

## Contract of Sale of Real Estate

**Property: Lot on Plan of Subdivision PS  
826701N, Stage 11, "Savana",**

**(Registered Lot Contract)**

**Avid Property Group Nominees Pty Ltd ACN 088  
212 631**

Ref LAD:JQ:1060258

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## ELECTRONIC CONTRACT CONSENT AND ACKNOWLEDGEMENT

By signing this document, you:

1. consent to **Avid Property Group Nominees Pty Ltd ACN 088 212 631 as trustee for the Hobbs Road Wyndham Trust ABN 47 262 319 891 (Vendor)** and its lawyers, HWL Ebsworth, and any agent of the Vendor delivering documents to you in connection with the Vendor's development known as "Savana Estate" estate at Officer, Victoria 3809 (**Development**) by an electronic communication (within the meaning given in the *Electronic Transactions (Victoria) Act 2000* (Vic) and any other relevant legislation) or by email attaching a DocuSign link (or a similar link) which you may use to find, read and download the documents (**Electronic Delivery**);
2. direct the Vendor to deliver documents to you by Electronic Delivery to any email address you supply, including the email address of your solicitors or other agents;
3. confirm you are able to save documents delivered by Electronic Delivery so that the documents are readily accessible so as to be useable for subsequent reference;
4. consent to the Vendor signing documents in connection with the Development electronically using DocuSign under which the Vendor will apply a unique electronic signature to the documents and the application of the electronic signature to the document by the Vendor will indicate the Vendor's approval of the contents of the document;
5. acknowledge that the Vendor has consented to you signing documents in connection with the Development electronically using DocuSign under which you will apply a unique electronic signature to the documents and your application of the electronic signature to the document will indicate your approval of the contents of the document;
6. acknowledge that you have been given the opportunity to obtain copies of the Vendor's standard form Sale Contract and Vendor's Statement (**sale documents**) for the Development prior to providing this consent and to obtain independent legal advice concerning the nature and effect of the sale documents and that you have availed yourself of that opportunity to the extent to which you chose to do so; and
7. confirm that, if you are providing this consent and acknowledgement as an authorised officer of a company:
  - (a) you have the full authority of the company to provide the consent on its behalf; and
  - (b) you may be required to sign documents to guarantee the company's obligations to the Vendor in which case the consent and acknowledgement you provide about the signing of documents includes the guarantee documents you will sign in your personal capacity.

I Accept

I Accept

I Accept

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Purchaser (if any)

\_\_\_\_\_  
Purchaser (if any)

# **VENDOR'S STATEMENT PURSUANT TO SECTION 32 OF THE SALE OF LAND ACT 1962**

**PROPERTY**    Lot on Plan of Subdivision PS 826701N,

## **1. FINANCIAL MATTERS**

**1.1 Rates, Taxes, Charges or Other Similar Outgoings** affecting the land and any interest payable, are as follows:

- (a) Are estimated not to exceed \$5000.00.
- (b) Are contained in the attached certificates.
- (c) Amounts for which the purchaser may become liable as a consequence of the sale of which the vendor might reasonably be expected to have knowledge of, are as follows:
  - (i) The purchaser will be liable for municipal, water, sewerage and drainage rates and charges; and
  - (ii) The purchaser may also become liable for State Land Tax depending on the use to which the property is put and other properties owned by the purchaser.

**1.2 Charges** (whether registered or not) over the land imposed by or under an Act to secure an amount due under that Act, are as follows:

See attached certificates.

**1.3 Mortgages** (whether registered or unregistered) over the land, which will not to be discharged before the purchaser becomes entitled to possession or to the receipt of rents and profits, are as follows:

Nil.

**1.4 Terms Contract** - where the purchaser is obliged to make 2 or more payments to the vendor after the execution of the contract and before the purchaser is entitled to a conveyance or transfer of the land, particulars are as follows:

Not applicable.

## **2. INSURANCE**

**2.1 Damage and Destruction** - if the contract does not provide for the land to remain at the risk of the vendor until the purchaser becomes entitled to possession or to the receipt of rents and profits, particulars of any policy of insurance maintained by the vendor in respect of any damage to or destruction of the land are as follows:

Not applicable.

**2.2 Owner-Builder** - if there is a residence on the land which was constructed within the preceding 6 years and section 137B of the *Building Act 1993* applies to the residence, particulars of any required insurance under that Act applying to the residence are as follows:

Not applicable.

## **3. LAND USE**

**3.1 Easements, Covenants or Other Similar Restrictions** affecting the land (whether registered or unregistered):

- (a) To the best of the Vendor's knowledge, there are no easements, covenants or other similar restrictions affecting the Property other than:

- (i) those set out in the attached copies of the title documents;
  - (ii) the easements created by section 98 of the *Transfer of Land Act 1958* (Vic), section 12(2) of the *Subdivision Act 1988* (Vic) and any other easements noted on the Plan of Subdivision;
  - (iii) the requirements of the Planning Documents (as that term is defined in the contract of sale); and
  - (iv) any easements, covenants or other similar restrictions referred to in or contemplated by the contract of sale.
- (b) Particulars of any existing failure to comply with the terms of that easement, covenant or restriction are as follows:

Save as disclosed in the attachments to the Vendor's Statement, none to the best of the Vendor's knowledge.

**3.2 Designated Bushfire Prone Area** - the property is in a bushfire prone area within the meaning of regulations made under the *Building Act 1993*. Special bushfire construction requirements apply.

**3.3 Road Access** - there is access to the property by road.

**3.4 Planning Scheme** - information concerning the planning scheme is contained in the attached certificate.

## **4. NOTICES**

**4.1 Notice, Order, Declaration, Report or Recommendation** of a public authority or government department or approved proposal directly and currently affecting the land, being a notice, order, declaration, report, recommendation or approved proposal of which the vendor might reasonably be expected to have knowledge particulars are as follows:

Save as disclosed in the attachments to the Vendor's Statement, none to the best of the Vendor's knowledge.

