

Users of this example Affordable Housing Agreement are advised to refer to the Guidance for seeking and negotiating Affordable Housing under the *Planning and Environment Act 1987* available at planning.vic.gov.au

Affordable Housing Agreement under Section 173 of the Planning and Environment Act 1987

Please include a reference to 'affordable housing' in the title of the section 173 agreement.

[insert] in its capacity as Responsible Authority

and

[insert landowner]

[and

[insert] in its capacity as Registered Housing Agency – (Optional)

Note to reader: The use of clauses and options in this document is not mandatory.

All clauses and options provided in this document are examples only and have been provided to help parties negotiating an Affordable Housing Agreement. The examples provided are by no means exhaustive.

User of this example agreement are advised to amend, add, remove and customise this example agreement to reflect the negotiations between parties.

Throughout this document text highlighted in yellow indicate an option or a field that requires customising.

Including a reference to 'affordable housing' in the title of the section 173 agreement will assist the Department of Environment, Land, Water and Planning to monitor affordable housing agreements.

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Date

2018

[insert]

of [insert address]

(Responsible Authority)

and

[insert]

of [insert address]

(Owner)

[and]

[insert]

of [insert address]

(Registered Housing Agency)

[Note: The Registered Housing Agency may be joined as a party at its discretion in accordance with s 173(2) of the Act.]

Background

- A. The Responsible Authority is responsible for the administration and enforcement of the Planning Scheme pursuant to the provisions of the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. The purpose of this Agreement is to give effect to the Planning Scheme and achieve and advance the objectives of planning in Victoria. In particular, this Agreement aims to facilitate the provision of Affordable Housing in Victoria.

[Optional – The following clauses may be useful to include where a Planning Permit has already been issued:]

- D. [The Responsible Authority has issued the Planning Permit.
- E. The Planning Permit authorises the development of [insert details], including provision of the Affordable Housing.
- F. The conditions contained in the Planning Permit provide that [insert relevant condition of Planning Permit.]
- G. The Responsible Authority and the Owner have agreed to enter into this Agreement to give effect to the Planning Permit.]

[Optional – The following clauses may be useful to included where the Registered Housing Agency is a party to the Agreement:]

- H. [The Registered Housing Agency has agreed to accept ownership of the Affordable Housing Lots in accordance with the terms and conditions of this Agreement.]

Remove any definitions that are not relevant from Section 1.1 once all options have been selected.

Agreed terms

1. Definition and Interpretation

1.1 Definitions

In this Agreement, the words and expressions set out in this clause have the following meanings, unless the context admits otherwise:

Act means the *Planning and Environment Act 1987* (Vic).

Affordable Housing has the meaning given in the Act.

Affordable Housing Lots means [insert appropriate option: the lots on which Affordable Housing Dwellings have been constructed in accordance with the Plans and Specifications, located within a residential or mixed use development and created upon registration of the plan of subdivision **OR** the building envelopes within which the Affordable Housing Dwellings are presently intended to be constructed on the Subject Land, as shown on the Endorsed Plans].

Agreement means this Agreement and any agreement executed by the Parties expressed to be supplemental to this Agreement.

Commencement Date means the date on which this Agreement commences under clause 10 of this Agreement and specified in Item 8.

Cost includes a cost, charge, expense, outgoing, payment or other expenditure of any nature.

[Development means the residential development on the Land.]

Dwelling has the same meaning as in the Planning Scheme, being a building used as a self-contained residence which includes a kitchen sink, food preparation facilities, a bath or shower and a closet pan and wash basin.

Endorsed Plans means plans approved and endorsed pursuant to the Planning Permit.

[Gross Floor Area means the sum of the areas of each floor of the Development, being the area within the inside face of the external walls as measured at a height of 1,400 millimetres above each floor level, excluding the following:

- (a) columns, fin walls, sun control devices, awnings, and any other elements, projections or works outside the general lines of the outer face of the external wall;
- (b) lift towers, cooling towers, machinery and plant rooms and ancillary space and vertical air-conditioning ducts;
- (c) car-parking needed to meet the requirements of the Responsible Authority and any internal access thereto;

(d) space for loading and unloading of goods; and

(e) internal public arcades and thoroughfares, terraces and balconies with outer walls less than 1400 millimetres high.]

