

ANNEXURE A – SPECIAL CONDITIONS

These are the Special Conditions referred to in and that form part of the Contract for Sale of Land by Offer and Acceptance dated _____/_____/20____ made between the following persons concerning the following property (“**Contract**”):

BUYER: _____;

SELLER: _____;

PROPERTY: Lot _____ on Deposited Plan/Survey Strata Plan; _____
of _____ Estate, Suburb _____.

1 DEFINITIONS AND INTERPRETATION

In these Special Conditions, unless the context requires otherwise:

- (a) clause 26 of the 2009 General Conditions shall apply to the interpretation as if a reference to ‘document’ was a reference to these Special Conditions;
- (b) a word defined in the 2009 General Conditions shall have the meaning given to that term;
- (c) headings are for convenience of reference only and do not affect interpretation;
- (d) “**2009 General Conditions**” means the Joint Form of General Conditions for the Sale of Land 2009 Revision;
- (e) “**Authority**” means a statutory authority or public body having jurisdiction over any part of the Subdivision, including but not limited to the Planning Commission and relevant local authority;
- (f) “**Contract**” means the Contract referred to above, including these Special Conditions and the 2009 General Conditions;
- (g) “**Latest Date**” means 24 months after the Contract Date;
- (h) “**Seller’s Restrictive Covenants**” means a Restrictive Covenant, substantially in the form of that comprising Annexure B of the Contract, that the Seller intends imposing on and registering against the Property for the purpose of maintaining and enhancing the standards and visual amenity of the Subdivision;
- (i) “**Special Conditions**” means the special conditions comprising this Annexure A of the Contract; and
- (j) “**Subdivision**” means the subdivision that the Seller intends undertaking in which the Property will be created as a separate Lot.

2 CONDITIONS

2.1 Subdivision approvals

Should any Authority grant approval for the Subdivision subject to any condition, or should any other issue arise, that:

- (a) makes the Subdivision or creation and/or sale of the Property unviable, in the sole but reasonable opinion of the Seller;
or
 - (b) the Seller is unwilling, in its absolute discretion, to comply with,
- the Seller may at anytime thereafter, by notice in writing, terminate the Contract.

2.2 Issue of Certificate of Title

- (a) The Contract is subject to and conditional upon a separate Certificate of Title being issuing for the Property on or before the Latest Date. Should a separate Certificate of Title not issue on or before the Latest Date, either Party may, by notice in writing to the other, terminate the Contract.
- (b) Should the Seller, acting reasonably, form the opinion that a separate Certificate of Title will not be issued by Landgate for the Property on or before the Latest Date, the Seller may by notice in writing to the Buyer terminate the Contract.

3 ACKNOWLEDGMENTS

3.1 General acknowledgements

The Buyer acknowledges and agrees that:

- (a) he/she has read and understood the Contract including all annexures, schedules and appendices;
- (b) he/she has sought independent legal advice with respect to his/her individual rights and obligations pursuant to the Contract or has had the opportunity to do so and chosen not to on the basis that he/she has fully understood and comprehended those rights and obligations;

- (c) the Seller is at liberty to assign all or any of its rights under the Contract at any time;
- (d) the Seller provides no representation or warranty that the location of any survey pegs is correct and is under no obligation to maintain any survey pegs; and
- (e) all materials provided to the Buyer by the Seller or its agents (including advertising, sales brochures and plans) have been prepared and provided in good faith and are believed to be, and taken as, correct. No error, omission or misdescription of the Property will void or annul the sale of the Property or give rise to any claim or right of action against the Seller.

3.2 Subdivision acknowledgments

The Buyer acknowledges and agrees that:

- (a) he/she is purchasing Land that is part of a Subdivision that is yet to receive final approval from all Authorities and be the subject of a final survey;
- (b) as part of the approval process conditions may be imposed on the Subdivision, which may affect the Property, such as the requirement for easements, restrictive covenants, Title Notifications or Memorials. These may be for varying matters, such as building dimensions and appearance, the location of and access to drainage and utilities; restrictions on ground water usage; requirements for water conservation devices; environmental conservation; and factors affecting the area that the Property is located and the permitted uses within this area;
- (c) the Property may contain or utilise shared services/infrastructure such as drainage pits. Those properties utilising any shared services/infrastructure shall have unfettered access to these services/infrastructure.
- (d) following final approval and survey, the Property may vary in respect of:
 - (i) its lot or street number/name;
 - (ii) its boundaries (including location and angle) and accordingly its dimensions, size and area;
 - (iii) its ground level (height, gradient or otherwise);
 - (iv) the provision or position of any retaining walls;
 - (v) the provision or location of any services, utilities or the like to or affecting the Property; and/or
 - (vi) its Encumbrances; and
- (e) it is the intention of the Seller, although it is under no obligation, to register the Seller's Restrictive Covenants over all or part of the Subdivision to maintain and enhance the standard and visual amenity of the Subdivision.

