

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF LAND
OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B
CONVEYANCING ACT 1919**

Lengths are in metres

(Sheet 1 of 13 Sheets)

Plan: DP[insert]

Plan of Subdivision of Lot [insert] DP[insert]

Covered by Subdivision Certificate No.

Dated:

Full name and address of the proprietors of the land:

Commonwealth of Australia as represented by the
Department of Infrastructure, Transport, Regional
Development and Communications ABN 86 267 354
017
11 Alinga Street
Canberra City ACT 2601

[NRFA Note: This is a template for the draft wording to be used. As the subdivisions are done in phases as areas are drawn down for long term leases each s88B instrument will be prepared for the relevant plan of subdivision]

PART 1 (CREATION)

| Number of item shown in the intention panel on the plan: | Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan: | Burdened lot(s) or parcel(s): | Benefited lot(s), road(s), bodies or Prescribed Authorities: |
|--|---|-------------------------------|--|
| 1. | Easement for services (whole of lot) (SE[insert]) | | |
| 2. | Easement for future services (whole of lot) (SE[insert]A) | | |
| 3. | Easement for access (whole of lot) (E[insert]B) | | |
| 4. | Easement for drainage of water (SD[insert]) | | |

PART 2 (TERMS)

1 Interpretation

1.1 Definitions

These meanings, in any form, apply unless the contrary intention appears:

- (1) **Accessway Plan** means a plan showing the access ways within the Lot Burdened providing a means of access through the Development to public land.
- (2) **Act** means the *Conveyancing Act 1919* (NSW).
- (3) **Authorised User** means every person authorised by the Grantee for the purposes of an easement, positive covenant and restriction on use created by this instrument. Subject to

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the terms of an easement, positive covenant and restriction on use, an Authorised User includes, without limitation:

- (a) the Management Committee; and
 - (b) the tenants, lessees, sublessees, employees, agents, contractors, licensees and invitees of the Grantee.
- (4) **Commonwealth Head Lease** means registered lease AM423354 between the Commonwealth of Australia as landlord and Moorebank Intermodal Development Investment Nominees Pty Limited ACN 606 134 347 as tenant dated 24 January 2017 and registered on the folio of the Lot Burdened.
- (5) **Development** means the precinct known as “Moorebank Logistics Park”, being the land comprised in folio identifiers 100/1049508, 1/1197707, 2/1197707, 4/1197707 and 1/1048263.
- (6) **Easement Site** means in relation to an easement, positive covenant and restriction on use in this instrument:
- (a) the site of an easement, positive covenant and restriction on use identified on the Plan; and
 - (b) all items within the site of the easement identified on the Plan which are the subject of the easement, positive covenant or restriction on use.
- (7) **Government Agency** means any government or governmental, semi or local government, statutory, public or other authority having jurisdiction over any lot in the Plan from time to time.
- (8) **Grantee** means:
- (a) the freehold owner from time to time of the Lot Benefited;
 - (b) the Owner from time to time of a Lot Benefited; and
 - (c) an authority benefited.
- (9) **Grantor** means the Owner of a Lot Burdened.
- (10) **Long Term Lease** means a lease for a term of greater than 50 years when it was granted and if there is more than one lease (for a term of greater than 50 years), means a lease or sub lease which is the latest in a chain of lease grants.
- (11) **Lot Benefited** means a lot benefited by an easement, positive covenant or restriction on use in this instrument.
- (12) **Lot Burdened** means a lot burdened by an easement, positive covenant or restriction in this instrument.
- (13) **Management Committee** means any management committee constituted under the Precinct Management Agreement.
- (14) **Owner** means:
- (a) if a Long Term Lease has been granted in respect of the lot, the holder from time to time of that Long Term Lease for the duration of the term of that Long Term Lease; or

Plan: DP[insert]

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- (b) if a Long Term Lease has not been granted in respect of the lot, the owner from time to time of the freehold of the lot.
- (15) **Plan** means the plan of subdivision to which this instrument relates.
- (16) **Precinct Management Agreement** means a precinct management agreement which regulates the operation and maintenance of the Development and which applies to any and all of the lots in the Plan (or any lots created upon further subdivision of a lot in the Plan) from time to time.
- (17) **Services** means:
- (a) the supply of water, gas, recycled water, electricity or artificially heated or cooled air; and
 - (b) fire safety or control services;
 - (c) the provision of sewerage and drainage;
 - (d) telephone, radio, television or other transmission means;
 - (e) electricity;
 - (f) oil;
 - (g) garbage;
 - (h) signals or data transmission;
 - (i) security systems;
 - (j) mechanical ventilation; and
 - (k) any other facility, supply or transmission.

