



LAKELANDS

Special Conditions Stage 63

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 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 Assessment Act 1976. 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. Requisition on Title

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.

4. 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.

5. 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. Clauses 9.1(b) and 9.1(c) of the 2011 General Conditions are excluded from this Contract.

6. No Warranty or Representation

The Buyer acknowledges and admits that the Buyer has not been induced to enter into this Contract by reason of any warranty or representation given or made by the Seller or the Seller's Agent.

7. 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 ("the 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 7(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.

8. 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.

9. GST

Clauses 18.1 to 18.3 of the 2011 General Conditions do not apply to this Contract and in their place the following is substituted:

'18.1 The Buyer and the Seller agree that the Margin Scheme is to be applied to this Contract. The Parties acknowledge that the consideration for the sale of the Property was negotiated on the basis that it includes GST, calculated on the basis that the Seller will choose to apply the Margin Scheme as provided for in Division 75 of the GST Act.'

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. Clause 24.17 – 2011 General Conditions

Clause 24.17 of the 2011 General Conditions is hereby specifically excluded and the rule in Bain v Fothergill applies to this Contract.

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.'

13. Finance Clause

If clause 1 ("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 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) the reference to a 'mortgage broker' in the Schedule to this Contract shall be disregarded and the definition of 'Lender' in clause 1.9 of the Finance Clause shall be amended by the deletion of the words 'or mortgage broker' in paragraph (a) and the deletion of the words 'or a mortgage broker carrying on business in Western Australia' in paragraph (b).

14. Encumbrances

The Buyer acknowledges that the Property is sold subject to the following 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, notifications and memorials noted or to be noted on the deposited plan;
- (c) Any memorial lodged in accordance with section 165 of the Planning and Development Act 2005;
- (d) the restrictive covenants contained in Annexure B to this Contract;
- (e) any other encumbrance including easement, restrictive covenant, notification memorial which is not specified in this Contract but may be required by a statutory authority as a condition of subdivision; and
- (f) the obligations contained in this Contract.

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, 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) In the definition of **Prescribed Rate** in clause 26.1 of the 2011 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. 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.

20. Lot Variations

(a) The Buyer acknowledges that the Property is currently under construction and the dimensions, area, level, fence type and location of services may vary from the sales plan annexed to this Contract ('the 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 clause 20(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.

21. 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) 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.'

22. 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 subclause (b), the Buyer must enter into:

- (1) any agreement required by the Seller to enable the New Seller to enforce the Buyer's obligations under the Contract; and

- (2) if applicable and without limiting subclause (c)(1), 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.

- (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.

23. Misdescription

Clauses 15.2, 15.3, 15.4 and 15.5 of the 2011 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 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.'

24. Other variations to the 2011 General Conditions

- (a) The following post-ambles in the 2011 General Conditions are to be construed as if, in each case, they were to be taken out to the margin so that in:
- (i) clause 2.7(b): the post-amble relates to the whole of clause 2.7(b);
- (ii) clause 3.5(b)(2): the post-amble relates to the whole of clause 3.5(b)(2); and
- (iii) clause 4.6(c)(3): the post-amble relates to the whole of clause 4.6(c).

25. Third Party Referral

The Buyer acknowledges that:

- (a) the Seller may have provided a fee to a builder or another third party ("the 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;



LAKELANDS

Restrictive Covenants Stage 63

1. Restrictive Covenants Relating to the Property

The registered proprietor of a lot shall not construct, erect or install or permit to be constructed, erected or installed on their lot:

1.1 LAND USE

Anything other than a residence, a shed, outbuilding or fence that complies with the restrictive covenants.

1.2 HOUSE SIZE

Subject to the minimum open space requirements as set out in the Residential Design Codes, a residence unless the residence is in compliance with Annexure N – Detailed Area Plan.

1.3 BUILDING MATERIALS

A residence unless:

- (a) All external walls (excluding windows) are constructed with bricks or masonry or limestone finished face work or painted render or rammed earth or such other materials as the Owners may consent to in writing; and
- (b) the roof of the residence is covered with tiles or colourbond (zincalume is not permitted).

1.4 PARKING

A residence unless:

- (a) the residence contains a garage;
- (b) a driveway and a crossover between the road and the parking area on the lot are constructed and completed prior to occupation of the residence;
- (c) the lot is able to be subdivided further after settlement, the residence contains an enclosed garage making provision for parking of at least one motor vehicle, incorporated under the main roof of the residence;
- (d) the driveway and crossover are constructed of paved materials using brick or block paving but not in situ concrete or grey slabs or such other materials that the Owners may in their absolute discretion consent to in writing; and
- (e) the location of the garage is in compliance with Annexure N – Detailed Area Plan.

1.5 SHEDS/OUTBUILDINGS

The Buyer must not constructed or permit to be constructed or bring onto the Lot any Outbuilding which exceeds 20m² in floor area or more than 2 metres in height above the natural surface level of the residence or is visible from any public street or open space unless constructed in the same materials as the residence or unless the written consent of the Owners has first been obtained.