**4.2 Livestock Disease or Contamination by Agricultural Chemicals** - particulars of any notices, property management plans, reports or orders in respect of the land issued by a government department or public authority in relation to livestock disease or contamination by agricultural chemicals affecting the ongoing use of the land for agricultural purposes are as follows:

Save as disclosed in the attachments to the Vendor's Statement, none to the best of the Vendor's knowledge.

**4.3 Compulsory Acquisition** - particulars of any notice of intention to acquire served under section 6 of the *Land Acquisition and Compensation Act 1986* are as follows:

Save as disclosed in the attachments to the Vendor's Statement, none to the best of the Vendor's knowledge.

## **5. BUILDING PERMITS**

Particulars of any building permits issued in the past 7 years under the *Building Act 1993* (required only where there is a residence on the land) are contained in the attached certificate.

## **6. OWNERS CORPORATION**

The land is not affected by an Owners Corporation within the meaning of the *Owners Corporations Act 2006*.

## **7. GROWTH AREAS INFRASTRUCTURE CONTRIBUTION (GAIC)**

The land was subject to GAIC but the vendor has attended to payment of the GAIC and the GAIC notice was removed from the parent title to the land.

## **1. NON-CONNECTED SERVICES**

The following services are **not** connected to the land:

- (a) electricity supply;
- (b) gas supply;
- (c) water supply;
- (d) sewerage; and
- (e) telephone services.

## **2. TITLE**

Attached is:

- (a) a copy of the Register Search Statement and the document, or part of the document, referred to as a diagram location in the Register Search Statement that identifies the land from which the Property will be derived and its location, being Certificate of Title Volume Folio ;
- (b) Registered Plan of Subdivision PS 826701N;
- (c) Covenant No. PS 826701N;
- (d) Section 173 Agreement AL114846N;
- (e) Section 173 Agreement AQ257914E;
- (f) Section 173 Agreement AQ257915C;
- (g) Planning Permit;
- (h) Planning Certificate;
- (i) Land Information Statement;
- (j) Land Tax Certificate;
- (k) Water Information Statement;
- (l) Roads Certificate;
- (m) Building Certificates;
- (n) EPA Certificate;
- (o) Planning Report (incl. Designated Bushfire Prone Area Information);

## **10. SUBDIVISION**

### **10.1 Unregistered Subdivision**

Not applicable.

### **10.2 Staged Subdivision**

Not applicable.

### **10.3 Further Plan of Subdivision**

Not applicable.

## **11. DISCLOSURE OF ENERGY EFFICIENCY INFORMATION**

There is no certificate relating to Energy Efficiency Information applicable.

## **12. DUE DILIGENCE CHECKLIST**

The Sale of Land Act 1962 provides that the vendor or the vendor's licensed estate agent must ensure that a prescribed due diligence checklist is made available to any prospective purchasers from the time the land is offered for sale where that land is vacant residential land or land on which there is a residence. The due diligence checklist is provided with, or attached to, this vendor's statement.

**The vendor makes this statement in respect of the land in accordance with section 32 of the *Sale of Land Act 1962*.**

Date of this Statement: 18 June 2021



Signature of the vendor:

**The purchaser acknowledges being given a duplicate of this statement signed by the vendor with the attached documents before the purchaser signed any contract.**

Date of this Acknowledgment:

Purchaser's signature:

Date of this Acknowledgment:

Purchaser's signature:

Date of this Acknowledgment:

Purchaser's signature:

## CONTRACT OF SALE OF REAL ESTATE - PARTICULARS OF SALE

Part 1 of the standard form of contract prescribed by the Estate Agents (Contracts) Regulations 2008

The vendor agrees to sell and the purchaser agrees to buy the property, being the land and the goods, for the price and on the terms set out in this contract.

The terms of this contract are contained in the -

- Particulars of sale; and
- Special conditions, if any; and
- General conditions; and
- Vendor's Statement

and in that order of priority.

The Vendor's Statement required by section 32(1) of the **Sale of Land Act 1962** is attached to and forms part of the terms of this contract.

### IMPORTANT NOTICE TO PURCHASERS

#### Cooling-off

Section 31

period

#### Sale of Land Act 1962

You may end this contract within 3 clear business days of the day that you sign the contract if none of the exceptions listed below applies to you.

You must either give the vendor or the vendor's agent **written** notice that you are ending the contract or leave the notice at the address of the vendor or the vendor's agent to end this contract within this time in accordance with this cooling-off provision.

You are entitled to a refund of all the money you paid EXCEPT for \$100 or 0.2% of the purchase price (whichever is more) if you end the contract in this way.

#### EXCEPTIONS

The 3-day cooling-off period does not apply if -

- you bought the property at or within 3 clear business days **before or after** a publicly advertised auction; or
- the property is used primarily for industrial or commercial purposes; or
- the property is more than 20 hectares in size and is used primarily for farming; or
- you and the vendor have previously signed a contract for the sale of the same land in substantially the same terms; or
- you are an estate agent or a corporate body.

### IMPORTANT NOTICE TO PURCHASERS

#### Section 9AA(1A), Sale of Land Act 1962

Subject to the limit set by section 9AA(1)(b) of the Sale of Land Act 1962 (Vic), the purchaser may negotiate with the vendor about the amount of deposit moneys payable under the contract.

A substantial period of time may elapse between the day on which the purchaser signs the contract for sale and the day on which the purchaser becomes the registered proprietor of the lot.

The value of the lot may change between the day on which the purchaser signs the contract for sale of that lot and the day on which the purchaser becomes the registered proprietor.

