

# DEVELOPMENT AND FUNDING AGREEMENT

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Chief Executive Officer (Housing) 'CEO (Housing)'  
(ABN 23 912 978 797)

[insert successful proponent name]

'[insert successful  
proponent short  
name']



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## DEVELOPMENT AND FUNDING AGREEMENT

AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 2015

### PARTIES

1. **Chief Executive Officer (Housing)** (ABN 23 912 978 797) of Level 6, RCG Centre, 47 Mitchell Street Darwin 0800 in the Northern Territory of Australia (CEO (Housing)); and
2. **[insert successful proponent name]** of [insert address] ([insert successful proponent short name]).

### RECITALS

- A. CEO (Housing) is the owner of the Properties.
- B. CEO (Housing) recognises the growing demand for renal services in Central Australia and the requirement for end stage renal patients who reside in remote communities to relocate to urban areas once they reach end-stage kidney disease where they are able to access daily treatment and clinical support.
- C. CEO (Housing) entered into the Commonwealth Funding Agreement in order to fund the Project for the provision of affordable long-term accommodation for end stage renal patients.
- D. The Proponent was the successful proponent in a public Request for Proposals process undertaken by CEO (Housing).
- E. CEO (Housing) wishes in conjunction with the Proponent and the Department of Health to:
  - (a) give effect to the terms and conditions of the Commonwealth Funding Agreement by selling the Properties to the Proponent to be rebuilt and/or refurbished in accordance with the plans approved under clause 3.1;
  - (b) engage the Proponent to provide the Property Management Services for the Term; and
  - (c) allow the Department of Health to provide clinical care to end stage renal patients in ongoing long term family centric accommodation.
- F. CEO (Housing) has agreed with the Proponent to provide the Funding under the Commonwealth Funding Agreement to the Proponent to assist the Proponent in achieving the Objectives, on the terms and conditions of this Agreement.

### OPERATIVE PROVISIONS

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Defined terms

In this Agreement unless the context otherwise requires:

- (a) **Agreement** or **this Agreement** means the development and funding agreement constituted by this document, including any schedules, annexures and attachments and includes the Project Plan once approved;
- (b) **Annexure** means an annexure to this Agreement.
- (c) **Approval Date** means the date specified in Item 5;
- (d) **Approved Account** means the account opened and operated by the Proponent pursuant to clause 5.2;

- 
- (e) **Authority** means any Northern Territory or Commonwealth government agency, corporation, or government owned corporation, or local government authority excluding CEO (Housing);
- (f) **Business Day** means any day which is not a Saturday, Sunday or public holiday in Darwin or Alice Springs;
- (g) **Business Plan** means the business plan submitted by the Proponent in accordance with clause 3.3 and approved by CEO (Housing) under clause 3.3(a);
- (h) **Caveat** means a caveat securing CEO (Housing)'s interest under this Agreement and the Covenant substantially in the form of the caveat contained at Schedule 2;
- (i) **CEO (Housing)** means the Chief Executive Officer (Housing), a body corporate sole established under the *Housing Act* and includes its successors and permitted assigns;
- (j) **Commencement Date** means the date specified at Item 2;
- (k) **Commonwealth Funding Agreement** means the *Project Agreement for Renal Infrastructure in the Northern Territory* entered into between the Commonwealth of Australia and CEO (Housing);
- (l) **Conflict** means any matter, circumstance, interest, or activity directly or indirectly affecting the Proponent or any employee, officer, member, agent or subcontractor of the Proponent (including holding any office, possessing any property, or having any professional or contractual obligation), which may, or may appear to, impair the ability of the Proponent or the relevant employee, officer, member, agent or subcontractor to carry out the Proponent's responsibilities and obligations under this Agreement diligently and independently;
- (m) **Department of Health** means the Northern Territory Department of Health;
- (n) **Detailed Development Plans** means detailed plans for the Development included in the Project Plan;
- (o) **Development** means the refurbishment or rebuilding of the Properties in accordance with the Detailed Development Plans;
- (p) **Development Approval** means the issue of a development permit pursuant to the *Planning Act* (NT) in respect to the Development;
- (q) **Development Bond** means the amount specified in Item 3 which is provided to secure the Proponent's obligations in respect of carrying out the Development;
- (r) **Development Completion Date** means the date specified in Item 4;
- (s) **Eligibility Criteria** means the eligibility criteria specified in Item 9;
- (t) **Eligible Tenants** means tenants from the Wait List who meet the Eligibility Criteria;
- (u) **Expert** means a person appointed as the independent expert in accordance with clause 24;
- (v) **Expiry Date** means, for each of the Properties, 10 years from the issue of the Notice of Acceptance by CEO (Housing) in accordance with clause 8.2(a)(i) for that Property;
- (w) **Funding** means the total amount of funding CEO (Housing) will pay the Proponent during the Term, as set out in the Project Budget, and, where the context permits or requires, includes the whole or any part of the Funding or any Funding Instalments, and any interest accrued on the investment of the Funding or any part of it;
- (x) **Funding Instalment** means the instalments set out in Item 6 paid in accordance with the Project Budget and pursuant to clause 5;

- 
- (y) **Improvements** means any buildings, structures, improvements or works of any permanent nature whatsoever erected on or in the Properties as part of the Development;
- (z) **Interest Rate** means the greater of 10% per annum or the rate applied by CEO (Housing)'s bank on overdrafts exceeding \$100,000.00 from time to time;
- (aa) **Item** means an item of Schedule 1;
- (bb) **Laws** means:
- (i) any statute, regulation, ordinance, by-law or subordinate legislation in force from time to time, whether made by state, territory, federal or local government;
  - (ii) any other regulatory instruments applying to the Property; and
  - (iii) the common law applicable from time to time in the Northern Territory.
- (cc) **Notice** means written notice;
- (dd) **Objectives** means the objectives set out in clause 2;
- (ee) **Project** means the Project as a whole as set out in the Project Plan and includes the Development and the Property Management Services;
- (ff) **Project Budget** means the budget for the Project included in the Project Plan;
- (gg) **Project Manager** means the project manager to be engaged by the Proponent pursuant to clause 7.2;
- (hh) **Project Plan** means the plan approved by CEO (Housing) in accordance with clause 3.1 and includes the Detailed Development Plans, the Project Budget and the Project Schedule;
- (ii) **Project Schedule** means the project schedule for the Project included in the Project Plan;
- (jj) **Properties** means the properties specified in Item 1;
- (kk) **Property Management Services** means the services to be provided by the to CEO (Housing) pursuant to clause 10;
- (ll) **[Proponent (insert Proponent name in alphabetical order)]** means [insert name and full details once proponent is known] and includes its successors and permitted assigns;
- (mm) **[Proponent's Property (insert Proponent name in alphabetical order)]** means the equipment, machinery, tools, goods and chattels required in or for the performance of the Development but does not include anything purchased in whole or in part with the Funding;
- (nn) **Purchase Price** means the amount set out in Item 8;
- (oo) **Relevant Authority** means any public governmental, semi-governmental, statutory or regulatory authority, department or other body having competent jurisdiction in respect of the relevant act, matter or thing;
- (pp) **Request for Proposals** means the Request for Proposals issued by CEO (Housing) for the redevelopment of the Properties;
- (qq) **Response to the Request for Proposals** means the response to the Request for Proposals provided by the Proponent [consider whether to attach];

- (rr) **Restrictive Covenant** means a covenant pursuant to the *Land Title Act* substantially in the form of the restrictive covenant contained at Schedule 3;
- (ss) **Stage** means a stage of the Development (if any) set out in the Project Plan;
- (tt) **Stage Completion Date** means each date (if any) set out for completion of any Stage in the Project Plan;
- (uu) **Term** means the term of this Agreement commencing on the Commencement Date and expiring on the Expiry Date;
- (vv) **Transfer** means the transfer of title in the Properties from CEO (Housing) to the Proponent in accordance with this Agreement;
- (ww) **Transfer Date** means 14 Business Days from the satisfaction of the last of clause 3.1(c)(i), clause 3.3(f)(i) or clause 3.4(a); and
- (xx) **Wait List** means a wait list of tenants maintained by the Department of Health and notified to the Proponent from time to time.

## 1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (b) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of this Agreement and references to this Agreement include any schedule or annexure to this Agreement;
- (c) the singular includes the plural and the plural includes the singular;
- (d) a reference to one gender includes the other gender;
- (e) the reference to a person includes a body corporate;
- (f) headings are included for reference only and do not affect the interpretation of this Agreement;
- (g) a party who is a trustee is bound both personally and in its capacity as trustee;
- (h) the expressions "CEO (Housing)" and "Proponent" include the respective executors, administrators, permitted assigns and successors in title of such parties including any person taking by way of novation;
- (i) every covenant or agreement expressed or implied in this Agreement by which more parties than one covenant to agree shall bind such parties and every one or more of them jointly and each of them severally and every provision expressed or implied in this Agreement which applies to more parties than one shall apply to such parties and every two or more of them jointly and each of them severally and their respective administrators, executors and assigns;
- (j) "including" and similar words are not words of limitation;
- (k) writing includes any mode of representing or reproducing words in a tangible and visible form, and includes e-mail;
- (l) a right includes a remedy, authority or power;
- (m) if a word or phrase is defined similar words and phrases have a corresponding meaning;



- (n) a reference to Laws includes any amendments, re-enactments or replacements of those laws, or any legislative provisions substituted for such laws, and all ordinances, by-laws, regulations and other statutory instruments issued under those laws;
- (o) a reference to any authority, association or body whether statutory or otherwise will (if that authority, association or body ceases to exist or is re-constituted, re-named or replaced or its powers or functions are transferred to any other authority, association or body) be deemed to refer respectively to the authority, association or body established or constituted in its place or as nearly as may be succeeding to its powers or functions;
- (p) a reference to time is a reference to time in Darwin;
- (q) if an act must be done on a day which is not a Business Day, that act is to be done instead on the next Business Day;
- (r) all monetary amounts are in Australian dollars, unless otherwise stated;
- (s) any term, condition or covenant implied by Law (statutory or otherwise) is not negated by this Agreement, but will be deemed to have been modified (where so permitted) to the extent of any inconsistency with this Agreement; and
- (t) a term or condition of this Agreement must not be interpreted to the disadvantage of a party merely because that party was responsible for the drafting of this Agreement or the inclusion of the term or condition in this Agreement.

## **2. OBJECTIVES**

### **2.1 Objectives of this Agreement**

The Parties agree the primary objectives of this Agreement are:

- (a) to provide quality, affordable, fit for purpose accommodation to end stage renal patients in Central Australia;
- (b) to give effect to the Commonwealth Funding Agreement by providing long term family-centric renal accommodation for end stage renal patients and their families or carers in Alice Springs and Tennant Creek through:
  - (i) the sale and purchase of the Properties in accordance with this Agreement;
  - (ii) the delivery of the refurbishment and/or redevelopment of the Properties to Australian Standard AS4299 Class C (Adaptable Housing) in accordance with the Detailed Development Plans and this Agreement;
  - (iii) the delivery of the Property Management Services at the Properties for the purpose of providing ongoing long term family centric accommodation to end stage renal patients and their families or carers for the Term.

## **3. PROJECT APPROVAL**

### **3.1 Project Plan**

- (a) The Proponent must, within one month of the Commencement Date, prepare and submit to CEO (Housing) a draft Project Plan in accordance with this clause 3.1, incorporating Detailed Development Plans, Stages (if any), Project Schedule and Project Budget for the provision of the Project substantially in accordance with the Response to the Request for Proposals for CEO (Housing)'s approval.
- (b) The Project Plan must address all aspects of the Project, including but not limited to the following:

- (i) detailed plans for the refurbishment and/or redevelopment for each of the Properties ('Detailed Development Plans');
  - (ii) a detailed budget for the Project including any milestone payments, all costs of the refurbishment and/or redevelopment of each of the Properties ('Project Budget'); and
  - (iii) a detailed schedule for the Project, including any milestones and Stage details if the Development will be constructed in Stages ('Project Schedule').
- (c) Within 14 Business Days of receiving the Project Plan, CEO (Housing) will notify the Proponent either that:
- (i) it approves the Project Plan; or
  - (ii) it does not approve the Project Plan, giving written reasons.
- (d) If CEO (Housing) notifies the Proponent that it does not approve the draft Project Plan, the Proponent must amend the draft as required by CEO (Housing) in its notice and issue a revised Project Plan within the timeframe contained in CEO (Housing)'s notice, for CEO (Housing)'s approval.
- (e) Subject to clause 3.5, the provisions of this clause 3.1 will continue to apply until CEO (Housing) approves the Project Plan.
- (f) The Project Plan approved by CEO (Housing) pursuant to clause 3.1(c)(i) will be incorporated into this Agreement and form part of it as though it was annexed to this Agreement at the Commencement Date and must be complied with by the Proponent.

### **3.2 Approval of Project Plan**

The Proponent acknowledges that CEO (Housing)'s approval or acceptance of the Project Plan and any amendments or replacements to the Project Plan is not to be construed that CEO (Housing) accepts any responsibility for the technical or financial adequacy or the design of the Project for the purposes required by the Proponent or for any other purpose whatsoever.

### **3.3 Business Plan**

- (a) The Proponent must, within one month of the Commencement Date, prepare and submit to CEO (Housing) for approval a detailed draft Business Plan on substantially the same terms as set out in the Response to the Request for Proposals for CEO (Housing)'s approval.
- (b) The Business Plan must address such matters including but not limited to the following:
  - (i) the Proponent's future business directions and activities;
  - (ii) the Proponent's financial projections of income and expenditure relating to its business activities (including but not limited to the Properties) and the Project;
  - (iii) risk management;
  - (iv) the Proponent's profitability, growth forecast and other matters which confirm the Proponent's ongoing viability and solvency; and
  - (v) the Proponent's ongoing ability to fund the Property Management Services from each Property for a minimum 10 year period from the Notice of Acceptance for that Property.
- (c) The Business Plan must demonstrate the Proponent's capacity to manage the Properties and provide the Property Management Services using the income from the Properties and without any further contribution from CEO (Housing).

