



## Special Conditions

### 1. Transfer

The Buyer must cause a Transfer of the Property to be delivered to the Seller or to the Seller's Representative not later than seven (7) days prior to the Settlement Date. 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 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 to the date upon which Settlement actually occurs and clause 4.1 of the 2011 General Conditions (as amended by special condition 17) is amended accordingly.

### 2. Outgoings

Clause 7 of the 2011 General Conditions does not apply to this Contract and in its place the following is substituted:

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), from which date they are payable by the Buyer and will be apportioned if necessary. 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 Act. Land Tax will be payable by the Seller up to the date upon which this Contract is signed by the Buyer. On that date Land Tax will be apportioned and thereafter is payable by the Buyer.'

### 3. Deposit

The Seller or the Seller's Representative 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's Representative.

### 4. Requisition on Title

- (a) Clause 16 of the 2011 General Conditions does not apply to this Contract.
- (b) The Buyer is not entitled to deliver any requisition on or objection to the title of the Seller and hereby unconditionally excludes the Buyer's right to do so.

### 5. Survey Pegs

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.

### 6. Dividing Fences

- (a) The Buyer and the Seller agree 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 or repairing any dividing fence whether under the Dividing Fences Act 1961 or otherwise and the Buyer shall indemnify the Seller against any such claim.
- (b) The Seller and the Buyer acknowledge 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.

### 7. No Warranty or Representation

- (a) Clause 9 of the 2011 General Conditions does not apply to this Contract.
- (b) The Buyer acknowledges and admits 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's 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 and any other matters that may affect the Property or title to the Property;
  - (iv) as to the value of the Property;
  - (v) as to the present and future economic feasibility, viability and economic return of the Property; and
  - (vi) that the Property offered for sale and inspected by the Buyer is identical to the Property described in this Contract,
- 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 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 clause.

## 8. Prior Contract

- (a) If at the time this Contract is signed by the Seller, the Seller or the Seller's Agent has accepted an earlier offer to purchase the Property (**Prior Contract**) the Seller will not be bound to proceed with this Contract.
- (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 clause 6(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 arising from the termination of this Contract.

## 9. Form of Contract

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

## 10. Disclosure

The Buyer acknowledges that the directors of Peet Estates (WA) Pty Ltd (**Seller Agent**) may have a beneficial interest in the Seller.

## 11. GST

- (a) Clauses 18.1 to 18.3 of the 2011 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.

## 12. Subdivision

- (a) Clause 13.3(a)(1) of the 2011 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 2011 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.'

- (c) If a separate certificate of title for the Property has not issued by the date being six (6) months after the Contract Date then the Seller may elect by written notice to the Buyer to terminate this Contract. Upon termination of this Contract, the Seller must repay to the Buyer the Deposit and any other money paid by the Buyer under this Contract and neither 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 termination.

## 13. Finance Clause

If the Subject to Finance clause referred to in condition 1 of the Contract (**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 Financial 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 is a mortgage broker or if no Lender is nominated in the Schedule the expression '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 and the definition of 'Finance Approval' in condition 1.9 is amended accordingly.

## 14. Encumbrances

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

- (a) all reservations and conditions and provisions (if any) contained in the certificate of title to the Property or which are reasonably apparent on visual inspection and all sewer mains (if any);
- (b) all resumptions, rights and encroachments (if any) now subsisting in respect of or over the Property;
- (c) easements, notifications and memorials noted or to be noted on the deposited plan;
- (d) any memorial lodged in accordance with section 165 of the Planning and Development Act 2005;
- (e) the restrictive covenants contained in Annexure B to this Contract;
- (f) any other encumbrance including any easement, restrictive covenant, notification or memorial which is not specified in this Contract but may be required by a statutory authority as a condition of subdivision;
- (g) all notices or work orders (if any) now received or which may be in the future received in respect of or over the Property;
- (h) all rights (if any) acquired by adverse possession in respect of or over the Property;
- (i) all claims (if any) by indigenous persons whether by virtue of any law or otherwise;
- (j) 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
- (k) 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.

**15. Dimensions**

The Buyer acknowledges 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 at the Contract Date are approximate only and are subject to confirmation.

**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) 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 Lot, the timing for Settlement or anything else referred to in this clause.

**17. Interest**

- (a) Clause 4.1(a) of the 2011 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:

- (1) on the balance of the Purchase Price; and
- (2) any other money payable at Settlement,

at the Prescribed Rate.'

- (b) Clause 4.2 of the 2011 General Conditions does not apply to this Contract.
- (c) Clause 4.4 of the 2011 General Conditions does not apply to this Contract.

**18. Possession and Rent**

Clauses 6.3 to 6.10 (inclusive) of the 2011 General Conditions do not apply to this Contract.

**19. 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.

**20. Notices**

A Notice may be given by the Seller Agent under clause 21 of the 2011 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 that the dimensions, area, level, fence type and location of services of the Property may vary from the sales plan annexed to this Contract as annexure F (**Sales Plan**).
- (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 Sales Plan where the area of the Property on issue of the certificate of title is not less than 95% of the approximate area shown on the Sales Plan or exceeds the approximate area shown on the Sales Plan.
- (c) If the area of the Property on issue of the certificate of title to the Property is less than 95% of the approximate area shown on the Sales Plan, 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 Sales Plan; 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 21(c)(ii) 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.