4 Encumbrances

The Property is sold to the Buyer subject to any:

- (a) easement, right, reservation or other condition affecting any part of the Property, or any Memorial, restrictive covenants or Title Restrictions that is or will be registered against the Property at Settlement (including but not limited to any that relates to a matter referred to in clauses 3.2(b), 3.2(c) and 3.2(e));
- (b) claims, demands, conditions (including building conditions) and restrictions imposed or made by any Authority; and
- (c) maintenance of public open space levy or other statutory levy imposed on the Property.

5 Variations to Subdivision

5.1 Staging

The Buyer acknowledges and agrees that the Subdivision and release of the resulting lots may occur in one or more stages, separately or concurrently, in the Seller's absolute discretion. The Seller makes no representations as to whether any stage will be undertaken and if undertaken the timing and final number and size of lots. The Seller retains absolute control over determining the timing and make up of any stage of the Subdivision.

5.2 Variations

The Seller may make any change to the Subdivision, including but not limited to the dimensions of the Property:

- (a) where arising from any condition imposed by an Authority;
- (b) in accordance with any recommendation of the Seller's planners, surveyors, environmental consultants, engineers or the like and not materially adversely affecting the Buyer's reasonable use and enjoyment of the Property;
- (c) due to matters that arise which the Seller could not have reasonably foreseen; or
- (d) where the Seller in good faith believes the changes will enhance the Subdivision.

6 CLAIMS FOR ENCUMBERANCES OR VARIATIONS

6.1 Limitation on objections

The Buyer shall make no objection, requisition or claim for compensation nor have any right to terminate the Contract or attempt to delay settlement by virtue of any matter referred to in clauses 3, 4 or 5, provided that such matters have not resulted in a reduction of the size of the Property (as compared to that shown in Annexure C) by greater than three percent (3%) or materially prejudiced the reasonable use of the Property. Should the Property's size be reduced by greater than three percent (3%) or its reasonable use be materially prejudiced due to such matters, the Buyer may at anytime within thirty (30) days of becoming aware of the matter, by notice in writing, terminate the Contract.

6.2 Increase in Property size

Should the size of the Property (as compared to that shown in Annexure C) be increased by greater than three percent (3%), the Seller may, by notice in writing to the Buyer, inform the Buyer of its intention to increase the Purchase Price by the same percentage that the Property's size has increased. The Buyer may within thirty (30) days of receiving such notice, by notice in writing, agree to or reject the increase in the Purchase Price. Should the Buyer fail to agree to the increase in the Purchase Price the Seller may, at anytime thereafter by notice in writing to the Buyer, terminate the Contract.

6.3 Notification

The Seller shall notify the Buyer, within a reasonable time of it becoming aware, of any matter referred to in clauses 3, 4 or 5 that is not disclosed in the Contract and will have a material adverse impact on the size or reasonable use of Property.

6.4 Settlement is waiver

Settlement constitutes a full waiver of any right, action or claim whatsoever that a Party may have due to any matter referred to in clauses 3, 4, 5 or 6.

7 CAVEAT

- (a) The Buyer must not, before the issue of a separate Certificate of Title for the Property, lodge any caveat against all or any part of the land comprising the Subdivision and to protect the Buyer's interest under the Contract. Should the Buyer lodge any such caveat, he/she irrevocably and unconditionally:
- (i) appoints the Seller and each of its directors, agents and employees jointly and severally as his/her attorney to take all such actions and execute all such documents in the Buyer's name as the Seller, acting reasonably, deems necessary to withdraw and/or remove such caveat (including but not limited to lodging any applications or forms at Landgate);
 - (ii) indemnify the Seller and shall keep the Seller indemnified against all costs, expenses and/or damages that the Seller may suffer as a result of such caveat, the Seller taking any action to withdraw and/or remove the caveat and any delay the caveat may cause in the completion of the Subdivision and sale and settlement of the resulting lots;
 - (iii) ratify and confirm all things whatsoever done under this power of attorney; and
 - (iv) within fourteen (14) days of receiving a written demand from the Seller, execute a power of attorney in registrable form to give effect to this clause 7(a).
- (b) Any person, including Landgate, dealing with the attorney or a person purporting to be an attorney under clause 7(a), is entitled to rely on execution of any document by that person as conclusive evidence that:
- (i) the person holds the office set out in the power;
 - (ii) the power of attorney has come into effect;
 - (iii) the power of attorney has not been revoked; and
 - (iv) the right or power being exercised or purported to be exercised is properly exercised and that the circumstances have arisen to authorise the exercise of that right and power,
- and is not required to make any inquiries in respect of any of the above matters.
- (c) Nothing contained or implied in this clause prejudices, limits or otherwise affects the Seller's right to otherwise claim damages from the Buyer from any breach of this clause.