Housing Act means the *Housing Act 1983* as amended from time to time.

Item means an item of the Schedule.

Land means the land comprised in Certificate(s) of Title Volume [Vol] Folio [Fol], of which the Subject Land forms a part.

Lot has the meaning given to that term in the *Subdivision Act 1988* (Vic).

Market Value means [insert applicable option - the value of a Dwelling determined by a Valuer / the 12-month median price for a comparable Dwelling in the suburb in which the Affordable Housing is located, as published by the Real Estate Institute of Victoria].

Mortgagee means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as mortgagee of the Subject Land or any part of it which at the Commencement Date are specified in Item 7.

Owner means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple in the Subject Land or any part thereof and includes any Mortgagee-in-possession and at the Commencement Date is the party specified in Item 1.

Party or Parties means the Owner [, the Registered Housing Agency - Optional] and the Responsible Authority or one or more of these entities, as dictated by the context.

Planning Permit means the planning permit specified in Item 6 and any subsequent amendment to the Planning Permit.

Planning Scheme means the planning scheme specified in Item 5 and any other planning scheme that applies to the Subject Land.

Plans and Specifications means [insert applicable option: the plans and specifications applicable to the Affordable Housing located on the Subject Land, prepared by the Owner and approved by the Responsible Authority (acting reasonably) a copy of which is annexed to this Agreement as Attachment 1, or, if not attached to this agreement, available for inspection at the office of the Responsible Authority **OR** the plans and specifications applicable to the Affordable Housing located on the Subject Land and included in the Endorsed Plans.].

Register means the register of proprietary interests in land maintained by the Registrar of Titles for the State of Victoria under the *Transfer of Land Act 1958* (Vic).

Registered Housing Agency means a housing provider or association registered with Victoria's Registrar for Housing Agencies for the purposes of the Housing Act [which at the Commencement Date is the party specified in Item 3 - Optional].

Responsible Authority means the party named in Item 2 as the Responsible Authority for the Planning Scheme and any subsequent person or body who becomes the Responsible Authority for the Planning Scheme.

Schedule means the Schedule appended to this Agreement.

Section 3AA(2) Notice means a notice published in the Government Gazette pursuant to s 3AA(2) of the Act.

Subject Land means the land specified in Item 4, and any references to the Subject Land in this Agreement include any Lot or Lots created by subdivision of the Subject Land.

Termination Date means the date on which this Agreement terminates under clause 10 of this Agreement and specified in Item 9.

Valuer means a valuer appointed by the President of the Australian Property Institute (Victorian Division) or its successor body.

VCAT means the Victorian Civil and Administrative Tribunal.

1.2 Interpretation

In this Agreement unless the context admits otherwise:

- (a) The singular includes the plural and vice versa.
- (b) A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
- (c) If a Party consists of more than one person, this Agreement binds them jointly and each of them severally.
- (d) A term used in this Agreement has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning given to it in the Act.
- (e) A reference to an Act, regulation or the Planning Scheme includes any Acts, regulations or amendments amending, consolidating or replacing the Act, regulation or Planning Scheme, as applicable.
- (f) The Recital clauses to this Agreement enumerated in the 'Background' section are and will be deemed to form part of this Agreement.
- (g) The obligations of the Owner under this Agreement will take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land, provided that if the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a Lot is only responsible for the covenants and obligations to the extent that they relate to that owner's Lot.
- (h) Any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

Section 2 includes examples of clauses that could be included in an Affordable Housing Agreement. The examples provided are by no means exhaustive. Delete any options and clauses that are not relevant. Further guidance on how to customise this section of the agreement can be found in the Guidance for seeking and negotiating Affordable Housing under the *Planning and Environment Act 1987*.

