**99 year home ownership lease**

***Aboriginal Land Act 1991 or Torres Strait Islander Land Act 1991***

**Agreement to purchase and lease**

**[Drafting Notes (as at 22 May 2019):**

* **This Agreement is intended as a general template to be used by trustees of Aboriginal Land and Aboriginal Trust Land as defined under the *Aboriginal Land Act 1991* (ALA) or trustees of Torres Strait Islander Land and Torres Strait Islander Trust Land as defined under the *Torres Strait Islander Land Act 1991* (TSILA).**
* **Trustees should seek their own independent legal advice on the terms of this Agreement and its suitability for their circumstances prior to using it.**
* **This Agreement can be conditional on satisfaction of native title and is drafted so that the Trustee is responsible for satisfying native title to be able to grant a valid lease.**
* **This Agreement is not conditional on the Trustee’s compliance with ss 127 and 128 of the ALA or ss 92 and 93 of the TSIKA. The Trustee should ensure it is compliant with those sections prior to the grant of the Lease or make the grant of the Lease conditional on such compliance.]**

**This Agreement is made:**

between:the party named in Item 9 as the **Trustee**

and**:** the party named in Item 9 as the **Lessee**

Background

1. The Trustee is the registered owner of the Land and holds the Land on trust.
2. The Trustee grants and the Lessee accepts the Lease on the terms and conditions in this Agreement.
3. If relevant, the Trustee sells and the Lessee purchases the Property on the terms and conditions in this Agreement.

Agreed terms

Reference Schedule

|  |  |  |  |
| --- | --- | --- | --- |
| 1. **Agreement Date** |  | | |
| 1. **Land** | Lot [insert] on [insert], Title Reference [insert] | | |
| 1. **Premises** | [The whole of the Land] or [Lease [insert] on the plan shown in Schedule 4] or [that part of the Land shown on the Indicative Plan, subject to obtaining the Survey Plan.]  **Address:** [insert] | | |
| 1. **Improvements**   (clause 9.1) | Are any Improvements on the Premises sold to the Lessee?  Yes  No  If yes, the Trustee agrees to sell the Improvements to the Lessee (see clause 9.1). | | |
| 1. **Included Chattels** | [Drafting Note: List any chattels sold with the Improvements.] | | |
| 1. **Encumbrances**   (clause 9.3) | Is the Property sold or the Premises leased subject to any Encumbrances?  Yes  No  [Drafting Note: List any encumbrances the Property or Premises are subject to e.g. easements noted on title.] | | |
| 1. **Purchase Price** | $[insert] (exclusive of GST) | | |
| 1. **Finance**   (clause 2) | Financier: | |  |
| Finance Amount: | |  |
| Finance Date: | |  |
| 1. **Inspection Date**   (clause 3) | [insert date ] or [The date that is [insert] days after the Agreement Date.] | | |
| 1. **Survey Date**   (clause 4) | [insert date ] or [The date that is [insert] days after the Agreement Date.] | | |
| 1. **Approval Date**   (clause 5) | [insert date ] or [The date that is [insert] days after the Agreement Date.] | | |
| 1. **Native Title Date**   (clause 6) | [insert date ] or [The date that is [insert] days after the Agreement Date.] | | |
| 1. **Settlement Date** | [The date that is [insert] days after the last of the Conditions is satisfied.] | | |
| 1. **Settlement Place** |  | | |
| 1. **Local Government** | [Drafting Note: Insert name of local government.] | | |
| 1. **Parties and address for notices**   (clause 20) |  | | |
| **Trustee:** | [insert] | | |
| Address: | [insert] | |
| Phone: | [insert] | |
| fax: | [insert] | |
| email: | [insert] | |
| attention: | [insert] | |
| Trustee’s solicitor | [insert] | | |
| Address: | [insert] | |
| Phone: | [insert] | |
| fax: | [insert] | |
| email: | [insert] | |
| attention: | [insert] | |
| **Lessee:** | [insert] | | |
| Address: | [insert] | |
| Phone: | [insert] | |
| fax: | [insert] | |
| email: | [insert] | |
| attention: | [insert] | |
| Lessee’s solicitor | [insert] | | |
| Address: | [insert] | |
| Phone: | [insert] | |
| fax: | [insert] | |
| email: | [insert] | |
| attention: | [insert] | |

