



CONTRACT FOR SALE BY  
WAY OF OFFER AND ACCEPTANCE  
INCORPORATING CONDITIONS

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# Conditions

## 1. These Conditions

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### 1.1 Conditions

1.1.1 These are the Conditions referred to in the Offer portion of this Contract.

1.1.2 These Conditions are part of the Contract between us and you.

### 1.2 Defined Words

1.2.1 In this Contract certain words and phrases have special meanings. Some of these words and phrases are set out in the clause entitled "Definitions and Interpretations" and will have the meaning appearing next to them unless the contrary intention appears.

1.2.2 Other words and phrases are defined in other clauses of this Contract in which case they will have those meanings for the purpose of the clause in which they appear and throughout this Contract.

1.2.3 Words and expressions which are defined in the 2011 General Conditions have the same meaning in this Contract unless the contrary intention appears.

### 1.3 Application

If at the date of this Contract the conditions contained in the clause entitled "Subdivision" are satisfied then those conditions shall not apply.

## 2. 2011 GENERAL CONDITIONS

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### 2.1 Incorporation

Subject to clause 2.2, the 2011 General Conditions are incorporated in this Contract so far as they are not varied by or inconsistent with the express terms of this Contract.

### 2.2 Excluded Provisions

The following provisions of the 2011 General Conditions are excluded and shall not apply:

- (a) clauses 4.2 (Seller delay in Settlement);
- (b) clause 6.1(b)(2) (removal of vehicles etc.);
- (c) clause 9.1(a), (b), (c), (e) and (f) (Seller Representation and Warranty);
- (d) clause 9.2 (Contract Date);
- (e) clause 10 (Strata title);
- (f) clause 11 (Electricity/Underground Power);
- (g) clause 12 (Sewer/Septic Tank);

- (h) clause 13 (Subdivision);
- (i) clause 14 (Terms contract);
- (j) clause 15 (Error or Misdescription);
- (k) clause 16 (Requisition on Title); and
- (l) clause 19.3 (Capital Works Deduction).

### **3. SUBDIVISION**

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#### **3.1 Subdivision of Property**

If the Property comprises part of a larger parcel of land within Lakeside Success Private Estate and is accordingly not a lot as defined in the Planning and Development Act then this Contract is subject to and conditional upon the approval of the Commission to the subdivision of the lot of which the Property forms part being obtained in order to create the Property as a separate lot in accordance with Section 135 of the Planning and Development Act and this Condition shall apply.

### **4. TITLE**

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#### **4.1 Inspection of Title**

The Certificate of Title in respect of the Property or the parent Certificate of Title of which the Property forms part may be inspected by search at Landgate and you shall not require us to produce an abstract of title or any other evidence of our title or right to sell the Property.

#### **4.2 No Requisitions**

We shall not be required to answer any objections or requisitions on title.

### **5. ERROR OR MISDESCRIPTION**

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#### **5.1 Meaning of error or misdescription**

An error or misdescription of the Property means an error or misdescription in the Contract of:

- 5.1.1 a physical structure or physical feature of the Property;
- 5.1.2 a boundary of the Property; or
- 5.1.3 the area of the Property.

#### **5.2 No termination or delay in Settlement**

Subject to this clause, an error or misdescription of the Property in the Contract will not:

- 5.2.1 entitle you to terminate the Contract; or
- 5.2.2 result in any deferment or delay of Settlement which must proceed on the Settlement Date.

### 5.3 **Claim for compensation by Buyer**

Where you claim:

5.3.1 there has been an error or misdescription of the Property in the Contract; and

5.3.2 to be entitled to compensation,

you must give to us a notice in writing which specifies the basis of the claim and compensation required no later than ten (10) Business Days after the Settlement Date.

### 5.4 **Claim for compensation lost**

If you fail to give a Notice, any right you have to claim compensation arising from an error or misdescription of the Property in the Contract will cease to apply.

### 5.5 **Determination of claim and compensation**

Where you serve a notice under this clause, unless otherwise agreed in writing between the Parties, within ten (10) Business Days after service of the Notice, any issue between the Parties as to:

5.5.1 whether there is an error or misdescription of the Property in the Contract; or

5.5.2 the amount of compensation payable by us to you,

must be determined in accordance with paragraph 6.6 entitled "Disputes".