8 DEPOSIT

8.1 General

- (a) The risk of the Deposit and any interest that may accrue is that of the person who is ultimately entitled to those amounts. The Deposit Holder is not responsible for any loss on any investment of the Deposit pursuant to the Contract.
- (b) Clause 1.7 of the 2009 General Conditions shall not apply where the Seller is entitled to the Deposit due to a repudiation of the Contract by the Buyer and the procedure outlined in clause 1.2 of the 2009 General Conditions has been followed.
- (c) Should the Deposit be invested in an interest bearing trust account:

- (i) the Deposit Holder shall be entitled to a reasonable administration fee for administering such account. Such fee shall be deducted from any interest that may accrue on the Deposit;
- (ii) the Deposit Holder shall be responsible for lodging any necessary taxation returns and paying any tax in relation to the Deposit and any interest that may accrue. The Parties irrevocably indemnify the Deposit Holder against any such tax and irrevocably authorise the Deposit Holder to deduct such amount from the Deposit, should the Parties fail to pay that amount to the Deposit Holder within a reasonable period after being requested in writing to do so; and
- (iii) interest shall accrue for the benefit of the Buyer provided that:
 - A. the Buyer shall not be entitled to any interest during any period in which the Buyer is in default of the Contract or the Seller becomes a Deposit Claimant, with the Seller entitled to any interest during such periods;
 - B. the Seller shall be entitled to any and all interest that may have accrued should the Deposit be forfeited; and
 - C. the right of a Party to any interest is subject to clauses 8.1(c)(i) and 8.1(c)(ii).

9 AMENDMENTS TO GENERAL CONDITIONS

- (a) Clauses 4.2, 9.1(a)(4), 9.1(a)(5), 9.1(c), 9.1(e), 13, 15, 18 and 24.7 of the 2009 General Conditions do not apply to the Contract.
- (b) Should there be any inconsistency between these Special Conditions and the 2009 General Conditions, these Special Conditions will prevail to the extent of the inconsistency.

10 NO REPRESENTATIONS OR WARRANTIES

- (a) The Seller makes no representations and gives no warranties regarding the Property or Subdivision, other than those that are an express term of the Contract or imposed by statute, mandatory and cannot be excluded by agreement of the Parties.
- (b) The Buyer must make and rely on his/her own inquiries concerning the Property and all conditions relating to the Property. The Buyer has or is taken to have entered into the Contract in sole reliance of these inquiries and not upon any alleged statement, warranty, condition, or representation whatsoever made to or alleged to have been made to the Buyer by the Seller or any agent of the Seller.

11 SETTLEMENT

- (a) The Settlement Date shall be that stated in the Offer and Acceptance or, where none is mentioned in the Offer and Acceptance, the date that is fourteen (14) days after the later of:
 - (i) the Contact Date; or,
 - (ii) where a separate Certificate of Title has not issued for the Property before the Contract Date, the date on which the Seller notifies the Buyer that a separate Certificate of Title has issued for the Property.
- (b) The Buyer shall deliver the Transfer to the Seller's Settlement Agent, duly executed and stamped, no less than seven (7) days prior to the Settlement Date.
- (c) The Buyer shall not demand any bank fees from the Seller should the Seller require no more than three (3) bank cheques at Settlement. Where the Seller requires four (4) or more bank cheques at Settlement the Seller shall reimburse the Buyer's reasonable bank fees incurred in obtaining more than three (3) bank cheques.

