gov.au](mailto:chris.wilson@act.gov.au)  
Level 7 TransACT House, 470 Northbourne Ave, Dickson | GPO Box 158 Canberra ACT 2601



		Total payment per statement GST		Net amount
Acton B16 S33 (Boat hire)	Land	1,116,004	100,000	<b>1,016,004</b>
	Goodwill and equipment	632,500	57500	575,000
<b>Bike hire</b>				
	Land	1,208,313	110,000	1,098,313 Per settlement statement
		47,300	4300	43,000 Per settlement statement
		180		180 Per settlement statement
		1,573		1,573 Per settlement statement
		3,388	308	3,080 Per settlement statement
		1,049		1,049 Per settlement statement
		1,650	150	1,500 Per settlement statement
	Access Canberra	260		260
		<b>3,012,217</b>	<b>114,758</b>	<b>1,148,955</b>
<b>Total Land</b>				<b>2,164,959</b>

Mr Spokes Bike Hire



ABN: 70783 414557

ACN: 118 844 885

**To: Land Development Agency**  
**ABN 204 1992 5579**  
**Level 6, 470 Northbourne Ave**  
**Dickson ACT 2602**

**Attn: David Gray (ACT Govt Solicitor)**

**Mr Spokes Bike Hire**  
**TAX INVOICE: 2016002**  
**Land Development Agency**  
**Invoice Date: 1 Feb 2016**

01/02/2016	Sale of Business Assets	\$1.00
	GST	.10
<b>TOTAL</b>		<b>\$1.10</b>

**PAYMENT METHODS**

**In Person:** On day of settlement by cheque.

**By Direct Credit (please send remittance to above address or email):**



## AUSTRALIAN CAPITAL TERRITORY

**TITLE SEARCH**

Acton Section 33 Block 16 on Deposited Plan 7738  
Lease commenced on 26/08/2008, granted on 01/10/2008, term of 20 years  
Area is 142 square metres or thereabouts

**Sole Proprietor:**

Dobel Boat Hire Pty Limited  
of 4 Harcourt Street, Weetangera ACT 2614

<b>Registered Date</b>	<b>Dealing Number</b>	<b>Description</b>
		Original title is <b>Volume 1866 Folio 11</b> Purpose Clause: Refer Crown Lease Concessional Lease: Current Restriction on Transfer/Assignment: Applies For Term Of Lease
01/08/2003	1329692	Caveat by JIM SEEARS & CONY SEEARS continued by S.91A/91B/91C Land Titles Act 1925
02/03/2009	1607762	Application to Register a Crown Lease (DCL1607761)
09/07/2013	1870038	Caveat by Jim Seears and Cony Seears <b>End of interests</b>



# DEED OF SURRENDER OF CROWN LEASE

**Dated** \_\_\_\_\_ 2015

**Parties**

**AUSTRALIAN CAPITAL TERRITORY**

**THE PLANNING AND LAND  
AUTHORITY**

**JE & MS PTY LTD AS TRUSTEE FOR  
THE JE & MS TRUST**  
**ABN 70 783 414 557**

**Prepared by**

ACT Government Solicitor  
Level 6, 12 Moore Street  
Canberra ACT 2601  
Australia  
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Ref: 626515:KA

**Version** Draft 08/12/2015

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**PARTIES:** **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Chief Minister, Treasury and Economic Development Directorate.

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**JE & MS PTY LTD ACN 118 844 885 in its own capacity and as trustee for the JE & MS TRUST ABN 70 783 414 557** of [REDACTED]

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## BACKGROUND

- A. Pursuant to the Lease, the Authority (on behalf of the Commonwealth of Australia) leases the Land to the Lessee.
- B. The Lessee has agreed to surrender the Lease with effect from the Surrender Date.
- C. The parties have otherwise agreed to the surrender of the Lease on the terms of this Deed.

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**IT IS AGREED** by the parties as follows.

## 1. Interpretation

### 1.1 Definitions

The following definitions apply in this Deed, unless the context otherwise requires. Additional definitions also appear in the Reference Schedule.

**ACT Building Legislation** means the *Building Act 1972* (ACT), the *Building Act 2004* (ACT), the *City Area Leases Act 1936* (ACT), the *Leases Act 1918* (ACT), the *Leases (Special Purposes) Act 1925* (ACT), the *Buildings (Design and Siting) Act 1964* (ACT), the *Land (Planning and Environment) Act 1991* (ACT), the *Planning and Development Act 2007* (ACT), the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) and the *National Lands Ordinance 1989* (Cth) (and any laws having effect by virtue of that Ordinance), and regulations made pursuant to that legislation, and their predecessors and substitutes.

**Authorised Officer** means a director or secretary of a party or any other person appointed by a party to act as an

authorised officer for the purposes of this Deed.

<b>Business Day</b>	means a day on which banks are open for general banking business in the capital city of the State or Territory in which the Land is situated (not being a Saturday, Sunday or public holiday in that city).
<b>Claim</b>	means a claim, notice, demand, action, proceeding, litigation, investigation or judgment however arising, whether present or future, actual or contingent, and whether involving a third party or a party to this Deed.
<b>Completion</b>	means completion of the surrender of the Lease in accordance with this Deed.
<b>Costs</b>	includes costs, charges and expenses, including those incurred in connection with advisers.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>Deed</b>	means this deed and all schedules and attachments annexed to it.
<b>Goods</b>	means plant, equipment, chattels, fixtures and fittings on the Land.
<b>GST Act</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Land Charges</b>	means general rates and water and sewerage rates.
<b>Planning Act</b>	means the <i>Planning and Development Act 2007</i> (ACT).
<b>Property</b>	means the Lease, the Goods and the Land.
<b>Reference Schedule</b>	means the reference schedule contained in Schedule 1.
<b>Stakeholder</b>	means <span style="background-color: #cccccc; display: inline-block; width: 100px; height: 1em; vertical-align: middle;"></span> .
<b>Territory</b>	means:  (a) when used in a geographical sense, the Australian Capital Territory; and  (b) when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-</i>

## **1.1 References to certain general terms**

Unless the contrary intention appears in this Deed:

- (1) a reference to a document (including this Deed) includes any variation or replacement of it;
- (2) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Deed;
- (3) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;
- (4) the word “law” includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re enactments or replacements of any of them);
- (5) the singular includes the plural and vice versa;
- (6) the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;
- (7) a reference to a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (8) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;
- (9) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (10) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (11) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (12) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (13) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (14) a day is to be interpreted as the period of time commencing at midnight and



ending 24 hours later;

- (15) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (16) the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (17) if an act under this Deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (18) a reference to time is a reference to time in the State or Territory in which the Land is situated; and
- (19) a reference to anything (including any amount) is a reference to the whole and each part of it.

## **1.2 Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed.

## **2. Consideration**

### **2.1 Valuable Consideration**

Each party acknowledges entering into this Deed and incurring obligations and giving rights under this Deed for valuable consideration received from each other party.

## **3. Agreement to surrender Lease**

### **3.1 Surrender of Lease**

With effect from the Surrender Date, the Lessee as beneficial owner agrees to surrender to the Authority free of encumbrances all the Lessee’s estate, title and interest in the Lease and the Land.

### **3.2 Acceptance of surrender of Lease**

The Authority agrees to accept the surrender of the Lease from the Surrender Date under section 293 of the Planning Act.

### **3.3 Lessee Acknowledgement**

The Lessee:

- (1) acknowledges that the Surrender Sum and all amounts payable by the Territory under clauses 3.7 (“Deposit”), 3.10 (“Obligations on Completion”) and 3.11

(“Adjustments”), constitute payment by the Territory and the Authority of every amount payable to the Lessee upon surrender of the Lease, including for the improvements on the Land, in particular any amounts due to be paid to the Lessee under sections 291 and 293 of the Planning Act; and

- (2) agrees not to make any Claim for, or take any action against, the Territory or the Authority to recover any monies in addition to those amounts regarding the surrender of the Lease, including any Claim under sections 291 or 293 of the Planning Act.

### **3.4 Lessee’s goods and improvements**

The Goods located on the Land at Completion become the property of the Territory except any which are not owned by the Lessee.

### **3.5 No warranties by Lessee**

The Lessee does not make any representation or warranty in relation to the condition of the Land and the Goods, and the Territory accepts them in their state of repair and condition at Completion.

### **3.6 Condition and use**

The parties agree that the Lease is surrendered subject to the terms in **Schedule 3**.

### **3.7 Deposit**

On the Deposit Date:

- (1) The Territory must pay the Deposit to the Stakeholder; and
- (2) The Lessee must provide the Territory with the forms for the surrender of the Lease, executed by the Lessee and any other document or consent required to register the forms of surrender.

### **3.8 Date for Completion**

The parties will complete the surrender of the Lease on or before the Surrender Date.

### **3.9 Place and time for Completion**

Unless otherwise agreed Completion is to take place:

- (1) at the ACT Settlement Rooms; and
- (2) at a time before 3.00pm nominated by the Territory.

### **3.10 Obligations on Completion**

On Completion:

- (1) provided the Lessee has complied with its obligations under clause 3.7(2), the Territory must provide the Lessee with a copy of the forms for surrender of the

Lease executed by the Territory and endorsed by the Authority;

- (2) the Territory must pay the Surrender Sum (minus the Deposit paid) to the Lessee:
  - (a) by cheque drawn on the Territory's bank account; and
  - (b) as the Lessee or the Stakeholder directs; and
- (3) the Lessee must pay all rent due to be paid under the Lease to the Authority as at the Completion date.

### **3.11 Adjustments**

The Territory and the Lessee agree to make all necessary adjustments of amounts payable by the Lessee for Land Charges, on the Surrender Date as if the Territory were responsible for Land Charges arising after the Surrender Date. If an amount cannot be adjusted because it is not known, the Territory and the Lessee agree to make the adjustment within 14 days after the amount is known.

### **3.12 Release**

- (1) The Territory and the Authority agrees to release and forever discharge the Lessee from all Claims and Costs concerning the Lessee's obligations under the Lease arising on and from the Surrender Date.
- (2) The Lessee agrees to release and forever discharge the Territory and the Authority from all Claims and Costs concerning the Lease, the use or occupation of the Premises or any incidental matter, arising up to the Surrender Date.

### **3.13 Obligations after Completion**

The Lessee agrees to provide all reasonable assistance to enable the Territory to register the surrender of the Lease after completion, including answering any requisitions raised by the Land Titles Office or the Authority.

## **4. Parties' Costs**

The parties agree to bear their own costs in connection with this Deed and any document or matter in connection with it with the exception of the Lessee's legal fees which will be paid by the Territory on Completion up to a maximum of \$43,000 plus GST on the provision of a valid tax invoice to the Territory.

## **5. GST**

### **5.1 GST definitions**

In this clause:

**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 GST 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.

## **5.2 Payment of GST**

A party making Payment to another party for a Taxable Supply under this Deed 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.

## **5.3 Reimbursements**

When calculating the amount of:

- (a) any reimbursement to a party under this Deed; and
- (b) the indemnification under this Deed 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.

## **5.4 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.

# **6. Notices and other communications**

## **6.1 Form**

Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing, signed by the sender (if an individual) or an Authorised Officer, or the solicitor, of the sender and marked for the attention of the person identified in the Reference Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

## **6.2 Delivery**

Communications must be:

- (1) left at the address set out or referred to in the Reference Schedule; or
- (2) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Reference Schedule; or
- (3) sent by fax to the fax number set out or referred to in the Reference Schedule; or

(4) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or changed fax number, then communications must be to that address or number.

### **6.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 6.4 (“When taken to be received”) (whichever happens first) unless a later time is specified.

### **6.4 When taken to be received**

Communications are taken to be received:

- (1) if left at the address set out or referred to in the Reference Schedule, on that day;
- (2) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (3) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

### **6.5 Receipt outside business hours**

Despite clauses 6.3 (“When effective”) and 6.4 (“When taken to be received”), if communications are received or taken to be received under clause 6.4 after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

## **7. General**

### **7.1 Payments**

The parties agree to make payments under this Deed in full without set-off (including equitable set-off) or counterclaim and without any deduction.

### **7.2 No merger**

The warranties, undertakings and indemnities in this Deed do not merge on the Surrender Date.

### **7.3 Variation and waiver**

A provision of this Deed, or a right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

### **7.4 Confidentiality**

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of this Deed except:

- (1) to any person in connection with an exercise of rights or a dealing with rights or obligations under the Lease or this Deed; or
- (2) to officers, employees, legal and other advisers and auditors of the parties; or
- (3) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (4) as required by any law or stock exchange; or
- (5) as required by law; or
- (6) in the case of the Territory and the Authority, to any Minister of the Territory or to the Legislative Assembly or any of its bodies or committees; or
- (7) as required to give effect to the surrender of the Lease.

Each party consents to disclosures made in accordance with this clause 7.4.

#### **7.5 Counterparts**

This Deed may consist of a number of copies, each signed by one or more parties to this Deed. If so, the signed copies are treated as making up the one document.

#### **7.6 Entire agreement**

This Deed and the Business Agreement constitutes the entire agreement of the parties about the surrender of the Lease and supersedes all previous agreements, understandings and negotiations. The Territory and the Authority agree that in entering into this Deed they have not relied on any representation or warranty about its subject matter except those included in this Deed.

#### **7.7 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed any part of it.

#### **7.8 Further assurances**

Each party agrees, at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this Deed and the transactions contemplated by it, including by signing documents.


#### **7.9 Interdependency with Business Agreement**

- (1) This Deed is interdependent and conditional upon the Sale of Business Assets to be entered into on or about the date of this Deed (**Business Agreement**).
- (2) If either party breaches any provisions of this Deed that will constitute a breach of the Business Agreement.
- (3) If either party breaches any provision of the Business Agreement that will

constitute a breach of this Deed.

- (4) If either party is entitled to rescind or terminate this Deed then that party will be entitled to rescind or terminate (as the case may be) the Business Agreement.
- (5) If either party is entitled to rescind or terminate the Business Agreement then that party will be entitled to rescind or terminate (as the case may be) this Deed.
- (6) Completion of this Deed must take place simultaneously with the Business Agreement.