### 5.6 **Disputes**

In the event of any dispute as to whether such modification, variation or amendment has materially prejudiced or detrimentally affected the site or value of the Property then such dispute shall be determined by a Valuer appointed by the President for the time being of the Australian Property Institute (Inc.) Western Australian Division who shall act as an expert and not as an arbitrator. The parties shall pay the costs of such Valuer equally.

## 6. **MATTERS AFFECTING THE PROPERTY**

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### 6.1 **Boundaries**

All fences and walls purporting to be on the boundaries of the Property shall, as between us and you, be deemed to be upon their survey boundaries and if any fence or wall shall be found not to be on its true boundary you shall not be entitled to any compensation or have any claim against us.

### 6.2 **No claim for dividing fences**

You will not make any claim against us pursuant to the Dividing Fences Act 1961 or however else concerning:

6.2.1 the construction of or contribution to the cost of construction of, any dividing fences or walls; or

6.2.2 any other liability in respect of a dividing fence or wall including any liability we may have incurred with any adjoining owners.

### 6.3 **Geotechnical Matters**

You acknowledge and agree that you may be required by the Local Authority to undertake a detailed geotechnical survey of the Property at your cost prior to the issue of the building licence by the Local Authority.

### 6.4 **Services**

You acknowledge and confirm that:

6.4.1 the Property has or will be serviced by us in accordance with conditions imposed by the Commission,

6.4.2 the Property may be filled and/or levelled by us to meet the requirements of the Commission and that any additional earthworks that may be required will be at your sole cost.

### 6.5 **No Continuing Obligations**

You acknowledge and agree that any landscaping, retaining walls, entry statements and other structures established by us in Lakeside Success Private Estate may not be maintained by us after the actual Settlement Date.

### 6.6 **Street Verges**

In the event that a landscaped street verge adjoining the Property has been provided by us you acknowledge that the irrigation for such street verge may be supplied from a temporary source which may be disconnected by us in our absolute discretion. If connection pipes have been made available by us then you shall reconnect such irrigation to the water supply from the Property and shall undertake ongoing maintenance and watering of the Property and landscaped verge.

### 6.7 **Site Conditions & Footings**

You acknowledge that:

6.7.1 you must make your own assessment of the footing type that may be required for your Residence; and

6.7.2 you have read and understood our advice to you regarding the Property in the Site Conditions, Site Works, Retaining Walls and Fencing in Attachment 4.

### 6.8 **Specified Area Rating**

You acknowledge that a specified area rating may be struck by the Local Authority in respect of the Property.

### 6.9 **Western Power**

You acknowledge that on the Latest Date Western Power may not have completed the connection of electrical power to the Property and you may not delay settlement or be entitled to make any objection, representation or claim for compensation nor rescind this Contract by reason thereof.

### 6.10 **National Broadband Network**

6.10.1 In this clause 7.11:

“**NBN Building Ready Specifications**” means the specifications governing the building requirements for connecting a dwelling house to the national broadband fibre optic network as may be provided by us or as otherwise available at the website [www.nbnco.com.au](http://www.nbnco.com.au)

**“Network Infrastructure”** means the physical infrastructure which will support the proposed national broadband optic network.

6.10.2 If Lakeside Success Private Estate is located adjacent to infrastructure which will allow physical connection to the national broadband fibre optic network:

6.10.2.1 you must adopt and ensure compliance with the NBN Building Ready Specifications and appropriate building wiring specifications when constructing a dwelling house on the Land; and

6.10.2.2 you acknowledge that:

- (a) the NBN Building Ready Specifications must be complied with to enable the Property to be connected to the Network Infrastructure; and
- (b) failure to comply with the NBN Building Ready Specifications will either:
  - (i) prevent connection to the Network Infrastructure; or;
  - (ii) require you to incur additional costs in order to connect to the Network Infrastructure.

## 6.11 Detailed Area Plan

6.11.1 At the time you enter into this Contract the Detailed Area Plan may not have been approved by the Local Authority.

6.11.2 The Detailed Area Plan attached to this Contract may be subject to change if required by the Local Authority in order for us to obtain approval.