2. Specific Obligations of the Owner

[Option 1]

2.1 Restriction on future use of the Subject Land

The Owner covenants, acknowledges and agrees with the Responsible Authority [and the Registered Housing Agency - Optional] that:

- (a) before the Subject Land is [insert applicable option: subdivided for residential development (excluding subdivision of the Land into superlots) **OR** construction commences of a Dwelling on the Subject Land **OR** a statement of compliance is issued by the Responsible Authority in relation to the Subject Land], the Owner must:
 - (i) enter into an agreement with [a/the] Registered Housing Agency [or any other housing provider or trust that is approved by the Responsible Authority - optional] to the Responsible Authority's satisfaction for:
 - (A) subject to clause 2.1(c), unencumbered ownership of []% of the total number of Dwellings approved for the Land to be transferred to the Registered Housing Agency [or any other housing provider or trust that is approved by the Responsible Authority - optional] for nil consideration; or
 - (B) a sum of money equal to the cumulative Market Value of the Dwellings specified in clause 2.1(a)(i)(A) to be paid to [a/the] Registered Housing Agency [or any other housing provider or trust that is approved by the Responsible Authority - optional]; or
 - (C) subject to clause 2.1(c), management of []% of the total number of Dwellings approved for the Land to be assumed by [a/the] Registered Housing Agency [or any other housing provider or trust that is approved by the Responsible Authority - optional] for leasing as Affordable Housing in the Registered Housing Agency's [or approved housing manager's - optional] absolute discretion; or
 - (ii) provide an alternative means of delivering an equivalent quantum of Affordable Housing to the satisfaction of the Responsible Authority;
- (b) the Owner must:
 - (i) construct the Affordable Housing on the Subject Land in a continuous, proper and workmanlike manner, strictly in accordance with:

- (A) the Plans and Specifications;
 - (B) all applicable laws;
 - (C) the terms of applicable permits and approvals; and
 - (D) using all due care and skill,
- (ii) complete delivery of its Affordable Housing commitments under this Agreement by:
- (A) providing good title to the Affordable Housing including all necessary title documents in registerable form under subclause 2.1(a)(i)(A);
 - (B) paying the sum of money in full pursuant to clause 2.1(a)(i)(B);
 - (C) vesting management rights pursuant to clause 2.1(a)(i)(C), or
 - (D) fully performing its contractual commitment under subclause 2.1(a)(ii),
- (as the case may be) within the time frame specified in subclause 2.1(c).
- (c) **[Delivery timeframe option 1 (delete alternative):]** the Owner must comply with clause 2.1(b) within three months of the last to occur of:
- (i) registration of the plan of subdivision which creates the Affordable Housing Lots; and
 - (ii) completion of construction of the Affordable Housing, as signified by the issuing of an occupancy permit by a licensed building surveyor for each of the Lots comprising the Affordable Housing,
- and in any event prior to **[insert date]**.
- (d) **[Delivery timeframe option 2 (delete alternative and insert if the Development is being constructed in stages):]** the Owner must comply with clause 2.1(b) prior to the earlier of:
- (i) **[insert date]**; and
 - (ii) the date that **[]%** of the Development has been completed.
- (e) **[- Optional Clause]** the **[]%** of Dwellings referred to in clause 2.1(a)(i) must include a diversity of housing stock that is representative of the total number of Dwellings approved for the Subject Land, including such characteristics as number of bedrooms, to the satisfaction of the Registered Housing Agency **[or any other housing provider or trust that is approved by the Responsible Authority - optional]** (acting reasonably).

[Option 2 – The following example clauses relate to developments that will comprise of apartments]**2.2 Restriction on future use of the Subject Land**

The Owner:

- (a) must construct in a continuous, proper and workmanlike manner [insert number] [one/two/three-bedroom] Dwelling[s] on the Subject Land for use as Affordable Housing, strictly in accordance with:
- (i) the Plans and Specifications;
 - (ii) all applicable laws;
 - (iii) the terms of applicable permits and approvals; and
 - (iv) using all due care and skill,
- and specifically identify the relevant Dwellings in a written notice given to the Responsible Authority, for use in monitoring performance of the Owner's Affordable Housing obligations.
- (b) must, subject to clause 2.2(c), either:
- (i) only sell a Dwelling referred to in clause 2.2(a) to a Registered Housing Agency [or any other housing provider or trust that is approved by the Responsible Authority - optional], or, a person or persons who is or are eligible for provision of Affordable Housing accommodation, as determined by the Registered Housing Agency [or any other housing provider or trust that is approved by the Responsible Authority - optional], and on such terms and conditions (including terms as to the quantum and payment of the sale price) as determined by [a/the] Registered Housing Agency [or any other housing provider or trust that is approved by the Responsible Authority - optional]; or
 - (ii) place the Affordable Housing under the management of [a/the] Registered Housing Agency [or any other housing provider or trust that is approved by the Responsible Authority - optional] pursuant to a management or other agreement on terms which are satisfactory to [a/the] Registered Housing Agency [or any other housing provider or trust that is approved by the Responsible Authority - optional]; and
- (c) [Delivery timeframe option 1 (delete alternative):] must comply with clause 2.2(b) within three months of the last to occur of:
- (i) registration of the plan of subdivision which creates the Affordable Housing Lots; and
 - (ii) completion of construction of the Affordable Housing, as signified by:
 - (A) the issuing of an occupancy permit by a licensed building surveyor for each of the Lots comprising the Affordable Housing; and

