

## **Annexure A – Special Conditions –Titled Lots**

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### **1. General Conditions**

- (a) Conditions 3.7 and 9 of the Joint Form of General Conditions for the Sale of Land (2018 Revision) (**General Conditions**) do not apply to and is excluded from this Contract.
- (b) Unless the context otherwise requires, words and phrases defined in the General Conditions have a same meaning when used in these Special Conditions.

### **2. Timing**

- (a) The Seller, the Seller Agent and the Seller's Representative are not liable for any loss, damage, cost or expense (including, but not limited to, the increase in the money payable under any other agreement entered into by the Buyer concerning the Property), loss of profits or economic loss sustained by the Buyer, in any way arising out of the timing of Settlement or any other planning or subdivision process or infrastructure installation in relation to the Property.
- (b) This Special Condition 2 is intended to confer a direct benefit on the Seller Agent and the Seller's Representative under Section 11 of the Property Law Act 1969.

### **3. Dividing Fences**

The Buyer and the Seller agree that the Seller will have no liability to the Buyer or any other person claiming through the Buyer to contribute to the cost of erecting (except where the Seller has constructed the dividing fence) or repairing any dividing fence whether under the Dividing Fences Act 1961 or otherwise. This Special Condition 3 will not prejudice or affect the rights of the Buyer against any owner of land adjoining the Property (other than the Seller). The Buyer hereby agrees to indemnify the Seller against all claims in respect of and dividing fence on any boundary of the Property from any future owner, legal or equitable, of the Property or any adjoining land. The Buyer will not later than at Settlement deliver to the Seller a signed and completed copy of the Fencing Authority in Annexure F.

### **4. Acknowledgment**

The Buyer acknowledges that no person has expressly or impliedly stated to the Buyer by way of inducement to enter into this Contract that any person will buy at a profit to the Buyer any other land or chattels now owned by the Buyer, nor that any person will at some future time obtain for the Buyer a profit on the Property. The Buyer acknowledges that the Buyer was not induced to enter into this Contract by any unreasonable persuasion on the part of any person.

### **5. Basis of Sale**

The Buyer confirms that it has not in entering into this Contract relied on any warranty, representation or statement, whether oral or written, made or published by the Seller or the Seller Agent or any other person on behalf of the Seller, save as is otherwise expressly provided under this Contract but has relied entirely upon the Buyer's own enquires in relation to and the Buyer's inspection of, the Property. The Buyer further acknowledges that the Buyer has acquainted itself with the use and permitted use of the Property and accepts the Property in its present condition and agrees that the Property is sold subject to all defects of whatsoever nature.

## **6. Advertising Material**

Without limiting Special Condition 5, the Buyer acknowledges and agrees that all brochures, plans, illustrations, photographs, dimensions and other marketing and similar material (whether descriptive or pictorial) provided by or on behalf of the Seller, were provided on the basis that:

- (a) the Buyer has no recourse against the Seller or the Seller Agent in the event of any misdescription, error or omission in the material or on any other basis whatsoever relating to the provision of the material;
- (b) all illustrations and photographs were artists' impressions and may not have been to scale, or accurate representations of the subject; and
- (c) the Seller has reserved the right to make changes to any descriptions, dimensions or details expressed or shown in the material.

## **7. Errors**

If any error or misdescription of the Property occurs the Seller will be at liberty to rescind this Contract by written notice to the Buyer and by returning all moneys paid by the Buyer to the Seller pursuant to this Contract including the Deposit, and thereafter will not be liable to pay the Buyer compensation or refund any expense of the Buyer whatsoever.

## **8. No Objection**

Notwithstanding anything hereinbefore provided, the Buyer will not be entitled to make any objection requisition or claim for compensation, nor to rescind this Contract in respect of:

- (a) the fact that water, drainage, sewerage, gas, electricity, telephone or other services or connections to the Property are not yet available, or may be joint services to any other land, or because any facilities for services for any other land pass through the Property; or
- (b) any works conducted on the Property for the purpose of satisfying subdivision conditions including the construction of retaining walls, services and the cut and/or fill of the Property.

## **9. Encumbrances**

The Property is sold subject to:

- (a) any easements, notifications, memorials or Encumbrance on the Certificate of Title for the Property; and
- (b) the restrictive covenants referred to in Special Condition 14.

