



## Special Conditions

### 1. Finance Clause

If the Subject to Finance clause referred to in condition 1 of the Contract ("the Finance Clause") applies to this Contract:

- (a) the Finance Clause shall be deemed to have been satisfied upon Finance Approval being obtained even if the Finance Approval lapses or expires before the Settlement Date;
- (b) the Seller shall be under no obligation to agree to an extension to the Latest Time referred to in the Finance Clause; and
- (c) if the 'Lender' nominated in the Schedule to this Contract is a mortgage broker or if no Lender is nominated in the Schedule, then the term 'Lender' in the definition of 'Finance Approval' shall be deemed to be a reference to a bank, building society, credit union or other institution which makes loans carrying on business in Western Australia.

### 2. Deposit

The Seller or the Seller Agent is entitled to hold the Deposit as it sees fit and the Buyer is not entitled to any interest or any other money in relation to the Deposit by reason of it being held by the Seller or the Seller Agent.

### 3. Transfer

- (a) The Buyer must cause a Transfer of the Property to be prepared, duly signed by the Buyer and delivered to the Seller or to the Seller's Representative not later than seven (7) days prior to the Settlement Date.
- (b) If the Transfer is delivered to the Seller's Representative less than seven (7) days prior to the Settlement Date and if Settlement is delayed for that reason or for any other reason not the fault of the Seller then:
  - (i) the Buyer must pay to the Seller interest (which is deemed to accrue from day to day) computed at the Prescribed Rate from the Settlement Date up to and including the date upon

which Settlement actually occurs; and

- (ii) clause 4.1 of the 2018 General Conditions (as varied by special condition 18) is amended accordingly.

### 4. Outgoings

Clauses 7.1 and 7.2 of the 2018 General Conditions are deleted and replaced with the following:

*'7.1 Subject to clause 7.2, the Seller will pay all Outgoings up to the Settlement Date or the Possession Date (whichever is the earlier), on and from which date they are payable by the Buyer and will be apportioned (if required). Any amount owing by one Party to the other is to be paid or allowed at Settlement.'*

*7.2 Land Tax is to be apportioned on the basis that the Property is the only land of which the Seller is owner within the meaning of the Land Tax Assessment Act 2002 (WA). Land Tax will be payable by the Seller up to the date which is the later of the date upon which this Contract is signed by the Buyer and the date on which a separate Certificate of Title for the Property is issued by Landgate. On that date Land Tax will be apportioned and thereafter is payable by the Buyer, regardless of when Settlement occurs.'*

### 5. Subdivision

- (a) Clause 13.3(a)(1) of the 2018 General Conditions does not apply to this Contract and in its place the following is substituted:

*'13.3(a)(1) The Planning Commission endorsing approval on a Subdivision Plan within eighteen (18) months of the date of granting of approval to the subdivision referred to in clause 13.2(a) or the Contract Date, whichever is the later date.'*

- (b) Clause 13.4 of the 2018 General Conditions does not apply to this Contract and in its

place the following is substituted:

'13.4 The Seller must use its best endeavours to arrange for:

- (a) the preparation of a Subdivision Plan including the Subdivision Lot; and
- (b) that Subdivision Plan to be:
  - (1) lodged at Landgate; and
  - (2) endorsed In Order for Dealing,

as soon as practicable after the Contract Date.'

## 6. Requisition on Title

- (a) Clause 16 of the 2018 General Conditions does not apply to this Contract.
- (b) The Buyer acknowledges and agrees that the Buyer is not entitled to deliver any requisition on or objection to the title of the Seller and unconditionally excludes the Buyer's right to do so.