### SIGNING OF THIS CONTRACT

#### **WARNING: THIS IS A LEGALLY BINDING AGREEMENT. YOU SHOULD READ THIS CONTRACT BEFORE SIGNING IT.**

Purchasers should ensure that prior to signing this contract, they have received a copy of the full terms of this contract.

The authority of a person signing -

- under power of attorney; or
- as director of a corporation; or
- as an agent authorised in writing by one of the parties

must be noted beneath the signature.

Any person whose signature is secured by an estate agent acknowledges being given by the agent at the time of signing a copy of the terms of this contract.

## EXECUTION

### Purchaser:

Purchaser (1) name:

Individual

on

If more than 1 individual purchaser:

on

Purchaser (2) name:

on

Purchaser (3) name:

Corporation

on

Print name(s) of person(s) signing:

State nature of authority, if applicable:

on

Print name(s) of person(s) signing:

State nature of authority, if applicable:

### Vendor:

Signed by: .....on

Signed by: .....on

State nature of authority, if applicable: Peter Vlitass and Davina Sher as attorneys for Avid Property Group Nominees Pty Ltd ACN 088 212 631 as trustee for the Hobbs Road Wyndham Trust pursuant to the power of attorney dated .....

or

Lydia Antoniette Arrico-Dunn or Michael Mammen as attorneys for Avid Property Group Nominees Pty Ltd ACN 088 212 631 as trustee for the Hobbs Road Wyndham Trust pursuant to the power of attorney dated .....

The **DAY OF SALE** is the date by which both parties have signed this contract.



## Particulars of Sale

<b>Vendor's Agent</b>	<b>Estate</b>	<b>RPM Real Estate Pty Ltd</b> Level 5, 52 York Street, South Melbourne, Victoria 3205  Contact: Monique Ruggieri   Telephone: 1300 656 011   Email: savana@avid.com.au		
<b>Vendor</b>		<b>Avid Property Group Nominees Pty Ltd ACN 088 212 631 as trustee for the Hobbs Road Wyndham Trust</b> of Ground Floor, 80 Dorcas Street, Southbank, Victoria 3006		
<b>Vendor's Practitioner</b>	<b>Legal</b>	<b>HWL Ebsworth Lawyers</b> of Level 26, 530 Collins Street, Melbourne VIC 3000 DX 564 Melbourne ☎ : (03) 8644 3500   Fax: 1300 365 323   Ref: LAD:JQ:1060258		
<b>Purchaser</b>		Name: (and/or nominee) ..... Address: ..... ABN: ..... ACN: ..... Telephone: Name: (and/or nominee) ..... Address: ..... Telephone: Name: (and/or nominee) ..... Address: ..... Telephone: .....		
<b>Purchaser's Legal Practitioner or Conveyancer</b>		of Tel: Fax: Email: Ref:		
<b>Property address</b>		the Land together with any improvements known as  Lot on Plan of Subdivision PS 826701N, Stage 11, "Savana",		
<b>Land</b>		Lot on Plan of Subdivision PS 826701N, (a copy of which is contained in the Vendor's Statement) and being the land described in Certificate of Title Volume Folio		
<b>Goods (list or attach schedule)</b>		Nil (vacant land)		
<b>Payment</b>		<b>Price</b>	<b>\$</b>	including GST
		<b>Deposit</b>	<b>\$</b>	Payable to HWL Ebsworth Lawyers Law Practice Trust Account on or before the Day of Sale or as follows: of which has been paid on the (time being of the essence); and the remainder is due on (time being of the essence).
		<b>Balance</b>	<b>\$</b>	payable at settlement
<b>GST</b> (refer to general condition 13) The price includes GST (if any) unless the words ' <b>plus GST</b> ' appear in this box				
				<b>Not applicable</b>

If this is a sale of a 'farming business' or 'going concern' then add the words ' **farming business** ' or ' **going concern** ' in this box

Not applicable

If the margin scheme will be used to calculate GST then add the words ' **margin scheme** ' in this box

Margin scheme

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**Settlement** is due on: .....

At settlement the purchaser is entitled to vacant possession of the property unless the words ' **subject to lease** ' appear in this box

in which case refer to general condition 1.1. If ' **subject to lease** ' then particulars of the lease are:

Not applicable

If this contract is intended to be a terms contract within the meaning of the [Sale of Land Act 1962](#) then add the words ' **terms contract** ' in this box  
and refer to general condition 23 and add any further provisions by way of Special Conditions

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### Encumbrances

This sale is NOT subject to an existing mortgage unless the words ' **subject to existing mortgage** ' appear in this box:

If the sale is ' **subject to existing mortgage** ' then particulars of the mortgage are:

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### Special conditions

This contract does not include any Special Conditions unless the words ' **Special Conditions** ' appear in this box

Special Conditions

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**Loan** (refer to general condition 14)

The following details apply if this contract is subject to a loan being approved.