6.11.3 You acknowledge that we may vary the Detailed Area Plan at any time after this Contract is entered into in order to obtain approval from the Local Authority and that you will accept the Detailed Area Plan as varied notwithstanding that it may affect the use of the Property by you and increase the cost of construction of your Residence.

6.11.4 You release us from all claims of whatsoever nature arising from any law, in equity or by statute to the extent possible that you may have by reason of any variation to the Detailed Area Plan.

## 7. OUTGOINGS

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### 7.1 Definition of Outgoings

In this clause:

**"outgoings"** shall mean all rates, taxes, charges (including fixed charges) and other similar expenses payable in relation to the Property (whether periodical or not) including but not limited to:

7.1.1 Local Authority rates;

7.1.2 any Special Area Rating imposed by the Local Authority;

7.1.3 Water Authority rates and consumption charges;



7.1.4 Land Tax payable under the *Land Tax Assessment Act 1977* and including Metropolitan Region Improvement Tax in respect of the Property immediately prior to registration of the application for subdivision referred to in the clause entitled "Subdivision of Property" but not calculated on a single ownership basis.

## 7.2 Payment Obligations

All outgoings shall be paid by us up to and until the actual date of Settlement from which date they shall be paid by you.

## 7.3 Separate Assessments Issued

If separate assessments of outgoings have been issued for the Property by the relevant authority before the Settlement Date then they shall be apportioned on the Settlement Date.

## 7.4 Separate Assessments Not Issued

If separate assessments of outgoings have not been issued for the Property by the relevant authorities before the Settlement Date then our Conveyancing Representative will prior to the Settlement Date notify you of a reasonable estimate of the proper proportion of outgoings likely to be payable in respect of the Property as at the Settlement Date and you will pay this amount to our Conveyancing Representative or to whom they direct until an actual assessment of the outgoings have been received whereupon our Conveyancing Representative will apportion the amount of outgoings payable in respect of the Property and we will pay our proper proportion.

## 7.5 Deduction

You irrevocably authorise our Conveyancing Representative to deduct and pay your proper proportion of outgoings as soon as practicable after the assessment has been made. If there is a shortfall in the amount due by you after such apportionment then you will pay that amount to us or as we direct on demand. If after the apportionment there is any balance due to you then we will direct our settlement agent to pay that balance to you as soon as is practicable.

## 7.6 Proper Proportion

For the purpose of this clause a proper proportion of outgoings is the amount of outgoings charged against or payable for the whole of the land of which the Property forms part divided by the total area of all the lots and then multiplied by the area of the Property.

## 7.7 Delay in Settlement

Where there is any delay in Settlement due to the act or default by you then:

7.7.1 rates, taxes and outgoings shall be adjusted as between us and you on the due date of Settlement and not the actual date; and

7.7.2 if any increase in Land Tax or any other rates and taxes payable by us occurs (for example, by the Settlement being delayed until after 1 July in any year), you shall be liable for all such additional payments (including any increase in Land Tax calculated on a multi ownership basis) which amount shall be due and payable to us at Settlement.

# 8. ENCUMBRANCES

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## 8.1 Permitted Encumbrances

The Property is sold subject to:

- 8.1.1 all easements, positive covenants, restrictive covenants, memorials (and any condition or statement contained in the memorial), rights, reservations, condition, orders, tenancies, public roads and encroachment (if any) affecting the Property and which are mentioned in the Certificate of Title or which will be mentioned or registered upon lodgement of the transfer of the Property to you at Landgate including (without limitation) where necessary:
- 8.1.1.1 any notification registered against the title to the Property pursuant to Section 70A of the *Transfer of Land Act 1893 (WA)*;
  - 8.1.1.2 any restrictive covenant registered against the title to the Property pursuant to Sections 129B and 136D of the *Transfer of Land Act 1893 (WA)*;
  - 8.1.1.3 any notification registered against the title to the Property pursuant to Section 165 of the *Planning and Development Act 205 (WA)*; and
  - 8.1.1.4 any memorial registered against the title to the Property pursuant to Section 58 of the *Contaminated Sites Act 2003 (WA)*;
- 8.1.2 all claims, demands, conditions (including building conditions) or restrictions whatsoever imposed or made on the Property by any local state or federal government department or authority or under any legislation;
- 8.1.3 a notification pursuant to Section 70A of the *Transfer of Land Act 1893* as follows:
- "The lot is subject to a Detailed Area Plan relating to the development of the lot."*
- 8.1.4 a notification pursuant to Section 70A of the *Transfer of Land Act 1893* in respect of Lots 175, 176, 177, 210, 211, 212, 213, 214, 235, 236, 237, 238, 239, 240, 241, 242, 247, 283, 284, 285, 286, 287 and 288 inclusive as follows:
- "This lot is subject to a Fire Management Plan."*
- 8.1.5 a notification pursuant to Section 165 of the *Planning and Development Act* as follows:
- "This lot is in close proximity to known mosquito breeding areas. The predominant mosquito species is known to carry viruses and other diseases."*
- 8.1.6 T4348/1958 subject to certain mineral and other reservations as set out in Transfer 4348/1958 which are in addition to those reservations of the Crown already contained in the original grant;
- 8.1.7 Easement E988451 to the Water Authority;
- 8.1.8 Easement ET18393 to Water Corporation.