## 7. Description of Property, Boundaries, Dividing Fences

The Buyer expressly acknowledges, covenants and agrees:

- (a) that the Seller is under no liability to ensure that survey pegs remain in their correct position or to replace them should they be moved or removed;
- (b) that it is fully aware that all dimensions, areas, boundaries and other features of the Property and the area, level and location of all services in relation to the Property shown as at the Contract Date are approximate only and are subject to confirmation;
- (c) that the road names depicted on:
  - (i) the draft plan depicting the Property, a copy of which is annexed to this Contract as Annexure M (**Lot Diagram**);
  - (ii) the draft staging plan depicting the stage of the estate of which the Property forms part (**Estate**), a copy of which is annexed to this Contract as Annexure O (**Stage Plan**); and/or
  - (iii) the Subdivision Plan,are not final and may be subject to change;
- (d) that, if there is to be a drainage lot connection pit and/or other service points on the Property, the Buyer accepts the Property at Settlement with all drainage lot connection pits and other service points that are in place at Settlement and which may be shared with Lots adjoining the Property and agrees:

- (i) to grant access to any shared drainage lot connection pits and other service points for the purposes of inspections, maintenance and repairs; and
- (ii) not to hold any party liable for costs associated with granting that access (including for disturbance caused to any landscaping, fencing and other works or improvements);
- (e) that on the Settlement Date, the Property may not have a gas supply, power supply, water supply or wastewater service, and the Buyer will be responsible for all costs associated with obtaining a temporary connection of such services to the Property (including but not limited to the use of electricity generators) until the relevant service providers install, connect and activate the reticulation of the relevant supply or service;
- (f) to grant access to:
  - (i) the Seller (and any agent or contractor of the Seller); and/or
  - (ii) any relevant authority,access to the Property following Settlement for:
  - (iii) any works required to achieve delivery of the Property and the services referred to in special condition 7(d); and/or
  - (iv) the installation of the fencing or landscaping bonus pursuant to Annexure C (if applicable);
- (g) not to hold any party liable for costs associated with granting access to the Property pursuant to special condition 7(e) (including for disturbance caused to any landscaping, fencing and other works or improvements);
- (h) that, if not already delivered, the Seller will take all reasonable steps to deliver to the boundary of the Property the services referred to in special condition 7(d) as soon as reasonably practicable following Settlement;
- (i) that the Seller has no liability to the Buyer or any other person claiming through the Buyer including its successors in title in respect of any delay to the connection of any services to the Property, and the Buyer is not entitled to delay Settlement, object to or make a claim for compensation as a result of any delay to the connection of any services to the Property;
- (j) that the Seller has no liability to the Buyer or any other person claiming through the Buyer including its successors in title to contribute to the cost of erecting, maintaining or repairing any dividing fence or other fence within the Estate, whether under the *Dividing Fences Act 1961* (WA) or otherwise and the Buyer shall indemnify

the Seller against any such claim;

- (k) that all dividing fences erected by the Seller on the Property are not necessarily on the boundaries of the Property and the Buyer acknowledges that the Buyer has no claim against the Seller if that is the position; and
- (l) that the Buyer accepts the Property subject to any liabilities as to dividing fences and also as to encroachments and any requisition or order made by any Authority having jurisdiction over the Property, and the Seller will have no liability for any fence not being on the boundary line

#### **8. Encumbrances**

The Buyer acknowledges that the Property is sold subject to the following Specified Encumbrances:

- (a) all reservations and conditions (if any) referred to in the certificate of title to the Property or which are reasonably apparent on visual inspection and all sewer mains (if any);
- (b) all easements and other encumbrances (including the requirements of any statutory authority) depicted on the Lot Diagram;
- (c) all easements, notifications and memorials noted or to be noted on the deposited plan creating the Property;
- (d) all resumptions, rights and encroachments (if any) now subsisting in respect of or over the Property;
- (e) any notification lodged in accordance with section 165 of the Planning and Development Act;
- (f) the protective covenants contained in Annexure B to this Contract;
- (g) any other encumbrance including any easement, protective covenant, Title Notification or memorial which is not specified in this Contract but may be required by a statutory authority as a condition of subdivision;
- (h) all notices or work orders (if any) now received or which may be in the future received in respect of or over the Property;
- (i) all rights (if any) acquired by adverse possession in respect of or over the Property;
- (j) all claims (if any) by indigenous persons whether by virtue of any law or otherwise;
- (k) all liability (if any) to maintain and contribute to the costs of fences, underground power, sewerage and other liabilities and incidents of tenure affecting the Property; and
- (l) the obligations contained in this Contract,

without any liability or obligation on the Seller to disclose the creation of the Specified Encumbrances or to define or apportion any burden created by the Specified Encumbrances.