**22. Assignment**

Clause 26.5(a) of the 2011 General Conditions does not apply to this Contract and in its place the following is substituted:

'26.5(a)(1) The Seller must comply with each obligation of the Seller under the Contract and the Buyer must:

- (A) comply with each obligation of the Buyer under the Contract; and
- (B) not assign or transfer the Contract or any right under the Contract to a

third party without the prior written consent of the Seller.

26.5(a)(2) Subject to clause 26.5(a)(3), the Buyer must not (except with the prior written approval of the Seller which may be granted, granted subject to conditions or withheld in the Seller's absolute discretion):

- (A) sell, agree to sell or otherwise dispose of the Property or any part of the Property or any estate or interest in it or otherwise attempt or purport to do so;
- (B) amalgamate or subdivide (including, without limit, by strata or survey-strata subdivision) the Property or apply for the Property to be so amalgamated or subdivided; or
- (C) apply to re-zone the Property under any local planning scheme for the purpose of altering the zoning or permitted use of the Property,

unless and until the Buyer completes construction of a dwelling on the Property in accordance with special condition 26 or special condition 27 (as applicable).

26.5(a)(3) Clause 26.5(a)(2) does not apply to a sale by the Buyer pursuant to the exercise by the Seller of its option to repurchase the Property pursuant to the special conditions contained in Annexure G.'

## 23. Novation

If the Seller assigns or otherwise transfers its interest in the Land to a third party (**New Seller**) before Settlement then:

- (a) the Seller is released from its obligations under the Contract arising after the date of that assignment or transfer;
- (b) the covenants under the Contract of the Buyer are novated to the New Seller; and
- (c) if required by the Seller but without affecting the novation under special condition 23(b), the Buyer must enter into:
  - (i) any agreement required by the Seller to enable the New Seller to enforce the Buyer's obligations under the Contract; and
  - (ii) if applicable and without limiting special condition 23(c)(i), a deed with the New Seller and any other person required by

the Seller varying the Contract to insert into the Contract the New Seller's usual provisions limiting its liability (if applicable),

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

## 24. Misdescription

Clauses 15.2, 15.3 and 15.4 of the 2011 General Conditions do not apply to this Contract and in its place the following is substituted:

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

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

## 25. Default

Clause 24.4 of the 2011 General Conditions does not apply to this Contract.

## 26. Foreign Buyer

- (a) This special condition 26 applies if the Buyer is a 'foreign person' for the purpose of the Foreign Acquisitions and Takeovers Act 1975 (Cth) (**FIRB Act**).
- (b) The Buyer must at its cost promptly comply with all obligations under the FIRB Act and any other requirements imposed by the Foreign Investment Review Board (**FIRB**) from time to time in relation to the Property.
- (c) The Buyer warrants to the Seller that the Buyer has made its own enquiries and investigations in relation to the application under the FIRB Act and the requirements of FIRB to the purchase of the Property and the Buyer will not be entitled to rescind or set aside this Contract, delay Settlement, claim any compensation, 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 26.
- (d) The Buyer must:
  - (i) commence construction of a dwelling on the Property within twelve (12) months of the Contract Date; and
  - (ii) spend an amount of not less than 50% of the Purchase Price in connection with the

- construction of a dwelling on the Property.
- (e) For clarity, nothing in special condition 26(d) affects:
  - (i) the Buyer's obligations under special condition 26(b) or special condition 27; or
  - (ii) the warranty given by the Buyer under or the operation of special condition 26(c).

## 27. Building conditions

- (a) The Buyer must complete construction of a dwelling on the Property within the period of two (2) years after the date of Settlement in accordance with this Contract including, without limit, this special condition 27.
- (b) The Buyer must:
  - (i) at its cost submit to the Seller for its approval detailed plans, drawings and specifications of the proposed dwelling and any other improvements intended to be constructed on the Property which plans, drawings and specifications must:
    - (A) comply with the restrictive covenants contained in Annexure B to this Contract;
    - (B) comply with the other provisions of this Contract; and
    - (C) otherwise be in the form reasonably required by the Seller;
  - (ii) ensure that those plans, drawings and specifications are submitted to the Seller for its approval before commencing construction of any dwelling or other improvements on the Property;
  - (iii) not commence construction of any dwelling or other improvements on the Property until the Seller has approved those plans, drawings and specifications;
  - (iv) promptly provide the Seller with any further information regarding those plans, drawings and specifications or the proposed dwelling and/or the other improvements which the Seller reasonably requires;
  - (v) obtain all necessary consents, licences and approvals from all relevant Authorities prior to commencing construction of any dwelling or other improvements on the Property;

- (vi) construct the dwelling and other improvements on the Property strictly in accordance with plans, drawings and specifications approved in writing by the Seller and all relevant Authorities;
- (vii) without affecting special condition 27(b)(vi), not make any material variation to the approved plans, drawings and specifications referred to in that special condition without first obtaining the prior written approval of the Seller and all relevant Authorities; and
- (viii) in constructing the dwelling and all other improvements on the Property comply with the requirements of all relevant Authorities and the terms of this Contract.