1.2 References to certain terms

Unless a contrary intention appears, a reference in this instrument to:

- (1) **(reference to anything)** a reference to anything is a reference to the whole or each part of it; and
- (2) **(references to statute)** a law, ordinance or code includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of them; and
- (3) **(singular includes plural)** the singular includes the plural and vice versa; and
- (4) **(meaning not limited)** the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

1.3 Headings

Headings do not affect the interpretation of this instrument.

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1.4 Positive covenants and maintenance requirements

A requirement in an easement, positive covenant or restriction on use in this instrument which requires a Grantee or Grantor to maintain or repair an Easement Site or a Lot Burdened or any thing in an Easement Site or Lot Burdened is a positive covenant according to section 88BA of the Act.

2 Interpretation

2.1 Application of this clause

This clause applies to each easement, positive covenant and restriction on use in this instrument, except where the contrary intention is expressed.

2.2 Covenants and agreements

The easements, positive covenants and restrictions on use, including in this clause and clauses 3 (“Complying with this instrument and the Precinct Management Agreement”) and 4 (“Effect of the Precinct Management Agreement”), in each of the easements, positive covenants and restrictions on use in this instrument are covenants and agreements between:

- (1) each Grantee for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Benefited or any part of it with which the right is capable of enjoyment; and
- (2) each Grantor for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment,

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the easements, positive covenants and restrictions on use.

2.3 Release

The Grantee and its Authorised Users enter upon the Lot Burdened at their own risk and the Grantee hereby releases the Grantor and the freehold owner of the Lot Burdened from all damage, expense, loss, claims or liability of any nature that may arise in respect of any accident or damage to property or death or injury to any person entering upon the Lot Burdened under the terms of this instrument, subject to the following provisions:

- (1) in the case of the Grantee’s and its Authorised Users’ releases of the Grantor which is not the freehold owner of the Lot Burdened, the Grantee and its Authorised Users do not release the Grantor to the extent that the damage, expense, loss, claim or liability is caused or contributed to by the act, negligence or omission of the Grantor; and
- (2) in the case of the Grantee’s and its Authorised Users’ releases of the freehold owner of the Lot Burdened, the Grantee and its Authorised Users do not release the freehold owner of the Lot Burdened to the extent that the damage, expense, loss, claim or liability is caused or contributed to by the act, negligence or omission of the freehold owner of the Lot Burdened.

2.4 Indemnity

- (1) The Grantee (other than the freehold owner of the Lot Benefited) indemnifies and agrees to keep indemnified the Grantor and the freehold owner of the Lot Burdened against all damage, expense, loss, claims or liability of any nature suffered or incurred by the Grantor or the freehold owner of the Lot Burdened arising from or in consequence of the

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exercise of rights under an easement, positive covenant or restriction on use in this instrument by the Grantee and any of its Authorised Users including but not limited to:

- (a) damage to the Lot Burdened, except fair wear and tear; and
- (b) damage to any property of the Grantor, the freehold owner of the Lot Burdened or any other person; and
- (c) injury to any person on or near the Lot Burdened,

subject to clause 2.4(2) and clause 2.4(3), as applicable.

- (2) In the case of a Grantee's indemnity in favour of a Grantor other than the freehold owner of the Lot Burdened, the Grantee's indemnity will be reduced proportionately to the extent that the damage, expense, loss, claim or liability is caused or contributed to the act, omission or negligence of the Grantor.
- (3) In the case of a Grantee's indemnity in favour of the freehold owner of the Lot Burdened, the Grantee's indemnity will be reduced proportionately to the extent that the damage, expense, loss, claim or liability is caused or contributed to by the act, omission or negligence of the freehold owner of the Lot Burdened.

2.5 Notice to owner

If a notice to the Grantor is required to be given under this instrument, that notice must also be given to the occupier of the Lot Burdened. Notice required in the case of an emergency may be given verbally.

3 Complying with this instrument and the Precinct Management Agreement

3.1 Obligations of Grantees and Grantors

Each Grantee and Grantor must, as appropriate, comply with the terms of the easements, positive covenants and restrictions on use in this instrument and the Precinct Management Agreement.