## SCHEDULE 1 – Reference Schedule

- Item 1:** Lessee: JE & MS Pty Ltd ACN 118 844 885 in its own capacity and as trustee for JE & MS Trust  
ABN 70 783 414 557
- Item 2:** Land: Block 13 Section 33 Division of Acton
- Item 3:** Lease: Lease granted pursuant to the *Land (Planning and Environment) Act 1991* (ACT) by the Commonwealth to the Lessee over the Land and entered in register Book Volume 1627 Folio 69, a copy of which is contained in Schedule 2.
- Item 4:** Surrender Date:
- Item 5:** Deposit: \$10 (receipt of which is acknowledged).
- Item 6:** Deposit Date: the date of this Deed.
- Item 7:** Surrender Sum: \$1,099,999.00(excluding GST) comprising:
- (a) all statutory compensation payable under sections 291 and 293 of the Planning Act; and
  - (b) consideration for the surrender of the Crown lease.
- Item 8:** Governing law: Australian Capital Territory
- Item 9:** Address for Notices: **Territory:**  
Chief Minister, Treasury and Economic  
Development Directorate  
Ground Floor, TransACT House  
470 Northbourne Avenue  
Dickson ACT 2602
- Contact Officer: Nicholas Holt
- Lessee:**  
JE & MS Pty Ltd  

- Contact Officer:
- Authority:**  
Dame Pattie Menzies House  
16 Challis Street  
Dickson ACT 2602



Contact Officer: Maggie Chapman

## **SCHEDULE 2 – Crown lease**

## **SCHEDULE 3 - Condition and use terms**

### **Item 1 As is, where is**

The Territory and the Authority acknowledge that the Lessee surrenders the Property on an “as is, where is” basis, in its present state and condition, including:

- (1) any legal and physical defects; and
- (2) any matter referred to in this Deed.

### **Item 2 Inspection**

The Territory confirms it:

- (1) is satisfied as to the nature, quality, condition and state of repair of the Property; and
- (2) accepts the Property as it is including all defects (latent or patent) including any matter referred to in this Deed; and
- (3) is satisfied about the purposes for which the Property may be used and about all restrictions and prohibitions on its use and development.

### **Item 3 Due Diligence**

The Territory acknowledges and agrees that:

- (1) before entering into this Deed, the Lessee gave the Territory a reasonable opportunity to inspect the Property; and
- (2) the Territory has entered into this Deed on the basis that it has carried out, or had the opportunity to carry out, its due diligence of the Property.

### **Item 4 Territory has satisfied itself about specific matters**

The Territory acknowledges that it has satisfied itself in connection with the matters arising from its due diligence, including in connection with and enquiries about:

- (1) the title to the Property, including easements, restrictions on use and other encumbrances which benefit or burden the Property; and
- (2) the Lessee’s title to the Property and its rights and obligations in connection with it, including the terms of the Lease; and
- (3) the accuracy of the description of the Property; and
- (4) the matters referred to in Item 1 (“As is, where is”) and Item 2 (“Inspection”) of this schedule; and

- (5) the use, fitness or suitability of the Property for any purpose; and
- (6) the means of access to the Property; and
- (7) whether the walls or fences on the land that should not be on the boundaries of the Property, as the case may be, are not and the existence of any encroachments onto the Property or by the Property onto adjacent land (and whether the encroachments are subject to any registered easement or other agreement burdening or benefitting the Property); and
- (8) whether the Property complies with any laws and requirements of Authorities affecting the Property (including any use) and any non-compliance including the ACT Building Legislation; and
- (9) the existence or otherwise of any requirements of any Authority in connection with the Property, including resumptions, road dedications, road widenings and similar things; and
- (10) the existence or otherwise of necessary consents, approvals, licences or requirements of Authorities in connection with the Property (including its use) and any non-compliance with those consents, approvals, licences or requirements; and
- (11) whether there are any notices or orders by any Authority, including a notice or order requiring work to be done or money spent in connection with the Property; and
- (12) the existence of any claim for an interest in the Property under the *Native Title Act 1993* (Cth), the *Native Title Act 1994* (ACT) or any other native title law; and
- (13) the existence of easements or other rights in respect of a service for the Property (including air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water) which is a joint service or which passes through another property, or any service for another property which passes through the Property; and
- (14) the condition or existence or non-existence of services; and
- (15) any approval, application for an approval or order under any law; and
- (16) the terms and conditions of the Lease and any non-compliance with those terms and conditions; and
- (17) the ownership or location of any fuel storage tank or facility.

## **Item 5 No claims or requisitions**

The Territory accepts the surrender of the Lease subject to the matters referred to, disclosed or described under this Deed.





# DEED OF SURRENDER OF CROWN LEASE

**Dated** \_\_\_\_\_ 2015

**Parties**

**AUSTRALIAN CAPITAL TERRITORY**

**THE PLANNING AND LAND  
AUTHORITY**

**JE & MS PTY LTD AS TRUSTEE FOR  
THE JE & MS TRUST [ACN 118 844 885](#)  
ABN 70 783 414 557**

**Prepared by**

ACT Government Solicitor  
Level 6, 12 Moore Street  
Canberra ACT 2601  
Australia  
Ph: (02) 6205 3494  
Fax: (02) 6207 0650  
Ref: 626515:KA

**Version** Draft 08/12/2015

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<b>Deed</b>	means this deed and all schedules and attachments annexed to it.
<b><u>Deposit Date?</u></b>	means plant, equipment, chattels, fixtures and fittings on the Land.
<b>Goods</b>	
<b>GST Act</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b><u>Land?</u></b>	
<b>Land Charges</b>	means general rates and water and sewerage rates.
<b><u>Lease?</u></b>	
<b>Planning Act</b>	means the <i>Planning and Development Act 2007</i> (ACT).
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<b><u>Surrender Sum?</u></b>	means <span style="background-color: #cccccc; display: inline-block; width: 100px; height: 1em; vertical-align: middle;"></span>
<b>Stakeholder</b>	
<b>Territory</b>	means: <ul style="list-style-type: none"> <li>(a) when used in a geographical sense, the Australian Capital Territory; and</li> <li>(b) when used in any other sense, the body politic established by section 7 of the</li> </ul>

*Australian Capital Territory (Self-Government) Act 1988* (Cth).

**1.2**  
**4.2**

**References to certain general terms**

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- (4) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re enactments or replacements of any of them);
- (5) the singular includes the plural and vice versa;
- (6) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;
- (7) a reference to a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (8) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;
- (9) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (10) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (11) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (12) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (13) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (14) a day is to be interpreted as the period of time commencing at midnight and

ending 24 hours later;

- (15) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (16) the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (17) if an act under this Deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (18) a reference to time is a reference to time in the State or Territory in which the Land is situated; and
- (19) a reference to anything (including any amount) is a reference to the whole and each part of it.

### 1.3

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## **4.3 Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed.

## **2. Consideration**

### **2.1 Valuable Consideration**

Each party acknowledges entering into this Deed and incurring obligations and giving rights under this Deed for valuable consideration received from each other party.

## **3. Agreement to surrender Lease**

### **3.1 Surrender of Lease**

With effect from the Surrender Date, the Lessee as beneficial owner agrees to surrender to the Authority free of encumbrances all the Lessee's estate, title and interest in the Lease and the Land.

### **3.2 Acceptance of surrender of Lease**

The Authority agrees to accept the surrender of the Lease from the Surrender Date under section 293 of the Planning Act.

### **3.3 Lessee Acknowledgement**

The Lessee:

- (1) acknowledges that the Surrender Sum and all amounts payable by the Territory under clauses 3.7 (“Deposit”), 3.10 (“Obligations on Completion”) and 3.11 (“Adjustments”), constitute payment by the Territory and the Authority of every amount payable to the Lessee upon surrender of the Lease, including for the improvements on the Land, in particular any amounts due to be paid to the Lessee under sections 291 and 293 of the Planning Act; and
- (2) agrees not to make any Claim for, or take any action against, the Territory or the Authority to recover any monies in addition to those amounts regarding the surrender of the Lease, including any Claim under sections 291 or 293 of the Planning Act.

#### **3.4 Lessee’s goods and improvements**

The Goods located on the Land at Completion become the property of the Territory except any which are not owned by the Lessee.

#### **3.5 No warranties by Lessee**

The Lessee does not make any representation or warranty in relation to the condition of the Land and the Goods, and the Territory accepts them in their state of repair and condition at Completion.

#### **3.6 Condition and use**

The parties agree that the Lease is surrendered subject to the terms in **Schedule 3**.

#### **3.7 Deposit**

On the Deposit Date:

- (1) The Territory must pay the Deposit to the Stakeholder; and
- (2) The Lessee must provide the Territory with the forms for the surrender of the Lease, executed by the Lessee and any other document or consent required to register the forms of surrender to be held in escrow by the Territory pending completion?

Commented [mc1]: Amended for consistency with Deed for Block 16

#### **3.8 Date for Completion**

The parties will complete the surrender of the Lease on or before the Surrender Date.

#### **3.9 Place and time for Completion**

Unless otherwise agreed Completion is to take place:

- (1) at the ACT Settlement Rooms being the rooms designated for property settlements located at Level 1, Farrell Place, Canberra; and
- (2) at a time before 3.00pm nominated by the Territory.

Commented [mc2]: Amended for consistency with Deed for Block 16

#### **3.10 Obligations on Completion**

On Completion:

- (1) provided the Lessee has complied with its obligations under clause 3.7(2), the Territory must provide the Lessee with a copy of the forms for surrender of the Lease executed by the Territory and endorsed by the Authority;
- (2) the Territory must pay the Surrender Sum (minus the Deposit paid) to the Lessee:
  - (a) by cheque drawn on the Territory's bank account; and
  - (b) as the Lessee or the Stakeholder directs; and
- (3) the Lessee must pay all rent due to be paid under the Lease to the Authority as at the Completion date.

### **3.11 Adjustments**

The Territory and the Lessee agree to make all necessary adjustments of amounts payable by the Lessee for Land Charges, on the Surrender Date as if the Territory were responsible for Land Charges arising after the Surrender Date. If an amount cannot be adjusted because it is not known, the Territory and the Lessee agree to make the adjustment within 14 days after the amount is known.

### **3.12 Release**

- (1) The Territory and the Authority agrees to release and forever discharge the Lessee from all Claims and Costs concerning the Lessee's obligations under the Lease arising on and from the Surrender Date.
- (2) The Lessee agrees to release and forever discharge the Territory and the Authority from all Claims and Costs concerning the Lease, the use or occupation of the Premises or any incidental matter, arising up to the Surrender Date.

### **3.13 Obligations after Completion**

The Lessee agrees to provide all reasonable assistance to enable the Territory to register the surrender of the Lease after completion, including answering any requisitions raised by [Access Canberra \(the Land Titles and Rental Bonds\) Office](#) or the Authority.

## **4. Parties' Costs**

The parties agree to bear their own costs in connection with this Deed and any document or matter in connection with it with the exception of the Lessee's legal fees which will be paid by the Territory on Completion up to a maximum of \$43,000 plus GST on the provision of a valid tax invoice to the Territory.

## **5. GST**

### **5.1 GST definitions**

In this clause:

**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 GST 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.

## **5.2 Payment of GST**

A party making Payment to another party for a Taxable Supply under this Deed 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.

## **5.3 Reimbursements**

When calculating the amount of:

- (a) any reimbursement to a party under this Deed; and
- (b) the indemnification under this Deed 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.

## **5.4 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.

## **6. Notices and other communications**

### **6.1 Form**

Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing, signed by the sender (if an individual) or an Authorised Officer, or the solicitor, of the sender and marked for the attention of the person identified in the Reference Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

### **6.2 Delivery**

Communications must be:

- (1) left at the address set out or referred to in the Reference Schedule; or
- (2) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or

referred to in the Reference Schedule; or

- (3) sent by fax to the fax number set out or referred to in the Reference Schedule; or
- (4) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or changed fax number, then communications must be to that address or number.

### **6.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 6.4 (“When taken to be received”) (whichever happens first) unless a later time is specified.

### **6.4 When taken to be received**

Communications are taken to be received:

- (1) if left at the address set out or referred to in the Reference Schedule, on that day;
- (2) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (3) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

### **6.5 Receipt outside business hours**

Despite clauses 6.3 (“When effective”) and 6.4 (“When taken to be received”), if communications are received or taken to be received under clause 6.4 after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

## **7. General**

### **7.1 Payments**

The parties agree to make payments under this Deed in full without set-off (including equitable set-off) or counterclaim and without any deduction.

### **7.2 No merger**

The warranties, undertakings and indemnities in this Deed do not merge on the Surrender Date.

### **7.3 Variation and waiver**

A provision of this Deed, or a right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

#### 7.4 Confidentiality

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of this Deed) except:

- (1) to any person in connection with an exercise of rights or a dealing with rights or obligations under the Lease or this Deed; or
- (2) to officers, employees, legal and other advisers and auditors of the parties; or
- (3) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (4) as required by any law or stock exchange; or
- (5) as required by law; or
- (6) in the case of the Territory and the Authority, to any Minister of the Territory or to the Legislative Assembly or any of its bodies or committees; or
- (7) as required to give effect to the surrender of the Lease.

Each party consents to disclosures made in accordance with this clause 7.4.

Commented [mc3]: Statement inconsistent with 7.4 in Deed for Block 16

#### 7.5 Counterparts

This Deed may consist of a number of copies, each signed by one or more parties to this Deed. If so, the signed copies are treated as making up the one document.

#### 7.6 Entire agreement

This Deed and the Business Agreement constitutes the entire agreement of the parties about the surrender of the Lease and supersedes all previous agreements, understandings and negotiations. The Territory and the Authority agree that in entering into this Deed they have not relied on any representation or warranty about its subject matter except those included in this Deed.

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#### 7.7 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed any part of it.

#### 7.8 Further assurances

Each party agrees, at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this Deed and the transactions contemplated by it, including by signing documents.

#### 7.9 Interdependency with Business Agreement

- (1) This Deed is interdependent and conditional upon the Sale of Business Assets to be entered into on or about the date of this Deed (Business Agreement).