- (d) The Proponent must regularly review the Business Plan throughout the Term (and at least annually) and submit to CEO (Housing) within a reasonable time any amendments made to the Business Plan.
- (e) The Proponent must submit to CEO (Housing) by no later than 30 June each year in accordance with the guidelines agreed by the Parties an annual budget forecast for the following Financial Year including by not limited to:
  - (i) profit and loss accounts;
  - (ii) cash flow statement;
  - (iii) balance sheet; and
  - (iv) future level of debt servicing obligations of the Proponent.
- (f) Within 14 Business Days of receiving the Business Plan, CEO (Housing) will notify the Proponent either that:
  - (i) it approves the Business Plan; or
  - (ii) it does not approve the Business Plan, giving written reasons.
- (g) If CEO (Housing) notifies the Proponent that it does not approve the draft Business Plan, the Proponent must amend the draft as required by CEO (Housing) in its notice and issue a revised Business Plan within the timeframe contained in CEO (Housing)'s notice, for CEO (Housing)'s approval.
- (h) Subject to clause 3.5, the provisions of this clause 3.3 will continue to apply until CEO (Housing) approves the Business Plan.

### **3.4 Project Consent and Project Approval**

- (a) Where required for any refurbishment and/or redevelopment of any Property, the Proponent must:
  - (i) make and diligently pursue applications to the relevant Authority for the Property to be rezoned to the appropriate zone to allow the Proponent to undertake the Development;
  - (ii) make and diligently pursue applications to all Relevant Authorities for approval of the Project and the Development; or
  - (iii) connect all services to the Properties.
- (b) CEO (Housing) agrees to do all things and sign all documents reasonably necessary as owner of the Properties to allow the Proponent to make any applications under clause 3.4(a).

### **3.5 Conditions Precedent to Sale and Purchase**

- (a) If:
  - (i) the Project Plan is not approved by CEO (Housing) in accordance with clause 3.1(c)(i);
  - (ii) the Business Plan is not approved by CEO (Housing) in accordance with clause 3.3(f)(i);
  - (iii) the Proponent has not been successful in rezoning the Properties (if required) in accordance with clause 3.4(a)(i); or
  - (iv) the Proponent has not been successful in obtaining any necessary approvals of the Project and the Development in accordance with clause 3.4(a)(ii),

by the Approval Date, then either party may at any time thereafter before the Transfer Date terminate this Agreement by giving written notice to the other party, and neither shall have any rights to damages or compensation of any nature whatsoever, as against the other in relation to that termination.

#### **4. DEVELOPMENT BOND**

- (a) As security for the performance of the Proponent's obligations to complete the Development in accordance with this Agreement, the Proponent must pay or provide the Development Bond to CEO (Housing) on or before Transfer.
- (b) The Development Bond must be provided by way of unconditional and irrevocable financial guarantee reasonably acceptable to CEO (Housing):
  - (i) issued by an authorised deposit-taking institution as defined in the *Banking Act* (Cth) and acceptable to CEO (Housing) or an insurer (reasonably acceptable to CEO (Housing)) in the form of an insurance bond;
  - (ii) in favour of CEO (Housing) and its assigns;
  - (iii) given expressly in respect of the whole of the Proponent's obligations under this Agreement; and
  - (iv) with no expiry date.
- (c) If the Proponent defaults in the performance of its obligations under this Agreement (including covenants of a negative character) in relation to or in connection with:
  - (i) the performance of the Development; or
  - (ii) failure to comply with the terms of the Covenant,CEO (Housing) is entitled (without prejudice to any other rights or remedies available) to:
  - (iii) call upon the Development Bond it holds in accordance with its terms; and
  - (iv) apply part or all of the Development Bond as it sees fit.
- (d) Provided there are no genuine claims in existence or in the process of being made by CEO (Housing) pursuant to clause 4(c) at the time, the amount of the Development Bond held by CEO (Housing) must be returned to the Proponent upon completion of the Development in accordance with the Project Plan as determined by CEO (Housing) (acting reasonably).

#### **5. PROJECT FUNDING**

##### **5.1 Contribution by CEO (Housing)**

- (a) The Parties acknowledge CEO (Housing) entered into the Commonwealth Funding Agreement to support the delivery of long term family-centric renal accommodation for end stage renal patients and their families or carers in Alice Springs and Tennant Creek.
- (b) In accordance with the terms and conditions of the Commonwealth Funding Agreement, CEO (Housing) will provide the Funding for the Purchase Price and the Development, being the lesser of:
  - (i) the costs of the Development and the Purchase Price (inclusive GST) as set out in the Project Budget; or
  - (ii) \$6.3 million dollars (inclusive GST).

- (c) CEO (Housing) agrees to provide the Funding to the Proponent on the terms and conditions of this Agreement, subject to the continuing compliance of the Proponent with the terms and conditions of this Agreement.

## 5.2 Approved Account

- (a) Within five Business Days of the Commencement Date, the Proponent must open an Approved Account for the Funding to be paid into.
- (b) Unless CEO (Housing) otherwise agrees in writing, the Approved Account must be:
  - (i) opened and used for the sole purpose of receipt and expenditure of the Funding for the Project and in accordance with this Agreement;
  - (ii) held with an authorised deposit-taking institution under the *Banking Act 1959* (Cth) ('ADI'), in an account under the Proponent's sole name and control; and
  - (iii) an interest bearing account of a type appropriate for the amount of the Funding and for the purposes of the Project.
- (c) The Proponent must:
  - (i) notify CEO (Housing) in writing of the details of the Approved Account, before CEO (Housing) will be obliged to pay the Funding;
  - (ii) provide CEO (Housing) and the ADI with written authority for CEO (Housing) to obtain any details relating to the Approved Account and the funds with it;
  - (iii) provide written notification to the ADI that the Funding is for the express purpose of the Development (including payment of the Purchase Price) and provide a copy of the notification to CEO (Housing);
  - (iv) subject to clause 5.2(c)(v), not change the Approved Account, or any details of it without the prior written approval of CEO (Housing);
  - (v) if the ADI varies any details of the Approved Account (including, without limitation, the type of account, name or interest rate), notify CEO (Housing) in writing within 10 Business Days of the change occurring and any varied details of the Approved Account; and
  - (vi) when any interest on the Funding is paid into the Approved Account, only use such interest for the purposes of the Development (including payment of the Purchase Price).

## 5.3 Payment of Funding

- (a) Subject to the continuing compliance by the Proponent with this Agreement, CEO (Housing) will pay the Proponent the Funding in the amounts and at the times set out in Item 6.
- (b) CEO (Housing) will pay each Funding Instalment into the Approved Account.

## 5.4 Use of Funding

- (a) The Proponent must:
  - (i) use the Funding (including any interest earned on the Funding), solely for the purpose of purchasing the Properties and conducting the Development and in accordance with this Agreement; and
  - (ii) spend the Funding in accordance with the Project Budget and this Agreement.
- (b) The Proponent must ensure that any amount of the Funding not immediately required for expenditure is held in the Approved Account, and any interest earned on those

monies is applied and accounted for as though it formed part of the Funding provided by CEO (Housing).

- (c) Except with CEO (Housing)'s prior written approval, the Proponent must not use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit payment or other interest:
- (i) the Funding;
  - (ii) this Agreement or any of CEO (Housing)'s obligations under this Agreement; or
  - (iii) any one of more of the Properties.

#### **5.5 No requirement for additional funding**

- (a) The Proponent acknowledges that CEO (Housing):
- (i) is under no obligation to provide any further monies to the Proponent if the Proponent's expenditure on the purchase of the Properties or the Development, or any Stage, exceeds the Funding or any part of the Funding attributable to a specific Stage, and the Proponent accepts responsibility for any additional expenditure or costs incurred in the Purchase or Development or any Stage;
  - (ii) will have no responsibility for any costs associated with the upkeep and management of the Properties or the Development constructed, purchased or otherwise acquired using the Funding; and
  - (iii) will have no responsibility for any costs associated with or required to fund the Property Management Services.

## **6. SALE AND PURCHASE OF PROPERTIES**

### **6.1 Transfer of Title**

- (a) CEO (Housing) agrees to transfer title in the Properties to the Proponent in exchange for:
- (i) payment of the Purchase Price by the Proponent to CEO (Housing);
  - (ii) the Proponent providing CEO (Housing) with an executed Restrictive Covenant for each of the Properties, capable of registration to be registered on title immediately following transfer of title;
  - (iii) the Proponent providing CEO (Housing) with an executed Caveat for each of the Properties capable of registration to be registered on title immediately following transfer of title; and
  - (iv) any general consents required to enable CEO (Housing) to register the above forms.
- (b) CEO (Housing) will deliver to the Proponent:
- (i) the transfer of land instrument for each Property duly executed by CEO (Housing) to be held in escrow by the Proponent for the purpose of assessment for stamp duty only; and
  - (ii) particulars of the Purchase Price and the manner in which the Purchase Price is to be paid,

no later than seven Business Days before the Transfer Date.

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- (c) Unless otherwise agreed in writing by the parties, Transfer will take place at the Land Titles Office, Darwin on the Transfer Date.
  - (d) The Parties agree that at Transfer the following documents will be registered for each of the Properties in the following order:
    - (i) transfer of land instrument;
    - (ii) Restrictive Covenant;
    - (iii) Caveat;
    - (iv) any General Consent necessary to register the above; and
    - (v) any other documents required to be registered by the Proponent.

## **7. DEVELOPMENT**

### **7.1 The Development**

- (a) On and from Transfer, the Proponent must carry out and complete the Development in accordance with this clause 7.1.
- (b) The Proponent must (by itself or by engaging contractors in accordance with clause 7.3):
  - (i) carry out the Development diligently, effectively and in a proper and workmanlike manner in accordance with:
    - (A) the Project Plan;
    - (B) the Detailed Development Plans;
    - (C) the Project Schedule;
    - (D) the NT Planning Scheme;
    - (E) the requirements of any relevant Authority; and
    - (F) all applicable Laws;
  - (ii) ensure any Stages are completed by the relevant Stage Completion Date (if any);
  - (iii) ensure the Development is completed by the Development Completion Date;
  - (iv) keep CEO (Housing) fully informed on a regular basis, or on the request of CEO (Housing) from time to time, as to the progress of the Development and the Project;
  - (v) comply, within a reasonable time, with all reasonable requests or directions of CEO (Housing) in respect of the Development;
  - (vi) keep records and account books covering the use of the Funding in such a way as to ensure easy identification of all receipts and expenditure relating to the Development and compliance with any reporting requirements under this Agreement; and
  - (vii) promptly advise CEO (Housing) in writing of any relevant matters which might affect the Proponent's ability to continue or to complete the Development, or to meet any of the Proponent's obligations under this Agreement.
- (c) The Proponent must ensure the Development complies with relevant building codes and standards, including:
  - (i) the Building Code of Australia;

- (ii) the relevant Australian Standards, including as a minimum AS4299 Class C (Adaptable Housing);
  - (iii) the Building Act (NT) and Building Regulations;
  - (iv) NT Deemed to Comply Manual (Building Advisory Committee); and
  - (v) any other applicable Laws.
- (d) The Proponent is responsible for the Development and for ensuring that it complies with this Agreement, and will not be relieved of that responsibility because of any:
- (i) involvement by CEO (Housing) in the performance of this Agreement; or
  - (ii) subcontracting by the Proponent of any part of this Agreement or any obligations under it.
- (e) Other than in the case of Force Majeure in accordance with clause 26:
- (i) the Proponent must not suspend the delivery of the Development without the prior written consent of CEO (Housing), which consent may be withheld, or given subject to conditions, in CEO (Housing)'s absolute discretion; and
  - (ii) if the Proponent suspends any of the Development, whether with the consent of CEO (Housing) or otherwise, the Proponent must immediately notify CEO (Housing) of that suspension, with detailed reasons, and, where the suspension is without CEO (Housing) consent, CEO (Housing) may in its absolute discretion take action pursuant to clause 21.
- (f) The Proponent must:
- (i) obtain all necessary consents, approvals and clearances for the demolition (if any) and construction of the Development including (without limitation) those relating to the following matters:
    - (A) Development permits;
    - (B) the environment;
    - (C) sacred sites and heritage; and
    - (D) service authorities where the Development may have an impact on the relevant service.

## **7.2 Project Manager**

- (a) Subject to clause 7.2(b), by the date specified in the Project Plan, the Proponent must engage and retain the services of a suitably qualified and experienced Project Manager, to manage the Development until the Development Completion Date or such time as the Development is actually completed and the last of the Notices of Acceptance for the Properties is given by CEO (Housing) in accordance with clause 8.2(a)(i).
- (b) Before formally engaging a Project Manager, the Proponent must submit details of the Project Manager's name, qualifications and such other details as CEO (Housing) requests, to CEO (Housing) for approval. The Proponent must not formally engage the Project Manager until CEO (Housing) has given its approval to the appointment, which approval will not be unreasonably withheld.
- (c) The Proponent must ensure that the Project Manager it engages is bound by a written agreement to comply with the following clauses of this Agreement as if the Project Manager were a party to it, and ensure that the Project Manager so complies with those provisions, unless CEO (Housing) agrees otherwise in writing:



- (i) Insurance (clause 17.1);
  - (ii) Risk (clause 17.2);
  - (iii) Release (clause 17.3);
  - (iv) Indemnity (clause 17.4);
  - (v) Confidential Information (clause 18.2);
  - (vi) Protection of Personal Information (clause 18.3);
  - (vii) CEO (Housing) Information (clause 18.4);
  - (viii) Conflict of Interest (clause 19); and
  - (ix) No merger (clause 27.1).
- (d) At any time during the Term of this Agreement:
- (i) CEO (Housing) may (on any reasonable ground) give the Proponent notice in writing that the Project Manager is not, or is no longer, acceptable to CEO (Housing). If the Proponent receives a notice under this clause 7.2(d)(i), the Proponent must immediately replace the Project Manager with another Project Manager acceptable to CEO (Housing); and
  - (ii) the Proponent must, in any contract with a Project Manager, reserve a right of termination to take account of CEO (Housing)'s rights under clauses 7.2(d)(i) and 21.
  - (iii) CEO (Housing) is not liable to compensate the Proponent if it exercises its rights under clause 7.2(d)(i).

