

PARTIES

ATCO Gas Australia Pty Ltd ACN 089 531 975 of Level 6, 12-14 The Esplanade, Perth, Western Australia (ATCO Gas Australia)	and	The Owners of The Mews Strata Plan 5629 of 147 Charles St West Perth (Strata Company)
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AGREEMENT

- A. ATCO Gas Australia is the holder of a distribution licence under the *Energy Coordination Act* and is responsible for maintaining and upgrading the Distribution Network which extends up to the meter.
- B. The Owner is responsible for the Gas Installations.
- C. To enable sufficient and safe gas supply to the Building, ATCO Gas Australia is required by Law to undertake the Works. The Strata Company believes that the Works will benefit the Strata Company and the Owners.
- D. Nothing in this document affects, restricts or fetters ATCO Gas Australia's powers, rights or discretions carried out in accordance with any Law and any conduct of ATCO Gas Australia under any Law is not a breach of any of ATCO Gas Australia's obligations under this document.
- E. Nothing in this document affects the rights of either party under any Law.
- F. The Terms and Conditions attached to this schedule apply and form part of the agreement between ATCO Gas Australia and the Strata Company.

Executed by the parties as a deed on the day of _____ 20__.

Signed for and on behalf of
ATCO Gas Australia Pty Ltd ACN 089 531 975
 by its duly authorised signatory

 Authorised signatory (signature)

 Witness (signature)

 Name of signatory (print)

 Name and occupation of witness (print)

 Occupation of signatory (print)

The common seal of
 The Owners of The Mews Strata Plan 5629 was
 hereunto affixed by
 authority of the Council of Owners
 in the presence of:

 Signature of Council Member

 Signature of Council Member

 Full Name (please print)

 Full Name (please print)

1. Consideration

- (a) ATCO Gas Australia is responsible for the cost of the Works.
- (b) The Strata Company and/or Owners are responsible for the costs engaging a registered gas fitter to locate and repair any Gas Leak or Non-Compliant Gas Installation.
- (c) The Strata Company and/or Owners are responsible for the cost to keep the Gas Installations in good repair and compliant with the Law.
- (d) Each party enters into this document for valuable consideration from the other party and receipt of the consideration is acknowledged by each party. In consideration for the mutual obligations given to each other under this Agreement, the parties agree to perform their respective obligations as set out in this Agreement.

2. Access to the building

- (a) The Strata Company acknowledges that ATCO Gas Australia has the power at Law to come into the Building and do the Works and nothing in this document reduces or interferes with that right.
- (b) The Strata Company acknowledges that ATCO Gas Australia and its Workmen may enter and remain upon the Building with any vehicles, machinery or equipment needed to undertake the Works.
- (c) For the purpose of carrying out works referred to in section 39 of the Strata Titles Act 1985, if requested by ATCO Gas Australia in writing, the Strata Company will appoint ATCO Gas Australia as a contractor of the Strata Company to undertake such works as are part of the Works.
- (d) If ATCO Gas Australia is appointed as a contractor of the Strata Company in accordance with clause 1(c), ATCO Gas Australia shall:
 - (i) comply with section 39(1)(f) or (1)(g) of the Strata Titles Act 1985; and
 - (ii) indemnify the Strata Company against all Liability, direct or indirect of the Strata Company arising from such appointment that ATCO is or would have been liable if it had not been a contractor of the Strata Company, except for Liability arising from the negligent or wilful acts or omissions of the Strata Company.
- (e) The Strata Company must at its own cost provide ATCO Gas Australia with the power and water needed to undertake the Works.
- (f) The Strata Company shall to the best of its ability provide ATCO Gas Australia with adequate parking bays at the Building, to enable ATCO Gas Australia to undertake the Works.

3. Works by ATCO Gas Australia

- (a) ATCO Gas Australia will:

- (i) at least 10 days before starting the Works, provide the ATCO Gas Australia Notice to the Strata Company;
 - (ii) use reasonable endeavours to minimise:
 - (A) any disruption to the gas supply to the Building; and
 - (B) the impact of the Works on the use and enjoyment of the Building by the Strata Company;
 - (iii) decide upon the location of and method of undertaking the Works;
 - (iv) repair any damage to the Distribution Network caused by ATCO Gas Australia or its Workmen;
 - (v) comply with all relevant Laws;
 - (vi) if requested in writing, advise the Strata Company of the requirements at Law for the paint colour permitted on gas pipe work; and
 - (vii) if requested, provide details of a registered gas fitter to locate and repair any Gas Leak and repair any Non-Compliant Gas Installation.
- (b) The Strata Company must:
- (i) as soon as practicable, pass on the ATCO Gas Australia Notice to each Owner and to each Occupier;
 - (ii) to the best of its ability, comply with, and ensure that each Owner, Occupier and the strata manager complies with all relevant Laws and safety or emergency directives from ATCO Gas Australia or its Workmen in relation to the Works
 - (iii) to the best of its ability, minimise, and ensure that each Owner, Occupier and the strata manager minimises interference with the Works; and
 - (iv) inform ATCO Gas Australia in writing if there are any plants or valuable items at the Building that require particular care by ATCO Gas Australia when undertaking the Works.
- (c) In undertaking the Works, ATCO Gas Australia may need to break, penetrate or remove parts of the Building but if it does so, shall ensure that so far as is reasonable and practicable, as little detriment or inconvenience is caused and as little damage is done as is possible and otherwise s120 shall apply.
 - (d) If ATCO Gas Australia decides that a meter needs to be relocated, the Parties shall endeavour to agree on an alternative location for the meter, but if the Parties cannot agree, ultimately ATCO Gas Australia will decide the alternative location and will be responsible for the cost to relocate the meter.
 - (e) The Works are the property of ATCO Gas Australia.

4. Reinstatement

- (a) If in the course of undertaking the Works, ATCO Gas Australia or its Workmen cause damage, to land, premise or other things, ATCO Gas Australia will make good that item, ATCO Gas Australia will make good that item to the standard set out in clause 4(c).

- (b) Any make good and any associated costs and expenses required to rectify damage that is not within sub-clause (a), are the responsibility of and must be paid for by the Strata Company.
- (c) For the purposes of this clause 4, ATCO Gas Australia:
 - (i) will determine how and subject to paragraph 4(c)(ii), when the make good works are done;
 - (ii) will as soon as reasonably practical, make good the item to a condition similar to that existing before the Works were undertaken;
 - (iii) may replace items with similar items;
 - (iv) is not required to replace old items with new items;
 - (v) is not required to place an item in a better condition than its previous condition;
 - (vi) will use reasonable endeavours to ensure that plants are reinstated in a condition that will enable the plants to continue to grow; and
 - (vii) is not required to make good an item that has reached the end of its useful life.

5. Non-Compliant Gas Installations

- (a) The Strata Company acknowledges that if ATCO Gas Australia detect a Gas Leak or a Non-Compliant Gas Installation, ATCO Gas Australia is required by Law and for safety reasons to turn off the gas supply and disconnect the meter.
- (b) The Strata Company acknowledges that the Owner is required to engage the services of a registered gas fitter to locate and repair any Gas Leak or Non-Compliant Gas Installation before the gas supply can be restored and accordingly there may be some disruption to gas supply until a registered gas fitter has repaired the Gas Leak or Non-Compliant Gas Installation.
- (c) The Strata Company must inform each Owner that each Owner is responsible for the costs associated with engaging the services of a registered gas fitter, to locate and repair any Gas Leak or Non-Compliant Gas Installation.
- (d) The Owner and the Strata Company are entitled to use any registered gas fitter to repair any Gas Leak or Non-Compliant Gas Installation.

6. Strata Company warranty

The Strata Company represents and warrants to ATCO Gas Australia that:

- (a) it has the power to enter into this document;
- (b) the Council of Owners have been validly appointed, meetings have been held, all necessary resolutions have been passed and the Council of Owners may enter into this document on behalf of the Strata Company; and
- (c) there is nothing in the by-laws of the Strata Company prohibiting the Strata Company entering into this document or fulfilling its obligations pursuant to this document.

7. Dispute Resolution

- (a) If a dispute or difference between the Parties arises in relation to this document, details of the dispute or difference shall be adequately identified and provided by, as appropriate;
 - (i) the Strata Company to the Project Administrator, James Pentecost on telephone number (08) 9499 7216 or via email at multistoreyprojects@atcogas.com.au; or
 - (ii) ATCO Gas Australia to the Strata Company at the address specified in clause 9(b).
- (b) Within seven days after being notified of the dispute or difference the parties should and must attempt to, in good faith, resolve the dispute or difference.
- (c) If the Parties cannot resolve the dispute or difference within seven days of the meeting, the Strata Company must give written notice to ATCO Gas Australia marked to the attention of "Complaints Officer" via email at; customer.relations@atcogas.com.au. The written notice must adequately identify and provide details of the dispute or difference.
- (d) The Complaints Officer of ATCO Gas Australia will use reasonable endeavours to resolve the dispute or difference.