3.2 Obligations for Authorised Users

For each easement, positive covenant and restriction on use in this instrument, each Grantee must use reasonable endeavours to ensure that its Authorised Users comply with the terms of the instrument when they exercise their rights or comply with their obligations under the instrument.

3.3 Complying with the Precinct Management Agreement

For each easement, positive covenant and restriction on use in this instrument, the Grantee who is required to comply with the Precinct Management Agreement must:

- (1) comply with the Precinct Management Agreement; and
- (2) use reasonable endeavours to ensure that its Authorised Users comply with the Precinct Management Agreement which applies to the Lot Burdened.

4 Effect of the Precinct Management Agreement

4.1 Application of this clause

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Plan of Subdivision of Lot [insert] DP[insert]
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This clause applies to each easement, positive covenant and restriction on use in this instrument.

4.2 Requirements about making rules

If the Grantor is entitled under an easement, positive covenant or restriction on use to make rules about the use of an Easement Site, covenant or restriction by a Grantee or its Authorised User, the rules must be consistent with the easement, covenant or restriction and any Precinct Management Agreement.

4.3 Complying with obligations

If a Precinct Management Agreement allocates responsibility for complying with obligations under an easement, positive covenant or restriction on use to a different person than that set out in the easement, positive covenant or restriction on use (eg. the obligation is imposed on a Management Committee), the Precinct Management Agreement prevails to the extent of the inconsistency. However, the relevant Grantor or Grantee must use its reasonable endeavours to ensure that the person complies with these obligations.

5 Terms of Easement for services (whole of lot) numbered 1 in the Plan

5.1 Grant

The Grantee may:

- (1) use the Easement Site, to provide Services to or from each Lot Benefited; and
- (2) do anything reasonably necessary for that purpose, including:
 - (a) entering the Lot Burdened;
 - (b) taking anything on to the Lot Burdened; and
 - (c) carrying out work, such as constructing, placing, repairing or maintaining pipes, poles, wires, cables, conduits, structures and equipment.

5.2 Term

The Grantor and the Grantee agree that this easement will expire on the date which is 99 years after the date the Commonwealth Head Lease commenced.

5.3 General requirements when exercising rights

In exercising those powers, the Grantee must:

- (1) ensure all work is done properly;
- (2) cause as little inconvenience as is practicable to the Grantor and any occupier of the Lot Burdened;
- (3) cause as little damage as practicable to the Lot Burdened and make good and repair any damage to the reasonable satisfaction of the Grantor;
- (4) restore the lot burdened as nearly as is practicable to its former condition; and
- (5) make good any collateral damage.

5.4 Making rules

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Subject to clause 4.2 (“requirements about making rules”), the Grantor may make reasonable rules about the use of the Lot Burdened by the Grantee and its Authorised Users under this easement.

5.5 Additional requirements when exercising rights

When exercising its rights or complying with obligations under this easement, the Grantee and its Authorised Users must:

- (1) ensure that any person carrying out works on Services on their behalf is qualified or licensed (if a licence is required at law) to do those works;
- (2) ensure that all work is:
 - (a) done properly and in accordance with requirements of Government Agencies (if applicable); and
 - (b) completed as quickly as practicable;
- (3) repair damage which they cause to a Service owned by the Grantor located in the Lot Burdened;
- (4) restore the Lot Burdened as nearly as practicable to its former condition;
- (5) make good any collateral damage;
- (6) comply with any rules made by the Grantor in accordance with clause 5.4 (“Making Rules”) and any relevant requirements under the Precinct Management Agreement; and
- (7) not interfere with the structural integrity of the building or any infrastructure located on the Lot Burdened without the prior written consent of the Grantor, which consent must not be unreasonably withheld.

5.6 Maintaining Services

Subject to any contrary requirements under a Precinct Management Agreement or unless agreed otherwise in writing, the Grantee must maintain its own Services.

5.7 Additional Obligations

The Grantee:

- (1) acknowledges that some of the Services under this easement are being used in common with the Grantor and its authorised users; and
- (2) must not interfere with any of the Services for the Lot Burdened located within the Easement Site from time to time.

6 Terms of Easement for future services (whole of lot) numbered 2 in the Plan

6.1 Grant

The Grantee and its Authorised Users may:

- (1) use the Lot Burdened, but only within the Easement Site and in a manner that does not detrimentally interfere with use of the Lot Burdened, to install and provide Services to or

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from the Lot Benefited with the prior written consent of the Grantor, which consent must not be unreasonably withheld or delayed; and

- (2) do anything reasonably necessary for the purposes of this easement, including:
 - (a) entering the Lot Burdened;
 - (b) taking anything on to the Lot Burdened; and
 - (c) carrying out work, such as constructing, placing, installing, repairing, using, operating, maintaining, examining, re-laying, altering, renewing, cleaning, replacing, enhancing, adding to or removing pipes, poles, wires, cables, ducts, conduits, structures and equipment.

