

ANNEXURE A - CONDITIONS - BANKSIA GROVE

1 Definitions and interpretations

Definitions

1.1 In this Contract:

Business Day means any day other than a Saturday, Sunday or a public holiday in Western Australia.

Buyer means the person purchasing the land as stipulated in the Contract.

Deposit means the amount specified as the deposit in the Contract to be paid by the Buyer in accordance with clause 4.1.1.

Contract means the contract of sale for the Land between the Seller and the Buyer in which these conditions are incorporated and includes these conditions.
Contract Date means the date of acceptance of the Contract by or on behalf of the Seller.

Common Fence means any fence that separates the Land from any adjoining land, whether the fence is on the common boundary of the adjoining land or in a line other than the common boundary.

Encumbrance means any:

- (a) Security for the payment of money or performance of obligations (including a mortgage, charge, lien, pledge, trust or power of title retention arrangement);
- (b) Right of set-off, assignment of income, garnishee order or monetary claim;
- (c) Equity, interest or writ of execution;
- (d) Reservations, easements or restrictive covenants; or
- (e) Any other right or interest of any third party, affecting the Land.

Expert means the expert referred to in clause 28.1.

GST means any goods and services tax or other form of value added or consumption tax and includes GST as defined in section 195-1 of the GST Act.
GST Act means A New Tax System (Goods and Services Tax) Act (Cth) 1999 or an Act imposing, or relating to the imposition or administration of, a value added or consumption tax.

Land means the land described in the Contract.

Latest Date means the latest date specified in the Contract.

Lender means the lender specified in the Contract.

Loan Amount means the loan amount specified in the Contract.

Margin Scheme means the margin scheme as defined in the GST Act.

Practical Completion means the completion of a Residence on the Land in conformity with the plans and specifications previously approved by the relevant authorities and evidenced by the handing over by the Buyer to the Seller of the following as the Seller may require:

- (a) A certificate from the Buyer's architect or builder certifying the Residence has been constructed or completed on the Land in accordance with the plans and specification approved by the City of Wanneroo and other relevant authorities; and/or
- (b) A copy of written permission from the City of Wanneroo for the occupation of the Residence.

Purchase Price means the purchase price stipulated in the Contract.

Rate means 12% per annum calculated on a daily basis.

Repurchase Price means the lesser of:

- (a) The Purchase Price and the cost of all fixed improvements to the Land constructed or effected by the Buyer, less the agent's selling commission on the sale of the Land by the Seller to the Buyer; and
- (b) The current market value of the Land and all fixed improvements to the Land (if any) constructed or effected by the Buyer, less the agent's selling commission on the sale of the Land by the Seller to the Buyer. Any dispute as to the current market value of the Land together with all fixed improvements thereon (if any) will be determined by the Valuer General of Western Australia who will act as an expert and whose decision will be final and binding.

Residence means the construction of a dwelling house.

Restrictive Covenant means the restrictive covenant substantially in the form set out in Annexure B.

Seller's Representative means Banksia Grove Management Pty Ltd, PO Box 7352, Cloisters Square, Perth, WA, 6850.

Seller's Settlement Agent means the seller's settlement agent as described in the Contract.

Settlement means the settlement of the sale and purchase of the Land in accordance with this Contract.

Settlement Date means the date Settlement is to be effected as stipulated in the Contract.

Supply has the same meaning as in the GST Act.

Interpretation

1.2 In this Contract, unless the context otherwise requires:

- 1.2.1 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.2 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
- 1.2.3 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document unless otherwise stated.
- 1.2.4 An expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency.
- 1.2.5 The day on which any act, matter or thing is to be done under this document is not a Business Day, that act, matter or thing may be done on the next Business Day.
- 1.2.6 An agreement on the part of 2 or more persons binds them jointly and severally.
- 1.2.7 An agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally.
- 1.2.8 A reference to any thing or any amount is a reference to the whole and each part of it. A reference to a group of persons is a reference to all of them collectively, to 2 or more them collectively and to each of them individually.
- 1.2.9 References to time are to time in Perth, Western Australia.
- 1.2.10 References to money and the sign '\$' are references to the currency of Australia.
- 1.2.11 The schedules and attachments form part of this Contract.

2 Finance

2.1 This Contract is subject to and conditional upon the Buyer obtaining finance from the Lender, or any other lender acceptable to the Buyer, on or before the Latest Date of an amount not less than the Loan Amount.

Consequences if condition not met

2.2 If the condition in clause 2.1 is not satisfied on or before the Latest Date, then this Contract (other than this clause 2.2 and the rights of the parties that have accrued before that date) is terminated. The Deposit and all other moneys (if any) paid under the Contract will be refunded immediately to the Buyer and there shall be no further claim under this Contract by either the Seller or the Buyer against the other either at law or in equity.

Reasonable endeavours

2.3 The Buyer must use all reasonable endeavours to satisfy the condition in clause 2.1.

Notification

2.4 The Buyer must notify the Seller in writing when the condition has been satisfied by written notice delivered to the Seller prior to the Latest Date.

Waiver of condition

2.5 The Buyer may waive the condition set out in clause 2.1 by written notice delivered to the Seller prior to the Latest Date.

3 Encumbrances

- 3.1 The Land is sold subject to all reservations (if any), easements and restrictive covenants that are registered as an Encumbrance on the certificate of title to the Land. In particular, the Buyer acknowledges the Land is subject to the Restrictive Covenant.
- 3.2 With the exception of the matters set out in clause 3.1, the Land is sold free from Encumbrances.