#### **9. No Warranty or Representation**

- (a) Clause 9 of the 2018 General Conditions does not apply to this Contract.
- (b) The Buyer acknowledges and agrees that the Buyer relies solely on its own enquiries and warrants to the Seller that the Buyer has not been induced to enter into this Contract by reason of any express or implied statement, warranty or representation (whether oral, written or otherwise) given or made by the Seller or the Seller Agent in respect of the Property or anything relating to or which could have an effect on the Property.
- (c) The Buyer acknowledges and warrants to the Seller that the Buyer has satisfied itself:
  - (i) as to the state, condition and repair of the Property and each and every part of it;
  - (ii) as to the purposes and uses to which the Property may be put in accordance with the requirements of the relevant local authority and governmental authorities, its future zoning and planning restrictions (including but not limited to all planning permits and consents) and the terms, covenants, conditions, requirements and obligations created by any applicable local authority planning scheme;
  - (iii) as to the terms, conditions, locations and proposals of any road resumptions or reserves (including, without limitation, reserves for recreation or other public open spaces or any pedestrian accessways) and any other matters that may affect the Property or title to the Property;
  - (iv) as to the Specified Encumbrances and the impact that they may have on the Property or the Buyer's proposed use or enjoyment of the Property;
  - (v) as to the value of the Property;
  - (vi) as to the present and future economic feasibility, viability and economic return of the Property; and
  - (vii) that the Property offered for sale and inspected by the Buyer is identical to the Property described in this Contract;
  - (viii) as to all matters acknowledged by the Buyer under this Contract, including, but not limited to, the matters in special condition 7,

and the Buyer will be deemed to have entered into this Contract in reliance solely on that basis.

- (d) The Buyer acknowledges that:
  - (i) the Buyer purchases the Property in its state, repair and condition at the date of Settlement;
  - (ii) the Seller makes no warranty that the Property complies with any laws or requirements, whether statutory or otherwise, or are suitable for use or fit for any purpose; and
  - (iii) the Seller will not be required to make any renovation or repair to the Property prior to Settlement.
- (e) The Parties agree that the Property is sold subject to:
  - (i) all laws affecting the Property;
  - (ii) all requisitions, orders, notifications and notices whatsoever issued by any Authority with respect to the Property; and
  - (iii) all defects (if any) whether or not those defects could or should have been recognisable upon the Buyer's inspection of the Property.
- (f) The Buyer warrants that it will not be entitled to rescind or set aside this Contract, delay Settlement, claim any compensation or damages or reduction in the Purchase Price against the Seller or exercise any other rights and remedies whatsoever against the Seller by reason of any matter or thing arising out of or referred to in this special condition 7.

#### 10. Buyer's Representations and Warranties

The Buyer represents and warrants to the Seller that:

- (a) the Buyer has full power and authority to enter into this Contract and perform its obligations under this Contract;
- (b) subject to special condition 1, the Buyer has the financial capacity to perform its obligations under this Contract;
- (c) the Buyer does not require the consent of any third party to enter into this Contract or perform its obligations under this Contract;
- (d) except as disclosed in this Contract, the Buyer is purchasing the Property on its own behalf as principal or as trustee and not as an agent for a third party; and
- (e) either:
  - (i) the Treasurer's consent under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FAT Act**) is not required for the Buyer's purchase of the Property; or
  - (ii) the Treasurer has consented under the **FAT Act** to the Buyer's purchase of the Property.

#### 11. Prior Contract

- (a) If, at the time this Contract is signed by the Seller, the Seller has accepted an earlier offer to purchase the Property (**Prior Contract**) then the Seller will not be bound to proceed with this Contract and may terminate it.
- (b) As soon as practicable after the Seller becomes aware of the Prior Contract, the Seller will give notice to the Buyer that this Contract has been terminated.
- (c) If the Seller gives notice in accordance with special condition 11(b), the Deposit paid by the Buyer under this Contract must be promptly repaid to the Buyer and no Party will have any claim or right of action against the other arising from the termination of this Contract pursuant to this special condition 11.

#### 12. Form of Contract

The Seller will only accept offers for the purchase of the Property if the offer is made in the form of this Contract and the Buyer is not a government instrumentality.