Conditions applicable to the Agreement

|  |  |
| --- | --- |
| **Financial Approval** (clause 2) | Yes  No  If yes, this Agreement is conditional on the Lessee obtaining Financial Approval in accordance with clause 2. |
| **Building and pest inspection** (clause 3) | Yes  No  If yes, this Agreement is conditional on the Lessee obtaining satisfactory building and pest reports pursuant to clause 3. |
| **Survey Plan** (clause 4) | Yes  No  If yes, this Agreement is conditional on the Lessee obtaining, and the Trustee approving, a Survey Plan in accordance with clause 4. |
| **Development Approval** (clause5) | Yes  No  If yes, this Agreement is conditional on the Lessee obtaining a Development Approval, on terms and conditions satisfactory to the Lessee, on or before the Approval Date in accordance with clause 5. |
| **Native Title Requirements** (clause 6) | Yes  No  If yes, this Agreement is conditional on the parties satisfying the Native Title Requirements before the Native Title Date in accordance with clause 6. |

Notices by Trustee (clause 8.4)

|  |  |
| --- | --- |
| **Electrical Safety Switch** (to be completed where dwelling sold to Lessee) | The Trustee gives notice to the Lessee that an Approved Safety Switch for the General Purpose Socket Outlets is:  Installed in the residence  Not installed in the residence |
| **Smoke alarms** (to be completed where dwelling sold to Lessee) | The Trustee gives notice to the Lessee that a Compliant Smoke Alarm(s) is/are:  Installed in the residence  Not installed in the residence |
| **Neigbourhood disputes** | The Trustee gives notice to the Lessee in accordance with Section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* that the Premises are:  not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land; or  affected by any application to, or an order made by, QCAT in relation to a tree on the Land, a copy of which has been given to the Lessee prior to signing this Agreement. |

Special Conditions

|  |  |
| --- | --- |
| **Are any Special Conditions applicable to this Agreement?** | Yes  Listed in Schedule 2  No |

1. Definitions and interpretation
   1. In this Agreement, terms in bold the Reference Schedule have the meanings given opposite them and:

***Agreement*** includes this document and all schedules to this document.

***Approvals*** mean any consent or approval required by law.

***Approved Safety Switch*** means a residual current device as defined in the *Electrical Safety Regulation 2013*.

***Assessment Manager*** has the meaning given in the Planning Act.

***Authority*** means any government or administrative body, department, commission, authority, court, tribunal, agency, Minister, statutory body or entity having jurisdiction in relation to the Property or Premises (including the Local Government).

***Bank*** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth).

***Business Day*** means any day in the State of Queensland which is not a Saturday, Sunday or public holiday (either in the locality of the Premises or in Brisbane) or a day in the period 27 to 31 December (inclusive).

***Claim*** means any claim, demand, liability, proceeding, cost, loss, charge or expense.

***Compliant Smoke Alarm*** means a smoke alarm complying with the requirements for smoke alarms in domestic dwellings under the *Fire and Emergency Services Act 1990*;

***Condition*** means each condition applicable to this Agreement as specified in the Reference Schedule.

***Condition Date*** means the latest date by which the Lessee must give notice of satisfaction of a Condition pursuant to this Agreement.

***Decision Notice*** has the meaning given in the Planning Act.

***Development Application*** means an application for a Development Permit for:

* + 1. reconfiguring the Land for the purposes of the Lease;
    2. carrying out building work;
    3. carrying out plumbing or drainage work;
    4. carrying out operational work; or
    5. a material change of use of the Premises,

as required by the Planning Act to enable the lawful grant of the Lease or construction of the Works (as applicable).

