

# AUBIN RISE PRIVATE ESTATE, AUBIN GROVE - LOT \_\_\_\_\_

## ANNEXURE A

### THE PARTIES AGREE AS FOLLOWS:

#### 1. DEFINITIONS

1.1 In this Contract, unless a contrary intention appears:

- (a) “**Authority**” means Federal, State or local government, government department, instrumentality or authority, statutory body or agency, Court, tribunal, official acting under any written law, or other public body or authority of any kind;
- (b) “**Land**” means the land contained within Certificate of Title Volume \_\_\_\_ Folio \_\_\_\_.
- (c) “**Property**” means the lot the Buyer agrees to purchase upon sub-division of the Land, being Lot \_\_\_\_
- (d) “**Restrictive Covenants**” means those covenants contained at the end of this Contract and marked “Restrictive Covenants.”

#### 2. VARIATION TO PROPERTY PARTICULARS

##### 2.1 Variations

The Buyer makes this Offer to the Seller for the Purchase of the Property hachured in the diagram of the Land annexed hereto even though the Property has not been approved as a separate Lot, and is subject to final conditions of subdivision and a final survey. The Buyer hereby acknowledges that it shall make no objection, requisition nor claim to compensation, in respect of any minor changes to the same, which do not materially detrimentally affect the value of the Property even though the Property may vary in respect of the following:

- (i) the Property’s size or area being varied, such variation not exceeding more than 3% of the Property’s overall size or area;
- (ii) provision or position of retaining walls within the Property;
- (iii) the location of its boundaries being varied;
- (iv) the Property’s ground level being varied;
- (v) the angles of the Property’s boundaries being varied; and
- (vi) the Property becoming subject to restrictive covenants including:
  - 1. the Restrictive Covenants; and/or
  - 2. restrictive covenants in gross in favour of the Local Authority.

##### 2.2 Variation in Property size

Where, upon final survey, the overall Property size or area is varied by more than 3%, either Party may terminate the Contract, after which time, no Party will have any claim or right of action against the other arising from the termination, except in respect of any matter which arose before the termination. If the Buyer terminates the Contract pursuant to this clause 2.2, the Seller will refund the Deposit within 15 days. The right to terminate the Contract as contained in this Clause 2.2 shall expire fourteen days after the Buyer is advised of the final overall Property size and area.

##### 2.3 Settlement

Where the overall Property size or area is varied by more than 3%, and yet the Buyer elects to proceed to the settlement of the Property in any event, and does not terminate this Contract pursuant to clause 2.2, the Buyer thereby waives any right of action of claim for compensation or any claim whatsoever that the Buyer might have had against the Seller as a result of such a variation.

##### 2.4 Joint Form of General Conditions

Clause 13.5 of the *Joint Form* is hereby deleted.

##### 2.5 Buyer Acknowledges Subdivision and Restrictive Covenants

The Buyer makes this Offer knowing that the Property is part of an overall subdivision of the Land and that easements and restrictive covenants are made without the notice to the Buyer and without compensation paid to the Buyer. The Buyer accepts such encumbrances on the title, knowing that these encumbrances bind any proposed transferees of the Lot. For the avoidance of all

doubt, the Buyer acknowledges that the Property may become subject to the Restrictive Covenants which may be lodged by the Seller in its complete discretion.

## **2.6 Survey and Setbacks**

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 any survey pegs marking the boundary of the Property. Further, the Buyer hereby agrees to bear the cost of any replacement pegs or resurvey required to identify the boundaries of the Property. Finally, the Buyer acknowledges and agrees that owners of adjoining land will be permitted by the Buyer to construct a residence on the boundary of the Property with a zero setback and the Seller may provide such consent where the Lot is unsold at the time of receipt of the request from the adjoining buyer.

## **2.7 Dividing Fences**

The Buyer shall not make any claim against the Seller pursuant to the *Dividing Fences Act 1961*, and the Seller shall be entitled to plead this clause as a bar to any action made by the Buyer against the Seller pursuant to the *Dividing Fences Act 1961*.