#### 13. GST

- (a) Clauses 18.1 to 18.3 of the 2018 General Conditions do not apply to this Contract.
- (b) The sale of the Property is a taxable supply (as defined in the GST Act).
- (c) The Parties agree that the GST payable on the taxable supply of the Property will be calculated by the Seller using the Margin Scheme under Division 75 of the GST Act.
- (d) The Purchase Price is inclusive of GST.
- (e) The acquisition of the Property under the Margin Scheme is not a creditable acquisition (as defined in the GST Act) and the Buyer will not be entitled to claim an input tax credit (as defined in the GST Act).
- (f) The Buyer is not entitled to object to or make a claim for compensation in relation to the method adopted by the Seller to calculate GST payable in respect of the supply under this Contract.
- (g) If, under this Contract, a party (**Payer**) must make a payment (other than the Purchase Price) to the other party or a third party (**Recipient**), the Payer must make the payment and pay an additional amount equal to any GST applicable to that payment.
- (h) If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit (as defined in the GST Act) to which that party is entitled for that loss, cost or expense.

#### 14. Disclosure

The Buyer acknowledges that:

- (a) the Seller or shareholders / unitholders of the Seller may include Peet Limited (**Peet**) and / or directors and employees of Peet; and
- (b) where the Seller Agent is Peet Estates (WA) Pty Ltd (**Peet Estates**), the directors of Peet Estates may have a beneficial interest in the Seller.

**15. Clause 24.18 – 2018 General Conditions**

Clause 24.18 of the 2018 General Conditions is hereby specifically excluded and the rule in *Bain v Fothergill* applies to this Contract.

**16. Seller not liable**

Except in the case of fraud or misrepresentation by the Seller, the Seller Agent or the Seller's Representative, the Seller is not liable for any loss, damage, cost or expense (including, but not limited to, the increase in the money payable in any other agreement entered into by the Buyer concerning the Property, including, but not limited to, building or construction contracts or agreements), loss of profits or economic loss sustained by the Buyer, in any way arising out of the timing for the issue of a separate certificate of title for the Property, the timing and availability of services, the timing for Settlement or anything else referred to in this special condition.

**17. Interest**

- (a) Clause 4.1(a) of the 2018 General Conditions does not apply to this Contract and in its place the following is substituted:

*'(a) If for any reason not attributable to the Seller, Settlement is not completed on the Settlement Date, the Buyer must pay to the Seller at Settlement interest on:*

*(1) the balance of the Purchase Price; and*

*(2) any other money payable at Settlement,*

*at the Prescribed Rate.'*

- (b) Clause 4.2 of the 2018 General Conditions does not apply to this Contract.
- (c) In clause 4.3 of the 2018 General Conditions, the words:
  - (i) *'and compensation allowable under clause 4.2'* in the first paragraph; and
  - (ii) *'or compensation'*,
 are deleted.
- (d) Clause 4.4 of the 2018 General Conditions does not apply to this Contract.
- (e) In the definition of Prescribed Rate in clause 26.1 of the 2018 General Conditions, the reference to 9% per annum is replaced with '12% per annum'.

**18. Caveat**

The Buyer must not, before the issue by Landgate

of a separate certificate of title for the Property, lodge any caveat against the title to the Original Land or any part of the Original Land to protect the Buyer's interest under this Contract.

**19. Possession and Rent**

Clauses 6.3 to 6.10 (inclusive) of the 2018 General Conditions do not apply to this Contract.

**20. Notices**

A Notice may be given by the Seller Agent under clause 21 of the 2018 General Conditions and will be treated for all purposes as if the Notice had been given by the Seller.

