

Stage 2

1. Definitions and Interpretations

In this contract: (i) the definitions in the General Conditions shall apply unless superseded by this Annexure A; and (ii) unless the context otherwise requires, the following terms shall have the following meanings:

“Approval” means an approval, consent or permission that the Seller requires from an Authority in order to develop the Subdivision Land or register the proposed Deposited Plan;

“Area” means the area of the Property;

“Authority” means any legislated body having jurisdiction over Approval related to the Deposited Plan or the Subdivision Land

“Boundary” means any boundary of the Property;

“Building Plans” means house design plans and specification of the Dwelling and other structures, if any, proposed to be constructed on the Property;

“Buyer” means each person so specified in the Contract and their transferees, executors, administrators, successors-in-title and assigns;

“Clause” means, unless otherwise stated, a clause in these Special Conditions;

“Contract” means the Contract for Sale of Land by Offer and Acceptance;

“Deposit Holder” means the trust account of either the Seller, the Seller’s Conveyancer nominated on the Contract or their nominated selling agent;

“Deposited Plan” means the Deposited Plan referred to in the WAPC approval of Subdivision;

“Dwelling” means the dwelling house to be constructed by the Buyer on the Property in accordance with these Special Conditions;

“Estate” means the subdivision developed in accordance with the Deposited Plan;

“General Conditions” means the 2011 Joint Form of General Conditions for the Sale of Land;

“Latest Date” means 1st September 2016;

“Party” or **“Parties”** means the Seller and the Buyer specified in this Contract;

“Project Manager” means JB Investments Pty Ltd of 18/21 The Esplanade, Mt Pleasant, Western Australia 6153 or their nominated Project Manager;

“Property” means the Land which the Seller has agreed to sell to the Buyer as described in the schedule of the Contract;

“Restrictive Covenants” means the Restrictive Covenants which apply to this Estate;

“Seller” means JB Investments Pty Ltd of 18/21 The Esplanade, Mt Pleasant, Western Australia 6153;

“Settlement Date” means the later of either the date specified in the contract or the date which is 15 Business Days after the Seller notifies the Buyer in writing that a separate Certificate of Title for the Property has been issued;

“Special Condition” means a Clause of this Annexure A and **“Special Conditions”** means all of Clauses 1 to 10 inclusive as set out in this Annexure A; and;

“Subdivision Land” means the land subject to subdivision situated at Golf Links Road, Wundowie, Western Australia, being part of the land comprised of Lot 9500 on Deposited Plan 402934.

2. Settlement Date

2.1. If, as at the Contract Date, a separate Certificate of Title for the Property has not been issued, the Seller will use its reasonable endeavours to arrange for a separate Certificate of Title for the Property to be issued on or before the Latest Date. Notwithstanding the Settlement Date nominated in this Contract, Settlement of the purchase of the Property by the Buyer cannot proceed until a separate Certificate of Title for the Property has been issued.

If, as at the Contract Date, a separate Certificate of Title for the Property has not been issued, the Settlement Date will be the later of:

- (i). The Settlement Date specified in this Contract (if any); or;
- (ii). The date which is 15 Business Days after the Seller notifies the Buyer in writing that a separate Certificate of Title for the Property has been issued.

2.2. If a separate Certificate of Title for the Property has not been issued on or before the Latest Date, either Party will have the right to terminate this Contract by giving written notice of termination to the other by no later than the date which is five Business Days after the Latest Date.

2.3. If either Party gives notice under Special Condition 2.2 terminating the Contract, then:

- (i). This Contract will terminate;
- (ii). The Deposit shall be repaid to the Buyer; and,
- (iii). Neither Party will have any other rights or claims whatsoever against the other Party in respect of termination of this Contract, whether under the General Conditions or at law or otherwise.

2.4. If no notice of termination is given by either Party to the other Special Condition 2.2 within the period specified for notice, then both Parties will be deemed to have waived the right to elect to terminate this Contract under this Special Condition 2 and:

- (i). The Parties will proceed to Settlement in accordance with Special Condition 2.1(ii); and,
- (ii). Neither Party will have any rights or claims whatsoever against the other arising from the reason alone that the separate Certificate of Title for the Property will be issued after the Latest Date and thereby delaying Settlement to a date after the Latest Date, whether under the General Conditions or at law or otherwise.

