

# Annexure A - Special Conditions (Bennett Quarter, Bennett Springs)

## 1 Definitions and interpretation

### Definitions

1.1 In this document and the Contract:

**Approval** means any approval, consent or certificate of a federal, state or local government authority (including the WAPC), financier or consent body relating to the Development.

**BAL Rating** means the BAL Rating applying to a Lot.

**BMP** means the Bushfire Management Plan prepared by Bushfire Probe Planning for Lots 624 and 625 Marshall Road Bennett Springs dated 4 June 2020.

**Building Guidelines** means the development conditions and building guidelines attached as Annexure C to this Contract.

**Deposited Plan** means a Deposited Plan in respect of the Development attached as Annexure G to this Contract.

**Development** means the development of the land in accordance with this Contract to create the Property.

**Dwelling** means any residential dwelling to be constructed on the Property in accordance with Sale Condition 9.

**Land** means Lots 624 and 625 on Plan 3698, the whole of the land comprised in Certificates of Title Volume 1431 Folio 330 and Volume 1857 Folio 739.

**Latest Date** means 31 December 2022.

**Local Development Plan** means the plan attached as Annexure L.

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

**Mortgage** means a mortgage, charge or other encumbrance granting a security interest.

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

**Offer and Acceptance** means the offer and acceptance attached to this Contract.

**Restrictive Covenant** means the restrictive covenant attached as Annexure D to this Contract.

**Sale Conditions** means the sale conditions that make up this Contract.

**Seller** means Bennett Springs Land Development Pty Ltd (ACN 609 148 228) as trustee for the Bennett Springs Land Development Unit Trust.

**Stage 1 Plan** means the estate plan attached as Annexure E.

### Interpretation

1.2 In this document, unless the context otherwise requires terms defined in the 2018 General Conditions have the same meaning when used in this document.

## 2 2018 General Conditions

### Application of 2018 General Conditions

2.1 The 2018 General Conditions form part of this Contract except that:

2.1.1 these Sale Conditions will override the 2018 General Conditions to the extent of any inconsistency; and

2.1.2 2018 General Conditions 2.4 -2.7, 4.2, 7.3 - 7.6, 9, 10, 11, 12, 13, 15, 16 and 18 are excluded from this Contract.

## 3 Condition

### The issue of a separate certificate of title for the Land

3.1 The sale and purchase of the Property is conditional on the issue of a separate certificate of title for the Land by the Latest Date.

3.2 Without limiting Sale Condition 3.3, if the condition in Sale Condition 3.1 is not satisfied, either Party can terminate this Contract by giving a notice of this to the other Party at any time after the Latest Date.

3.3 Subject to Sale Condition 3.4, if the Seller forms the opinion that the issue of a separate certificate of title for the Land will not be issued by the Latest Date, the Seller may (but is not obliged to) terminate this Contract by notice to the Buyer.

3.4 Sale Condition 3.3 is for the benefit of the Seller and the Seller may waive that Sale Condition.

## Effect of termination

3.5 If this Contract is terminated pursuant to Sale Condition 3, this Contract will be at an end, the Deposit will be returned to the Buyer and neither Party will have any further rights or obligations under this Contract, except those arising out of a breach of this Contract before the date of termination, or which are expressed or implied to survive termination.

## 4 Advice as to timing of issue of titles

4.1 The Buyer acknowledges and agrees that the Seller or the Seller Agent may from time to time advise the Buyer of an indicative date by which the issue of a separate certificate of title for the Land is anticipated to occur.

4.2 Any such advice is an estimate of time and the Seller and the Seller Agent are not liable for any loss, claim or damage which the Buyer may suffer if the issue of a separate certificate of title for the Property does not occur by that advised indicative date.

## 5 Amendments

### Seller may amend Deposited Plan

5.1 As the Property is subject to final survey, the Deposited Plan is provisional only and may be amended by the Seller.

5.2 Without limiting Sale Condition 5.1, the Seller may do any one or more of the following:

5.2.1 change the total number of Lots or, the area of or configuration, dimensions, or position of any of the Lots;

5.2.2 change the use of, or services or facilities to, any of the Lots;

5.2.3 change the numbering of any of the Lots;

5.2.4 transfer or incorporate any additional land into the Deposited Plan, transfer or excise any land out of the Deposited Plan;  
or

5.2.5 change the design and layout of any of the Lots.