- (c) The Seller gives no warranty or undertaking that the terms contained in this special condition 27 will apply to or, if applied, will be enforced by the Seller against the buyers of other Lots within the subdivision of which the Property forms part.
- (d) The Buyer will not be entitled to rescind or set aside this Contract, delay Settlement, claim any compensation, damage 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 27.

## 28. 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.

## **29. Buyer's Acknowledgement**

The Buyer acknowledges and agrees that:

- (a) the Seller gives no warranty or commitment as to the future utilisation of any lot or lots for private use or otherwise;
- (b) until Settlement the Seller may exercise any of its rights as registered proprietor of the Property in relation to the erection of a parapet wall on a boundary adjacent to the Property, including issuing notice to any relevant authority advising that the Seller has no objection to the erection of a parapet wall on a boundary adjacent to the Property;
- (c) any dwelling on the Property must comply with the requirements of the NBN Co In Home Wiring Guide and that failure to comply with these requirements may prevent connection to the NBN Co infrastructure or may require the Buyer to incur additional costs in order to allow the Property to be connected to the NBN Co infrastructure; and
- (d) the Buyer will not be entitled to rescind or set aside this Contract, delay Settlement, claim any compensation, damages or reduction in 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 29.



## **Restrictive Covenants Stage 4F**

**1. Restrictive Covenants relating to the Property**

- (a) The Buyer acknowledges that the Property will be encumbered by and is sold subject to the restrictive covenants, designed to protect and enhance the amenity of the Golden Bay Estate (**Estate**) to be imposed by the Seller as set out below (**Restrictive Covenants**).
- (b) The Buyer must comply with the Restrictive Covenants.

**2. Land Use**

- (a) The Buyer must not use or permit the Property to be used other than for the construction and occupation of a permanent non-transportable residential dwelling house, except where the Residential Design Codes provide for in excess of one dwelling.
- (b) For the purpose of this clause 2 of this annexure, a non-transportable residential dwelling house means a residential dwelling house that is not constructed in whole or in part or parts off the Property and subsequently transported to and assembled or placed on the Property and which is by the nature of its construction or affixation easily capable of being removed and transported from the Property.

**3. Building Materials**

The Buyer must not construct or permit to be constructed on the Property any house unless it complies with:

- a) The Golden Bay Design Guidelines, a copy of which has been provided to the purchaser/s; and
- (b) The approved Local Development Plan which is annexed to this Annexure B as Attachment 1 (if any).

**4. Vehicle Repairs**

The Buyer must not carry out or permit to be carried out on the Property any repairs, restorations or wrecking of any motor vehicle, boat, trailer or any other vehicle unless screened from public view at all times.

**5. Submission of Plans for Approval**

The Buyer must not commence carry out erect construct or alter any development on the Property without plans and specifications (including finishes schedules) being first submitted to and approved by the Seller and compliance with any condition (consistent with the covenants) imposed by the Seller in giving the approval.

**6. Appearance**

- (a) The Buyer must not permit any rubbish disposal containers on the Property to be in front of the building line except on days allocated by the local government for rubbish collection from the Property.
- (b) The Buyer must not permit clothes hoists to be visible from any public street or thoroughfare.
- (c) The Buyer must not permit any satellite dish to be visible from any public street or thoroughfare.
- (d) The Buyer must not permit TV antennas to exceed 3 metres above the roof line.
- (e) The Buyer must not permit any air-conditioning plant to be installed on the Property unless it is installed on the roof and is of a similar colour to the roof.
- (f) The Buyer must not permit any solar hot water units to be installed on the Property unless it matches the profile of the house.
- (g) The Buyer must ensure that any letterbox is clearly numbered and compliments the house.

**7. Time Limit**

The Restrictive Covenants shall expire and cease to have effect from and including 31 December 2025.



## **8. Purchaser's Acknowledgments**

- (a) The Buyer must make its own enquiries about the impact of the Restrictive Covenants as they affect the Property and shall be taken to have satisfied itself about the Restrictive Covenants prior to the Contract Date.
- (b) The Buyer acknowledges that the burden of the Restrictive Covenants runs with the Land for the benefit of each other buyer of Lots on the same deposited plan as the Property excluding any land which is not residential, and shall be enforceable against the Buyer and every subsequent registered proprietor of the Land.
- (b) The Buyer acknowledges that each Restrictive Covenant is separate from the other and therefore if any Restrictive Covenant becomes invalid or unenforceable then the remaining Restrictive Covenants will not be affected and each remaining covenant will be valid and enforceable to the fullest extent permitted by law.
- (c) The Buyer acknowledges that the Restrictive Covenants will not be modified, surrendered, released, abandoned whether wholly or partially except with the Seller's written consent.