12 FENCES

- (a) The Buyer acknowledges that any dividing fences erected by the Seller on the Property may not be on the boundaries of the Property and that the Buyer shall have no claim or right of action against the Seller should they not be.
- (b) The Buyer shall not make any claim against the Seller pursuant to the Dividing Fences Act 1961.

13 SIGNAGE

Except with the Seller's prior written consent, which may be withheld in its absolute discretion, no sign hoarding or advertising of any description shall be erected or displayed on the Property other than professional signage of dimensions not exceeding 500mm high by 500mm wide which advertises:

- (a) the sale or lease of a fully completed dwelling constructed on the Property; or
- (b) a business operating from the Property.

The Seller may, without notice, remove any sign hoarding or advertising that breaches this clause 10.

14 MISCELLANEOUS

14.1 GST

The Purchase Price is inclusive of GST, with the Margin Scheme applied in calculating any GST payable by the Seller. The Buyer acknowledges that, in accordance with the provisions of the Margin Scheme, he/she cannot claim any GST input credits for the purchase of the Property.

14.2 Adjustments where Outgoings not yet issued

If a separate assessment of any Outgoing has not been issued for the Property before the Settlement Date, then the Seller's Settlement Agent will prior to the Settlement Date notify the Buyer (via his/her settlement agent, if any) of a reasonable estimate of the proper proportion of that Outgoing payable by the Buyer and the Buyer will pay this amount to the Seller's Settlement Agent to be held by them in their trust account until an actual assessment of the Outgoing has been received whereupon the Seller's Settlement Agent will apportion the Outgoing and deduct from their trust account the Buyer's proportion. If after the apportionment there is any balance due to the Buyer then the Parties irrevocably direct the Seller's Settlement Agent to pay that balance to the Buyer as soon as is practicable. If after the apportionment there is any shortfall in the amount due by the Buyer then the Buyer shall pay that amount to the Seller within fourteen (14) days of receiving a written demand to do so.

14.3 Referral arrangements

The Seller may have referral arrangements with various persons including registered builders. Should the Buyer have been referred to the Seller by any such person, the Buyer acknowledges that a fee may be payable by the Seller to the referee and consents to such fee being paid.

14.4 Termination

Should the Contract be terminated pursuant to clauses 2, 6.1 or 6.2, the Deposit shall be promptly refunded to the Buyer in full following which neither Party shall have any claim or right of action against the other for the termination.

14.5 Severability

If any part of the Contract can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any part of the Contract is illegal, unenforceable or invalid, that part is to be treated as removed from the Contract, but the rest of the Contract is not affected.

14.6 Waiver

The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon that Party by the Contract does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under the Contract.

SIGNED BY:

BUYER _____ Date / /

Witness _____ Date / /

BUYER _____ Date / /

Witness _____ Date / /

SELLER _____ Date / /

Witness _____ Date / /

ANNEXURE B – RESTRICTIVE COVENENANT (AS PROPOSED)

OPERATIVE PART

1. Pursuant to section 136D of the *Transfer of Land Act* 1893 the Developer hereby creates restrictive covenants on all the Lots, unless otherwise specified, in the following terms:

A registered proprietor shall not:

Compliance

- (a) Develop a Lot or construct upon a Lot a dwelling unless such development or construction is in compliance with the requirements of the Residential Design Codes, the Town Planning Scheme, the approved Detailed Area Plan (as may apply) and all relevant by-laws and policies of the relevant Shire or council;

Minimum Street Front Elevation

- (b) If a Lot has a street frontage width of greater than fifteen (15) metres, construct a dwelling with a street front elevation width of less than eighty percent (80%) of the street frontage width of the Lot. For the purpose of a corner lot, the street frontage relates to the primary street frontage only and for the purpose of measuring the street frontage width, any truncation is ignored and the measurement is taken along the side of the Lot abutting the primary street;
- (c) If a Lot has a street frontage width of less than fifteen (15) metres, construct a dwelling with a street front elevation width of less than seventy-five percent (75%) of the street frontage width of the Lot. For the purpose of a corner lot, the street frontage relates to the primary street frontage only and for the purpose of measuring the street frontage width, any truncation is ignored and the measurement is taken along the side of the Lot abutting the primary street;

External Finish

- (d) Construct a dwelling with external wall materials not primarily made of stone, face brick or painted or coloured cement render;
- (e) Construct a dwelling without incorporating either a portico, gable or feature wall into the street front elevation of the dwelling;
- (f) Construct a dwelling unless each street facing facade is made up of at least two (2) different colours or textures with each such colour or texture (as applicable) making up at least ten percent (10%) of the total surface area of the relevant facade. For the purpose of this clause the term "facade" does not include the roof, gutters, downpipes, windows or doors;
- (g) Construct a dwelling with roofing materials other than concrete or clay tiles or colourbond sheeting (Zincalume is not permitted) and with a pitch of less than twenty-four degrees (24°);