4 Payment of purchase price

Manner of payment

- 4.1 The Buyer must pay the Purchase Price to the Seller as follows:
- 4.1.1 The Deposit to be paid to Banksia Grove Realty REBA TRUST A/C TC56906 within 5 Business Days of the Contract Date.
- 4.1.2 The balance of the Purchase Price at Settlement by bank cheque to the Seller (or as the Seller may in writing direct) on the Settlement Date.

If the Deposit is not paid

- 4.2 If the Deposit is not paid in accordance with clause 4.1.1, the Buyer will be in default under this Contract and the Seller may terminate this Contract by notice to the Buyer.

Interest bearing account

- 4.3 The Seller's Settlement Agent must place the Deposit in an interest bearing account with a bank carrying on business in Western Australia.

Interest

- 4.4 Except as may be specifically provided otherwise in this Contract, all interest that accrues on the Deposit must be paid to the Buyer at Settlement.

5 Transfer

- 5.1 The Buyer must deliver to the Seller a stamped copy of the transfer in respect of the Land, properly executed by the Buyer, at least 14 days before the Settlement Date. This transfer must comply with the requirements of Landgate.

6 Settlement and possession

- 6.1 On the Settlement Date:
- 6.1.1 Subject to the performance by the Buyer of all of its obligations under this Contract, including payment of the Purchase Price, the Buyer will be entitled to vacant possession of the Land immediately after Settlement.
- 6.1.2 The Seller must deliver or cause to be delivered to the Buyer at Settlement:
- (a) A transfer of the Land (in registrable form) in favour of the Buyer free from Encumbrances except the Encumbrances specified in clause 3.1;
 - (b) The duplicate certificate of title (if any) relating to the Land; and
 - (c) All other documents and things required by this Contract to be delivered by the Seller to the Buyer on Settlement, or which are reasonably required by the Buyer to vest the Land in the Buyer.
- 6.2 Settlement will take place at a location within a radius of 2 km from the Perth office of the Landgate.

7 Rates and taxes

Rates and taxes

- 7.1 The Buyer must pay all rates, taxes and other outgoings in respect of the Land as from the date Settlement is effected. The Seller must pay all rates, taxes and other outgoings in respect of the Land up to (but not including) the date Settlement is effected. Land tax is to be apportioned on a single ownership basis.

Apportionment

- 7.2 Rates, taxes and other outgoings with respect to the Land will, if necessary, be apportioned between the Seller and the Buyer and adjusted at Settlement.

8 Condition of Land

- 8.1 The Land is sold as it stands as at the date of this Contract, subject to any defects, whether latent or patent, that may exist or may in future be found to exist in the Land. This includes, without limitation, any contamination of any area of the Land. The Buyer takes the Land as it finds it.

9 Requisitions on title

- 9.1 The Buyer is:
- 9.1.1 Deemed to have accepted unconditionally the Seller's title to the Land;
- 9.1.2 Not entitled to deliver or make any requisitions in relation to the Seller's title to the Land; and
- 9.1.3 Deemed to have unconditionally waived its right to deliver or make any such requisitions.

10 Time of the essence

- 10.1 Time is of the essence of this Contract in all respects.

11 Risk

Land at risk of Buyer

- 11.1 Despite any rule of law or equity to the contrary, the Land is at the risk of the Buyer on and from the Settlement Date.

Land destroyed or damaged before Settlement

- 11.2 If the Land includes a building or other improvement, any part of which is destroyed or damaged prior to the risk passing to the Buyer the following applies:
- 11.2.1 If the building is destroyed or made substantially unusable for the uses current at the date of this Contract, then either party may, by notice in writing to the other given within 5 Business Days of the occurrence of the event of destruction or damage, terminate this Contract and:
- (a) This Contract will be at an end; and
 - (b) Neither party will have a claim against the other arising out of the termination except in relation to any claim that arose prior to termination of this Contract.
- 11.2.2 If:
- (a) Neither party gives notice of termination under clause 11.2.1; or
 - (b) The building is damaged prior to the risk passing to the Buyer but not so as to be destroyed or made substantially unusable for the uses current at the date of this Contract, then
 - (c) This Contract will proceed but the Purchase Price must be reduced by an amount equal to the reduction in value of the Land caused by the destruction or damage; and
 - (d) If the amount of the reduction is not mutually agreed the issue is to be determined in the manner set out in clause 28.

12 No compensation

- 12.1 No error, mis-statement, omission or mis-description will annul this Contract or entitle the Buyer to be discharged from this Contract.
- 12.2 The Buyer will not be entitled to compensation in respect of that error, omission or mis-description.

13 No Representations

- 13.1 The Buyer is deemed to have satisfied itself:
- 13.1.1 By physical examination, inspection and enquiry as to the state of repair, maintenance and condition of the Land and each and every part of the Land;
- 13.1.2 By enquiry of the appropriate authorities as to the use to which the Land may be put, its zoning, any development that may take place on the Land, the manner in which such development may be carried out and of all restrictions relating to the Land;
- 13.1.3 By enquiry and survey as to the location of the boundaries of the Land including, without limitation, as to whether any building encroaches on the adjoining land or whether the Land is encroached on by adjoining buildings;
- 13.1.4 By the Buyer's own independent valuation and reports, as to the value of the Land;
- 13.1.5 By the Buyer's own physical examination and enquiry as to the fitness and suitability of the Land for any particular purpose including, without limitation, development within the guidelines and requirements of its zoning;
- 13.1.6 By the Buyer's own physical examination and enquiry as to the nature and extent of contamination on the Land;

- 13.1.7 By enquiry, inspection and review as to the level of income, expenses or income producing potential of the Land; and
- 13.1.8 By enquiry, inspection and review as to the enforceability of any leases or contracts in relation to the Land.
- 13.2 The Buyer is deemed to enter into this Contract in reliance solely upon the examinations, inspections, enquiries and perusals referred to in clause 13.1.