**21. Lot Variations**

- (a) The Buyer acknowledges and agrees that:
  - (i) the Property is currently under construction and the dimensions, boundaries, encumbrances, area, level, fence type, location of street trees extent and position of retaining walls, and location of services, street lights and street trees may vary from the Lot Diagram and/or Stage Plan; and
  - (ii) it is fully aware that all other features of the Property and the area, level and location of all services in relation to the Property shown on the Lot Diagram and/or Stage Plan are approximate only and may be subject to change prior to Settlement.
- (b) The Buyer shall make no objection to, nor shall the Buyer have any claim for compensation in respect of, any variation to the dimensions, area, boundaries or description of the Property from that appearing in the Lot Diagram where the area of the Property on the Subdivision Plan is not less than 95% of the approximate area shown on the Lot Diagram or exceeds the approximate area shown on the Lot Diagram or where levels, fence type, extent and position of retaining walls, location of services, street lights and street trees may vary from the Lot Diagram and/or the Stage Plan (to the extent that they are depicted on the Lot Diagram and/or the Stage Plan).
- (c) If the area of the Property on the Subdivision Plan is less than 95% of the approximate area shown on the Lot Diagram, the Buyer shall be entitled to one of the following options:
  - (i) on Settlement, the Buyer shall be allowed a pro rata reduction of and credit against the Purchase Price calculated per square metre of the total deficiency in area in full and final settlement and satisfaction of any and all claims or actions the Buyer has or would have but for this condition in respect of all variations from the Lot Diagram; or
  - (ii) at least twenty one (21) days prior to

the Settlement Date the Buyer shall have the right to terminate this Contract by notice in writing to the Seller.

- (d) If this Contract is terminated by the Buyer under special condition 22(c)(i) the Seller will repay the Deposit and all other moneys (if any) paid by the Buyer to the Seller under this Contract without deduction and upon repayment this Contract will cease to have effect and neither part shall have any claim of any nature against the other, except in respect of a claim arising prior to the date of termination.
- (e) If a building envelope is required by the local authority and is indicated on the Lot Diagram, Stage Plan or any other plan provided by the Seller that depicts the Property, the Buyer acknowledges and accepts that:
  - (i) the building envelope indicated on that plan is approximate only;
  - (ii) the Buyer must make their own investigations into the location and extent of the building envelope; and
  - (iii) the Buyer will have no claim against the Seller for any variation to the dimensions, area or description of the building envelope from that depicted on that plan.

## 22. Assignment and Novation

- (a) Clause 26.6(a) of the 2018 General Conditions does not apply to this Contract and in its place the following is substituted:

*'26.6(a) The Seller must comply with each obligation of the Seller under the Contract and the Buyer must:*

  - (1) *comply with each obligation of the Buyer under the Contract; and*
  - (2) *not assign or transfer the Contract or any right under the Contract to a third party without the prior written consent of the Seller;'*
- (b) The Seller may assign, novate or transfer all or part of the Seller's right, title and interest in the whole or any part of the Original Land or the Land to any person (**New Person**) and the Buyer:
  - (i) will remain bound under this Contract;
  - (ii) must not raise any objection to such assignment, novation or transfer; and
  - (iii) must complete the purchase of the Property in accordance with this Contract.
- (c) If the Seller assigns, novates or otherwise transfers its right, title and interest in the

whole or part of the Original Land or the Land to a third party (**New Person**) before Settlement then:

- (i) the Seller is released from its obligations under the Contract arising after the date of that assignment or transfer;
- (ii) the covenants under the Contract of the Buyer are novated to the New Person;
- (iii) the Seller will notify the Buyer in writing of such assignment, novation or transfer; and
- (iv) if required by the Seller but without affecting special condition 22(b), the Buyer must enter into:
  - (A) any agreement required by the Seller to enable the New Person to enforce the Buyer's obligations under this Contract; and
  - (B) if applicable and without limiting special condition 1(a)(i)(A), a deed with the New Seller and any other person required by the Seller varying the Contract to insert into the Contract the New Person's usual provisions limiting its liability (if applicable),

which documents will be in a form required by the Seller and the New Person and prepared by the Seller at the Seller's cost.

## 23. Dispute Resolution

- (a) Unless this Contract provides otherwise, if at any time any dispute or differences arises between the Seller and the Buyer in respect of any of the matters contained in this Contract, such dispute or difference may, at the Seller's election, be referred to a single arbitrator to be appointed in accordance with the provisions of the Commercial Arbitration Act 2012 (WA) as amended.
- (b) For the purposes of section 24A of the Commercial Arbitration Act 2012 (WA) each Party will be entitled to legal representation in such proceedings.
- (c) The arbitrator's decision will be final and binding on the Parties.
- (d) The arbitrator's costs will be borne equally by the Parties.