Lender: Any lender approved by the Vendor

Loan amount: - being no greater than the Price and not less than

(insert amount if subject to finance)

Approval Date: - days after Day of Sale

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### Schedule 1

The Purchaser assumes the following encumbrances:

1. all registered and any unregistered and implied easements, covenants and restrictive covenants (if any) affecting the Land including those disclosed in the Vendor's Statement and any apparent or implied easements for services, drains, sewer pipes and wires not located in registered easements;
2. any easements and restrictions created by the Plan of Subdivision or implied under the Subdivision Act or otherwise; and
3. the following encumbrances specific to the Development:
  - 3.1 the conditions and other restrictions contained in the Permit and any other planning permit affecting the Property which may issue after the Day of Sale or which may otherwise be imposed by a responsible authority;
  - 3.2 the provisions of any agreement which the Vendor has or may be required to enter into with any responsible authority in relation to the Plan of Subdivision including but not limited to an agreement under section 173 of the *Planning and Environment Act 1987* (Vic);
  - 3.3 the requirements of the Planning Documents;
  - 3.4 the requirements of the MCP;
  - 3.5 the requirements of the Design Guidelines; and

### 3.6 the Planning and Building Controls.

## FORM 2

### Estate Agents Act 1980

Regulation 5(a)

## CONTRACT OF SALE OF REAL ESTATE – GENERAL CONDITIONS

Part 2 of the standard form of contract prescribed by the *Estate Agents (Contracts) Regulations 2008*  
(October 2014)

### TITLE

#### 1. Encumbrances

- 1.1 The purchaser buys the property subject to:
- (a) any encumbrance shown in the section 32 statement other than mortgages or caveats; and
  - (b) any reservations in the crown grant; and
  - (c) any lease referred to in the particulars of sale.
- 1.2 The purchaser indemnifies the vendor against all obligations under any lease that are to be performed by the landlord after settlement.
- 1.3 In this general condition 'section 32 statement' means a statement required to be given by a vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of Part II of that Act.

#### 2. Vendor warranties

- 2.1 The vendor warrants that these general conditions 1 to 28 are identical to the general conditions 1 to 28 in the standard form of contract of sale of real estate prescribed by the **Estate Agents (Contracts) Regulations 2008** for the purposes of section 53A of the **Estate Agents Act 1980**.
- 2.2 The warranties in general conditions 2.3 and 2.4 replace the purchaser's right to make requisitions and inquiries.
- 2.3 The vendor warrants that the vendor:
- (a) has, or by the due date for settlement will have, the right to sell the land; and
  - (b) is under no legal disability; and
  - (c) is in possession of the land, either personally or through a tenant; and
  - (d) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
  - (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
  - (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.
- 2.4 The vendor further warrants that the vendor has no knowledge of any of the following:
- (a) public rights of way over the land;
  - (b) easements over the land;
  - (c) lease or other possessory agreement affecting the land;
  - (d) notice or order affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
  - (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.
- 2.5 The warranties in general conditions 2.3 and 2.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement required to be given by the vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of Part II of that Act.
- 2.6 If sections 137B and 137C of the **Building Act 1993** apply to this contract, the vendor warrants that:
- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
  - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
  - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the **Building Act 1993** and regulations made under the **Building Act 1993**.
- 2.7 Words and phrases used in general condition 2.6 which are defined in the **Building Act 1993** have the same meaning in general condition 2.6.

#### 3. Identity of the land

- 3.1 An omission or mistake in the description of the property or any deficiency in the area, description or measurements of the land does not invalidate the sale.
- 3.2 The purchaser may not:
- (a) make any objection or claim for compensation for any alleged misdescription of the property or any deficiency in its area or measurements; or
  - (b) require the vendor to amend title or pay any cost of amending title.

#### 4. Services

- 4.1 The vendor does not represent that the services are adequate for the purchaser's proposed use of the property and the vendor advises the purchaser to make appropriate inquiries. The condition of the services may change between the day of sale and settlement and the vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.
- 4.2 The purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost.

#### 5. Consents

The vendor must obtain any necessary consent or licence required for the sale. The contract will be at an end and all money paid must be refunded if any necessary consent or licence is not obtained by settlement.

#### 6. Transfer

The transfer of land document must be prepared by the purchaser and delivered to the vendor at least 10 days before settlement. The delivery of the transfer of land document is not acceptance of title. The vendor must prepare any document required for assessment of duty on this transaction relating to matters that are or should be within the knowledge of the vendor and, if requested by the purchaser, must provide a copy of that document at least 3 days before settlement.

#### 7. Release of security interest

- 7.1 This general condition applies if any part of the property is subject to a security interest to which the **Personal Property Securities Act 2009 (Cth)** applies.
- 7.2 For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the purchaser may be entitled to a release, statement, approval or correction in accordance with general condition 7.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.
- 7.3 If the purchaser is given the details of the vendor's date of birth under condition 7.2, the purchaser must:
- (a) only use the vendor's date of birth for the purposes specified in condition 7.2; and
  - (b) keep the date of birth of the vendor secure and confidential.
- 7.4 The vendor must ensure that at or before settlement, the purchaser receives:
- (a) a release from the secured party releasing the property from the security interest; or
  - (b) a statement in writing in accordance with section 275(1)(b) of the **Personal Property Securities Act 2009 (Cth)** setting out that the amount or obligation that is secured is nil at settlement; or
  - (c) a written approval or correction in accordance with section 275(1)(c) of the **Personal Property Securities Act 2009 (Cth)** indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.
- 7.5 Subject to general condition 7.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property:
- (a) that:
    - (i) the purchaser intends to use predominantly for personal, domestic or household purposes; and
    - (ii) has a market value of not more than \$5000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the **Personal Property Securities Act 2009 (Cth)**, not more than that prescribed amount; or
  - (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.
- 7.6 The vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property described in general condition 7.5 if:
- (a) the personal property is of a kind that may or must be described by serial number in the Personal Property Securities Register; or
  - (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 7.7 A release for the purposes of general condition 7.4(a) must be in writing.
- 7.8 A release for the purposes of general condition 7.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.
- 7.9 If the purchaser receives a release under general condition 7.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 7.10 In addition to ensuring that a release is received under general condition 7.4(a), the vendor must ensure that at or before settlement the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.
- 7.11 The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Properties Securities Register, which the purchaser reasonably requires to be released, at least 21 days before the due date for settlement.