14 Buyer's Acknowledgments

Seller's use of the other lots in Banksia Grove

- 14.1 The Buyer acknowledges that the Seller reserves the right to utilise, in its absolute discretion, any unsold lot or nominated lots for the implementation of its rental or purchase programs should the need arise and that the Seller gives no warranty or commitment to the use of unsold lots for private usage in the future.

Verve Connection

- 14.2 The Seller has complied with all necessary requirements of Verve to enable electrical power to be connected to the Land.
- 14.3 The Buyer acknowledges that:
- 14.3.1 On the Settlement Date, Verve may not have completed connection of electrical power to the Land;
- 14.3.2 The Buyer must pay the balance of the Purchase Price on the Settlement Date even if Verve has not completed connection of electrical power to the Land; and
- 14.3.3 The Buyer shall not make any claim whatsoever against the Seller or the Seller's Representative in respect of any delay in Verve's connection of electrical power to the Land.

15 Restrictions on Buyer

- 15.1 The Buyer shall not at any time amalgamate the Land or apply for the Land to be amalgamated.

16 Resurvey

Any resurvey of the Land after the Contract Date is the responsibility of the Buyer.

17 Site costs

The Seller is under no liability whatsoever to join in or contribute towards the expense of earthworks or any other site costs whatsoever relating to the Land or of erecting any retaining wall or walls on the Land or along the boundary of the Land.

18 Buyer's Covenant to Construct Development

- 18.1 The Buyer must within two (2) years of Settlement commence construction of a Residence on the Land.

Restrictions on Buyer

- 18.2 The Buyer must not sell or otherwise dispose of the Land or any part thereof or any estate or interest therein or otherwise attempt to do so until the Buyer completes the construction of a Residence on the Land. For the avoidance of doubt the Buyer cannot sell the Land as a vacant lot.
- 18.3 The Buyer shall not at any time apply to rezone the Property under any Town Planning Scheme for the purpose of altering the zoning or permitted use of the Land.

Seller's Option to Re-purchase

- 18.4 The Buyer grants the Seller the option to re-purchase the Land and all improvements on the Land for an unencumbered estate in fee simple in possession for the Repurchase Price and in the manner set out below, if:
- 18.4.1 The Buyer fails to complete the construction of a Residence on the Land within the period set out in and in breach of the provisions of clause 18.1; or
- 18.4.2 The Buyer sells, deals with or disposes of the Land or any part thereof or any estate or interest therein or attempts to do so during the period set out in and in breach of the provisions of clause 18.2; or
- 18.4.3 The Buyer applies to rezone or alter the permitted use of the Land in breach of clause 18.3.
- 18.5 The Seller may exercise the option of re-purchase granted in clause 18.4 at any time following the occurrence of any of the events set out in clause 18.4 by giving written notice of the exercise of the option to re-purchase to the Buyer.
- 18.6 Upon exercise of the option to re-purchase:

- 18.6.1 The Seller will prepare and submit to the Buyer who as transferor will execute a registrable transfer of the Land to the Seller as transferee;
- 18.6.2 Within one month after the date of service of the notice exercising the option:
- 18.6.1 In exchange for delivery to the Seller of the duly registrable transfer and the duplicate certificate of title to the Land, the Seller must pay the Buyer, the Repurchase Price.
- 18.6.2 Rates and taxes will be adjusted as the date that the Seller retakes possession of the Property; and
- 18.6.3 The Buyer will pay the costs of preparation and registration of the transfer and all stamp duties and registration fees.
- 18.7 The Buyer irrevocably appoints the Seller and every officer and employee of the Seller (jointly and severally) to be the agent and attorney of the Buyer in his name and on his behalf to execute a transfer of the Land to the Seller, if the option to re-purchase is exercised by the Seller pursuant to clause 18. The Buyer ratifies and confirms and agrees to ratify and confirm all that the attorney does or causes to be done under clause 18.

Caveat

- 18.8 The Buyer charges the Land in favour of the Seller with the due performance of his obligations under clause 18.2 and the Buyer acknowledges that the Seller will be entitled to lodge a caveat (whether expressed to be absolute or otherwise) over the title of the Land to give notice of its rights under this Contract provided that in doing so the Seller agrees to withdraw upon demand such caveat upon the Buyer completing construction of a Residence on the Land in accordance with the obligations under clause 18.2. The lodging and withdrawal of caveat is at the Buyer's cost.

19 Wanneroo Raceway Memorial

The Buyer acknowledges that the Land may potentially be affected by motor sport noise from the Wanneroo Raceway.

20 Fencing

Common Fences

- 20.1 The Land is sold subject to all statutory liability (if any) to contribute to the cost of Common Fences.
- 20.2 Unless the Seller specifically agrees with the Buyer otherwise in writing:
- 20.2.1 The Seller is under no obligation to contribute to the cost of erection of any Common Fences already existing or to be erected in the future;
- 20.2.2 The Seller is under no obligation to account to the Buyer for any monies now or that in the future may be paid or become owing to the Seller by any owner or owners of any adjoining land in respect of any Common Fences erected by the Seller;
- 20.2.3 The Buyer shall pay to the Seller on demand one half the cost of erection (including without limitation labour and materials) of any Common Fence erected by the Seller, notwithstanding that at the time the Common Fence was erected the Seller was the proprietor of the adjoining land.

