



Annexure 'A'

Section A – Protective Covenants – General Building Standards

The following Protective Covenants are applicable to all lots located within the Tuart Private Estate (being the subdivision of Lot 5 on Diagram 42593 C/T Vol 1322 Fol 350 ["the Estate"]). These covenants will be registered on each certificate of title (in a form which complies with Landgate requirements) and shall be enforceable by the Seller against the Buyer and all successors in title until the 31st December 2012. The intended purpose of these Covenants is to restrict the use of each lot so that minimum standards of building are achieved in the Estate.

1. All external walls of the dwelling house constructed on the land ("the dwelling") shall be primarily of brick, stone, concrete or glass. Timber and timber substitute used in the dwelling construction shall be limited to 20% of wall area and roofing shall be of non-reflective material. eg. Untreated zinc-alume shall not be used.
2. The dwelling shall have a minimum total floor area of:
 - 90 m², for Lots sizes up to 299 m² or;
 - 95 m², for Lots sizes between 300m² and 399m² or;
 - 125 m², for Lots sizes 400m² and larger,

(unless otherwise agreed in writing between the Seller and the Buyer), measured to the external wall lines. "Floor area" does not include patios, outbuildings or carports and garages but may include an outdoor alfresco area which is constructed under the main roof of the dwelling.
3. Single dwelling sites shall have as a minimum a double carport or garage constructed substantially of the same materials as the dwelling.
4. Carports shall be used only to store privately registered motor vehicles, registered boats or caravans. Commercial vehicles, tools, machinery, spare parts or household items must be garaged or stored away on the land so that they are screened from public view.
5. Each dwelling shall have a minimum roof pitch of 25 degrees.
6. Solar hot water heaters or air conditioners may not be erected on the dwelling on that portion of the roof facing the street and where erected they shall be painted to match the colour of the roof of the dwelling.

7. Driveways shall be a minimum 3 metres wide and shall be constructed entirely of brick paving and shall be constructed to the street kerb alignment within 30 days of occupation by the Buyer of the dwelling or otherwise approved by the Seller.
8. Repairs or maintenance to motor vehicles, boats or machinery is prohibited from taking place on the land unless screened from public view.
9. Any clothes line or rain water tank except in accordance with the manufacturer's instructions and screened from public view.
10. No fence may be constructed on the land forward of the dwelling towards the street kerb alignment and shall otherwise comply with City of Mandurah requirements.
11. A low screen wall maybe erected forward of the perimeter to the land not higher than 1.2 metres and to be constructed of the same material as the residence.
12. All fences perimeter to the land shall be constructed to a height of not less than 1.8 metres and the style to be constructed of "Stratco Colourbond – Wave Lock profile in "Terrace" colour.
13. No dwelling may be occupied on the land unless:
 - a. the letterbox is constructed, installed and clearly numbered and,
 - b. perimeter fencing is first constructed to the perimeter boundaries of the land.
14. All garden areas within public view are to be completely landscaped within 3 months of occupation of the dwelling.
15. All dwelling sites shall provide for adequate on site storm water drainage (ie: soakwells).
16. The general level on any site may not be altered by more than 200mm without written consent of the Seller.
17. Any additional retaining walls must be constructed of the same material as per the existing retaining walls used in the construction of the estate.
18. No transportable homes, caravans, mobile homes, trailer-park homes, fibrous cement sheet homes, or other temporary structures may be constructed as dwellings or occupied on the land.

Section B –Buyer's Acknowledgements

The Buyer acknowledges that:

1. Where a settlement agency or financial broker has been recommended in this transaction, the buyer is aware that the Seller, its employees, its agents or contractors may have a shareholding in that company or may receive a referral fee from the settlement agency or financial broker. A fee may also be paid to a registered builder/building representative who has introduced a buyer to the Development.
2. The Buyer has made all relevant enquiries as to the suitability and zoning of the land for the use and development proposed by the Buyer for the land.
3. The Buyer has not relied on any representation by the Seller, its agents or servants as to the suitability of the existing ground conditions of the land for the Buyer's proposed uses of the land.

4. The Buyer has entered into this Contract and will proceed to Settlement relying entirely upon the Buyers own independent appraisal and assessment of the land.
5. The Seller is registered for GST.
6. The Seller and the Buyer each acknowledge that the purchase price of the Proposed Lot is inclusive of GST and that the Seller has chosen to adopt the margin scheme in calculating it's GST liability.
6. The Seller shall, as part of subdivision of the Seller's land, have been or be required by Regulations to have its Surveyors install survey pegs at each corner of the land. Whether the land is survey pegged in satisfaction of the Regulations by the Seller's Surveyor prior to or after the Contract Date, once the land is so survey pegged, the Seller shall become under no additional obligation to the Buyer to secure the positioning of the survey pegs or to reinstate the survey pegs on the land either before or after Settlement.
7. The land is registered under the Transfer of Land Act 1893 (as amended) and that the Buyer is not entitled to deliver any requisition on or objection to the title of the Seller to the land and the Buyer hereby waives his/her right to do so.

Section C – Other Conditions

The Seller and the Buyer further covenant and agree:

1. If at the Contract Date the land is not described on a plan of subdivision registered at the Department of Land Information ("the DLI") which is in order for dealings or, a separate Certificate of Title to the land has not yet been issued by the DLI, then Clauses 1.1 to 1.3.8.1 inclusive below shall apply:
 - 1.1 The area of land being acquired by the Buyer under this contract is that land shown cross hatched on the Annexure B plan attached hereto.
 - 1.2 The land is not a separate lot as required by Section 20(1) of the Town Planning and Development Act 1928.
 - 1.3 Condition 13 of the 2002 Revision of the Law Society and Real Estate Institute of Western Australia Joint Form of General Conditions for the Sale of Land ("the General Conditions") incorporated into this Contract shall be deleted and the following shall be inserted in lieu thereof:
 - 1.3.4 *This Contract is also conditional upon the Seller being able to, at the expense of the Seller:*
 - 1.3.4.1 *comply with any conditions imposed by the Planning Commission upon the creation of the Proposed Lot per application reference 122116; and,*
 - 1.3.4.2 *cause the Planning Commission to affix its unconditional endorsement to a Deposited Plan of Survey describing the Proposed Lot on or before the expiration of 12 months from the Contract Date.*
 - 1.3.5 *If in the event that, for any reason howsoever arising, the Seller is unable to cause the Planning Commission to affix it's unconditional endorsement to a Deposited Plan of Survey describing the Proposed Lot on or before the expiration of 12 months from the Contract Date then this Contract shall be at an immediate end*

and all deposit monies shall be repaid to the Buyer and neither party shall have any claim against the other either at law or in equity.

1.3.6 *The Seller shall, as soon as is practical after the Planning Commission have affixed it's unconditional endorsement to a Deposited Plan of Survey describing the Proposed Lot, lodge the Deposited Plan so endorsed by the Planning Commission at the Office of Titles.*

1.3.7 *On or before the expiration of 14 days of the date at which the Deposited Plan of Survey describing the Proposed Lot is endorsed in order for dealings at DLI the Seller shall:*

1.3.7.1 apply for a certificate of title to the land as a separate lot,

1.3.7.2 upon making the application in satisfaction of Condition 1.3.4.1 above, notify the Buyer:

1.3.7.2.1 that the Deposited Plan describing the land as a separate lot is endorsed in order for dealings at DLI; and,

1.3.7.2.2 of the date at which the Seller made application to DLI for issue of a certificate of title to the land as a separate lot.

1.3.8 *The Settlement Date shall be:*

1.3.8.1 Settlement of 'the Contract' shall be effected on or before 21 days after notice given by the Seller or its settlement agent to the buyers or the buyer's settlement agent that the titles have been issued. Notwithstanding the Settlement Date nominated in this Contract of Sale, settlement of the Property by the Buyer cannot proceed until the Certificate of Title to the property has been issued. The Buyer acknowledges that house construction may not commence until settlement has taken place and agrees that the Seller will not be responsible for any additional building costs or any other costs that may result from settlement being delayed until the Certificate of Title to the Property has issued.

1.4 Without limiting the generality of this clause 1.4 and without limiting any of the other rights of the Seller, the Seller may require the Buyer to transfer the 'Proposed Lot' to it if:

- (a) the Buyer is in default of this contract and fails to comply with a notice given by the Seller pursuant to clause 24.1 of the General Conditions within the period stipulated in that notice; or
- (b) the Buyer fails to commences construction on the 'Proposed Lot' in accordance with this contract, within 2 years from the date of settlement of this contract.

1.4.1 If clause 1.4 applies, the Buyer shall comply with the requirement to transfer the 'Proposed Lot' to the Seller, and the following procedure shall apply:

- (a) the Seller will notify the Buyer in writing of the requirement for the Buyer to transfer the Property to the Seller or its nominee (Transfer Notice);
- (b) the Transfer Notice will stipulate the details of the person to take a transfer of the 'Proposed Lot', being either the Seller or its nominee and the consideration to be paid by

the Seller or its nominee for the transfer of the 'Proposed Lot', calculated in accordance with clause 1.4.1(c);

- (c) the consideration to be paid by the Seller or its nominee to the Buyer for the re-transfer of the 'Proposed Lot' will be the Purchase Price plus any amounts paid by the Buyer to the Builder less the Seller's costs incurred in selling the 'Proposed Lot' to the Buyer, being:
 - (i) sales commission;
 - (ii) fees charged by the Seller's Representative for both the sale of the 'Proposed Lot' to the Buyer and the transfer of the 'Proposed Lot' from the Buyer to the Seller or its nominee;
 - (iii) stamp duty and DLI lodgment fees in respect of both the transfer of the 'Proposed Lot' to the Buyer and the transfer of the 'Proposed Lot' from the Buyer to the Seller or its nominee; and
 - (iv) any other fees, costs or charges incurred by the Seller in transferring the 'Proposed Lot' to the Buyer or in transferring the 'Proposed Lot' from the Buyer to the Seller or its nominee.

1.5 The Buyer must not sell or otherwise transfer the 'Proposed Lot', unless it does so in accordance with clause 11 above, to any person within the period of 2 years from the date of execution of this contract (Prescribed Period) and the Buyer charges the Proposed Lot with the performance of the covenants under this contract, including the covenant not to sell the Proposed Lot within 2 years after the Settlement Date.

1.5.1 If the Buyer sells or transfers, or attempts to sell or transfer the 'Proposed Lot' within the Prescribed Period, the Buyer will be in breach of this contract and the Seller may exercise any of its rights under this contract including those set out in clause 1.4.1 above.

1.5.2 The Seller shall, at its own cost, be entitled to caveat the 'Proposed Lot' absolutely for the Prescribed Period to better ensure the Buyer's compliance with this clause 1.4.1. At the expiration of the Prescribed Period, and provided that the Buyer is not in breach of this contract, the Seller will cause the caveat to be withdrawn from the 'Proposed Lot', and will do all things necessary to lodge such withdrawal at the Land Titles Office.

1.6. If in partial satisfaction of condition 1, Finance Approval, on the contract, a finance approval is obtained from the Lender before the Latest Time and such approval is expressed to be subject to any term or condition whatsoever ("the Conditional Approval") then the Seller may by notice in writing require the Buyer to waive the condition for such finance approval or tender an unconditional finance approval within 10 Business Days of the date of the Seller's notice to the Buyer.

1.6.1 If the Buyer fails to either provide an unconditional finance an unconditional finance approval or waive the finance condition on the contract within 10 Business days of the Seller's notice to the Buyer, the Seller may notify the Buyer that the Conditional Approval is insufficient and that finance approval is therefore deemed declined. The Contract will be at an end upon service of further notice by the Seller on the Buyer and all deposit monies paid will be refunded.