- 7.12 The vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide an advice under general condition 7.11.
- 7.13 If settlement is delayed under general condition 7.12 the purchaser must pay the vendor:
- (a) interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier; and
  - (b) any reasonable costs incurred by the vendor as a result of the delay: as though the purchaser was in default.
- 7.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 7.14 applies despite general condition 7.1.
- 7.15 Words and phrases which are defined in the **Personal Property Securities Act 2009 (Cth)** have the same meaning in general condition 7 unless the context requires otherwise.

## **8. Builder warranty insurance**

The vendor warrants that the vendor will provide at settlement details of any current builder warranty insurance in the vendor's possession relating to the property if requested in writing to do so at least 21 days before settlement.

## **9. General law land**

- 9.1 This general condition only applies if any part of the land is not under the operation of the **Transfer of Land Act 1958**.
- 9.2 The vendor is taken to be the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.
- 9.3 The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.
- 9.4 The purchaser is taken to have accepted the vendor's title if:
- (a) 21 days have elapsed since the day of sale; and
  - (b) the purchaser has not reasonably objected to the title or reasonably required the vendor to remedy a defect in the title.
- 9.5 The contract will be at an end if:
- (a) the vendor gives the purchaser a notice that the vendor is unable or unwilling to satisfy the purchaser's objection or requirement and that the contract will end if the objection or requirement is not withdrawn within 14 days of the giving of the notice; and
  - (b) the objection or requirement is not withdrawn in that time.
- 9.6 If the contract ends in accordance with general condition 9.5, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.
- 9.7 General condition 10.1 should be read, in respect of that part of the land which is not under the operation of the **Transfer of Land Act 1958**, as if the reference to 'registered proprietor' is a reference to 'owner'.

## **MONEY**

### **10. Settlement**

- 10.1 At settlement:
- (a) the purchaser must pay the balance; and
  - (b) the vendor must:
    - (i) do all things necessary to enable the purchaser to become the registered proprietor of the land; and
    - (ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.
- 10.2 The vendor's obligations under this general condition continue after settlement.
- 10.3 Settlement must be conducted between the hours of 10.00a.m. and 4.00p.m. unless the parties agree otherwise.

### **11. Payment**

- 11.1 The purchaser must pay the deposit:
- (a) to the vendor's licensed estate agent; or
  - (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or
  - (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.
- 11.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit:
- (a) must not exceed 10% of the price; and
  - (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision.
- 11.3 The purchaser must pay all money other than the deposit:
- (a) to the vendor, or the vendor's legal practitioner or conveyancer; or
  - (b) in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.
- 11.4 At settlement, payments may be made or tendered:

- (a) in cash; or
  - (b) by cheque drawn on an authorised deposit-taking institution; or
  - (c) if the parties agree, by electronically transferring the payment in the form of cleared funds.
- 11.5 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate in relation to which an authority under subsection 9(3) of the **Banking Act 1959 (Cth)** is in force.
- 11.6 At settlement, the purchaser must pay the fees on up to three cheques drawn on authorised deposit-taking institution. If the vendor requests that any additional cheques be drawn on an authorised deposit-taking institution, the vendor must reimburse the purchaser for the fees incurred.

## 12. Stakeholding

- 12.1 The deposit must be released to the vendor if:
- (a) the vendor provides particulars, to the satisfaction of the purchaser, that either-
    - (i) there are no debts secured against the property; or
    - (ii) if there are any debts, the total amount of those debts do not exceed 80% of the sale price; and
  - (b) at least 28 days have elapsed since the particulars were given to the purchaser under paragraph (a); and
  - (c) all conditions of section 27 the **Sale of Land Act 1962** have been satisfied.
- 12.2 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.
- 12.3 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.

## 13. GST

- 13.1 The purchaser does not have to pay the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price unless the particulars of sale specify that the price is 'plus GST'. However the purchaser must pay to the vendor any GST payable by the vendor:
- (a) solely as a result of any action taken or intended to be taken by the purchaser after the day of sale, including a change of use; or
  - (b) if the particulars of sale specify that the supply made under this contract is of land on which a farming business is carried on and the supply (or a part of it) does not satisfy the requirements of section 38-480 of the GST Act; or
  - (c) if the particulars of sale specify that the supply made under this contract is of a going concern and the supply (or a part of it) does not satisfy the requirements of section 38-325 of the GST Act.
- 13.2 The purchaser must pay to the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price if the particulars of sale specify that the price is 'plus GST'.
- 13.3 If the purchaser is liable to pay GST, the purchaser is not required to make payment until provided with a tax invoice, unless the margin scheme applies.
- 13.4 If the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:
- (a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
  - (b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.
- 13.5 If the particulars of sale specify that the supply made under this contract is a 'going concern':
- (a) the parties agree that this contract is for the supply of a going concern; and
  - (b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and
  - (c) the vendor warrants that the vendor will carry on the going concern until the date of supply.
- 13.6 If the particulars of sale specify that the supply made under this contract is a 'margin scheme' supply, the parties agree that the margin scheme applies to this contract.
- 13.7 This general condition will not merge on either settlement or registration.
- 13.8 In this general condition:
- (a) 'GST Act' means **A New Tax System (Goods and Services Tax) Act 1999 (Cth)**; and
  - (b) 'GST' includes penalties and interest.

## 14. Loan

- 14.1 If the particulars of sale specify that this contract is subject to a loan being approved, this contract is subject to the lender approving the loan on the security of the property by the approval date or any later date allowed by the vendor.
- 14.2 The purchaser may end the contract if the loan is not approved by the approval date, but only if the purchaser:
- (a) immediately applied for the loan; and
  - (b) did everything reasonably required to obtain approval of the loan; and
  - (c) serves written notice ending the contract on the vendor within 2 clear business days after the approval date or any later date allowed by the vendor; and
  - (d) is not in default under any other condition of this contract when the notice is given.
- 14.3 All money must be immediately refunded to the purchaser if the contract is ended.

