

# Ginninderry Built Form Delivery Contract

Suburban Land Agency  
(SLA)

and

Riverview Developments (ACT) Pty Limited  
(Riverview Developments)

collectively, the Developer

The person identified in Item 1 of Schedule 1  
Buyer

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# Built Form Delivery Contract

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<b>Date</b>	The date identified in Schedule 1.
<b>Parties</b>	<b>SUBURBAN LAND AGENCY ABN 27 105 505 367</b> , a corporation established by section 31 of the <i>Planning and Development Act 2007 (ACT)</i> ( <b>SLA</b> ) <b>RIVERVIEW DEVELOPMENTS (ACT) PTY LIMITED ACN 165 870 557</b> c/- Riverview Projects (ACT) Pty Ltd of Unit 3, 28 Bougainville Street Manuka ACT 2603 ( <b>Riverview Developments</b> ) (collectively, the <b>Developer</b> )  The person named in Item 1 of Schedule 1 ( <b>Buyer</b> )

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this contract:

**Approvals** includes all consents, authorisations, registrations, filings, agreements, notifications, certificates, permissions, licence approvals, permits, authorities, insurances and exemptions necessary for undertaking and completing the Building Works.

**Bank Guarantee** means a bank guarantee issued by a bank operating in Australia in form and substance satisfactory to the Developer.

**Bond** means a Deposit Insurance Bond issued to the Developer at the request of the Buyer in form and substance satisfactory to the Developer.

**Building** means the building to be constructed on the Site in accordance with the Plans.

**Building Works** means the building works to be carried on the Site as contemplated by this contract.

**Buyer's Bank** means any person, corporation or institution lending all or any part of the Contract Price to the Buyer.

**Completion** has the meaning given in the Sale Contract.

**Contract Documentation** means:

- (a) this contract;
- (b) the Plans; and
- (c) any other documents prepared by or on behalf of the Developer in connection with the Building Works.

**Contract Price** means the sum specified in Item 3 of Schedule 1.

**Date for Completion** has the meaning given in the Sale Contract.

**Defects Liability Period** means the period of 90 days from but excluding the date of Completion, or from the date the Buyer takes occupation, whichever is earlier.

**Deposit** means the sum identified in Item 4 of Schedule 1.

**Inclusions** means the inclusions attached to this contract.

**Plans** means the plans for the Building Works attached to this contract.

**Practical Completion** means the stage whether Building Works have been certified by the Developer that the Building Works have been completed in accordance with this contract, except for minor omissions, and the Developer has done all that is required to be done to obtain a certificate of occupancy for the Building.

**Sale Contract** means the first grant contract land not ready dated on the date of this contract between the SLA as seller and the Buyer as buyer.

**Site** means the land identified in Item 2 of Schedule 1.

**Target Date** means the later of the dates identified in Item 5 of Schedule 1.

## 1.2 Interpretation

In this contract:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) **contract** means this contract and the Plans attached to this contract, signed by the Buyer and the Developer.

(e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

(f) a reference to a document (including this contract) is to that document as varied, novated, ratified or replaced from time to time;

(g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(i) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this contract, and a reference to this contract includes all schedules, exhibits, attachments and annexures to it;

(j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

- (k) **includes** in any form is not a word of limitation; and
- (l) a reference to **\$** or **dollar** is to Australian currency.

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## 2. Building Works

- (a) The Developer must make all arrangements necessary to cause construction of the Building Works according to:
  - (i) this contract;
  - (ii) the Plans;
  - (iii) the Inclusions; and
  - (iv) all applicable laws and regulations.
- (b) Subject to clause 11, the Building Works must reach Practical Completion by the Target Date.

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## 3. Planning and building approvals

- (a) The Developer will obtain at its expense all Approvals required for the Building Works.
- (b) The Buyer authorises the Developer to sign any documentation necessary to obtain the Approvals.

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## 4. Variations

The Developer is permitted to make variations to the Building Works (including, without limitation, variations to the configuration of the Building) provided those variations:

- (a) are in the Developer's opinion reasonably necessary to comply with the Building Code of Australia as applicable in the Australian Capital Territory; or
- (b) are required by any relevant authority; and
- (c) do not reduce the size or the value of the Building by more than 5%; and
- (d) do not result in any room as shown on the Plans being deleted from the completed Building,

and the Buyer may make no objection, requisition or claim or delay Completion or rescind or terminate this contract in respect of any variation referred to in this clause 4.