***Development Approval*** means the approval of the Development Application.

***Development Permit*** has the meaning given in the Planning Act.

***Extended Survey Date*** has the meaning given in clause 4.5(c).

***Financial Approval*** has the meaning given in clause 2.2.

***Future Act*** has the meaning given in the *Native Title Act 1993* (Cth).

***General Purpose Socket Outlet*** means an electrical socket outlet as defined in the *Electrical Safety Regulations 2013*.

***GST*** has the meaning given in GST Act.

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

***Improvements*** means all fixed structures on the Premises and includes all items fixed to them (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae and in-ground plants).

***Indicative Plan*** means the plan shown in Schedule 4.

***Keys*** means keys, codes or devices in the Trustee’s possession or control for all locks or security systems on the Property or necessary to access the Property.

***Lease*** means a lease of the Premises on substantially the same terms as the lease contained in Schedule 3.

***Native Title Requirements*** means if the grant of the Lease is a Future Act, obtaining validity for the grant of the Lease with respect to Native Title under Part 2 Division 3 of the *Native Title Act 1993* (Cth).

***Object*** means delay settlement, make any Claims or requisitions, withhold all or part of the Purchase Price or terminate this Agreement.

***Outgoings*** mean rates, charges and other levies payable to any authority (including rates and charges for the provision or reticulation of water, sewerage and drainage services payable to the local government).

***Planning Act*** means the *Planning Act 2016* (Qld).

***Plans and Specifications*** means the plans and specifications in Schedule 5.

***Property*** means the Improvements and the Included Chattels.

***Statutory Encumbrances*** includes any infrastructure or works of an Authority (including any infrastructure for sewerage, drainage, water supply, energy, telephone or other installations, services and utilities) located above on or under the surface of the Premises, all obligations upon the owner or occupier of the Property and Premises in respect of any such infrastructure and any rights in respect of the Property or Premises an Authority may have under any law.

***Supply*** has the meaning given in the GST Act.

***Survey Plan*** means a plan of survey in registrable form prepared in accordance with the requirements of the *Land Title Act 1994* (Qld) or the *Land Act 1994* (Qld), as applicable including all necessary consents to enable the plan to be registered.

***Tax Invoice*** has the meaning given in the GST Act.

***Tenancy Agreement*** has the meaning given in clause 14.3.

***Works*** means the construction of a residential dwelling on the Premises in accordance with the Plans and Specifications.

* 1. In this Agreement:
     1. words importing a gender include any other gender and words in the singular include the plural and vice versa;
     2. all monetary amounts refer to Australian currency;
     3. a reference to legislation includes subordinate legislation made under it and any legislation amending, consolidating or replacing it;
     4. a reference to an “**Item**” is to an item in the Reference Schedule;
     5. a reference to an individual or person includes a corporation or other legal entity;
     6. a reference to a clause or schedule means a clause or schedule to this Agreement;
     7. the headings are included for convenience of reference only and are not intended to affect the meaning of this Agreement;
     8. if an expression is defined, other grammatical forms of that expression will have corresponding meanings;
     9. a reference to days or months means calendar days or months;
     10. if the day on which any act or thing is to be done under this Agreement is a Saturday, Sunday or public holiday in the place where the act or thing is to be done, the act or thing may be done on the next Business Day in that place;
     11. if any conflict arises between the clauses in this Agreement and the contents of any schedule, the clauses prevail; and
     12. an obligation on the part of two or more persons binds them jointly and each of them individually.
  2. If a government department or agency mentioned in this Agreement:
     1. ceases to exist; or
     2. is reconstituted, renamed or replaced;

and its powers or functions are transferred to another government department or agency, a reference to the government department or agency will include that other government department or agency.