## **15. Adjustments**

- 15.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustments paid and received as appropriate.
- 15.2 The periodic outgoings and rent and other income must be apportioned on the following basis:
- (a) the vendor is liable for the periodic outgoings and entitled to the rent and other income up to and including the day of settlement; and
  - (b) the land is treated as the only land of which the vendor is owner (as defined in the **Land Tax Act 2005**); and
  - (c) the vendor is taken to own the land as a resident Australian beneficial owner; and
  - (d) any personal statutory benefit available to each party is disregarded in calculating apportionment.

## **TRANSACTIONAL**

### **16. Time**

- 16.1 Time is of the essence of this contract.
- 16.2 Time is extended until the next business day if the time for performing any action falls on a Saturday, Sunday or bank holiday.

### **17. Service**

- 17.1 Any document sent by:
- (a) post is taken to have been served on the next business day after posting, unless proved otherwise;
  - (b) email is taken to have been served at the time of receipt within the meaning of section 13A of the **Electronic Transactions (Victoria) Act 2000**.
- 17.2 Any demand, notice, or document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party. It is sufficiently served if served on the party or on the legal practitioner or conveyancer:
- (a) personally; or
  - (b) by pre-paid post; or
  - (c) in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner; or
  - (d) by email.
- 17.3 This general condition applies to service of any demand, notice or document by or on any party, whether the expression 'give' or 'serve' or any other expression is used.

### **18. Nominee**

The purchaser may nominate a substitute or additional transferee, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.

### **19. Liability of signatory**

Any signatory for a proprietary limited company purchaser is personally liable for the due performance of the purchaser's obligations as if the signatory were the purchaser in the case of default by a proprietary limited company purchaser.

### **20. Guarantee**

The vendor may require one or more directors of the purchaser to guarantee the purchaser's performance of this contract if the purchaser is a proprietary limited company.

### **21. Notices**

The purchaser is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made on or after the day of sale that does not relate to periodic outgoings. The purchaser may enter the property to comply with that responsibility where action is required before settlement.

### **22. Inspection**

The purchaser and/or another person authorised by the purchaser may inspect the property at any reasonable time during the 7 days preceding and including the settlement day.

### **23. Terms contract**

- 23.1 If this is a 'terms contract' as defined in the **Sale of Land Act 1962**:
- (a) any mortgage affecting the land sold must be discharged as to that land before the purchaser becomes entitled to possession or to the receipt of rents and profits unless the vendor satisfies section 29M of the **Sale of Land Act 1962**; and
  - (b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.
- 23.2 While any money remains owing each of the following applies:



- (a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;
- (b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;
- (c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each amendment or renewal as evidence of the status of the policies from time to time;
- (d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;
- (e) insurance costs paid by the vendor under paragraph (d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;
- (f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;
- (g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;
- (h) the purchaser must observe all obligations that affect owners or occupiers of land;
- (i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.

#### **24. Loss or damage before settlement**

- 24.1 The vendor carries the risk of loss or damage to the property until settlement.
- 24.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.
- 24.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 24.2, but may claim compensation from the vendor after settlement.
- 24.4 The purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 24.2 at settlement.
- 24.5 The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.
- 24.6 The stakeholder must pay the amounts referred to in general condition 24.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

#### **25. Breach**

A party who breaches this contract must pay to the other party on demand:

- (a) compensation for any reasonably foreseeable loss to the other party resulting from the breach; and
- (b) any interest due under this contract as a result of the breach.

### **DEFAULT**

#### **26. Interest**

Interest at a rate of 2% per annum plus the rate for the time being fixed by section 2 of the **Penalty Interest Rates Act 1983** is payable on any money owing under the contract during the period of default, without affecting any other rights of the offended party.

#### **27. Default notice**

- 27.1 A party is not entitled to exercise any rights arising from the other party's default, other than the right to receive interest and the right to sue for money owing, until the other party is given and fails to comply with a written default notice.
- 27.2 The default notice must:
  - (a) specify the particulars of the default; and
  - (b) state that it is the offended party's intention to exercise the rights arising from the default unless, within 14 days of the notice being given -
    - (i) the default is remedied; and
    - (ii) the reasonable costs incurred as a result of the default and any interest payable are paid.

#### **28. Default not remedied**

- 28.1 All unpaid money under the contract becomes immediately payable to the vendor if the default has been made by the purchaser and is not remedied and the costs and interest are not paid.
- 28.2 The contract immediately ends if:
  - (a) the default notice also states that unless the default is remedied and the reasonable costs and interest are paid, the contract will be ended in accordance with this general condition; and
  - (b) the default is not remedied and the reasonable costs and interest are not paid by the end of the period of the default notice.
- 28.3 If the contract ends by a default notice given by the purchaser:

- (a) the purchaser must be repaid any money paid under the contract and be paid any interest and reasonable costs payable under the contract; and
  - (b) all those amounts are a charge on the land until payment; and
  - (c) the purchaser may also recover any loss otherwise recoverable.
- 28.4 If the contract ends by a default notice given by the vendor:
- (a) the deposit up to 10% of the price is forfeited to the vendor as the vendor's absolute property, whether the deposit has been paid or not; and
  - (b) the vendor is entitled to possession of the property; and
  - (c) in addition to any other remedy, the vendor may within one year of the contract ending either:
    - (i) retain the property and sue for damages for breach of contract; or
    - (ii) resell the property in any manner and recover any deficiency in the price on the resale and any resulting expenses by way of liquidated damages; and
  - (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
  - (e) any determination of the vendor's damages must take into account the amount forfeited to the vendor.
- 28.5 The ending of the contract does not affect the rights of the offended party as a consequence of the default.
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### **\* Law Institute of Victoria Property Law Dispute Resolution Committee Guidelines**