### Buyer's rights regarding amendments to Deposited Plan

5.3 The Buyer is not entitled to make any Objection if any amendment to the Deposited Plan pursuant to Sale Conditions 5.1 or 5.2 does not result in a reduction in the area of the Property of more than 2% from the area of the Property shown in the Deposited Plan as at the Contract Date.

5.4 If any amendment made by the Seller pursuant to Sale Conditions 5.1 or 5.2 results in a reduction in the area of the Property of more than 2% from the area of the Property shown in the Deposited Plan at the Contract Date, the Buyer may, by giving the Seller a Notice of this by no later than the earlier of:

5.4.1 10 Business Days after being notified of the amendment; or

5.4.2 the day that is 3 Business Days before the Settlement Date, elect to either:

(a) proceed with the purchase of the Property for a Purchase Price adjusted proportionally to reflect the decrease in area; or

(b) terminate this Contract, in which case, this Contract will be at an end, the Deposit will be returned to the Buyer and neither Party will have any further rights or obligations under this Contract, except for those arising out of a breach of this Contract before the date of termination pursuant to this clause or which are expressed or implied to survive termination.

5.5 If clause 5.4 applies and the Buyer does not give the Seller a Notice within the deadline referred to in clause 5.4, the Buyer will be required to complete Settlement on the Settlement Date, for the Purchase Price adjusted proportionally to reflect any increase or decrease in area (as the case may be) and is not entitled to make any Objection to this.

## 6 Local Development Plan

6.1 The Buyer acknowledges the Land is subject to the Local Development Plan.

## 7 Encumbrances

### Property subject to encumbrances

7.1 The Property is sold subject to, and the Buyer is not entitled to make any Objection in relation to:

7.1.1 the provisions of the *Transfer of Land Act 1893 (WA)*, all restrictions on use, easements expressed or implied in favour of, or against, the owner of the Property and all laws affecting the Property;

7.1.2 all other requisitions, orders, notices, notifications and memorials issued by any competent authority in relation to the Property including:

(a) any notification pursuant to section 70A of the *Transfer of Land Act 1893 (WA)*;

(b) any restrictive covenant pursuant to sections 129BA and 136D of the *Transfer of Land Act 1893 (WA)*, in particular the Restrictive Covenant;

(c) any notification pursuant to section 165 of the *Planning and Development Act 2005 (WA)*;

(d) any memorial pursuant to section 58 of the *Contaminated Sites Act 2003 (WA)*;

7.1.3 all defects (if any) whether or not those defects could or should have been recognisable upon the Buyer's inspection of the Property; or

7.1.4 all of the matters referred to in Sale Conditions 7.2 and 7.3.

#### **Further encumbrances**

7.2 Without limiting Sale Condition 7.1, the Buyer acknowledges that, at the Contract Date, the Seller may not have granted, created or identified all the easements, leases, restrictions on use, notifications, covenants, design area plans or detailed area plans, entered into all agreements, leases, licenses, authorisations and other arrangements, granted all the rights and privileges, dedicated all the land, and/or created the roads or any services, which may be considered necessary or desirable for the Seller to create, enter into, grant or dedicate as part of the Development.

7.3 The Seller is entitled to give effect to any matter referred in Sale Condition 7.2, and the Buyer is not entitled to make any Objection to this.

### **8 Mortgage**

#### **Existing Mortgage**

8.1 The Buyer acknowledges that the Property may be subject to a Mortgage.

#### **Discharge**

8.2 For the purposes of section 14 of the *Sale of Land Act 1970 (WA)*, the Seller will discharge any mortgage over the Property on or before Settlement and for that purpose the Deposit and all other moneys payable pursuant to this Contract will (to the extent required) be applied by the Seller Agent towards discharging any mortgage.

