

# MARRI PARK PRIVATE ESTATE – BYFORD

## ANNEXURE A

These are the Special Conditions referred to in the Contract for Sale of Land by Offer and Acceptance dated ...../...../2009 made between Goldtune Investments Pty Ltd ABN 113 899 219 and

\_\_\_\_\_ (Buyer)

in relation to the Property known as Lot \_\_\_\_\_ on Deposited Plan \_\_\_\_\_ marked Appendix 1 attached to this contract for lots within the Marri Park Private Estate (**Contract**).

### SPECIAL CONDITIONS

1. The words and expressions defined in clause 26 of the 2002 General Conditions shall have the same meanings in these Special Conditions.
2. The Buyer acknowledges and agrees that the Lot is sold subject to a number of Encumbrances, Title Restrictions and limitations of use as set out below.
3. The Buyers of **Lots 38, 39, 40 & 41** on Deposited Plan **62672** acknowledge that these Lots are subject to the provisions of Detailed Area Plans (DAP's) that are yet to be approved by Council. The purpose of the DAP's is to coordinate development options on smaller lots. The Buyer further acknowledges that a Section 70A Notification advising of the existence of DAP's will be placed on the Certificates of Title for these Lots.
4. The Certificates of Title for certain Lots (Lots **28, 30-38, 69-80 & 112-123** on Deposited Plan **62672**) will contain a Section 167 (drainage) easement of 3m in width, generally aligned along the rear boundary of the Lots. The easements are to be to the benefit of the Shire of Serpentine-Jarrahdale to allow reciprocal use and access to drainage infrastructure by Council personnel for maintenance purposes.
5. The title to certain lots (Lots **29, 31, 33, 35, 37, 39, 41, 70, 72, 74, 76, 77, 80, 81, 84, 86, 87, 89, 92, 113, 115, 117, 119, 121, 123, 125, 127, 128, 129, 131, 133 & 135** on Deposited Plan **62672**) will contain a Section 167 (drainage) easement of 1m x 1m located in the front corner of each affected Lot adjoining the road reserve. These easements cover shared drainage pits installed by the Developer for the purposes of collection and conveyance of house and roof stormwater (in addition to or in place of normal house soakwells). The easements are to be to the benefit of the Shire of Serpentine-Jarrahdale to allow reciprocal use and access to drainage infrastructure by Council personnel for maintenance purposes.
6. The Buyer acknowledges that a Section 70A Notification advising of the existence of shared drainage pits will be placed on Certificates of Title of those Lots that contain them and advising that the adjoining lot owner is permitted to connect and have unfettered access to this infrastructure in perpetuity. The Certificates of Title of Lots adjoining but not containing the drainage pits will also inform these Buyers that they will be permitted unfettered access to this infrastructure in perpetuity.
7. The Buyer acknowledges that they are aware that all house and roof stormwater runoff is to connect to the piped public road drainage network via the shared drainage pits and that, even if standard soak wells around the house are installed, overflow connections to the piped drainage network will be required as a condition of a Building License approval when issued by the Shire of Serpentine-Jarrahdale.
8. The Buyer acknowledges that all Lots are subject to the provisions of Restrictive Covenants imposed by the Developer dealing with the built form on each Lot in order to maintain and enhance the standards of visual amenity throughout the Marri Park Private Estate.

### 1. VARIATION TO PROPERTY PARTICULARS

- 1.1 The Buyer is aware that the Property is a portion of the Land, and has not been approved as a separate Lot, but is subject to final conditions of subdivision and a final survey. The Buyer shall make no objection, requisition or claim compensation from the Seller even though the Property may vary in respect of the following:
  - (i) size or area, unless such variation exceeds more than 3% of the Property's area;

- (ii) provision or position of retaining walls within the Property;
- (iii) the location of its boundaries;
- (iv) the Property's ground level;
- (v) the angles of the Property's boundaries; and
- (vi) the Property becoming subject to any restrictive covenants, including, but not limited to, those covenants particularised below and any other covenants required by any public authority to satisfy any condition of subdivision approval.

- 1.2 Where the Property's area is varied by more than 3%, either Party may terminate the Contract by providing written notice of the same to the other Party.
- 1.3 Settlement of the Property constitutes a full waiver of any right, action or claim whatsoever to compensation that either Party may have in relation to any variation in or of the Property.
- 1.4 The Seller makes no warranty in relation to the accurate location of any survey pegs which may be on the Property and is not obliged to maintain those survey pegs
- 1.5 The Buyer shall not make any claim against the Seller pursuant to the *Dividing Fences Act 1961*. Further, Clause 9.1(c) of the Joint Form is deleted and substituted with the following clause:  
*"The Parties acknowledge that all dividing fences erected by the Seller on the Land are not necessarily on the boundaries of the Land."*

## **2. BUYER NOT ENTITLED TO CAVEAT LAND**

The Buyer hereby agrees to not, lodge a caveat the Land or the Property, prior to settlement.

