

APPENDIX **F**

DRAFT TRAFFIC ASSESSMENT COVENANT

Land Title Act
REGISTRAR-GENERAL'S DIRECTIONS



NORTHERN TERRITORY OF AUSTRALIA

Commissioner of Territory Revenue use only

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IMPORTANT NOTICE

Please Note Privacy Statement Overleaf

**CREATION OF
COVENANT IN GROSS**

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

Register	Volume	Folio	Location	Lot Description	Plan	Unit
CLP	727	022	Town of Darwin	Lot 5182	S77/093B	N/A

(NOTE 4)

OWNER OF THE
LAND
BURDENED

Gwalwa Daraniki Association Inc (ABN 71 508 188 079)

(NOTE 5)

PERSON(S)
RECEIVING
THE BENEFIT

Northern Territory of Australia C/- Department of Transport
Address: GPO Box 2520
Darwin NT 0801

City of Darwin (ABN 11 503 313 301)
Address: GPO Box 84
Darwin, NT 0801

(NOTE 6)

DESCRIPTION
OF COVENANT

The Owner of the Land Burdened Covenants with the Persons Receiving the Benefit on the terms annexed to this form.

(NOTE 7)

.....
Executed for and on behalf of **Gwalwa Daraniki Association Inc.** (ABN 71 508 188 079) in accordance with its constitution:

on (Date)

In the presence of:

Signature of qualified witness:

Print name of qualified witness

Qualification and Contact Ph

SIGNED by.....(print delegate name) for and on behalf of the **Northern Territory of Australia** pursuant to a delegation under the Contracts Act:

Signature of Delegate

in the presence of:

Signature of qualified witness

Print name of qualified witness

Qualification and Contact Ph

(NOTE 8)

[insert City of Darwin execution clause]

CONSENT OF REGISTERED MORTGAGEES (NOTE 9)

Instrument type:

Instrument type:

Instrument No:

Instrument No:

Name of Parties:

Name of Parties:

.....

.....

I the registered proprietor of the interest shown above
consent to the registration of this instrument.

I the registered proprietor of the interest shown above
consent to the registration of this instrument.

Signed:

Signed:

(Date):

(Date):

In the presence of:

In the presence of:

.....

.....

Name of Witness:

Name of Witness:

Address or Telephone No.:

Address or Telephone No.:

COVENANTS

- ☐ To comply with the provisions contained in Memorandum of Common Provisions recorded in the Register as LTO No:
☐ Additional Covenants:

PRIVACY STATEMENT – LAND REGISTER FORMS

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

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

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

Table of Contents

2.	DEFINITIONS AND INTERPRETATION	3
2.1	Definitions	3
2.2	Interpretation	3
3.	Covenantor separately covenants	4
4.	Covenants by the Owner	4
5.	Acknowledgement by Territory and City of Darwin	5
6.	Term.....	5
7.	Dispute resolution	5
8.	SERVICE OF NOTICES.....	5
8.1	Notice	5
8.2	When Notice is Deemed to be Served.....	6
8.3	Receipt of Notice by Fax.....	6
8.4	Addresses for Service of Notices	6
8.5	Evidence of Service of Notices.....	6
8.6	Notices Given to More than One Party	6
9.	GENERAL MATTERS.....	7
9.1	Governing Law	7
9.2	Additional Documents	7
9.3	Severability	7
9.4	Exercise of Rights.....	7
9.5	Waiver	7
	Annexure A – Area Plan	8

COVENANT

COVENANT made the day of 2014

PARTIES

1. **Gwalwa Daraniki Association Inc.** (ABN 71 508 188 079) of (**Gwalwa Daraniki**); and
2. **Northern Territory of Australia** care of the Department of Transport, of level 1 Energy House, 18 Cavenagh Street Darwin in the Northern Territory (**the Territory**); and
3. **City of Darwin** (ABN 11 503 313 301) of Harry Chan Avenue, Darwin NT 0800 (**City of Darwin**).