- (2) If either party breaches any provisions of this Deed that will constitute a breach of the Business Agreement.
- (3) If either party breaches any provision of the Business Agreement that will constitute a breach of this Deed.
- (4) If either party is entitled to rescind or terminate this Deed then that party will be entitled to rescind or terminate (as the case may be) the Business Agreement.
- (5) If either party is entitled to rescind or terminate the Business Agreement then that party will be entitled to rescind or terminate (as the case may be) this Deed.
- (6) Completion of this Deed must take place simultaneously with the Business Agreement.

## SCHEDULE 1 – Reference Schedule

- Item 1:** Lessee: JE & MS Pty Ltd ACN 118 844 885 in its own capacity and as trustee for JE & MS Trust ABN 70 783 414 557
- Item 2:** Land: Block 13 Section 33 Division of Acton
- Item 3:** Lease: Lease granted pursuant to the *Land (Planning and Environment) Act 1991* (ACT) by the Commonwealth to the Lessee over the Land and entered in register Book Volume 1627 Folio 69, a copy of which is contained in Schedule 2.
- Item 4:** Surrender Date:
- Item 5:** Deposit: \$10 (receipt of which is acknowledged).
- Item 6:** Deposit Date: the date of this Deed.
- Item 7:** Surrender Sum: \$1,099,999.00 (excluding GST) comprising:
- (a) all statutory compensation payable under sections 291 and 293 of the Planning Act; and
  - (b) consideration for the surrender of the Crown lease.
- Item 8:** Governing law: Australian Capital Territory
- Item 9:** Address for Notices: **Territory:**  
Chief Minister, Treasury and Economic Development Directorate  
Ground Floor, TransACT House  
470 Northbourne Avenue  
Dickson ACT 2602
- Contact Officer: Nicholas Holt
- Lessee:**  
JE & MS Pty Ltd  
[REDACTED]
- Contact Officer: [insert or delete](#)
- Authority:**  
Dame Pattie Menzies House  
16 Challis Street  
Dickson ACT 2602

Contact Officer: Maggie Chapman

**SCHEDULE 2 – Crown lease**

## **SCHEDULE 3 - Condition and use terms**

### **Item 1 As is, where is**

The Territory and the Authority acknowledge that the Lessee surrenders the Property on an “as is, where is” basis, in its present state and condition, including:

- (1) any legal and physical defects; and
- (2) any matter referred to in this Deed.

### **Item 2 Inspection**

The Territory confirms it:

- (1) is satisfied as to the nature, quality, condition and state of repair of the Property; and
- (2) accepts the Property as it is including all defects (latent or patent) including any matter referred to in this Deed; and
- (3) is satisfied about the purposes for which the Property may be used and about all restrictions and prohibitions on its use and development.

### **Item 3 Due Diligence**

The Territory acknowledges and agrees that:

- (1) before entering into this Deed, the Lessee gave the Territory a reasonable opportunity to inspect the Property; and
- (2) the Territory has entered into this Deed on the basis that it has carried out, or had the opportunity to carry out, its due diligence of the Property.

### **Item 4 Territory has satisfied itself about specific matters**

The Territory acknowledges that it has satisfied itself in connection with the matters arising from its due diligence, including in connection with and enquiries about:

- (1) the title to the Property, including easements, restrictions on use and other encumbrances which benefit or burden the Property; and
- (2) the Lessee’s title to the Property and its rights and obligations in connection with it, including the terms of the Lease; and
- (3) the accuracy of the description of the Property; and
- (4) the matters referred to in Item 1 (“As is, where is”) and Item 2 (“Inspection”) of this schedule; and

- (5) the use, fitness or suitability of the Property for any purpose; and
- (6) the means of access to the Property; and
- (7) whether the walls or fences on the land that should not be on the boundaries of the Property, as the case may be, are not and the existence of any encroachments onto the Property or by the Property onto adjacent land (and whether the encroachments are subject to any registered easement or other agreement burdening or benefitting the Property); and
- (8) whether the Property complies with any laws and requirements of Authorities affecting the Property (including any use) and any non-compliance including the ACT Building Legislation; and
- (9) the existence or otherwise of any requirements of any Authority in connection with the Property, including resumptions, road dedications, road widenings and similar things; and
- (10) the existence or otherwise of necessary consents, approvals, licences or requirements of Authorities in connection with the Property (including its use) and any non-compliance with those consents, approvals, licences or requirements; and
- (11) whether there are any notices or orders by any Authority, including a notice or order requiring work to be done or money spent in connection with the Property; and
- (12) the existence of any claim for an interest in the Property under the *Native Title Act 1993* (Cth), the *Native Title Act 1994* (ACT) or any other native title law; and
- (13) the existence of easements or other rights in respect of a service for the Property (including air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water) which is a joint service or which passes through another property, or any service for another property which passes through the Property; and
- (14) the condition or existence or non-existence of services; and
- (15) any approval, application for an approval or order under any law; and
- (16) the terms and conditions of the Lease and any non-compliance with those terms and conditions; and
- (17) the ownership or location of any fuel storage tank or facility.

## **Item 5 No claims or requisitions**

The Territory accepts the surrender of the Lease subject to the matters referred to, disclosed or described under this Deed.

**SIGNED AS A DEED ON**.....2015

**SIGNED** for and on behalf of the )  
**AUSTRALIAN CAPITAL** ) .....  
**TERRITORY** in the presence of: ) Signature of Territory delegate

.....  
Signature of witness ) Print name

.....  
Print name

**EXECUTED** by the authorised )  
representative for **THE PLANNING** )  
**AND LAND AUTHORITY** in the ) .....  
presence of: ) By executing this Deed the  
 ) signatory warrants that the signatory  
 ) is duly authorised to execute this  
..... ) Deed on behalf of The Planning and  
Signature of witness ) Land Authority

..... )  
Name of witness ) Print name

**EXECUTED** by the **JE & MS Pty** )  
**Ltd ACN 118 844 885** in )  
accordance with section 127 of the )  
Corporations Act 2001: )

..... )  
Signature of Director ) Signature of Director/Company  
 ) Secretary

..... )  
Print name ) Print name



**ACT**  
Government

# DEED OF SURRENDER OF CROWN LEASE



<b>Dated</b>	<u>17 December 2015</u>
<b>Parties</b>	<b>AUSTRALIAN CAPITAL TERRITORY</b> <b>THE PLANNING AND LAND</b> <b>AUTHORITY</b> <b>DOBEL BOAT HIRE PTY LTD</b> <b>ACN 008 492 144</b>
<b>Prepared by</b>	ACT Government Solicitor Level 6, 12 Moore Street Canberra ACT 2601 Australia Ph: (02) 6205 3494 Fax: (02) 6207 0650 Ref: 626510:KA
<b>Version</b>	Final 14/12/2015



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**PARTIES:** **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Chief Minister, Treasury and Economic Development Directorate.

**PLANNING AND LAND AUTHORITY**, the body corporate established by section 10 of the *Planning and Environment Act 2007* (ACT) for and on behalf of the Commonwealth of Australia (**Authority**).

**DOBEL BOAT HIRE PTY LTD ACN 008 492 144**



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## BACKGROUND

- A. Pursuant to the Lease, the Authority (on behalf of the Commonwealth of Australia) leases the Land to the Lessee.
- B. The Lessee has agreed to surrender the Lease with effect from the Surrender Date.
- C. The parties have otherwise agreed to the surrender of the Lease on the terms of this Deed.

---

IT IS AGREED by the parties as follows.

## 1. Interpretation

### 1.1 Definitions

The following definitions apply in this Deed, unless the context otherwise requires. Additional definitions also appear in the Reference Schedule.

**ACT Building Legislation** means the *Building Act 1972* (ACT), the *Building Act 2004* (ACT), the *City Area Leases Act 1936* (ACT), the *Leases Act 1918* (ACT), the *Leases (Special Purposes) Act 1925* (ACT), the *Buildings (Design and Siting) Act 1964* (ACT), the *Land (Planning and Environment) Act 1991* (ACT), the *Planning and Development Act 2007* (ACT), the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) and the *National Lands Ordinance 1989* (Cth) (and any laws having effect by virtue of that Ordinance), and regulations made pursuant to that legislation, and their predecessors and substitutes.

**Authorised Officer** means a director or secretary of a party or any other person appointed by a party to act as an authorised officer for the purposes of this Deed.

<b>Business Day</b>	means a day on which banks are open for general banking business in the capital city of the State or Territory in which the Land is situated (not being a Saturday, Sunday or public holiday in that city).
<b>Claim</b>	means a claim, notice, demand, action, proceeding, litigation, investigation or judgment however arising, whether present or future, actual or contingent, and whether involving a third party or a party to this Deed.
<b>Completion</b>	means completion of the surrender of the Lease in accordance with this Deed.
<b>Costs</b>	includes costs, charges and expenses, including those incurred in connection with advisers.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>Deed</b>	means this deed and all schedules and attachments annexed to it.
<b>Deposit</b>	means the amount set out at Item 5 of the Reference Schedule.
<b>Deposit Date</b>	means the date set out at Item 6 of the Reference Schedule.
<b>Goods</b>	means plant, equipment, chattels, fixtures and fittings on the Land.
<b>GST Act</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Land</b>	means the land set out at Item 2 of the Reference Schedule.
<b>Land Charges</b>	means general rates and water and sewerage rates.
<b>Lease</b>	means the lease set out at Item 3 of the Reference Schedule.
<b>Planning Act</b>	means the <i>Planning and Development Act 2007</i> (ACT).
<b>Property</b>	means the Lease, the Goods and the Land.
<b>Reference Schedule</b>	means the reference schedule contained in Schedule 1.

<b>Stakeholder</b>	means Aulich Civil Law.
<b>Sublease</b>	means the sublease entered into between the Lessee and Jim and Cony Seears in respect of the Land.
<b>Surrender Sum</b>	means the amount set out at Item 7 of the Reference Schedule
<b>Territory</b>	means: <ul style="list-style-type: none"> <li>(a) when used in a geographical sense, the Australian Capital Territory; and</li> <li>(b) when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).</li> </ul>

#### 1.1 References to certain general terms

Unless the contrary intention appears in this Deed:

- (1) a reference to a document (including this Deed) includes any variation or replacement of it;
- (2) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Deed;
- (3) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;
- (4) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re enactments or replacements of any of them);
- (5) the singular includes the plural and vice versa;
- (6) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;
- (7) a reference to a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (8) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;

- (9) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (10) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (11) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (12) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (13) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (14) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (15) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (16) the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (17) if an act under this Deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (18) a reference to time is a reference to time in the State or Territory in which the Land is situated; and
- (19) a reference to anything (including any amount) is a reference to the whole and each part of it.

## **1.2 Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed.

## **2. Consideration**

### **2.1 Valuable Consideration**

Each party acknowledges entering into this Deed and incurring obligations and giving rights under this Deed for valuable consideration received from each other party.

### **3. Agreement to surrender Lease**

#### **3.1 Surrender of Lease**

With effect from the Surrender Date, the Lessee as beneficial owner agrees to surrender to the Authority free of encumbrances all the Lessee's estate, title and interest in the Lease and the Land.

#### **3.2 Acceptance of surrender of Lease**

The Authority agrees to accept the surrender of the Lease from the Surrender Date under section 293 of the Planning Act.

#### **3.3 Lessee Acknowledgement**

The Lessee:

- (1) acknowledges that the Surrender Sum and all amounts payable by the Territory under clauses 3.7 ("Deposit"), 3.10 ("Obligations on Completion") and 3.11 ("Adjustments"), constitute payment by the Territory and the Authority of every amount payable to the Lessee upon surrender of the Lease, including for the improvements on the Land, in particular any amounts due to be paid to the Lessee under sections 291 and 293 of the Planning Act; and
- (2) agrees not to make any Claim for, or take any action against, the Territory or the Authority to recover any monies in addition to those amounts regarding the surrender of the Lease, including any Claim under sections 291 or 293 of the Planning Act.

#### **3.4 Lessee's goods and improvements**

The Goods located on the Land at Completion become the property of the Territory except any which are not owned by the Lessee.

#### **3.5 No warranties by Lessee**

The Lessee does not make any representation or warranty in relation to the condition of the Land and the Goods, and the Territory accepts them in their state of repair and condition at Completion.

#### **3.6 Condition and use**

The parties agree that the Lease is surrendered subject to the terms in **Schedule 3**.

#### **3.7 Deposit**

On the Deposit Date:

- (1) The Territory must pay the Deposit to the Stakeholder; and
- (2) The Lessee must provide the Territory with the forms for the surrender of the Lease, executed by the Lessee and any other document or consent required to register the forms of surrender to be held in escrow by the Territory pending

Completion.

### **3.8 Date for Completion**

The parties will complete the surrender of the Lease on or before the Surrender Date.

### **3.9 Place and time for Completion**

Unless otherwise agreed Completion is to take place:

- (1) at the ACT Settlement Rooms, being the rooms designated for property settlements located at Level 1, 1 Farrell Place, Canberra; and
- (2) at a time before 3.00pm nominated by the Territory.

### **3.10 Obligations on Completion**

On Completion:

provided the Lessee has complied with its obligations under clause 3.7(2), the Territory must provide the Lessee with a copy of the forms for surrender of the Lease executed by the Territory and endorsed by the Authority;

- (1) the Territory must pay the Surrender Sum (minus the Deposit paid) to the Lessee:
  - (a) by cheque drawn on the Territory's bank account; and
  - (b) as the Lessee or the Stakeholder directs;
- (3) the Lessee must pay all rent due to be paid under the Lease to the Authority as at the Completion date; and
- (4) the Territory must pay \$15,336 (including GST) together with an apportionment for December 2015 rental as agreed between the parties towards the payment of outstanding rental arrears owed to the Lessee under the Sublease.

### **3.11 Adjustments**

The Territory and the Lessee agree to make all necessary adjustments of amounts payable by the Lessee for Land Charges, on the Surrender Date as if the Territory were responsible for Land Charges arising after the Surrender Date. If an amount cannot be adjusted because it is not known, the Territory and the Lessee agree to make the adjustment within 14 days after the amount is known.

### **3.12 Release**

- (1) The Territory and the Authority agrees to release and forever discharge the Lessee from all Claims and Costs concerning the Lessee's obligations under the Lease arising on and from the Surrender Date.
- (2) The Lessee agrees to release and forever discharge the Territory and the Authority from all Claims and Costs concerning the Lease, the use or occupation of the

Premises or any incidental matter, arising up to the Surrender Date.

