



Occupation Agreement

Between: **Zoe Catherine Robens and David Colin Robens**
(‘Licensor’)

(‘Licensee’)

Dated:

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This Agreement is made on

20

Parties:

Between: **Zoe Catherine Robens and David Colin Robens**
(‘Licensor’)

And: _____
(‘Licensee’)

Whereas:

- A. The Licensor and the Licensee have entered into a Contract for the Property.
- B. The Licensor has agreed to allow the Licensee into occupation of the Property on the terms and conditions of this agreement, and the Licensee has agreed to accept occupation on these conditions.
- C. The parties have obtained, or acknowledge that they have had ample opportunity to obtain, independent legal advice in relation to this agreement.

Operative Provisions:

1. Definitions & Interpretation

1.1 Definitions

In this agreement:

‘**Claim**’ includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent.

‘**Contract**’ means the contract of sale entered into by the Licensor as Seller and Licensee as Buyer for the Property.

‘**Cost**’ includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid) including, where appropriate, all legal fees (including in-house lawyers charged at their usual rates) on a full indemnity basis or a solicitor/client basis, whichever is the greater and fees of other experts and consultants.

‘**Default Occupation Fee**’ means the amount specified in Item 4.

‘**Item**’ followed by a number means the item with that number in the Schedule.

‘**Occupation Date**’ means the date specified in Item 2.

‘**Occupation Fee**’ means the amount specified in Item 3.

‘**Property**’ means the property specified in Item 1.

‘**Seller’s Costs**’ means the amount specified in Item 5.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a party to this agreement includes the party's successors and permitted assigns;
- (d) a reference to a person includes a firm, a body corporate, an unincorporated association or an authority and vice versa;
- (e) a reference to any 'thing' (including any amount) is a reference to the whole or each part of it and a reference to a 'group of persons' is a reference to any one or more of them;
- (f) a reference to this agreement or another document includes any variation, novation, replacement or supplement to any of them from time to time;
- (g) a reference to a part, clause, annexure, exhibit, appendix or schedule is a reference to a part of, clause of, an annexure, exhibit, appendix or schedule to this agreement and a reference to this agreement includes any annexure, exhibit, appendix and schedule;
- (h) a reference to dollars or \$ is to Australian currency;
- (i) a reference to a right or obligation of two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (j) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and any regulations and statutory instruments issued under it;
- (k) a reference to conduct includes any omission, representation, statement or undertaking, whether or not in writing;
- (l) specifying anything in this agreement after the words including, includes or for example or similar expressions does not limit what else might be included unless there is express wording to the contrary;
- (m) all references to time are to Canberra time;
- (n) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document; and
- (o) where a term is not defined in clause 1.1 but is defined in the Contract, that term has the meaning given in the Contract where it is used in this agreement.

2. Occupation

2.1 Occupation under Licence

The Licensor agrees to grant, and the Licensee agrees to accept, occupation of the Property on the following conditions:

- (a) Occupation is granted as a licence to the Licensee;
- (b) Occupation is granted, and is deemed to commence, on the Occupation Date;

- (c) The Occupation Fee is payable by the Licensee to the Licensor on a day by day basis from the Occupation Date until:
 - (i) completion of the Contract; or
 - (ii) termination or rescission of the Contract and the subsequent vacation by the Licensee of the Property;
- (d) The Licensee must pay to the Licensor the Occupation Fee on the earlier of
 - (i) Completion of the Contract, at which point the Occupation Fee is payable as a lump sum in full;
 - (ii) Termination of the Contract, at which point the Occupation Fee is payable as a lump sum for the period from the Occupation Date until termination, then on a daily basis from the day after termination until vacation by the Licensee of the Property; and
 - (iii) Immediately upon breach by the Licensee of a condition of this Agreement, at which point the Occupation Fee is payable as a lump sum for the period from the Occupation Date until notice of the breach is given by the Licensor, then on a daily basis from the day after notice is given until:
 - (A) completion of the Contract; or
 - (B) termination or rescission of the Contract and the subsequent vacation by the Licensee of the Property;
- (e) Notwithstanding Item 3, in the event that completion of the Contract is delayed due to a default of the Licensee as buyer under the Contract, the Occupation Fee is to be interpreted as the Default Occupation Fee for the period from the day after the due date for completion of the Contract until:
 - (i) completion of the Contract; or
 - (ii) termination or rescission of the Contract and the subsequent vacation by the Licensee of the Property;
- (f) The Licensee must not make any structural alterations or additions to the Property without the written consent of the Licensor;
- (g) The Licensee must not part with possession, lease, sublease, licence or otherwise grant occupation to any person other than the Licensee or immediate family members of the Licensee of the Property;
- (h) The Contract is varied such that the date for adjustment of Land Charges is the earlier of the Occupation Date or the relevant date as specified in the Contract prior to this variation;
- (i) The Licensee accepts the Property in its state of repair and condition as at the Occupation Date and cannot make any Claim in relation to the repair or condition of the Property from that date;
- (j) The Licensee accepts all insurance risk in relation to the Property and all items in or on the Property (irrespective of whether those items are owned by the Licensee) from the Occupation Date;
- (k) The Licensee indemnifies the Licensor for any loss or Costs relating to any matter, action, inaction, omission or thing that relates to the Property and occurs after the Occupation Date;