RECITALS

- A. Gwalwa Daraniki is the owner of Crown Lease in Perpetuity 00671 affecting the Property.
- B. Gwalwa Daraniki has agreements with Citiland Corporation Pty Ltd (ACN 009 651 496) (Citiland) for the grant of certain subleases over parts of the Property to facilitate development of the Property in accordance with the Crown Lease and the NT Planning Scheme.
- C. Before subleases are to be granted to Citiland by Gwalwa Daraniki the Property must be subdivided.
- D. Before granting approval for subdivision of the Property the Territory and City of Darwin required a legally binding agreement between them and the owner from time to time of the Property requiring that:
 - (a) before any Development Application is made in relation to the Development the conduct of a traffic study, taking into account the master plan to be provided and approved under the Specific Use Zone for the Property;
 - (b) before any Development Application is made in relation to the Development a road to be designed to meet requirements ascertained under the traffic study, and to meet the usual requirements of the Territory and City of Darwin; and
 - (c) before any Occupancy Permit is issued in relation to any building comprised in the Development , the Road is to be constructed meeting those requirements and the usual requirements of the Territory and City of Darwin in respect of similar roads.
- E. By this Covenant Gwalwa Daraniki agrees to:
 - (d) undertake or procure a traffic study in respect of the proposed development, taking into account the master plan to be provided and approved under the Specific Use Zone for the Property;
 - (e) undertake or procure the design of the Road meeting the requirements as ascertained by the traffic study as well as the usual requirements of the Territory and City of Darwin in respect of similar roads; and
 - (f) before any Occupancy Permit is issued in relation to any building comprised in the Development, construct or procure that the Road is constructed and handed over to City of Darwin.

OPERATIVE PROVISIONS

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

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

Authority means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency, competent authority or entity;

Area A means that part of the Property identified as such on the plan at Annexure A;

Area B means that part of the Property identified as such on the plan at Annexure A;

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

Covenant means this document and its Schedules;

Covenantee means the Northern Territory of Australia and City of Darwin;

Covenantor means the registered proprietor or registered proprietors of the Property or any part of the Property from time to time (for avoidance of doubt including any registered lessees or sublessees);

Development Application means a development application as defined in the *Planning Act (NT)* in relation to Area A but excluding any development application for a subdivision;

Development means the buildings and associated infrastructure intended to be constructed on Area A in accordance with the NT Planning Scheme and the approved Master Plan;

Development Works means any substantial use or development of Area A other than site preparation works including surveying, clearing, and site levelling and filling and any other works required to meet the requirements of any Authority or any Law [NOTE to Territory: this part about "requirements" has been inserted to deal in particular with AAPA's requirement for ground penetrating radar survey of parts of the site, which also requires a degree of site clearing];

Law includes any requirement of any statute, regulation, proclamation, code, standard, ordinance or by-law, present or future, whether of the Northern Territory, or any State or the Commonwealth;

Occupancy Permit means an occupancy permit as defined in the *Building Act (NT)*;

Property means that Part of Lot 5182 Town of Darwin delineated on the plan at Annexure A (including any lots created by any subdivision thereof) but excluding Area B and any part of Lot 5182 Town of Darwin which is not within the boundaries of each of Totem Road, Fitzner Drive, Bagot Road & Dick Ward Drive as shown on the plan at Annexure A;

Road means a road providing access to all lots proposed to be created from or within Area A; and

subdivision has the same meaning as in the *Planning Act(NT)*.

2.2 Interpretation

In this Covenant, unless the contrary intention appears:

- (a) the singular includes the plural and the plural includes the singular;
- (b) a reference to one gender includes all other genders;
- (c) a reference to a person includes a body corporate;

- (d) a reference to a party or parties is a reference to the parties to this Covenant;
- (e) headings are included for reference only and shall not affect the interpretation of this Covenant;
- (f) a party who is a trustee is bound both personally and in its capacity as trustee;
- (g) every covenant or agreement expressed or implied in this Covenant by which more parties than one covenant to agree shall bind such parties and every one or more of them jointly and each of them severally and every provision expressed or implied in this Covenant which applies to more parties than one shall apply to such parties and every two or more of them jointly and each of them severally and their respective administrators, executors and assigns;
- (h) "including" and similar words are not words of limitation;
- (i) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to any document or instrument includes any variation or replacement of it;
- (k) a reference to clauses, annexures or schedules is a reference to the clauses, annexures or schedules of this Covenant;
- (l) a reference to any authority, association or body whether statutory or otherwise shall (if that authority, association or body ceases to exist or is re-constituted, re-named or replaced or its powers or functions are transferred to any other authority, association or body) be deemed to refer respectively to the authority, association or body established or constituted in its place or as nearly as may be succeeding to its powers or functions;
- (m) reference to time is a reference to time in Darwin;
- (n) if an act must be done on a day which is not a Business Day, that act may be done instead on the next Business Day;
- (o) all monetary amounts are in Australian dollars; and
- (p) a provision of this Covenant must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Covenant.

3. COVENANTOR SEPARATELY COVENANTS

- 3.1 The Covenantor covenants and agrees, as a separate covenant with each and every Covenantee and each and every person claiming under or through any Covenantee, to perform and observe the obligations and stipulations in this Covenant, to the intent that the burden of this Covenant runs with and binds the Property.
- 3.2 From the date that a person ceases to be the registered proprietor of a lot forming part of the Property, that person is released from all future obligations under this Covenant but is not released and remains liable for any breach or default of or under this Covenant that occurred before that date.