1. Financial Approval
   1. This clause 2 only applies if Financial Approval is a Condition.
   2. This Agreement is conditional on the Lessee obtaining approval of a loan for the Finance Amount from the Financier, on or before the Finance Date, on terms satisfactory to the Lessee (**Financial Approval**).
   3. The Lessee must take all reasonable steps to obtain the Financial Approval.
   4. The Lessee must notify the Trustee by 5 pm on the Finance Date, whether the Condition in clause 2.2:
      1. has been satisfied or waived by the Lessee; or
      2. has not been satisfied or waived and this Agreement is terminated.
2. Building and pest condition
   1. This clause 3 only applies if a building and pest inspection is a Condition.
   2. This Agreement is conditional on the Lessee obtaining a written building report from a building inspector and a written pest report from a pest inspector (which may be a single report) on the Premises, on or before the Inspection Date, on terms satisfactory to the Lessee.
   3. Despite clause 3.2, the Lessee may notify the Trustee on or before the Inspection Date that only one of the reports is being obtained. The Lessee must take all reasonable steps to obtain the reports (subject to the right of the Lessee to elect to obtain only one of the reports).
   4. The Lessee must notify the Trustee on or before 5:00 pm on the Inspection Date whether the Condition in clause 3.2:
      1. has been satisfied or waived by the Lessee; or
      2. has not been satisfied or waived and this Agreement is terminated.
   5. If the Lessee terminates this Agreement and the Trustee asks the Lessee for a copy of the building and pest reports, the Lessee must give a copy of each report to the Trustee without delay.
3. Survey Plan
   1. This clause 4 only applies if approval of a Survey Plan is a Condition.
   2. This Agreement is conditional on:
      1. the Lessee obtaining a Survey Plan for the Premises that is substantially in accordance with the Indicative Plan; and
      2. the Trustee approving the Survey Plan (acting reasonably),

on or before the Survey Date.

* 1. The Lessee must take all reasonable steps to obtain the Survey Plan and provide the Survey Plan to the Trustee no later than 30 days prior to the Survey Date.
  2. The Trustee must notify the Lessee on or before 5:00 pm on the Survey Date, or such later date as agreed by the parties, whether the Survey Plan has been approved by the Trustee.
  3. If the Trustee does not approve the Survey Plan:
     1. it must provide reasons for this decision;
     2. the Lessee must amend the Survey Plan to address the reasons for the Trustee’s decision; and
     3. the Survey Date is extended by 30 days (**Extended Survey Date**).
  4. If the Trustee has not approved the Survey Plan by the Extended Survey Date, or such later date as agreed by the parties, either party may terminate this Agreement by notice to the other.
  5. The Lessee must obtain the Trustee’s consent to any proposed amendments to the Survey Plan made after the Trustee’s approval is given pursuant to this clause 4.

1. Development Approval
   1. This clause 5 only applies if a Development Approval is a Condition.
   2. This Agreement is conditional on the Lessee obtaining a Development Approval, on terms and conditions satisfactory to the Lessee, on or before the Approval Date.
   3. At the Lessee’s cost, the Lessee must prepare the Development Application in accordance with the Survey Plan and the Plans and Specifications, as applicable.
   4. Subject to the Lessee’s compliance with clause 5.3, the Trustee must provide its consent as owner of the Land to the Development Application.
   5. The Lessee must:
      1. lodge the Development Application with the Assessment Manager no later than the Lodgement Date; and
      2. take all reasonable steps to diligently pursue the Development Application.
   6. The Lessee must notify the Trustee no later than:
      1. 14 days after receipt of the Assessment Manager’s decision; or
      2. 5 pm on the Approval Date, or such later date as agreed by the parties,

whichever is the earlier, as to whether:

* + 1. the Condition in clause 5.2 has been satisfied and provide a copy of the Decision Notice to the Trustee; or
    2. the Condition in clause 5.2 has not been satisfied and this Agreement is terminated.

1. Native title
   1. This clause 6 only applies if satisfying the Native Title Requirements is a Condition.
   2. This Agreement is conditional on the Trustee satisfying the Native Title Requirements by the Native Title Date.
   3. The Trustee must notify the Lessee no later than:
      1. 14 days after satisfaction of the Native Title Requirements; or
      2. 5 pm on the Native Title Date, or such later date as agreed by the parties,

whichever is the earlier, as to whether:

* + 1. the Condition in clause 6.2 has been satisfied; or
    2. the Condition in clause 6.2 has not been satisfied and this Agreement is terminated.