### **VARIATION OF GENERAL CONDITIONS TO ALLOW FOR PLANNING APPROVAL**

- 2.1 Clause 4.2 of the Joint Form is hereby deleted.
- 2.2 Clause 13.2(b) of the Joint Form is amended by substituting the expression "6 months" with "10 months".
- 2.3 Clause 13.3(a)(1) of the Joint Form is amended by substituting the expression "6 months ... from the Planning Commission" with "15 months after the Contract Date"
- 2.4 Clause 13.3(a)(2) of the Joint Form is amended by substituting the expression "within 3 months, accordance with subclause (1)" with "within 18 months after the Contract Date".
- 2.5 Clause 13.9 (b)(1)(2) of the Joint Form is deleted and substituted with the clause:  
**"Settlement shall be effected on or before 14 days after the service of a notice by the Seller to the Buyer that the titles have been issued by Landgate."**
- 2.6 Clause 15 of the Joint Form is deleted and substituted with the clause:  
*"The Property is believed and will be taken to be accurately described. No error, omission or mis-description of the Property will annul the sale or entitle the Buyer to any compensation or abatement of the purchase price."*
- 2.7 Clause 18.2 of the Joint Form is deleted and substituted with the following clause:  
**"The Purchase Price is inclusive of GST, any GST payable by the Seller will be calculated using the "Margin Scheme" as per the New Tax System (Goods and Services Tax) Act 1999."**

(Note: Under GST regulations, acquisition of property under the margin scheme is not considered a creditable acquisition, that is, no input credits can be claimed)

- 2.8 Clause 24.7 of the Joint Form is hereby deleted.

## **3. WAPC CONDITIONS OF SUBDIVISION**

If the WAPC grants approval for the subdivision of the Property from the Land, or part of that Land, subject to a condition, or if any other matter arises, on the subdivision that makes the subdivision of the Land or the Property un-viable in the sole opinion of the Seller; or that the Seller is unwilling, in its complete discretion, to comply with:

the Seller may terminate this Contract at any time thereafter by refunding the Deposit and giving notice to the Buyer, after which time the Buyer shall have no claim or right of action against the Seller arising from such termination.

**4. NO WARRANTIES OR REPRESENTATIONS**

Each Party acknowledges that in entering this Contract, it has not relied on any representations or warranties about its subject matter except as previously provided by the written terms of this Contract. Further, the Buyer shall be taken to have satisfied itself in respect of all conditions relating to the Land.

**ACKNOWLEDGEMENTS**

Where a registered builder or his representative has referred the Buyer to the land, then following settlement, a fee may be paid by the Seller to the referee and the Buyer, by his execution hereof, assents to that fee being paid.

**5. ENCUMBRANCES**

- 5.1 The Property is sold subject to all easements, restrictive covenants, rights, reservations and conditions, Title Notifications and Crown Reservations which are or will be contained in the Certificate of Title or Crown Grant of the Property as at the settlement date. Further, the Property is sold subject to all claims, demands, conditions (including building conditions) or restrictions whatsoever imposed or made on the Property by any local or public authority. In addition, should the Property become subject to a "maintenance of public open space levy", they shall be liable for such levy and hereby acknowledge that, should this levy be imposed, that they have no right to terminate the Contract, or seek compensation from the Seller or its agents.
- 5.2 The Buyer hereby acknowledges that, should any Encumbrance contained within this clause 7, be place over the Land, the Buyer shall have no right whatsoever to terminate the Contract, or claim compensation whatsoever, and nor shall he have any claim, right or legal action against the Seller at law.

**6. SIGNAGE**

Not to erect or display on the Lot any sign hoarding or advertising of any description whatsoever, except for professional signage advertising the sale or lease of a fully completed dwelling house constructed on the Lot or advertising a business operating from the Lot, provided such sign does not exceed 500mm by 500mm in its dimensions. Any sign or advertising material erected or displayed on the Lot in breach of this covenant may be removed without notice by the Seller.

**BUYER..... BUYER.....**

**WITNESS..... DATE ...../...../2009**

**SELLER/S.....**

**WITNESS ..... DATE ...../...../ 2009**