- (B) compliance by the Owner with the Plans and Specifications in connection with the built form on the Affordable Housing Lots, to the reasonable satisfaction of the Responsible Authority,

and in any event prior to [insert date].

- (d) [Delivery timeframe option 2 (delete alternative and insert if the Development is being constructed in stages):] the Owner must comply with clause 2.2(b) prior to the earlier of:
- (i) [insert date]; and
 - (ii) the date that []% of the Development has been completed.

[Option 3 – The following example clauses relate to Affordable Housing offered at discounted price]

2.3 Restriction on future use of the Subject Land

The Owner covenants, acknowledges and agrees with the Responsible Authority [and the Registered Housing Agency - Optional] that:

- (a) before the Subject Land is [insert applicable option: subdivided for residential development (excluding subdivision of the Land into superlots) **OR** construction commences of a Dwelling on the Subject Land **OR** a statement of compliance is issued by the Responsible Authority in relation to the Subject Land], the Owner must (subject to clause 2.3(c)) enter into a binding agreement with [a/the] Registered Housing Agency to the Responsible Authority's satisfaction for unencumbered ownership of []% of the [insert applicable option - total number of Dwellings approved for the Land / Gross Floor Area] (rounded down to the nearest number) to be sold to [a/the] Registered Housing Agency in accordance with clause 2.3(b);
- (b) the contracts of sale between the Owner and [a/the] Registered Housing Agency for the Affordable Housing Dwellings individually or collectively must be entered into on the following terms and conditions:
 - (i) the price must not exceed []% of their Market Value on the day of sale; and
 - (ii) the contract of sale must be based on Forms 1 and 2 in the *Estate Agents (Contracts) Regulations 2008*, as in force from time to time, amended to incorporate such additional terms and conditions as are reasonable and consistent with conventional practice for a contract of sale in the circumstances;
- (c) the Owner must:
 - (i) construct the Affordable Housing Dwellings in a continuous, proper and workmanlike manner, strictly in accordance with:
 - (A) the Plans and Specifications;
 - (B) all applicable laws;
 - (C) the terms of applicable permits and approvals; and

- (D) using all due care and skill; and
- (d) if any of Affordable Housing Dwellings are not purchased by [a/the] Registered Housing Agency and under contract within [insert] months of date of this Agreement (**Sunset Date**), the Owner must make a payment to [a/the] Registered Housing Agency within 30 days of the Sunset Date calculated based on the number of Affordable Housing Dwellings that have not been purchased, multiplied by a figure which represents []% of their Market Value as at the Sunset Date.

[Option 4 – The following example clauses relate to a shared equity arrangement]

2.4 Restriction on future use of the Subject Land

The Owner covenants, acknowledges and agrees with the Responsible Authority [and the Registered Housing Agency - Optional] that:

