



**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.
- 1.1.2 These Conditions are part of this Agreement between us and you.

#### **1.2 Defined Words**

- 1.2.1 In this Agreement 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 Agreement in which case they will have those meanings for the purpose of the clause in which they appear and throughout this Agreement.
- 1.2.3 Words and expressions which are defined in the 2018 General Conditions have the same meaning in this Agreement unless the contrary intention appears.

#### **1.3 Application**

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

### **2. 2018 GENERAL CONDITIONS**

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#### **2.1 Incorporation**

Subject to clause 2.2, the 2018 General Conditions are incorporated in this Agreement so far as they are not varied by or inconsistent with the express terms of this Agreement.

#### **2.2 Excluded Provisions**

The following provisions of the 2018 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 Brookside Waters and is accordingly not a lot as defined in the Planning and Development Act then this Agreement 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. FINANCE APPROVAL**

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#### **4.1 Finance Condition**

This Contract is conditional upon Finance Approval being obtained before the Latest Time.

#### **4.2 Your Obligations**

You shall:

- (a) make an application for Finance Approval to at least one lender using, if required by the Lender, the Property as security;

- (b) use your best endeavours to obtain Finance Approval and if required in writing by us provide evidence in writing of the making of an application in good faith for Finance Approval, any loan offer made, and the reasons for you not accepting any loan offer made;
- (c) on receipt of the Finance Approval immediately notify us in writing whereupon the condition in clause 4.1 will then be satisfied.

#### 4.3 Latest Time

If on or before the Latest Time:

- (a) you are notified by the Lender that the application for Finance Approval is rejected; or
- (b) no Finance Approval is obtained,

then you shall immediately in writing notify us of such rejection or non-receipt as the case may be, and provide evidence in writing of the rejection.

#### 4.4 Finance Condition not Satisfied

UNLESS you have waived the condition in clause 4.1 and communicated such waiver in writing to us prior to the Latest Time, then if:

- (a) the condition in clause 4.1 is not satisfied; and
- (b) you have complied with clauses 4.2(a), 4.2(b) and 4.3,

THEN this Contract shall be deemed to have come to an end without the necessity of either party giving to the other notice to that effect. The Deposit and all other monies (if any) paid pursuant to this Contract shall then be refunded to you (less all bank and government charges) and there shall be no further claim under this Contract by either party in law or equity against the other.

#### 4.5 Our Rights to Terminate

If you fail to notify us in accordance with clauses 4.2(c) or 4.3 you shall be in default and we may without prejudice to any other remedies and rights available immediately terminate the Contract by notice in writing to you.

#### 4.6 Finance Approval

The condition in clauses 4.1 shall operate for the benefit of both parties except that you, by waiving your rights pursuant to this clause at any time before the Latest Time, shall be deemed to have received Finance Approval.

### 5. TITLE

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#### 5.1 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.

#### 5.2 No Requisitions

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

### 6. ERROR OR MISDESCRIPTION

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#### 6.1 Meaning of error or misdescription

An error or misdescription of the Property means an error or misdescription in this Agreement of:

- 6.1.1 a physical structure or physical feature of the Property;
- 6.1.2 a boundary of the Property; or
- 6.1.3 the area of the Property.

#### 6.2 No termination or delay in Settlement

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

- 6.2.1 entitle you to terminate this Agreement; or
- 6.2.2 result in any deferment or delay of Settlement which must proceed on the Settlement Date.

#### 6.3 Claim for compensation by Buyer

Where you claim:

- 6.3.1 there has been an error or misdescription of the Property in this Agreement; and
- 6.3.2 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.

#### 6.4 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 this

Agreement will cease to apply.

#### 6.5 **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:

6.5.1 whether there is an error or misdescription of the Property in this Agreement; or

6.5.2 the amount of compensation payable by us to you,

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

#### 6.6 **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.

### **7. MATTERS AFFECTING THE PROPERTY**

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#### 7.1 **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.

#### 7.2 **No claim for dividing fences**

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

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

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

#### 7.3 **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.

#### 7.4 **Services**

You acknowledge and confirm that:

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

7.4.2 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.