## 8.2 **Interests not registered**

If any document or interest mentioned in the preceding sub-clause is to be registered on the title to the Property at Settlement due to:

- 8.2.1 the requirements of the Commission;
- 8.2.2 any Local Authority or other government agency or authority having jurisdiction over the Property; or

8.2.3 as a result of our requirements,

then you acknowledge and agree that such document or interest will be registered either immediately before or after the registration of the transfer of the Property to you.

## 9. DEFAULT

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### 9.1 Right to Terminate

Neither us nor you 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:

9.1.1 that Party has first given a notice to the other Party:

9.1.1.1 specifying the failure;

9.1.1.2 stating that the other Party must observe and perform that Party's obligations under this Contract the subject of the notice within ten (10) business days from the date of service of the notice; and

9.1.1.3 stating that if those obligations are not observed and performed within that time the Party giving the notice may terminate this Contract or that the Contract will be terminated; and

9.1.2 the Party receiving the notice fails to observe and perform those obligations within the period stated in that notice.

### 9.2 Repudiation

This clause does not apply if either Party repudiates this Contract.

### 9.3 Application of Purchase Price

In the event that you are in breach of your Covenants or you repudiate this Contract that part of the Purchase Price and any other monies paid by you to us under this Contract amounting in the aggregate to:

9.3.1 up to 10% of the Purchase Price, will be forfeited to and retained by us; and

9.3.2 in excess of 10% of the Purchase Price, will be held by us pending the exercise of our Remedies.

### 9.4 Our Rights

In the event that you are in breach of your Covenants or repudiate this Contract we, without prejudice to our Remedies may:

9.4.1 affirm this Contract and sue you for damages for breach of contract;

9.4.2 sue you for specific performance of the Contract evidenced by this Contract;

9.4.3 subject to the first sub-clause of this clause:

9.4.3.1 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

- 9.4.3.2 the default is not remedied within the time stated, terminate this Contract; and
- 9.4.3.3 sue you for damages for breach of contract; and
- 9.4.3.4 without further notice to you resell the Property in such manner as we think fit.

## 9.5 Resale

If we resell the Property:

- 9.5.1 we may retain absolutely:
- 9.5.2 any surplus arising from the resale in excess of:
  - 9.5.2.1 the Purchase Price; and
  - 9.5.2.2 losses and expenses incurred by us in the resale and resulting from your default; and
- 9.5.3 any interest paid by you;
- 9.5.4 any amount by which the Purchase Price exceeds the proceeds of the resale and all losses and expenses incurred by us in the resale and resulting from your default are recoverable by us from you as liquidated damages;

## 10. NO WARRANTIES OR REPRESENTATIONS

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### 10.1 Other Enquiries

You shall be taken to have satisfied yourself:

- 10.1.1 by enquiry of all relevant authorities as to the zoning of the Property and the use to which the Property or any other land adjoining or in the vicinity of the Property may be put;
- 10.1.2 as to the easements, restrictive covenants, notifications or other Contracts or encumbrances to which the Property may be or become subject,
- 10.1.3 as to the requirements of each and every authority, body or government department which has control or jurisdiction over the Property and the current and prospective use and development of the Property;
- 10.1.4 by independent valuations or reports to the value of the Property and as to the present and future feasibility, liability and economic return that may be derived from the Property,

and shall be deemed to purchase the Property in reliance solely upon such examination, inspection, enquiry, perusal, opinion and advice and not upon any or any alleged statement, condition or representation whatsoever made or alleged to have been made to you by us or any employee, contractor or agent of ours.