### **3.13 Obligations after Completion**

The Lessee agrees to provide all reasonable assistance to enable the Territory to register the surrender of the Lease after completion, including answering any requisitions raised by Access Canberra (Land Titles and Rental Bonds) or the Authority.

## **4. Parties' Costs**

The parties agree to bear their own costs in connection with the preparation and negotiation of this Deed and any document or matter in connection with it.

## **5. GST**

### **5.1 GST definitions**

In this clause:

**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 GST 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.

### **5.2 Payment of GST**

A party making Payment to another party for a Taxable Supply under this Deed 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.

### **5.3 Reimbursements**

When calculating the amount of:

- (a) any reimbursement to a party under this Deed; and
- (b) the indemnification under this Deed 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.

### **5.4 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.



## **6. Notices and other communications**

### **6.1 Form**

Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing, signed by the sender (if an individual) or an Authorised Officer, or the solicitor, of the sender and marked for the attention of the person identified in the Reference Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

### **6.2 Delivery**

Communications must be:

- (1) left at the address set out or referred to in the Reference Schedule; or
- (2) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Reference Schedule; or
- (3) sent by fax to the fax number set out or referred to in the Reference Schedule; or
- (4) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or changed fax number, then communications must be to that address or number.

### **6.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 6.4 (“When taken to be received”) (whichever happens first) unless a later time is specified.

### **6.4 When taken to be received**

Communications are taken to be received:

- (1) if left at the address set out or referred to in the Reference Schedule, on that day;
- (2) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (3) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

### **6.5 Receipt outside business hours**

Despite clauses 6.3 (“When effective”) and 6.4 (“When taken to be received”), if communications are received or taken to be received under clause 6.4 after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

## **7. General**

### **7.1 Payments**

The parties agree to make payments under this Deed in full without set-off (including equitable set-off) or counterclaim and without any deduction.

### **7.2 No merger**

The warranties, undertakings and indemnities in this Deed do not merge on the Surrender Date.

### **7.3 Variation and waiver**

A provision of this Deed, or a right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

### **7.4 Confidentiality**

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of this Deed) except:

- (1) to any person in connection with an exercise of rights or a dealing with rights or obligations under the Lease or this Deed; or
- (2) to officers, employees, legal and other advisers and auditors of the parties; or
- (3) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (4) as required by any law or stock exchange; or
- (5) as required by law; or
- (6) in the case of the Territory and the Authority, to any Minister of the Territory or to the Legislative Assembly or any of its bodies or committees; or
- (7) as required to give effect to the surrender of the Lease.

Each party consents to disclosures made in accordance with this clause 7.4 however for the avoidance of doubt the Territory and the Lessee expressly agrees not to disclose the detail of the Surrender Sum to any party except in accordance with this clause.

### **7.5 Counterparts**

This Deed may consist of a number of copies, each signed by one or more parties to this Deed. If so, the signed copies are treated as making up the one document.

### **7.6 Entire agreement**

This Deed constitutes the entire agreement of the parties about the surrender of the Lease and supersedes all previous agreements, understandings and negotiations. The Territory

and the Authority agree that in entering into this Deed they have not relied on any representation or warranty about its subject matter except those included in this Deed.


**7.7 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed any part of it.

**7.8 Further assurances**

Each party agrees, at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this Deed and the transactions contemplated by it, including by signing documents.

## SCHEDULE 1 – Reference Schedule

- Item 1:** Lessee: Dobel Boat Hire Pty Ltd ACN 008 492 144  
ABN 79 008 492 144
- Item 2:** Land: Block 16 Section 33 Division of Acton
- Item 3:** Lease: Lease granted pursuant to the *Land (Planning and Environment) Act 1991* (ACT) by the Commonwealth to the Lessee over the Land and entered in register Book Volume 1866 Folio 11, a copy of which is contained in Schedule 2.
- Item 4:** Surrender Date: The date which is 30 days after the date of this Deed (or such earlier date as is agreed between the parties)
- Item 5:** Deposit: \$10 (receipt of which is acknowledged)
- Item 6:** Deposit Date: the date of this Deed.
- Item 7:** Surrender Sum: **\$1,000,000.00 (excluding GST) comprising:**
- (a) all statutory compensation payable under sections 291 and 293 of the Planning Act; and
  - (b) consideration for the surrender of the Lease.
- Item 8:** Governing law: Australian Capital Territory
- Item 9:** Address for Notices: **Territory:**  
Chief Minister, Treasury and Economic  
Development Directorate  
Ground Floor, TransACT House  
470 Northbourne Avenue  
Dickson ACT 2602
- Contact Officer: Nicholas Hudson
- Lessee:**  
Dobel Boat Hire Pty Ltd  

- Contact Officer: Pat Seears
- Authority:**  
Dame Pattie Menzies House  
16 Challis Street

## **SCHEDULE 3 - Condition and use terms**

### **Item 1 As is, where is**

The Territory and the Authority acknowledge that the Lessee surrenders the Property on an “as is, where is” basis, in its present state and condition, including:

- (1) any legal and physical defects; and
- (2) any matter referred to in this Deed.

### **Item 2 Inspection**

The Territory confirms it:

- (1) is satisfied as to the nature, quality, condition and state of repair of the Property; and
- (2) accepts the Property as it is including all defects (latent or patent) including any matter referred to in this Deed; and
- (3) is satisfied about the purposes for which the Property may be used and about all restrictions and prohibitions on its use and development.

### **Item 3 Due Diligence**

The Territory acknowledges and agrees that:

- (1) before entering into this Deed, the Lessee gave the Territory a reasonable opportunity to inspect the Property; and
- (2) the Territory has entered into this Deed on the basis that it has carried out, or had the opportunity to carry out, its due diligence of the Property.

### **Item 4 Territory has satisfied itself about specific matters**

The Territory acknowledges that it has satisfied itself in connection with the matters arising from its due diligence, including in connection with and enquiries about:

- (1) the title to the Property, including easements, restrictions on use and other encumbrances which benefit or burden the Property; and
- (2) the Lessee’s title to the Property and its rights and obligations in connection with it, including the terms of the Lease; and
- (3) the accuracy of the description of the Property; and
- (4) the matters referred to in Item 1 (“As is, where is”) and Item 2 (“Inspection”) of this schedule; and

- (5) the use, fitness or suitability of the Property for any purpose; and
- (6) the means of access to the Property; and
- (7) whether the walls or fences on the land that should not be on the boundaries of the Property, as the case may be, are not and the existence of any encroachments onto the Property or by the Property onto adjacent land (and whether the encroachments are subject to any registered easement or other agreement burdening or benefitting the Property); and
- (8) whether the Property complies with any laws and requirements of Authorities affecting the Property (including any use) and any non-compliance including the ACT Building Legislation; and
- (9) the existence or otherwise of any requirements of any Authority in connection with the Property, including resumptions, road dedications, road widenings and similar things; and
- (10) the existence or otherwise of necessary consents, approvals, licences or requirements of Authorities in connection with the Property (including its use) and any non-compliance with those consents, approvals, licences or requirements; and
- (11) whether there are any notices or orders by any Authority, including a notice or order requiring work to be done or money spent in connection with the Property; and
- (12) the existence of any claim for an interest in the Property under the *Native Title Act 1993* (Cth), the *Native Title Act 1994* (ACT) or any other native title law; and
- (13) the existence of easements or other rights in respect of a service for the Property (including air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water) which is a joint service or which passes through another property, or any service for another property which passes through the Property; and
- (14) the condition or existence or non-existence of services; and
- (15) any approval, application for an approval or order under any law; and
- (16) the terms and conditions of the Lease and any non-compliance with those terms and conditions; and
- (17) the ownership or location of any fuel storage tank or facility.

## **Item 5 No claims or requisitions**

The Territory accepts the surrender of the Lease subject to the matters referred to, disclosed or described under this Deed.

SIGNED AS A DEED ON 17 December 2015

SIGNED for and on behalf of the )  
AUSTRALIAN CAPITAL )  
TERRITORY in the presence of: ) Signature of Territory delegate

.....  
Signature of witness ) Print name

.....  
Print name

EXECUTED by the authorised )  
representative for THE PLANNING )  
AND LAND AUTHORITY in the )  
presence of: )  
..... ) By executing this Deed the  
Signature of witness ) signatory warrants that the signatory  
..... ) is duly authorised to execute this  
..... ) Deed on behalf of The Planning and  
..... ) Land Authority

..... )  
Name of witness ) Print name

EXECUTED by the DOBEL )  
BOAT HIRE PTY LTD ACN 008 )  
492 144 in accordance with section )  
127 of the Corporations Act 2001: )

..... )  
Signature of Director )

PATRICK SEARS )  
..... )  
Print name )



Signature of Director/Company )  
Secretary )  
Maura Sears )  
..... )  
Print name )

**From:** [GENTLEMAN](#)  
**To:** [Carter, Tania](#)  
**Subject:** FW: Martin Shanahan and Jillian Edwards - Development of West Basin  
**Date:** Tuesday, 30 September 2014 3:23:41 PM  
**Attachments:** [DOC300914-30092014155757.pdf](#)

---

Natasha Apostoloski | Office Manager  
Office of Mick Gentleman MLA | Member for Brindabella  
Minister for Planning,  
Minister for Community Services,  
Minister for Workplace Safety and Industrial Relations,  
Minister for Children and Young People,  
Minister for Ageing  
t: 620 50218 | e: natasha.apostoloski@act.gov.au |

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Tuesday, 30 September 2014 3:21 PM  
**To:** GENTLEMAN; GALLAGHER  
**Cc:** Mark Flint; [REDACTED]  
**Subject:** Martin Shanahan and Jillian Edwards - Development of West Basin

Confidential Communication

Good afternoon,

Please find attached our letter of today's date for your attention.

Kindly contact Mark Flint on [REDACTED] or [REDACTED] should you wish to discuss.

Regards

[REDACTED] (on behalf of Mark Flint)

[REDACTED] | Senior Executive Assistant T [REDACTED] | F [REDACTED] Level 3, 1 Farrell Place,  
Canberra City ACT 2601 [REDACTED]

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2014 Property Council ACT Allan Wylucki Property Professional of the Year - Archie Tsirimokos

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**From:** [Carter, Tania](#)  
**To:** [Butchart, Rebecca](#)  
**Subject:** FW: REQUEST TO TRANSFER: Martin Shanahan and Jillian Edwards - Development of West Basin  
**Date:** Wednesday, 15 October 2014 12:39:52 PM

---

Tania Carter | Directorate Liaison Officer | Office of Mick Gentleman MLA | Minister for the Planning |  
Legislative Assembly Building | GPO Box 1020 CANBERRA ACT 2601  
t: 02 620 54521 | e: Tania.Carter@act.gov.au

-----Original Message-----

From: Carter, Tania  
Sent: Wednesday, 8 October 2014 8:34 AM  
To: Butchart, Rebecca  
Subject: FW: REQUEST TO TRANSFER: Martin Shanahan and Jillian Edwards - Development of West Basin

Hi Bec

Transfer accepted.

Tania Carter | Directorate Liaison Officer | Office of Mick Gentleman MLA | Minister for the Planning |  
Legislative Assembly Building | GPO Box 1020 CANBERRA ACT 2601  
t: 02 620 54521 | e: Tania.Carter@act.gov.au

-----Original Message-----

From: Morgan, Anneliese  
Sent: Tuesday, 7 October 2014 6:19 PM  
To: Carter, Tania  
Subject: RE: REQUEST TO TRANSFER: Martin Shanahan and Jillian Edwards - Development of West Basin

Hi Tania,

Yes ED accept this.

Anneliese Morgan | Directorate Liaison Officer | (02) 62054643  
Office of Minister Barr MLA | Office of Minister Burch MLA | Office of Minister Rattenbury MLA  
Chief Minister, Treasury and Economic Development Directorate | ACT Government  
PO Box 1020 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

-----Original Message-----

From: Carter, Tania  
Sent: Tuesday, 7 October 2014 11:05 AM  
To: Morgan, Anneliese  
Subject: REQUEST TO TRANSFER: Martin Shanahan and Jillian Edwards - Development of West Basin

Hi Anneliese

EPD (Leasing) has advised that this ministerial should be transferred to LDA (as with 14/23354 re the paddle boat hire) as CMTEDD is responsible for delivering this project.

At some stage EPD would implement the necessary mechanics (eg land acquisition) the timeframes for delivery of the City to Lake project are the responsibility of the LDA and Minister Barr.

Could you please advise if you accept the transfer?

Tania Carter | Directorate Liaison Officer | Office of Mick Gentleman MLA | Minister for the Planning |  
Legislative Assembly Building | GPO Box 1020 CANBERRA ACT 2601  
t: 02 620 54521 | e: Tania.Carter@act.gov.au

-----Original Message-----

From: GENTLEMAN  
Sent: Tuesday, 30 September 2014 3:24 PM  
To: Carter, Tania  
Subject: FW: Martin Shanahan and Jillian Edwards - Development of West Basin

Natasha Apostoloski | Office Manager  
Office of Mick Gentleman MLA | Member for Brindabella Minister for Planning, Minister for Community  
Services, Minister for Workplace Safety and Industrial Relations, Minister for Children and Young People,  
Minister for Ageing  
t: 620 50218 | e: natasha.apostoloski@act.gov.au |

-----Original Message-----

From: [REDACTED]  
Sent: Tuesday, 30 September 2014 3:21 PM  
To: GENTLEMAN; GALLAGHER  
Cc: Mark Flint; [REDACTED]  
Subject: Martin Shanahan and Jillian Edwards - Development of West Basin

Confidential Communication

Good afternoon,

Please find attached our letter of today's date for your attention.

Kindly contact Mark Flint on [REDACTED] or [REDACTED] should you wish to discuss.