1. Trustee as Local Government
   1. Where the Trustee is the Local Government, nothing in this Agreement operates to restrict or otherwise affect the Trustee’s unfettered discretion in exercising its powers as the Local Government, as distinct from its powers as the owner of the Land and the Property.
   2. The Trustee’s liability under this Agreement is limited to its acts or omissions as the owner of the Land and the Property and does not extend to anything done or not done whilst exercising the powers as the Local Government.
2. No warranties
   1. The Trustee makes no warranties as to the standard of the Property or the Premises or their suitability for the purposes of the Lessee or the Lease.
   2. The Lessee agrees and acknowledges that it:
      1. has had the opportunity to obtain and undertake its own independent inspections, searches and enquiries in relation to the Property and the Premises;
      2. purchases the Property and leases the Premises:
         1. in an ‘as is’, ‘where-is’ condition; and
         2. subject to any and all defects (whether apparent or not).
   3. The Lessee will not:
      1. Object in respect of anything related to, or arising out of:
         1. the state of repair or condition of the Property or Premises; or
         2. the suitability of the Property or Premises for any particular use or purpose; or
      2. require the Trustee to carry out any work in respect of the Property or Premises on the grounds that there are defects in the Property or Premises.
   4. The Lessee acknowledges that the Trustee has provided the notices set out in the Reference Schedule.
3. Purchase and lease
   1. Subject to each of the Conditions being satisfied or waived, in consideration for, and subject to, payment of the Purchase Price:
      1. if Item 4 is checked ‘Yes’, the Trustee agrees to sell, and the Lessee agrees to purchase, the Property; and
      2. the Trustee agrees to grant, and the Lessee agrees to accept, the Lease.
   2. Title to the Property will pass to the Lessee at settlement. The Lease will commence on the Settlement Date.
   3. The Property is sold and the Premises are leased:
      1. subject to any reservations or conditions on the title or the original deed of grant; and
      2. free of all Encumbrances other than:
         1. those disclosed in Item 6; and
         2. any administrative advice that may be registered on the title; and
         3. Statutory Encumbrances.
   4. The Lessee may not deliver any requisitions or enquiries on title.
4. Risk
   1. The parties acknowledge that the Property and the Premises will be at the risk of the Lessee from 5.00pm on the first Business Day after the Agreement Date.
5. Requirements of Authorities
   1. Subject to clause 11.5, any valid notice or order by any Authority requiring work to be done or money spent in relation to the Property or Premises (**Work or Expenditure**) must be fully complied with:
      1. if issued before the Agreement Date, by the Trustee before the Settlement Date;
      2. if issued on or after the Agreement Date, by the Lessee.
   2. If any Work or Expenditure that is the Trustee’s responsibility under clause 11.1 is not done before the Settlement Date, the Lessee is entitled to claim the reasonable cost of work done by the Lessee in accordance with the notice or order referred to in clause 11.1 from the Trustee after settlement as a debt.
   3. Any Work or Expenditure that is the Lessee’s responsibility under clause 11.1, which is required to be done before the Settlement Date, must be done by the Trustee unless the Lessee directs the Trustee not to and indemnifies the Trustee against any liability for not carrying out the work. If the Trustee does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Purchase Price.
   4. The Lessee may terminate this Agreement by notice to the Trustee if there is an outstanding notice at the Agreement Date under sections 246AG, 247 or 248 of the *Building Act 1975* or sections 167 or 168 of the Planning Actthat affects the Property.
   5. Clause 11.1 does not apply to orders disclosed under section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.
6. Settlement
   1. Settlement must occur between 9.00am and 5.00pm on the Settlement Date.
   2. If the parties do not agree on where settlement is to occur, it must take place in the Settlement Place at a location nominated by the Trustee, or, if the Trustee does not make a nomination, at the land registry office in or nearest to the Settlement Place.
7. Purchase price payment
   1. On the Settlement Date, the Lessee must pay the Purchase Price (adjusted in accordance with clause 14) to the Trustee by bank cheque as the Lessee or the Lessee’s Solicitor directs, in exchange for:
      1. vacant possession of the Premises and the Property;