### 10.2 Prohibited Material

This clause shall apply notwithstanding the contents of any brochure, document, letter or publication made prepared or published by us or by any other person with our authority, whether express or implied.

### 10.3 Limiting of Liability

You shall have no right to make any objection or requisition or claim against us for compensation or to rescind this Contract and we shall not be liable to indemnify you whatsoever or howsoever arising by reason of:

- 10.3.1 the prior use of the Property;
- 10.3.2 the Property being suitable for any particular purpose; or
- 10.3.3 the location of any sewerage, water or drainage pipes or services affecting the Property or that any sewer passes through, or penetrates the Property.

### 10.4 Warranties and Representations

You acknowledge and agree that:

- 10.4.1 no warranty or representation has been given or made to you or anyone on your behalf by us or any agent, employee or contractor of ours or any other person on our behalf as to:
  - 10.4.1.1 the title to the Property;
  - 10.4.1.2 any encumbrance, restriction or right in favour of any third party affecting the Property;
  - 10.4.1.3 the suitability of the Property for any use or purpose of any kind; or
  - 10.4.1.4 the fences (if any) purporting to be on the boundaries of the Property being on the proper boundaries of the Property.
- 10.4.2 any representation or warranty implied by virtue of any statute or otherwise will not apply to or be implied in, the Contract and any such representation or warranty is excluded to the extent permitted by law;
- 10.4.3 we will not be liable under any circumstances to make any allowance or compensation to you nor will the Purchase Price be affected by the exclusion of warranties or representations in this clause or for any fault, defect or characteristic in the Property; and
- 10.4.4 this clause will apply despite the contents of any brochure, document, letter or publication made, prepared or published by us or by any other person with our express or implied authority.

### 10.5 Site Costs

You acknowledge that you shall be solely liable for all site clearance and building preparation costs including but not limited to the front verge and front yard for landscaping and for the installation of telephone, internet, broadband, power, gas and water on the Property which should be determined by you prior to entering into this Contract.

## 11. PLANNING AND OTHER MATTERS

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### 11.1 Planning Acknowledgements

You acknowledge that the Property is sold subject to the following as at the Settlement Date:

- 11.1.1 the provisions of any town planning scheme, zoning bylaws and other laws affecting the Property;

- 11.1.2 any order or requisition affecting the Property;
- 11.1.3 any proposal or scheme for the widening, realignment closure, setting or alteration of the level of any road or right of way adjacent to or in the vicinity of the Property by any competent authority or person;
- 11.1.4 any resumption or proposal to resume the Property or any adjoining or other land;
- 11.1.5 any easement, memorial (and any condition or statement contained in the memorial), notification, positive covenant or restrictive covenant or other encumbrance mentioned in the paragraph entitled "Permitted Encumbrance" or which will affect the Property on registration of the transfer of the Property to you and you will take title subject to the above and will not be entitled to make any objection, requisition or claim for compensation, nor to rescind this Contract in respect of any matter mentioned in this paragraph;
- 11.1.6 all habitable dwellings within the increased fire risk area shall be designed and built to conform to the relevant Local Authority specifications and Australian Standard 3959 Construction of Buildings in Bush Fire Prone Areas. Buildings to be constructed to appropriate Australian Standard 3959 Bushfire Attack Levels, as described in the Detailed Area Plan.
- 11.1.7 Lots 247, 284 and 288 as identified in the Detailed Area Plan require portions of the residence to be constructed to the appropriate specification for BAL 29 in accordance with the Australian Standard 3935-2009 Construction of Buildings in Bush Fire Prone Areas;
- 11.1.8 Lots 175, 176, 177, 210, 211, 212, 213, 214, 235, 236, 237, 238, 239, 240, 241, 242, 283, 285, 286 and 287 as identified in the Detailed Area Plan require portions of the residence to be constructed to the appropriate specification for BAL 12.5 in accordance with the Australian Standard 3935-2009 Construction of Buildings in Bush Fire Prone Areas;
- 11.1.9 if the Property lot is listed in clause 12.1.7 or 12.1.8 then you acknowledge having received a copy of FESA's Publication "Prepare. Act. Survive";
- 11.1.10 if the Property lot is listed in clause 12.1.7 or 12.1.8 then you acknowledge having received a copy of the "Fire Management Plan, Hammond Road LSP, Success, City of Cockburn";
- 11.1.11 if the Property is listed in clause 12.1.7 or 12.1.8 then you acknowledge having received a copy of the City of Cockburn Fire Control Notice;
- 11.1.12 the permitted encumbrances described in the clause entitled "Permitted Easement" will run with the Property and bind any proposed transferees of the Property;
- 11.1.13 all building and planning conditions or restrictions whatsoever imposed or made on the Property by any local state or federal government department or authority or under any legislation; and
- 11.1.14 permanent structures cannot be constructed over easements, including concrete driveways that inhibit or restrict the use of the easement area without the prior written consent of the party having the benefit of the easement.