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## 5. Documentation and copyright

- (a) The Developer is responsible for the preparation of all Contract Documentation.
- (b) Copyright in the Contract Documentation does not vest in the Buyer.

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## 6. Defects

- (a) The Developer will cause all defects or faults (if any) in the Building Works due to defective or improper materials or bad workmanship, as are notified in writing to it

by the Buyer within the Defects Liability Period, to be made good in a proper and workmanlike manner, at no cost to the Buyer.

- (b) The Developer will cause to be made good defects notified during the Defects Liability Period:
- (i) if it relates to:
- A. electricity or gas supplies or distribution;
  - B. sewerage or drainage; or
  - C. any portion of the Building Works the fault or defect in which could materially restrict or interfere with the proper use and enjoyment of the Site by the Buyer,
- as soon as practicable after receiving notice from the Buyer;
- (ii) if it relates to any other defects or faults, within 90 days from the date of receiving the notice,
- PROVIDED that the Developer will not be liable to make good or repair any items within the Building which are covered by a manufacturer's warranty the benefit of which has effectively been assigned to the Buyer.
- (c) Other than for matters directly covered by clause 6(b)(i) the Buyer may submit only one list of defects during the Defects Liability Period.
- (d) The Buyer must make the Site available, at any reasonable time or times notified by the Developer, to the Developer or the Developer's contractors to permit the defect rectification work to be completed in a prompt and timely manner.

## **7. Completion**

### **7.1 Interdependent contract**

Completion of this contract is interdependent with and conditional on completion of the Sale Contract in respect of the Site. If the Sale Contract is rescinded or terminated, this contract is taken to be rescinded.

### **7.2 Completion**

- (a) The Developer will notify the Buyer in writing of the Date for Completion.
- (b) Completion of this contract is to take place simultaneously with completion of the Sale Contract.

### **7.3 Contract Price**

On Completion, the Buyer must pay the Contract Price to the Developer by unendorsed bank cheque less any amount of the Deposit paid to the Developer.

### **7.4 Buyer may inspect and list defects**

The Buyer may, within 5 days of notification of the Date for Completion under clause 7.2, inspect the Building Works and provide the Developer with a list of defects in relation to the Building and in this respect time is of the essence.

## 7.5 Rectification of defects

- (a) The Developer will use its best endeavours to have rectified any reasonable defect notified to the Developer in accordance with clause 7.4 prior to the Date for Completion.
- (b) If the Developer has been unable to arrange the completion of any rectification work notified in accordance with clause 7.4 prior to the Date for Completion, the Buyer may not delay Completion and any unrectified defects will be completed in accordance with clause 6.
- (c) The submission of a defects list in accordance with clause 7.4 or the failure to submit a list of defects in accordance with clause 7.4 in no way derogates from the Buyer's rights under clause 6.

## 7.6 Possession of Site

The Buyer must not take possession of the Building Works or the Site without the Developer's consent until the Contract Price has been paid in full to the Developer.

## 7.7 Home Warranty Insurance

The Developer must ensure the Buyer obtains on and from Completion the benefit of the residential building works insurance required by the Building Act 2004 (ACT) in respect of the Building Works by delivering evidence to the Buyer on Completion.

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# 8. Deposit

## 8.1 Payment of Deposit

The Buyer must pay the Deposit to the Developer. The Developer agrees to accept the payment of the Deposit in 2 instalments as follows:

- (a) the sum of:
  - (i) 5% of the Contract Price by cheque or Bank Guarantee; or
  - (ii) 10% of the Contract Price by Bondon the date of this contract (**First Instalment**); and
- (b) the balance of 10% of the Contract Price (if it has not already been paid) by unendorsed bank cheque on the Date for Completion (**Second Instalment**)

and in every respect time is of the essence of this clause 8.1.

## 8.2 Completion

The Deposit becomes the Developer's property on the date of this Contract. The Developer must return the Deposit to the Buyer in the event that this contract is rescinded or terminated due to the default of the Seller under the Sale Contract.

## 8.3 Failure to pay

If the Deposit or any instalment of the Deposit is:

- (a) not paid on time and in accordance with clause 8.1; or
- (b) paid by cheque and the cheque is not honoured on first presentation

the Buyer is in default and the Developer may terminate this contract immediately by written notice to the Buyer and clause 19 of the Sale Contract will apply (without the notice required under clause 18 of the Sale Contract). If the Developer does not terminate this contract in accordance with this clause 8.3, then this contract remains on foot, subject to this clause 8, until either the Developer terminates the contract pursuant to this clause 8.3, or waives the benefit of this clause 8 pursuant to clause 8.5.