### **7.3 Engagement of Subcontractors**

- (a) Subject to subclauses 7.3(b) and 7.3(c), the Proponent may engage subcontractors to assist it complete the Development, provided that:
- (i) the Proponent advises CEO (Housing) in writing of the existence and details of any subcontract;
  - (ii) the Proponent may only engage subcontractors who are appropriately qualified, skilled and experienced in their respective disciplines; and
  - (iii) the Proponent will be responsible for the services performed by its subcontractors, as if the Proponent had performed them itself.
- (b) Prior to engaging any subcontractor, the Proponent must provide CEO (Housing) with written details of the proposed subcontractor, including:
- (i) the subcontract's name;
  - (ii) specifics of the work the subcontractor is engaged by the Proponent to perform; and
  - (iii) such other information as CEO (Housing) may reasonably request.
- (c) In respect of any subcontractors engaged by the Proponent pursuant to clause 7.3(a):
- (i) CEO (Housing) may (on any reasonable ground) give the Proponent notice in writing that the subcontractor is not, or is no longer, acceptable to CEO (Housing). If the Proponent receives a notice under this clause 7.3(c)(i), the Proponent must immediately replace the subcontractor with another subcontractor acceptable to CEO (Housing); and

- (ii) the Proponent must, in any contract with a subcontractor, reserve a right of termination to take account of CEO (Housing)'s rights under clauses 7.2(d)(i) and 21.
- (iii) CEO (Housing) is not liable to compensate the Proponent if it exercises its rights under clause 7.3(c)(i).

#### **7.4 Development Meetings**

- (a) Until the last of the Notices of Acceptance for the Properties is given by CEO (Housing) in accordance with clause 8.2(a)(i), the Proponent must, and must ensure that the Proponent's employees and any subcontractors, if requested by CEO (Housing):
  - (i) participate in such meetings between the Proponent, CEO (Housing), representatives of CEO (Housing), and/or such other third parties as CEO (Housing) may reasonably request from time to time including but not limited to the meetings set out in Item 7, for purposes including information sharing and coordination of the Development; and
  - (ii) provide such information (in writing if requested) as is reasonably requested by CEO (Housing), relating to the conduct and progress of the Development, including as to how the Development is progressing against budgets and timeframes.

### **8. COMPLETION OF THE DEVELOPMENT**

#### **8.1 Notice of Completion and Inspection**

- (a) The Proponent must provide to CEO (Housing) a statement in writing when it considers that the Development of any one or more of the Properties has been completed in accordance with:
  - (i) this Agreement;
  - (ii) the Project Plan; and
  - (iii) any relevant laws and standards ('Notice of Completion').
- (b) The Notice of Completion must contain copies of all relevant documents to CEO (Housing), including but not limited to the following:
  - (i) Certificate of Occupancy for the Property or Properties; and
  - (ii) all approvals, permits, consents, licences or authorities for the Property or Properties.
- (c) CEO (Housing) must perform an inspection of each of the relevant Property or Properties within 15 Business Days of:
  - (i) receipt of the Notice of Completion; or
  - (ii) receiving notice from the Proponent that it has completed the additional works required by CEO (Housing) under clause 8.2(a)(ii).

#### **8.2 Notice of Acceptance**

- (a) Within 10 Business Days of carrying out the inspection referred to in clause 8.1(c), CEO (Housing) must:
  - (i) issue the Proponent with a statement in writing accepting completion of the Development of any one or more of the Properties ('Notice of Acceptance'); or

- (ii) if, in the opinion of CEO (Housing), the Development of any one or more of the Properties has not been constructed in accordance with this Agreement, the Project Plan and any relevant Australian Standards, CEO (Housing) may issue the Proponent with a written notice containing directions for any additional works to be carried out by the Proponent which are necessary to obtain CEO (Housing)'s approval (acting reasonably).
- (b) If CEO (Housing) notifies the Proponent that it does not accept completion of the Development of any one or more of the Properties under clause 8.2(a)(ii), the Proponent must address such additional works as required by CEO (Housing) in its notice and issue a revised Notice of Completion in accordance with clause 8.1(a).
- (c) The provisions of this clause 8.2 will continue to apply until CEO (Housing) issues the Notice of Acceptance.
- (d) A failure by CEO (Housing) to issue a notice in accordance with clause 8.2(a)(i) or clause 8.2(a)(ii) shall not constitute or be taken to be an acceptance by CEO (Housing) of the Development of any one or more of the Properties.

## **9. RECORDS, REPORTING AND ACQUITTAL**

### **9.1 Records**

The Proponent must, at its own expense throughout the Term:

- (a) clearly identify the receipt and expenditure of the Funding within its accounting records separately from all other monies, so that at all times the Funding is identifiable and ascertainable;
- (b) keep financial records relating to the Funding, the Development and the Project for a period of six years after the expiry or earlier termination of this Agreement to enable:
  - (i) all receipts and payments to be identified in the Proponent's accounts and reported in accordance with this Agreement;
  - (ii) a complete and detailed report and explanation of:
    - (A) the expenditure of the Funding on the Development (including payment of the Purchase Price), and each Stage (where applicable), and whether the Funding was properly expended for the Development (including payment of the Purchase Price) and each Stage (where applicable);
    - (B) any other expenditure on each Stage (where applicable), the Development, or the Project as a whole;
    - (C) implementation and progress of each Stage (where applicable); and
    - (D) the expenditure of the Funding as it relates to each Property.
  - (iii) the preparation of general purpose financial statements in accordance with the Australian Accounting Standards;
  - (iv) an audit of the accounts and records in accordance with the Australian Auditing Standards;
  - (v) the identification of all taxation liabilities and payments; and
  - (vi) the Proponent to comply with clause 9.2;
- (c) ensure that all records and accounts comply with the accounting principles applied to government and as required by Law; and

- (d) provide the information and records described in clause 9.1(a) and clause 9.1(b) to CEO (Housing), upon the reasonable request of CEO (Housing) and within 10 Business Days of the request.

## **9.2 Reporting and Acquittal Requirements**

- (a) In order to acquit the Funding, and unless and except to the extent agreed otherwise between the parties, the Proponent must provide CEO (Housing) with the reports, statements and information specified in Item 10, by the relevant date or dates specified in Item 10.
- (b) All reports, statements and information referred to in this clause 9.2 must be certified as correct by the treasurer or accountant of the Proponent and signed by its chairperson, president or CEO.
- (c) CEO (Housing) may, in its absolute discretion, give the Proponent a notice requiring the Proponent to resubmit any of the reports, statements or information referred to in clause 9.2(a), and the Proponent must resubmit the report or statement within the time, and in accordance with any request, specified in the notice.
- (d) If:
  - (i) the Proponent fails to resubmit a report, statement or information under clauses 9.2(a) and 9.2(c) in the time or manner required, or at all; or
  - (ii) CEO (Housing) considers that the report, statement or information is still deficient in some way,

CEO (Housing) may, in its absolute discretion and at the Proponent's expense, engage a suitably qualified independent auditor or accountant (or other qualified person or firm as required) to review the report and correct the deficiencies, and the Proponent must provide all information and cooperation as may be required by the person or firm so engaged.

## **10. PROPERTY MANAGEMENT SERVICES**

### **10.1 Nature of Property Management Services**

- (a) Upon the issue of a Notice of Acceptance for any Property in accordance with clause 8.2(a)(i) and in consideration for the Transfer of the Properties and payment of the Funding, the Proponent will, at its own cost and expense until the Expiry Date for that Property, perform the Property Management Services. The Property Management Services are comprised of the following:
  - (i) the Tenancy Management Services (described in clause 10.2);
  - (ii) the Repair and Maintenance Services (described in clause 10.3); and
  - (iii) the Emergency Repair Services (described in clause 10.4).
- (b) The parties acknowledge:
  - (i) that payment of the Funding and the Transfer of the Properties is sufficient and adequate consideration for provision of the Property Management Services; and
  - (ii) CEO (Housing) is not required to providing any funding, pay any rent or provide any compensation to the Proponent in return for the Property Management Services.

### **10.2 Tenancy Management Service**

- (a) The Proponent must:

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- (i) only let the Properties in accordance with this clause 10.2;
  - (ii) only enter into written tenancy agreements with Eligible Tenants (unless agreed otherwise with CEO (Housing));
  - (iii) ensure all tenancy agreements entered into comply with and are managed in accordance with the requirements of all applicable Laws including in particular the *Residential Tenancies Act*;
  - (iv) ensure the rent paid by any Eligible Tenant is no less favourable than the basis upon which rents are set by CEO (Housing) from time to time;
  - (v) ensure that any Eligible Tenant complies with its obligations under the tenancy agreement;
  - (vi) enforce the Proponent's rights under the tenancy agreements in the event of a default by any Eligible Tenant; and
  - (vii) inspect the Properties at quarterly intervals or at such other intervals as may be agreed between the Proponent and CEO (Housing) and provide a copy of the inspection records to CEO (Housing) and the Department of Health.
- (b) The Proponent must ensure that the Department of Health has both physical and vehicle access to the Properties at all times throughout the term of any tenancy agreement.
- (c) If CEO (Housing) is of the reasonable opinion that the Eligible Tenant's conduct is such that there is non-compliance with the terms of this Agreement, CEO (Housing) may give notice to the Proponent specifying the circumstances of the alleged non-compliance and require the Proponent to take appropriate action against the Eligible Tenant to ensure that the alleged non-compliance is remedied and where the non-compliance is not remedied, to take such further action lawfully available to the Proponent to terminate the tenancy agreement.
- (d) Where applicable, at the expiration or termination of any tenancy agreement, the Proponent will be responsible for taking reasonable steps to assist Eligible Tenants any persons residing with the Eligible Tenant to apply for public housing or find alternative accommodation.
- (e) The Proponent must provide an Annual Report to the CEO (Housing) including the following:
- (i) The Proponent's Annual Report
  - (ii) Minutes of Annual General Meeting and Extraordinary General Meeting (if any)
  - (iii) Number of tenancies taken to the Commissioner of Tenancies
  - (iv) Number of Evictions
  - (v) Total number of maintenance items reported
  - (vi) Total number of maintenance related complaints
  - (vii) Total number of tenancy related complaints
  - (viii) Number of applications lodged under the Residential Tenancies Act with the Commissioner of Tenancies following failed inspection
  - (ix) Any other matter requested by CEO (Housing).

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**10.3 Repair and Maintenance Service**

- (a) The Proponent must repair and maintain the Properties (including fair wear and tear), for items such as but not limited to:
- (i) doors and windows;
  - (ii) locks and catches;
  - (iii) window coverings such as blinds, curtains and vertical drapes;
  - (iv) security and/or insect screens;
  - (v) built-in appliances such as stoves, ovens, rangehoods, airconditioning, hot water systems, dishwashers and heaters;
  - (vi) gas appliances and meters;
  - (vii) lights and light fittings;
  - (viii) power points and switches;
  - (ix) walls and ceilings;
  - (x) wet areas, plugs, tiles, vanity units, cabinets, shower screens, towel rails, toilet seats, cisterns;
  - (xi) floor coverings;
  - (xii) cupboards, serveries, bench tops and shelving;
  - (xiii) gates, garage doors, letterbox and clothes line;
  - (xiv) indoor and outdoor tap ware;
  - (xv) piping systems and drainage fittings;
  - (xvi) hot water systems;
  - (xvii) heating and cooling systems;
  - (xviii) general upkeep of grounds and gardens forming part of the Properties (if any); and
  - (xix) smoke detectors.
- (b) In performing its obligation under clause 10.3(a), the Proponent will maintain the Properties, internally and externally in a condition which reflects contemporary community standards and the standards of the locality where the Properties are situated.
- (c) The Proponent must not otherwise carry out work which:
- (i) will significantly change the ability of the Properties to be used for the Permitted Use; or
  - (ii) involves structural alteration or additions,
- without the prior consent of CEO (Housing) which consent may be withheld in CEO (Housing)'s absolute discretion.
- (d) Any works arranged by the Proponent under this clause 10.3 must be carried out by a licensed or suitably qualified tradesperson (holding the appropriate insurances) and must comply with the Building Code.

#### **10.4 Emergency Repair Service**

- (a) The Proponent will, immediately on becoming aware of it, arrange any emergency works where such work is essential to preserve the Properties and/or protect human health, safety and security.
- (b) If the Proponent:
  - (i) requests CEO (Housing) to carry out the emergency works which are the responsibility of the Proponent under subclause 10.4(a); or
  - (ii) fails to carry out the emergency works immediately becoming aware of it which are the responsibility of the Proponent under 10.4(a) to the satisfaction of CEO (Housing),

CEO (Housing) may (without any obligation to do so) execute such works as if it were the Proponent at the expense of the Proponent.

### **11. PROTECTION OF CEO (HOUSING)'S INTEREST IN THE PROPERTIES**

#### **11.1 Proponent not to mortgage, charge or encumber Properties**

- (a) The Proponent must not mortgage, charge or otherwise encumber any of the Properties during the Term without the prior written consent of CEO (Housing), which consent may be withheld, or given subject to conditions, in CEO (Housing)'s discretion acting reasonably.
- (b) CEO (Housing) acknowledges that it would be unreasonable for it to withhold its consent to any mortgage, charge or other encumbrance if:
  - (i) the mortgage, charge or encumbrance is to secure finance to provide the Project; or
  - (ii) the proposed financial arrangements which are to be secured by the mortgage, charge or encumbrance are consistent with the Proponent's Business Plan, the Objectives and otherwise with this Agreement,

and in respect of both clause 11.1(b)(i) and clause 11.1(b)(ii):

  - (iii) the other party or parties to the proposed mortgage, charge or encumbrance agree to enter into a binding agreement with CEO (housing) and the Proponent in relation to priority arrangements to CEO (Housing)'s reasonable satisfaction.

#### **11.2 Proponent not to sell Properties**

The Proponent must not sell, assign, transfer or otherwise dispose of its estate or interest in any of the Properties without the prior written consent of CEO (Housing), which consent may be withheld, or given subject to conditions, in CEO (Housing)'s discretion acting reasonably.

#### **11.3 Proponent not to lease Properties**

The Proponent must not without the prior written consent of CEO (Housing), which consent may be withheld, or given subject to conditions, in CEO (Housing)'s absolute discretion, let or lease its estate or interest of any of the Properties other than in accordance with this Agreement.

#### **11.4 Restrictive Covenant**

To secure the performance of the Proponent's obligations under clause 7, clause 10, clause 11.1, clause 11.2 or clause 11.3, the Proponent consents to CEO (Housing) registering the Restrictive Covenant at the Land Titles Office against the certificate of title of any or all of the Properties from the Transfer Date, and must do all acts including signing all documents reasonably required to enable registration of the Restrictive Covenant.

### **11.5 Caveat**

The Proponent consents to CEO (Housing) registering a Caveat over all or any of the Properties to secure and protect the rights and interests CEO (Housing) has in the Properties under this Agreement, and must do all acts including signing all documents reasonably required to enable registration of the Caveat.