1.6 FENCING

- (a) any fence forward of the building line unless such fence is constructed of permeable fencing no higher than 1.2 metres or painted rendered masonry, brick or limestone piers no higher than 1.2 metres in height.
- (b) any fence abutting a laneway (excluding fencing forward of the building line) unless such fencing is constructed to a maximum height of 1.8 metres with the lower 1.5 metre portion of such fence being constructed of either painted rendered masonry, brick, limestone or proprietary brand colorbond metal fencing in the colour 'grey ridge' and the upper 0.3 metre portion being constructed of visually permeable fencing.
- (c) any boundary fence abutting any public open space or public reserve or road reserve unless such fence is constructed of 'grey ridge' colorbond limestone or the same brick as any brick on the property and is of a height of 1.8 metres.
- (d) any gate unless it is constructed of complimentary material to the fence.
- (e) any retaining walls that are within public view unless they are constructed to match in terms of both materials and finish other retaining walls within the Lakelands Private Estate that are within public view.

1.7 LANDSCAPING

The registered proprietor must not permit garden areas on the lot and within public view or forward of the building setback to remain unlandscaped after six months of occupation of any house on the lot including adjoining road verges

1.8 FURTHER PARKING RESTRICTIONS

The registered proprietor of a lot must not Park or allow to be parked on the lot or on the road or on any other lot near or next to the lot any commercial vehicles including but not limited to trucks, utilities, caravans, trailers, boats or any other mobile machinery (“commercial vehicles”) unless such commercial vehicles are housed or contained within a garage on the lot or behind the building line, unless when used during the normal course of business by a visiting tradesperson.

1.9 VEHICLE REPAIRS

The registered proprietor of a lot must not carry out or permit to be carried out on their lot any repairs, restorations or wrecking of any motor vehicle, boat, trailer or any other vehicle unless screened from public view at all times.

1.10 SUBMISSION OF PLANS FOR APPROVAL

The registered proprietor of a lot must not commence, carry out, erect, construct or alter any development on their lot without plans and specifications (including finishes schedules) being first submitted to and approved by the Owners and compliance with any condition (consistent with the restrictive covenants) imposed by the Owners in giving the approval.

1.11 APPEARANCE

The registered proprietor of a lot must not permit:

- (a) any rubbish disposal containers on their lot to be stored or positioned in front of the building line except on days allocated by the local authority for rubbish collection from their lot;
- (b) clothes hoists to be visible from the street on which the residence is located;
- (c) any satellite dish to be visible from the street on which the residence is located;
- (d) TV, radio or communication antennas to be visible above the roofline from the street on which the residence is located;
- (e) any external airconditioning unit to be installed unless it is of similar colour to the roof; or
- (f) any solar hot water unit to be installed on the roof of a residence unless it matches the profile of the residence.
- (g) any letter box that is not clearly numbered and that does not compliment the residence.

- (h) any “for sale sign” to be erected on the property until construction of the residence is at lock up stage or later.
- (i) any action to be taken to remove, alter or mark any wall or fence constructed by the Owners (unless additional blocks are required to be added for the purpose of retaining) on or about any of the boundaries of the lot.
- (k) such wall or fence to become damaged, unsafe or fall into a state of disrepair.
- (l) any roots or any tree, plant or building or other thing on the lot to cause such wall or fence to become structurally unsound and not to repair or renew such wall or fence except in the same style, material and colour as the existing wall and fence.

1.12 CORNER LOTS

In relation to any lots, that are located on a corner, the Buyer must not construct or permit to be constructed on the Property, a House unless it is designed to address both the Primary Street and the Secondary Street in accordance with the following:

- (a) Annexure N – Detailed Area Plan.

2. DEFINITIONS

In this annexure, unless the contrary intention appears:

- (a) **“Commercial Vehicle”** means any vehicle other than a passenger car licensed for private use, including but not limited to trucks, utilities, caravans, trailers, boats or any other mobile machinery.
- (b) **“Floor Area”** means the walkable area between the internal walls of the House including any alfresco area located under the main roof of the House, including the area of any garage.
- (c) **“House”** means a permanent non-transportable single residential dwelling.
- (d) **“Outbuilding”** means any building constructed on the Property other than a House, including but not limited to any detached garage, workshop, garden shed, or storage shed.
- (e) **“Primary Street”**, in relation to a corner lot, means the street that the shorter boundary of the lot faces.
- (f) **“Secondary Street”**, in relation to a corner lot, means the street that the longer boundary of the lot faces.

3. TIME LIMIT

The above restrictive covenants shall expire and cease to have effect from and including 31 December 2020.

4. BUYER'S ACKNOWLEDGMENT

- 5.1 The Buyer must make its own enquiries about the impact of the restrictive covenants imposed by the Seller as they affect the Property and shall be taken to have satisfied itself about the restrictive covenants prior to the Contract Date.
- 5.2 The Buyer acknowledges that the burden of the restrictive covenants in this annexure runs with the Land for the benefit of every other purchaser of land in the The Chase excluding any land which is not residential, and shall be enforceable against the Buyer and every subsequent registered proprietor of the Land.
- 5.3 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.
- 5.4 The Buyer acknowledges that the restrictive covenants will not be modified, surrendered, released or abandoned, whether wholly or partially, except with the Seller's written consent.