#### **8.4 Benefit of clause**

This clause 8 is for the benefit of the Developer and the obligations imposed on the Buyer by this clause 8 are essential. The obligations imposed on the Buyer by this clause 8 bind the Buyer despite any indulgence, waiver or extension of time by the Developer to the Buyer.

#### **8.5 Waiver**

The Developer may at any time before this contract is terminated notify the Buyer in writing that the benefit of this clause 8 is waived.

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### **9. Bond and Bank Guarantee**

#### **9.1 Developer to be beneficiary**

Any Bond or Bank Guarantee provided under clause 8.1 must show the Developer as the beneficiary of the Bond or Bank Guarantee.

#### **9.2 Buyer to pay on Completion**

The Buyer must pay the amount stipulated in the Bond or Bank Guarantee to the Developer by unendorsed bank cheque on Completion, on expiry of the Bond or Bank Guarantee or at such other time as may be provided for the Deposit to be accounted for to the Developer.

#### **9.3 Immediate payment of Deposit**

If:

- (a) the Developer serves on the Buyer a notice in writing claiming to forfeit the Deposit; or
- (b) the term of the Bond or the Bank Guarantee contains an expiry date which expires before the date which is 14 days after the Target Date, or it is not renewed in accordance with clause 11.2; or
- (c) in the Developer's opinion, the issuer of the Bond or Bank Guarantee is unable to pay the amount referred to in the Bond or Bank Guarantee,

then to the extent that the amount has not already been paid under the Bond or Bank Guarantee, the Buyer must immediately pay the Deposit, (or so much of it as has not been paid), to the Developer by unendorsed bank cheque.

#### **9.4 Satisfaction of Deposit**

The Developer acknowledges that payment under the Bond or Bank Guarantee will, to the extent of the amount paid, be in satisfaction of the Buyer's obligation to pay the Deposit under clause 8.1.



## 9.5 External administration of relevant issuer

If the issuer of the Bond or Bank Guarantee is placed under external administration of any nature before Completion, the Buyer must, within 24 hours, secure the Deposit to the Developer by either:

- (a) providing a replacement Bond or Bank Guarantee by another bond provider or bank reasonably acceptable to the Developer; or
- (b) payment of the Deposit to the Developer by unendorsed bank cheque,

and this clause 9.5 is for the benefit of the Developer and the performance of the obligations by the Buyer pursuant to this clause 9.5 is an essential condition of this contract.

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## 10. Access to the Site

- (a) The Buyer acknowledges that:
  - (i) the Developer, its contractors and its nominees have exclusive access to and possession of the Site to carry out the Building Works; and
  - (ii) the Buyer has no right to have access to or to go onto the Site at any time, unless by arrangements under paragraph (c).
- (b) The Developer is entitled to allow or refuse access to anyone, and may order unauthorised people from the Site.
- (c) Subject to paragraph (d), the Buyer and any authorised officer of the Buyer's Bank may go onto the Site to inspect the Building Works. If the Buyer or any authorised officer of the Buyer's Bank is permitted by the Developer to go onto the Site, those persons do so entirely at their own risk.
- (d) The Buyer acknowledges that the Developer will be engaging the services of a builder to deliver the Building Works. The appointed builder will have sole responsibility for compliance with work health safety legislation and therefore prior to allowing access to the Site the appointed builder may:
  - (i) prescribe times during which access will, or will not, be permitted;
  - (ii) require compliance with site induction and training requirements;
  - (iii) require acknowledgments and waivers to be signed; and
  - (iv) issue reasonable instructions which must be complied with by the Buyer and any authorised officer of the Buyer's Bank.

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## 11. Delay and extension of time

### 11.1 Target Date

The Target Date may be extended by the Developer giving written notice to the Buyer if events occur beyond the Developer's reasonable control preventing the Building Works reaching Practical Completion by the Target Date, including but not limited to:

- (a) civil commotion, strike or lockout of workmen;
- (b) weather sufficiently inclement to prevent the Developer proceeding with the works;
- (c) accident to the works for which the Developer is not responsible;

- (d) in consequence of proceedings being taken or threatened by, or disputes with adjoining or neighbouring owners;
- (e) in obtaining Approvals; or
- (f) any other reasonable cause beyond the control of the Developer.