4. COVENANTS BY THE OWNER

- 4.1 The Covenantor agrees that, prior to lodging any Development Application to construct the Development, it will:
 - (a) procure that a traffic study is undertaken to assess the likely impacts of the Development on traffic on Bagot Road, Dick Ward Drive, Fitzner Drive and Totem Road in the vicinity of the Property;

- (b) procure the design of the Road, including appropriate intersections and street furniture to meet the requirements ascertained under the traffic study and to meet the usual requirements of the Territory and City of Darwin (as applicable).

- 4.2 The Covenantor agrees that, prior to applying for, requesting or obtaining any Occupancy Permit in relation to any building comprised in the Development Works, it will construct or procure the construction of the Road in accordance with the design procured under clause 4.1(b) and to the standard and specifications required for hand over to and acceptance by City of Darwin (such hand over and acceptance not to be unreasonably withheld or delayed).

5. ACKNOWLEDGEMENT BY TERRITORY AND CITY OF DARWIN

- 5.1 The Territory and City of Darwin agree and acknowledge that nothing in this Covenant restricts or is intended to restrict the development of Area B in accordance with the Crown Lease and the NT Planning Scheme, and that subject to all Laws and the requirements of any relevant Authorities, the Covenantor may proceed with or procure the development of Area B at any time.

6. TERM

- 6.1 The term of this Covenant commences on the date it is registered on the title to the Property and expires on the date construction of the Road is complete and has been handed over to and accepted by City of Darwin (such handover and acceptance not to be unreasonably withheld or delayed).
- 6.2 On or at any time after expiry of the term, upon request by the Covenantor, both the Territory and City of Darwin must without delay sign all and any documents, and must render all assistance reasonably required by the Covenantor, to extinguish this Covenant and remove it from the title to the Property.

7. DISPUTE RESOLUTION

- 7.1 If a dispute arises between the parties in relation to this Covenant, the parties may agree to the identity of an independent expert (**Expert**) to determine the dispute.
- 7.2 If the parties fail to agree to the identity of the Expert within five (5) Business Days of one party nominating an Expert, then either or both of the parties may refer the matter to the President for the time being of the Law Society Northern Territory who will nominate an Expert to determine the dispute.
- 7.3 The decision of the Expert will be absolute and final and binding on the parties.
- 7.4 The Expert is deemed to be acting in making any decision as an expert and not as an arbitrator.
- 7.5 Each party will bear its own costs of any dispute and the parties will bear the costs of the Expert in equal shares.
- 7.6 The parties must make available to the Expert all materials requested by the Expert and will furnish the Expert all other materials that are relevant to the dispute or determination.

8. SERVICE OF NOTICES

8.1 Notice

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

- (a) delivered by hand at the address for service of the addressee;
- (b) sent by registered mail, postage prepaid, to the address for service of the addressee, if the address is in Australia and the Notice is being sent from within Australia;

- (c) sent by prepaid airmail to the address for service of the addressee, if the address is outside Australia or if the Notice is being sent from outside Australia; or
- (d) sent by facsimile to the facsimile number of the addressee.

8.2 When Notice is Deemed to be Served

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

- (a) if delivered, upon delivery;
- (b) if mailed from within Australia to an address in Australia, on actual delivery to that address as evidenced by Australia Post documentation;
- (c) if mailed to an address outside Australia or mailed from outside Australia, on the fifth Business Day (at the address to which it is mailed) after posting;
- (d) if sent by facsimile, before 4.00 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

8.3 Receipt of Notice by Fax

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

8.4 Addresses for Service of Notices

The address for service and facsimile number for Gwalwa Daraniki is:

Address: [INSERT]

Attention: [INSERT]

Facsimile: [INSERT]

The address for service and facsimile number for the Territory is:

Address: [INSERT]

Attention: [INSERT]

Facsimile: [INSERT]

The address for service and facsimile number for the City of Darwin is:

Address: [INSERT]

Attention: [INSERT]

Facsimile: [INSERT]

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

8.5 Evidence of Service of Notices

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

8.6 Notices Given to More than One Party

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

9. GENERAL MATTERS**9.1 Governing Law**

This Covenant shall be governed by the laws of the Northern Territory of Australia.

9.2 Additional Documents

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

9.3 Severability

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

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

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

9.4 Exercise of Rights

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

9.5 Waiver

Failure or omission by any of the parties at any time and from time to time to enforce or require the strict compliance with any provision of this Covenant shall not affect or impair such provision in any way or the rights of such party to avail itself of such remedies as it may have in respect of any breach or breaches of any such provisions.

Annexure A – Area Plan