- (a) before the Subject Land is [insert applicable option - subdivided for residential development (excluding subdivision of the Land into superlots) / construction commences of a Dwelling on the Subject Land / a statement of compliance is issued by the Responsible Authority in relation to the Subject Land], the Owner must (subject to clause 2.4(c)) enter into a binding agreement with [a/the] Registered Housing Agency to the Responsible Authority's satisfaction for fee simple ownership of [insert quantity] of the Affordable Housing Dwellings to be transferred to [a/the] Registered Housing Agency under a shared equity arrangement in accordance with clause 2.4(b) (**Shared Equity Agreement**) or on such other terms and conditions as are acceptable to the Responsible Authority and [a/the] Registered Housing Agency;
- (b) the Shared Equity Agreement will operate on the following terms and conditions:
- (i) the Owner must transfer fee simple ownership of each of the Affordable Housing Dwellings to [a/the] Registered Housing Agency for nil consideration;
- (ii) the Owner may secure separate mortgages for principal amounts (**Principal**) of up to []% of the Market Value of each Affordable Housing Dwelling on such terms and conditions as are reasonable and consistent with conventional practice for a mortgage in the circumstances including that:
- (A) the Principal will be paid to the Owner as a lump sum drawn from net sale proceeds upon settlement of a sale of the Affordable Housing Dwelling rather than in instalments;
- (B) the mortgage will be subject to the Memorandum of Common Provisions AA2712 retained by the Registrar of Titles, incorporating such amendments as are necessary to ensure that the mortgage complies with this clause 2.4(b)(ii); and
- (C) no interest will be payable on the Principal, except where the Registered Housing Agency defaults in repayment of the Principal upon settlement of the sale of the Affordable Housing Dwelling, in which case interest will accumulate

on the Principal at the rate fixed from time to time by s 2 of the *Penalty Interest Rates Act 1983* for the period from the date that the Principal was due until the date that it is actually paid;

- (iii) the Owner must:
 - (A) construct the Affordable Housing Dwellings in a continuous, proper and workmanlike manner, strictly in accordance with:
 - (I) the Plans and Specifications;
 - (II) all applicable laws;
 - (III) the terms of applicable permits and approvals; and
 - (IV) using all due care and skill; and
 - (iv) pursuant to such other additional terms and conditions as are acceptable to the Registered Housing Agency, reasonable and consistent with conventional practice for a shared equity arrangement in the circumstances; and
- (c) if fee simple ownership of any of the Affordable Housing Dwellings has not been transferred to [a/the] Registered Housing Agency in accordance with clause 2.4(b)(i) within [insert quantity] months of the date of this Agreement (**Sunset Date**), the Owner must instead:
 - (i) make a payment to [a/the] Registered Housing Agency within 30 days of the Sunset Date calculated based on the number of Affordable Housing Dwellings that have not been transferred, multiplied by a figure which represents []% of their Market Value as at the Sunset Date; or
 - (ii) grant an interest as mortgagee over the Affordable Housing Dwellings to [a/the] Registered Housing Agency which represents []% of the cumulative Market Value of the Affordable Housing Dwelling as at the Sunset Date secured by a mortgage in favour of [a/the] Registered Housing Agency, in a form prepared by the Registered Housing Agency's solicitor that is consistent with conventional practice for a mortgage in the circumstances.

2.5 Section 3AA(2) Notices

In constructing the Affordable Housing, the Owner must have regard to any applicable Section 3AA(2) Notices.

2.6 Costs

The Owner covenants to reimburse the Responsible Authority [and the Registered Housing Agency - Optional] within fourteen (14) days of demand for the reasonable Costs incurred in relation to the preparation, execution and registration of this Agreement.

2.7 Indemnity

- (a) The Owner indemnifies [the Registered Housing Agency and - Optional] the Responsible Authority, its officers and employees against all Costs, losses or damages to the extent caused by any suit, action, proceeding, judgment or claim brought by any person in relation to a breach of this Agreement or non-compliance with it by the Owner or the negligent or unlawful act or omission of the Owner, except to the extent that such Costs, losses or damages are caused or contributed to by the negligent or unlawful act, unlawful omission or default of the Responsible Authority or the Registered Housing Agency.
- (b) The parties agree that each will conduct itself in a manner that ensures mitigation of its loss in respect of any claim, suit, action, proceeding or judgement brought by any person.

Section 3 is optional. This section may be of use if parties are considering directing any affordable housing in their agreement to a registered housing agency.

3. Effect of Housing Act

[Optional Clause]

If ownership of all of the Affordable Housing Lots is transferred to [a/the] Registered Housing Agency, and the Registered Housing Agency is regulated by the Housing Act, the Parties agree that:

- (a) this Agreement will terminate on the date that [a/the] Registered Housing Agency becomes registered proprietor of all of the Affordable Housing Lots;
- (b) the Housing Act will operate to regulate the use of the relevant Affordable Housing in lieu of this Agreement; and
- (c) if the Affordable Housing Lots are sold by [a/the] Registered Housing Agency, any proceeds of the sale must be reinvested by [a/the] Registered Housing Agency:
 - (i) in accordance with the Housing Act; and
 - (ii) in other Affordable Housing [insert applicable option - located in the municipality applicable to the Affordable Housing Lots/within a [insert kms] kilometre radius of the Subject Land].