#### 7.5 **No Continuing Obligations**

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

#### 7.6 **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.

#### 7.7 **Site Conditions & Footings**

You acknowledge that:

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

7.7.2 you have read and understood our advice to you regarding the Property in the Site Conditions, Site Works, Retaining Walls and Fences being Attachment 4 hereto.

#### 7.8 **Specified Area Rating**

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

#### 7.9 **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 Agreement by reason thereof.

## 7.10 National Broadband Network

- 7.10.1 In this clause:
- “**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.
- 7.10.2 If Brookside Waters is located adjacent to infrastructure which will allow physical connection to the national broadband fibre optic network:
- 7.10.2.1 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
- 7.10.2.2 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.

## 7.11 Local Development Plan

- 7.11.1 At the time you enter into this Agreement the Local Development Plan may not have been approved by the Local Authority.
- 7.11.2 The Local Development Plan attached to this Agreement may be subject to change if required by the Local Authority in order for us to obtain approval.
- 7.11.3 You acknowledge that we may vary the Local Development Plan at any time after this Agreement is entered into in order to obtain approval from the Local Authority and that you will accept the Local Development Plan as varied notwithstanding that it may affect the use of the Property by you and increase the cost of construction of your Residence.
- 7.11.4 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 Local Development Plan.

## 8. SETTLEMENT

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- 8.1 On the Settlement Date you will pay:
- 8.1.1 by way of electronic transfer the GST Withheld Amount to the ATO when completing online the Purchaser Completion Form 2 or deliver to us a bank cheque payable to the Commissioner of Taxation for the GST Withheld Amount; and
- 8.1.2 to us the balance of the Purchase Price and all other monies which may be required to be paid by you to us pursuant to this Agreement by bank cheque(s) in such amounts as our settlement agent shall direct in writing.
- 8.2 When you pay to us all the monies required by the preceding sub-clause we will deliver to you or your Conveyancing Representative the registrable Transfer of your Lot duly executed by us.
- 8.3 As soon as practicable thereafter either we or our selling agent will deliver to you all the access devices (including where necessary written details of each code which applies in respect thereto) relating to your Lot in our possession (including duplicates).

## 9. ELECTRONIC TRANSACTION

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### 9.1 Definitions

In this clause and throughout this Agreement:

“**Adjustment Figures**” means details of the adjustments to be made to the Purchase Price under the clause entitled “Outgoings”;

“**Certificate of Title**” means the paper duplicate of the folio of the register for the Property which exists immediately prior to Settlement;

“**Completion Time**” means the time of day on the date for completion when the electronic transaction is to be settled;

“**Discharging Mortgagee**” means any discharging mortgagee, chargee, covenant chargee or caveator whose provision of a Digitally Signed discharge of mortgage, discharge of charge or withdrawal of caveat is required in order for unencumbered title to the property to be transferred to the purchaser;

“**ECNL**” means the Electronic Conveyancing National Law;

“**Electronic Document**” means a dealing as defined in the Transfer of Land Act 1893 (WA) which may be created and Digitally Signed in an Electronic Workspace;

“**Electronic Transfer**” means a transfer of land under the Transfer of Land Act 1893 (WA) for the Property to be prepared and Digitally Signed in the Electronic Workspace established for the purposes of the parties’ Conveyancing Transaction;



**“Electronic Transaction”** means a Conveyancing Transaction to be conducted for the parties by their Conveyancing Representatives as Subscribers using an ELN and in accordance with the ECNL and the Participation Rules;

**“Incoming Mortgagee”** means any mortgagee who is to provide finance to you on the security of the Property and to enable you to pay the whole or part of the Purchase Price;

**“Mortgagee Details”** means the details which a party to the electronic transaction must provide about any discharging mortgagee of the Property as at the Settlement Date;

**“Participation Rules”** means the participation rules as determined by the ENCL;

**“Populate”** means to complete data fields in the Electronic Workspace; and

**“Title Data”** means the details of the title to the Property made available to the Electronic Workspace by Landgate.

## 9.2 Electronic Transaction

This Conveyancing Transaction is to be conducted as an electronic transaction.