## **3. SELLER TO CARRY OUT SUBDIVISION**

Subject to the terms hereof, the Seller shall use its best endeavours to complete subdivision of the Land so as to create the sub-divisional Property and comply with all conditions that may be issued from time to time by the Planning Commission.

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

The Buyer acknowledges and hereby covenants that, while the Contract remains subject to the condition precedent in Clause 13 of the *Joint Form* (as amended by this Contract), the Buyer shall not be entitled to caveat the sub-divisional land, or any part thereof, at any time.

The Buyer hereby irrevocably appoints each director of the Seller, severally, as the Buyer's attorney in the Buyer's name, to execute and lodge at the WALIA a withdrawal of caveat lodged by the Buyer over the Property or the Land, at the Buyers expense.

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

### **5.1 Clause 4.2**

Clause 4.2 of the Joint Form is modified to the extent that the Seller will not be liable to allow for compensation to the Buyer at the prescribed on the balance of the Purchase Price payable at Settlement for any reason.

### **5.2 Clause 9.1(c)**

Clause 9.1(c) of the Joint Form is deleted and substituted with the following clause:

*"The Seller and the Buyer acknowledge that all dividing fences erected by the Seller on the Land are not necessarily on the boundaries of the Land, and the Buyer acknowledges that he/she does not have a claim against the Seller in this respect."*

### **5.3 Clause 13.2(b)**

Clause 13.2(b) of the Joint Form is amended by deleting the expression "within 6 months after the Contract Date" and substituting that expression with the following:

*"within ten (10) months after the Contract Date."*

### **5.4 Clause 13.3(a)(1)**

Clause 13.3(a)(1) of the Joint Form is amended by deleting the expression "6 months after approval for subdivision by the Planning Commission" and substituting that expression with the following:

*"fifteen (15) months after the Contract Date."*

### **5.5 Clause 13.3(a)(2)**

Clause 13.3(a)(2) of the Joint Form is amended by deleting the expression "within 3 months after the date of endorsement of approval by the Planning Commission in accordance with subclause (1)" and substituting that expression with the following:

*"within 18 months after the Contract Date."*

### **5.6 Clause 13.9(b)(1)(2)**

Clause 13.9 (b)(1)(2) of the Joint Form is deleted and substituted with the following clause:

*"Settlement shall be effected on or before fourteen (14) days after the service of a notice by the Seller or its Settlement agent to the Buyer or its Settlement Agent that the titles have been issued at WALIA."*

### **5.7 Clause 15**

Clause 15 of the Joint Form is deleted and substituted with the following 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."*

### **5.8 Clause 18.2**

Clause 18.2 of the Joint Form is deleted and substituted with the following clause:

*"The Purchase Price is inclusive of GST, and any GST payable by the Seller will be calculated using the "Margin Scheme" as defined in Division 75 of a New Tax System (Goods and Services Tax) Act 1999."*

**5.9 Clause 24.7**

Clause 24.7 of the Joint Form is hereby deleted.

**6. EXTENSION OF TIME**

In the event that the parties agree to extend the time for satisfaction of any condition in this contract the Settlement Date hereinbefore mentioned shall remain unaltered unless the parties agree in writing to the contrary.

**7. WAPC CONDITIONS OF SUBDIVISION**

If the Planning Commission grants approval for the subdivision of the Property from the Land, or part of that Land, subject to a condition:

- (a) that makes the subdivision of the Land or the Property un-viable in the sole opinion of the Seller; or
- (b) 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 no Party will have any claim or right of action against the other arising from the termination, except in respect of any matter which arose before the termination.

**8. BREACH OF COVENANT**

The Buyer hereby warrants that it shall observe and perform the Restrictive Covenants, and, in the event of the Buyer breaching any restrictive covenant, the Buyer hereby indemnifies the Seller for all legal costs incurred by the Seller in obtaining the remedy of the breach including all legal costs, solicitor costs and other professional services costs as are reasonably incurred. Further the Buyer acknowledges that the Restrictive Covenants shall only encumber residential lots comprising the Land.

