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COMMISSION - ADELAIDE

Form G

Commonwealth of Australia

Competition and Consumer Act 2010—subsection 93(1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47(2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N98743 Lend Lease Communities (**Blakeview**) Pty Ltd ACN 131 672 403 (**LLC**) of
Cnr Main Terrace and Park Terrace, Blakeview South Australia 5114.

- (b) Short description of business carried on by that person:
(Refer to direction 3)

LLC is the developer of a residential housing development at Blakeview in South Australia known as "Blakes Crossing" (**Development**).

- (c) Address in Australia for service of documents on that person:
c/o Lynch Meyer Lawyers, GPO Box 467, Adelaide SA 5001

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The proposed arrangement is under a put and call option deed (**Deed**) entered or to be entered into by LLC with Rivergum Homes Pty Ltd ACN 065 466 337 (**Builder**).

Under the Deed, LLC grants the Builder an option to purchase 57 allotments in the Development (**Lots**) and the Builder grants LLC an option to require the Builder to purchase the Lots.

- (b) Description of the conduct or proposed conduct:

Deed

Under the Deed, the Builder may exercise a call option and nominate a purchaser to purchase a Lot from LLC (with the intention that the Builder will enter into a building contract with such purchasers for the construction of a dwelling on such Lot).

Under the Deed:

- (i) the Deed is subject to the Builder entering into unconditional building contracts for at least 10 of the Lots and the Builder or its nominee entering into unconditional contracts with LLC for the purchase of 10 of the Lots on or before 31 January 2016;
- (ii) LLC proposes that the Builder will market and sell House and Land Packages for the Lots. A representative of LLC and the Builder (**Marketing Representatives**) will formulate a plan for advertising and promotion by the Builder of the House and Land Packages for the Lots (**marketing plan**) but the Builder may vary or add to the marketing plan. It will be a condition of sale of those Lots by the Builder that purchasers enter into a building contract with the Builder; and
- (iii) LLC requires all House and Land Packages to be offered by the Builder to be eligible to be part of the South Australian Government's Affordable Housing Scheme established under the *South Australian Housing Trust Regulations 2010* (SA) as amended from time to time (**Scheme**) and the Builder must first advertise each of the House and Land Packages on the Affordable Housing Scheme Property Locator for a period of 30 days from a date required by Lend Lease or such other period required under the Scheme.

(together the **Restriction**)

Exclusive dealing – full line forcing

The Restriction, being the proposed conduct by LLC may be exclusive dealing, full line forcing that contravenes section 47 of the *Competition and Consumer Act 2010* (Cth).

Under **section 47(2)**, LLC may be a corporation that:

- (a) supplies or offers to supply, goods or services;
- (b) supplies, or offers to supply, goods or services at a particular price; or
- (c) gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the corporation,

on the condition that the person to whom the corporation supplies, or offers or proposes to supply, the goods or services, or, if that person is a body corporate, a body corporate related to that body corporate:

...

- (f) in the case where the corporation supplies or will supply the goods or services, will not re-supply the goods or supplies to any person, or will not, or will not except to a limited extent, re-supply the goods or services:
 - (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
 - (ii) in particular places or classes of places or places other than particular places or classes of places.

Under **section 47(3)** LLC may be a corporation that refuses:

- (a) to supply goods or services to a person;
- (b) to supply goods or services to a person at a particular price; or
- (c) to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services to a person,

for the reason that the person or, if the person is a body corporate, a body corporate related to that body corporate:

...

- (f) has re-supplied, or has not agreed not to re-supply, goods or services, or goods or services of a particular kind or description, acquired from the corporation to any person, or has re-supplied or has not agreed not to re-supply, goods or services of a particular kind or description acquired from the corporation:
 - (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

- (ii) in particular places or classes of places or in places other particular places or classes of places.