## 12. DELAY IN SETTLEMENT

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### 12.1 No Requirements to Satisfy you

You acknowledge that a separate Certificate of Title in respect of the Property may not be available as at the date of this

Contract or on the Settlement Date. We shall not be obliged to notify you of the date of issue of the title.

## 12.2 **No Compensation**

You shall not be entitled to any compensation as a result in any delay in Settlement as a result of the Certificate of Title not being available, and without limiting the generality hereof, you acknowledge that the construction of any development upon the Property may not be able to commence until Settlement has been effected and that any building contract entered into by you prior to the date of actual Settlement shall be at your sole risk.

## 12.3 **No Liability for Construction Costs**

You acknowledge that we have no liability for any costs or damages arising as a result of you entering into any building contract prior to actual Settlement (including but not limited to any increase in the construction cost).

## 12.4 **Indemnity**

You indemnify us and agree to keep us fully and effectually indemnified from and against any claim loss or liability whatsoever which we may incur in connection with this Contract and in respect of any loss or expense that we may incur as a consequence of any default by you in respect of your Covenants.

# 13. **GST**

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## 13.1 **GST**

We and you agree that the Purchase Price is inclusive of GST.

## 13.2 **Margin Scheme**

We and you agree that the Margin Scheme is to apply in working out the amount of any GST on the sale of the Property by us under this Contract. You acknowledge that you will not be entitled to an input tax credit for the acquisition of the Property under this Contract.

## 13.3 **Non-Monetary Contributions**

Where a party or parties to this Contract provides non-monetary consideration and the provision of this non-monetary consideration is a Taxable Supply the party providing the non-monetary consideration shall provide a Tax Invoice to the other party for the GST inclusive market value of that non-monetary consideration. The party receiving the Tax Invoice shall pay to the other party the GST detailed on the Tax Invoice.

## 13.4 **Not a Tax Invoice**

This Contract and supporting material is not a document notifying any obligation to make payment and is not considered an invoice under the GST Act. The Deposit (if any) paid is held as security for the performance of an obligation in accordance with Division 99 of the GST Act.

## **14. MISCELLANEOUS**

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### **14.1 Governing Law**

These Conditions and the Contract are to be governed by, and construed according to the laws of Western Australia and the Commonwealth.

### **14.2 No Moratorium**

Unless application is mandatory by law, a statute, proclamation, order, regulation or moratorium, present or future, is not to apply to the Contract or these Conditions so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise affect prejudicially rights, powers, privileges, remedies or discretion given or accruing to a party.

### **14.3 Unenforceability**

If a condition, covenant or stipulation of these Conditions or of the Contract or the application of them to a person or circumstances is, or becomes, invalid or unenforceable the remaining covenants, conditions and stipulations are not to be affected by the invalidity or enforceability, and each covenant, condition and stipulation of these Conditions and the Contract will be valid and enforceable to the fullest extent permitted by law.

### **14.4 No Assignment**

You may not assign or transfer your rights under this Contract without our prior written consent which consent may be withheld in our absolute discretion.

### **14.5 Waiver**

A provision of, or a right created under, the Contract may or may not be:

14.5.1 waived except in writing signed by the party granting the waiver; or

14.5.2 varied except in writing signed by all parties.