## 9.3 Conduct of Electronic Transaction

9.3.1 To the extent, but only to the extent, that any other provision of this Agreement is inconsistent with this clause, the provisions of this clause prevail;

9.3.2 Normally, words and phrases used in this clause have the same meaning which they have in the Participation Rules;

9.3.3 The parties must conduct the electronic transaction in accordance with the Participation Rules and the ECNL;

9.3.4 A party must pay the fees and charges payable to that party to the ELNO and Landgate as a result of this transaction being an electronic transaction;

9.3.5 Any communication from one party to another party in the Electronic Workspace made:

9.3.5.1 after receipt of your notice that this Conveyancing Transaction is to be treated as an electronic transaction; and

9.3.5.2 before the receipt of a notice that this Conveyancing Transaction is an electronic transaction,

is taken to have been received by that party at the time determined by s13 of the Electronic Transactions Act 2011; and

9.3.6 A document which is an electronic document is served as soon as it is first Digitally Signed in the Electronic Workspace on behalf of the party required to serve it.

## 9.4 Our Obligations

We must:

9.4.1 create an Electronic Workspace;

9.4.2 populate the Electronic Workspace with title data, the date for completion and, if applicable, mortgagee details; and

9.4.3 invite you and any discharging mortgagee to the Electronic Workspace.

## 9.5 Your Entitlement to Create Electronic Workspace

If we have not created an Electronic Workspace in accordance with the previous clause, you may create an Electronic Workspace. If you create the Electronic Workspace you must:

9.5.1 populate the Electronic Workspace with title data;

9.5.2 create and populate an electronic transfer;

9.5.3 populate the Electronic Workspace with the date for completion and a nominated Completion Time; and

9.5.4 invite you and any incoming mortgagee to join the Electronic Workspace.

## 9.6 Our Invitation to Join Electronic Workspace

Within 7 days of receiving an invitation from us to join the Electronic Workspace, you must:

9.6.1 join the Electronic Workspace;

9.6.2 create and populate an electronic transfer;

9.6.3 invite an incoming mortgagee to join the Electronic Workspace; and

9.6.4 populate the Electronic Workspace with a nominated Completion Time.

## 9.7 Your Invitation to Join Electronic Workspace

If you have created the Electronic Workspace we must within 7 days of being invited to the Electronic Workspace:

9.7.1 join the Electronic Workspace;

9.7.2 populate the Electronic Workspace with mortgagee details, if applicable; and

9.7.3 invite any discharging mortgagee to join the Electronic Workspace.

## 9.8 Financial Settlement Schedule

To complete the financial settlement schedule in the Electronic Workspace:

- 9.8.1 we must provide you with Adjustment Figures at least 2 business days before the date for completion; and
- 9.8.2 we must populate the Electronic Workspace with payment details at least 1 Business Day before the date for completion.

## 9.9 Parties' Obligation Prior to Settlement

At least 1 Business Day before the Settlement Date, the parties must ensure that:

- 9.9.1 all electronic documents which a party must Digitally Sign to complete the electronic transaction are populated and Digitally Signed;
- 9.9.2 all certifications required by the ECNL are properly given; and
- 9.9.3 they do everything else in the Electronic Workspace which that party must do to enable the electronic transaction to proceed to completion.

## 9.10 Cheques and Settlement Address

If Settlement takes place in the Electronic Workspace:

- 9.10.1 payment electronically on completion of the price in accordance with the clause entitled "Settlement" is taken to be payment by a single bank cheque;
- 9.10.2 the settlement address in the clause entitled "Place for Settlement" is the Electronic Workspace.

## 9.11 Computer Systems Inoperative

If the computer systems of any of Landgate, the ELNO or the Reserve Bank of Australia are inoperative for any reason at the Completion Time agreed by the parties, a failure to complete this Agreement for that reason is not a default under this Agreement on the part of either party.