4. Further Obligations of the Owner

4.1 Notice and Registration

The Owner further covenants and agrees that the Owner will bring this Agreement to the attention of all prospective purchasers, lessees, Mortgagees, chargees, transferees and assigns of the Subject Land.

4.2 Further actions

The Owner further covenants and agrees that:

- (a) the Owner will do all things necessary to give effect to the Owner's obligations under this Agreement;
- (b) the Owner will:
 - (i) consent to the Responsible Authority making application to the Registrar of Titles for recording of this Agreement in the Register on the Certificate of Title/s for the Subject Land in accordance with Section 181 of the Act; and
 - (ii) do all things necessary to enable the Responsible Authority to do so, including signing any further agreement, acknowledgment or document, or procuring the consent to this Agreement of any Mortgagee or caveator to enable the recording to be made in the Register under that section.

4.3 Breach of the Owner's obligations

The Parties agree that:

- (a) if the Owner breaches an obligation applicable under this Agreement the Responsible Authority may:
 - (i) serve a notice on the Owner specifying the breach and requiring its rectification within a number of days that is reasonable in the circumstances (which, except in an emergency, will not be less than 14 days) (**Breach Notice**); and
 - (ii) if necessary, enter the Subject Land to take action to rectify the default if the Breach Notice is not complied with within the time specified in the Breach Notice, at the Owner's expense; and
- (b) any reasonable Costs and expenses incurred by the Responsible Authority in enforcing its rights under this clause must be reimbursed by the Owner within 14 days of demand.

5. Disputes

- (a) If there is a dispute between the parties concerning the interpretation or implementation of this Agreement, other than a dispute referred to in Clause 5(b), that dispute may be referred to VCAT for resolution to the extent permitted by the Act.
- (b) If there is a dispute concerning any matter which is not referable to VCAT under the Act, that dispute may be referred for arbitration by an arbitrator agreed upon in writing by the parties, or, in the absence of such agreement the Chairman of the Victorian Chapter of the Institute of Arbitrators, Australia or their nominee for arbitration.
- (c) Where provision is made in this Agreement that any matter be done to the satisfaction of the Responsible Authority or must not be done without its consent and a dispute arises in relation to such provision, the dispute may be referred to VCAT in accordance with s 149(1)(b) of the Act.
- (d) The parties are entitled to legal representation for the purposes of any arbitration or referral referred to in clauses 5(b) or 5(c) above.

- (e) Unless the mediator or VCAT shall otherwise direct, each party must bear its own costs.

6. Agreement under Section 173 of the Act

The Responsible Authority and the Owner agree that, without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made as a deed pursuant to section 173 of the Act, and the obligations of the Owner under this Agreement are obligations to be performed by the Owner as conditions subject to which the Owner may have use and enjoyment of the Subject Land.

7. Owner's Warranties

The Owner further covenants and agrees that:

- (a) it is, or entitled to be registered as, the registered proprietor of the Subject Land;
- (b) save as shown in the certificate of title to the Subject Land, there are no mortgages, liens, charges, easements or other encumbrances or any rights inherent in any person affecting the Subject Land or any part of it and not disclosed by the usual searches; and
- (c) without limiting the operation or effect which this Agreement has, the Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, to the best of the Owner's information, knowledge and belief, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

8. Successors in Title

Without limiting the operation or effect that this Agreement has, the Owner must ensure that, until such time as a memorandum of this Agreement is registered on the title to the Subject Land, successors in title will be required to:

- (a) give effect to and do all acts and sign all documents which are necessary to give effect to this Agreement; and
- (b) execute a deed agreeing to be bound by the terms of this Agreement.

9. General Matters

9.1 Notices

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- (a) by delivering it personally to that Party;
- (b) by sending it by prepaid post addressed to that Party at the address set out in this Agreement or subsequently notified to each Party from time to time;
or

- (c) by sending it by facsimile, provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending Party by hand delivery or prepaid post.