### **9 Construction of the Dwelling on the Property**

9.1 The Buyer must comply with the terms of the Restrictive Covenant and the Building Guidelines.

9.2 The Buyer acknowledges and agrees that:

9.2.1 the Restrictive Covenant and Building Guidelines are in draft form and may be amended as reasonably required by the Seller; and

9.2.2 the Deposited Plan sets out the lots that will be created from the land comprised in certificate of title volume 1624 folio 922, one of which is the Land; and

9.3 The Buyer acknowledges and agrees that it is responsible for obtaining all approvals from the appropriate authorities required at law relating to any construction of a Dwelling on the Property. The Buyer is not entitled to make any Objection in relation to these matters, either before or after the Settlement Date.

9.4 The Buyer must not affix any for sale sign on the Property until the earlier to occur of the following:

9.4.1 the Seller and any other owners of the Land (or any successor in title of these owners at the date certificates of title for the Lots are created) have settled on the sale of each of the Lots; and

9.4.2 the Buyer has completed construction of the Dwelling on the Property.

9.5 The Seller will install fencing on the land from which the Property will be created. The Buyer has no claim whatsoever in respect of any fencing the Seller may install on that land.

### **10 Acknowledgement regarding BMP**

10.1 The Buyer acknowledges that:

10.1.1 the Land is subject to a Bushfire Management Plan;

10.1.2 the BMP may:

(a) affect what can be constructed on the Land and where construction can be carried out on the Land; and

(b) require that certain materials be used or not used in any construction carried out on the Land; and

10.1.3 the Buyer has received a copy of the BMP.

10.2 The Buyer has no claim against the Seller whatsoever as a result of the application of the BMP to the Property.

### **11 Execution of separate documents**

11.1 This Contract is properly executed if each party executes this document or an identical document. In the former case, this Contract takes effect when the last party executes this document. In the latter case, this Contract takes effect when the last of the identical documents is executed.

11.2 Evidence of execution of this Contract by a party may be shown by fax, email or a PDF copy of this document.

- 11.3 For the purposes of section 10 of the *Electronic Transactions Act 2011* (WA) and the *Electronic Transactions Act 1999* (Cth), each party:
- 11.3.1 consents to each other party signing this document using 'DocuSign' or some other method by which an electronic signature is applied to this document (Electronic Signature); and
- 11.3.2 acknowledges and agrees that the application of an Electronic Signature to this document by that party and by each other party is:
- (a) a method which identifies each party and indicates each party's approval of the variations in this document; and
- (b) a reliable method as is appropriate for the purpose of signing this document in light of all the circumstances.

## 12 Assignment and dealings

### Seller's right to assign

12.1 The Seller may assign or transfer any of its interests, rights and obligations in any or all of:

- 12.1.1 this Contract;
- 12.1.2 the Land; or
- 12.1.3 the Property,

to any person without the need to obtain any consent from the Buyer.

12.2 The Seller will be released from any obligations in this Contract that are assigned or transferred pursuant to Sale Condition 12.1.

### Buyer's obligations if Seller assigns

12.3 The Buyer agrees in favour of any assignee or transferee pursuant to Sale Condition 12.1 to observe this Contract as if the assignee or transferee was the Party originally named in this Contract as the seller, and the Buyer will do anything that the Seller or the assignee reasonably requires to secure the assignee's rights in this Contract including:

- 12.3.1 signing any deed of covenant the Seller considers necessary; and
- 12.3.2 giving notice to the Seller Agent that the Deposit is held for the benefit of the assignee instead of the Seller.

### Restriction on assignment

12.4 The Buyer is not permitted to and will not sell, transfer or assign or otherwise dispose of its interest in this Contract or the property (**Disposal**) without the prior written consent of the Seller.

12.5 The Seller may give, withhold or impose conditions on the giving of its consent pursuant to Sale Condition 12.4 as the Seller determines in its discretion.

## 13 Caveats

13.1 The Buyer will not, before the creation of a separate certificate of title for the Property, lodge any caveat against the title to the land comprised in certificate of title volume 1431 folio 330 and certificate of title volume 1857 folio 739 (or any part of it) to protect the Buyer's interest in this Contract.

## 14 Survey pegs

14.1 The Buyer acknowledges that once the Property is surveyed and the surveyor has installed the survey pegs at each corner of the Property the Seller is under no obligation to secure the position of the pegs or to reinstate the pegs either before or after Settlement. The Buyer is not entitled to make any Objection in relation to these matters, either before or after the Settlement Date.