## **10. Seller Mortgages and Deposit**

- (a) The Buyer acknowledges that the Property may, as at the date of this Contract, be subject to a mortgage or mortgages.
- (b) The Buyer consents to the Seller further encumbering the Property by granting one or more further mortgages over the Property and other land, prior to Settlement.
- (c) For the purposes of Section 14 of the *Sale of Land Act 1970* (WA), the Seller will discharge any mortgage over the Property on or before Settlement and for that purpose

the Deposit and all other moneys payable pursuant to this Contract will (to the extent required) be applied towards discharging any such mortgage.

(d) The Deposit must be paid to the Deposit Holder.

#### **11. Improvement Maintenance**

The Buyer will not alter or fail to maintain, replace and keep in good order and free from graffiti all feature walls, retaining walls, fences and other improvements constructed by the Seller on the Property.

#### **12. Caveats**

The Buyer will on the request of the Seller withdraw any caveat registered by the Buyer over the Property.

#### **13. Acknowledgements**

The Buyer acknowledges that:

- (a) the Property is sold subject to and the Buyer accepts the matters and disclosures in Annexure D: and
- (b) it has received and accepts the interest disclosure attached as Annexure E.

#### **14. Restrictive Covenants**

The Buyer acknowledges that the Property is sold subject to the restrictive covenants set out in Annexure B (**Covenants**). The Buyer agrees to accept a transfer of the Property subject to the Covenants.

#### **15. Contractual Performance of Covenants**

The Buyer covenants and agrees with the Seller as a separate contractual obligation to observe and perform the Covenants. Nothing obliges the Seller to:

- (a) sell any other land subject to the Covenants or subject to the same Covenants; or
- (b) enforce any breach of the Covenants against the Buyer or the owner of any other land the subject of the Covenants.

#### **16. Planning Requirements**

The Buyer acknowledges having received and read a copy of the Peel Retreat Building Guidelines and the Peel Retreat Residential Plan Approval Procedure prior to entering into this Contract and covenants to comply with the standards and requirements set out therein.

#### **17. Building Approval**

The Buyer agrees with the Seller not to commence any construction on the Property until after the Seller has approved the proposed construction in writing. The Purchaser will deliver to the Seller in respect of any proposed construction two sets of:

- (a) A site plan;

- (b) A floor plan;
- (c) A front, rear and both side elevations;
- (d) A cross section;
- (e) A schedule of external finishes with colours and materials;
- (f) An area schedule showing house and garage floor space, verandahs and other improvements;
- (g) A schedule of fencing, driveway and retaining wall details indicating elevations, heights and materials; and
- (h) A front landscaping plan,

(together the **Plans**). The Seller will within 14 days of receiving the Plans approve the proposed construction in accordance with the Plans if the proposed construction complies in all respects with the Covenants and the Buyer's obligations under Special Condition 16. No approval issued by the Seller pursuant to this Special Condition 17 will:

- (a) constitute a waiver of any of the Covenants;
- (b) effect the Buyer's obligation to comply with each of the Covenants, the Buyer's obligations under Special Condition 16 or any of the requirements of any relevant authority or body;
- (c) render the Seller liable for any costs, damages or expenses incurred by the Buyer as a result of the Plans not complying with the Covenants or other requirements; or
- (d) replace the requirement to obtain development approvals, permits or licences (including a building permit) from any relevant authority or body.

## 18. FIRB Approval

- (a) If the Buyer is a foreign interest for the purposes of the Foreign Acquisitions and Takeovers Act 1975 and that fact is stated in this Contract then this Contract is conditional on and subject to:
  - (i) the issue by the Treasurer of the Commonwealth of Australia (**Treasurer**) of a notice stating that the Treasurer does not object to the acquisition of the Property by the Buyer unconditionally other than a condition that the Buyer construct a dwelling on the Property within a certain period; or
  - (ii) the Treasurer being or becoming precluded by law from making any order in respect of the acquisition of the Property by the Buyer;

(**FIRB Approval**), on or before the date being 55 days from the date of this Contract or any other date agreed by the Seller and the Buyer in writing (**FIRB Approval Date**).
- (b) The Buyer will:
  - (i) give all records and notices in the prescribed forms (if any) to the Treasurer in respect of the acquisition of the Property by the Buyer as required under relevant legislation; and
  - (ii) supply to the Treasurer, as required, all requisite accompanying information,