      2. any instrument necessary to release any Encumbrance over the Property or the Premises in compliance with the Trustee’s obligation in clause 9.3(b);
      3. the Lease validly executed by the Trustee and capable of immediate registration after stamping; and
      4. a valid Tax Invoice under clause 18, if applicable.
   2. At settlement, the Trustee assigns to the Lessee the benefit of all manufacturers’ warranties regarding the Included Chattels and builders’ warranties on the Improvements.
8. Outgoings adjustments
   1. The parties agree that the Trustee is liable for Outgoings for the Premises up to and including the Settlement Date and the Lessee is liable for all Outgoings after the Settlement Date.
   2. At settlement, the Purchase Price will be adjusted in respect of Outgoings for periods including the Settlement Date;
      1. for those Outgoings paid, on the amount paid;
      2. for those Outgoings assessed but unpaid, on the amount payable (excluding any discount); and
      3. for those Outgoings not assessed:
         1. on the amount the relevant authority advised will be assessed (excluding any discount); or
         2. if no advice on the assessment to be made is available, on the amount of the latest separate assessment (excluding any discount).
   3. If the Lessee occupies the Premises under a tenancy agreement with the Trustee (**Tenancy Agreement**), the Trustee is entitled to rent under the Tenancy Agreement up to and including the Settlement Date and clause 14.4 will apply.
   4. On or before the Settlement Date:
      1. the Lessee must pay to the Trustee any arrears of rent owing under the Tenancy Agreement for the rental period ending on or before the Settlement Date; or
      2. the Trustee must deduct from the Purchase Price any rental that has been paid by the Lessee under the Tenancy Agreement for the period following the Settlement Date.
9. Bank cheques
   1. The Lessee must pay the costs of any Bank cheques drawn in favour of the Trustee at settlement.
   2. The Trustee must pay the costs of any Bank cheques drawn in favour of parties other than the Trustee at settlement.
10. Post-settlement obligations
    1. If the Keys are not delivered at settlement, the Trustee must deliver the Keys to the Lessee.
    2. At the Lessee’s cost, the Lessee must:
       1. sign the Lease after it is received from the Trustee;
       2. arrange for the Lease to be stamped in respect of duty;
       3. lodge the Lease for registration as soon as practicable following the Settlement Date; and
       4. provide the Trustee with a copy of the registration confirmation statement.
    3. The Trustee must assist the Lessee or the Financier to answer any requisitions issued by the registrar of titles in connection with the registration of the Lease.
    4. Despite settlement and registration of the Lease, any term of this Agreement that can take effect after settlement or registration remains in force.
11. Termination
    1. If a party does not give notice of satisfaction of a Condition by the relevant Condition Date (**notifying party**), then the other party may terminate this Agreement by notice given after the Condition Date to the notifying party. This is the only remedy available for a failure to give a notice by a Condition Date.
    2. The notifying party has a continuing right to give notice of satisfaction of the Condition prior to receipt of a termination notice given under clause 17.1. The other party’s right to terminate under clause 17.1 is subject to that continuing right.
    3. The Trustee may terminate this Agreement if the Lessee is in breach of this Agreement, including in relation to any failure to effect settlement of this Agreement in accordance with its terms.
    4. Neither party may make any Claim against the other party as a result of, or related to, termination of this Agreement under clauses 2.4(b), 3.4(b), 4.6, 5.6(d), 6.3(d), 11.4, or 17.1.
12. GST
    1. The parties acknowledge that:
       1. the Purchase Price is exclusive of GST; and
       2. GST may be payable on a Supply under this Agreement.
    2. Where GST is payable upon any Supply under this Agreement, the consideration payable by the recipient for the Supply is adjusted in accordance with clauses 18.3 and 18.4.
    3. Subject to the supplier issuing a valid Tax Invoice, the consideration payable by the recipient to the supplier for the Supply is increased by the amount equal to that which the supplier is obliged to remit as GST on the Supply.
    4. If for any reason including:
       1. any amendment to the GST Act;
       2. the issue of a ruling or advice by the Commissioner of Taxation;
       3. a refund to the supplier in respect of a Supply made under this Agreement; or
       4. a decision of any tribunal or court,