### **11.6 Proponent not to challenge caveatable interest**

The Proponent covenants and agrees with CEO (Housing) that the Proponent must not make any claim or commence any action, suit or proceedings wherein or whereby the validity of the caveatable interest of CEO (Housing) in the Properties or the Caveat is directly or indirectly challenged. If the Proponent or any party on behalf of the Proponent makes any such claim or commences any such action, suit and/or proceedings, CEO (Housing) will be entitled to plead this clause 11.6 as a full and complete bar and defence to such claim, action, suit or proceeding and this clause 11.6 will be recognised by any court of competent jurisdiction for this purpose.

## **12. PROJECT REVIEWS**

- (a) CEO (Housing) may at its absolute discretion, and at any time during the Term or within 12 months following the end of the Term, provide the Proponent with written notice advising that CEO (Housing) intends to conduct a review of the Project, to determine matters including:
  - (i) the extent to which the Proponent is providing the Project in accordance with this Agreement and the Project Plan, including any budgets and Stages; and
  - (ii) if the Proponent has breached this Agreement.
- (b) During the period when CEO (Housing) is conducting a review of the Project pursuant to this clause 12, CEO (Housing) may, in its absolute discretion, suspend dealings with this Agreement and/or the Funding pursuant to clause 21.
- (c) When conducting a review, CEO (Housing) may consider, amongst other things:
  - (i) any Project Plan, budgets, and reports or information provided by the Proponent pursuant to clause 9.2;
  - (ii) feedback on performance from any stakeholders; and
  - (iii) any other relevant information.
- (d) Once CEO (Housing) has completed a preliminary review, CEO (Housing) may provide the Proponent with a draft report on the findings of the review.
- (e) Within five Business Days of receipt of the draft report, the Proponent may provide comments to CEO (Housing) on the draft report.
- (f) CEO (Housing) must consider any comments provided by the Proponent in accordance with clause 12(e), and may:
  - (i) continue the review in accordance with clause 12(c), taking into account:
    - (A) any comments of the Proponent provided under clause 12(e); and
    - (B) any other information CEO (Housing) considers appropriate; or
  - (ii) prepare a final review report in accordance with clause 12(g) and provide it to the Proponent.
- (g) The review report may:



- (i) direct the Proponent to undertake measures to ensure satisfactory performance of this Agreement and provision of the Project, and meeting or achieving the Project Plan, Project Budget and/or Stages;
- (ii) amend the amount of Funding and/or Funding Instalments in CEO (Housing)'s absolute discretion; and/or
- (iii) provide for CEO (Housing) to take action pursuant to clause 21.

### **13. LOCAL INDUSTRY PRINCIPLES**

The parties are committed to the concept of local industry participation in carrying out the Project. The Proponent must make its best endeavours to:

- (a) Acquire goods and services from local businesses where local businesses are able to provide those goods and services at equal to or better standards of competency, capability and commerciality as those from outside the local area.
- (b) Give local businesses a reasonable opportunity to submit proposals and tenders when requests for tenders and proposals are made and consider local businesses when preparing specifications, calling tenders and letting contracts for the acquisition of goods and services for the Project.
- (c) Require subcontractors and suppliers also seek to acquire goods and services from local businesses when letting contracts for works, materials, plant, equipment and suppliers where standards are equal to or better than obtainable from those outside the local areas.
- (d) Seek to engage labour from the local area where those persons have the requisite skill and are available on equal or better terms and conditions than workers from outside the local area.
- (e) Require that subcontracts and suppliers also seek to engage labour from the local area where those persons have the requisite skills and are available on equal or better terms and conditions than workers from outside the local area.
- (f) Actively engage Indigenous individuals and organisations to become involved with the Project as workers or suppliers of goods and services.

### **14. REPORTING REQUIREMENTS**

- (a) The Proponent must provide to CEO (Housing) within four months after the end of each Financial Year throughout the Term a copy of its annual report on its operations including:
  - (i) a copy of its audited financial statements and accounts prepared in accordance with relevant accounting standards and legislative requirements signed by an appropriate senior officer holder of the Proponent;
  - (ii) declarations that over the previous Financial Year it has complied with all legal, financial and other reporting requirements to which it is subject including complying with any relevant Australian Taxation Office requirements; and
  - (iii) financial statements in the nature of a general purpose financial report.
- (b) CEO (Housing) acting reasonably may require the Proponent to provide additional reports in relation to the operations of the Proponent throughout the Term within timeframes as may be reasonably requested by CEO (Housing) having regard to the nature of the reports.

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**15. PROPONENT'S OWN ENQUIRIES****15.1 Requisitions**

The Proponent may not deliver any requisitions on title to CEO (Housing) or call upon CEO (Housing) to amend title, rectify a failure to comply with a Law applicable to the Properties or a requirement of any Authority, improve the condition of the Properties or to pay any costs of doing so.

**15.2 Representations as to Condition of the Properties**

The Proponent acknowledges that:

- (a) CEO (Housing) has made no representations or warranties (express or implied) about the condition of any of the Properties, the suitability of any of the Properties for the Project or compliance of the Properties with any Law;
- (b) the Proponent has entered into this Agreement only after satisfactory personal inspection and investigation of the Properties; and
- (c) the terms of this Agreement constitute the entire and only agreement between the parties in relation to the sale and Development of the Properties.

**16. NO CAVEAT**

- (a) The Proponent must not lodge a caveat over the Properties in respect of the Proponent's interest under this Agreement.
- (b) If the Proponent breaches this clause 16, and notwithstanding any provision to the contrary in this Agreement, CEO (Housing) may immediately terminate this Agreement.
- (c) The Proponent irrevocably appoints CEO (Housing) to be the true and lawful attorney of the Proponent on behalf of and in the name of and as the act and deed of the Proponent to do, execute and perform any act, deed, matter or thing in order to remove any caveat lodged in breach of this clause 16 and the Proponent shall not object or defend any application for removal of the caveat nor seek or obtain any extension of time for the removal of such caveat.

**17. INSURANCE, RELEASE AND INDEMNITY****17.1 Insurance**

- (a) The Proponent must take out and keep in force, for so long as any obligations remaining connection with this Agreement, insurance policies (noting the interest of CEO (Housing), if applicable), for all matters, and for not less than the minimum amounts, specified in Item 11.
- (b) Within five Business Days of the Commencement Date, the Proponent must provide CEO (Housing) with a copy of the Proponent's insurance policies or a copy of a certificate of currency for the policies referred to in this clause 17.1.
- (c) If CEO (Housing) requests at any other time that the Proponent provide a copy of any of the Proponent's insurance policies or a copy of a certificate of currency, the Proponent must provide a copy within five Business Days.
- (d) The Proponent must not do or omit to do or permit to be done or omit any act where any insurance required under this clause 17.1 may be rendered void or voidable.

**17.2 Risk**

The Proponent accepts all risks in respect of this Agreement, the Development the Properties and the Project including the risk of:

- (a) the design, construction and commissioning of the Development;
- (b) the actual cost of the design, construction and commissioning of the Development being greater than anticipated;
- (c) the design, construction and commissioning of the Development not being completed in accordance with the requirements of any contract between the Proponent and any subcontractor;
- (d) the actual cost of performing its obligations under this Agreement being greater than anticipated;
- (e) any goods or services not being supplied in accordance with the requirements of any contract between the Proponent and any third party;
- (f) all liabilities associated with:
  - (i) occupational health and safety;
  - (ii) environmental issues;
  - (iii) payments and liabilities to third parties, including to contractors and subcontractors; and
- (g) compliance with all laws relating to the Project and the Proponent's obligations under this Agreement.

### 17.3 Release

The Proponent releases to the full extent permitted by Law, CEO (Housing) and its officers, employees, agents, subcontractors, visitors and invitees ('those released') from all responsibility or liability for loss of or damage to any property, or injury or death to any person, arising out of any involvement of those released pursuant to this Agreement.

### 17.4 Indemnity

The Proponent indemnifies and keeps indemnified CEO (Housing) and its officers, employees, agents, subcontractors, visitors and invitees ('those indemnified') against any:

- (a) loss, damage or other liability incurred by those indemnified; and
- (b) loss or expense incurred by those indemnified in dealing with any claim against them, (including legal costs on a solicitor and own client basis),

that is caused by or arises from or (to the extent of the contribution) is contributed to by:

- (c) an act or omission by the Proponent, or any of the Proponent's officers, employees, agents, volunteers, subcontractors, visitors or invitees in connection with this Agreement or the Project; or
- (d) a failure by the Proponent to comply with any or all of the Proponent's obligations under this Agreement.

## 18. CONFIDENTIAL INFORMATION AND PRIVACY

### 18.1 Definitions

In this clause 18:

- (a) **Act** means the *Information Act* (NT);
- (b) **Agreement Information** means all Information:
  - (i) brought into existence under or in accordance with this Agreement or for the purpose of performing a party's obligations under this Agreement;

- (ii) incorporated in, supplied or required to be supplied along with the Information referred to in clause 18.1(b)(i); or
- (iii) copied or derived from Information referred to in clauses 18.1(b)(i) or 18.1(b)(ii);
- (c) **CEO (Housing) Information** means any Information provided by CEO (Housing) to the Proponent directly or indirectly for the purposes of this Agreement, or which is copied or derived from Information so provided, and includes all Confidential Information;
- (d) **Confidential Information** means any Information:
  - (i) which is by its nature confidential;
  - (ii) which is designated as confidential by the person by or for whom the information is provided;
  - (iii) which a party knows, or ought to know, is confidential;
  - (iv) which is Personal Information; or
  - (v) which is agreed between the parties after the Commencement Date as constituting Confidential Information for the purposes of this Agreement;
 and includes the terms (but not the existence) of this Agreement, but excludes Information which:
  - (vi) is or becomes public knowledge other than by:
    - (A) fault of a party;
    - (B) breach of this Agreement; or
    - (C) any other unlawful means;
  - (vii) was already in the possession of the party who receives the Information (the "Receiving Party") without restriction in relation to disclosure before the other party gave it to the Receiving Party; or
  - (viii) had already been independently developed or acquired by the Receiving Party before the other party gave it to the Receiving Party;
- (e) **Personal Information** means all information about a person that is "personal information" as defined in the Act which is collected and/or handled by any of the parties in connection with this Agreement; and
- (f) **Privacy Laws** means:
  - (i) the Act; and
  - (ii) the Information Privacy Principles set out in the Act or any 'code of practice' approved under the Act that applies to any of the parties to this Agreement.

## 18.2 Confidential Information

- (a) Subject to subclause 18.2(c), a party must not, without the prior written consent of the other party, use or disclose any Confidential Information of the other party.
- (b) In giving written consent to use or disclose its Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with those conditions.
- (c) The obligations on a party under this clause 18 will not be breached where that Confidential Information:
  - (i) is disclosed by a party to its employees, agents or subcontractors, solely in order to comply with obligations, or to exercise rights, under this Agreement,

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- or is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Agreement-related activities;
- (ii) is disclosed by CEO (Housing) to the Parliament, the Administrator, Cabinet, a Minister or any Parliamentary, Ministerial or Cabinet Committee or in response to a request by the Legislative Assembly or a Committee of the Legislative Assembly;
  - (iii) is shared by a party within its organisation, or in the case of CEO (Housing), with another department or agency of the Northern Territory of Australia, with the Commonwealth of Australia or any other State or Territory of Australia, where this serves the party's legitimate interests;
  - (iv) is authorised or required by law to be disclosed;
  - (v) is disclosed by a party and is information in a material form in respect of which an interest, whether by license or otherwise, in Intellectual Property in relation to that material form, has vested in, or is assigned to, the party under this Agreement or otherwise, and that disclosure is permitted by that license or otherwise; or
  - (vi) is in the public domain otherwise than due to a breach of this clause 18.

### **18.3 Protection of Personal Information**

- (a) Each party agrees:
  - (i) to deal with all Personal Information collected or obtained pursuant to this Agreement in a manner which is consistent with the Privacy Laws and any other relevant privacy legislation, as if the party were a public sector organisation pursuant to section 5(7) of the Act;
  - (ii) to ensure that any of that party's employees, agents or subcontractors, and any other person who may have access to Personal Information held by that party, are aware of and undertake to not access, use, disclose or retain Personal Information except in performing their duties of employment, agency or subcontract;
  - (iii) to ensure that any subcontract entered into by it for the purpose of fulfilling its obligations under this Agreement will contain provisions to ensure that the subcontractor has the same awareness and obligations as the party has under this clause 18.3, including this requirement in relation to subcontracts; and
  - (iv) in the case of the Proponent:
    - (A) to collect, use, disclose or otherwise deal with Personal Information only for the purposes of fulfilling that party's obligations under this Agreement;
    - (B) at the expiration or earlier termination of this Agreement, or such longer period as any Personal Information is required to be held or retained by the party pursuant to this Agreement, to either return to CEO (Housing), or at CEO (Housing) 's request, delete or destroy, all Personal Information received, created or held by the party for the purposes of this Agreement; and
    - (C) to indemnify CEO (Housing) in respect of any liability, loss or expense incurred arising out of or in connection with a breach of the obligations of the party under this clause 18.3.

**18.4 CEO (Housing) Information**

- (a) Ownership of all CEO (Housing) Information remains vested at all times in the Territory.
- (b) The Proponent must ensure that CEO (Housing) Information is used, copied, supplied or reproduced only for the purposes of the fulfilling Proponent's obligations under this Agreement.
- (c) If CEO (Housing) advises the Proponent of any restrictions or conditions attached to CEO (Housing) or CEO (Housing) Information, the Proponent must only use that CEO (Housing) Information in accordance with those conditions.
- (d) On the expiry or sooner termination of this Agreement, the Proponent must return to CEO (Housing), or delete or destroy (at CEO (Housing)'s option) all CEO (Housing) Information remaining in the possession of Proponent.

**19. CONFLICT OF INTEREST**

- (a) The Proponent warrants that, at the date of signing this Agreement, to the best of its knowledge, no Conflict exists or is likely to arise in the performance of the Proponent's obligations under this Agreement.
- (b) If, during the performance of this Agreement a Conflict arises, or appears likely to arise, the Proponent will immediately notify CEO (Housing) in writing of the Conflict and the steps it proposes to take to resolve or deal with the Conflict.
- (c) The parties will negotiate in good faith to resolve or deal with the Conflict. If the parties are unable to reach agreement within ten (10) Business Days of notification pursuant to clause 19(b)), CEO (Housing) may, in its absolute discretion, take action pursuant to clause 21.
- (d) Information provided under clause 19(b) will be treated as confidential by CEO (Housing).