Fencing package provided by Seller

- 20.3 Subject to the Buyer:
- 20.3.1 Submitting to the Seller's Representative the house plans for approval prior to commencement of construction of the Residence;
- 20.3.2 Obtaining the Seller's approval to the construction of the Residence;
- 20.3.3 Having commenced construction of a Residence within 24 months of Settlement; and
- 20.3.4 Constructing the Residence in accordance with the Restrictive Covenant the Seller agrees to provide, at the Seller's expense.
- 20.3.5 fencing to the side and rear boundaries (not including from the Residence to the side fence) of the Land.
- 20.4 Construction of the fencing will commence only after the completion of construction and handover of the Residence on the Land to the Buyer.
- 20.5 The Buyer must contact the Seller 1 month prior to handover of the Residence to arrange the fencing package.
- 20.6 The fencing package shall be determined by the Seller whose decision shall be final.

- 20.7 Fencing shall be constructed by a fencing contractor nominated by the Seller.
- 20.8 The fencing contractor will supply and install fencing as nominated by the Seller to the side and rear boundaries of the Land for a period of up to 3 months after the construction of a Residence has reached Practical Completion.
- 20.9 The Seller will install fences only once. Any need to repair, replace, modify, move, remove or realign fences to enable building or due to any damage caused in any manner will be the sole responsibility of the Buyer.
- 20.10 The Buyer must comprehensively insure the fences constructed on the Land under these conditions. Such insurance must commence on or before the date construction of the fencing commences. The Seller takes no responsibility for any damage, loss or theft of any parts of the fencing caused after construction of the fencing has commenced.
- 20.11 The Seller has no obligation to provide the fencing package to any owner other than the original Buyer of the Land.

Alternative Fencing

- 20.12 Where the Buyer chooses to install alternative fencing and such fencing is to the written satisfaction of the Seller, the Seller shall provide the Buyer with a reimbursement of the whole or part of the costs of the fencing in the Seller's absolute discretion. Where a Buyer chooses to install alternative fencing, it is the Buyer's responsibility to advise any neighbour and obtain their approval.

Restrictions on fencing on the Land

- 20.13 The Buyer must ensure that all survey pegs are in the correct positions. The Seller is not responsible for replacing any missing survey pegs.
- 20.14 It is the responsibility of the Buyer to ensure that the area of the Land to be fenced is cleared.
- 20.15 No boundary fencing may extend past the building line to the front elevation. Where a parapet wall is incorporated, no fencing will extend forward of the parapet wall. The extent and setback of fencing to corner lots will be at the discretion of the Seller.
- 20.16 Any boundary fencing must not exceed 1.8m in height above the ground level.
- 20.17 Front fencing must not dominate the streetscape. If used, it must be limited to:
- 20.17.1 A height approved by the Seller, maintaining the surveillance of the street from the Residence.
- 20.17.2 Integrate and complement the design of the Residence.
- 20.17.3 Incorporate screen-planting elements.
- 20.18 Where there is a retaining wall along a boundary of the Land that is to be fenced, the fence will be erected at the top of the retaining wall and may be offset slightly from the cadastral boundary.

21 Landscaping package

- 21.1 Subject to the Buyer:
- 21.1.1 Submitting to the Seller's Representative the house plans for approval prior to commencement of construction of the Residence;
- 21.1.2 Obtaining the Seller's approval to the construction of the Residence;
- 21.1.3 Constructing the Residence in accordance with the Restrictive Covenant; and
- 21.1.4 Having commenced construction of the residence within 24 months of Settlement, the Seller agrees to provide to the Seller's specifications and at the Seller's expense, landscaping to the front garden and verge and, in the case of the Land being a corner lot landscaping to the side verge.
- 21.2 The provision of landscaping is further subject to the Buyer:
- 21.2.1 Providing access and assistance as required by the landscaping contractor;
- 21.2.2 Installing a 90mm diameter PVC stormwater pipe across the driveway, located approximately 300mm below the ground, necessary to run pipe work and wiring for the reticulation under the driveway;
- 21.2.3 Installing an external power point for the irrigation controller, adjacent to the meter box; and
- 21.2.4 Ensuring that the site is clean and finished to the levels required by the landscape contractor.
- 21.3 The landscaping:

- 21.3.1 Shall be in the absolute discretion of the Seller and the Seller's decision shall be final;
- 21.3.2 Will be installed by the Seller's nominated landscaping contractor who shall also provide irrigation design and construction services to the Land (including the verge);
- 21.3.3 Will include a 45 litre street tree. If the Land is situated on a corner lot the Buyer may be entitled to additional street trees (at the absolute discretion of the Seller);
- 21.3.4 Will be a water sensitive design comprising an acceptable balance between turf and mulched garden beds, and must be maintained.
- 21.4 The landscaping does not include:
- 21.4.1 Site cleaning and levelling; or
- 21.4.2 Reticulation to the rear part of the Land behind the Residence. The Buyer must ensure that there is provision for reticulation to be extended to the rear of the Land.
- 21.5 The Buyer must contact the Seller within 1 month from the handover of the completed Residence to arrange the landscaping package and the landscaping package is available to the Buyer for a period of up to 3 months after Practical Completion of the Residence.
- 21.6 The Seller has no obligation to provide the landscaping package to any owner other than the original buyer of the Land.