Regards

[REDACTED] (on behalf of Mark Flint)

[REDACTED] | Senior Executive Assistant T [REDACTED] | F [REDACTED] Level 3, 1 Farrell Place,  
Canberra City ACT 2601 [REDACTED]

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2014 Property Council ACT Allan Wylucki Property Professional of the Year - Archie Tsirimokos

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Mr Spokes Bike Hire

ABN: 70783 414557

ACN: 118 844 885

**To: The Land Development Agency**  
**ABN 20419925579**  
**Level 6, 470 Northbourne Av e**  
**Dickson ACT 2602**

**Attn: David Gray (ACT Govt Solicitor)**

**Mr Spokes Bike Hire**  
**TAX INVOICE: 2016001**  
**The ACT Government**  
**Invoice Date: 1 Feb 2016**

01/02/2016	Surrender of Crown Lease	\$1,099,999.00
	GST	109,999.90
<b>TOTAL</b>		<b>\$1,209,998.90</b>

**PAYMENT METHODS**

**In Person:** On day of settlement by cheque.

**By Direct Credit (please send remittance to above address or email):**



**From:** [Butchart, Rebecca](#)  
**To:** [Carter, Tania](#)  
**Cc:** [EPD Ministerials - Planning Delivery](#)  
**Subject:** FW: 14/23800 - MINISTERIAL CORRESPONDENCE - Block 13 Section 33 Acton - Development of West Basin Mark Flint (obo Martin Shanahan and Jillian Edwards)  
**Date:** Thursday, 2 October 2014 5:35:00 PM  
**Attachments:** [FW Martin Shanahan and Jillian Edwards - Development of West Basin.msg](#)  
[14\\_23800 - Ministerial-Block 13 Section 33 Acton - Development of West Basin Mark Flint \(obo Martin Shanahan and Jillian Edwards\).obr](#)  
[FW 1423354 - MINISTERIAL CORRESPONDENCE - Paddle Boat Hire - James Seears.msg](#)

---

Hi Tania

Leasing has advised that this ministerial should be transferred to LDA (as with 14/23354 re the paddle boat hire) as CMTEDD is responsible for delivering this project.

At some stage EPD would implement the necessary mechanics (eg land acquisition) the timeframes for delivery of the City to Lake project are the responsibility of the LDA and Minister Barr.

Could you please request a transfer?

Many thanks

**Rebecca Butchart | Ministerial Liaison Officer**

**Ph:** (02) 6207 5804 | **Email:** [rebecca.butchart@act.gov.au](mailto:rebecca.butchart@act.gov.au)

Communications, Government Services & Executive Support | Environment and Planning | ACT Government  
Level 3 South, Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601  
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---

**From:** Crowe, Lindsay  
**Sent:** Thursday, 2 October 2014 11:44 AM  
**To:** Butchart, Rebecca  
**Subject:** FW: 14/23800 - MINISTERIAL CORRESPONDENCE - Block 13 Section 33 Acton - Development of West Basin Mark Flint (obo Martin Shanahan and Jillian Edwards)

Good morning Rebecca,

Please see Maggie's email below. It has been suggested that the Ministerial be transferred to LDA to respond to.

If you require anything further please let me know.

Kind regards,

Lindsay Crowe | Executive Assistant to Jim Corrigan

**Phone 02 6205 9636**

**Planning Delivery | Environment and Planning | ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 |

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---

**From:** Chapman, Maggie  
**Sent:** Thursday, 2 October 2014 10:41 AM  
**To:** Crowe, Lindsay  
**Subject:** FW: 14/23800 - MINISTERIAL CORRESPONDENCE - Block 13 Section 33 Acton - Development of West Basin Mark Flint (obo Martin Shanahan and Jillian Edwards)

Hi Lindsay

This Ministerial is related the 14/23354 attached which I recommended be transferred to the LDA. 14/23354 was related to the paddle boat hire. 14/23800 is related to the Bike Hire (Mr. Spokes).

CMTEDD (the LDA) has carriage of the delivery of this project. See attached link.

<http://www.citytolake.com.au/>

Whilst I expect that EPD will be called upon to implement the necessary mechanics (eg land acquisition) the timeframes for delivery of the City to Lake project are the responsibility of the LDA and Minister Barr.

I hope this information is of assistance.

Regards

Maggie

---

**From:** Crowe, Lindsay  
**Sent:** Thursday, 2 October 2014 8:40 AM  
**To:** Chapman, Maggie  
**Subject:** FW: 14/23800 - MINISTERIAL CORRESPONDENCE - Block 13 Section 33 Acton - Development of West Basin Mark Flint (obo Martin Shanahan and Jillian Edwards)

Good morning Maggie,

Can I please seek your advice for the above Ministerial.

My thoughts are this may be better placed with Strategic Planning with input from others.

Can you please assist?

Kind regards,

Lindsay Crowe | Executive Assistant to Jim Corrigan

**Phone 02 6205 9636**

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---

**From:** EPD Ministerials - Government Services  
**Sent:** Wednesday, 1 October 2014 2:26 PM  
**To:** EPD Ministerials - Planning Delivery  
**Cc:** Crowe, Lindsay  
**Subject:** 14/23800 - MINISTERIAL CORRESPONDENCE - Block 13 Section 33 Acton - Development of West Basin Mark Flint (obo Martin Shanahan and Jillian Edwards)

Good afternoon

Please see the attached ministerial correspondence for brief and reply, due to GS COB 8 October 2014 in order to meet the deadline set by the MO.

Kind regards

**Rebecca Butchart | Ministerial Liaison Officer**

**Ph:** (02) 6207 5804 | **Email:** [rebecca.butchart@act.gov.au](mailto:rebecca.butchart@act.gov.au)

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## Ministerial Correspondence / Brief Request Form

**Objective Number: 14/23800**

**Date due Ministerial Services: 8 October 2014**

**Date due Deputy Director-General: 9 October 2014**

**Date due Director-General: 10 October 2014**

**Date due MINISTER'S OFFICE: 10 October 2014**

**Priority: Urgent / Normal**

**Critical Date:**

**Subject: Block 13 Section 33 Acton - Development of West Basin Mark Flint  
(oboMartin Shanahan and Jillian Edwards)**

---

**To:**

Strategic  
Planning

Sustainability and Climate  
Change

**X Planning Delivery**

Environment

Construction and Services

Director-General

Deputy Director-General

Other

---

**Response by:**

**X Minister**

Chief Minister

Director-General ESDD

Minister Chief of Staff

Adviser

Other:

---

**Action required:**

**X Reply to correspondence**

Directorate Input

Media Release / Media Alert **(Produced in Consultation with Communications)**

**X Information brief**

Dept Officer to attend

Speech / Speaking Notes **(Produced in Consultation with Communications)**

Information only / NFA

Functions Brief (inc arrangements brief)

Questions and Answers

Phone constituent

For appropriate action

Other

---

**Meeting / Event:**

Time:

Date:

Location:

Event Contact/Organiser:

Equipment:

---

**Further Information:**

---

**From:** [Chapman, Maggie](#)  
**To:** [Crowe, Lindsay](#)  
**Subject:** FW: 14/23354 - MINISTERIAL CORRESPONDENCE - Paddle Boat Hire - James Seears  
**Date:** Tuesday, 23 September 2014 4:57:00 PM  
**Attachments:** [TRIM Ministerial Correspondence MIN2014004271 Paddle boat hire - land lease.msg](#)  
[image003.png](#)  
[14\\_23354 - Ministerial-Paddle Boat Hire - James Seears.obr](#)

---

Hi Lindsay

Thank you for referring this Ministerial for review.

The correspondence relates to Block 16 Section 33 Acton. I have included a copy of the Crown lease and the Title in the Ministerial folder. The Crown lease commenced on 26 August 2008 for a term of 20 years. Therefore the lease is not due to expire for another 14 years.

Anecdotally (ie not officially) I have been advised that the LDA is preparing a request for the land to be acquired under the *Lands Acquisition Act 1994* (Act). The Act is administered by Lease Administration, however, to date no formal request for acquisition has been received from the LDA. The LDA sits within the Economic Development unit in CMTEDD.

From the correspondence received by the Chief Minister from Mr Seears, it would appear that Mr Seears has been advised by the LDA that it proposes to commence an acquisition process.

However, as the lease has not expired and no request for acquisition has been received, the ministerial correspondence should be referred to the LDA for a response.

Lease Administration can, if requested by LDA, provide input into the response in relation to the acquisition process and the assessment of compensation in accordance with the Act.

Regards  
Maggie

---

Maggie Chapman | Senior Manager - Lease Administration  
**Phone 02 6207 1885** | Fax 02 6207 1856 | Mobile [REDACTED]  
**Planning Delivery Division** | ACTPLA | Environment and Planning | **ACT Government**  
Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | [www.actpla.act.gov.au](http://www.actpla.act.gov.au)

---

**From:** Crowe, Lindsay  
**Sent:** Tuesday, 23 September 2014 11:52 AM  
**To:** Chapman, Maggie  
**Subject:** FW: 14/23354 - MINISTERIAL CORRESPONDENCE - Paddle Boat Hire - James Seears

Interesting one...

Please advise me if you're ok to prepare a response to this. I am aware that EDD input will be requested although please let me know if you think it should be the other way around?

Can I please ask that this is back to me by **cob Thursday 25 September 2014.**



Kind regards,

Lindsay Crowe | Executive Assistant to Jim Corrigan

Phone 02 6205 9636

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---

**From:** EPD Ministerials - Government Services

**Sent:** Tuesday, 23 September 2014 10:11 AM

**To:** EPD Ministerials - Planning Delivery

**Cc:** Crowe, Lindsay

**Subject:** 14/23354 - MINISTERIAL CORRESPONDENCE - Paddle Boat Hire - James Sears

Good morning

Please see the attached chief ministerial correspondence for reply, due to GS COB Friday 26 September 2014. Please note EDD has been asked if they could provide input to our response.

Many thanks

**Rebecca Butchart | Ministerial Liaison Officer**

**Ph:** (02) 6207 5804 | **Email:** [rebecca.butchart@act.gov.au](mailto:rebecca.butchart@act.gov.au)

Communications, Government Services & Executive Support | Environment and Planning | ACT Government

Level 3 South, Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601

[www.environment.act.gov.au](http://www.environment.act.gov.au)

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ACTGov\_EaSD\_inline

**Ministerial Correspondence / Brief Request Form**



**Objective Number: 14/23354**

**Date due Ministerial Services: 26 September 2014**

**Date due Deputy Director-General: 30 October 2014**

**Date due Director-General: 1 October 2014**

**Date due MINISTER'S OFFICE: 1 October 2014**

**Priority: Urgent / Normal**

**Critical Date:**

**Subject: Paddle Boat Hire - James Sears**

---

**To:**

Strategic Planning

Construction and Services

Sustainability and Climate Change

Director-General

**X Planning Delivery**

Deputy Director-General

Environment

Other

---

**Response by:**

Minister

**X Chief Minister**

Director-General ESDD

Minister Chief of Staff

Adviser

Other:

---

**Action required:**

**X Reply to correspondence**

Directorate Input

Media Release / Media Alert  
**(Produced in Consultation with Communications)**

Information brief

Dept Officer to attend

Speech / Speaking Notes  
**(Produced in Consultation with Communications)**

Information only / NFA

Functions Brief  
(inc arrangements brief)

Questions and Answers

Phone constituent

For appropriate action

Other

---

**Meeting / Event:**

Time:

Date:

Location:

Event Contact/Organiser:

Equipment:

---

**Further Information:**

---

**From:** [Payne, Cassia](#)  
**To:** [Carter, Tania](#)  
**Subject:** TRIM Ministerial Correspondence : MIN:2014/004271 : Paddle boat hire - land lease  
**Date:** Friday, 19 September 2014 12:27:22 PM  
**Attachments:** [Email\\_FW Paddle boat hire.html](#)

---

Hi Tania

Please find attached CMTED Ministerial for resposne by CM

Due date to the Chief Minister is: 03/10/14

Please provide CMTED MLO with your Directorates reference number for our TRIM records.

Thank you

CMTED MLO  
Ext: 54058

-----< TRIM Record Information >-----

Record Number : MIN:2014/004271  
Title : Paddle boat hire - land lease

E-mail Message

---

**From:** [Schembri, Karen \[EX:/O=ACTGOV/OU=CALLAM/CN=LEGISLATIVE ASSEMBLY/CN=KAREN\\_SCHEMBRI\]](#)  
**To:** [CMTD MLO \[EX:/O=ACTGOV/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=CMTD\\_MLOa9d\]](#)  
**Cc:**  
**Sent:** 19/09/2014 at 10:16 AM  
**Received:** 19/09/2014 at 10:16 AM  
**Subject:** FW: Paddle boat hire

---

Cass

Advice and response from CM please

Regards

Karen Schembri | Office of the Chief Minister  
t: 620 50840 | fx: 620 53030 | karen.schembri@act.gov.au | www.chiefminister.act.gov.au

---

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---

-----Original Message  
From: james seears [redacted]  
Sent: Friday, 19 Sep  
To: GALLAGHER  
Subject: Paddle boat hire

Dear Katie I am writing to you as a last resort to my concerns. The LDA is treating myself and my wife like leppers. They intend to throw us out of our small family business without any compensation. They have told us that our lease is invalid. The lease has been fine for the last 12 years, but know that the LDA wants our premises to develop they have told us that that lease is no good.

[redacted] I know that the LDA is a huge part of revenue raising for ACT taxpayers. I have no problems with that as I know that the government needs a certain amount of money to run the territory, but what I cannot understand is how the LDA can throw me out off my business without any compensation, especially when I have 9 years left on my lease. The ACT government will make a lot off money out off the land sales at Acton park. I am not asking for millions but a fair deal for us is not unreasonable. I have sent Tim Xarikis many emails but he will not reply. I went to a meeting at the NCA last week where Tim was a guest speaker. He was very quick to blame the treasurer for all the problems at the Kingston foreshore telling the meeting that all he got from them was to hurry up and get more land ready for sale because we need more money. He told us that that won't happen with city to lake as the LDA is going to put a fence around city to lake at A [redacted]

[redacted] I would like you to talk to the people at the LDA and see if we could work out a rea [redacted]

[redacted] compassionate person and I am asking for your help as a last measure to my plight. I hope that I have not caused any trouble but look forward to hearing from you Sincerely Jim Seears.  
Sent from my iPad



**ACT**  
Government

# SALE OF BUSINESS AGREEMENT

Date

\_\_\_\_\_

Parties

**LAND DEVELOPMENT AGENCY**

**JIM SEEARS AND CONY SEEARS**

Business

**LAKE BURLEY GRIFFIN BOAT HIRE**

Prepared by

ACT Government Solicitor  
Level 6, 12 Moore Street  
Canberra City ACT 2601  
Ph: 02 6207 0672  
Fax: 02 6207 0539  
Ref: DG:KM: 626512

Version

Final – 08/10/2015

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(i)

**DATED:**

**PARTIES:** **LAND DEVELOPMENT AGENCY**, a corporation established by section 31 of the *Planning and Development Act 2007 (ACT)* (**Buyer**).