8. Claims

- (a) The Strata Company both as the strata company and on behalf of the Owners agrees that it is not entitled to, and will not, make any objection to, or Claim against ATCO Gas Australia with respect to, the Works or the performance by ATCO Gas Australia of its obligations at Law, except in accordance with sections 120 and 121 of the Energy Operations (Powers) Act.
- (b) The Strata Company indemnifies ATCO Gas Australia against all Liability arising directly or indirectly from any breach of this document by the Strata Company, in particular relating to costs with respect to Gas Leaks and Non-Compliant Works.

9. Notices

- (a) A party must send a notice to the other party at the address listed on the Schedule to these terms and conditions.
- (b) A party may vary its address by sending a written notice to the other party. A party must use the new address from the time that it receives the notice. To deliver a notice, a party must hand deliver or post it to the other party's address. A notice takes effect at the time stated in the notice. If no time is stated then a notice sent by post is deemed to be received three days after posting if within Australia and seven days after posting if posted to or from a place outside Australia.

10. Governing clauses

- (a) The law of Western Australia governs this document.
- (b) A provision of this document, or a right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.
- (c) A party's rights under this document are in addition to its rights at law.

- (d) If a provision of this document is invalid, illegal or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that provision must be ignored in the interpretation of this document. The remaining provisions of this document remain in full force and effect.
- (e) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this document.
- (f) Each party must do everything necessary to give full effect to this document.
- (g) This document is not intended to create a partnership, joint venture or relationship of principal and agent between the parties.
- (h) Each party must pay its own legal and other costs and expenses in relation to the preparation and execution of this document and the related documents.
- (i) Any special conditions attached to this document are to be incorporated in and read as part of this document.

11. Interpretation and Definitions

11.1 Interpretation

In this document, unless inconsistent with the context:

- (a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (b) the singular includes the plural and vice versa;
- (c) a heading is for convenience only and does not affect interpretation;
- (d) the word includes is not a word of limitation and does not restrict the interpretation of a word or phrase in this document;
- (e) a reference to a document, includes a variation or replacement of it;
- (f) a reference to this document includes all schedules and annexures to it;
- (g) a reference to a statute includes its subordinate legislation and a modification or re-enactment of either;
- (h) a reference to person includes a reference to:
 - (i) an individual, a body corporate, a trust, a partnership, a joint venture an, unincorporated body or other entity, whether or not it is a separate legal entity; and
 - (ii) that person's successors and permitted assigns and a person, who innovates this document; and
- (i) an agreement, representation or warranty in favour of or on the part of two or more people, benefits or binds them jointly and severally.

11.2 Definitions

ATCO Gas Australia Notice: means the notice provided by ATCO Gas Australia to the Strata Company notifying the Strata Company of the proposed Works;

Building: means a building shown on the strata plan and includes the whole of the and comprised in the strata plan, the proprietors of which comprise that Strata Company;

Claim: includes any claim, proceeding, action, demand or suit (including by way of contribution or

indemnity) for any Liability, including a claim for breach of contract, negligence, under statute, in equity or otherwise;

Distribution Network: means the gas distribution system of pipelines, mains, meters, gas service pipes and other parts of the gas distribution system including associated apparatus, facilities, structures, plant or equipment extending up to and including the meter;

Energy Coordination Act: means the *Energy Coordination Act 1994* (WA);

Energy Operators (Powers) Act: means the *Energy Operators (Powers) Act 1979* (WA);

Gas Installation: means the gas supply pipes, from the meter to the gas appliances (including gas hot water system, gas heater, gas oven and hot plates) on the relevant strata lot or the common property;

Gas Leak: means a gas leak in or to a Gas Installation and does not include any leaks found in the Distribution Network.

Law: includes any requirement of any statute, regulation, proclamation, ordinance or bylaw, present or future and whether State, federal, local or otherwise;

Liability: means any debt, obligation, cost (including legal costs of proceedings), expense, loss, damage, compensation, charge, penalty or liability of any kind, including those that are prospective or contingent, indirect or consequential (including pure economic loss) and including the amount of which is not ascertained or ascertainable.

Non-Compliant Gas Installation: means a Gas Installation that does not comply with the Law;

Occupier: means a person in occupation of part of the building;

Owner: means the person who is for the time being the registered proprietor of a strata lot on the building;

Strata Titles Act: means the Strata Title Acts 1985 (WA);

Workmen: means any employee, agent, contractor or other person authorised by ATCO Gas Australia

Works: means:

- (a) Any works that ATCO Gas Australia is entitled by Law to do; and
- (b) Includes the works set out in any document annexed to this document or given to the Strata Company before or after the Strata Company entered into this document.