## 9.12 When Settlement required despite Computer Systems being Inoperative

If the Electronic Workspace allows the parties to choose whether financial settlement is to occur despite the computer systems of Landgate being inoperative for any reason at the completion time agreed by the parties:

- 9.12.1 the parties must choose that financial settlement not occur, however
- 9.12.2 if both parties choose that financial settlement is to occur despite such failure and financial settlement occurs:
  - 9.12.2.1 all electronic documents Digitally Signed by us, the Certificate of Title and any discharge of mortgage, withdrawal of caveat or other electronic document forming part of the Lodgment Case for the electronic transaction shall be taken to have been unconditionally and irrevocably delivered to you or your mortgagee at the time of financial settlement together with the right to deal with the Property comprised in the Certificate of Title; and
  - 9.12.2.2 we shall be taken to have no legal or equitable interest in the Property.

## 9.13 Certificate of Title

A party who holds a Certificate of Title must act in accordance with any Prescribed Requirement in relation to the Certificate of Title but if there is no Prescribed Requirement, we must deliver the Certificate of Title after Settlement.

## 9.14 Other Documents

If the parties do not agree about the delivery before completion of one or more documents or things that cannot be delivered through Electronic Workspace, the party required to deliver the documents or things:

- 9.14.1 holds them on Settlement in escrow for the benefit of; and
- 9.14.2 must immediately after Settlement deliver the documents or things to, or as directed by; the party entitled to them.

## 10. OUTGOINGS

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### 10.1 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:

- 10.1.1 Local Authority rates;
- 10.1.2 any Special Area Rating imposed by the Local Authority;
- 10.1.3 Water Authority rates and consumption charges;

10.1.4 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.

## 10.2 Payment Obligations

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

## 10.3 Separate Assessments Issued

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

## 10.4 Separate Assessments Not Issued

If separate assessments of outgoing 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 outgoing 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 outgoing have been received whereupon our Conveyancing Representative will apportion the amount of outgoing payable in respect of the Property and we will pay our proper proportion.

## 10.5 Deduction

You irrevocably authorise our Conveyancing Representative to deduct and pay your proper proportion of outgoing 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.

## 10.6 Proper Proportion

For the purpose of this clause a proper proportion of outgoing is the amount of outgoing 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.

## 10.7 Delay in Settlement

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

- 10.7.1 rates, taxes and outgoing shall be adjusted as between us and you on the due date of Settlement and not the actual date; and
- 10.7.2 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.

## 11. ENCUMBRANCES

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### 11.1 Permitted Encumbrances

The Property is sold subject to:

- 11.1.1 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:
- 11.1.1.1 any notification registered against the title to the Property pursuant to Section 70A of the *Transfer of Land Act 1893 (WA)*;
- 11.1.1.2 any restrictive covenant registered against the title to the Property pursuant to Sections 129B and 136D of the *Transfer of Land Act 1893 (WA)*;
- 11.1.1.3 any notification registered against the title to the Property pursuant to Section 165 of the *Planning and Development Act 205 (WA)*; and
- 11.1.1.4 any memorial registered against the title to the Property pursuant to Section 58 of the *Contaminated Sites Act 2003 (WA)*;
- 11.1.2 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;
- 11.1.3 a notification pursuant to Section 70A of the *Transfer of Land Act 1893* as follows:  
*"This lot is subject to a Fire Management Plan."*
- 11.1.4 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."*

- 11.1.5 Drainage Easements and Reserved as may be required by the City of Armadale for drainage infrastructure as shown on the Deposited Plan under Sections 152 and 167 of the *Planning and Development Act 2005*.
- 11.1.6 A pedestrian accessway as shown on the Deposited Plan vested in the Crown under Section 152 of the *Planning and Development Act 2005*.
- 11.1.7 Easement N074351 to the Water Corporation for pipeline purposes.
- 11.1.8 Easement B721903 to Town of Armadale.
- 11.1.9 Caveat B773069.
- 11.1.10 The Restrictive Covenant.

## 11.2 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:

- 11.2.1 the requirements of the Commission;
- 11.2.2 any Local Authority or other government agency or authority having jurisdiction over the Property; or
- 11.2.3 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.