**JIM SEEARS** of [REDACTED] and

**CONY SEEARS** of [REDACTED] (both individually and collectively the **Seller**).

**BACKGROUND**

- A The Seller carries on the Business in the Australian Capital Territory (the **Land**).
- B The Seller is in occupation of the Land pursuant to the Lease granted by the Landlord.
- C The Seller wishes to sell the Business Assets to the Buyer and the Buyer wishes to purchase the Business Assets on the terms and conditions set out in this Agreement.

**OPERATIVE PART**

**1. Defined terms and rules of interpretation**

1.1 In this Agreement unless the context requires otherwise:

- (a) **Business Day** means a day on which trading banks are open for ordinary business in the Australian Capital Territory.
- (b) **Business Hours** means between 9.00am and 5.00pm on a Business Day.
- (c) **Confidential Information** means all information of and relating to a party and its business including:
  - (i) trade secrets, drawings, know-how, techniques,
  - (ii) business and marketing plans and projections,
  - (iii) arrangements and agreements with third parties,
  - (iv) concepts not reduced to material form, designs, plans and models,except Confidential Information excludes information which is public knowledge.
- (d) **Confidential Text** means any text of this Agreement that, for the purposes of the Procurement Act, either party proposes should not be published and which is specified in Item 13 of the Reference Schedule.
- (e) **Employees** means all the employees of the Seller at the date of this Agreement.
- (f) **Equipment** means the equipment listed at Annexure B.
- (g) **Landlord** means Dobel Boat Hire Pty Ltd ACN 008 492 144.
- (h) **Lease** means the lease under which the Seller occupies the Land.

- (i) **Procurement Act** means the *Government Procurement Act 2001* (ACT).
- (j) **Reference Schedule** means the schedule of information contained in Annexure A of this Agreement.
- (k) **Rights** includes authority, benefit, power, privilege, remedy, right and cause of action.

1.2 In the interpretation of this Agreement, unless the contrary intention appears:

- (a) The term "this Agreement" means this document and includes all schedules, appendices, exhibits and annexures.
- (b) Words in the Reference Schedule have the same meaning adjacent to them.
- (c) A reference to this Agreement or to any other deed, agreement or document includes, respectively, this Agreement or that other deed, agreement or document as amended, novated, supplemented, varied or replaced.
- (d) A reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement.
- (e) The headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- (f) Where words or phrases are given a defined meaning, any other part of speech or other grammatical form of those words or phrases shall have a corresponding meaning.
- (g) The terms "parties" or "party" means the parties or a party to this Agreement.
- (h) A reference to a party includes its executors, administrators, successors and permitted assigns, substitutes and persons taking by way of novation.
- (i) Where a party is comprised of more than one person, the obligations and covenants of that party bind any two or more of those persons jointly and each of them severally.
- (j) References to any person shall, in the event of that person ceasing to exist or being reconstituted, renamed or replaced or its powers or functions being transferred to any other person, refer respectively to the person established or constituted in its place or succeeding to its powers or functions.
- (k) A reference to any thing includes the whole or any part of that thing and a reference to a group of things or persons shall include each thing or person in that group.
- (l) Any covenant or deed by a party not to do an act or thing shall be deemed to include an obligation not to permit such act or thing to be done and to use its best endeavours to prevent such act or thing being done by another person.
- (m) Words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies, and vice versa.
- (n) The singular includes the plural and vice versa.
- (o) Words importing one gender include every gender.
- (p) A reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State or Territory legislation, as applicable.



- (q) 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 subordinate legislation.
- (r) A reference to a consent or approval of a party means the prior written consent or approval of that party.
- (s) The term "notice" shall include notice, authorisation, request, nomination, notification and any other form of communication between the parties.
- (t) The expressions "deliver", "provide" and "handover" includes procure the delivery or provision or handing over.
- (u) A reference to "currency", "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency.
- (v) A reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.
- (w) No provision of this Agreement shall be construed against a party by reason of that provision having been drafted by that party.

## 2. Sale of Business

- 2.1 The Seller agrees to sell and the Buyer agrees to purchase of the right, title and interest of the Seller in the Business Assets for the Purchase Price.
- 2.2 The Buyer agrees to reimburse the Seller for its reasonable legal and accountancy expenses incurred in connection with the sale of the business on the receipt of valid itemised tax invoices for these expenses up to a maximum of \$10,000 (plus GST).

## 3. GST

- 3.1 In this clause:

- (a) **GST Act** means the "A New tax System (Goods & Services Tax) Act 1999.
- (b) **consideration, enterprise, GST, recipient, registered, supply, supply of going concern and supplier** have the meaning given to them in the GST Act.

- 3.2 The Buyer warrants to the Seller that it is or is required to be registered for GST.

- 3.3 The Seller and Buyer agree that GST is payable in respect of the supply of the Business and accordingly:

- (a) the Buyer must pay to the Seller on Completion the amount of any GST payable by the Seller in respect of the supply; and
- (b) the Seller must provide the Buyer with a valid tax invoice on Completion showing the amount of the GST payable for the supply.

## 4. Payment

- 4.1 The Purchase Price shall be paid by the Buyer to the Seller as follows:

- (a) The Deposit upon signing this Agreement directly to the Seller. The Deposit may be paid by cheque but if the cheque is not honoured on presentation the Buyer shall immediately and without notice be in default and the Seller may at its option terminate this Agreement and the default provisions shall apply.
- (b) The balance of the Purchase Price, shall be paid to the Seller or at its direction by government cheque on the Completion Date.

## **5. Completion**

5.1 Completion shall take place on the Completion Date at the ACT settlements room or any other location agreed between the parties.

5.2 On the Completion Date:

- (a) the Seller must give the Buyer unencumbered title to, and ownership of the Business, and place the Buyer in effective possession and control of the Business and, to this end (without limitation) the Seller must give the Buyer:
  - (i) an effective assignment of the Lease;
  - (ii) any other documents reasonably required by the Buyer for vesting in the Buyer, the full possession and benefit of the Business; and
  - (iii) possession of, and all security devices and keys for the Land.
- (b) the Buyer shall:
  - (i) pay the balance of the Purchase Price to the Seller or as the Seller directs, by way of government cheque;
  - (ii) take possession of the Business;
  - (iii) accept all documents which the Seller gives to the Buyer; and
  - (iv) do and execute all other acts and documents that this Agreement requires the Buyer to do or execute at the Completion Date.

## **6. Lease**

6.1 This Agreement is conditional upon:

- (a) the Landlord consenting to assign the Lease;
- (b) the Landlord releasing the Seller from any liability pursuant to the Lease; and
- (c) the Seller providing the Buyer with a withdrawal of caveat for registration number 1870038 in registrable form on Completion.

## **7. Maintenance of Business**

7.1 Until Completion the Seller must:

- (a) ensure that the Equipment and the Premises are kept secure and not damaged;
- (b) not enter into any contracts or incur any liabilities in relation to the conduct of the Business; and
- (c) notify the Buyer immediately upon the happening of an event which has a material effect on the Business Assets.

## **8. Services**

8.1 All existing services to the Premises in respect of electricity, telephone, gas or otherwise shall, be terminated on or before the Completion Date.

8.2 All electricity, telephone, gas and other outgoings whether of a periodic nature or otherwise unpaid at the Completion Date (other than specifically dealt with in this Agreement) shall be paid by the Seller or adjusted with the usual pro rata apportionment between the parties on the Completion Date. An allowance calculated on the usual pro rata basis shall be made by the

Buyer to the Seller in respect of any payment of a periodic nature which the Seller has paid and which relates to a period subsequent to Completion. The Seller shall be entitled to obtain a refund of all moneys paid by deposit or bond for any services (if any).

8.3 The Buyer shall be responsible for the payment of rent, up to four months in arrears, payable by the Seller but unpaid at the Completion Date, but otherwise any rent payable by the Seller shall be paid by the Seller or adjusted with the usual pro rata apportionment between the parties on the Completion Date.

9. **Business Name**

9.1 The Buyer acknowledges that the Business Name is not currently registered and will not be transferred on Completion.

10. **Employees**

10.1 The Seller must terminate the employment of each Employee on and from Completion. On the Completion Date the Seller must pay to each Employee the amounts (if any) due to that Employee in respect of accrued salary, holiday pay, long service leave and any other remuneration arising out of their employment or the termination of that employment by the Seller.

10.2 The Seller indemnifies the Buyer against any claim, demand and liability against the Buyer:

- (a) in respect of the entitlements of the Employees set out in subclause 10.1 and
- (b) otherwise in respect of all Employees to the extent that the claim, demand or liability relates to the period before Completion.

11. **Debts & Liabilities**

The Seller shall discharge all debts and liabilities of the Business which have not been fully discharged as at the Completion Date, and the Seller shall indemnify and keep indemnified the Buyer against all claims and proceedings in respect of the Business. No apportionment in respect of debts and liabilities shall be made and adjusted on the Completion Date.

12. **Book debts**

12.1 The Seller shall be entitled to payment of all debts owing to the Business at the Completion Date. It is agreed that the book debts of the Business are not included in this sale and shall remain the exclusive property of the Seller.

13. **Equipment**

13.1 The Seller gives no warranty as to the working order of the Equipment.

13.2 The Buyer acknowledges having relied on its own enquiries and inspections of the Equipment before entering into this Agreement.

14. **Acknowledgements as to Non-reliance**

14.1 The Buyer acknowledges that:

- (a) in entering into this Agreement it has not relied on any statement, representation, promise, warranty, conduct or inducement made or given or offered by Seller or any person or agent on behalf of Seller other than as expressly contained in this Agreement; and
- (b) it has conducted, and has entered into this Agreement in reliance on, its own enquiries, inspections and investigations in relation to the subject matter of this Agreement.



**15. Seller Warranties**

15.1 Each Seller warrants in respect of the Business that at the Completion Date:

- (a) the assets of the Business shall be the sole and unencumbered property of the Seller and that no other person shall have any interest in them;
- (b) the assets of the Business shall be free from any hire purchase agreement, Lease, bill of sale, lien or other encumbrance; and
- (c) that there are no outstanding notices issued by any competent authority affecting the Business.

15.2 The Seller covenants to comply at its expense with any notice served or received up to and including the Completion Date.

15.3 The Buyer shall at its expense comply with all notices from and all requirements of any competent authority received after the Completion Date affecting or relating to the Business.

**16. Default**

16.1 If the Buyer fails to comply with any of the provisions of this Agreement:

- (a) the Deposit shall be forfeited to the Seller;
- (b) the Seller may terminate this Agreement and sue the Buyer for breach of contract or without any notice to the Buyer resell the business in whatever manner and on terms and conditions the Seller thinks appropriate.

16.2 The deficiency (if any) arising out of such resale together with all expenses of and incidental to that resale or attempted resale shall be recoverable by the Seller from the Buyer as liquidated damages. The Seller is entitled to retain any money paid by the Buyer other than the Deposit as security for any deficiency arising on the resale or for any damages, compensation, and/or costs awarded to the Seller for the Buyer's failure.

**17. Notices**

17.1 All notices given under this Agreement shall be in writing and may be validly given by any one of the following means:

- (a) by sending it by prepaid post or by document exchange to the address of the party to be served or its solicitor;
- (a) by facsimile transmission to the facsimile number of the party to be served or its solicitor; or
- (b) by delivering it to the party to be served or to its solicitor.

17.2 A notice shall be deemed to be given and received:

- (a) If sent by pre-paid post or by document exchange, two (2) Business Days after it has been posted or has been delivered to the Document Exchange Centre;
- (b) If sent by facsimile during Business Hours, on the day it was sent; and if sent by facsimile outside Business Hours, on the first Business Day after the day it was sent;
- (c) If delivered during Business Hours, on the day of delivery; and if delivered outside Business Hours, on the first Business Day after the day of delivery.

17.3 The address and facsimile number of each of the parties for service is as set out in the Reference Schedule.

17.4 A notice given or a document signed or served on behalf of any party by any director or company secretary or solicitor of that party shall be deemed to have been given, signed or served by that party personally.

17.5 Any activity report or transmission advice slip issued by a facsimile machine to any party seeking to serve any other party by facsimile shall constitute sufficient and good proof of service for the purposes of this Agreement.

**18. Costs & Stamp Duty**

18.1 Except as otherwise provided in this Agreement, each of the parties shall pay its own costs and expenses (including legal fees) of and incidental to the preparation, negotiation, execution and (where applicable) the stamping and registration of this Agreement and any document or transaction contemplated by this Agreement.

**19. Governing Law**

19.1 This Agreement is to be governed by the laws of the Australian Capital Territory. The parties submit to the jurisdiction of the Courts of the Territory and any Courts that have jurisdiction to hear any appeals from those Courts.

**20. Non-Merger**

20.1 Any provision of this Agreement which imposes any obligation or confers any right on a party after completion, or which remains to be performed or is capable of having effect following completion, shall not merge on completion but shall remain in full force and effect.

**21. Error or misdescription**

No error or misdescription of the Business, Business Name or Equipment shall annul this sale and compensation, if demanded in writing before Completion but not otherwise, shall be made or given as the case may require, the amount to be settled in the case of any difference by the President of the Australian Property Institute of the Australian Capital Territory or his nominee, acting as an expert and not as an arbitrator.

**22. Confidentiality**

22.1 The terms of this Agreement and all information exchanged between the parties under this Agreement during the negotiations preceding this Agreement are confidential to them. A party must not disclose any of those terms or information, or any other Confidential Information, to any other person except:

- (a) to employees, legal advisers, accountants, auditors and other consultants of the party or its related bodies corporate requiring the information for the purposes of this Agreement; or
- (b) with the consent of the party who supplies the information; or
- (c) if the information is, at the date of this Agreement, lawfully in the possession of the recipient of the information through sources other than the party who supplied the information; or
- (d) if required by law or a stock exchange; or
- (e) if strictly and necessarily required in connection with legal proceedings relating to this Agreement; or
- (f) if the information is generally and publicly available other than as a result of breach of confidence by the person receiving the information.

**23. Confidential text under the Procurement Act**

- 23.1 In giving effect to the principles of open and accountable government, the Buyer may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this Agreement may be a notifiable contract under the Procurement Act and, if so, the Buyer will be required to make the text of this Agreement available to the public, including by publication on a public contracts register.
- 23.2 If Item 12 of the Reference Schedule states that this Agreement is a notifiable contract under the Procurement Act and specifies Confidential Text, the grounds on which the text is confidential are set out in Item 13 of the Reference Schedule, and clause 23.3 applies.
- 23.3 Except as provided in this Agreement, the Buyer must not disclose Confidential Text to any person without the prior written consent of the Seller (which consent will not be unreasonably withheld) except to the extent that Confidential Text:
- (a) is required or authorised to be disclosed under law;
  - (b) is reasonably necessary for the enforcement of the criminal law;
  - (c) is disclosed to the Buyer's solicitors, auditors, insurers or advisers;
  - (d) is generally available to the public;
  - (e) is in the possession of the Buyer without restriction in relation to disclosure before the date of receipt from the Seller;
  - (f) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
  - (g) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.

**24. Restraint of Trade**

- 24.1 In this clause 24, the following definitions apply:
- (a) **Restraint Area** means:
    - (i) the area within a 10 Kilometre radius from the Land, or if that area is unenforceable;
    - (ii) the area within a 5 Kilometre radius from the Land, or if that area is unenforceable;
    - (iii) the area within a 2 Kilometre radius from the Land.
- 24.2 Each Seller covenants to the Buyer that in order to protect the goodwill and profitability of the Business that they will not either directly or indirectly at any time (and, except in conjunction with the Buyer) for a period commencing on the date that the Seller is no longer operating the Business under the Licence and expiring on the date that is:
- (a) 5 years, or if that period is unenforceable;
  - (b) 3 years, or if that period is unenforceable;
  - (c) 1 year,
- either:
- (d) canvass or solicit:

- (i) orders for goods or services supplied by the Business; or
- (ii) business the same as or similar to the Business,

from any person who is or has been a client or customer of the Business; or

- (e) engage or be concerned or interested in any business carried on within the Restraint Area which is:
  - (i) the same as or similar to the Business within;
  - (ii) the same as or similar to a material part of the Business;
  - (iii) competitive with the Business; or
  - (iv) competitive with a material part of the Business.

24.3 The agreement by each Seller in clause 24.1 applies to them acting:

- (a) either alone or in partnership or association with another person;
- (b) as principal, agent, representative, director, officer or employee;
- (c) as member, shareholder, debenture holder, note holder or holder of any other security;
- (d) as trustee of or as a consultant or adviser to any person other than the Buyer; or
- (e) in any other capacity.

24.4 Each of the provisions referred to in clause 24.1 operate concurrently and independently of each other.

24.5 If any separate provision referred to in clause 24.1 is unenforceable, illegal or void that provision is severed and the other provisions remain in force.

24.6 Each Seller acknowledges that each separate provision in clause 24.1 is a fair and reasonable restraint of trade.

24.7 Each Seller agrees that for each period set out in clause 24.1 it will not initiate any contact with any clients or customers of the Business (whether former or current) in any way and for any commercial purpose.

24.8 The consideration for each Seller agreeing to the provisions of this clause 24 is \$1.00, receipt of which is acknowledged.

## 25. Variation of Agreement

This Agreement can only be varied by the parties in writing.

## 26. Severability

If any provision of this Agreement is illegal, void or unenforceable, that provision is to be treated as removed from this Agreement but the rest of the Agreement is not affected.

## 27. Waiver

A waiver by a party of its Rights under this Agreement is only effective if it is in writing and is only effective in relation to the particular obligation or breach in respect of which it is given.

**28. Further Assurance**

Each party must do anything (including signing any documents) reasonably required to give full effect to this Agreement and the transactions it contemplates.

**29. Consents and Approvals**

Subject to any law to the contrary, where the doing or execution of any act, matter or thing is dependent on the consent or approval of a party, that consent or approval may be given or withheld in the absolute discretion of that party, unless this Agreement expressly provides otherwise.

**30. No assignment**

A party must not assign any of its Rights under this Agreement to any person without the written consent of the other parties. Any such consent may be given or withheld in the absolute discretion of the relevant party.

**31. Counterparts**

This Agreement may be executed in any number of counterparts, all of which taken together constitute one and the same document.



EXECUTED as an Agreement.

SIGNED for and on behalf of the LAND DEVELOPMENT AGENCY in the presence of:

)  
)  
)

.....  
Signature of Witness

.....  
Signature of Land Development Agency delegate

.....  
Name of Witness

.....  
Name of Land Development Agency delegate

SIGNED by JIM SEARS  
in the presence of:

.....  
[Redacted]

Signature of Witness

[Redacted]

.....  
Print name

[Redacted]

Signature of Jim Sears

SIGNED by CONY SEARS  
in the presence of:

.....  
[Redacted]

Signature of Witness

[Redacted]

.....  
Print name

[Redacted]

Signature of Cony Sears

## ANNEXURE A

### Reference Schedule

No	Item	Definition
1.	Completion Date	28 days from the Date of this Deed, provided the conditions set out in the Agreement have been satisfied.
2.	Deposit	\$50,000.00
3.	Purchase Price	<p>\$575,000.00 (plus GST), being apportioned as set out below:</p> <p>(a) Included Equipment: \$ 2,000 Plus GST</p> <p>(b) Intellectual-Property <del>Goodwill</del> \$ 573,000 Plus GST.</p> <p>(c) Lease: \$</p> <p><del>(d) Legal and advisory costs: \$10,000 plus GST</del></p> <p><i>Sale cl 2.2.</i></p>
4.	Stakeholder	Not applicable
5.	Business Assets	<p>All:</p> <ol style="list-style-type: none"> <li>1. Equipment;</li> <li>2. the Lease; and</li> <li>3. Intellectual Property;</li> </ol> <p>owned by the Seller and used in connection with the Business, and not including the Excluded Assets.</p>
6.	Business	Lake Burley Griffin Boat Hire
7.	Business Name	Lake Burley Griffin Boat Hire (not currently registered)
8.	Business Premises/Land	Block 16 Section 33 Acton
9.	Excluded Assets	<p>All:</p> <ol style="list-style-type: none"> <li>1. Book Debts;</li> <li>2. Rescue boat;</li> <li>3. Cash at Hand,</li> </ol> <p>owned by the Seller and/or used in connection with the Business.</p>
10.	Intellectual Property	<ol style="list-style-type: none"> <li>1. Goodwill (including restraint of trade); and</li> <li>2. Business Name.</li> </ol>
11.	Address for service of notices	<p><b>Buyer</b>            Land Development Agency            ABN 20 419 925 579            TransACT House            470 Northbourne Avenue            Dickson ACT 2602</p> <p>Attention: David Dawes</p> <p><b>Seller</b>            Jim and Cony Seears</p> <div style="background-color: gray; width: 100px; height: 20px; margin-top: 5px;"></div>

**12. Confidential Text**

This Agreement is a "notifiable contract" under the Procurement Act and the following is Confidential Text:

1. The entire contents of Annexure A (Reference Schedule);
2. Clause 2.2;
3. Clause 24 (restraint of trade); and
4. Annexure B (Equipment).

**13. Grounds for confidentiality of Confidential Text**

The Procurement Act, part 3 (Notifiable Contracts) applies to this Agreement. The Buyer is satisfied that the Confidential Text is "confidential information" for the purposes of that Act because disclosure of the text would:

1. be an unreasonable disclosure of information about the business affairs of a person; and
2. 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.

## **ANNEXURE B**

### **Equipment**



**ANNEXURE C**

**Lease**

# SETTLEMENT STATEMENT TAX INVOICE

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**Lessee:** Dobel Boat Hire Pty Limited  
ABN 79 008 492 144

**Buyer:** Australian Capital Territory represented by Chief  
Minister, Treasury and Economic Development  
ABN 204 199 255 79

**Land:** Block 16 Section 33 Acton

**Date and time of Settlement:** Thursday 17 December 2015 at 2.30pm

**Place of Settlement:** ACT Law Society Settlements Rooms

## PAYABLE BY BUYER

Surrender Sum (GST exclusive)	\$1,000,000.00
GST	\$100,000.00
Less Deposit	<u>\$0.00</u>
Subtotal	\$1,100,000.00

### Adjustments:

Rental Arrears Repayment, 8 months @ \$1917.00 (GST inclusive)	+\$15,336.00
Rental Arrears Repayment for December \$1917.00 per month, 17/31 days	+1,051.26
Revenue Rates \$1,094.30 per quarter Adjusted as unpaid Lessee allows 78/92 days	-\$927.78
Land Rent \$3,575.00 per quarter Adjusted as paid Buyer allows 14/92 days	+\$544.02

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<b>AMOUNT PAYABLE ON COMPLETION</b>	<b>\$1,116,003.50</b>
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## CHEQUE DIRECTION

1. Dobel Boat Hire Pty Limited	\$1,116,003.50
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Total	\$1,116,003.50
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# SETTLEMENT STATEMENT TAX INVOICE

**Lessee/Seller:** JE & MS Pty Ltd as trustee for the JE & MS Trust  
 ABN 70 783 414 557  
**Buyer:** Australian Capital Territory represented by the Chief  
 Minister, Treasury and Economic Development Directorate  
 ABN 204 199 255 79  
**Land:** Block 13 Section 33 Acton  
**Date and time of Settlement:** Monday 1 February 2016 at 2.30pm  
**Place of Settlement:** ACT Law Society Settlements Rooms

## PAYABLE BY BUYER

Surrender Sum	\$1,099,999.00
Purchase Price of the Business Assets	\$1.00
GST	\$110,000.00
Less Deposit	\$0.00

Subtotal	\$1,210,000.00
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### Adjustments:

Revenue Rates \$6,293.92 p.a. Adjusted as paid to 31/3/16 Buyer allows 59/366 days	+\$1,014.59
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Water and Sewerage Charge \$468.21 (1/7/15 to 31/3/16) Adjusted as paid to 31/3/2016 Buyer allows 59/275 days	+\$100.45
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### Buyer allows additional payments as per Deed of Surrender:

Negotiation fees payable to [REDACTED]	+\$47,300.00 ✓
Legal fees payable to Mills Oakley Lawyers	+\$1,650.00 ✓
Accounting and tax fees payable to Kerstons Pty Limited	+\$3,388.00 ✓

## AMOUNT PAYABLE ON COMPLETION

**\$1,263,453.04**

## CHEQUE DIRECTIONS

1. JE & MS Pty Ltd	\$1,208,312.95
2. [REDACTED]	\$47,300.00 ✓
3. Icon Water	\$179.86
4. ACT Revenue Office	\$1,573.00
5. Kerstons Pty Limited	\$3,388.00 ✓
6. ACT ESDD RBT account \$2,983.75 per quarter, Seller allows 32/91 days (1 Jan – 1 Feb 2016)	\$1,049.23
7. Mills Oakley Lawyers	\$1,650.00 ✓
<b>Total</b>	<b>\$1,263,453.04</b>



# DEED OF SURRENDER OF CROWN LEASE

Dated \_\_\_\_\_ 2015

Parties

**AUSTRALIAN CAPITAL TERRITORY**

**THE PLANNING AND LAND  
AUTHORITY**

**JE & MS PTY LTD ACN 118 844 885 AS  
TRUSTEE FOR THE JE & MS TRUST  
ABN 70 783 414 557**

Prepared by

ACT Government Solicitor  
Level 6, 12 Moore Street  
Canberra ACT 2601  
Australia  
Ph: (02) 6205 3494  
Fax: (02) 6207 0650  
Ref: 626515:KA

Version

Final 22/12/2015



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**PARTIES:** **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (Territory) represented by the Chief Minister, Treasury and Economic Development Directorate.

**PLANNING AND LAND AUTHORITY**, the body corporate established by section 10 of the *Planning and Environment Act 2007* (ACT) for and on behalf of the Commonwealth of Australia (Authority).

**JE & MS PTY LTD ACN 118 844 885** in its own capacity and as trustee for the **JE & MS TRUST ABN 70 783 414 557** of [REDACTED] (Lessee).

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## BACKGROUND

- A. Pursuant to the Lease, the Authority (on behalf of the Commonwealth of Australia) leases the Land to the Lessee.
- B. The Lessee has agreed to surrender the Lease with effect from the Surrender Date.
- C. The parties have otherwise agreed to the surrender of the Lease on the terms of this Deed.

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IT IS AGREED by the parties as follows.

### 1. Interpretation

#### 1.1 Definitions

The following definitions apply in this Deed, unless the context otherwise requires. Additional definitions also appear in the Reference Schedule.

**ACT Building Legislation**

means the *Building Act 1972* (ACT), the *Building Act 2004* (ACT), the *City Area Leases Act 1936* (ACT), the *Leases Act 1918* (ACT), the *Leases (Special Purposes) Act 1925* (ACT), the *Buildings (Design and Siting) Act 1964* (ACT), the *Land (Planning and Environment) Act 1991* (ACT), the *Planning and Development Act 2007* (ACT), the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) and the *National Lands Ordinance 1989* (Cth) (and any laws having effect by virtue of that Ordinance), and regulations made pursuant to that legislation, and their predecessors and substitutes.

**Authorised Officer**

means a director or secretary of a party or any other person appointed by a party to act as an authorised officer for the purposes of this Deed.