22 Access

- 22.1 If the Land purchased under this Contract is a lot with rear laneway access, the Buyer acknowledges that in accordance with the requirements of the Western Australian Planning Commission, the Seller hereby notifies the Buyer that the Land may be affected by a detailed area plan pursuant to a Local Structure Plan under the City of Wanneroo District Planning Scheme No. 2. The Buyer acknowledges that the Seller has provided the Buyer with a copy of the relevant detailed area plan with this Contract.

23 Boundary and retaining walls and fences

- 23.1 If there are existing walls and fences on the Land, then:
- 23.1.1 The Seller gives no warranty that all walls and fences purporting to be on the boundaries of the Land are in fact on the proper boundaries of the Land. Because the retaining wall or walls may be located within and not necessarily upon the relevant boundary or boundaries of the Land, the area of the Land available for the construction of a dwelling house may be less than the actual area of the Land as shown on the relevant certificate of title for the Land;
- 23.1.2 The Buyer acknowledges that the dividing walls and fences (if any) of the Land may encroach on the lot or lots adjoining the Land or, alternatively, that the dividing walls and fences of the lot or lots adjoining the Land (if any) may encroach onto the Land itself.
- 23.1.3 All walls and fences purporting to be on a boundary to the Land will be deemed to be on the proper boundaries and the Buyer will have no claim against the Seller if:
- (a) It should be found that any walls or fences are not on the boundaries or encroach onto any adjoining land; or
- (b) The owner or owners of any adjoining land claim to be entitled to any rights of adverse possession over any part of the Land because of the boundary walls or fences on the Land not being on the proper boundaries.
- 23.1.4 The Seller gives no warranty that any retaining wall affecting the Land are wholly within the boundaries of the Land or wholly within any lot or lots adjoining the Land.
- 23.1.5 The Seller will be under no obligation or liability to realign or pay for the cost of realigning any walls or fences that are not on the actual boundaries of the Land.
- 23.1.6 If a site plan has been attached to this Contract, then measurements of the retaining walls shown on the attached plan are approximations only and the Seller makes no warranty as to the accuracy of any measurements. The Buyer will also be required to keep any retaining walls in good repair and condition and must not cause or allow any of

those retaining walls to be demolished, damaged, destabilised or interfered with in any manner.

23.1.7 The Buyer is not entitled to:

- (a) Rescind or set aside this Contract;
- (b) Claim any compensation or damages or reduction in the Purchase Price against the Seller; or
- (c) Exercise any other rights and remedies whatsoever against the Seller on account of the dividing walls and fences of the Land not being on the proper boundaries of the Land or on account of any owners of adjoining lands having rights of adverse possession over part of the Land.

23.1.8 The Buyer acknowledges that in accordance with the requirements of the Western Australian Planning Commission the Seller notifies the Buyer that the positioning of any buildings on the Land is not to surcharge any subdivisional retaining wall.

24 GST

Margin Scheme

24.1 The Buyer acknowledges that the Seller is registered for GST. The total price nominated in this Contract is inclusive of GST. The Buyer and the Seller agree that for the purposes of the GST Act, the Supply of the Land is made under the Margin Scheme. The Buyer is advised that under GST regulations, acquisition of the Land under the Margin Scheme is not considered a creditable acquisition and no input credits can be claimed.

25 Delay in settlement

Delay not attributable to the Seller

25.1 If for any reason not attributable to the Seller, Settlement is not effected on the Settlement Date, the Buyer must pay to the Seller on the date Settlement is effected, in addition to the unpaid balance of the Purchase Price, interest at the Rate on the unpaid balance of the Purchase Price calculated:

- 25.1.1 If the Seller is ready, willing and able to complete the sale of the Land on the Settlement Date, from and including the Settlement Date; or
- 25.1.2 If the Seller is not ready, willing and able to complete the sale of the Land on the Settlement Date, from and including the date on which the Seller gives written notice to the Buyer that the Seller is ready, willing and able to complete the sale of the Land, in either case, up to and including the date on which Settlement is effected.

Delay not attributable to the Buyer

25.2 If for any reason not attributable to the Buyer, Settlement is not effected on or before the Settlement Date, the Seller must allow to the Buyer at Settlement, as a deduction from the balance of the Purchase Price payable at Settlement, compensation calculated at the Rate on the balance of the Purchase Price payable at Settlement calculated:

- 25.2.1 If the Buyer is ready, willing and able to complete the sale of the Land on or before the Settlement Date, from and including the Settlement Date; or
- 25.2.2 If the Buyer is not ready, willing and able to complete the sale of the Land on the Settlement Date, from and including the date on which the Buyer gives written notice to the Seller that the Buyer is ready, willing and able to complete the sale of the Land, in either case, up to and including the date on which Settlement is effected.

26 Notice to complete

Notice must be given

26.1 Except as otherwise provided in this Contract:

26.1.1 The Seller is not entitled to:

- (a) Receive or retain money paid by the Buyer; or
- (b) Take or recover possession of the Land, by reason of the Buyer's failure to observe or perform the Buyer's obligations under this Contract;

26.1.2 Neither the Seller nor the Buyer may terminate this Contract by reason of the other's failure to observe or perform an obligation imposed on that other party under this Contract unless that party has first given a notice to the other party:

- (a) Specifying the failure;

- (b) Stating that the other party must observe and perform that party's obligations under this Contract the subject of the notice within 5 Business Days from the date of service of the notice;

- (c) Stating that if those obligations are not observed and performed within that time, the party giving the notice may terminate this Contract; and

- (d) The party receiving the notice fails to observe and perform those obligations within the period stated in that notice.