## 12. DEFAULT

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### 12.1 Right to Terminate

Neither us nor you may terminate this Agreement by reason of the other's failure to observe or perform an obligation imposed on that other Party under this Agreement unless:

- 12.1.1 that Party has first given a notice to the other Party:
  - 12.1.1.1 specifying the failure;
  - 12.1.1.2 stating that the other Party must observe and perform that Party's obligations under this Agreement the subject of the notice within ten (10) business days from the date of service of the notice; and
  - 12.1.1.3 stating that if those obligations are not observed and performed within that time the Party giving the notice may terminate this Agreement or that the Contact will be terminated; and
- 12.1.2 the Party receiving the notice fails to observe and perform those obligations within the period stated in that notice.

### 12.2 Repudiation

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

### 12.3 Application of Purchase Price

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

- 12.3.1 up to 10% of the Purchase Price, will be forfeited to and retained by us; and
- 12.3.2 in excess of 10% of the Purchase Price, will be held by us pending the exercise of our Remedies.

### 12.4 Our Rights

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

- 12.4.1 affirm this Agreement and sue you for damages for breach of contract;
- 12.4.2 sue you for specific performance of this Agreement evidenced by this Agreement;
- 12.4.3 subject to the first sub-clause of this clause:
  - 12.4.3.1 if the notice given under that clause states that unless the default is remedied within the time stated in the notice this Agreement may be estimated; and
  - 12.4.3.2 the default is not remedied within the time stated, terminate this Agreement; and
  - 12.4.3.3 sue you for damages for breach of contract; and
  - 12.4.3.4 without further notice to you resell the Property in such manner as we think fit.

### 12.5 Resale

If we resell the Property:

- 12.5.1 we may retain absolutely;
- 12.5.2 any surplus arising from the resale in excess of:

- 12.5.2.1 the Purchase Price; and
- 12.5.2.2 losses and expenses incurred by us in the resale and resulting from your default; and
- 12.5.3 any interest paid by you;
- 12.5.4 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;

### **13. NO WARRANTIES OR REPRESENTATIONS**

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#### **13.1 Other Enquiries**

You shall be taken to have satisfied yourself:

- 13.1.1 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;
- 13.1.2 as to the easements, restrictive covenants, notifications or other contracts or encumbrances to which the Property may be or become subject,
- 13.1.3 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;
- 13.1.4 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.

#### **13.2 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.

#### **13.3 Limiting of Liability**

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

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

#### **13.4 Warranties and Representations**

You acknowledge and agree that:

- 13.4.1 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:
  - 13.4.1.1 the title to the Property;
  - 13.4.1.2 any encumbrance, restriction or right in favour of any third party affecting the Property;
  - 13.4.1.3 the suitability of the Property for any use or purpose of any kind; or
  - 13.4.1.4 the fences (if any) purporting to be on the boundaries of the Property being on the proper boundaries of the Property.
- 13.4.2 any representation or warranty implied by virtue of any statute or otherwise will not apply to or be implied in, the Contact and any such representation or warranty is excluded to the extent permitted by law;
- 13.4.3 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
- 13.4.4 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.

#### **13.5 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 Agreement.

## **14. PLANNING AND OTHER MATTERS**

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### **14.1 Planning Acknowledgements**

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

- 14.1.1 the provisions of any town planning scheme, zoning bylaws and other laws affecting the Property;
- 14.1.2 any order or requisition affecting the Property;
- 14.1.3 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;
- 14.1.4 any resumption or proposal to resume the Property or any adjoining or other land;
- 14.1.5 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 Agreement in respect of any matter mentioned in this paragraph;
- 14.1.6 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 Local Development Plan.
- 14.1.7 if the Property is Lots 41 and 67 to 73, inclusive then you acknowledge having received a copy of the City of Armadale Fire Control Notice;
- 14.1.8 the permitted encumbrances described in the clause entitled "Permitted Easement" will run with the Property and bind any proposed transferees of the Property;
- 14.1.9 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
- 14.1.10 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.

### **14.2 Local Planning Scheme and Structure Plan**

You acknowledge having been advised prior to entering into this Contract of the provision of the City of Armadale:

- 14.2.1 Local Planning Scheme Number 4; and
- 14.2.2 Lake Road Precinct A1 Structure Plan,

that relate to the use and management of the Land.