- (l) The Licensee indemnifies the Licensor for any loss or Costs resulting from a breach by the Licensee of a condition of this agreement or the Contract;
- (m) The Licensee is responsible for all utility charges to the Property from the Occupation Date, including but not limited to the electricity, water consumption and gas;
- (n) If the Licensee is in default of the Contract or this agreement then the Licensor may terminate the right of occupation of the Licensee under this agreement by providing the Licensee (or the solicitor acting on behalf of the Licensee) with written notice of said termination of occupation. Upon receipt of the said notice of termination of occupation by the Licensee (or solicitor) the Licensee must vacate the Property and remove all items owned by the Licensee from the Property within 24 hours of receipt of the notice;
- (o) If the Licensee is in breach of this agreement, then the stakeholder (as defined under the Contract) is authorised and directed to release that part of the Deposit (as defined under the Contract) to the Licensor for any amount required to remedy that breach;
- (p) The parties agree and acknowledge that this agreement and the right of occupation granted under this agreement is a licence only, and no relationship of landlord and tenant is created. The parties agree and acknowledge that this agreement and the right of occupation granted under this agreement do not comprise a Residential Tenancy Agreement pursuant to the *Residential Tenancies Act 1997*;
- (q) The Licensee must keep the Property in good repair to the standard of the Property as at the Occupation Date;
- (r) The Licensee must comply with all laws affecting the Property;
- (s) The Licensee must comply with all covenants of any applicable instrument, covenant, crown lease or units plan affecting the Property;
- (t) The Licensee agrees to grant to the Licensor (or its agents and assigns) the right to inspect the Property to ensure compliance by the Licensee of the terms of this agreement, at reasonable times (between 9am and 5pm) and upon reasonable notice (not less than 24 hours' notice);
- (u) In the event that the Licensee has not paid the Occupation Fee (and Default Occupation Fee, if applicable) in accordance with this agreement, or an allowance has not been made for such payment on completion of the Contract, then the Licensor is not obliged to complete the Contract until such time as the due monies are paid, or an allowance is made for payment on completion of the Contract. In the event that completion of the Contract is delayed by the Licensor as Seller pursuant to this condition, then the parties agree that for the purposes of the Contract, completion of the Contract has been delayed due to buyer default of that Contract.
- (v) The Licensee is liable for all Costs, loss and damage to the Property from the Occupation Date until:
 - (i) completion of the Contract; or
 - (ii) termination or rescission of the Contract and the subsequent vacation by the Licensee of the Property;
- (w) The Buyer must pay to the Seller the amount of the Seller's Costs, on the earlier of (timing being of the essence):
 - (i) completion of the Contract; or

- (ii) termination or rescission of the Contract;
- (x) The Licensee, as buyer under the Contract, waives any right to claim damages under the Contract (including pursuant to clause 22 of the Contract); and
- (y) The Licensee cannot, as buyer under the Contract, issue or serve a Notice to Complete (as defined in the Contract) or a Default Notice (as defined in the Contract) whilst the Licensee is in occupation of the Property pursuant to this agreement. Any Notice to Complete (as defined in the Contract) or a Default Notice (as defined in the Contract) purported to be issued or served in breach of this condition is, for the purposes of the Contract, invalid.

3. General

3.1 Governing Law

- (a) This agreement is governed by the laws of the Australian Capital Territory.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in relation to all matters arising under this agreement.
- (c) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings where that venue falls within the Australian Capital Territory.

3.2 Severance

Any provision of this agreement which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

3.3 Waiver

- (a) Waiver of a breach or of any right of election arising from a breach of this document must be in writing and signed by the party granting the waiver.
- (b) A breach or any right of election arising from a breach of this document is not waived by any failure to or delay in the exercise, or partial exercise, of that right of election or any other right.

3.4 Amendments

This agreement may not be varied except in writing signed by all parties.

3.5 Further Action

Each party must take all steps, execute all documents and do everything reasonably required by any other party to give effect to the transactions contemplated by this agreement.