Repudiation

26.2 Clause 26.1 does not apply if either party repudiates the Contract.

27 Default

Buyer in default

27.1 If the Buyer:

- 27.1.1 Fails to observe or perform any of the Buyer's obligations under this Contract; or
- 27.1.2 Repudiates this Contract, the Buyer forfeits the Deposit and any other amounts paid to the Seller under this Contract (which includes any interest that has accrued on the Deposit), which the Seller may retain absolutely.

27.2 The Seller may also do any of the following:

- 27.2.1 Affirm this Contract and sue the Buyer for damages for breach of Contract.
- 27.2.2 Sue the Buyer for specific performance of the agreement evidenced by this Contract.
- 27.2.3 Subject to clause 26 and clause 27.6, proceed to take or recover possession of the Land.
- 27.2.4 Subject to clause 26, if the notice given under that clause states that unless the default is remedied within the time stated in the notice, this Contract may be terminated and the default is not remedied within the time stated. The Buyer may:
 - (a) Terminate this Contract;
 - (b) Sue the Buyer for damages for breach of Contract; and
 - (c) Without further notice to the Buyer, re-sell the Land in such manner as the Seller thinks fit.

27.3 If the Seller re-sells the Land within 12 months following the date of termination, the following amounts are recoverable by the Seller from the Buyer as liquidated damages:

- 27.3.1 Any deficiency in the proceeds of sale.
- 27.3.2 All losses and expenses incurred by the Seller in the re-sale and resulting from the Buyer's default.

27.4 The Buyer must on demand pay the Seller on a full indemnity basis all of the Seller's costs, fees and expenses of and incidental to:

- 27.4.1 Each breach of the Buyer's obligations under this Contract; and
- 27.4.2 The removal or attempted removal following default by the Buyer of any caveat lodged against the title to the Land by the Buyer.

27.5 If the Seller proceeds to take or recover possession of the Land before the Settlement Date the Seller will not be obliged to pay any compensation or other moneys to the Buyer in respect of the Land.

Seller in default

27.6 If the Seller:

- 27.6.1 Fails to observe or perform any of the Seller's obligations under this Contract; or
- 27.6.2 Repudiates the agreement evidenced by this Contract, The Buyer is entitled to the repayment of the Deposit.

28 Resolution of disputes

Appointment of expert

28.1 The parties agree that before any dispute is referred to the courts, it must first be referred to the Expert for determination except where a party seeks urgent interlocutory relief in respect of this Contract, in which case that party is not required to comply with this clause 28 prior to seeking such relief. The Expert is the person whom the parties agree to determine the dispute. However, if the

parties cannot agree, then any party may request the president for the time being of the Law Society of Western Australia to make the appointment. The president must be directed to appoint a suitably qualified person having regard to the nature of the dispute.

Determining dispute

- 28.2 In determining the dispute:
- 28.2.1 Either party may be represented by a legal practitioner;
 - 28.2.2 Each party must make a written submission to the Expert as to its contentions in relation to the dispute;
 - 28.2.3 Each party must make a written response to the submission made by another party;
 - 28.2.4 After receiving the parties' submissions and responses, the Expert may request further submissions or information from the parties or any of them;
 - 28.2.5 The Expert is not bound by the rules of evidence or the rules of natural justice;
 - 28.2.6 The Expert may make his or her own enquiries but the Expert must advise the parties of the results of those enquiries and allow the parties to make further submissions before making a determination;
 - 28.2.7 The Expert must deal with the determination of the dispute as soon as reasonably possible;
 - 28.2.8 The Expert may engage such qualified persons to advise or give an opinion in respect of any particular matter as the Expert sees fit; and
 - 28.2.9 If a party fails to comply with a direction of the Expert within the time set down, the other parties may withdraw from this dispute resolution process and commence court proceedings.

Expert's determination

- 28.3 The Expert's determination will be final in relation to the matter in issue and binding on all parties.

Expert's orders

- 28.4 The Expert may make such order as he or she thinks fit as to the payment by a party of the Expert's costs and the costs of the parties in relation to the determination.

Expert not arbitrator

- 28.5 In determining a dispute, the Expert will not act as an arbitrator.

29 Notices

Giving notices

- 29.1 A notice, consent, information, application or request that must or may be given or made to a party under this Contract is only given or made if it is in writing and:
- 29.1.1 Delivered or posted to that party at its address as set out in the Contract; or
 - 29.1.2 Posted or faxed to that party's settlement agent.
- 29.2 If a party gives the other party 3 Business Days' notice of a change of its address or fax number, a notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.

Time notice is given

- 29.3 A notice, consent, information, application or request is to be treated as given or made at the following time.
- 29.3.1 If it is delivered, when it is left at the relevant address.
 - 29.3.2 If it is sent by post, 2 Business Days after it is posted.
 - 29.3.3 If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 29.4 If a notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, after the normal business hours of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

30 Miscellaneous

Trustee

- 30.1 If a party acts as trustee of a trust, that party enters into this Contract in its own right and as trustee for the trust.