**(FIRB Application)** within 10 days from the date of this Contract.

- (c) The Buyer will:
  - (i) use the Buyer's best endeavours to procure the occurrence of the FIRB Approval prior to the FIRB Approval Date; and
  - (ii) do all things, and provide all information and documents reasonably required by the Treasurer in connection with the FIRB Application promptly and in any event within 5 business days of being notified of the required things, information or documents.
- (d) The condition in Special Condition 18(a) is for the benefit of the Seller and the Buyer and cannot be waived. The Buyer will keep the Seller informed of the progress of the FIRB Application and the FIRB Approval.
- (e) If there has not been FIRB Approval by the FIRB Approval Date and the Seller and the Buyer hereto have not agreed in writing to extend the FIRB Approval Date, then:-
  - (i) this Contract will automatically terminate without notice (other than the provisions of this clause) on the date which is the day following the FIRB Approval Date;
  - (ii) the Deposit and any other monies paid by the Buyer under this Contract will be immediately refunded to the Buyer; and
  - (iii) neither the Seller nor the Buyer will have any claim against the other.

#### **19. GST Clause**

- (a) If GST applies to any supply made under or in connection with this Contract by the Seller:
  - (i) the amount payable in respect of the Purchase Price is inclusive of GST; and
  - (ii) the Seller may, in addition to any additional amount or consideration, except the Purchase Price, expressed as payable in respect of the supply, which without limitation includes money which is paid or payable arising from:
    - (A) delay in settlement;
    - (B) the adjustment of Outgoings or rent;
    - (C) payment in respect to:
      - (I) a sewer condition;
      - (II) an underground power rate; and
      - (III) a Contributory Extension Scheme;recover from the Buyer and additional amount on account of GST; and
  - (iii) the amount payable by the Buyer to the Seller or to a third party in respect of that supply, except in relation to the payment of the Purchase Price, shall be increased by the product of:
    - (A) the rate at which GST is imposed at that time; and
    - (B) the amount or consideration payable for the relevant supply; and

- (iv) the Buyer shall pay any additional amount on account of GST at Settlement or the same time as the Purchase Price is paid or at such other time as the Seller directs.
- (b) If GST is payable in respect of a supply made under or in relation to this Contract, except in relation to the payment of the Purchase Price, the recipient must pay to the supplier an amount (**GST Amount**) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as any consideration for the supply, provided the supplier has given the recipient a tax invoice.

**20. Margin Scheme**

- (a) The parties acknowledge that the Seller may (in its absolute discretion) apply the margin scheme in relation to the Purchase Price for this Contract.
- (b) If the Seller applies the margin scheme, the Seller will at its expense and before Settlement obtain a valuation of the property as at 1 July 2000 (or other relevant date) that complies with the requirements of the GST Act (including any ruling or determination made by the Commissioner of Taxation).
- (c) The Buyer acknowledges that it will not be entitled to claim an input tax credit for any amount of GST the Buyer pays to or reimburses to the Seller where the margin scheme is applied.
- (d) This Condition will not merge on completion of this Contract and will survive settlement and any termination of this Contract by either the Seller or the Buyer.

**21. Survey pegs**

The Buyer acknowledges that once the Property is surveyed and the surveyor has installed the survey pegs at each corner of the Property the Seller is under no obligation to secure the position of the pegs or to reinstate the pegs either before or after Settlement.

**22. Previous Arrangements**

The terms of this Contract supersede all previous arrangements, statements, representations or intentions of the parties.

**23. Variations**

This Contract may only be varied in writing signed by the Seller and the Buyer and is not varied by any statement or representation made by any party before or after the date of this Contract.

**24. No Assignment**

The Buyer agrees that no assignment of this Contract by the Buyer can be made unless under such terms as are required by, and with the written consent of, the Seller.

**25. Foreign resident capital gains withholding payment**

- (a) This Special Condition 25 applies (despite any other provision of the Contract) if:
  - (i) the market value of the Land is \$750,000.00 or more and the Seller does not provide a Clearance Certificate to the Buyer at least 1 Business Day before Settlement; or

- (ii) for any other reason the Buyer is obliged to pay a Withholding Amount to the Commissioner.
- (b) Notwithstanding anything to the contrary in this Special Condition 26, the Seller may delay Settlement by notice or notices in writing to the Buyer provided that:
  - (i) the Seller has applied to the Australian Taxation Office (**ATO**) for a Clearance Certificate or a Variation Notice (**Application**);
  - (ii) the ATO is yet to respond; and
  - (iii) the Seller provides evidence of this Application to the Buyer at least 1 Business Day before Settlement,

provided that Settlement must not be delayed to later than 5 Business Days after the ATO delivered the Clearance Certificate or the Variation Notice to the Buyer.