### **14.3 Drainage Easement Restriction**

You acknowledge that prior to entering into this Contract you have had the opportunity to read and understand the restrictions on the use and enjoyment of the property if any pursuant to the provisions of Easement B721903 including but not limited to the restriction on:

- 14.3.1 not planting or permitting to be planted any trees or other plants which may damage or affect in any way the drains and works referred to therein; and
- 14.3.2 not without the prior written consent of the City of Armadale and subject to such conditions it may impose erect any buildings or structures of any kind whatsoever on the property delineated and hachured blue on the Plan annexed to the Easement.

### **14.4 Ground Water**

You acknowledge that prior to entering into this Contract you have been given notice that the ground water to the property is not potable.

## **15. DELAY IN SETTLEMENT**

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### **15.1 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 Agreement or on the Settlement Date. We shall not be obliged to notify you of the date of issue of the title.

### **15.2 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.

### **15.3 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).

## 15.4 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 Agreement 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.

**16. GST**

## 16.1 Definitions

In this clause and this Agreement:

“**ATO**” means the Australian Taxation Office;

“**Consideration for the Supply**” means the Purchase Price without deduction payable by you for the Property;

“**GST**” has the same meaning as in the *GST Act*;

“**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

“**GST Withheld Amount**” means the amount stated in the GST Withholding Notice;

“**GST Withholding Notice**” means the GST Withholding Notice being Attachment 7 hereto;

“**Margin Scheme**” has the same meaning as in the *GST Act*;

“**Purchaser Completion Form 2**” means the purchaser completion form required to be completed by you for the purposes of Section 14-250 of the *Taxation Administration Act 1953*;

“**Purchaser Notification Form 1**” means the purchaser notification form required to be completed online by you for the purposes of Section 14 – 250 in Schedule 1 of the *TA Act*;

“**TA Act**” means the *Taxation Administration Act 1953*.

## 16.2 GST

The parties agree that:

16.2.1 the Purchase Price is inclusive of GST; and

16.2.2 the GST is to be calculated according to the Margin Scheme.

## 16.3 Non Merger

This clause will not merge on Settlement and will survive termination of this Agreement.

## 16.4 GST Withholding and Payment

You acknowledge and agree:

16.4.1 having received the GST Withholding Notice prior to the date of this Agreement;

16.4.2 to pay the GST Withheld Amount on Settlement as part of the Purchase Price with a failure to do so a breach of your obligations imposed by Section 14 – 250 of Schedule 1 of *TA Act* and a breach by you of the Settlement provisions of this Agreement;

16.4.3 you or your Conveyancing Representative will complete the Purchaser Notification Form 1 online with the Australian Taxation Office within 14 days of our acceptance of your offer and will upon being notified by the ATO of the Payment Reference Number (PRN) and the Lodgement Reference Number (LRN) you will forthwith inform us or our Conveyancing Representative of the PRN and the LRN; and

16.4.4 you or your Conveyancing Representative will on the Settlement Date complete the Purchaser Completion Form 2 online with the ATO and otherwise perform your obligations imposed upon you by Section 14-250 in Schedule 1 of the *TA Act*.

**17. MISCELLANEOUS**

## 17.1 Governing Law

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

## 17.2 No Moratorium

Unless application is mandatory by law, a statute, proclamation, order, regulation or moratorium, present or future, is not to apply to this Agreement 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.

## 17.3 Unenforceability

If a condition, covenant or stipulation of these Conditions or of this Agreement 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 this Agreement will be valid and enforceable to the fullest extent permitted by law.

#### 17.4 **No Assignment**

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

#### 17.5 **Waiver**

A provision of, or a right created under, this Agreement may or may not be:

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

17.5.2 varied, except in writing signed by all parties.

#### 17.6 **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 Agreement will not be construed as a waiver of the provisions of this Agreement or prejudice our exercising such rights or the exercise of any such option or discretion.