However, LLC considers that, under **section 47(10)**, LLC is not engaging in the practice of exclusive dealing by engaging in conduct of a kind referred to in section 47(2) and 47(3) on the basis that the following **does not apply**:

- (a) the engaging by the corporation in that conduct has the purpose, or has or is likely to have the effect of substantially lessening competition; or
- (b) the engaging by the corporation in that conduct, and the engaging by the corporation, or by the body corporate related to the corporation, in other conduct of the same of a similar kind, together have or are likely to have the effect of substantially lessening competition.

(Refer to direction 4)

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

The Builder as defined in paragraph 2(a) and purchasers of land in South Australia.

- (b) Number of those persons:

- (i) At present time:

The Builder as defined in paragraph 2(a).

- (ii) Estimated within the next year:
(Refer to direction 6)

The Builder as defined in paragraph 2(a).

- (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:

The Builder as defined in paragraph 2(a).

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

The Restriction being the proposed conduct will benefit the public because:

- (i) the notified conduct will promote the sale of land in the Development;

- (ii) the House and Land Packages that will be offered for sale by the Builder will be eligible to be part of the South Australian Government's Affordable Housing Scheme and the Builder will advertise each of the House and Land Packages on the Affordable Housing Scheme Property Locator;
 - (iii) there is currently other land available in the Development (excluding the Lots) and other developments in South Australia that may be purchased by the Builder (and other persons) in South Australia for marketing, advertising and sale in South Australia or to persons in South Australia;
 - (iv) the Restriction does not prevent the Builder (and other persons) from purchasing other land (other than the Lots) in the Development or in other developments;
 - (v) the Restriction encourages investment in land in South Australia by persons outside of South Australia;
 - (vi) under the terms of the Deed, the Builder has the exclusive right to purchase the Lots at a purchase price specified during the call option period (i.e. the Lots are not being offered for sale to any other party for the call option period); and
 - (vii) under the terms of the Deed, the Builder may nominate another purchaser to purchase the Lots for the purchase price specified.
- (b) Facts and evidence relied upon in support of these claims:
- Refer to paragraph 4(a). On the basis outlined above, the Restriction comprising the proposed conduct will not decrease competition in the Adelaide market, north of Adelaide, for the supply of residential land.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 8)

- (i) The relevant market is the Adelaide market, north of Adelaide, for the supply of residential land (**Adelaide market**).

- (ii) The market is extremely competitive with residential land available in the north of Adelaide for purchase by the Builder and any other persons (other than the Lots).
- (iii) There are currently 53 allotments available for sale in the Development (other than the Lots) which are available to purchase by the Builder (and other purchasers) without the Restriction.
- (iv) There is expected to be approximately 300 allotments available for sale in the Development (other than the Lots) over the course of the call option period (which will expire on 28 February 2017).
- (v) There are many residential land developments in the north of Adelaide which offer for sale and supply residential land to purchasers. There are currently 31 developments in the northern Adelaide market offering allotments for sale which will be available to purchase by the Builder (and other purchasers) without the Restriction. At 30 June 2015, there were 524 developed allotments available for sale by other developers in the market, consistent with the rolling 12 month average for the local area market (*Source: Charter Keck Cramer independent market report – August 2015*).
- (vi) The Builder (and other purchasers) can choose to obtain land from a number of other land owners, developers and builders in the Adelaide market.
- (vii) In respect of such other land (excluding the Lots), the Builder can advertise and market it and offer it for sale within South Australia and to persons within South Australia.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)

LLC considers that, for the reasons set out above, in particular paragraph 5, the proposed conduct being the Restriction will not have any public

detriment, will not have an anti-competitive effect in the relevant market and will not have any material effect on the price of land in the relevant market.

- (b) Facts and evidence relevant to these detriments:

Refer to paragraph 5.

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Kathryn Walker

Partner

Lynch Meyer Lawyers

GPO Box 467

Adelaide South Australia 5000

Dated 9 December 2015

Signed for and on behalf of the Applicant
by its solicitor and authorised agent:



(Signature)

Kathryn Walker
Partner
Lynch Meyer Lawyers



DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible