

# Sale of Land Contract

Annexures A to D

By the Housing Authority of 99 Plain Street East Perth

**Licensee: Banksia Grove Realty Pty Ltd - Licensee Trading as Banksia Grove Realty**

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## ANNEXURE A – CONDITIONS – BANKSIA GROVE

### 1. Definitions and interpretations

#### Definitions

1.1 In this Contract:

**Assessment** means an assessment issued by State Revenue in respect of the amount of Duty payable on the 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.

**Buyer's Settlement Agent** means the buyer's settlement agent as defined in the Contract.

**Certificate of Duty** means the State Revenue certificate of payment of Duty generated through Revenue Online.

**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 and the annexures referred to in this Contract.

**Contract Date** means the date of acceptance of the Contract by or on behalf of the Seller.

**Contaminated Sites Act** means the *Contaminated Sites Act 2003 (WA)*

**Commissioner of State Revenue** means the Commissioner of State Revenue specified in section 6 of the *Taxation Administration Act 2002 (WA)*.

**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.

**Deposit** means the amount specified as the deposit in the Contract to be paid by the Buyer in accordance with clause 3.1.1.

**Dutiable Value** has the same meaning as dutiable value in section 9 of the Duties Act.

**Duties Act** means the *Duties Act 2008 (WA)*.

**Duty** means duty payable under the Duties Act.

**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; or
- (d) reservations, easements or restrictive covenants; or any other right or interest of any third party, affecting the Land.

**Expert** means the expert referred to in clause 21.1.

**Financial Year** means each period commencing on 1 July in a year and ending on 30 June in the next succeeding year.

**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 1999 (Cth)* 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.

**Landgate** means the Department of Land Information.

**Land Tax** means land tax payable under the *Land Tax Act 2002 (WA)* and includes

where applicable any metropolitan region improvement tax as that tax is defined under the *Metropolitan Region Improvement Tax Act 1959 (WA)*.

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

**Objection** means any objection, requisition, claim (for compensation or otherwise), withholding of all or part of the Purchase Price, refusal to complete Settlement, delay in completing Settlement or termination of this Contract.

**Practical Completion** means the completion of the construction 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
- (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.

**Remediated Site** means the Land has been classified under the Contaminated Sites Act as "remediated for restricted use."

**Remediated Site Memorial** means a memorial lodged against the Land under the Contaminated Sites Act which classified the Land as a "Remediated Site".

**Residence** means a dwelling house.

**Restricted Use** means the restriction on the use of the Land imposed by the Contaminated Sites Act.

**Restrictive Covenants** means the restrictive covenants in Annexure B.

**Revenue Online** also known as ROL means the system developed by State Revenue which enables Duty to be assessed and paid electronically.

**Seller's Project Manager** means Banksia Grove Management Pty Ltd ACN 119 156 473.

**Seller's Representative** means Banksia Grove Realty Pty Ltd ACN 126 914 350.

**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 or such other date the parties may agree in writing.

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

**State Revenue** means the office established by the Commissioner of State Revenue and known as the Office of State Revenue.

**Subdivision Land** means the land which at the commencement of the Financial Year in which Settlement occurs includes the Land and from which following subdivision the Land is created as separate lot.

**Supply** has the same meaning as in the GST Act.

**Transaction Summary** means the summary generated through Revenue Online which specifies:

- (a) the date the Contract was lodged on Revenue Online;
- (b) the Dutiable Value;
- (c) the date of assessment; and
- (d) the Duty assessed.

**Transfer** means the instrument required to transfer the Land to the Buyer in a form acceptable for registration by Landgate subject to signing by all parties.

Initial Here

## 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; and
  - 1.2.11 the schedules, annexures and attachments form part of this Contract.

## 2. Encumbrances

### Land subject to encumbrances

- 2.1 Notwithstanding any other provision of this Contract:
- 2.1.1 the Land is sold subject to:
    - (a) the provisions of the *Transfer of Land Act 1893 (WA)*;
    - (b) all matters contained in or endorsed upon the deposited plan to be registered at Landgate in relation to the Land;
    - (c) all laws affecting the Land;
    - (d) all other requisitions, orders, notices, notifications and memorials issued by any competent authority in relation to the Land including any of the following:
      - (i) any notification registered against the title to the Land pursuant to section 70A of the *Transfer of Land Act 1893 (WA)*;
      - (ii) any restrictive covenant registered against the title to the Land pursuant to sections 150 of the *Planning and Development Act 2005 (WA)* and 136D of the *Transfer of Land Act 1893 (WA)*;
      - (iii) any notification registered against the title to the Land pursuant to section 165 of the *Planning and Development Act 2005 (WA)*; and
      - (iv) provided clause 2.4 applies, any memorial registered against the title to the Land pursuant to section 58 of the *Contaminated Sites Act 2003 (WA)*;
    - (e) all defects (if any) whether or not those defects could or should have been recognisable upon the Buyer's inspection of the Land;
    - (f) the Restrictive Covenant; and
    - (g) all the matters referred to in clauses 2.1 and 2.2.
  - 2.1.2 the Buyer is not entitled to make any Objection to any of the matters referred to in clause 2.1.

## Note to Buyer

The comments contained in this dialogue box are intended to assist the Buyer to understand clause 2.2. The comments do not form an operative part of this Contract.

The Seller may, without recourse from the Buyer, because of a requirement from an authority or if the Seller considers it appropriate to do so (in the interests of the development), cause a range of encumbrances to be registered against the title to the Property and/or against the certificate of title to the Land. Any additional encumbrance will not materially adversely affect the Buyer's direct use and enjoyment of the Land.

Buyer to initial that it has read and understood this clause.

## Further encumbrances

- 2.2 The Buyer acknowledges that as, at the Contract Date, the Seller may not have:
- 2.2.1 granted, created or identified all the easements, leases, restrictions on use, notifications and covenants in respect of the Land;
  - 2.2.2 entered into all agreements, leases, licenses, authorisations and other arrangements in respect of the Land;
  - 2.2.3 granted all the rights and privileges in respect of the Land;
  - 2.2.4 dedicated all the land; and/or
  - 2.2.5 created the roads or any services, which may be considered necessary or desirable for the Seller to create, enter into, grant or dedicate in respect of the Land.
- 2.3 With the exception of the matters set out in clauses 2.1 and 2.2, the Land is sold free from Encumbrances. The Seller is entitled to give effect to any matter referred to in clause 2.2 and the Buyer is not entitled to make any Objection in relation to clause 2.2.

## Land sold subject to Remediated Site Memorial

- 2.4 If the Land is a Remediated Site and a Remediated Site Memorial has been lodged against the certificate of title to the Land and the Restricted Use does not unreasonably affect the proposed use of the Land by the Buyer for residential purposes then the Buyer must complete the purchase of the Land pursuant to this Contract subject to the Remediated Site Memorial.

## 3 Payment of purchase price

### Manner of payment

- 3.1 The Buyer must pay the Purchase Price to the Seller as follows:
- 3.1.1 the Deposit to be paid to the Seller's Representative within 5 Business Days of the Contract Date; and
  - 3.1.2 the balance of the Purchase Price at Settlement by bank cheque payable to the Seller (or as the Seller may in writing direct) on the Settlement Date.

### If the Deposit is not paid

- 3.2 If the Deposit is not paid in accordance with clause 3.1.1, the Buyer will be in default under this Contract and the Seller may terminate this Contract by notice to the Buyer.

### Investment of the Deposit

- 3.3 Nothing in this Contract prevents the Seller's Representative from depositing the Deposit in an interest bearing trust account. Any interest which accrues on the Deposit (less fees charged by the Seller's Representative's financial institution and any income tax withheld by the Seller's Representative's financial institution) is payable to the Buyer on completion of Settlement.

## 4 Transfer

- 4.1 The Buyer must deliver to the Seller the Transfer, properly executed by the Buyer, at least 14 days before the Settlement Date. This Transfer must comply with the requirements of Landgate.

## 5 Duty

- 5.1 Subject to clauses 5.3 to 5.10, before the Transfer is delivered to the Seller, the Buyer must arrange for:
- 5.1.1 Duty to be paid on the Contract; and
- 5.1.2 the Transfer to be endorsed with Duty.
- 5.2 Following the delivery of the Transfer to the Seller or the Seller's Settlement Agent in accordance with clause 5.1, the Seller must within a reasonable time sign the Transfer pending Settlement.
- 5.3 Subject to clauses 5.4 to 5.10, the Buyer's Settlement Agent may make a request in writing to the Seller's Settlement Agent that:
- 5.3.1 the Seller sign the Transfer; and
- 5.3.2 the Seller's Settlement Agent return the Transfer to the Buyer's Settlement Agent,
- without payment by the Buyer of Duty on the Contract, and without the Transfer being endorsed with Duty to be held by the Buyer's Settlement Agent solely for:
- 5.3.3 payment by the Buyer of Duty on the Contract before Settlement and the Transfer being endorsed with Duty before, and for the purpose of, Settlement; or
- 5.3.4 the payment of Duty where the Duty is to be assessed and paid through Revenue Online and the provision of a Certificate of Duty at Settlement.
- 5.4 The Seller will have no obligation to comply with a request by the Buyer's Settlement Agent in accordance with clause 5.3.
- 5.5 A request by the Buyer's Settlement Agent in accordance with clause 5.3, must be accompanied by:
- 5.5.1 an Assessment of the Duty payable on the Contract issued by State Revenue; or
- 5.5.2 where Duty is to be assessed and paid through Revenue Online in accordance with clause 5.9 and 5.10, a Transaction Summary.
- 5.6 If the Seller agrees to provide the Transfer to the Buyer's Settlement Agent, in accordance with clause 5.3:
- 5.6.1 the Seller's Settlement Agent must provide the Transfer signed by the Seller to the Buyer's Settlement Agent; and
- 5.6.2 the Buyer will be treated as having given unconditional undertakings to the Seller and the Seller's Settlement Agent as follows:
- (a) the Buyer's Settlement Agent will hold the Transfer solely for the purpose of payment of Duty on the Contract, and for the Transfer to be endorsed with Duty for the purposes of Settlement; and
- (b) the Buyer's Settlement Agent must immediately following a direction in writing by the Seller or the Seller Representative, deliver the Transfer to the Seller or the Seller Representative whether or not the Transfer has been endorsed with Duty.
- 5.7 The Buyer unconditionally and irrevocably:
- 5.7.1 directs; and
- 5.7.2 will be treated as having directed,
- the Buyer's Settlement Agent to comply with the provisions of clauses 5.6.2(a) and 5.6.2(b) and, in particular, to comply immediately with a direction by the Seller or the Seller's Settlement Agent, made in accordance with clause 5.6.2(b); and
- 5.8 Where the Seller or the Seller's Settlement Agent has provided the Transfer to the Buyer's Settlement Agent in accordance with clause 5.3 and 5.6, the provision of the Transfer to the Buyer's Settlement Agent will be without prejudice to any right of the Seller arising from any of the following.
- 5.8.1 any claim the Seller has, or may have, against the Buyer under clause 17 arising from a delay in Settlement.
- 5.8.2 without affecting clause 5.8.1, any default by the Buyer under the Contract.
- 5.9 Where the Buyer's Settlement Agent:
- 5.9.1 is registered for Revenue Online; and
- 5.9.2 has elected to have Duty on the Contract assessed and paid through Revenue Online,
- the provisions of clause 5.3 to 5.8 and 5.10 will apply.
- 5.10 Where clause 5.9 applies, the following will apply.

- 5.10.1 the Buyer's Settlement Agent must advise the Seller or the Seller's Representative that the Buyer's Settlement Agent has elected to have Duty on the Contract assessed and paid through Revenue Online;
- 5.10.2 the Buyer's Settlement Agent must, within 5 Business Days after the Transaction Summary is generated, provide a copy of the Transaction Summary to the Seller or the Seller's Representative; and
- 5.10.3 on Settlement the Buyer's Settlement Agent must provide to the Seller's Representative a copy of the Certificate of Duty.

## 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; and
- 6.1.2 the Seller must deliver or cause to be delivered to the Buyer:
- (a) a transfer of the Land (in registrable form) in favour of the Buyer free from Encumbrances except the Encumbrances specified in clause 2.1;
- (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 at 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 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.

### 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.
- 7.3 All Land Tax apportioned under this clause 7 will be done so on a single ownership basis.

### Settlement Date 30 June

- 7.4 Where the Settlement Date is before 30 June and Settlement does not occur before 5pm on 30 June for a reason not attributable to the Seller, the Buyer must pay to the Seller at Settlement any Land Tax assessed in respect of the Land as at midnight 30 June.

### Land Tax subdivided land

- 7.5 Where at Settlement a Land Tax assessment has only been issued in respect of the Subdivision Land (and not issued in respect of the Land) the amount of Land Tax that will be apportioned in accordance with clause 7.1 is that amount of the Land Tax which is in the same proportion as the area the Land bears to the area of the Subdivision Land.

## 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 the 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 date Settlement is effected.

### 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 as at the Contract Date, 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;

11.2.2 this Contract will be at an end; and

11.2.3 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.

11.3 If:

11.3.1 neither party gives notice of termination under clause 11.2.1; or

11.3.2 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 as at the Contract Date,

then 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 if the amount of the reduction is not mutually agreed the issue is to be determined in the manner set out in clause 21.

## 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

### Note to Buyer

The comments contained in this dialogue box are intended to assist the Buyer to understand Clause 13. The comments do not form an operative part of this Contract.

Except as set out in the Contract and as set out below, the Buyer is not relying on any representations or warranties made by the Seller, any real estate agent representing the Seller or any other person representing the Seller.

If the Buyer is relying on a representation or warranty made by the Seller, any real estate agent representing the Seller or any other person representing the Seller that is not contained in the Contract, details of that representation or warranty are set out below: (specify the person to whom the representation or warranty was made, the person who made the representation or warranty, details of the representation or warranty and the date, time and place when the representation or warranty was made)

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Buyer to initial that it has read and understood this clause.

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 reviews referred to in clause 13.1.

## 14. Resurvey

14.1 Any resurvey of the Land after the Settlement Date is the responsibility of the Buyer.

## 15 Site costs

15.1 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.

## 16 GST - Margin Scheme

16.1 The Buyer acknowledges that the Seller is registered for GST. The Purchase Price in 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 acquisition of the Land under the Margin Scheme is not considered a creditable acquisition and no input tax credits can be claimed.

## 17 Delay in settlement

### Delay not attributable to the Seller

17.1 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:

17.1.1 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

17.1.2 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

17.2 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:

- 17.2.1 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
- 17.2.2 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.

## 18 Registration of Transfer

### Registration

- 18.1 No later than 3 Business Days following Settlement, the Buyer must lodge the Transfer and every other document required to enable the Transfer to be registered at Landgate and must then use best endeavours to ensure that the Transfer is registered with Landgate as soon as possible.

### Seller to co-operate

- 18.2 The Seller will provide the Buyer with any assistance reasonably required in respect of clause 18.1.

### Landgate requisition

- 18.3 If a requisition notice is issued by Landgate relating to the registration of the Transfer or any other document required to enable the Transfer to be registered at Landgate the Buyer and Seller must do all things reasonably necessary to satisfy the requirements of the requisition notice.
- 18.4 Where the requisition notice issued by Landgate in respect of a document prepared by or on behalf of the Seller, the Seller must within 3 Business Days of the issue of the requisition notice, pay to the Buyer or to Landgate the fee required in respect of that requisition notice.
- 18.5 Where the requisition notice issued by Landgate in respect of a document prepared by or on behalf of the Buyer, the Buyer must within 3 Business Days of the issue of the requisition notice, pay to the Seller or to Landgate the fee required in respect of that requisition notice.

## 19 Notice to complete

### Notice must be given

- 19.1 Except as otherwise provided in this contract:
- 19.1.1 the Seller is not entitled to:
- (a) receive or retain money paid by the Buyer; or
  - (b) take or recover possession of the Land; and
- 19.1.2 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; and
  - (c) stating that if those obligations are not observed and performed within that time, the party giving the notice may terminate this Contract; and
- the party receiving the notice fails to observe and perform those obligations within the period stated in that notice.

### Repudiation

- 19.2 Clause 19.1 does not apply if either party repudiates the Contract.

## 20 Default

### Buyer in default

- 20.1 If the Buyer:
- 20.1.1 fails to observe or perform any of the Buyer's obligations under this Contract; or
- 20.1.2 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.

- 20.2 The Seller may also do any of the following:

- 20.2.1 affirm this Contract and sue the Buyer for damages for breach of this Contract;
- 20.2.2 sue the Buyer for specific performance of the agreement evidenced by this Contract;
- 20.2.3 subject to clause 19 and clause 20.5, proceed to take or recover possession of the Land; or
- 20.2.4 Subject to clause 19:
- (a) 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
  - (b) the default is not remedied within the time stated, terminate this Contract and;
  - (c) sue the Buyer for damages for breach of Contract; and
  - (d) without further notice to the Buyer, re-sell the Land in such manner as the Seller thinks fit.

- 20.3 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:

- 20.3.1 any deficiency in the proceeds of sale.
- 20.3.2 all losses and expenses incurred by the Seller in the re-sale resulting from the Buyer's default.

- 20.4 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:

- 20.4.1 each breach of the Buyer's obligations under this Contract; and
- 20.4.2 the removal or attempted removal following default by the Buyer of any caveat lodged against the title to the Land by the Buyer.

- 20.5 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

- 20.6 If the Seller:
- 20.6.1 fails to observe or perform any of the Seller's obligations under this Contract; or
- 20.6.2 repudiates the agreement evidenced by this Contract,
- the Buyer is entitled to the repayment of the Deposit (and any interest that has accrued on the Deposit (under clause 3.3)).

## 21 Resolution of disputes

### Appointment of expert

- 21.1 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 21 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

- 21.2 In determining the dispute:
- 21.2.1 either party may be represented by a legal practitioner;
- 21.2.2 each party must make a written submission to the Expert as to its contentions in relation to the dispute;
- 21.2.3 each party must make a written response to the submission made by another party;
- 21.2.4 after receiving the parties' submissions and responses, the Expert may request further submissions or information from the parties or any of them;

- 21.2.5 the Expert is not bound by the rules of evidence or the rules of natural justice;
- 21.2.6 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;
- 21.2.7 the Expert must deal with the determination of the dispute as soon as reasonably possible;
- 21.2.8 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
- 21.2.9 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**

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

#### **Expert's orders**

- 21.4 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**

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

## **22 Notices**

### **Giving notices**

- 22.1 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:
  - 22.1.1 delivered or posted to that party at its address as set out in the Contract; or
  - 22.1.2 posted or faxed to that party's settlement agent.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**

- 22.2 A notice, consent, information, application or request is to be treated as given or made at the following time:
  - 22.2.1 if it is delivered, when it is left at the relevant address.
  - 22.2.2 if it is sent by post, 2 Business Days after it is posted.
  - 22.2.3 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. 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.

## **23 Miscellaneous**

### **Trustee**

- 23.1 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**

- 23.2 Except as expressly permitted by this Contract, the Buyer must not assign any of its rights under this Contract without the prior written consent of the Seller. That consent may be given or withheld at the Seller's absolute discretion. The Seller may assign its rights under this Contract without the consent of the Buyer.

### **Costs**

- 23.3 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**

- 23.4 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**

- 23.5 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**

- 23.6 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**

- 23.7 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**

- 23.8 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 Contract, but the rest of this document is not affected.
- 23.9 If the removal of a clause or part of a clause under clause 23.8 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.

### **Variation**

- 23.10 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**

- 23.11 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**

- 23.12 The Buyer must pay all duty in respect of the transaction evidenced by this Contract.

## 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 of 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.

For the purposes of the wording of the Restrictive Covenant, a reference for "Lot" includes the Land begun purchased in this Contract.

### Restrictive Covenant

In this Restrictive Covenant:

**Dwelling** means a permanent non-transportable dwelling.

**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 The registered proprietors for the time being of all of the Lots must not do any of the following in respect of a Lot:
  - 1.1 Develop the Lot without the plans and specifications for that development having been approved in writing by the Housing Authority.
  - 1.2 Develop the Lot otherwise than in accordance with the Agreed Local Structure Plan.
  - 1.3 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.
  - 1.4 Construct, erect or install, or permit to be constructed, erected or installed on the Lot a dwelling other than a Dwelling that meets each of the following criteria:
    - 1.4.1 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.
    - 1.4.2 With a maximum 6.0m (in width) driveway and crossover to be completed at the same time as the Dwelling before occupation.
    - 1.4.3 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.
    - 1.4.4 With a minimum roof pitch of 25 degrees, unless a lesser slope is required over a veranda area.
    - 1.4.5 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.
    - 1.4.6 With external walls constructed in concrete, clay bricks, limestone or other masonry materials, finished in fair face or appropriately coloured render, unless otherwise approved.
    - 1.4.7 With clay or concrete tiles, 'Zincalume' or 'Colorbond' metal roofing.
    - 1.4.8 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.
    - 1.4.9 With a distinctive front façade and a minimum of two different wall materials or wall colours.
    - 1.4.10 With one or more of the following features:
      - (a) An alternative façade design, providing that it contains a distinctive architectural feature and has been approved by the Housing Authority; or

- (b) At least one gable or gablet on the street elevation; or
- (c) 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
- (d) Timber or weatherboard to be stained or painted and comprise no less than 10% of the wall area of the front elevation.

- 1.4.11 With a remote sectional garage/carport door prior to occupation.
- 1.5 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:
  - 1.5.1 'Colorbond' capped and painted on both sides; or
  - 1.5.2 Natural finished timber, brushwood, masonry or brick.
- 1.6 Install boundary fencing between adjoining Lots less than 1500mm high.
- 1.7 Construct fencing forward of the "building line" on a Lot unless it is a corner Lot.
- 1.8 Fail to insure all fencing under the owner's household insurance policy.
- 1.9 Fail to complete all fencing on the Lot prior to occupation of the Dwelling.
- 1.10 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.
- 1.11 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.
- 1.12 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.
- 1.13 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.
- 1.14 Alter the general level of a Lot.
- 1.15 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.
- 1.16 Install air conditioning units that protrude significantly above the ridgeline of the Dwelling or are not of similar colour to the roof.
- 1.17 Install any solar hot water units that are not integrated with, and matching, the roof profile of the Dwelling.
- 1.18 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.
- 1.19 Install any television aerial unless it is not visible from public view and the street or public open space.
- 1.20 Permit the landscaping to the front of the Dwelling to remain incomplete 3 months after practical completion of the Dwelling.
- 1.21 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.
- 1.22 Use the completed Dwelling for display purposes without the written approval of the Housing Authority.
- 1.23 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.
- 1.24 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.
- 1.25 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.

## 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.

## Approval Process

Prior to any plans being submitted to the City of Wanneroo under the normal building approval procedures, two full sets of plans and specifications must be submitted for approval to Banksia Grove Management Pty Ltd, PO Box 495, South Perth WA 6951.

### Note to Buyer

The comments contained in this dialogue box are intended to assist the Buyer to understand this Annexure B. The comments do not form an operative part of this Contract.

This Annexure B provides that the Land will be encumbered by restrictive covenants and discloses the nature of those restrictive covenants in relation to restrictions on the type of residence that can be constructed, and other activities that can be undertaken, on the Land.

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Buyer to initial that it has read and understood this clause.

## ANNEXURE C – OFF THE PLAN SALES SPECIAL CONDITIONS

### 1 Definitions and interpretation

#### Definitions

1.1 In this Annexure C the following definitions apply:

**Lot** means a lot on the Plan and includes, where the context permits, the Land.

**Objection** means any objection, requisition, claim, action, withholding of all or part of the Purchase Price, refusal to complete Settlement, delay in completing Settlement or termination of this Contract.

**Plan** means the plan attached as Annexure E.

**Registration** means registration of the deposited plan creating the Land at Landgate and the creation and issue of a separate indefeasible title for the Land.

**Registration Date** means 30 June 2015.

**Restrictive Covenant** means the restrictive covenant referred to in Annexure B.

#### Interpretation

1.2 Unless otherwise stated, reference in this Annexure C to a clause refers to one in this Annexure C.

### 2 Acknowledgment

The terms of this Annexure C will override any other terms of this Contract to the extent of any inconsistency.

### 3 Deposit

#### Holding of the Deposit

3.1 Notwithstanding clause 3 of the Annexure A, the Seller's Representative will hold the Deposit on the following terms:

3.1.1 until Registration, on trust for the Buyer;

3.1.2 upon Registration, as stakeholder for the Seller and the Buyer;

3.1.3 the Seller's Representative will pay the Deposit into its trust account;

3.1.4 unless the Seller and Buyer otherwise agree, neither party is entitled to direct the Seller's Representative to pay the Deposit to any person before Settlement, except as provided in clause 3.1.5; and

3.1.5 the Seller and Buyer direct the Seller's Representative to pay the Deposit:

(a) to the Seller, or as the Seller directs, at Settlement; or

(b) to the Seller, if the Deposit is forfeited pursuant to this Contract.

### 4 Conditions

#### Note to Buyer

The comments contained in this dialogue box are intended to assist the Buyer to understand clause 4 of this Annexure C. The comments do not form an operative part of this Contract.

Clause 4 of this Annexure C provides that the Contract is subject to registration of the deposited plan creating the Land at Landgate and the creation and issue of a separate indefeasible title for the Land by a certain deadline.

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Buyer to initial that it has read and understood this clause.

#### Registration

4.1 The sale and purchase of the Land under this Contract is conditional on Registration being effected by the Registration Date.

4.2 If clause 4.1 is not satisfied, the Buyer may terminate this Contract, by giving a notice of this to the Seller, at any time after the Registration Date.

#### Effect of termination

4.3 If this Contract is terminated pursuant to clause 4.2:

4.3.1 this Contract will be at an end;

- 4.3.2 the Deposit (together with any interest that has accrued on the Deposit in accordance with clause 3.3 of Annexure A) will be returned to the Buyer; and
- 4.3.3 neither party will have any further rights or obligations under this Contract, except for any rights or obligations:
- (a) arising out of a breach of this Contract before the date of termination pursuant to this clause 4.2;
  - (b) or which are expressed or implied to survive termination.

## 5 Amendments

### Note to Buyer

The comments contained in this dialogue box are intended to assist the Buyer to understand clause 5 of this Annexure C. The comments do not form an operative part of this Contract.

As the Land is yet to be created and approvals for the deposited plan are yet to be obtained, the Seller may need to make variations to the deposited plan and consequently to dimensions of the Land (and other Lots in the development).

These variations may need to be made because of engineering or other requirements imposed by an authority or as recommended to the Seller by its professional advisors.

The Contract permits the Seller to make variations to the size and dimensions of the Land, without any recourse from the Buyer, so long as those variations do not reduce the area of the Land by more than 5%.

This 5% figure is quite standard in respect of property development, and the Seller believes that this figure is reasonable in all the circumstances.

Any reductions to the area of the Land of more than 5% may entitle the Buyer to a reduction in the purchase price or to terminate the Contract.

Buyer to initial that it has read and understood this clause.

### Seller may amend Plan

- 5.1 The Plan is provisional only and may be amended by the Seller.
- 5.2 Without limiting clause 5.1, the Seller may do any one or more of the following:
- 5.2.1 change the total number of any of the Lots;
  - 5.2.2 change the configuration, dimensions, or position of any of the Lots;
  - 5.2.3 change the use of any of the Lots;
  - 5.2.4 change the area of any of the Lots;
  - 5.2.5 change the numbering of any of the Lots;
  - 5.2.6 change the services or facilities to any of the Lots;
  - 5.2.7 transfer or incorporate any additional land into the Plan;
  - 5.2.8 transfer or excise any land out of the Plan; or
  - 5.2.9 change the design and layout of any of the Lots.

### Buyer's rights regarding amendments to Plan

- 5.3 If any amendment made by the Seller pursuant to clauses 5.1 or 5.2 does not result in a reduction in the area of the Land of more than 5% from the area of the Land shown in the Plan (being the Plan as at the Contract Date), the Buyer is not entitled to make any Objection in relation to the amendment.
- 5.4 If any amendment made by the Seller pursuant to clauses 5.1 or 5.2 results in a reduction in the area of the Land of more than 5% from the area of the Land shown in the Plan (being the Plan as at the Contract Date), the Buyer may, by giving the Seller a notice of this by no later than the earlier of:
- 5.4.1 3 Business Days after being notified of the amendment; or

- 5.4.2 the day that is 3 Business Days before the Settlement Date, elect to either:
- 5.4.3 Proceed with the purchase of the Land and receive a discount to the Purchase Price represented by A in the following formula:
- $$A = B - [BX [C/D]]$$
- Where:
- A = the discount to the Purchase Price;
  - B = the Purchase Price;
  - C = the area of the Land after it has been reduced pursuant to clause 5.2; and
  - D = the area of the Land shown in the Plan (being the Plan as at the Contract Date); or
- 5.4.4 terminate this Contract, in which case:
- (a) this Contract will be at an end;
  - (b) the Deposit (together with any interest that has accrued on the Deposit under clause 3.3 of Annexure A) will be returned to the Buyer; and
  - (c) neither party will have any further rights or obligations under this Contract, except for any rights or obligations:
    - (i) arising out of a breach of this Contract before the date of termination pursuant to this clause; or
    - (ii) which are expressed or implied to survive termination.
- 5.5 If clause 5.4 applies and the Buyer does not give the Seller a notice within the deadline referred to in clause 5.4:
- 5.5.1 the Buyer will be required to complete Settlement on the Settlement Date;
  - 5.5.2 the Buyer will not be entitled to any discount to the Purchase Price; and
  - 5.5.3 the Buyer is not entitled to make any Objection to this.
- Seller not obliged to agree on any amendments**
- 5.6 The Buyer acknowledges that the Seller is not obliged to enter into any negotiation, agreement or arrangement with the Buyer to vary the Land.

## ANNEXURE D – BUYER'S ACKNOWLEDGMENTS

### 1 Seller's use of the other lots in Banksia Grove

- 1.1 The Buyer acknowledges that the Seller reserves the right to utilise, in its absolute discretion, any unsold lot or nominated lots in Banksia Grove for the implementation of its rental or purchase programs and that the Seller gives no warranty or commitment to the Buyer to make any unsold lots available for private usage in the future.

### 2 Wanneroo Raceway notification

- 2.1 The Buyer acknowledges that the Land may potentially be affected by motor sport noise from the Wanneroo Raceway and a notification may be registered on the certificate of title to the Land giving notice to any person who searched the certificate of title of this.

### 3 Verve Connection

- 3.1 The Seller has complied with all necessary requirements of Verve to enable electrical power to be connected to the Land.
- 3.2 The Buyer acknowledges that:
- 3.2.1 on the Settlement Date, Verve may not have completed connection of electrical power to the Land;
- 3.2.2 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
- 3.2.3 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.

### 4 Rear laneway access

- 4.1 If the Land purchased under this Contract is a lot with rear laneway access, the Buyer acknowledges that:
- 4.1.1 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; and
- 4.1.2 in accordance with the requirements of the Western Australian Planning Commission, the Seller has given the Buyer notice of the matters set out in clause 4.1.1.
- 4.2 The Buyer acknowledges that the Seller has also provided the Buyer with a copy of the relevant detailed area plan with this Contract.

### 5 Buyer's covenants and Seller's right to buy back

#### Note to Buyer

The comments contained in this dialogue box are intended to assist the Buyer to understand clause 5 of this Annexure D. The comments do not form an operative part of this Contract.

The Buyer is required to construct a Residence on the Land within 2 years of Settlement. If the Buyer does not construct a Residence or tries to dispose of the Land as a vacant lot, or tries to rezone or alter the permitted use of the Land, the Seller may exercise its right to buy back the Land from the Buyer at a discounted price.

This clause contains important obligations of the Buyer which if not complied with give rise to the Seller's right to repurchase the Land. The Seller is entitled to lodge a caveat on the certificate of title to the Land to protect its rights under this clause.

Buyer to initial that it has read and understood this clause.

#### Definitions

- 5.1 In this clause:

**Residence** means the construction of a dwelling house.

**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 selling 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 selling 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.

#### Construct a Residence

- 5.2 The Buyer must within 2 years of Settlement commence construction of a Residence on the Land.

#### Restrictions on Buyer

- 5.3 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 this means that the Buyer cannot sell the Land as a vacant lot.
- 5.4 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 the Land

- 5.5 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 for the Repurchase Price and in the manner set out in this clause 5, if:
- 5.5.1 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 5.2; or
- 5.5.2 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 clause 5.2 and in breach of the provisions of clause 5.3; or
- 5.5.3 the Buyer applies to rezone or alter the permitted use of the Land in breach of clause 5.4.
- 5.6 The Seller may exercise the option of re-purchase granted in clause 5.5 at any time following the occurrence of any of the events set out in clause 5.5 by giving written notice of the exercise of the option to re-purchase to the Buyer.
- 5.7 Upon exercise of the option to re-purchase:
- 5.7.1 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;
- 5.7.2 within one month after the date of service of the notice exercising the option, 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;
- 5.7.3 rates and taxes will be adjusted as the date that the Seller retakes possession of the Property; and
- 5.7.4 the Buyer will pay the costs of preparation and registration of the transfer and all duties and registration fees.
- 5.8 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 5. The Buyer ratifies and confirms and agrees to ratify and confirm all that the attorney does or causes to be done under clause 5.

#### Caveat

- 5.9 The Buyer charges the Land in favour of the Seller with the due performance of his obligations under clause 5.3. 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 5.3. The lodging and withdrawal of caveat is at the Buyer's cost.

## 6 Fencing

### Common Fences

- 6.1 The Land is sold subject to all statutory liabilities (if any) on the owner of the Land to contribute to the cost of Common Fences in respect of the Land.
- 6.2 Unless the Seller specifically agrees with the Buyer otherwise in writing:
- 6.2.1 the Seller is under no obligation to contribute to the cost of erection of any Common Fences (whether already existing or to be erected in the future);
- 6.2.2 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; and
- 6.2.3 the Buyer shall pay to the Seller on demand one half of 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 owner of the adjoining land.

### Fencing package

- 6.3 Provided that the Buyer has complied with the following:
- 6.3.1 submitted to the Seller's Project Manager the Buyer's house plans for the Land for approval prior to commencement of construction of the Residence;
- 6.3.2 obtained the Seller's approval to the construction of the Residence;
- 6.3.3 constructed the Residence in accordance with the Restrictive Covenants;
- 6.3.4 reached Practical Completion of the construction the Residence within 24 months of Settlement; and
- 6.3.5 contacted the Seller 1 month prior to handover of the Residence to arrange the fencing package,
- then Seller agrees to provide, at the Seller's expense either:
- 6.3.6 the fencing to the side and rear boundaries (not including from the Residence to the side fence) of the Land; or
- 6.3.7 where the Buyer chooses to install alternative fencing (within 24 months of Settlement) that is to the written satisfaction of the Seller, provide the Buyer with a reimbursement for that fencing. Where a Buyer chooses to install alternative fencing, it is the Buyer's responsibility to advise any neighbour and obtain their approval.
- 6.4 Each of the following applies to the fencing referred to in clause 6.3.6:
- 6.4.1 construction of the fencing will commence only after the completion of construction and handover of the Residence on the Land to the Buyer;
- 6.4.2 the materials and installation of the fencing shall be determined by the Seller (whose decision shall be final);
- 6.4.3 the fencing shall be constructed and installed by a fencing contractor nominated by the Seller.
- 6.5 The Seller will install fences only once. Any repair, replacement, modification, removal or realignment of the fences to enable building or due to any damage caused in any manner will be the sole responsibility of the Buyer.
- 6.6 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.
- 6.7 The Seller has no obligation to provide the fencing package to any owner other than the original Buyer of the Land.

### Restrictions on fencing on the Land

- 6.8 The Buyer must ensure that all survey pegs are in the correct positions. The Seller is not responsible to replace any missing survey pegs.
- 6.9 It is the responsibility of the Buyer to ensure that the area of the Land to be fenced is cleared.

- 6.10 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.

### Note to Buyer

The comments contained in this dialogue box are intended to assist the Buyer to understand clause 6.10 of this Annexure D. The comments do not form an operative part of this Contract.

The Buyer is not permitted to extend boundary fencing past the building line to the front elevation. Where a parapet wall is incorporated, the Buyer cannot extend fencing forward of the parapet wall. The Buyer acknowledges that the extent and setback of fencing to corner lots will be at the discretion of the Seller.

Buyer to initial that it has read and understood this clause.

- 6.11 Any boundary fencing must not exceed 1.8m in height above the ground level.
- 6.12 Front fencing must not dominate the streetscape. If used, it must be limited to:
- 6.12.1 a height approved by the Seller, maintaining the surveillance of the street from the Residence;
- 6.12.2 integrate and complement the design of the Residence; and
- 6.12.3 incorporate screen-planting elements.
- 6.13 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.

## 7 Boundary and retaining walls and fences

### Note to Buyer

The comments contained in this dialogue box are intended to assist the Buyer to understand clause 7 of this Annexure D. The comments do not form an operative part of this Contract.

This clause contains important exclusions of liability of the Seller in relation to boundary and retaining walls and fences.

Buyer to initial that it has read and understood this clause.

- 7.1 If there are existing walls and fences on the Land, then;
- 7.1.1 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;
- 7.1.2 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;

- 7.1.3 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,
- 7.1.4 The Seller gives no warranty that any retaining walls affecting the Land are wholly within the boundaries of the Land or wholly within any lot or lots adjoining the Land;
- 7.1.5 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;
- 7.1.6 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;
- 7.1.7 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.

## 8 Provision of Landscaping

- 8.1 Subject to clause 8.2, if the Buyer has achieved Practical Completion of the construction the Residence within 18 months of Settlement, the Seller agrees to provide, at the Seller's expense, specifications and to the Seller's satisfaction, landscape and irrigation design & construction services to the front of the Land and verge and in the case of a corner lot the side verge.
- 8.2 Each of the following will apply to the landscaping referred to in clause 8.1:
- 8.2.1 the landscaping shall be determined by the Seller whose decision shall be final;
- 8.2.2 the landscaping will be installed by the Seller's nominated landscaping contractor;
- 8.2.3 the provision of landscaping is subject to the Buyer providing access to the Land to the Seller's nominated landscaping contractor and all assistance for the provision of the installation of the landscaping as required by the landscaping contractor including the following matters:
- (a) the Buyer having arranged with the Buyer's builder for the provision for the irrigation to be extended to the rear of the Land;
  - (b) installing a 100mm diameter PVC stormwater pipe across the driveway, accurately located approximately 300mm below the ground. This duct is necessary to run pipe work and wiring for the reticulation under the driveway where gardens are required both sides of the driveway, and eliminates the need to pull up any paving. An extra fee may apply if this pipe is not installed; and
  - (c) ensuring that the Land is clean and finished to the levels required by the Buyer as site cleaning and levelling are not included in the landscape package.

## 9 Disclosure

- 9.1 The Seller discloses and the Buyer acknowledges that Banksia Grove Realty Pty Ltd ACN 126 914 350 (**Seller's Representative**) and Banksia Grove Management Pty Ltd ACN 119 156 473 (**Seller's Project Manager**) are related bodies corporate within the meaning of section 50 of the *Corporations Act 2001 (Cth)*.