- 1.6.2 If for any reason not attributable to the Seller, settlement is not completed within three business days after the Settlement Date, the Buyer must pay to the Seller at settlement interest on the balance of the Purchase Price and any other money payable at settlement. The Seller's right under this clause 1.6.2 is in addition to the Seller's entitlement under any other clause of this contract or at law.
- 1.6.3 Interest payable under clause 1.6.2 is to be calculated and accrue daily at the rate of 20% per annum from and including the Settlement Date up to, but excluding, the date on which settlement occurs.
- 1.6.4 Interest is not payable under clause 1.6.2 unless and until the Seller is ready, willing and able to settle.
- 1.6.5 The Buyer is not entitled to interest for a delay in settlement by the Seller, unless the Seller has wilfully delayed settlement for an improper purpose, in which case the Buyer is entitled to interest on the same terms as set out in clauses 1.6.2 to 1.6.4 above, save that the period in which interest will accrue is the period of such wilful delay.
- 1.6.6 The land is subject to final survey by the Seller prior to the Settlement Date and that the final surveyed area of the land as a separate lot may vary from that shown on the Annexure B plan by up to 3% whether greater or smaller in area and provided that the final surveyed area of the land as a separate lot is within 3% of the area described on the Annexure B plan neither the Seller nor the Buyer shall have recourse against the other and Condition 15 of the General Conditions is deleted. If in the event that the final surveyed area of the land as a separate lot is more than 3% lower than that area shown on the Annexure B plan the Buyer may terminate the Contract by notice issued to the Seller and the Seller shall refund to the Buyer all deposits paid on account of the Purchase Price.
2. The Seller accepts no liability for dividing fences and the Buyer shall meet all claims by any other party for contribution to any existing dividing fences on the perimeter of the land and further the Buyer agrees that in the event the Buyer constructs a dividing fence on any boundary of the land whether before or after settlement and such boundary is a boundary of any other lot in the subdivision owned by the Seller the Buyer will have no claim for compensation or contribution against the Seller under the provisions of the Dividing Fences Act.
3. The Purchase Price is inclusive of GST and any GST payable under this sale will be calculated using the 'Margin Scheme' as defined in Division 75 of a New Tax System (Goods and Services Tax) Act 1999 and the Seller is not obliged to provide at settlement a Tax Invoice entitling the Buyer to an Input Tax Credit.
4. Conditions 2.4, 2.5, 2.6, 2.7, 14.5, 18.1, 18.2 and 18.3 of the General Conditions are deleted.
5. Condition 24.17 of the General Conditions is deleted and the rule in *Bain v Fothergill* applies to this Contract.
6. Registration of the protective covenants on the Certificate of Title to the land and assignment of the benefit of the protective covenants to all other Purchasers of lot within the Tuart Park - Private Estate shall be at the discretion of the Seller. If registered on the Certificate of Title the covenants shall be consistent with the above but may be varied for the purposes of registration as the Seller's solicitor might reasonably require.
7. The Buyer has satisfied itself with respect to the physical characteristics of the Property, including (but not limited to) soil types, levels, slopes and vegetation and any impacts including (but not limited to) building restrictions or costs which may result.

8. The Seller shall use its best endeavours to complete the subdivision of the land of which the Property forms part so as to create the Property and achieve the issue of a separate Certificate of Title to the property.
9. The Buyer shall not at any time prior to settlement of this Contract of Sale be entitled to lodge a caveat on the Property or any other property of which the Property currently forms part.
10. The Buyer acknowledges that the Project Manager may from time to time release details of the Buyer's name and address to buyers of the adjoining land.

Buyer: _____ **Buyer:** _____

Witness: _____ **Witness:** _____

Date: _____/_____/ **2011**

Date: _____/_____/ **2011**

Seller: _____ **Date:** _____/_____/ **2011**



Annexure 'B'

DIAGRAM ATTACHED ON FOLLOWING PAGE

Buyer: _____

Buyer: _____

Witness: _____

Witness: _____

Date: ____/____/ 2011

Date: ____/____/ 2011

Seller: _____

Date: ____/____/ 2011