Deed of Novation – DHA Property Care Contract

This deed is made on [date]

between

[Insert name/s of current owner/s of the Property] of [address] (Original Party)

and

[Insert name/s of the new owner/s of the Property] of [address] (New Party)

and

Defence Housing Australia ABN 72 968 504 934 of 35 Hinder Street Gungahlin ACT 2600 (Consenting Party).

BACKGROUND

1. The Original Party is the registered proprietor of the Property and leases the Property to the Consenting Party.
2. The Original Party and the Consenting Party are parties to the Agreement.
3. The Original Party entered into a Contract of Sale with the New Party to sell the Property.
4. The Original Party wishes to novate its rights and obligations under the Agreement to the New Party.
5. The Consenting Party has agreed to consent to the novation on the terms of this deed.

OPERATIVE PROVISIONS

1. Definitions and interpretation
	1. Definitions

In this deed unless the context otherwise requires:

Agreement means the Defence Housing Australia Property Care Contract between the Original Party and the Consenting Party and annexed hereto marked ‘Annexure A’.

Effective Date means the completion date for the Contract of Sale for the Property between the Original Party and New Party.

Property means [*insert address of property subject to sale*]

Survival clause means the clause within the Agreement setting out the effect of termination or expiry on the provisions of the Agreement.

* 1. Interpretations

In this deed, clause and subclause headings are for reference purposes only. They do not affect interpretation, and unless the context otherwise requires:

* + 1. a reference to any legislation includes it as amended, consolidated or replaced by other legislation or provisions (as the case may be) from time to time and all orders, regulations, rules and by-laws made under it;
		2. singular words include the plural and vice versa;
		3. words denoting any gender include all genders;
		4. reference to a person includes any other entity recognised by law and vice versa;
		5. 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;
		6. a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation;
		7. a reference to any document or security includes any amendment to that document or security;
		8. "includes" in any form is not a word of limitation;
		9. the expression “at any time” includes reference to past, present and future time and the performance of any action from time to time;
		10. general words are not to be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words; and
		11. nothing is to be construed adversely to a party just because that party put forward this deed or the relevant part of this deed.
1. Novation

On and from the Effective Date, the Agreement is novated to the New Party and the Consenting Party such that:

* + 1. the Agreement as between the Original Party and the Consenting Party is terminated;
		2. a new agreement on the same terms of the Agreement is created between the Consenting Party and the New Party (Novated Agreement);
		3. the New Party is bound by all the terms of the Novated Agreement instead of the Original Party;
		4. the New Party is entitled to the benefit of the Novated Agreement instead of the Original Party;
		5. the Consenting Party is bound by the terms of the Novated Agreement; and
		6. each reference in the Novated Agreement to the Original Party must be read as a reference to the New Party; each reference to the Commencement Date must be read as a reference to the Effective Date; and each reference to the address for service of the New Party is taken as a reference to the address of the New Party as set out in this deed.
1. Release from obligations and liabilities
	* 1. Subject to the Survival clause of the Agreement, the Original Party and the Consenting Party each release and discharge the other from obligations and liabilities arising in respect of the Agreement.
		2. The Parties acknowledge and agree that:
			1. the Original Party is not party to the Novated Agreement, and it has no liability for any obligations arising in respect of the Novated Agreement; and
			2. the New Party is not party to the Agreement, and it has no liability for any obligations arising in respect of the Agreement prior to the Effective Date.
2. Costs and expenses

The Parties must bear their own costs in respect of this deed.

1. Governing law and jurisdiction
	1. Governing law

This deed is governed by the law applying in [name of state/territory where Property located].

* 1. Jurisdiction

Each party irrevocably:

* + 1. submits to the non exclusive jurisdiction of the courts of [name of state/territory where Property located], and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
		2. waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 5.2(a).
1. Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts, which taken together constitute one and the same document.

**EXECUTION PAGE**

[Note: If the Original Party or New Party is a corporation, adjust signature blocks to effect execution under s 127 of the Corporations Act 2001]

|  |  |  |
| --- | --- | --- |
| Executed as a deed by the **Original Party**, by *[insert name/s]*:  | ))) | in the presence of: |
|  |  |  |
| Signature/s of Original Party  |  | Signature of witness |
| **DATE:**  |  | [Name of Witness] |

|  |  |  |
| --- | --- | --- |
| Executed as a deed by the **New Party**, by[*insert name/s*]:  | ))) | in the presence of: |
|  |  |  |
| Signature/s of New Party |  | Signature of witness |
|  **DATE:**  |  | [Name of witness] |

|  |  |  |
| --- | --- | --- |
| Executed as a deed by the **Consenting Party** by its delegate duly authorised pursuant to section 65 of the *Defence Housing Australia Act 1987* (Cth): | ))) | in the presence of: |
|  |  |  |
| Signature of delegate |  | Signature of witness |
| [Name of delegate] |  | [Name of witness] |

**DATE:**

**ANNEXURE A: PROPERTY CARE CONTRACT [‘AGREEMENT’].**

[*Affix Defence Housing Australia Property Care Contract between the Original Party and the Consenting Party here.]*