3. Deposit

3.1. A cash deposit or acceptable bank guarantee must be received within the time specified on the Contract. Bank guarantees to have expiry dates of at least 6 months past the Latest Date. If there are deposit bonds, then the Issuer must be on the Bank panel of approved Deposit Bond Issuers.

3.2. Deposit bonds must not prohibit the assignment or transfer of all or any of the Seller's interests in the bond OR, if assignment or transfer is subject to consent of the bond provider, then the Seller must receive evidence to their satisfaction that the consent of the relevant bond provider has been obtained in respect of the relevant transaction.

4. Buyers Restrictions

4.1. The Property is sold subject to the Restrictive Covenants, which the Buyer acknowledges will be registered as an encumbrance on the Certificate of Title for the Property. If the Restrictive Covenants are not registered on the Certificate of Title for the Property by the date which is ten days prior to the Settlement Date, the Buyer agrees to include the Restrictive Covenants on the transfer of the Property.

4.2. The Buyer covenants with the Seller to:

- (i). Observe and perform the Restrictive Covenants; and,
- (ii). Indemnify and keep indemnified the Seller from and against any breach or failure to observe and perform the Restrictive Covenants, which indemnity will survive Settlement.

4.3. The Seller does not accept responsibility for the enforcement of the Restrictive Covenants, but the Seller shall have the right to enforce the Restrictive Covenants, and reserves the right to do so, so long as the Seller shall be the registered proprietor of any land in the Estate.

5. Buyer's obligation to construct dwelling and construction requirements

5.1. The Buyer may only construct on the Property a single dwelling house in accordance with:

- (i). The Restrictive Covenants and all relevant requirements and regulations of any relevant Authority; and,
- (ii). The Building Plans that shall have been approved by the Project Manager prior to the commencement of construction in accordance with Special Condition 5.

5.2. The Buyer acknowledges that the burden of the Restrictive Covenants runs with the Property for the benefit of every other registered proprietor of the land in the Estate. Notwithstanding the above, the Seller gives no warranty or undertaking that any similar conditions or requirements imposed in respect of the construction of the Dwelling on the Property will be imposed in respect of other Lots within the Estate or that any conditions or requirements imposed in respect of the construction of a Dwelling house on any other Lots within the Estate will be enforced by the Seller or any Selling Party.

5.3. The Buyer must ensure that during the construction of the Dwelling, the Buyer and the Buyer's contractors must at all times:

- (i). Keep the Property tidy and free from rubbish; and,
- (ii). Arrange for appropriate covered rubbish receptacles to be used on the Property to prevent rubbish and building waste from spilling onto the Property, the street frontage or neighbouring Properties.

5.4. If the Buyer does not comply with Special Condition 5.3, the Seller may arrange, at the cost of the Buyer, for a contractor to clean and remove any of the Buyer's building waste or rubbish on the Property, the street frontage or the neighbouring Properties and the Buyer shall pay the cost of such contractor to the Seller on demand.

6. Buyer's Acknowledgements

6.1. The Seller hereby advises the Buyer and the Buyer hereby acknowledges that:

- (i). Details of Buyer – the Project Manager may from time to time release the details of the Buyer's name and address and the Buyer's Building Plans to any person who, in the reasonable opinion of the Project Manager, has bona fide and reasonable causes to enquire as to such information;
- (ii). Dividing fences – (a) the Seller will have no liability to the Buyer or any other claiming party through the Buyer in respect of, and the Buyer will not make any claim against the Seller for, any contribution to the cost of erecting any dividing fences or walls under the provisions of the Dividing Fences Act 1961 or otherwise; (b) the Buyer agrees that the provisions of this subclause may be pleaded as an absolute bar to any action for relief or claim for compensation made by the Buyer against the Seller; and, (c) upon request, the Buyer will provide the Project Manager with details of all costs of such dividing fences or other information as may be required by the Project Manager to satisfy any enquiry in that regard by a buyer of any other Lot in the Estate.