### **14.6 Non Enforcement of Rights**

The failure on our part at any time to enforce any of our rights or to exercise any option or discretion in accordance with this Contract will not be construed as a waiver of the provisions of this Contract or prejudice our exercising such rights or the exercise of any such option or discretion.

### **14.7 Further Assurances**

We and you agree to sign, execute and complete all further assurances and documents and to do all things reasonably required to complete the matters set out in, or contemplated by, these Conditions and the Contract.

### **14.8 Extent of Obligations**

Without limitation to the extent that any obligations under the Contract and these Conditions have not been complied with on or before Settlement those obligations survive Settlement and continue until complied with including without limitation your obligation to buy your Residence in accordance with the Building Guidelines.



#### 14.9 **Costs and Duty**

Each of us is to pay its own legal and conveyancing costs in respect of this Contract and the completion of this Contract. Any document recording a variation to this Contract requested by you and agreed by us will be at your cost. You shall pay all duty assessed on this Contract.

#### 14.10 **Whole Agreement**

This Contract comprises the whole agreement between the parties and subject only to any provision expressly to the contrary supersedes all prior Contracts and understandings between the parties.

#### 14.11 **Counterparts**

This Contract may consist of a number of counterparts. The counterparts taken together constitute one instrument.

### 15. SPECIAL CONDITIONS

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#### 15.1 **Special Conditions**

The Special Conditions (if any) included in the Schedule to the Offer portion of this Contract shall apply from this Contract.

#### 15.2 **Inconsistencies**

In the event of any inconsistency between the Special Conditions and the terms hereof the Special Conditions shall prevail.

### 16. PRIVACY CONSENT

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#### 16.1 **Consent**

In consideration of our acceptance of your offer to purchase the Property you consent and agree to information about you being used by us and other parties in the ways described in this clause.

#### 16.2 **Personal Information**

In the Offer portion of this Contract you tell us personal details and financial information. You may also give us other personal information so that you can comply with your obligations to us. In the future we may obtain other information about you either from you or other sources (called "your information").

#### 16.3 **Purpose**

We acknowledge that your information will only be used by us for the primary purpose of assessing your offer and, if accepted, the sale of the Property to you.

#### 16.4 **Other Uses**

Your information may also be used by us to maintain your relationship with us and for our internal operations including accounting, risk management, record keeping, archiving, systems development and testing, staff training, credit scoring and compliance monitoring. We may also use your information to develop, establish and administer arrangements with other organisations in relation to the promotion of Lakeside Success Private Estate and to develop, identify and (unless you have

requested us not to) inform you of other developments we may undertake that may interest you. The information might also be used for marketing or customer satisfaction, research, compliance with legislative and regulatory requirements or for preventing or investigating crime or fraud and considering any other offer made by you to us.

## 17. ACKNOWLEDGEMENTS

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### 17.1 Your acknowledgements

You acknowledge that in purchasing the Property and entering into this Contract you have:

- 17.1.1 not relied upon any statement, representation or warranty by us or our selling agent and our and their respective servants or agents (whether in writing or otherwise) other than as contained in this Contract; and
- 17.1.2 not relied upon any statement, representation or warranty including, but not limited to, any promotional material provided by us or our agents to you prior to entering into this Contract, that the Property is suitable for any particular use and that your intended use is subject to the Planning Scheme of the Local Authority;
- 17.1.3 relied solely upon your own skill and judgement;
- 17.1.4 thoroughly read and understood this Contract including but not limited to Attachments 1 to 6 inclusive;
- 17.1.5 had the opportunity to produce this Contract to professional advisors for the purpose of receiving independent legal and/or financial advice.

## 18. NOTICE

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### 18.1 Notices

Any notice given or required to be given under this Contract:

- 18.1.1 must be in writing addressed to us or you (as the case may be), to our or your address shown in the Contract (or to any other address specified by you to us or us to you, by notice). A notice served on your Conveyancing Representative in accordance with this clause will be treated for all purposes as if the notice had been served on you;
- 18.1.2 must be signed by the sender or an officer of, or under the common seal, of the sender or by the sender's lawyer, conveyancer or other authorised representative (as the case may be);
- 18.1.3 is to be regarded as being given by the sender and received by the addressee:
  - 18.1.3.1 if by delivery in person, when delivered to the addressee;
  - 18.1.3.2 if by post (which posting must be by pre-paid security post), three (3) business days from and including the date of posting to the addressee; and
  - 18.1.3.3 if by facsimile transmission:
    - (a) on the date the notice or communication is transmitted in its entirety by a facsimile machine; and