9.2 Service of Notice

A notice or other communication is deemed served:

- (a) if delivered, on the next following business day;
- (b) if posted, on the expiration of 3 business days after the date of posting; or
- (c) if sent by facsimile, on the next following business day, unless the receiving Party has requested retransmission before the end of that business day.

9.3 Further assurance

- (a) Each of the Parties will:
 - (i) unless otherwise expressly stated in this Agreement, act reasonably in applying and enforcing this Agreement; and
 - (ii) sign and execute all further documents and deeds and do all acts and things as will reasonably be required to give effect to their obligations under this Agreement.
- (b) If, for any reason, the Registrar of Titles refuses to register this Agreement on the title(s) to the Subject Land, the Parties will sign and execute any document varying this Agreement in order to meet the requirements of the Registrar of Titles for registration of this Agreement on the title(s) to the Subject Land, or any other agreement made under s 173 of the Act on substantially the same terms as this Agreement, modified to meet the requirements of the Registrar of Titles for registration on the title(s) to the Subject Land.

9.4 No Waiver

Any time or other indulgence granted by the Responsible Authority to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Responsible Authority against the Owner will not in any way amount to a waiver of any of the rights or remedies of the Responsible Authority in relation to the terms of this Agreement.

9.5 Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it must be severed and the other provisions of this Agreement will remain operative.

9.6 No Fettering of the Responsible Authority's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of the Responsible Authority to make any decision or impose any requirements or conditions in connection with the granting of any planning approval applicable to the Subject Land or relating to any use or development of the Subject Land.

10. Commencement and Termination of Agreement

Unless otherwise provided in this Agreement, this Agreement:

- (a) commences on the date of this Agreement; and
- (b) ends on the Termination Date.

Note to reader: Sunset provisions or termination dates should be included within your affordable housing agreement to ensure that any requirements on title are removed or inactive once the requirement has been delivered.

Signing page

Executed as a deed.

Signed sealed and delivered by []
 [] on behalf of the [] **Council**)
 pursuant to the power delegated to)
 that person by an Instrument of)
 Delegation in the presence of:)
)
)

.....
Witness

.....
Print name

Signed, sealed and delivered by [])
 in the presence of:)
)

.....
Signature of witness

.....
Name of witness
(BLOCK LETTERS)

.....
Address of witness

Executed by [] (ACN []) in)
 accordance with section 127(1) of the)
Corporations Act 2001:)

.....
Signature of Director

.....
Signature of Director (or Company
Secretary)

.....
Print full name

.....
Print full name

.....

Mortgagee's Consent

[REDACTED] as **Mortgagee** under registered mortgage no. [REDACTED] consents to the **Owner** entering into this Agreement.

Caveator's Consent

[REDACTED] as **Caveator** under registered caveat no. [REDACTED] consents to the **Owner** entering into this Agreement.

[Execution clauses to be amended as appropriate.]

Schedule

Item 1	Owner	[Owner] of [Address]
Item 2	Responsible Authority	[Council] of [Address]
Item 3	[Registered Housing Agency]	[Registered Housing Agency] of [Address] - Optional]
Item 4	Subject Land	The land situated at [Address] being the land comprised in Certificate(s) of Title Volume [Vol] Folio [Fol]
Item 5	Planning Scheme	[Council] Planning Scheme
Item 6	Planning Permit	Planning Permit No. [Permit No.], issued by [Council] on [Date]
Item 7	Mortgage	Mortgage No. [No.] in favour of [Bank]
Item 8	Commencement Date	[Date]
Item 9	Termination Date	The earlier of: the date on which the Responsible Authority provides written notice to the Owner that all of the requirements of this Agreement have been fulfilled; and the date that is [99] years after the Commencement Date; [and the date that [a/the] Registered Housing Agency becomes registered proprietor of all of the Affordable Housing Lots in accordance with clause 3 - Optional].

Note to reader: Sunset provisions or termination dates should be included within your affordable housing agreement to ensure that any requirements on title are removed or inactive once the requirement has been delivered.

Attachment 1 Plans and Specifications [optional]

[Insert copy Plans and Specifications where applicable.]