6.2 Term

The Grantor and the Grantee agree that this easement will expire on the date which is 99 years after the date the Commonwealth Head Lease commenced.

6.3 Requirements before exercising rights

Before exercising any rights under this easement, the Grantee and its Authorised Users must:

- (1) except in an emergency, give the Grantor not less than 48 hours' notice of its intention to enter the Lot Burdened. In an emergency, a Grantee or Authorised User must give the Grantor notice of access to the Lot Burdened as soon as practicable;
- (2) if required by the Grantor, when exercising rights under this easement be accompanied by, and comply with the reasonable directions of the Grantor's nominee;
- (3) except where prior arrangements have been made with the Grantor or in an emergency, not disrupt any of the Services to the Lot Burdened; and
- (4) not carry out any works to the structure of the buildings and infrastructure located on the Lot Burdened unless:
 - (a) the Grantor gives its approval to the works proposed to be carried out (which approval must not be unreasonably withheld or delayed);
 - (b) the Grantee, at its own cost, consults with a structural engineer or services engineer (as applicable) nominated by the Grantor; and
 - (c) the Grantee ensures that the recommendations of the structural engineer or services engineer (as applicable) are carried out.

6.4 Requirements when exercising rights

When exercising rights under this easement, the Grantee and its Authorised Users must:

- (1) ensure that any person carrying out works on Services or the Easement Site on their behalf is qualified or licensed (if a licence is required at law) to do those works;
- (2) ensure that all work is done properly and in accordance with the requirements of any Government Agency (if relevant);
- (3) cause as little inconvenience as practicable to the Grantor and any occupiers of the Lot Burdened;

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- (4) cause as little damage as practicable to the Lot Burdened and any personal property or improvements on the Lot Burdened;
- (5) if any damage is caused:
 - (a) promptly make good and repair such damage to the reasonable satisfaction of the Grantor; and
 - (b) (if relevant) restore the Lot Burdened as nearly as is practicable to its former condition (including, if relevant and without limitation, by restoring any excavated surface as nearly as possible to its original state and making good any collateral damage); and
- (6) not interfere with the structural integrity of the building or any infrastructure located on the Lot Burdened without the prior written consent of the Grantor, which consent must not be unreasonably withheld or delayed.

6.5 **Maintaining Services**

Subject to any contrary requirements under a Precinct Management Agreement or unless agreed otherwise in writing, the Grantee must maintain its own Services.

6.6 **Acknowledgement of the Grantee**

The Grantee acknowledges that this easement may be used in common with the Grantor.

7 Terms of Easement for access (whole of lot) numbered 3

7.1 **Grant**

Subject to the conditions in this easement, the Grantor grants to the Grantee and its Authorised Users the right to pass and repass over all driveways and trafficable accessways (existing from time to time) on the Lot Burdened:

- (1) with vehicles;
- (2) on foot; and
- (3) with or without materials, tools and equipment,

for the purpose of accessing the Lot Benefited and the sites of those easements which benefit the Lot Benefited.

7.2 **Term**

The Grantor and the Grantee agree that this easement will expire on the date which is 99 years after the date the Commonwealth Head Lease commenced.

7.3 **Precinct Management Agreement**

- (1) The Grantee has advised the Grantor that:
 - (a) that Precinct Management Agreement will include an Accessway Plan showing the driveways and trafficable accessways within the Lot Burdened (if any); and

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- (b) the Precinct Management Agreement will set out rules about the use of the driveways and trafficable accessways shown in the Accessway Plan, by the Grantee and its Authorised Users.
- (2) The Grantor may make reasonable rules about the use of the Easement Site by the Grantee and its Authorised Users. If the Grantor does so, the Grantee and its Authorised Users must comply with those rules, even if they are inconsistent with the rules in the Precinct Management Agreement.

7.4 Prohibitions

The Grantee and its Authorised Users must not:

- (1) park or stand a vehicle on the Lot Burdened, except where otherwise expressly permitted; or
- (2) obstruct the use of the Lot Burdened.