**9. 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:

- (a) by physical examination and inspection (where applicable), and relying on the opinion or advice of such experts as the Buyer may wish to consult as to the state, condition, quality and quantity of the Property and each and every part thereof.
- (b) By enquiry of all relevant authorities in respect of the zoning of the Property and the use to which the Property may be put, and easements, restrictive covenants or other agreement to which the Property may be subject and as to the requirements of each and every authority, body or government department which has control or jurisdiction over the Property in relation to the use of the Property for any purpose; and
- (c) Shall be deemed to purchase the Property in reliance solely of those factors particularised in clause 9(a) and 9(b) of this Contract above.

**10. ENFORCEABILITY**

IF A COURT DECIDES that any part of this Contract is invalid or unenforceable, that part of the Contract will be modified (if possible) so that it is enforceable. If that part cannot be modified, it will be severed and the rest of the Contract will continue to operate.

**11. ENCUMBRANCES**

**11.1 Property sold subject**

The Property is sold subject to:

- (a) all easements, restrictive covenants, rights, reservations and conditions which are or will be contained in the Certificate of Title or Crown Grant of the Property as at the Settlement Date;
- (b) 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;
- (c) All claims, demands, conditions (including building conditions) or restrictions whatsoever imposed or made on the Property by any Local Authority or by any Public Authority; and
- (d) Any restrictive Covenants lodged by the Seller. (collectively "**Encumbrances**")

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.

### 11.2 Commission and Local Authority

Without limiting condition 11.1, the Buyer hereby acknowledges and agrees that an easement, restrictive covenant or notification may be registered over the title to the Land at settlement as a result of the requirements of the Commission or Local Authority.

### 11.3 Encumbrances

The Buyer hereby acknowledges that, should any Encumbrance contained within this clause 11, 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.

### 12. FINANCE APPROVAL

If in partial satisfaction of condition 1, Finance Approval, on the Contract, a finance approval is obtained from the Lender before the Latest Time and such approval is expressed to be subject to any term or condition whatsoever ("the Conditional Approval") then the Seller may by notice in writing require the Buyer to waive the condition for such finance approval or tender an unconditional finance approval within 10 Business Days of the date of the Seller's notice to the Buyer.

If the Buyer fails to either provide an unconditional finance approval or waive the finance condition on the contract within 10 Business Days of the Seller's notice to the Buyer, the Seller may notify the Buyer that the Conditional Approval is insufficient and that finance approval is therefore deemed declined. The Contract will be at an end upon service of further notice by the Seller on the Buyer and all deposit monies paid shall be refunded.

### 13. FENCING

Should the Buyer complete the construction of the residence on the Property within 18 months of the Settlement Date, to the Seller's satisfaction, the Seller shall procure for the Buyer the provision and erection, by a contractor or contractors nominated by the Seller, of boundary fencing at the Property in compliance with the Restrictive Covenants at a nominal height (not including the height of any retaining wall on which the fencing may be constructed) of 1.8 metres provided that:

- a. such fencing works are completed within six months of completion of the Dwelling;
- b. the Buyer must contact the Seller's fencing contractor by post or fax;
- c. 3 weeks prior to the completion of their dwelling. The Seller's nominated fencing contractor is:

**Mr Andrew Corruthers**  
**Lowtherfield Contracting.**  
P.O BOX 5035,                      Fax:            9455 4987  
Canning Vale South,            Mobile no: 0438 562 775  
WA 6155.

- d. The Seller may engage such other fencing contractor as it sees fit;
- e. If the Seller engages such other fencing contractor it shall give reasonable notice of such engagement to the Buyer.
- f. Where there is a retaining wall along a boundary to be fenced, the fence will be erected on the inside of the high side of the retaining wall at the election of the Seller;
- g. it is the Buyer's responsibility to ensure that the area of land to be fenced has been suitably retained;

For the purposes of this clause the Buyer hereby grants all reasonable access which may be required by the Seller, its servants, agents and contractors from time to time for the purpose of constructing the boundary fencing, and acknowledges that neither the Seller nor its servants, agents and contractors are required to consult with or otherwise obtain approval from the Buyer prior to the construction of a boundary fence on the Buyer's lot on behalf of the Buyer of any lot adjoining the Buyer's lot. Where boundary fencing is constructed pursuant to this condition, sections 7 to 13 (inclusive) of the Dividing Fences Act (1961-1969) shall not apply.