- (b) that facsimile machine produces a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee, but if the delivery or transmission by facsimile is on a day which is not a business day or is after 5.00 p.m. (addressee's time) it is to be regarded as being given at 9.00 a.m. (addressee's time) on the next succeeding business day; and

18.1.4 can be relied upon by the addressee, and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

## 18.2 Corporations and others

Where you comprise two (2) or more persons or corporations, or any combination of the same, notice to either one (1) person or to one (1) corporation is deemed notice to all persons and corporations comprising the Buyer.

# 19. DEFINITIONS AND INTERPRETATION

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## 19.1 Definitions

In these Conditions unless the contrary intention applies and whether appearing in capitals or not:

**"Conditions"** means these conditions for the sale of the Property;

**"Contamination"** means the presence of a substance in, on or under land or water, either in soil, seabed, surface, or groundwater, at above background concentrations that presents or has the potential to present a risk:

- (a) of harm to the Environment (as defined in the *Environmental Protection Act 1986 (WA)*) or any environmental value;
- (b) of rendering the Property or the Environment:
  - (i) unsafe or unfit for or likely to cause harm to humans or other living things;
  - (ii) degraded in any way, including its capacity to support plant life;
  - (iii) unsuitable for the use to which the contaminated land is, or can be put; or
  - (iv) diminished in value;
- (c) of harm to human health;

**"Contract"** means the contract for sale of the Property of which these Conditions form part;

**"Conveyancing Representative"** means the person nominated by a party to act as the party's conveyancing representative in the Offer portion of this Contract or such other person as that party may nominate in writing from time to time;

**"Deposit"** means the deposit mentioned in the Offer portion of the Contract;

**"Detailed Area Plan"** means a Detailed Area Plan being Attachment 6 hereto or any variation thereto issued at any time;

**"GST"** has the meaning given in Section 195-1 of the GST Act;

"**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* and any legislation substituting or amending that Act;

"**Lakeside Success Private Estate**" means the whole of the land of which the Property forms part and which is commonly known and promoted by us as "Lakeside Success Private Estate";

"**Local Authority**" means the local authority having jurisdiction over the Property;

"**Local Structure Plan**" means the Lakeside Success Local Structure Plan;

"**Margin Scheme**" means the scheme described in Division 75 of the GST Act as the margin scheme;

"**our Remedies**" means all or any of the rights powers and remedies contained in or implied by the Contract exercisable by us against you or in respect of the Property;

"**Property**" means the vacant lot intended to be sold by us to you and identified in the Offer portion of this Contract by the number that corresponds to the number shown on the Stage Plan;

"**Purchase Price**" means the purchase price (inclusive of GST) mentioned in the Offer portion of this Contract;

"**Stage 5**" means that part of Lakeside Success Private Estate shown in the Stage Plan;

"**Stage Plan**" means the Plan of Lakeside Success Private Estate Stage 5 being Attachment 1 hereto;

"**your Covenants**" means all or any of the covenants contained in or implied by his Contract to be observed and performed by you;

"**your Residence**" means the construction on the Property of a residential building with landscaping and other buildings:

- (a) in accordance with plans and specifications approved by the Local Authority; and
- (b) which complies with the current Town Planning Scheme of the Local Authority;

"**us**" or "**we**" means the seller described in the Offer portion of this Contract, namely, JH Property Development Pty Ltd (ACN 141 628 408);

"**you**" means the buyer described in the Offer portion of this Contract;

"**2011 General Conditions**" means The Joint Form of General Conditions for the Sale of Land 2011 Revision, September Edition.

## 19.2 Interpretations

19.2.1 The singular includes the plural and vice versa.

19.2.2 Words importing a gender include every other gender.

19.2.3 Headings are for convenience of reference only and do not affect the construction or interpretation of this Contract.

19.2.4 Attachments 1 to 7 form part of this Contract.

- 19.2.5 Where a party to this Contract is more than one person they are jointly and severally liable under the terms of this Contract.
- 19.2.6 This Contract is to be constructed and interpreted as a conditional contract.
- 19.2.7 Person includes corporation.