3.6 Counterparts

This agreement may be executed in a number of counterparts which together will constitute the one instrument. A party may execute this agreement by signing any counterpart.

3.7 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this agreement. They will survive the execution and delivery of any assignment or to her document entered into for the purpose of implementing any such transaction.

3.8 Rights cumulative

Subject to any express provision in this agreement to the contrary, the rights of a party under this agreement are cumulative and are in addition to any other rights of that party.

3.9 Approvals and Consent

Subject to any express provision in this agreement to the contrary, a party may conditionally or unconditionally give or withhold any consent to be given under this agreement and is not obliged to give its reasons for doing so.

3.10 Inurement

The provisions of this agreement will inure for the benefit of and be binding on the parties and their respective successors and permitted substitutes and assigns.

3.11 Entire Agreement

This agreement contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.

3.12 No Merger

The warranties and indemnities given by the parties under this agreement do not merge on completion of the Contract.

Schedule

Item 1	Property 58 MacLeay Street Turner ACT 2612
Item 2	Occupation Date
Item 3	Occupation Fee \$1,000.00 per week
Item 4	Default Occupation Fee \$1,200.00 per week
Item 5	Seller's Costs \$440.00

Execution Page

Executed as an Agreement

Licensors

EXECUTED by **Zoe Catherine Robens** in the presence of

Signature of witness

Zoe Catherine Robens

Name of witness

EXECUTED by **David Colin Robens** in the presence of

Signature of witness

David Colin Robens

Name of witness

Licensee

EXECUTED by
in the presence of

Signature of witness

Name of witness

EXECUTED by
in the presence of

Signature of witness

Name of witness

D. Deposit

D.1 Deposit by EFT

Notwithstanding clauses 2.1 and 2.3, for the benefit of the Buyer, if the Seller agrees to accept payment of the Deposit (or an instalment of the Deposit) by electronic funds transfer, the following conditions apply to that payment:

- (a) the Deposit (or if applicable, the instalment) must be received as clear funds into the financial institution account of the Stakeholder by the date required under this Contract (timing being of the essence); and
- (b) the Buyer accepts full responsibility to undertake all actions required to ensure the Deposit (or if applicable, the instalment) is clear in the financial institution account of the Stakeholder by the date noted above, including (without limitation) the obligation to verify the details of the account of the Stakeholder. The Buyer agrees to verify the account details of the Stakeholder using not less than two methods of communication, where each method of communication is independent of the other (for example where account details are verified by email and telephone, the telephone number used must not have been obtained by way of email); and
- (c) where for any reason the Deposit is not clear in the account of the Stakeholder by the date noted above, the Buyer will be in default to an essential respect, and immediately and without the notice otherwise necessary under clause 18, clause 19 applies. This condition applies (without limitation) regardless of whether any of the following events occur (noting the Buyer accepts responsibility for any of the following events):
 - (i) an error by the Buyer or the Buyer's financial institution in undertaking the electronic funds transfer; and/or
 - (ii) incorrect account details being used; and
- (d) the Parties agree and acknowledge that it is irrelevant if incorrect account details were or are received by the Buyer due to fraudulent or intercepted emails or other electronic communications, regardless of whether an email or electronic communication is intercepted or originated through the Buyer's email server or database, the Seller's email server or database, the Seller Agent's email server or database, or the Stakeholder's email server or database. This applies even in the event that the Seller, Seller Agent or Stakeholder are negligent in allowing their server or other electronic database to be compromised due to their failure to protect or otherwise secure the credentials necessary to access that server or database; and
- (e) for the avoidance of doubt, the Deposit (or if applicable, the instalment) is not paid until the time it is received as clear funds into the financial institution account of the Stakeholder.

2. Deposit Bond

2.1 Application of Special Condition 2

This Special Condition 2 applies if the Seller has approved the use by the Buyer of a Deposit Bond.

2.2 Amendments to Printed Terms for Special Condition 2

The Printed Terms apply to this Special Condition 2, however are amended as follows:

- (a) clauses 2.1 to 2.4 (inclusive) are deleted.

2.3 Delivery of Deposit Bond

The delivery of the Deposit Bond, upon or before the making of this Contract, to the Seller, to the extent of the amount guaranteed under the Deposit Bond, comprises payment of the Deposit in accordance with this Contract.

2.4 Payment to Seller

The Buyer must pay to the Seller, in addition to all other monies payable under this Contract (however it is noted that the payment will comprise part payment of the Deposit), the amount guaranteed under the Deposit Bond by unendorsed bank cheque, on the earlier of:

- (a) Completion;
- (b) termination of this Contract by the Seller for Buyer default;
- (c) within 24 hours of the Seller serving on the Buyer a notice in writing claiming the Buyer forfeits the Deposit; and
- (d) any other date that the Deposit is due to be paid, is payable, or is forfeited to, the Seller.