The benefits provided by virtue of this clause are only available to the Buyer, and not its successors in title.

In the event that the Seller constructs any of the boundary fences described in Annexure A, Condition 13, and in consideration of the Seller's undertakings in that regard, the Buyer hereby sets over and assigns to the Seller all of the Buyer's right, title and interest in any claims under the *Dividing Fences Act 1961* as amended ("Act") which the Buyer as the owner of the property might have against any owner of land adjoining the Property ("Adjoining Owner") to claim the maximum amount payable by any Adjoining Owner to the Buyer under the Act ("Fence Contribution Amount") with respect to those boundary fences constructed by the Seller.

For the avoidance of doubt, the Buyer acknowledges and agrees that the Seller may take such action as the Seller sees fit for and in the name of the Buyer to recover a Fence Contribution Amount from any Adjoining Owner provided that all costs and fees in taking such action will be borne by the Seller.

#### 14. ANY OTHER MATTERS

If any matter arises prior to the subdivision being carried out that in the opinion of the Seller makes the subdivision un-viable the Seller may terminate this contract by refunding the Deposit and giving notice to the other Party, after which time no Party will have any claim or right of action against the other arising from the termination, except in respect of any matter which arose before the termination.

#### 15. ACKNOWLEDGEMENT

The Buyers hereby acknowledges that the completion of the physical construction of the Property, as a separate Lot, is not a requirement for the separate Certificate of Title for the Property to be issued. Where the physical construction of the Property, as a separate Lot, has not been fully completed at the time of issue of a separate Certificate of Title, then Settlement must still occur. Most delays in the construction of the Property, as a separate Lot, are generally not the fault of the Seller. Some House Building Contracts may contain provisions for price increases due to time delays in commencing construction, which may be the result of the physical construction of the land not having been fully completed as originally anticipated. This may cause the cost of constructing the Buyer's house to increase. The Seller or the Seller's Representative will not be responsible for any loss the Buyer may incur should costs increase as a result of any such delay.

#### 16. RESTRICTIVE COVENANTS

"The registered proprietor hereby covenants:

- (1) Not to construct, erect or install or permit to be constructed, erected or installed on the Lot without the prior written approval of the Seller:
  - (a) more than one (1) private single residential dwelling;
  - (b) Where the Lot is less than 500 square metres in area, any dwelling other than a single, private, non-transportable dwelling house having a floor area of 120 square metres or more and being constructed predominantly of clay face brick, painted cement rendered brick or stone elevations. The area of such dwelling is to be calculated so as to exclude any areas comprised in any garages, storerooms, verandas, balconies, pergolas and other out-buildings of any nature whatsoever, including al fresco areas situated under the main roof of the dwelling;
  - (c) Where the Lot is greater than 500 square metres in area, any dwelling other than a single, private, non-transportable dwelling house having a floor area of 170 square metres or more and being constructed predominantly of clay face brick, painted cement rendered brick or stone elevations. The area of such dwelling is to be calculated so as to exclude any areas comprised in any garages, storerooms, verandas, balconies, pergolas and other out-buildings of any nature whatsoever, except al fresco areas situated under the main roof of the dwelling ;
  - (d) Any dwelling having a roof pitch of less than 24 degrees, or any dwelling with a roof constructed of zincalume or any other significantly reflective material;
  - (e) Any dwelling house without, at the same time providing an enclosed garage for not less than two motor vehicles, parked side by side, which:
    - (i) Includes a garage door sufficient to completely screen the interior of the garage from the street;
    - (ii) Is built under the main roof of the dwelling, or constructed in a manner that matches the dwelling house in respect of the design, materials used, roof pitch and external appearance, including colour and quality of appearance;
    - (iii) Includes a driveway and cross-over constructed of brick paving and extending to the road kerb in the same material; ;
  - (f) Any pergola or like structure which is visible from the street or road adjacent to the Lot or from adjacent lots unless the pergola or like structure is constructed of the same materials and of the same colour and style as the walls and the roof of the main dwelling constructed on the Lot;
  - (g) Any retaining wall that faces a street frontage unless constructed of:
    - (i) the same brick or with the same finish as the walls of the main dwelling on the Lot; or
    - (ii) the same material as used by the Developer in the construction of retaining walls for the estate;
  - (h) Any fence forward of the front building line of the dwelling house or any fence to the front boundary facing the street;
  - (i) Any free-standing structure (including a garden shed) of 9 square metres or less, unless such structure:
    - (i) Is substantially hidden from public view from immediately adjacent streets and parks;
    - (ii) Is not constructed of zincalume or any other significantly reflective material; and
    - (iii) Does not project above the height of any surrounding boundary fence by more than 300mm.
  - (i) Any free-standing structure (including a garden shed) of greater than 9 square metres but less than 36 square metres, unless such structure:
    - (i) Is substantially hidden from public view from immediately adjacent streets and parks;
    - (ii) Is not constructed of zincalume or any other significantly reflective material;
    - (iii) Does not project above the height of any surrounding boundary fence by more than 600mm; and
    - (iv) Has been approved in writing by the registered proprietor of each lot surrounding the land on which such structure is erected.
  - (j) Any free-standing structure (including a garden shed) in excess of 36 square metres, unless such structure matches the dwelling in respect of materials used, design and external appearance including colour and quality of construction;