## 24. Default

Clause 24.4 of the 2018 General Conditions does not apply to this Contract.

## 25. Misdescription

Clauses 15.2, 15.3, 15.4 and 15.5 of the 2018 General Conditions do not apply to this Contract and in the place of those clauses the following is substituted:

'15.2 An error or misdescription of the Property will not:

- (a) entitle the Buyer to terminate this Contract;
- (b) result in any right for the Buyer to delay Settlement; or
- (c) result in any right to claim compensation from the Seller or the Seller Agent.'

**26. Third Party Referral**

The Buyer acknowledges that:

- (a) the Seller may have provided a fee to a builder or another third party (**Referrer**) for the promotion of the sale of the Property or for the referral of the Property to the Buyer;
- (b) the Referrer is not an agent of the Seller or the Seller Agent;
- (c) the Buyer has not been induced to enter the Contract by reason of any representation made by the Referrer;
- (d) the Buyer has relied entirely upon its own enquiries and opinion of the Property as to the suitability of the Property for the Buyer's purposes; and
- (e) the Seller and the Seller Agent are not liable for any alleged statement, warranty, inducement or representation made or alleged to have been made by the Referrer to the Buyer about the Property.

**27. Buyer's acknowledgements**

The Buyer acknowledges and agrees that:

- (a) upon Settlement or possession, whichever occurs earlier, the Buyer takes responsibility for the Property including, repairs, maintenance and keeping the Property free of rubbish and debris;
- (b) it is the Buyer's responsibility to inspect the Property to ensure they are satisfied and inform the Seller or the Seller Agent in writing of any matters that are unsatisfactory prior to Settlement or possession, whatever occurs earlier; and
- (c) upon Settlement or possession, whichever occurs earlier, the Buyer is deemed to be satisfied with the Property and shall have no claim against the Seller in relation to repairs or maintenance of the Property, including but not limited to retaining wall and stair installation or repairs, location of services, the ground levels of the Property, the extent or repairs of fencing or gates and any clearing of debris, rubbish or plant matter.

**28. Dust, Sand and Noise and Further Development of Estate**

The Buyer acknowledges and agrees that:

- (a) the Seller intends to subdivide the Original Land and/or land adjoining the Original Land, which forms part of the Estate, in stages;
- (b) lots and/or proposed lots forming part of the Estate may still be under construction after Settlement;
- (c) the Property may be affected by the emission of dust, sand, vibration, rubbish and noise associated with development works on the Original Land and/or land adjoining the Original Land;
- (d) the Buyer will have no right to terminate the Contract, delay or defer Settlement or claim compensation from the Seller or the Seller Agent in relation to such development works or for any nuisance resulting from the emission of dust, sand, vibration, rubbish and noise; and
- (e) the Seller makes no representation or warranty as to the subdivision of future stages of the Original Land and land adjoining the Original Land (**Future Stage**), and will not be liable to the Buyer, and the Buyer will have no claim whatsoever (for compensation or otherwise) against the Seller if the Seller:
  - (i) varies the manner and/or extent of the subdivision of any Future Stage; or
  - (ii) fails to complete the subdivision of a Future Stages.

**29. Electronic Conveyancing**

Clause 3.12(q) of the 2018 General Conditions is deleted and replaced with the following:

*'(q) The Buyer must pay its own and the Seller's fees and charges for using the ELNO for Electronic Settlement.'*

**30. Maintaining Verge and Retaining Wall Structures**

- (a) The Buyer acknowledges and agrees that:
  - (i) the Buyer must ensure that any damage caused to the verge, verge landscaping, road, footpath or kerb adjoining the Property during the construction of a dwelling on the Property is rectified as soon as possible after the damage has occurred;
  - (ii) the Seller is not responsible for the repair or maintenance of verge areas between the public street boundary and the back of the road kerb including, but not limited to:
    - (A) the watering of those verge areas; and
    - (B) keeping alive any turf laid or other plant life planted on those verge areas; and