7.5 Requirements when exercising rights

When exercising their rights and complying with their obligations under this easement, the Grantee and its Authorised Users must:

- (1) take all reasonable steps to minimise disturbance, damage or obstruction to:
 - (a) the Grantor and occupiers of the Lot Burdened;
 - (b) the Lot Burdened;
 - (c) the contents of the Lot Burdened; and
 - (d) any improvements or other items on the Lot Burdened;
- (2) if any damage is caused to the Lot Burdened or any personal property in the Lot Burdened as a result of the Grantee or its Authorised Users exercising those rights or complying with those obligations:
 - (a) promptly make good and repair such damage to the reasonable satisfaction of the Grantor; and
 - (b) (if relevant) restore the Lot Burdened as nearly as is practicable to its former condition (including, if relevant and without limitation, by restoring any excavated surface as nearly as possible to its original state and making good any collateral damage); and
- (3) comply with any rules about the use of the Easement Site by the Grantor under clause 7.3(2) and (where not inconsistent with those rules) as set out in the Precinct Management Agreement.

7.6 Costs regulated under Precinct Management Agreement

If the Precinct Management Agreement requires an Authorised User to contribute to the costs of accessways shown on the Accessway Plan, then the rights granted under this easement to Authorised Users are subject to that Authorised User paying for the use of the accessways in accordance with the Precinct Management Agreement.

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7.7 Release of easement on dedication as public road

If any part of the Lot Benefitted is dedicated as a public road, then as and from the date of dedication:

- (1) this easement will cease to benefit the land the subject of the dedication;
- (2) the owner of the Lot Burdened will be entitled to have this easement and notation for this easement removed from the title to that part of the Lot Benefitted that has been dedicated as a public road; and
- (3) the Grantee and Grantor must, as soon as reasonably practicable, do all things and sign all documents necessary to remove this easement from the title to the part of the Lot Benefitted as referred to in clause 7.7(2), including signing any plans, requests or other dealings and producing certificates of title at NSW Land Registry Services as required for registration.

7.8 Suspension of access

- (1) The Grantor may temporarily suspend access to, and use of, any driveways and trafficable accessways in an emergency or for maintenance purposes provided that the Grantor:
 - (a) acts reasonably in determining the timing and duration of the temporary suspension of access; and
 - (b) provides the Grantee with prior written notice (except in the event of an emergency).
- (2) The Grantor may permanently close off a driveway or trafficable accessway within the Lot Burdened so long as that driveway or accessway does not provide sole access to a Lot Benefitted.
- (3) If a driveway or trafficable accessway provides sole access to a Lot Benefitted, the Grantor must not permanently close off the accessway until an alternative means of access has been provided to the Lot Benefitted.

7.9 Acknowledgement

Subject to clause 7.8, nothing in this easement affects the right of the Owner of the Lot Burdened to redevelop the Lot Burdened from time to time and alter the position of driveways and trafficable accessways within the Lot Burdened (**Redevelopment**).

8 Terms of Easement for drainage of water numbered 4

8.1 Term

The Grantor and the Grantee agree that this easement will expire on the date which is 99 years after the date the Commonwealth Head Lease commenced.

8.2 Grant

The terms set out in Part 8 of Schedule 8 of the Act.

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Execution

I certify that I am an eligible witness and that a duly authorised delegate under the *Lands Acquisition Act 1989* (Cth) of the Commonwealth of Australia represented by the **Department of Infrastructure, Transport, Regional Development and Communications** signed this instrument in my presence.

Certified correct for the purposes of the *Real Property Act 1900* (NSW) by the duly authorised delegate named below.

Signature of witness

Signature of delegate

Name of witness
(BLOCK LETTERS)

Name of delegate
(BLOCK LETTERS)

Address of witness

Signing on behalf of Commonwealth of Australia represented by the **Department of Infrastructure, Transport, Regional Development and Communications**

Certified correct for the purposes of the *Real Property Act 1900* (NSW) and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: Moorebank Intermodal Development Investment Nominees Pty Limited
ACN 606 134 347
Authority: s127 *Corporations Act 2001* (Cth)

Signature of Company Secretary/Director

Signature of Director

Name of Company Secretary/Director

Name of Director

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Certified correct for the purposes of the *Real Property Act 1900* (NSW) and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: Moorebank Precinct Nominees Proprietary Limited ACN 606 141 566
Authority: s127 *Corporations Act 2001* (Cth)

Signature of Company Secretary/Director

Signature of Director

Name of Company Secretary/Director

Name of Director