**20. REPAYMENT OF UNSPENT OR MISUSED FUNDING**

- (a) If, at:
  - (i) the end of a Funding Instalment period; or
  - (ii) the Development Completion Date or earlier completion of the Development, or earlier expiry or termination of this Agreement,
 ('the Relevant Date') the Proponent still has any part of:
  - (iii) in the case of clause 20(a)(i), the Funding for that Funding Instalment period; or
  - (iv) in the case of clause 20(a)(ii), the Funding,
 (excluding any part of the Funding legally committed for expenditure in accordance with this Agreement and which falls for payment thereafter), the Proponent must, within 10 Business Days of the Relevant Date, advise CEO (Housing) of that fact, and:
  - (v) subject to clause 20(b), seek CEO (Housing)'s written agreement to retain the remaining part of the Funding for a purpose approved by CEO (Housing); or
  - (vi) return the remaining part of the Funding to CEO (Housing).
- (b) If the Proponent seeks the agreement of CEO (Housing) pursuant to clause 20(a)(v) but CEO (Housing) has not agreed in writing to the Proponent retaining the remaining part of the Funding under clause 20(a)(v) within 10 Business Days of receiving the request

from the Proponent, the Proponent must repay the remaining part of the Funding to CEO (Housing) within a further 10 Business Days.

- (c) If:
- (i) at any time CEO (Housing) forms the reasonable opinion that the Funding has not been used, spent or committed for expenditure in accordance with this Agreement; or
  - (ii) on the expiration of the Term or on any earlier termination of this Agreement, any part of the Funding:
    - (A) remains unspent or uncommitted, and CEO (Housing) has not agreed to the Proponent retaining that part of the Funding pursuant to clause 20(b); or
    - (B) cannot, by reconciliation between the accounts and records maintained by the Proponent (as disclosed to, or reviewed by, CEO (Housing) in accordance with clauses 9.2) be shown to the reasonable satisfaction of CEO (Housing) to have been spent or committed in accordance with this Agreement;
- then at the sole discretion of CEO (Housing) and by written notice CEO (Housing) may require the Proponent to:
- (iii) repay the Funding or any part of it to CEO (Housing) in the manner described in the notice; or
  - (iv) deal with the Funding or any part of it in accordance with any instructions of CEO (Housing) set out in the notice.
- (d) Prior to issuing a notice pursuant to clause 20(c) CEO (Housing) will give the Proponent a reasonable opportunity to respond to any concerns that CEO (Housing) may have regarding the expenditure of the Funding.
- (e) Any amount payable to CEO (Housing) pursuant to this clause 20 must be paid within 10 Business Days of a request, direction or demand from CEO (Housing) to pay it.
- (f) A failure to comply with clause 20(e) will:
- (i) result in interest accruing on the outstanding amount of the Funding at the Interest Rate from the last date for payment required by the request, direction or demand referred to in clause 20(e) and which will be payable in addition to the principal amount. Interest will accrue on outstanding monies until full payment of the principal and interest is received; and
  - (ii) entitle CEO (Housing) to take action pursuant to clause 21.
- (g) Any amount owed to CEO (Housing) under this Agreement (including any interest) will, without prejudice to any other rights available to CEO (Housing) under this Agreement or at law or in equity, be recoverable by CEO (Housing) as a debt due to CEO (Housing) by the Proponent without further proof of the debt being necessary.

## **21. DEFAULT AND TERMINATION**

### **21.1 Notice before termination**

- (a) A party will only be entitled to terminate this Agreement or bring any proceedings against the other arising from the provisions of this Agreement if:
- (i) the Party claiming the default (Non Defaulting Party) has given written notice (Default Notice) to the party alleged to be in default (Defaulting Party);

- (ii) that Default Notice specifies the breach and calls upon the Defaulting Party to remedy the breach within the time specified in the Default Notice (being not less than 10 Business Days after the service of the Default Notice); and
- (iii) the Defaulting Party fails to remedy the breach within the time specified in the Default Notice.

## **21.2 Rectification**

- (a) Without limiting the right of CEO (Housing) to terminate this Agreement, if the Proponent fails to comply with a Default Notice within the period specified in that Default Notice, CEO (Housing) may in its absolute discretion take such action at the Proponent's expense as is necessary to:
  - (i) make good any such failure;
  - (ii) ensure that, notwithstanding the failure, the Development is completed in accordance with this Agreement or as closely as possible in accordance with this Agreement to the reasonable satisfaction of CEO (Housing); and
  - (iii) ensure that, notwithstanding the failure, the Property Management Services are carried out in accordance with this Agreement.
- (b) In exercising its rights under clause 21.2(a), CEO (Housing) may, in its absolute discretion and without reference to the Proponent:
  - (i) suspend payment of the Funding;
  - (ii) supply any instalment of the Funding;
  - (iii) expend funds which it may subsequently recover from the Proponent as a debt due and payable upon demand; and
  - (iv) subject to clause 4, call on any Development Bond, security or guarantees provided by the Proponent in connection with the Development.
- (c) Without limiting the generality of clauses 21.2(a) CEO (Housing) may take appropriate action (including, subject to clause 4, calling on any Development Bond, security or guarantees given in relation to this Agreement) to achieve the objectives of this Agreement at the Proponent's expense including (without limitation):
  - (i) rectification or minimisation of delays to the achievement of the Development or the Project or other activity under this Agreement for which CEO (Housing) considers the Proponent responsible;
  - (ii) completion of the Development in accordance with the provisions of this Agreement;
  - (iii) the execution or completion of any thing required for the purposes of any Authority and which should have been provided by the Proponent as part of the Development; or
  - (iv) paying to CEO (Housing) any amount the Proponent has failed to pay to CEO (Housing) or any Authority in accordance with any indemnity given by the Proponent in this Agreement.

## **21.3 Default by the Proponent**

Without limiting the right of CEO (Housing) to terminate this Agreement, if:

- (a) the Proponent fails to provide the Property Management Services required under this Agreement and the Proponent fails to remedy the breach or default within the time specified in the Default Notice served under clause 20.1;



- (b) the Proponent fails to comply with any of the other provisions of this Agreement and the Proponent fails to remedy the breach or default within the time specified in the Default Notice served under clause 20.1;
- (c) notwithstanding any other clause in this Agreement, as a result of any change in Northern Territory or Commonwealth government policy, the Funding for the Project is to cease or be reduced, or if payment of monies to CEO (Housing) which will form part or all of the Funding (for example, under a Commonwealth funding agreement) is ceased, reduced or delayed;
- (d) the Proponent (including any officer, Employee or member of the Proponent), is in the reasonable opinion of CEO (Housing), guilty of any misconduct, misbehaviour, incompetence, carelessness or gross inefficiency in the discharge of its duties under the terms and conditions of this Agreement, or is convicted of any criminal offence, other than an offence which in the opinion of CEO (Housing) does not affect this Agreement or the provision of the Project, or CEO (Housing) reasonably suspects this has occurred or may occur;
- (e) the Proponent is, in the reasonable opinion of CEO (Housing), unable or unwilling, for any reason, to undertake the continuation or completion of the Project in a manner satisfactory to CEO (Housing); or
- (f) any clause in this Agreement provides that this clause 21.3 applies,

CEO (Housing) may without prejudice to any other rights and remedies available to CEO (Housing) (including rights to sue for damages, specific performance or both) terminate this Agreement by notice in writing to the Proponent.

#### **21.4 Insolvency Events**

The Proponent further covenants and agrees with CEO (Housing) that if it:

- (a) has a receiver, official manager, administrator or liquidator within the meaning of the Corporations Act appointed over any of its assets;
- (b) is placed into liquidation whether voluntary or otherwise;
- (c) is wound up or dissolved; or
- (d) becomes insolvent,

CEO (Housing) is entitled to immediately terminate this Agreement by written notice to the Proponent.

## **22. RIGHTS ON TERMINATION**

### **22.1 Following Termination**

- (a) If this Agreement is terminated for any reason then (without prejudice to any other rights or remedies of the parties):
  - (i) from the date of the termination of this Agreement the Proponent must cease all further Development, except for such works as CEO (Housing) may specify in the notice of termination or any work required to leave the Property in a clean, good and safe condition;
  - (ii) CEO (Housing) will be entitled to retain the Development Bond subject to clause 4 and this Agreement;
  - (iii) CEO (Housing) will be entitled to re-take possession of all or any of the Properties;

- (iv) CEO (Housing) will be entitled to grant to any person the option to purchase any one of more of the Properties, or to sell any one of more of the Properties and buy-in, rescind or vary any agreement for sale and resell, upon any terms CEO (Housing) thinks fit;
- (v) if required by CEO (Housing) and notice is given by CEO (Housing) under clause 22.5(a), the Proponent must transfer title of the Properties to CEO (Housing) in accordance with clause 22.5;
- (vi) the Proponent must remove the Proponent's Property from the Properties in accordance with clause 22.2;
- (vii) the Proponent must hold the Funding in utmost good faith for use only in accordance with the written directions of CEO (Housing) and will cease all other dealings with the Funding;
- (viii) CEO (Housing) will not be liable to pay any further Funding Instalments or any other part of the Funding not already paid; and
- (ix) the Proponent is obliged to repay CEO (Housing) on demand any part of the Funding already paid to the Proponent and not spent or lawfully committed in accordance with this Agreement.

## **22.2 Removal of Developer's Property**

- (a) Upon termination of this Agreement for any reason the Proponent shall, on the receipt of a written request from CEO (Housing), within 20 Business Days remove from any of the Properties all the Proponent's Property.
- (b) If the Proponent fails to comply with a request under clause 22.2(a) CEO (Housing) may, at the Proponent's cost:
  - (i) remove all the Proponent's Property from the Properties to such place or places as CEO (Housing) may deem fit; or
  - (ii) sell, dump, give away or otherwise dispose of the Proponent's Property; or
  - (iii) store the Proponent's Property in the name of the Proponent or otherwise at the Proponent's cost at a storage place selected by CEO (Housing), and all costs and expenses incurred by CEO (Housing) in such disposal, removal or storage shall (notwithstanding that this Agreement may have terminated) be deemed to be a liquidated debt payable by the Proponent to CEO (Housing) upon demand.

## **22.3 Rights on Termination**

If CEO (Housing) exercises the right to terminate this Agreement (then without limiting any other right of CEO (Housing)) the following shall apply:

- (a) CEO (Housing) shall be entitled to retain (or if applicable re take) possession of the Properties;
- (b) CEO (Housing) shall be entitled to recover from the Proponent as a liquidated debt due and payable:
  - (i) any expenses incurred by CEO (Housing) in connection with leasing or re-selling the Properties;
  - (ii) CEO (Housing)'s costs of any works to make the Property safe, saleable or lettable and stable;

- (iii) CEO (Housing)'s costs of clearing the Property of any of the Improvements not required or agreed to be left on the Property pursuant to clause 22.3(c) and any rubbish or debris which the Proponent has not removed;
  - (iv) CEO (Housing)'s conveyancing, legal, valuation and administration costs;
  - (v) any deficiency in price in connection with any resale of the Property provided the resale takes place within 12 months of the termination of this Agreement;
  - (vi) any expenses incurred by CEO (Housing) in connection with the resale of the Property provided the resale takes place within 12 months of the termination of this Agreement; and
  - (vii) any stamp duty payable by CEO (Housing) on any transfer of the Properties to CEO (Housing);
- (c) if the Proponent has commenced the Development and:
- (i) CEO (Housing) notifies the Proponent that it requires the Proponent to leave, or agrees to the Proponent leaving, all or any of the Improvements on any of the Properties, the Proponent must, at its own cost in all respects and as soon as reasonably practicable, remove all Improvements not required or agreed to be left on the Properties; or
  - (ii) CEO (Housing) notifies the Proponent that it requires the Proponent to remove all of the Improvements, the Proponent must do so at its own cost in all respects as soon as reasonably practicable after receiving such notice.

#### **22.4 CEO (Housing)'s Powers of Sale or Lease**

- (a) Upon CEO (Housing) exercising its right under clause 22.1(a)(iv):
- (i) any one or more of the Properties may be sold or leased by CEO (Housing) in any manner that CEO (Housing) considers expedient with full power to CEO (Housing) to apportion all costs, expenses, purchase money and rents between the separate Properties sold or leased;
  - (ii) CEO (Housing) may, as agent for the Proponent, retain any auctioneer, valuer, estate agent or consultant and, without the need for further enquiry and without incurring any liability to the Proponent, may act upon that person's advice as to the timing of or any incident or term of the sale or lease, including whether the Properties should be offered for sale by auction and as to the need for and amount of any reserve price and as to the adequacy of any rent or of any price obtainable on sale by private treaty; and
  - (iii) CEO (Housing) has full power to sell for cash or upon terms and may allow a purchaser any time for payment of the whole or any part of the purchase money either with interest at any rate or without interest and either with or without taking security as CEO (Housing) thinks fit and the conditions of sale may include such special conditions as CEO (Housing) thinks necessary.
- (b) CEO (Housing) does not have to offer any one or more of the Properties for sale by public auction before selling it by private contract.
- (c) The Proponent:
- (i) must execute, sign, deliver, enter into, acknowledge, effect and do all such deeds, things, contracts, transfers, instruments and acts; and
  - (ii) irrevocably appoints CEO (Housing), to be the attorney of the Proponent to do all such things in its name and as its act,

that may be necessary to carry into effect the matters agreed in this clause 22.4.

## **22.5 Transfer of title to the Properties to CEO (Housing)**

- (a) Upon CEO (Housing) exercising its rights under clause 22.1(a)(v), CEO (Housing) may (but is not obliged to) give the Proponent notice that it must transfer title to the Properties to CEO (Housing) for no consideration in accordance with this clause 22.5 and upon the giving of any such notice CEO (Housing) will provide the transfer of land instrument(s) executed by CEO (Housing) for execution by the Proponent.
- (b) Not later than two Business Days after receiving the transfer of land instrument(s) under clause 22.5(a), the Proponent must deliver the duly executed transfer of land instrument(s) to CEO (Housing), to be held in escrow by CEO (Housing) for stamping purposes only until the date of transfer of the Properties in accordance with clause 22.5(c).
- (c) Within 10 Business Days of CEO (Housing) giving the transfer of land instrument(s) under clause 22.5(a), the Proponent must transfer the Properties in the name of the Proponent to CEO (Housing) free from any encumbrances.
- (d) The transfer of title to the Properties will take place at the Land Titles Office in Darwin, or as otherwise agreed by the parties.
- (e) The Proponent:
  - (i) must execute, sign, deliver, enter into, acknowledge, effect and do all such deeds, things, contracts, transfers, instruments and acts; and
  - (ii) irrevocably appoints CEO (Housing), to be the attorney of the Proponent to do all such things in its name and as its act,that may be necessary to carry into effect the matters agreed in clause 22.5.
- (f) For the purposes of this clause 22.5 the Proponent will be responsible for and must pay all costs associated with the transfer of title to CEO (Housing), including but not limited to:
  - (i) legal costs on a full indemnity basis in connection with the exercise of its rights under this clause 22.5 and any other provision of this Agreement;
  - (ii) all taxes and duties (including stamp duty) incurred, paid or payable by CEO (Housing) arising out of the transfer of title under this clause 22.5 and the exercise by CEO (Housing) of any of its rights under this Agreement following that transfer; and
  - (iii) any other expenses or costs incurred or likely to be incurred in connection with or arising from transfer of title under this clause 22.5.