the amount of GST paid by a party under this Agreement differs from the amount of GST paid or payable to the Commissioner of Taxation, then the party making the Supply must issue an appropriate GST adjustment note and the difference must be paid by or to the other party as the case may be.

* 1. The parties agree to exchange with each other such information as may be necessary to enable each party to accurately assess its rights and obligations under this clause 18.

1. Tax conditions
   1. The parties acknowledge that clause 25 in Schedule 1 applies to this Agreement; and
      1. they have each completed the required information in clause 25 of Schedule 1 as required.
2. Notices
   1. Any notice, request, consent or approval under this Agreement must be in writing and may be delivered by hand, by registered mail, by facsimile, or by email to the addresses specified in Item 16, or any substitute address as may have been notified in writing by the relevant addressee from time to time or the party’s solicitor named in Item 16.
   2. Subject to clause 20.3, notices will be deemed to be given:
      1. if posted – 5 Business Days after deposit in the mail with the postage prepaid;
      2. if delivered – on the date of delivery;
      3. if faxed – on the date on which an apparently successful transmission is noted by the sender’s facsimile machine; or
      4. if emailed – on the date of the email,

as the case may be.

* 1. An email or facsimile transmission received after 5.00pm on any day will be deemed to be received at the start of the next Business Day.
  2. Excluding notices given by a party’s solicitor under clause 20.5, notices by:
     1. the Trustee must be on the Trustee’s letterhead and signed by an authorised person; and
     2. the Lessee must be signed by the Lessee.
  3. Notices may be given by or to a party’s solicitor by any of the means specified in clause 20.1.

1. Costs
   1. Each party must pay their own costs of and incidental to the negotiation, preparation and execution of this Agreement and the Lease.
   2. The Lessee must pay all duty payable on this Agreement and any registration fees payable in respect of the Lease.
2. Time of the essence
   1. Time is of the essence of this Agreement, except regarding any agreement between the parties on a time of day for settlement.
3. Foreign purchaser approval
   1. The Lessee warrants that either:
      1. the Lessee’s purchase of the Property or acceptance of the Lease is not a notifiable action; or
      2. the Lessee has received a no objection notification,

under the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

1. General provisions
   1. This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements and agreements between the parties.
   2. The parties must comply with all other statutory obligations to give effect to this Agreement.
   3. Any failure by a party at any time to enforce a clause of this Agreement, or any forbearance, delay or indulgence granted by a party to the other, will not constitute a waiver of the party’s rights.
   4. No provision of this Agreement will be deemed to be waived unless the waiver is in writing and signed by the waiving party.
   5. A waiver by a party of a breach of any provision of this Agreement will not operate as a waiver of any subsequent breach of the same provision nor as a waiver of any other provision.
   6. This Agreement is governed by the laws of Queensland and each party submits to the jurisdiction of the courts of Queensland.
   7. If any part of this Agreement is determined to be invalid, unlawful or unenforceable for any reason then that part will be severed from the rest of the Agreement to the extent of the invalidity, unlawfulness or unenforceability and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.
   8. A party may not assign or novate their interest in this Agreement, except with the prior consent of the other party or parties.
   9. This Agreement may only be varied by a written agreement executed by the parties.