<b>Business Agreement</b>	means the Sale of Business Assets between the Land Development Agency and the Lessee dated on or about the date of this Deed.
<b>Business Day</b>	means a day on which banks are open for general banking business in the capital city of the State or Territory in which the Land is situated (not being a Saturday, Sunday or public holiday in that city).
<b>Claim</b>	means a claim, notice, demand, action, proceeding, litigation, investigation or judgment however arising, whether present or future, actual or contingent, and whether involving a third party or a party to this Deed.
<b>Completion</b>	means completion of the surrender of the Lease in accordance with this Deed.
<b>Costs</b>	includes costs, charges and expenses, including those incurred in connection with advisers.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>Deed</b>	means this deed and all schedules and attachments annexed to it.
<b>Goods</b>	means plant, equipment, chattels, fixtures and fittings on the Land.
<b>GST Act</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Land Charges</b>	means general rates and water and sewerage rates.
<b>Planning Act</b>	means the <i>Planning and Development Act 2007</i> (ACT).
<b>Property</b>	means the Lease, the Goods and the Land.
<b>Reference Schedule</b>	means the reference schedule contained in Schedule I.
<b>Territory</b>	means: <ul style="list-style-type: none"> <li>(a) when used in a geographical sense, the Australian Capital Territory; and</li> <li>(b) when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).</li> </ul>

## 1.1 References to certain general terms

Unless the contrary intention appears in this Deed:

- (1) a reference to a document (including this Deed) includes any variation or replacement of it;
- (2) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Deed;
- (3) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;
- (4) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re enactments or replacements of any of them);
- (5) the singular includes the plural and vice versa;
- (6) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;
- (7) a reference to a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (8) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;
- (9) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (10) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (11) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (12) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (13) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (14) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;

- (15) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (16) the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (17) if an act under this Deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (18) a reference to time is a reference to time in the State or Territory in which the Land is situated; and
- (19) a reference to anything (including any amount) is a reference to the whole and each part of it.

## **1.2 Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed.

## **2. Consideration**

### **2.1 Valuable Consideration**

Each party acknowledges entering into this Deed and incurring obligations and giving rights under this Deed for valuable consideration received from each other party.

## **3. Agreement to surrender Lease**

### **3.1 Surrender of Lease**

With effect from the Surrender Date, the Lessee as beneficial owner agrees to surrender to the Authority free of encumbrances all the Lessee’s estate, title and interest in the Lease and the Land.

### **3.2 Acceptance of surrender of Lease**

The Authority agrees to accept the surrender of the Lease from the Surrender Date under section 293 of the Planning Act.

### **3.3 Lessee Acknowledgement**

The Lessee:

- (1) acknowledges that the Surrender Sum and all amounts payable by the Territory under clauses 3.7 (“Deposit”), 3.10 (“Obligations on Completion”) and (3)(a) (“Adjustments”), constitute payment by the Territory and the Authority of every

amount payable to the Lessee upon surrender of the Lease, including for the improvements on the Land, in particular any amounts due to be paid to the Lessee under sections 291 and 293 of the Planning Act; and

- (2) agrees not to make any Claim for, or take any action against, the Territory or the Authority to recover any monies in addition to those amounts regarding the surrender of the Lease, including any Claim under sections 291 or 293 of the Planning Act.

### **3.4 Lessee's goods and improvements**

The Goods located on the Land at Completion become the property of the Territory except for the following items:

- (1) any which are not owned by the Lessee;
- (2) are sold by the Lessee under the Business Agreement; or
- (3) are an Excluded Assets as defined in the Business Agreement.

### **3.5 No warranties by Lessee**

The Lessee does not make any representation or warranty in relation to the condition of the Land and the Goods, and the Territory accepts them in their state of repair and condition at Completion.

### **3.6 Condition and use**

The parties agree that the Lease is surrendered subject to the terms in **Schedule 3**.

### **3.7 Deposit**

On the Deposit Date:

- (1) The Territory must pay the Deposit to the Lessee; and
- (2) The Lessee must provide the Territory with the forms for the surrender of the Lease, executed by the Lessee.

### **3.8 Date for Completion**

The parties will complete the surrender of the Lease on or before the Surrender Date.

### **3.9 Place and time for Completion**

Unless otherwise agreed Completion is to take place:

- (1) at the ACT Settlement Rooms; and
- (2) at a time before 3.00pm nominated by the Territory.

### **3.10 Obligations on Completion**

On Completion:

- (1) provided the Lessee has complied with its obligations under clause 3.7(2), the Territory must provide the Lessee with a copy of the forms for surrender of the Lease executed by the Territory and endorsed by the Authority;
- (2) the Territory must pay the Surrender Sum (minus the Deposit paid) to the Lessee:
  - (a) by cheque drawn on the Territory's bank account; and
  - (b) as the Lessee directs; and
- (3) the Lessee must:
  - (a) pay all rent due to be paid under the Lease to the Authority as at the Completion date; and
  - (b) provide the Territory with the original certificate of title for the Land and any other document or consent required to register the forms of surrender of Lease

### **3.11 Adjustments**

The Territory and the Lessee agree to make all necessary adjustments of amounts payable by the Lessee for Land Charges, on the Surrender Date as if the Territory were responsible for Land Charges arising after the Surrender Date. If an amount cannot be adjusted because it is not known, the Territory and the Lessee agree to make the adjustment within 14 days after the amount is known.

### **3.12 Release**

- (1) The Territory and the Authority agrees to release and forever discharge the Lessee from all Claims and Costs concerning the Lessee's obligations under the Lease arising on and from the Surrender Date.
- (2) The Lessee agrees to release and forever discharge the Territory and the Authority from all Claims and Costs concerning the Lease, the use or occupation of the Premises or any incidental matter, arising up to the Surrender Date.

### **3.13 Obligations after Completion**

- (1) The Territory must arrange to register the surrender of Lease with Access Canberra (Land Titles and Rental Bonds) as soon as reasonably practicable after Completion.
- (2) The Lessee agrees to provide all reasonable assistance to enable the Territory to register the surrender of the Lease after completion, including answering any requisitions raised by Access Canberra (Land Titles and Rental Bonds) or the Authority.

#### 4. Parties' Costs

The parties agree to bear their own costs in connection with this Deed and any document or matter in connection with it with the exception of:

- (1) the Lessee's fees from [REDACTED] (up to a maximum of \$43,000 plus GST);
- (2) the Lessee's legal fees for reviewing this Deed and the Business Agreement (up to a maximum of \$1,500 plus GST);
- (3) the Lessee's accounting and tax fees for advising on structure and reviewing this Deed and the Business Agreement (up to a maximum of \$3,388 plus GST),

which will in each case be paid by the Territory on Completion on the provision of valid tax invoices to the Territory.

#### 5. GST

##### 5.1 GST definitions

In this clause:

**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 GST 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.

##### 5.2 Payment of GST

A party making Payment to another party for a Taxable Supply under this Deed 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.

##### 5.3 Reimbursements

When calculating the amount of:

- (a) any reimbursement to a party under this Deed; and
- (b) the indemnification under this Deed 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.



#### **5.4 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.

### **6. Notices and other communications**

#### **6.1 Form**

Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing, signed by the sender (if an individual) or an Authorised Officer, or the solicitor, of the sender and marked for the attention of the person identified in the Reference Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

#### **6.2 Delivery**

Communications must be:

- (1) left at the address set out or referred to in the Reference Schedule; or
- (2) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Reference Schedule; or
- (3) sent by fax to the fax number set out or referred to in the Reference Schedule; or
- (4) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or changed fax number, then communications must be to that address or number.

#### **6.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 6.4 ("When taken to be received") (whichever happens first) unless a later time is specified.

#### **6.4 When taken to be received**

Communications are taken to be received:

- (1) if left at the address set out or referred to in the Reference Schedule, on that day;
- (2) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (3) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

## **6.5 Receipt outside business hours**

Despite clauses 6.3 (“When effective”) and 6.4 (“When taken to be received”), if communications are received or taken to be received under clause 6.4 after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

## **7. General**

### **7.1 Payments**

The parties agree to make payments under this Deed in full without set-off (including equitable set-off) or counterclaim and without any deduction.

### **7.2 No merger**

The warranties, undertakings and indemnities in this Deed do not merge on the Surrender Date.

### **7.3 Variation and waiver**

A provision of this Deed, or a right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

### **7.4 Confidentiality**

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of this Deed except:

- (1) to any person in connection with an exercise of rights or a dealing with rights or obligations under the Lease or this Deed; or
- (2) to officers, employees, legal and other advisers and auditors of the parties; or
- (3) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (4) as required by any law or stock exchange; or
- (5) as required by law; or
- (6) in the case of the Territory and the Authority, to any Minister of the Territory or to the Legislative Assembly or any of its bodies or committees; or
- (7) as required to give effect to the surrender of the Lease.

Each party consents to disclosures made in accordance with this clause 7.4.

### **7.5 Counterparts**

This Deed may consist of a number of copies, each signed by one or more parties to this Deed. If so, the signed copies are treated as making up the one document.

**7.6 Entire agreement**

This Deed and the Business Agreement constitutes the entire agreement of the parties about the surrender of the Lease and supersedes all previous agreements, understandings and negotiations. The Territory and the Authority agree that in entering into this Deed they have not relied on any representation or warranty about its subject matter except those included in this Deed.

**7.7 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed any part of it.


**7.8 Further assurances**

Each party agrees, at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this Deed and the transactions contemplated by it, including by signing documents.

**7.9 Interdependency with Business Agreement**

- (1) This Deed is interdependent and conditional upon the Business Agreement.
- (2) If either party breaches any provisions of this Deed that will constitute a breach of the Business Agreement.
- (3) If either party breaches any provision of the Business Agreement that will constitute a breach of this Deed.
- (4) If either party is entitled to rescind or terminate this Deed then that party will be entitled to rescind or terminate (as the case may be) the Business Agreement.
- (5) If either party is entitled to rescind or terminate the Business Agreement then that party will be entitled to rescind or terminate (as the case may be) this Deed.
- (6) Completion of this Deed must take place simultaneously with the Business Agreement.

## SCHEDULE 1 – Reference Schedule

- Item 1:** Lessee: JE & MS Pty Ltd ACN 118 844 885 in its own capacity and as trustee for JE & MS Trust  
ABN 70 783 414 557
- Item 2:** Land: Block 13 Section 33 Division of Acton
- Item 3:** Lease: Lease granted pursuant to the *Land (Planning and Environment) Act 1991 (ACT)* by the Commonwealth to the Lessee over the Land and entered in register Book Volume 1627 Folio 69, a copy of which is contained in Schedule 2.
- Item 4:** Surrender Date: 1 February 2016
- Item 5:** Deposit: \$10 (receipt of which is acknowledged).
- Item 6:** Deposit Date: the date of this Deed.
- Item 7:** Surrender Sum: \$1,099,999.00 (excluding GST) comprising:
- (a) all statutory compensation payable under sections 291 and 293 of the Planning Act; and
  - (b) consideration for the surrender of the Crown lease.
- Item 8:** Governing law: Australian Capital Territory
- Item 9:** Address for Notices: **Territory:**  
Chief Minister, Treasury and Economic  
Development Directorate  
Ground Floor, TransACT House  
470 Northbourne Avenue  
Dickson ACT 2602
- Contact Officer: Nicholas Hudson
- Lessee:**  
JE & MS Pty Ltd  

- Contact Officer: Jillian Edwards
- Authority:**  
Dame Pattie Menzies House  
16 Challis Street  
Dickson ACT 2602
- Contact Officer: Maggie Chapman

## SCHEDULE 2 – Crown lease

## **SCHEDULE 3 - Condition and use terms**

### **Item 1 As is, where is**

The Territory and the Authority acknowledge that the Lessee surrenders the Property on an “as is, where is” basis, in its present state and condition, including:

- (1) any legal and physical defects; and
- (2) any matter referred to in this Deed.

### **Item 2 Inspection**

The Territory confirms it:

- (1) is satisfied as to the nature, quality, condition and state of repair of the Property; and
- (2) accepts the Property as it is including all defects (latent or patent) including any matter referred to in this Deed; and
- (3) is satisfied about the purposes for which the Property may be used and about all restrictions and prohibitions on its use and development.

### **Item 3 Due Diligence**

The Territory acknowledges and agrees that:

- (1) before entering into this Deed, the Lessee gave the Territory a reasonable opportunity to inspect the Property; and
- (2) the Territory has entered into this Deed on the basis that it has carried out, or had the opportunity to carry out, its due diligence of the Property.

### **Item 4 Territory has satisfied itself about specific matters**

The Territory acknowledges that it has satisfied itself in connection with the matters arising from its due diligence, including in connection with and enquiries about:

- (1) the title to the Property, including easements, restrictions on use and other encumbrances which benefit or burden the Property; and
- (2) the Lessee’s title to the Property and its rights and obligations in connection with it, including the terms of the Lease; and
- (3) the accuracy of the description of the Property; and
- (4) the matters referred to in Item 1 (“As is, where is”) and Item 2 (“Inspection”) of this schedule; and

- (5) the use, fitness or suitability of the Property for any purpose; and
- (6) the means of access to the Property; and
- (7) whether the walls or fences on the land that should not be on the boundaries of the Property, as the case may be, are not and the existence of any encroachments onto the Property or by the Property onto adjacent land (and whether the encroachments are subject to any registered easement or other agreement burdening or benefitting the Property); and
- (8) whether the Property complies with any laws and requirements of Authorities affecting the Property (including any use) and any non-compliance including the ACT Building Legislation; and
- (9) the existence or otherwise of any requirements of any Authority in connection with the Property, including resumptions, road dedications, road widenings and similar things; and
- (10) the existence or otherwise of necessary consents, approvals, licences or requirements of Authorities in connection with the Property (including its use) and any non-compliance with those consents, approvals, licences or requirements; and
- (11) whether there are any notices or orders by any Authority, including a notice or order requiring work to be done or money spent in connection with the Property; and
- (12) the existence of any claim for an interest in the Property under the *Native Title Act 1993* (Cth), the *Native Title Act 1994* (ACT) or any other native title law; and
- (13) the existence of easements or other rights in respect of a service for the Property (including air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water) which is a joint service or which passes through another property, or any service for another property which passes through the Property; and
- (14) the condition or existence or non-existence of services; and
- (15) any approval, application for an approval or order under any law; and
- (16) the terms and conditions of the Lease and any non-compliance with those terms and conditions; and
- (17) the ownership or location of any fuel storage tank or facility.

#### **Item 5 No claims or requisitions**

The Territory accepts the surrender of the Lease subject to the matters referred to, disclosed or described under this Deed.