## **22.6 Intellectual Property**

- (a) If CEO (Housing) exercises its right to terminate this Agreement for any reason or this Agreement is terminated by the parties, the Proponent:
  - (i) assigns to CEO (Housing) all its rights, title and interest including all intellectual property rights in the reports, Approvals, design documentation (including the Project Plan, drawings, calculations and other technical information) and any other documentation or material or a similar nature relating to the Development (Development Documents); and
  - (ii) must procure the assignment of any rights, title and interest including all intellectual property rights in the Development Documents that are not owned by the Proponent or cannot be assigned to CEO (Housing) by the Proponent.

- (b) The Proponent must do all further things necessary to give effect to the assignment in clause 22.6(a) including by procuring all necessary intellectual property rights from subcontractors or contributing parties to the Proponent.
- (c) If any Development Document cannot or will not be assigned to CEO (Housing), the Proponent must grant (if it is able to do so), and (if it is not able to do so) must procure that CEO (Housing) is granted, an unrestricted, non-exclusive, perpetual, irrevocable and transferable, royalty-free licence to use, copy, reproduce and modify that documentation or material.

#### **22.7 Survival of Clause**

- (a) Clause 22 shall survive the termination of this Agreement.

#### **23. GST**

- (a) Any term used in this clause 23 that is referred to in A New Tax System (Goods and Services Tax) Act 1999 will have the meaning which it has in that Act.
- (b) The Funding provided under this Agreement is inclusive of GST, with GST calculated using the GST Rate at the Commencement Date, and therefore CEO (Housing) will not be liable to pay the Proponent any additional amounts, over and above the Funding, for any GST incurred by the Proponent when the Proponent receives the Funding.
- (c) Where the GST Rate is changed after the Commencement Date, the consideration under this Agreement will be increased or decreased so that the consideration remains inclusive of GST, with GST calculated using the new GST Rate from the date of the change of the GST Rate.
- (d) If the Proponent ceases to be registered for GST, the Proponent must immediately notify CEO (Housing) in writing of that fact, and must repay to CEO (Housing) within 10 Business Days an amount equal to 1/11 of the Funding, less the actual GST incurred by the Proponent.
- (e) The Proponent must:
  - (i) provide CEO (Housing) with Tax Invoices and/or adjustments notes in relation to an amount of Funding, prior to an amount being paid by CEO (Housing) under this Agreement; and
  - (ii) do all things reasonably necessary to assist CEO (Housing) to claim and obtain any input tax credit available to it in respect of the Funding.
- (f) The amount of Funding will be paid within 30 days after receipt of a tax invoice from the Proponent.
- (g) The Tax Invoices required by clause 23(e) must be submitted to the address set out in Item 12

#### **24. RESOLUTION OF DISPUTES**

- (a) In the event of a dispute between the parties, they will use reasonable endeavours to resolve the dispute between themselves, but if having used reasonable endeavours either CEO (Housing) or the Proponent considers that the dispute cannot be resolved without reference to an independent expert the matter will be determined by an independent expert in accordance with the following:
  - (i) the independent expert will be a person agreed upon by the parties, or failing agreement, a person duly qualified to decide the dispute and nominated by the President for the time being of the Law Society of the Northern Territory;

- (ii) CEO (Housing) and the Proponent may make a submission either orally or in writing to the independent expert within five Business Days after the independent expert has been appointed;
- (iii) in making a determination the independent expert must:
  - (A) act as an expert and not as an arbitrator;
  - (B) consider any submission made to it on time by CEO (Housing) and the Proponent;
  - (C) provide CEO (Housing) and the Proponent with a written statement with reasons for the determination; and
  - (D) deliver a determination with seven Business Days after the last day on which CEO (Housing) and the Proponent are entitled to make submissions;
- (b) the determination of the independent expert is conclusive and binding on the parties;
- (c) the costs of the independent expert in accordance with this clause 24 will be borne by the parties equally and each party will bear its own costs in relation to the dispute and its determination; and
- (d) if the independent expert fails to deliver a determination within 14 Business Days after the last day on which the parties are entitled to make submissions then either party may require the appointment of a further independent expert under clause 24(a) above to determine the dispute.

## **25. NOTICE**

### **25.1 Who can sign a Notice**

A Notice from a Party can be signed by:

- (a) one of its officers;
- (b) its solicitor; or
- (c) its duly appointed agent.

### **25.2 Where notices may be served**

In addition to any modes of service otherwise available it is sufficient service on a party of any notice or document under or relating to this Agreement if such notice or document is:

- (a) left at the address for that party which appears in this Agreement;
- (b) sent by ordinary pre-paid post to that party at the address for that party which appears in this Agreement;
- (c) sent by email address to that party at the email address for that party which appears in this Agreement; or
- (d) such other address as CEO (Housing) or the Proponent may from time to time advise in writing to the other.

For the purposes of this clause 25.2, the address for service of the parties will be as specified in Item 12.

### **25.3 Time of service of notice**

Any such notice may be given by the party, or on behalf of the party by the party's solicitor, and is deemed to be duly given or made:

- (a) if delivered by hand, then upon delivery;

- (b) if sent by pre-paid post from within Australia, then three Business Days after posting;
- (c) if sent by pre-paid post from outside Australia, then upon delivery; or
- (d) if sent by facsimile, on receipt by the sender of a confirmation report,

but if such delivery or receipt is later than 4.30 p.m. on a Business Day, it will be deemed to have been duly given or made at the commencement of business on the next Business Day in that place.

## **26. FORCE MAJEURE**

### **26.1 Meaning of Force Majeure**

In this clause 26, 'Force Majeure Event' means an event or a circumstance:

- (a) beyond the reasonable control of the party affected by it and which occurs without the fault or negligence of the party; and
- (b) which causes or results in a default or delay in the performance by that party of any of its obligations under this Agreement (excluding obligations to pay money); and
- (c) where such default or delay and the occurrence and the effects of such event or circumstance could not have been prevented, overcome or remedied by the exercise by that party of a standard of foresight, care and diligence consistent with that of a prudent and competent person under the circumstances, including the expenditure of reasonable sums of money and the application of technology known to prudent and competent persons;

but it excludes any act, omission, default or negligence of any agent of that party or anything within the reasonable control of any agent of that party, other than acts, omissions or defaults that would otherwise constitute Force Majeure Event if that agent was a party to this Agreement;

### **26.2 Effect of Force Majeure**

- (a) If a party ('the Affected Party') is unable to wholly or in part carry out its obligations due to a Force Majeure Event, the Affected Party must comply with clause 26.2(b), whereupon such obligation will be suspended so far as it is affected by such intervening event.
- (b) The Affected Party must:
  - (i) notify the other party as soon as possible of full particulars of the event or circumstance of the Force Majeure Event including:
    - (A) the date of commencement of the event or circumstance of the Force Majeure Event and an estimate of the period of time required to enable it to resume full performance of its obligations;
    - (B) where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event; and
    - (C) the nature and extent of the obligations affected by, or other consequences of the Force Majeure Event;
  - (ii) use all reasonable diligence and employ all reasonable means to remedy, mitigate or abate the Force Majeure Event as expeditiously as possible, including the expenditure of reasonable sums of money and the application of technology known to prudent and competent persons;

- (iii) resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event has abated to an extent which permits resumption of performance;
  - (iv) notify the other party when the Force Majeure Event has terminated or abated to an extent that permits resumption of performance to occur; and
  - (v) notify the other party when resumption of performance has occurred.
- (c) Once such intervening event has ended, the Affected Party will carry out all acts which it would have been liable to carry out had the Force Majeure Event not intervened, with any necessary time frames extended by the period of suspension under clause 26.2(a).
- (d) The Affected Party will take all reasonable steps to ameliorate and eliminate the intervening event and resume performance as promptly as practicable.
- (e) Notwithstanding the existence of a Force Majeure Event, each party must continue to perform its other obligations under this Agreement, not being obligations suspended under clause 26.2(a).
- (f) If:
- (i) a party has invoked the operation of this clause 26.2; and
  - (ii) the same Force Majeure Event prevents or inhibits performance of any obligation or condition required to be performed under this Agreement for a period of 3 months,

then either party may terminate this Agreement by 20 Business Day's notice and, unless there has been a cessation of the event of the Intervening Event, this Agreement will automatically expire upon the expiry of that 20 Business Days.

## **27. GENERAL**

### **27.1 No Merger**

Notwithstanding the termination or sooner expiry of this Agreement, all provisions of this Agreement which are capable of taking effect after termination or sooner expiry will continue to remain in full force and effect.

### **27.2 Governing Law**

This Agreement is governed by and construed in accordance with the laws of the Northern Territory of Australia and the Parties submit to the non-exclusive jurisdiction of Courts of the Northern Territory at Darwin to entertain any action in respect of, or arising out of, this Agreement.

### **27.3 Warranties by Proponent**

The Proponent warrants that it is properly established and constituted at law, and has power and authority to enter into this Agreement.

### **27.4 Amendments To Constitution Documents**

The Proponent must obtain the written consent of CEO (Housing) before amending its constitution or trust deed provisions in any way that may affect the eligibility of the Proponent to the Funding, or ability of the Proponent to comply with the terms and conditions of this Agreement.

### **27.5 No Assignment**

The Proponent must not assign, transfer or otherwise deal with this Agreement, or any of the Proponent's rights or obligations under this Agreement, unless the Proponent has been given



prior written approval to do so from CEO (Housing) (which consent may be given or withdrawn in CEO (Housing)'s absolute discretion or may be granted on conditions considered fit by CEO (Housing)).

#### **27.6 Entire Agreement**

This Agreement and the Property Management Service Agreement constitutes the entire agreement between the parties, and overrules any previous agreement or understandings between the parties in relation to the Project.

#### **27.7 No Employment, Partnership Or Agency**

- (a) Nothing in this Agreement or its performance gives rise to any relationship of employment, partnership or agency between the parties, and it is the express intention of the parties that any such relationships are denied.
- (b) The Proponent acknowledges that any agreement entered into between the Proponent and a third party in relation to this Agreement or the Project, constitutes a private contractual arrangement between the Proponent and that third party, and CEO (Housing) will not be deemed to be a party to any such agreements, understandings and arrangements, and CEO (Housing) will not be responsible for any monies owed by either party to such agreement.

#### **27.8 Amendments**

This Agreement cannot be amended or added to unless the amendment or addition is in writing and signed by all of the parties.

#### **27.9 Severance**

If a court determines that a word, phrase, sentence, paragraph or provision in this arrangement is unenforceable, illegal or void then it will be severed and the other provisions of this arrangement will remain operative.

#### **27.10 Waiver and Time**

- (a) This Agreement and the rights and obligations set out in this Agreement will not be abrogated, prejudiced or affected by the granting of time, credit or any indulgence or concession by one party to another party or to any other person whomsoever or by any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any rights of a party or by any omission or neglect or any other dealing, matter or thing which, but for this clause 27.10 could or might operate to abrogate, prejudice or affect the rights of a party or obligations of a party.
- (b) Waiver of any provision of or right under this Agreement must be in writing signed by the party entitled to the benefit of that provision or right and is effective only to the extent set out in any written waiver.
- (c) Time is of the essence for all obligations under this Agreement.

#### **27.11 Costs and Stamp Duty**

The parties will each pay their own costs of and incidental to the negotiations for and the preparation and execution of this Agreement, and the Proponent will bear any costs of stamping of this Agreement.

#### **27.12 Counterparts**

This Agreement may be signed in any number of counterparts and all such counterparts when taken together constitute one instrument.

**27.13 Further Acts**

Each party will promptly do and perform all acts and execute and deliver all documents (in a form and context reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this Agreement.