2.5 Replacement of Deposit Bond

In the event that Completion has not occurred and the Deposit Bond has an expiration date that is less than 30 days, the Buyer must either:

- (a) replace the Deposit Bond with another deposit bond in a form approved in writing by the Seller before expiration of the Deposit Bond; or
- (b) pay the amount guaranteed under the Deposit Bond by unendorsed bank cheque before expiration of the Deposit Bond.

2.6 Payment to Stakeholder

- (a) In the event that:
 - (i) the Buyer fails to comply with its obligations under Special Condition 2.5;
 - (ii) in the Seller's opinion, the provider of, or insurer under, the Deposit Bond, is unable to pay the amount referred to in the Bond; or
 - (iii) the provider of, or insurer under, the Deposit Bond is placed under external administration or is insolvent;

then the Buyer must, within 24 hours of the above event occurring, pay the Deposit (or so much of it as has not already been paid by unendorsed bank cheque) to the Stakeholder, by unendorsed bank cheque.

2.7 Call Upon Deposit Bond

- (a) If the Buyer fails to comply with its obligations under Special Condition 2.4, 2.5 or 2.6, then the Seller is entitled to:

- (i) immediately terminate this Contract by notice in writing (if not terminated already); and/or
 - (ii) call upon the provider of, or insurer under, the Deposit Bond for payment to the Seller of the amount guaranteed under the Deposit Bond; and/or
 - (iii) claim the Deposit from the Buyer.
- (b) It is agreed and acknowledged that the Seller is not required to call upon the provider of, or insurer under, the Deposit Bond for payment of the Deposit in the first instance, or before claiming the Deposit from the Buyer.
- (c) Any payment by the provider of, or insurer under, the Deposit Bond, to the Seller, shall comprise (to the extent of the payment made by the provider or insurer) payment of the Deposit.

2.8 Timing of the Essence

Timing is of the essence for the purposes of this Special Condition 2.

X. Deposit by Instalments – Two Instalments

Instalment in reference to the Deposit means any of the First Instalment or Second Instalment as defined in this Special Condition X.

X.1 Deposit by Instalments

- (a) The Buyer must pay the Deposit to the Stakeholder on the Date of this Contract.
- (b) Notwithstanding Special Condition X.1(a), the Seller will accept payment of the Deposit in two (2) instalments which the Buyer must pay as follows:
 - (i) the sum of **\$1,000.00** on the Date of this Contract ('First Instalment');
 - (ii) the balance of the Deposit (being **10% of the Price less the First Instalment**) on or before 5 Business Days from the Date of this Contract ('Second Instalment').
- (c) Time is of the essence with regard to payment of each Instalment referred to in Special Condition X.1(b).
- (d) The Deposit becomes the Seller's property on the earlier of:
 - (i) Completion; or
 - (ii) termination of this Contract by the Seller due to the Buyer's default.
- (e) If the Deposit or any Instalment of the Deposit is:
 - (i) paid by cheque which is not honoured on first presentation; or
 - (ii) not paid on time as required by Special Condition X.1(b);

the Buyer is in default of an essential term of this Contract and the Seller may immediately, and without notice otherwise required under clause 18, terminate this Contract by written notice to the Buyer.

X. Deposit by Instalments – Three Instalments

Instalment in reference to the Deposit means any of the First Instalment, Second Instalment or Third Instalment as defined in this Special Condition X.

X.1 Deposit by Instalments

- (a) The Buyer must pay the Deposit to the Stakeholder on the Date of this Contract.
- (b) Notwithstanding Special Condition X.1(a), the Seller will accept payment of the Deposit in three (3) instalments which the Buyer must pay as follows:
 - (i) the sum of **\$1,000.00** on the Date of this Contract ('First Instalment');
 - (ii) the balance of **5% of the Price minus the First Instalment** on or before 5 Business Days from the Date of this Contract ('Second Instalment'); and
 - (iii) the balance of the Deposit (being **5% of the Price**) on the Date for Completion ('Third Instalment').
- (c) Time is of the essence with regard to payment of each Instalment referred to in Special Condition X.1(b).
- (d) The Deposit becomes the Seller's property on the earlier of:
 - (i) Completion; or
 - (ii) termination of this Contract by the Seller due to the Buyer's default.
- (e) If the Deposit or any Instalment of the Deposit is:
 - (i) paid by cheque which is not honoured on first presentation; or
 - (ii) not paid on time as required by Special Condition X.1(b);

the Buyer is in default of an essential term of this Contract and the Seller may immediately, and without notice otherwise required under clause 18, terminate this Contract by written notice to the Buyer.