- (c) If Special Condition 25(a) applies:
  - (i) the Buyer must deduct the Withholding Amount from the Purchase Price and pay the Withholding Amount to the Commissioner by no later than Settlement; or
  - (ii) if the Buyer provides to the Seller at Settlement:
    - (A) evidence from the Commissioner or the ATO that the Withholding Amount has been paid to the Commissioner; or
    - (B) a written undertaking from the Buyer's Representative to pay the Withholding Amount to the Commissioner immediately following Settlement; or
    - (C) any other evidence relating to the payment of the Withholding Amount that is acceptable to the Seller,

the Buyer is not required to pay that part of the Purchase Price to the Seller.

- (d) If Special Condition 25(c)(ii) applies, the Buyer will be treated as having given an irrevocable authority and direction to the Buyer's Representative to pay the Withholding Amount to the Commissioner immediately following Settlement.
- (e) Subject to Special Condition 26(b), any Variation Notice not provided to the Buyer at least 1 Business Day before Settlement is to be disregarded for the purposes of determining the Withholding Amount.

## **26. Electronic Communications**

- (a) This Contract and any variation to it may be signed by the parties in any number of identical copies. Each identical copy is deemed to be an original document, and all identical copies together constitute one and the same document.
- (b) The Buyer's offer, the Seller's acceptance, and each identical copy of this Contract and any variation to it may be communicated or exchanged by fax or e-mail sent to the addressee's fax number or e-mail address as provided by the addressee to the sender (whether under this Contract or otherwise).
- (c) If a fax number or e-mail address is provided or specified (whether by notice or otherwise) by a Party or a Representative as the fax number or e-mail address of that Party or Representative, then:

- (i) a notice to that Party or Representative may be transmitted by fax or as an attachment to an e-mail, provided that the notice is given on the sender's letterhead, signed by the sender, and transmitted to the fax number or e-mail address provided or specified by the recipient; and
- (ii) a notice transmitted by fax or e-mail will be treated as served on the day on which it is transmitted but if it is transmitted after 4pm or on a day which is not a Business Day it will be treated as having been served on the next Business Day. However, the notice will not be treated as served unless the fax machine or computer which transmits the notice produces an acknowledgment that the notice has been transmitted to the specified fax number or e-mail address.

## 27. Release of Information and Privacy Act

The Buyer acknowledges and agrees that the Seller, the Seller Agent and Seller's Representative may, from time to time and to the extent permitted by law, release details of the Buyer's name and address to any person who, in the reasonable opinion of them has a bona fide and reasonable cause to obtain such details from them.

## 28. GST withholding payment

If the Buyer is required by the GST Act or an Income Tax Act (**Legislation**) to withhold GST from any amount that would otherwise be payable to the Seller:

- (a) The Seller must before Settlement, serve written notice on the Buyer that a GST withholding is required and specifying the required time of payment to the Commissioner and the required amount of withholding (**Remittance Amount**).
- (b) The Buyer must before Settlement, lodge a GST withholding notification with the Australian Tax Office (**ATO**) and must after Settlement lodge a Settlement advice notification with the ATO, both in accordance with the Legislation and in each case must provide a copy to the Seller and a copy of any response from the ATO including details of any lodgement reference number or payment reference number issued by the ATO.
- (c) The Buyer must deduct the Remittance Amount from the Purchase Price and pay the Remittance Amount to the Commissioner by no later than the day of Settlement or provide to the Seller at Settlement a Bank Cheque for the Remittance Amount payable to the Commissioner or where paragraph (d)(iii) applies make the Bank Cheque available at Settlement for the Seller to sight.
- (d) If the Buyer provides to the Seller at Settlement:
  - (i) evidence from the Commissioner or the ATO that the Remittance Amount has been paid to the Commissioner; or
  - (ii) a Bank Cheque for the Remittance Amount payable to the Commissioner; or
  - (iii) if the Seller agrees in writing to accept an undertaking to pay (which it may do in the Seller's absolute discretion), a written undertaking from the Buyer's Representative to the Seller to pay the Remittance Amount to the Commissioner immediately following Settlement and on the day of Settlement; or
  - (iv) any other evidence or undertaking, relating to the payment of the Remittance Amount that is acceptable to the Seller (in its absolute discretion),

the Buyer is not required to pay that part of the Purchase Price to the Seller.

- (e) If the Buyer's Representative is to pay the Remittance Amount to the Commissioner, the Buyer and the Seller will be treated as having given an irrevocable authority and direction to the Buyer's Representative to pay the Remittance Amount to the Commissioner immediately following Settlement.

Buyer: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_