1. The Committee has been established to decide disputes relating to property law matters. Where one party does not have a solicitor representing them, the dispute cannot be heard until that party instructs a solicitor.
2. An *agreed* Statement of Facts must be signed by all parties and referring solicitors and must include:
  - 2.1 A clear and concise statement of all the relevant *agreed* facts upon which the dispute is based. The Committee is unable to make any decision unless the facts are *agreed* between the parties.
  - 2.2 A copy of all relevant documents.
  - 2.3 The issues, based on the agreed facts, to be decided by the Committee.
3. Applications for disputes to be decided by the Committee shall include an agreement by the referring solicitors and the parties to be bound by the Committee's decision on any question of law or practice.
4. Applications in the appropriate form must be lodged with the Secretary of the Property Law Dispute Resolution Committee C/- the Law Institute of Victoria.
5. An administration fee of \$100.00 for each referring solicitor must be paid to the Law Institute of Victoria when the application is lodged.
6. The Committee's decision will be based upon the material contained in the Statement of Facts only. In making its decision the Committee shall act as an expert panel and not as an arbitrator.
7. The Committee reserves the right:
  - (i) to call for further and better particulars in order to make a decision.
  - (ii) to refuse to decide any dispute, in which case any fees will be refunded in full.
8. The Committee's written decision will be sent to the referring legal practitioners within seven days of the dispute being decided.

*\* The guidelines and forms required can be obtained from the Secretary of the Property & Environmental Law Section, Law Institute of Victoria. Tel: (03) 9607 9522.*

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# Special Conditions

## 1. Definitions and Interpretation

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### 1.1 Definitions

In this Contract, capitalised terms have the meaning given to them in the Particulars of Sale and, unless the context requires otherwise:

**Authority** means any federal, state or local government, semi-government, municipal, statutory or other authority or body charged with the administration of the Law;

**Bank** means an Australian-owned bank on the list, current on the Day of Sale, of authorised deposit-taking institutions regulated by the Australian Prudential Regulation Authority;

**Business Day** means a day other than a Saturday, Sunday or public holiday in Melbourne;

**Claim** means a claim, action, proceeding, damage, loss, expense, cost or liability, immediate, future or contingent and includes a claim for compensation;

**Contaminant** means a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment (including asbestos) and **Contamination** has a corresponding meaning;

**Construct** means to construct the Residence on the Land in accordance with this Contract and **Construction** has a corresponding meaning;

**Construction Permits** means any permit, consent or approval required from any Authority for the Construction and includes building and planning permits;

**Construction Plans** means all documents, plans and specifications required in relation to the application for the Construction Permits and all plans and specifications relating to the Construction, including floor plans, elevation plans and landscaping plans;

**Contract** means this contract of sale of real estate and includes the annexures;

**Corporations Act** means the *Corporations Act 2001* (Cth);

**Council** means Wyndham City Council;

**Day of Sale** means the date on which this Contract is signed by both the Vendor and the Purchaser;

**Deposit Interest** means any interest earned on the Deposit less any relevant fees, taxes (including any amount required to be withheld under income tax legislation where a tax file number has not been advised) and charges;

**Design Guidelines** means the design guidelines for the Development, a copy of which is included in Annexure B, as those guidelines may be amended, added to or varied from time to time;

**Development** means the land in the Plan of Subdivision and any surrounding land to be developed by or on behalf of the Vendor;

**Development Land** means the whole of the land contained in or deriving title from the land known as "Savana", 50 Hobbs Road, Wyndham Vale, Victoria 3024 and any additional, adjacent or nearby land of which the Vendor or a related entity of the Vendor is the registered proprietor;

**Development Works** means the construction and completion of all infrastructure works, landscaping, installation of services and the subdivision of the Site and the construction of other lots on the Site and includes works of any kind necessary or incidental to establishing utility infrastructure and utility services, connections to such infrastructure and services, and including any excavation and general earthworks;

**Due Date** means the date settlement is due in the Particulars of Sale or such other date agreed by the parties in writing;

**Encumbrances** means the encumbrances specified in Schedule 1 of the Particulars of Sale;

**Environmental Law** means any and all past, present and future laws, and any codes of practice, guidance notes, national Environment Protection Measures, State Environment Protection Policies, order, directions, consents, authorisations or permits concerning environmental, health or safety matters (including the clean up standards and practices for Contamination in buildings, equipment, soil, sub surface-strata, air, surface or ground water), where they are provided for in applicable Laws or applied and practised to the Property;

**FIRB** means the Foreign Investment Review Board and includes the Minister of the Australian Government who administers the Government's foreign investment policy under the provisions of the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

**GST** means GST within the meaning of GST Law;

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Guarantee and Indemnity** means a guarantee and indemnity in the form of Annexure A;

**Input Tax Credit** has the meaning given to it in GST Law;

**Insolvency Event** means:

- (a) where the Purchaser (or if the Purchaser consists of 2 or more persons, any of those persons) is a corporation:
  - (i) an official manager, receiver, receiver and manager, administrator, liquidator, provisional liquidator or agent for a mortgagee is appointed to the Purchaser or to any or all of its assets or undertakings;
  - (ii) the Purchaser enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them (except to reconstruct or amalgamate while solvent on terms approved by the Vendor);
  - (iii) the Purchaser resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so (except to reconstruct or amalgamate while solvent on terms approved by the Vendor);
  - (iv) an application is made to a court for an order, or an order is made, that the Purchaser be wound up or dissolved;
  - (v) the Purchaser is or states that it is insolvent;
  - (vi) the Purchaser becomes an insolvent under administration as defined in the *Corporations Act* or action is taken which could result in that event;
  - (vii) the Purchaser takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation;