Assignment

- 30.2 Except as expressly permitted by this Contract, a party must not assign any of its rights under this Contract without the prior written consent of the other parties. That consent may be given or withheld at a party's absolute discretion.

Costs

- 30.3 Except as otherwise agreed by the parties in writing, each party must pay its own costs in relation to preparing, negotiating and executing this Contract and any document related to this Contract.

Entire agreement

- 30.4 This Contract contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Contract was executed, save as permitted by law.

Execution of separate documents

- 30.5 This Contract is properly executed if each party executes either this Contract or an identical document (including a faxed copy of this Contract). In the latter case, this Contract takes effect when the separately executed documents are exchanged between the parties. Exchange of the documents can be affected by way of facsimile transmission.

Further acts

- 30.6 The parties will promptly do and perform all acts and things and execute all documents as may from time to time be required, and at all times will act in good faith, for the purposes of or to give effect to this Contract.

Governing law and jurisdiction

- 30.7 This Contract is governed by the law of the State of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts on any basis.

Severability

- 30.8 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.
- 30.9 If the removal of a clause or part of a clause under clause 30.8 materially alters the commercial allocation of benefit and risk (or management of risk) under this document, the parties agree to negotiate in good faith to amend or modify the terms of the document as may be necessary or desirable having regard to the original terms of the bargain and the prevailing circumstances.

Time for action

- 30.10 If the day on or by which something is required to be done or may be done is not a Business Day, that thing must be done on or by the next Business Day.

Variation

- 30.11 No variation of this Contract will be of any force or effect unless it is in writing and signed by the parties to this Contract.

Waiver

- 30.12 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Contract, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

Duty

- 30.13 The Buyer must pay:
- 30.13.1 All duty payable under the *Duties Act 2008* (WA) in respect of the subject matter that this document records; and
 - 30.13.2 Any penalty or interest payable in respect of any duty the subject of clause 30.13.1 to the extent that the Buyer is responsible for such penalty or interest.

ANNEXURE B - RESTRICTIVE COVENANT

The following Restrictive Covenant will apply to the Land sold under this Contract. The wording of the Restrictive Covenant is substantially in the form that will be registered on the title of the Land subject to any minor changes required by Landgate for the registration of the Restrictive Covenant.

The burden of the Restrictive Covenant shall run the Land and is for the benefit other lots in the subdivision. The Restrictive Covenant shall be enforceable against the registered proprietor of each of the lots specified as a benefited lot, by the Housing Authority and every subsequent registered proprietor of each of the benefited lots.

1.1 In this Restrictive Covenant:

Dwelling means a permanent non-transportable dwelling.

Irrigation System Controller means the control mechanism for the irrigation system provided by the Housing Authority.

R Codes means the residential design codes prepared by the Western Australian Planning Commission.

Restrictive Covenant means each of the following restrictive covenants specified in clause 1.2.

1.2 Restrictive Covenants

The registered proprietors for the time being of all of the Lots must not do any of the following in respect of a Lot:

- 1.2.1 Develop the Lot without the plans and specifications for that development having been approved in writing by the Housing Authority.
- 1.2.2 Develop the Lot otherwise than in accordance with the Agreed Local Structure Plan.
- 1.2.3 Develop the Lot with setbacks otherwise than in accordance with the Agreed Local Structure Plan, or otherwise than in accordance with the provisions of the R Codes, the Building Code of Australia or the bylaws and policies of the local authority that apply to the Lot.
- 1.2.4 Construct, erect or install, or permit to be constructed, erected or installed on the Lot a Dwelling other than a Dwelling:
 - (a) Oriented to face the principal road, with the exception of a group dwelling as defined in the R Codes and a Dwelling on a corner Lot.
 - (b) With a maximum 6.0m (in width) driveway and crossover to be completed at the same time as the Dwelling before occupation.
 - (c) With all driveways comprised of brick paving, coloured limestone, coloured or textured concrete or coloured bitumen unless approved to be of other material by the Housing Authority.
 - (d) With a minimum roof pitch of 25 degrees, unless a lesser slope is required over a veranda area.
 - (e) That incorporates a minimum of a double carport or double garage, unless in accordance with the requirements of the R Codes, built in the same materials as the Dwelling and, in the case of a carport, integrated with the design of the Dwelling.
 - (f) With external walls constructed in concrete, clay bricks, limestone or other masonry materials, finished in fair face or appropriately coloured render, unless otherwise approved.
 - (g) With clay or concrete tiles, 'Zincalume' or 'Colorbond' metal roofing.
 - (h) With a balanced combination of materials in the primary facade facing the street, which may include timber, 'Hardiflex', 'Colorbond' and 'Zincalume' to the satisfaction of the Housing Authority.
 - (i) With a distinctive front façade and a minimum of two different wall materials or wall colours.
 - (j) With one or more the following features:
 - (1) At least one gable or gabled on the street elevation; or

- (2) An arch of any appropriate shape on the front façade of the Dwelling. This feature may be to a window, part of a verandah, balcony or portico and should be supported by corbels or well proportioned columns; or
- (3) Timber or weatherboard to be stained or painted and comprise no less than 10% of the wall area of the front elevation; or
- (4) An alternative façade design, providing that it contains a distinctive architectural feature and has been approved by the Housing Authority.