**EXECUTION**

<b>The Common Seal of the Chief Executive Officer (Housing) (ABN 23 912 978 797)</b>	)
hereto affixed in the presence of:	)
.....	.....
Print Name of authorised person	Signature of authorised person
.....	.....
Print Name of Witness	Signature of Witness

<b>Signed for and on behalf of [Proponent name and ACN]</b>	)
<b>in accordance with section 127 of the Corporations Act 2001:</b>	)
by	)
.....	.....
Print Name of Director	Signature of Director
.....	.....
Print Name of Director/Secretary	Signature of Director/Secretary

---

**SCHEDULE 1 – PARTICULARS**

<b>Item 1: Properties</b>	[insert the property details for each of the properties in list form]
<b>Item 2: Commencement Date</b>	The                      day of                      20
<b>Item 3: Development Bond</b>	
<b>Item 4: Development Completion Date</b>	The                      day of                      20
<b>Item 5: Approval Date</b>	The                      day of                      20
<b>Item 6: Funding Instalment</b>	Based on a successful proposal, a maximum of: <ul style="list-style-type: none"> <li>• \$3 million (inclusive of GST) at the commencement of Project;</li> <li>• \$2 million (inclusive of GST) in mid-2016; and</li> <li>• \$1.3 million (inclusive of GST) in mid-2017.</li> </ul>
<b>Item 7: Project Meetings</b>	1 <sup>st</sup> meeting on progress of Development – Mid-January 2016 2 <sup>nd</sup> meeting on progress of Development – Early April 2016 3 <sup>rd</sup> meeting on progress of Development – Early August 2016 4 <sup>th</sup> meeting on progress of Development – Early November 2016 5 <sup>th</sup> meeting on progress of Development – Early February 2017 6 <sup>th</sup> meeting on progress of Development – Early May 2017
<b>Item 8: Purchase Price (inclusive GST)</b>	[insert property details] – [insert purchase price] [insert property details] – [insert purchase price] ... <p style="text-align: right;">[insert total]</p>
<b>Item 9: Eligibility Criteria</b>	Tenants must: <ol style="list-style-type: none"> <li>1. be a renal patient referred to the Proponent by the Department of Health; or</li> <li>2. be the carer or family member of a patient referred under 1; and</li> <li>3. meet the additional criteria set by the Proponent and approved by CEO (Housing).</li> </ol>

<p><b>Item 10:</b> <b>Reporting Requirements</b></p>	<p>1. Progress Reports – monthly until the issue of the last Notice of Acceptance by CEO (Housing) in accordance with clause 8.2(a)(i), unless agreed otherwise between the Parties.</p> <p>2. Final Progress Report – within 30 days from the issue of the last Notice of Acceptance by CEO (Housing) in accordance with clause 8.2(a)(i), unless agreed otherwise between the Parties.</p> <p>3. Funding Acquittal Statement – within 60 days from the issue of the last Notice of Acceptance by CEO (Housing) in accordance with clause 8.2(a)(i), unless agreed otherwise between the Parties.</p> <p>4. A copy of the Proponent’s most recent audited financial statements, including income and expenditure statements and balance sheets – within 30 days of audited financial statements being compiled and endorsed by the Proponent in the ordinary course of the Proponent’s business.</p> <p>Audited income and expenditure statements must:</p> <p>(a) clearly identify the Funding and expenditure of the Funding; and</p> <p>(b) be undertaken by a qualified auditor with appropriate professional registration.</p> <p>5. Any other reports or information as reasonably requested by CEO (Housing) – within 30 days (or any longer period for by CEO (Housing) or agreed between the parties) of any request from CEO (Housing) from time to time.</p>
<p><b>Item 11:</b> <b>Insurance</b></p>	<p>1. Public Liability insurance for a minimum of \$20,000,000.00 for any one event and unlimited in the aggregate.</p> <p>2. Workers Compensation insurance as required by Law.</p> <p>3. Building insurance for each property for their full replacement value.</p>
<p><b>Item 12:</b> <b>Addresses for the delivery of notices</b></p>	<p>CEO (Housing)</p> <p>Attention:</p> <p>Address:</p> <p>Proponent</p> <p>Attention:</p> <p>Address:</p>

**SCHEDULE 2 – CAVEAT**

Land Title Act  
REGISTRAR-GENERAL'S DIRECTIONS



NORTHERN TERRITORY OF AUSTRALIA

<b>G</b>	<b>C</b>	<b>No:</b>
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**IMPORTANT NOTICE**  
Please Note Privacy Statement Overleaf

**GENERAL CONSENT**

Register	Volume	Folio	Location	Lot Description	Plan	Unit
[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]

(NOTE 1 – 2)

INSTRUMENT BEING  
CONSENTED TO  
(Item 1)

Instrument Type: Non Lapsing Caveat  
 Dated: [insert]  
 Names of Parties: Chief Executive Officer (Housing) (Caveator) and [insert Proponent's full name and ACN] (Caveatee/Owner)

(NOTE 3)

INSTRUMENT  
UNDER WHICH  
CONSENT REQUIRED  
(Item 2)

Dealing Type: Not Applicable  
 Dealing No: Not Applicable  
 Name of consenting party: [insert Proponent's full name and ACN]

(NOTE 4)

EXECUTION BY  
CONSENTING PARTY

The party identified in item 2 consents to the registration of the instrument identified in item 1 in respect of the above land.

(NOTE 5)

**Executed by [insert] (ACN [insert])** in accordance with Section 127 of the *Corporations Act 2001*  
 on (Date)  
 .....

.....  
 Signature of Director

.....  
 Print Full Name of Director

.....  
 Signature of Director/Secretary

.....  
 .Print Full Name of Director/Secretary

(NOTE 6)

## SCHEDULE OF NOTES

1. This General Consent form is lodged as an original only and must be typed or completed in ink or biro. Alterations to information entered on the form should be crossed out (not erased or obliterated by painting over) and initialled by the parties.
2. Volume and Folio references must be given together with parcel description.
3. Insert Instrument type and number, date and name of parties of the instrument being consented to.
4. Insert dealing type, number and name of consenting party.
5. This is the consenting clause.
6. Persons who may witness this document are a Commissioner for Oaths, a member of the Legislative Assembly, a legal practitioner within the meaning of the *Legal Profession Act*, a person holding office under the *Supreme Court Act*, the *Justices Act*, the *Local Court Act* or the *Registration Act*, a member of the Police Force, a person licensed as a conveyancing agent or real estate agent under the *Agents Licensing Act*, a Notary Public and any other person approved by the Registrar-General.

A witness to an instrument executed by an individual must first:

- take reasonable steps to ensure that the individual is the person entitled to sign the instrument;
- have the individual execute the document in the presence of the witness;
- not be a party to the instrument; and
- if witnessing more than one signature, clearly state that he/she has witnessed more than one signature. (ie I have witnessed the two signatures appearing above).

After signing, witnesses must legibly write, type or stamp their names and contact address or telephone number below their signature.

For a corporation, an instrument must be executed in a way permitted by law or sealed with the corporation's seal in accordance with the *Law of Property Act*, Section 48.

For witnessing of instruments executed outside the Northern Territory refer to Schedule 1 of the *Land Title Act* and the Registrar-General's Direction.

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## PRIVACY STATEMENT – LAND REGISTER FORMS

The Registrar-General's Office is authorised by the Land Title Act to collect the information on this form for the establishment and maintenance of the Land Register, which is made available for search by any person, anywhere, including through the Internet, upon payment of a fee. The information is regularly provided to other NT Government agencies, the Australian Valuation Office, local governments, the Australian Bureau of Statistics, the Australian Taxation Office or other Commonwealth Agencies as required or authorised by law, and some private sector organisations for conveyancing, local government, valuation, statistical, administrative and other purposes. The Department of Lands, Planning and the Environment also uses the information to prepare and sell or licence property sales reports to commercial organisations concerned with the development, sale or marketing of property.

Failure to provide the information in full or in part may prevent your application or transaction being completed.

Your personal information provided on this form can be subsequently accessed by you on request. If you have any queries please contact the Deputy Registrar-General on 8999 5318.



*Land Title Act*  
REGISTRAR-GENERAL'S DIRECTIONS



NORTHERN TERRITORY OF AUSTRALIA

<b>X</b>	No: _____
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**IMPORTANT NOTICE**

Please Note Privacy Statement Overleaf

**NON LAPSING CAVEAT**

The caveator claims the estate or interest specified in the land described on the grounds set out and forbids the registration of any dealing affecting that estate or interest to the extent of the prohibition as specified during the period in which the caveat remains in force. (NOTES 1-5)

Register	Volume	Folio	Location	Lot Description	Plan	Unit
[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]

(NOTE 6)

CAVEATOR (PERSON LODGING CAVEAT)	Name: Chief Executive Officer (Housing) Address for the service of Notices: C/- Department of Housing GPO Box 4621, DARWIN NT 0801	(NOTE 7)
--	--	----------

ESTATE OR INTEREST CLAIMED	An interest as covenantee in the land	(NOTE 8)
----------------------------	---------------------------------------	----------

GROUNDS OF CLAIM	Rights granted to the Northern Territory of Australia pursuant to Clauses [insert] of a Development and Funding Agreement between the Northern Territory of Australia and [insert proponent's name] ACN [insert proponent's ACN] Dated the [insert] Day of [insert] 2015.	(NOTE 9)
------------------	---	----------

REGISTERED INTERESTS AFFECTED EXTENT OF PROHIBITION	Instrument No: _____  Absolutely except for the transfer to [insert proponent's full name and ACN] and Creation of Covenant in Gross in favour of the Northern Territory of Australia [insert any mortgage or other document required by the Proponent].	(NOTE 10)
--	--	-----------

OWNERS	Name: [insert proponent's full name and ACN] Address: [insert proponent's address]	(NOTE 11)
--------	---	-----------

OTHER PARTIES	Not Applicable	(NOTE 12)
---------------	----------------	-----------

BASIS OF LODGEMENT (tick one)	BY REGISTERED OWNER <input type="checkbox"/>	WITH THE CONSENT OF THE REGISTERED OWNER <input checked="" type="checkbox"/>	COPY OF COURT ORDER DEPOSITED <input type="checkbox"/>	OTHER THAN PURSUANT TO PART 7 DIVISION 2 OF THE <i>LAND TITLES ACT</i> . <input type="checkbox"/>	(NOTE 13)
-------------------------------	---	---	---	--	-----------

.....  
 SIGNED by [insert full name] as Caveator for and on behalf of the Northern Territory of Australia pursuant to a delegation under the *Contracts Act* on (Date) .....

In the presence of:  
 .....  
 Signature of qualified witness:  
 .....  
 .....

(NOTES 14 & 15)

Registered on ..... At .....

**Office use only.**

Notices sent to registered proprietors

On ..... / ..... / 20.....

Registered Mail No: .....

Notices sent to registered proprietors

On ..... / ..... / 20.....

Registered Mail No: .....

Notices sent to registered proprietors

On ..... / ..... / 20.....

Registered Mail No: .....

Notices sent to registered proprietors

On ..... / ..... / 20.....

Registered Mail No: .....

**SCHEDULE OF NOTES**

1. Caveats remain in effect for the periods specified in Part 7 Division 2 of the *Land Title Act*. For Non Lapsing of Caveats refer Section 142 of the *Land Title Act*. This form may be used only if one of the circumstances set out in section 142(1) (a) to (e) of the *Land Title Act* exists.
2. A caveat prevents registration of another instrument affecting the lot over which the caveat is lodged from the date and time endorsed by the Registrar-General on the caveat as the caveat's date and time of lodgement.
3. A caveat may be lodged as an original only and must be typed or completed in ink or biro. Alterations to information entered on the form should be crossed out (not erased or obliterated by painting over) and initialled by the parties.
4. All signatures must be in ink or biro.
5. If there is insufficient space in any panel use the space above or an annexure sheet (Form 95).
6. Volume and Folio references must be given together with complete parcel description. The certificate as to title need not be produced. If the caveat affects part only of the land in a title the description should also be given. Any necessary diagram should be endorsed above or on an annexure sheet (Form 95) or a survey plan deposited with the Surveyor-General may be referred to.
7. Insert full name and an address for the service of notices. The address can be a postal address.
8. Specify the estate or interest claimed eg. "an estate in fee simple in the land", "an interest as mortgagee in the land". Where the interest claimed is the interest of only one of several registered owners this fact should be set out here. The interest must be an interest in the land.
9. Specify the grounds on which the interest is claimed.  
eg. "as purchaser under a contract of sale from A.B. dated....."  
"as mortgagee under an instrument of mortgage from A.B. dated....."
10. Where the caveat only affects one or some of the registered interest specify the registered interest eg lease. Caveats can be lodged so as not to absolutely prohibit dealings with the land or interest. If this is the case delete "absolutely" and specify the conditions under which registration may be effected. eg "except a mortgage to ....."
11. Insert Owners current address for the Service of Notices.
12. The Registrar-General must give written notice of lodgement of a caveat to each person whose interest or whose right to registration of an instrument is affected by the caveat. Insert name and address for the Service of Notices of anyone else having the right to deal with the lot affected by the caveat
13. You must tick one of these boxes. If you are unable to, the caveat subject to section 142 of the *Land Title Act* is a lapsing caveat and form 79 must be used. If you are claiming that the caveat is lodged with the consent of the registered owner evidence of the written consent is required either as a separate consent (Form 93) or other evidence of that consent must be produced.
14. The caveat may be signed by the caveator or by an agent of the caveator.
15. Persons who may witness this document are a Commissioner for Oaths, a member of the Legislative Assembly, a legal practitioner within the meaning of the *Legal Profession Act*, a person holding office under the *Supreme Court Act*, the *Justices Act*, the *Local Court Act* or the *Registration Act*, a member of the Police Force, a person licensed as a conveyancing agent or real estate agent under the *Agents Licensing Act*, a Notary Public and any other person approved by the Registrar-General.

A witness to an instrument executed by an individual must first:

- take reasonable steps to ensure that the individual is the person entitled to sign the instrument;
- have the individual execute the document in the presence of the witness;
- not be a party to the instrument; and
- if witnessing more than one signature, clearly state that he/she has witnessed more than one signature. (ie I have witnessed the two signatures appearing above).

After signing, witnesses must legibly write, type or stamp their names and contact address or telephone number below their signature.

For a corporation, an instrument must be executed in a way permitted by law or sealed with the corporation's seal in accordance with the *Law of Property Act*, Section 48.

For witnessing of instruments executed outside the Northern Territory refer to Schedule 1 of the *Land Title Act* and the Registrar-General's Direction.

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**PRIVACY STATEMENT – LAND REGISTER FORMS**

The Registrar-General's Office is authorised by the Land Title Act to collect the information on this form for the establishment and maintenance of the Land Register, which is made available for search by any person, anywhere, including through the Internet, upon payment of a fee. The information is regularly provided to other NT Government agencies, the Australian Valuation Office, local governments, the Australian Bureau of Statistics, the Australian Taxation Office or other Commonwealth Agencies as required or authorised by law, and some private sector organisations for conveyancing, local government, valuation, statistical, administrative and other purposes. The Department of Lands, Planning and the Environment also uses the information to prepare and sell or licence property sales reports to commercial organisations concerned with the development, sale or marketing of property.

Failure to provide the information in full or in part may prevent your application or transaction being completed.

Your personal information provided on this form can be subsequently accessed by you on request. If you have any queries please contact the Deputy Registrar-General on 8999 5318.

**SCHEDULE 3 – RESTRICTIVE COVENANT**

Land Title Act  
REGISTRAR-GENERAL'S DIRECTIONS



NORTHERN TERRITORY OF AUSTRALIA

Commissioner of Territory Revenue use only

<b>C</b>	<b>G</b>
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**IMPORTANT NOTICE**

Please Note Privacy Statement Overleaf

**CREATION OF  
COVENANT IN GROSS**

The owner of the land described below covenants with the person(s) having the benefit of the covenant in respect of the covenant described. (NOTES 1 – 3)

Register	Volume	Folio	Location	Lot Description	Plan	Unit
[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]

(NOTE 4)

OWNER OF THE LAND BURDENED

[insert]

(NOTE 5)

PERSON(S) RECEIVING THE BENEFIT

Chief Executive Officer (Housing)  
Address: C/- Department of Housing GPO Box 4621, DARWIN NT 0801

(NOTE 6)

DESCRIPTION OF COVENANT

To comply with the Provision of Covenant in Gross attached to this Form 58 containing 6 pages.