Schedule 1 – GST Withholding

1. GST Withholding
   1. The Lessee warrants to the Trustee that the Lessee is:

|  |  |  |  |
| --- | --- | --- | --- |
| **EITHER:** |  |  | **🖉LESSEE TO COMPLETE**  (tick relevant box) |
| (i) | registered for GST and acquiring the Land for a creditable purpose; |  |
| **OR** |  |  |
| (ii) | not registered for GST and not acquiring the Land for a creditable purpose. |  |

* 1. The Trustee provides notice under section 14-255(1)(a) of the Withholding Law that:

|  |  |  |  |
| --- | --- | --- | --- |
| **EITHER:** |  |  | **🖉TRUSTEE TO COMPLETE**  (tick relevant box) |
| (i) | the Lessee is not required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property |  |
| **OR** |  |  |
| (ii) | the Lessee is required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property. |  |

* 1. If the Lessee is required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property or the Premises, the Trustee provides the Lessee with the following information as required under section 14-255(1) of the Withholding Law:

|  |  |  |
| --- | --- | --- |
| Supplier's Name: |  | **🖉TRUSTEE TO COMPLETE** |
| Supplier's ABN: |  |
| Supplier's Business Address: |  |
| Supplier's Phone Number: |  |
| Amount Lessee must pay the ATO in relation to the Supply as the GST Withholding Amount: | $ |

* 1. Notwithstanding any other provision of this Agreement, if the Lessee is required to pay the GST Withholding Amount to the Deputy Commissioner for Taxation at settlement pursuant to section 14-250 of the Withholding Law:
     1. prior to settlement, the Lessee must:
        1. lodge a *GST Property Settlement Withholding Notification* form with the ATO for each person comprising the Lessee; and
        2. give the Trustee a copy of the notification from the ATO specifying the Lessee’s lodgement reference number and payment reference number and a copy of the *GST Property Settlement Withholding Notification* form lodged with the ATO;
     2. at settlement, the Lessee must provide evidence to the Trustee that it has drawn a bank cheque for the GST Withholding Amount in favour of the Deputy Commissioner of Taxation. The Lessee will retain this cheque and apply it in accordance with clause 25.4(c)(i) and 25.4(c)(ii);
     3. promptly following settlement:
        1. the Lessee must lodge a *GST* *Property Settlement Date Confirmation* form with the ATO for each person comprising the Lessee; and
        2. the Lessee must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law;
        3. the Trustee may request evidence that clauses 25.4(c)(i) and 25.4(c)(ii) have been complied with and the Lessee must provide within a reasonable period of time from the request; and
        4. the Trustee acknowledges and agrees that the Lessee must make payment in accordance with clause 25.4(c)(ii)and it must not Object, make any Claim or refuse to settle.

1. Definitions
   1. The following additional definitions apply to clause 25:
      1. ***ATO*** means the Australian Taxation Office.
      2. ***GST Withholding Amount*** means the amount (if any) determined under s 14-250 of the Withholding Law required to be paid to the Commissioner for Taxation.
      3. **Withholding Law** means Schedule 1 to the Taxation Administration Act 1953 (Cth).

[Drafting Note: Lessees should be comfortable with the “knowledge condition” in relation to CGT withholding, however trustees should be aware that they may be requested to obtain an ATO withholding certificate in relation to CGT withholding.]

Schedule 2 – Special Conditions

1. Special conditions prevail
   1. If there is any inconsistency between the terms of the Agreement and these special conditions, these special conditions prevail to the extent of the inconsistency.
   2. [Insert special conditions, if any].

Schedule 3 – Lease

Schedule 4 – Plan (Indicative or registrable)

Schedule 5 – Plans and Specifications

**EXECUTED by the parties** on the respective dates appearing below.

**SIGNED** for and on behalf of the )

**[insert name of** **Council]** ) …………………………………..……

as Trustee ) *(signature)*

)

……………………………………... *(name)* )

……………………………..……... *(position)* )

a duly authorised person, in the presence of: ) …….. / …….. / ……..

*(date)*

…………………………………………….

*(signature of witness)*

…………………………………………….

*(print name of witness)*

**SIGNED** by **[insert Lessee name]** )

as lessee ) …………………………………..……

) *(signature)*

)

) …….. / …….. / ……..

*(date)*

…………………………………………….

*(signature of witness)*

…………………………………………….

*(print name of witness)*

**SIGNED** by **[insert Lessee name]** )

as lessee ) …………………………………..……

) *(signature)*

)

) …….. / …….. / ……..

*(date)*

…………………………………………….

*(signature of witness)*

…………………………………………….

*(print name of witness)*