- 1.2.5 Construct, erect or install, or permit to be constructed, erected or installed any boundary fencing, including corner side Lots facing the secondary street unless constructed of either:
 - (a) 'Colorbond' capped and painted on both sides; or
 - (b) Natural finished timber, brushwood, masonry or brick.
- 1.2.6 Install boundary fencing between adjoining Lots less than 1500mm high.
- 1.2.7 Construct fencing forward of the "building line" on a Lot unless it is a corner Lot.
- 1.2.8 Fail to insure all fencing under the owner's household insurance policy.
- 1.2.9 Fail to complete all fencing on the Lot prior to occupation of the Dwelling.
- 1.2.10 Alter estate walling to a Lot boundary provided by the Housing Authority in any way, except in the event of damage, where the owner shall repair the wall in the same style and colour as provided by the Housing Authority.
- 1.2.11 Construct or permit to be constructed or bring on to the Lots any outbuildings greater than 20 square metres unless constructed in materials to match the main building.
- 1.2.12 Construct or permit to be constructed or bring on to the Lots any sheds and other outbuildings with a floor area of less than 20 square metres unless shown on plans approved by the Housing Authority and constructed in non-reflective finishes which complement the residence with respect to material and appearance.
- 1.2.13 Remove or damage any street tree or to allow the removal or damage of any street tree within the estate of which the Lot forms part, unless the Housing Authority has given approval before any action is taken.
- 1.2.14 Alter the general level of a Lot.
- 1.2.15 Raise the finished site level of any part of a Lot by more than 0.3m by either earthworks or imported fill or construct or permit to be constructed any boundary retaining walls necessitated by such alterations of levels otherwise than in compliance with the requirements of the R Codes, the Building Code of Australia or the bylaws and policies of the relevant local authority and at the owner's cost.
- 1.2.16 Install air conditioning units that protrude significantly above the ridgeline of the Dwelling or are not of similar colour to the roof.
- 1.2.17 Install any solar hot water units that are not integrated with, and matching, the roof profile of the Dwelling.
- 1.2.18 Install any clothes hoists, washing lines and rain water tanks unless they are screened from public view and not visible from the street or public open space.
- 1.2.19 With respect to any irrigation system installed upon a Lot by, or on behalf of, the Housing Authority:
 - (a) Replace the Irrigation System Controller except with a control mechanism approved by the Housing Authority for use with the irrigation system and where that replacement is undertaken by a contractor approved by the Housing Authority;
 - (b) Interfere with or damage the irrigation system;

- (c) Allow the irrigation system to fall into disrepair; or
 - (d) Use, or permit to be used, the Irrigation System Controller for any purpose other than for turning the irrigation system on and off and allowing the irrigation system to be tested.
- 1.2.20 Permit the landscaping to the front of the Dwelling to remain uncompleted 3 months after practical completion of the Dwelling.
- 1.2.21 Carry out, or permit to be carried out, on the Lot any repairs or restore any motor vehicle, boat, trailer, aircraft or any other vehicle on the Lot unless screened from public view at all times.
- 1.2.22 Use the completed Dwelling for display purposes without the written approval of the Housing Authority.
- 1.2.23 Permit any rubbish disposal containers (bins) on the Lot to be visible from any public street or thoroughfare except on days allocated by the local authority for rubbish collection from the Lots.
- 1.2.24 Park or permit to be parked, any commercial vehicles including trucks, buses and tractors on the Lot greater than 3 tonnes or longer than 4 metres, unless within a garage or when used during the normal course of business by a visiting tradesman.
- 1.2.25 Store or permit to be stored, any boats, caravans and camper trailers on the Lot unless in accordance with the provisions of the relevant town planning scheme and stored in the rear yard.

1.3 Planning Scheme

The Restrictive Covenants only apply to the extent that they are not inconsistent with any applicable planning scheme or the requirements of any authority.

ANNEXURE C - TELEPHONE AND COMMUNICATION SERVICES INFORMATION

General

The Seller will subsidise a telecommunications package which includes the design and installation of telephony, internet and TV services (**Telecommunications Package**). This network is a state-of-the-art Fibre to the Home solution that will provide you access to exceptional telephone and communication services for home and business purposes.

Timing

You are required to have commenced construction of your dwelling within 24 months of the date of settlement. Steps to Follow:

1. Following settlement of your property, Fuze Connect will send you an information package outlining service information and installation requirements that you and your builder will need to undertake to get services.
2. Once your property is nearing completion notify Fuze Connect as specified in the information package to connect your property to the Banksia Grove Telecommunication and Data network.

IMPORTANT

Please note that you are required to instruct your builder to install Cat5e and RG6 cabling within your house to connect to the internet, phone and TV services. You will also need to install a conduit from the communication pit to a position below the network connection weather-proof box as defined in the Telecommunications Package. Failure to do so may result in additional costs to you.

FAQS:

What is the network connection?

The network connection provides access to:

- Traditional analogue telephony services
- Scalable high speed Internet Services providing standard PC ethernet connection (no additional modem or network device required)
- Analogue Free to Air channels (ABC, 7, 9, 10, SBS) providing a receive level of 65-70 dBmV (millivolts) at the household
- Standard Definition Digital Free to Air channels (ABC, ABC2, 7, 9, 10, SBS, SBS2) assuming the customer has an appropriate digital set top box
- High Definition Digital Free to Air channels (ABC, 7, 9, 10, SBS) assuming the customer has an appropriate digital set top box

Where will my network connection be installed?

Your network connection will be installed in a weather-proof box on an external cavity wall of your house adjacent to the meter box.

What do I need to provide for the network connection?

Your builder will be required to install a power point to provide power to the network connection. In addition you will be responsible for arranging the installation of phone, data and TV outlets from the connection.