Garage

- (h) Construct a dwelling without a garage capable of housing at least two (2) motor vehicles. Such garage shall not be constructed other than in a manner which compliments the dwelling in respect to roof pitch, materials used, design, colour and external appearance;
- (i) Construct a garage without a roller or tilt type door to shield vehicles parked in the garage from the street;
- (j) Construct out buildings greater than 20m² and/or higher than 3m unless they are constructed from materials that compliment the dwelling in appearance;

Driveways

- (k) Construct a dwelling, unless a driveway and cross-over between the road and the parking area on the Lot are constructed and completed at the same time as or prior to occupation of the dwelling. Any driveway or crossover constructed shall not be less than three metres (3m) wide and no greater than six metres (6m) wide or constructed from anything other than brick pavers, concrete or similar; concrete must be coloured and not natural colour.

Solar Heaters

- (l) Install solar heaters and air conditioners on that part of a roof facing a street and the solar heaters and air conditioners shall not be painted (or consist of coloured materials) of any colours that do not match the roof colour;

Commercial Vehicles

- (m) Park commercial vehicles including trucks, buses and tractors at the dwelling or on a verge abutting the dwelling unless screened from public view at all times or unless parked during the normal course of business by a visiting tradesman;

Repairs

- (n) Repair, restore or maintain any motor vehicle, motor cycle, boat, trailer or any other vehicle unless carried out behind the building line and screened from public view at all times;

Fences

- (o) Construct side and rear boundary fencing using anything other than "River Sand" or similar coloured "Colourbond" fence panels or sheets with "Slate Grey" or similar coloured capping, posts and rails to a maximum height of one and eight tenths of a metre (1.8m) measured from the ground level up;
- (p) Construct fencing between the dwelling and the side boundary of the Lot or forward of the dwelling along the side and front boundaries, that is visible from the street, from any materials other than the materials of the dwelling, which match the appearance of the dwelling;
- (q) Complete construction of fencing to the dwelling any later than twenty-one (21) days from either the date of builder's handover or the date of occupation of the dwelling, whichever occurs first; or
- (r) Construct a dwelling unless the area between the front building line and the kerb is reticulated and landscaped within sixty (60) days of occupancy.

For Sale Signs

- (s) In relation only to Lots upon which a dwelling is yet to be constructed, from the date that a separate certificate of title for the Lot issues and for a period of two (2) years after that date, display or erect thereon any "For Sale" sign. For the purposes of clarity, this clause is not intended to prevent the registered proprietor of the Lot from selling or otherwise disposing of the Lot;

2. The burden of the covenants and restrictions contained in this deed shall run and bind each of the Lots and bind the registered proprietors and their successors in title, transferees and assigns and shall endure for the benefit and be enforceable by each and every other registered proprietor of the Lots, and their successors in title, transferees and assigns.
3. When at any time two or more persons or corporations own a joint interest in any of the Lots, their liability hereunder will be joint and several. Any person who becomes, is or was a registered proprietor of any of the Lots will be liable for any breach of the restrictive covenant affecting the Lot which occurs while that person or corporation was the (or one of the) registered proprietor(s) of that Lot.
4. A person who becomes a registered proprietor of any of the Lots, may whilst that person is the registered proprietor, enforce or take action in respect of a breach of the restrictive covenants created by this deed notwithstanding the breach complained of, in respect of any of the Lots, may have occurred prior to the person seeking to enforce the breach becoming the registered proprietor of the Lot.
5. The restrictive covenants outlined in this deed shall cease to exist on 31 December 2016.
6. If any part of this deed is void or voidable, then that part shall be severed from this deed so that all parts that are not void or voidable remain in full force and effect and are unaffected by that severance.
7. Headings and sub-headings are inserted for convenience of reference only and shall not affect the interpretation of this deed.
8. In this deed "construct" shall mean to construct, commence to construct, permit or suffer to be constructed or commenced to be constructed.

BUYER _____ Date / /

Witness _____ Date / /

BUYER _____ Date / /

Witness _____ Date / /

ANNEXURE C – PROPOSED PLAN OF PROPERTY