- (iii) the Buyer must comply with the requirements of any policy of any Authority, including the City of Wanneroo, in respect of the maintenance of the verge areas.
- (b) If a retaining wall has been, or is to be, constructed on the Property by the Seller, the Buyer must, without limiting any of the Restrictive Covenants:
  - (i) consult a qualified engineer regarding appropriate offsets and suitable footing systems for any dwelling or structure to be constructed adjacent to or near any retaining wall before commencing construction of the dwelling or structure on the Property;
  - (ii) not do, or cause anything to be done, to affect the structural integrity of the retaining wall;
  - (iii) maintain the retaining wall in good structural condition; and
  - (iv) repair any damage to the retaining wall caused by the construction of the dwelling, structure or fence adjacent to or near the retaining wall.

### 31. National Broadband Network

- (a) In this special condition 31:
  - (i) **Carrier** has the meaning given to it in the *Telecommunications Act 1997* (Cth);
  - (ii) **Carrier Licence** means the carrier licence granted to the NBN Carrier by the Australian Communications and Mediation Authority on 18 March 2010 under section 56 of the *Telecommunications Act 1997* (Cth);
  - (iii) **NBN Carrier** means the Carrier that is to be engaged by the Seller to install the Network, by itself or through contractors (including the Seller), being OptiComm Co Pty Ltd (ACN 117 414 776);
  - (iv) **Network** means the high speed broadband fibre optic network known as the National Broadband Network which is to be installed in the estate in which the Property is situated;
  - (v) **Network Infrastructure** means the physical infrastructure of the Network, including all fibre, cables, electronic devices and equipment, ducts, poles, towers, cabinets, housing and any other active and passive equipment and distribution infrastructure, but excluding the Pit and Pipe Works, any existing pit and pipe

infrastructure, lead-in conduit, the network termination units or the power supply units and related cables at the Land;

- (vi) **Pit and Pipe Works** means the physical infrastructure, including all pits, pipes, conduits and any other materials to be designed and constructed on behalf of the Seller under the Seller's agreement with the NBN Carrier necessary to properly service the stage of the estate in which the Property is located and to properly service the Property and other land within Elavale Estate or a stage of it with the Network Infrastructure; and
- (vii) **Schedule 3** means Schedule 3 of the *Telecommunications Act 1997* (Cth), and any associated instruments, including the *Telecommunications Code of Practice 1997* and the *Telecommunications (Low Impact Facilities) Determination 1997*, as amended from time to time.

#### (b) The Buyer acknowledges that:

- (i) the Seller has entered into an agreement with OptiComm Co Pty Ltd ACN 117 414 776 as the NBN Carrier for the installation of infrastructure in Elavale Estate or a stage of it which will form part of the national broadband network;
- (ii) the Seller is not responsible for the connection of telecommunications services to the Land other than the installation the Pit and Pipe Works to a point within the boundary of the Land;
- (iii) the Seller has no control over the timing of the connection of telecommunications services to the Land, those being solely the responsibility of the NBN Carrier or such other provider as may be prescribed by a relevant Authority, or over the type of telecommunications service provided; and
- (iv) the Buyer shall have no claim (for compensation or otherwise) against the Seller, the Seller Agent or the NBN Carrier if there is a delay in delivery of the Network Infrastructure or connection date.

#### (c) The Buyer acknowledges that:

- (i) the right, title and interest in the Pit and Pipe Works (including the portion of the Pit and Pipe Works which are within the Property) vest in the NBN Carrier on installation;
- (ii) despite the description of the Property in this Contract, the



portion of the Pit and Pipe Works which are within the Property does not form part of the property sold by the Seller to the Buyer under this Contract;

- (iii) following installation of the Pit and Pipe Works, the Pit and Pipe Works will be the sole property of the NBN Carrier and the NBN Carrier, as owner, will have the right to maintain, repair, alter, remove or replace the Pit and Pipe Works;
  - (iv) the Buyer must not interfere with or allow or cause others to interfere with the Network Infrastructure; and
  - (v) the NBN Carrier has rights and powers under the Carrier Licence, Schedule 3 and at law.
- (d) The Buyer must not object to, refuse to settle, delay Settlement or make any claim for compensation as a result of any matter referred to in this special condition 31.