- (iii). Verge trees – the Seller may plant trees on the verge immediately adjacent to the Property in accordance with the approval of the relevant authority and, if the Seller does so, the Buyer must properly tend and water such tree or trees and must not remove such tree or trees without the approval of the relevant authority;
- (iv). Wundowie Northwest Precinct Local Structure Plan – the Buyer acknowledges that the land is subject to the provisions of the local government's local structure plan that relate to the use and management of the land;
- (v). Retaining walls – retaining walls and/or fences may have been erected by the Seller within the boundaries of the Property. The Buyer acknowledges that they have satisfied themselves as to the location and construction of the retaining walls and/or fences and any building restrictions which may result;
- (vi). Encumbrances – the Property is sold subject to any vehicular access, reservation, easement, restriction, covenant, requirement and other Restrictive covenant required by an Authority prior to the Settlement Date (whether or not any such requirement is or will be registered, as the case may be, as an encumbrance on the Certificate of Title for the Property);
- (vii). Physical characteristics of the Property – the Buyer has satisfied themselves with respect to the physical characteristics of the Property, including (but not limited to) soil types, slopes, levels, vegetation, vulnerability to inundation and drainage and any impacts of any nature whatsoever including (but not limited to) building restrictions or costs which may result from such physical characteristics;
- (viii). Disclaimer – the buyer has read and understood this Contract. In deciding to sign this Contract, the Buyer is not relying on any advertising or marketing materials which the Buyer has read, or statements made by the Project Manager or its representatives or agents, relating to the Property and, instead, the Buyer is relying upon the representations, terms and conditions contained in this Contract, and the Buyer executes this Contract relying exclusively upon the representations, terms and conditions in this Contract; and,
- (ix). Final Survey – the Property is sold subject to a final survey and if there is 5% or less difference or mistake in or omission from this Contract with respect to the description, boundary or measurements of area of the Property or any other similar matter the same shall not invalidate the sale. An error or misdescription as mentioned in this Special Condition shall not entitle either Party to terminate this Contract or to delay Settlement

6.2. The Buyer shall not, prior to Settlement, be entitled to caveat or in any other manner note its interest on or encumber the title of the Property or the Subdivision Land.

6.3. Where the Buyer is a company, all of its obligations under the Contract should be guaranteed by a director of that company and where a Buyer is a trust, all of the obligations under the Contract should be guaranteed by a beneficiary of that trust.

7. GST notification

7.1. The Purchase Price includes GST and Clauses 18.1 and 18.2 of the General Conditions are hereby excluded.

7.2. The Seller has elected to apply the "Margin Scheme" as set out in Division 75 of A New Tax System (Goods and Services Tax) Act 1999 (Cwth) in respect to the sale of the Property and the Buyer agrees to the application of the Margin Scheme.

8. Seller's undertaking

The Seller undertakes to the Buyer that:

- (i). Any mortgage granted by the Seller affecting the Property will be discharged as to the Property upon Settlement; and,
- (ii). The Deposit and all other monies payable under this Contract, other than any money payable in excess of the amount required to so discharge any such mortgage will be paid to the Deposit Holder to be applied by it in or towards so discharging any such mortgage.

9. Assignment

9.1. The Seller may transfer its rights and obligations under this Contract without the consent of the Buyer.

9.2. The Buyer may not transfer its rights and obligations under this Contract prior to Settlement, unless such transfer is made with the prior written approval of the Seller, which may be withheld in the Seller's absolute discretion.

10. Severability

The Buyer acknowledges that each and every Restrictive Covenant and obligation of the Buyer contained in this Contract is separate from the other and therefore if any Restrictive Covenant or any other obligation shall become unenforceable or invalid then the remaining Restrictive Covenants and obligations will not be affected and each remaining Restrictive Covenant and obligation will be valid and enforceable to the fullest extent permitted by law.