(NOTE 7)

**Executed by [insert] (ACN [insert])** in accordance with Section 127 of the *Corporations Act 2001*  
on (Date) .....

.....  
Signature of Director

.....  
Print Full Name of Director

.....  
Signature of Director/Secretary

.....  
Print Full Name of Director/Secretary

Signed for and on behalf of the Northern Territory of Australia pursuant to a delegation under the *Contracts Act*:

.....  
Signature of delegate

Print Name in Full: .....

on (Date) .....

In the presence of:

.....  
Signature of qualified witness

.....  
.....

.....  
Print name, qualification and phone number or address of qualified witness

(NOTE 8)

## CONSENT OF REGISTERED MORTGAGEES (NOTE 9)

Instrument type: .....	Instrument type: .....
Instrument No: .....	Instrument No: .....
Name of Parties: .....	Name of Parties: .....
.....	.....
I the registered proprietor of the interest shown above consent to the registration of this instrument.	I the registered proprietor of the interest shown above consent to the registration of this instrument.
Signed: .....	Signed: .....
(Date): .....	(Date): .....
In the presence of: .....	In the presence of: .....
.....	.....
Name of Witness: .....	Name of Witness: .....
Address or Telephone No.: .....	Address or Telephone No.: .....

### COVENANTS

- To comply with the provisions contained in Memorandum of Common Provisions recorded in the Register as LTO No:
- Additional Covenants: to comply with the Provision of Covenant in Gross annexed hereto.

### SCHEDULE OF NOTES

1. This instrument can be lodged as an original only or in duplicate. It must be typed or completed in ink or biro. Pursuant to Section 168 of the *Law of Property Act* a covenant in gross may be created without dominant land for a limited class or person(s). Alterations to information entered on the form should be crossed out (nor erased or obliterated by painting over) and initialled by the parties.
  2. This instrument must include a description or sketch plan sufficient to identify the lot or part of the lot to be burdened by the covenant in gross. The imprint of the Commissioner of Territory Revenue must be shown.
  3. If there is insufficient space in any panel use the space above or an annexure sheet (Form 95).
  4. Volume and Folio references must be given together with complete parcel description. If the certificate as to title has been issued it must be produced.
  5. Insert full name of the owner of the land burdened by the covenant in gross. Include an address only if the address differs to that shown on the Certificate as to Title.
  6. Insert full name of person(s) receiving the benefit of the covenant in gross. A covenant in gross may only be granted to those persons referred to in Section 168 of the *Law of Property Act*. Insert address for the service of notices.
  7. Insert a description of the covenant.
  8. Persons who may witness this document are a Commissioner for Oaths, a member of the Legislative Assembly, a legal practitioner within the meaning of the *Legal Profession Act*, a person holding office under the *Supreme Court Act*, the *Justices Act*, the *Local Court Act* or the *Registration Act*, a member of the Police Force, a person licensed as a conveyancing agent or real estate agent under the *Agents Licensing Act*, a Notary Public and any other person approved by the Registrar-General.  
A witness to an instrument executed by an individual must first:
    - take reasonable steps to ensure that the individual is the person entitled to sign the instrument;
    - have the individual execute the document in the presence of the witness;
    - not be a party to the instrument; and
    - if witnessing more than one signature, clearly state that he/she has witnessed more than one signature. (ie I have witnessed the two signatures appearing above).After signing, witnesses must legibly write, type or stamp their names and contact address or telephone number below their signature.  
For a corporation, an instrument must be executed in a way permitted by law or sealed with the corporation's seal in accordance with the *Law of Property Act*, Section 48.  
For witnessing of instruments executed outside the Northern Territory refer to Schedule 1 of the *Land Title Act* and the Registrar-General's Direction.
9. The instrument of covenant must include the consents of all registered mortgagees of the lot burdened by the covenant.

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### PRIVACY STATEMENT – LAND REGISTER FORMS

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Failure to provide the information in full or in part may prevent your application or transaction being completed.

Your personal information provided on this form can be subsequently accessed by you on request. If you have any queries please contact the Deputy Registrar-General on 8999 5318.

# PROVISIONS OF COVENANT IN GROSS

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The Proponent (short name)

Chief Executive Officer (Housing) (CEO Housing)



JKW Law Practice Pty Ltd  
ACN 165 947 535 ABN 45 235 313 840  
8/21 Parap Road Parap NT 0820  
PO Box 2294 Parap NT 0804  
T (08) 8914 0010 F (08) 8981 4295  
[www.jkwlaw.com.au](http://www.jkwlaw.com.au)

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## PROVISIONS OF COVENANT IN GROSS

### PARTIES

**OWNER OF THE LAND BURDENED:      THE PROPONENT**

**PERSON RECEIVE THE BENEFIT:      Chief Executive Officer (Housing)**

### OPERATIVE PROVISIONS

#### 1.      DEFINITIONS AND INTERPRETATION

##### 1.1      Definitions

In this Covenant, unless and except to the extent that the context otherwise indicates or requires:

**Business Day** means a day which is not Saturday, Sunday, nor a public holiday in Darwin;

**CEO (Housing)** means the Chief Executive Officer (Housing), a body corporate sole established under the Housing Act and includes its successors and permitted assigns;

**Covenant** means this Covenant in Gross consisting of the Panel Form and these Provisions of Covenant in Gross;

**Development and Funding Agreement** means the Development and Funding Agreement entered into between CEO (Housing) and the Owner dated      day of      2015;

**Land** means the land described on the Panel Form and where the context permits includes a reference to the whole or any part of the Land;

**Owner** means the person named next to the heading "Owner of the Land Burdened" on the Panel Form and includes its successors in title to the Land;

**Panel Form** means the Form 58 Creation of Covenant in Gross to which these Provisions of Covenant in Gross are attached;

**Property Management Services** has the meaning given to it in the Development and Funding Agreement; and

**Term** means the period commencing upon registration of this Covenant and expiring on the date being 10 years from that date.

##### 1.2      Interpretation

In this Covenant, unless and except to the extent that the context otherwise indicates or requires:

- (a)      the singular includes the plural and the plural includes the singular;
- (b)      a reference to one gender includes all other genders;
- (c)      a reference to a person includes a body corporate;
- (d)      a reference to a Party or Parties is a reference to the Parties to this Covenant;
- (e)      headings are included for reference only and do not affect the interpretation of this Covenant;
- (f)      a Party who is a trustee is bound both personally and in its capacity as trustee;
- (g)      every covenant or agreement expressed or implied in this Covenant by which more Parties than one covenant to agree shall bind such Parties and every one or more of



them jointly and each of them severally and every provision expressed or implied in this Covenant which applies to more Parties than one shall apply to such Parties and every two or more of them jointly and each of them severally and their respective administrators, executors and assigns;

- (h) "including" and similar words are not words of limitation;
- (i) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to any document or instrument includes any variation or replacement of it;
- (k) a reference to clauses, annexures or schedules is a reference to the clauses, annexures or schedules of this Covenant;
- (l) a reference to any authority, association or body whether statutory or otherwise shall (if that authority, association or body ceases to exist or is re-constituted, re-named or replaced or its powers or functions are transferred to any other authority, association or body) be deemed to refer respectively to the authority, association or body established or constituted in its place or as nearly as may be succeeding to its powers or functions;
- (m) reference to time is a reference to time in Darwin;
- (n) if an act must be done on a day which is not a Business Day, that act may be done instead on the next Business Day;
- (o) all monetary amounts are in Australian dollars; and
- (p) a provision of this Covenant must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Covenant.

## **2. COVENANTS BY THE OWNER**

- (a) The Owner acknowledges that the Owner has covenanted with CEO (Housing) for the Term:
  - (i) Pursuant to clause 10] of the Development and Funding Agreement to provide the Property Management Services in respect of the Land;
  - (ii) Pursuant to clause 11.1 of the Development and Funding Agreement not to mortgage, charge or otherwise encumber its estate or interest in the Land without the prior written consent of CEO (Housing);
  - (iii) Pursuant to clause 11.2 of the Development and Funding Agreement not to sell, assign, transfer or otherwise dispose of its estate or interest in the Land without the prior written consent of CEO (Housing); and
  - (iv) Pursuant to clause 11.3 of the Development and Funding Agreement, not to let or lease its estate or interest in the Land other than to Eligible Tenants (as that expression is defined in the Development and Funding Agreement) without the prior written consent of CEO (Housing).
- (b) The Owner shall not for any reason without the prior written consent of CEO (Housing) deal with the Land or any part thereof in the manner outlined in subclause 2(a)(ii), 2(a)(iii) or 2(a)(iv).

## **3. COSTS**

- (a) CEO (Housing) shall pay all costs and expenses related to:

- (i) The registration of this Covenant including registration fees and stamp duty (if any);
  - (ii) The registration of any modification of this Covenant required by CEO (Housing) including registration fees and stamp duty (if any); and
  - (iii) Registration of the extinguishment of this Covenant including registration fees; and
- (b) If the Owner shall breach this Covenant, the Owner shall pay any legal fees and expenses as between solicitor and client incurred by CEO (Housing) as a result of or in connection with such breach.

#### **4. DISPUTE RESOLUTION**

- (a) If a dispute arises between the Parties in relation to this Covenant, the Parties may agree to the identity of an independent expert ('Expert') to determine the dispute.
- (b) If the Parties fail to agree to the identity of the Expert within five Business Days of one Party nominating an Expert, then either or both of the Parties may refer the matter to the President for the time being of the Law Society of the Northern Territory who will nominate an Expert to determine the dispute.
- (c) The decision of the Expert will be absolute and final and binding on the Parties.
- (d) The Expert is deemed to be acting in making any decision as an expert and not an arbitrator.
- (e) The Parties will bear the costs of such a determination equally.
- (f) The Parties must make available to the Expert all materials requested by the Expert and will furnish the Expert all other materials that are relevant to the dispute or determination.

#### **5. SERVICE OF NOTICES**

##### **5.1 Notice**

A notice or other communication ('Notice') connected with this Covenant has no legal effect unless it is in writing and:

- (a) delivered by hand at the address for service of the addressee;
- (b) sent by mail, postage prepaid, to the address for service of the addressee, if the address is in Australia and the Notice is being sent from within Australia;
- (c) sent by prepaid airmail to the address for service of the addressee, if the address is outside Australia or if the Notice is being sent from outside Australia; or
- (d) sent by facsimile to the facsimile number of the addressee.

##### **5.2 When Notice is Deemed to be Served**

Where the Notice is delivered or sent in a manner provided by this clause it is deemed given to and received by the Party to which it is addressed:

- (a) if delivered, upon delivery;
- (b) if mailed from within Australia to an address in Australia, on actual delivery to that address as evidenced by Australia Post documentation;
- (c) if mailed to an address outside Australia or mailed from outside Australia, on the fifth Business Day (at the address to which it is mailed) after posting;

- (d) if sent by facsimile, before 4.00 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

### **5.3 Receipt of Notice by Fax**

A Party which receives a Notice by facsimile must if requested by the sender immediately notify the sender of its receipt.

### **5.4 Addresses for Service of Notices**

The address for service and facsimile number for the Owner is the address for the Owner from time to time recorded in the Land Register under the *Land Title Act*.

The address for service and facsimile number for CEO (Housing) is:

Address:

Attention:

Facsimile:

A Party may change its address for service or facsimile number by giving Notice of that change to each other Party.

### **5.5 Evidence of Service of Notices**

A certificate signed by or on behalf of a Party giving a Notice by any lawyer, officer or employee of that Party stating the date on which that Notice was delivered or sent, is prima facie evidence of the date on which that Notice was delivered or sent.

### **5.6 Notices Given to More than One Party**

If the Party to which a Notice is intended to be given consists of more than one person then the Notice is deemed given to that Party if given to any of those persons.

## **6. LAW**

- (a) Nothing in this Covenant shall be taken to prevent CEO (Housing) from taking such action, including if deemed appropriate by CEO (Housing), court proceedings for injunctive or other relief.
- (b) This Covenant is governed by, and is to be construed in accordance with, the law of the CEO (Housing) and the Parties submit to the jurisdiction of the Supreme Court of the Northern Territory in respect of all matters arising under this Covenant.

## **7. GENERAL MATTERS**

### **7.1 Additional Documents**

The Parties will each execute, sign, deliver, enter into, acknowledge, effect and do all such deeds, acts, agreements, transfers, instruments and things as may be requisite or may be deemed proper for the purposes of carrying into effect any of the matters herein agreed to.

### **7.2 Entire Agreement**

This Covenant and the Development and Funding Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Covenant and supersedes and extinguishes any representations warranties and agreements previously given made or entered into other than those contained herein, and no variation of this Covenant shall be effective unless in writing signed by (or by some person duly authorised by) each of the Parties.

### **7.3 Time of Essence**

Any date or period mentioned in any clause of this Covenant may be extended by mutual agreement between the Parties, but as regards any date or period (whether or not extended

aforesaid) time shall be of the essence, including the time or any period of notice referred to in any notice given pursuant to this Covenant.

#### **7.4 Severability**

If it is held by a court of competent jurisdiction that:

- (a) any part of this Covenant is void, voidable, illegal or unenforceable; or
- (b) this Covenant would be void, voidable, illegal or unenforceable unless any part of this Covenant was severed from this Covenant,

that part shall be severed from and shall not affect the continued operation of the rest of this Covenant.

#### **7.5 Exercise of Rights**

Any rights conferred by this Covenant upon the Parties shall be unconditional and without prejudice to all other rights and remedies available to them.

#### **7.6 Waiver**

Failure or omission by either Party at any time and from time to time to enforce or require the strict compliance with any provision of this Covenant shall not affect or impair such provision in any way or the rights of such Party to avail itself of such remedies as it may have in respect of any breach or breaches of any such provisions nor effect or prejudice the rights of a party at any time to require strict and full performance by the other party of any or all of the terms and conditions of the Covenant.

#### **7.7 Variation**

No variation, modification or waiver of any provision of this Covenant nor consent to any departure by any Party therefrom shall be of any force or effect unless the same shall be confirmed in writing, signed by the Parties, and then such variation, modification, waiver or consent shall be effective only to the extent for which it may be made or given.

#### **7.8 Execution in Counterpart**

This Covenant may be executed in any separate number of counterparts, which when executed shall together be deemed to constitute the one and the same instrument.