## 11.2 Extension of Target Date

- (a) If the Buyer has provided a Bond or Bank Guarantee as the Deposit and the Target Date is extended in accordance with clause 11.1 then, as an essential term of this contract, the Buyer must, within 14 days of the date of a written request from the Developer, arrange to provide a new Bond or Bank Guarantee so that it has an expiry date no earlier than 14 days after the date notified by the Developer under clause 11.1.
- (b) If the Buyer fails to comply with clause 11.2(a) then the Buyer is in default and the Developer may sue the Buyer for the balance unpaid of the Deposit and/or terminate this contract immediately by written notice to the Buyer (without the notice otherwise necessary under clause 13) and clause 13 applies.

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## 12. Suspension rights

- (a) If the Buyer breaches this contract or the Sale Contract, the Developer may suspend the Building Works by notice in writing given to the Buyer.
- (b) If the Buyer rectifies the breach within 5 Business Days of the Developer's notice, the Building Works must resume within 15 Business Days of the Developer being notified of the Buyer's rectification of the breach.

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## 13. Default

### 13.1 Definition

A Default Event means:

- (a) the failure by a party to perform its obligations in accordance with the terms of this contract;
- (b) the appointment of a receiver, manager, receiver and manager, liquidator (including a provisional liquidator), statutory manager or any similar person appointed (whether by a Court or by other persons) to a party;
- (c) the bankruptcy, insolvency or entering into a scheme of arrangement (whether formal or informal) with creditors by a party; or
- (d) the assignment of property by a party for the benefit of creditors.

### 13.2 Consequences of Default Event

If a Default Event occurs, clauses 25, 26, 27 and 28 of the Sale Contract will apply in relation to the Default Event as if the Default Event was a default by the defaulting party under the Sale Contract and as if the references to the Sale Contract or "this Contract" in those clauses were references to this contract.

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## **14. Interest on Overdue Money**

If the Buyer defaults in the Completion of this contract in accordance with clause 7.2, the Buyer must pay interest on the entire Contract Price at the rate and in the manner prescribed in the Sale Contract. Interest under this clause 14 is payable on Completion in addition to the Contract Price.

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## **15. Assistance**

Each party agrees to undertake or do all acts, matters and things required of it under, or contemplated by, this contract in a timely manner and to provide all reasonable assistance to the other party to assist in the timely completion of the Building Works and Completion of this contract.

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## **16. Representations**

### **16.1 Entire agreement**

The Buyer agrees that this contract and the Sale Contract set out the entire agreement of the parties on the subject matter of this contract and the Sale Contract and supersede any prior agreement, advice, material supplied to the Buyer or understanding on anything connected with the subject matter of this contract.

### **16.2 No reliance**

Each party has entered into this contract without reliance upon any representation, statement or warranty (including sales and marketing material and preliminary art work), except as set out in this contract.

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## **17. Contract Price inclusive of GST**

The Contract Price payable in accordance with this contract is inclusive of GST (within the meaning of the A New Tax System (Goods & Services Tax) Act 1999 as amended from time to time).

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## **18. Caveat**

The Buyer may not lodge a caveat for registration in respect of the Site or the title to the Site prior to Completion.

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## **19. Notices**

Any notice or other communication in connection with this contract must be given in accordance with the provisions of the Sale Contract.

**Signed** as an agreement.

**SLA**

**Executed by Suburban Land Agency ABN 27 105 505 367** in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of Witness in full

**Developer**

**Riverview Developments (ACT) Pty Limited ACN 165 870 557** by its attorney in accordance with Power of Attorney ACT Registration No.

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

\_\_\_\_\_  
Name of Witness in full

**Buyer**

**Signed** by **Buyer** in the presence of:

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

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Signature of Authorised Delegate

\_\_\_\_\_  
Name of Authorised Delegate in full

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

\_\_\_\_\_  
Name of Attorney in full

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

**Schedule 1 - Contract Particulars**

Built Form Delivery Contract Date: \_\_\_\_\_

Item 1    The Buyer \_\_\_\_\_

Item 2    The Site \_\_\_\_\_

Item 3    Contract Price \_\_\_\_\_

Item 4    The Deposit (5% of Contract Price) \_\_\_\_\_

Item 5    Target Date Range \_\_\_\_\_