#### 17.7 **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 this Agreement.

#### 17.8 **Payment of Duty and Registration Fees**

17.8.1 You shall pay all Duty payable in relation to this Agreement and the Transfer document in respect of your Lot.

17.8.2 You shall pay all Landgate registration fees payable in respect of the Transfer document.

17.8.3 You shall pay all Electronic Transaction fees that we may be required to pay to the Electronic Lodgement Network Operator.

#### 17.9 **Extent of Obligations**

Without limitation to the extent that any obligations under this Agreement 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 being Attachment 5 hereto.

#### 17.10 **Costs and Duty**

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

#### 17.11 **Whole Agreement**

This Agreement 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.

#### 17.12 **Counterparts**

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

### **18. SPECIAL CONDITIONS**

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#### 18.1 **Special Conditions**

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

#### 18.2 **Inconsistencies**

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

### **19. PRIVACY CONSENT**

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#### 19.1 **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.

#### 19.2 **Personal Information**

In the Offer 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").



**19.3 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.

**19.4 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 Brookside Waters 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.

**20. ACKNOWLEDGEMENTS**

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**20.1 Your acknowledgements**

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

- 20.1.1 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 Agreement; and
- 20.1.2 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 Agreement, that the Property is suitable for any particular use and that your intended use is subject to the Planning Scheme of the Local Authority;
- 20.1.3 relied solely upon your own skill and judgement;
- 20.1.4 thoroughly read and understood this Agreement including but not limited to Attachments 1 to 9 inclusive;
- 20.1.5 had the opportunity to produce this Agreement to professional advisors for the purpose of receiving independent legal and/or financial advice.

**21. NOTICE**

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**21.1 Notices**

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

- 21.1.1 must be in writing addressed to us or you (as the case may be), to our or your address shown in this Agreement (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;
- 21.1.2 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);
- 21.1.3 is to be regarded as being given by the sender and received by the addressee:
  - 21.1.3.1 if by delivery in person, when delivered to the addressee;
  - 21.1.3.2 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
  - 21.1.3.3 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
- 21.1.4 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.

**21.2 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.

**22. DEFINITIONS AND INTERPRETATION**

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**22.1 Definitions**

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

**"Agreement"** means the agreement between us and you for the sale and purchase of your Lot comprising the Offer, these Conditions and the Incorporated Documents referred to in the Offer;

**"Brookside Waters"** means the whole of the land of which the Property forms part and which is commonly known and promoted by us as "Brookside Waters";

**"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;

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

**"Deposit"** means the deposit mentioned in the Offer;

**"Finance Approval"** means an offer to lend made by the Lender on reasonable terms and conditions or an approval of a finance application by the Lender to you, by the Latest Time for a loan of an amount not less than the Amount of Loan. An approval that is subject to the Lender's usual terms and conditions shall be deemed to be Finance Approval;

**"Latest Time"** means the date specified in Item 5 of the Offer;

**"Lender"** means either the lender nominated in Item 5 of the Offer (if any) or any other lender acceptable to you;

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

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

**"Local Structure Plan"** means the Brookside Waters Local Structure Plan;

**"Offer"** means the Buyer's offer to purchase the Property;

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

**"Property"** means property described in the Offer;

**"Purchase Price"** means the amount stated in the Offer as accepted by the Seller;

**"Restrictive Covenant"** means the restrictive covenant annexed hereto as Attachment 1;

**"Stage 2"** means Lots 41 to 73, inclusive 87 to 90, inclusive and 128 to 135 inclusive of Brookside Waters as shown on the Stage 2 Plan;

**"Stage 2 Plan"** means the Stage 2 Plan annexed hereto as Attachment 9;

**"your Covenants"** means all or any of the covenants contained in or implied by this Agreement 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, namely, Suncentro Pty Ltd (ACN 164 538 989) as The Trustee for Suncentro Land Trust (ABN 12 633 925 373);

**"you"** means the buyer described in the Offer;

**"2018 General Conditions"** means The Joint Form of General Conditions for the Sale of Land 2018 Revision.

## 22.2

### Interpretations

22.2.1 The singular includes the plural and vice versa.

22.2.2 Words importing a gender include every other gender.

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

22.2.4 Attachments 1 to 9 form part of this Agreement.

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