- (k) Any structure attached to the dwelling house, unless such structure matches the dwelling house in respect to materials used, design and external appearance including colour and quality of construction, unless it is hidden from public view;
  - (l) Any hot water heater, clothes line, satellite or cable dish, or rainwater tank except in accordance with the manufacturer's instructions and which is hidden from public view; and
  - (m) Any air conditioner or evaporative cooler except in accordance with the manufacturer's instructions and which is of a similar colour to the roof.
- (2) Not to park or allow to be parked on the Lot or on the road reserve next to or adjacent to the Lot any commercial vehicles including trucks, utilities, caravans, boats, trailers, or any other mobile machinery ("Commercial Vehicles") unless such Commercial Vehicles are housed or contained wholly within the Lot and are hidden from public view.
  - (3) Not to conduct or permit to be conducted any repairs or restorations of any motor vehicle, boat, trailer, aircraft, or any other vehicle, on the Lot or any part other than wholly within a garage on the Lot or any part thereof;
  - (4) Not to damage, alter, extend, build up or affect the visual appearance of any retaining wall on the land unless first approved by the Seller in writing.
  - (5) Not to allow the front yard and verge abutting the Lot to become overgrown or invaded by weeds or to fall into a state of disrepair or damage any trees planted on the verge abutting the Lot;
  - (6) 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.
  - (7) Not to permit or authorise any part of a residence constructed on the Lot to be used in any way directly or indirectly for any retail, business, commercial or non-residential purpose other than a business purpose which is quiet and unobtrusive and which does not in any way detract from the general amenity of the Lot;
  - (8) Not to subdivide the Lot to create two or more lots.

The above covenants shall endure for the benefit of and run at law and in equity with every allotment on the plan of subdivision of which the Lot forms part until **31 December 2012** to the extent that the same shall bind the registered proprietor, its transferees, executors, administrators, successors in title and assigns for the benefit of the registered proprietor or proprietors of the remainder of the lots comprised in the said plan of subdivision or any part or parts thereof."

BUYER: \_\_\_\_\_

BUYER: \_\_\_\_\_

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

DATE: \_\_\_\_ / \_\_\_\_ / 2007

DATE: \_\_\_\_ / \_\_\_\_ / 2007

SELLER: \_\_\_\_\_

SELLER: \_\_\_\_\_

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

DATE: \_\_\_\_ / \_\_\_\_ / 2007

DATE: \_\_\_\_ / \_\_\_\_ / 2007