## 15 Land Tax

### No Land Tax certificate

15.1 If there is no separate Land Tax certificate for the Property for the Financial Year in which Settlement occurs, Land Tax will be apportioned at Settlement on the basis that the amount of Land Tax applicable to the Property is equal to **A** in the following formula:

$$A = B \times (C/D)$$

where:

- A** = the amount of Land Tax applicable to the Property;
- B** = the amount of Land Tax applicable to the Land for the current financial year calculated on a single ownership basis, disregarding any exemption or concession that may or would otherwise have been granted to an individual or corporation owning land in Western Australia (but if there is no separate assessment, this will be the amount reasonably determined by the Seller);
- C** = the area of the Property; and
- D** = the total area of all of the Lots on the Deposited Plan.

## **Delays to Settlement**

- 15.2 If:
- 15.2.1 the Settlement Date is before or on 30 June in a particular year; and
  - 15.2.2 Settlement does not occur before 5pm on 30 June in that particular year for a reason attributable to the Buyer, the Buyer will pay to the Seller, as an adjustment to the Purchase Price:
  - 15.2.3 the full amount of any Land Tax assessed in respect of the Property as at midnight on 30 June for that particular year (i.e. for the following financial year); and
  - 15.2.4 its share of Land Tax for the previous financial year (calculated as if Settlement had occurred on the relevant date in the previous financial year).

## **16 GST**

### **GST inclusive**

- 16.1 The parties agree that for the purposes of the GST Act, the Purchase Price includes GST and the Margin Scheme is applied to the sale of the Property.

## **17 Referrals**

- 17.1 The Buyer acknowledges and agrees that where a registered builder or its representative has referred the Buyer to the Property, then following Settlement, a fee may be paid by the Seller to the referrer.

## **18 Warranties and representations**

### **Warranties and representations**

- 18.1 The Buyer acknowledges, agrees and is deemed to have satisfied itself:
- 18.1.1 that all brochures, plans, illustrations, photographs, dimensions and other marketing and similar material (whether descriptive or pictorial) provided by or on behalf of the Seller, were done so in good faith but on the basis that:
    - (a) the Buyer has no recourse against the Seller or the Seller Agent in the event of any error or omission;
    - (b) that all illustrations and photographs were artists' impressions and may not have been to scale, or accurate representations of the subject; and
    - (c) the Seller has reserved the right to make changes to those descriptions and dimensions; and
  - 18.1.2 by enquiry of the appropriate authorities as to the use to which the Property may be put, its zoning, the manner in which the Development may be carried out and of all restrictions relating to the Property and the Development;
- 18.2 The Buyer is deemed to enter into this Contract in reliance solely on the examinations, inspections, enquiries and perusals referred to in Sale Condition 18.1. The Buyer is not entitled to make any Objection in relation to these matters, either before or after the Settlement Date.

### **Acknowledgment**

- 18.3 The Buyer acknowledges and agrees that it has been given the opportunity to obtain independent legal and financial advice in respect of this Contract.

**SIGNED BY BUYER**

Date: \_\_\_\_\_

Signed by \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

Witness:

Signature:  
Full Name:  
Address:  
Occupation:

Signed by \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

Witness:

Signature:  
Full Name:  
Address:  
Occupation:

Executed as a deed by \_\_\_\_\_ )  
**Pty Ltd** )  
**ACN** )  
in accordance with section 127 of )  
the *Corporations Act 2001* (Cth) by: )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of \*Director/\*Secretary  
*\*delete that which does not apply*

\_\_\_\_\_  
Print name of Director

\_\_\_\_\_  
Print name of \*Director/\*Secretary  
*\*delete that which does not apply*

**Seller Details**

**SIGNED BY SELLER**

Date: \_\_\_\_\_

Executed as a deed by )  
**Bennett Springs Land Development Pty Ltd** )  
**ACN 609 148 227** as the Trustee for the )  
the Bennett Springs Land Development Unit Trust )  
in accordance with section 127 of )  
the *Corporations Act 2001* (Cth) by: )

\_\_\_\_\_  
**Ross James Neumann**  
Director

\_\_\_\_\_  
**Mitchell Charles Whalan**  
Secretary