- (viii) the Purchaser fails to comply with a statutory demand in accordance with section 459F(1) of the *Corporations Act*;
  - (ix) execution is levied against the Purchaser and is not satisfied within 30 days; or
  - (x) anything which is analogous to or has a substantially similar effect to any of the events specified above occurs; or
- (b) where the Purchaser (or if the Purchaser consists of 2 or more persons, any of those persons) is a natural person:
  - (i) the Purchaser becomes bankrupt;
  - (ii) an authority is signed under section 188 of the *Bankruptcy Act 1966* (Cth);
  - (iii) the Purchaser makes an assignment for the benefit of its creditors, or enters into composition or arrangements with its creditors;
  - (iv) the Purchaser is unable to pay its debts when due;
  - (v) the Purchaser dies; or
  - (vi) the Purchaser becomes mentally ill;

**Law** includes any statute, rule, regulation, proclamation, ordinance or by-law (whether present or future);

**Lot or Lots** means a lot or lots on the Plan of Subdivision;

**Margin Scheme** means the scheme for working out the amount of GST on a Taxable Supply under Division 75 of GST Law;

**MCP** means the memorandum of common provisions registered and imposed with or by the Plan of Subdivision, a copy of which is contained in the Vendor's Statement (if any);

**Object** means to make any Claim against the Vendor (before or after the date of actual settlement), to seek to withhold all or part of the Price, raise any objection, requisition, rescind or terminate this Contract or seek to delay or avoid Settlement;

**Outgoings** means all outgoings, costs and expenses paid or payable by the Vendor in relation to the Property (whether or not recoverable from tenants or not) including all rates, taxes (including land tax but excluding capital gains or income taxes), assessments, insurance premiums, statutory outgoings;

**Particulars of Sale** means the particulars of sale attached to and forming part of this Contract;

**Permit** means the planning permit No. WYP7871/14.22 issued by Council, a copy of which is attached to the Vendor's Statement;

**Plan of Subdivision** means plan of subdivision number PS 826701N a copy of which is attached to the Vendor's Statement;

**Planning and Building Controls** means the Restrictions and this Contract;

**Planning Documents** means the Permit and any other planning permits issued in respect of the Property before or the Development Land and after the Day of Sale as those permits may be amended, added to, varied, extended or endorsed from time to time and include the planning permits annexed to the Vendor's Statement;

**Property** means the Land and improvements constructed on the Land as at the Day of Sale;

**Registrar** means the Registrar of Titles of Victoria;

**Residence** means a dwelling to be constructed on the Land in accordance with this Contract;

**Restrictions** means the restrictions included in the Plan of Subdivision;

**Sale of Land Act** means the *Sale of Land Act 1962* (Vic);

**Services** means all water, sewerage, drainage, gas, electricity, telecommunications or other installations, services and utilities at the Property;

**Settlement** means the date the Purchaser accepts title to the Property and pays the Price in full;

**Settlement Date** means the date when Settlement occurs;

**Site** means the land owned or developed by the Vendor known as "Savana", 50 Hobbs Road, Wyndham Vale, Victoria 3024 and any other adjoining or neighbouring land owned by the Vendor and, where the context permits or requires, includes the Property;

**Staged Development** means the Development effected in stages;

**Subdivision Act** means the *Subdivision Act 1988* (Vic);

**Subsequent Stage Land** means all the land included in the Development except for the land in the Plan of Subdivision;

**Tax Invoice** has the meaning given to it in GST Law;

**Taxable Supply** has the meaning given to it in GST Law;

**Vendor's Legal Practitioner** means HWL Ebsworth or any other firm of solicitors about whom the Vendor gives details in writing to the Purchaser; and

**Vendor's Statement** means a statement made by the Vendor under section 32 of the *Sale of Land Act*, a copy of which is contained in **Error! Reference source not found..**

## 1.2 Interpretation

In the interpretation of this Contract, unless the context otherwise requires:

- (a) the headings are inserted only as a matter of convenience and do not affect the interpretation of this Contract;
- (b) the singular includes the plural and vice versa and words of one gender include the other genders;
- (c) where two or more persons are named as a party to this Contract, the representations, warranties, covenants, obligations and rights given, entered into or conferred (as the case may be), bind them jointly and each of them severally;
- (d) a reference to any party to this Contract or any other document or arrangement includes that party's successors, substitutes, permitted assigns, executors and administrators;
- (e) where a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (f) "person" includes a natural person, corporation, body corporate, unincorporated association, firm or an authority or body (whether it be any government, semi-government, municipal, statutory or other authority or body);
- (g) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, the legislation or legislative provision;

- (h) a reference to any agreement or document is to that agreement or document (and where applicable, any of its provisions) as varied, amended, novated, supplemented or replaced from time to time;
- (i) a reference to "include" or "including" means includes, without limitation, or including, without limitation, respectively;
- (j) anything includes each part of it; and
- (k) any reference to time in this Contract is a reference to time in Melbourne.

## **2. Variations to General Conditions**

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### **2.1 Amendments to General Conditions**

Without limiting the specific provisions of any other Special Condition in this Contract, the General Conditions are amended as follows:

- (a) General Conditions 2.2 to 2.7 (inclusive) are deleted.
- (b) General Condition 5 is deleted.
- (c) General Condition 10.1(b)(i) is amended to read:  
*"provide all title documents necessary to enable the purchaser to become the registered proprietor of the land; and"*
- (d) General Condition 11.1(b) is amended by deleting the words *"if there is no estate agent,"*.
- (e) General Condition 11.5 is amended to read:  
*"For the purposes of this general condition 'authorised deposit taking institution' means a Bank."*
- (f) General condition 12.4 is added:  
*"Where the purchaser is deemed by section 27(7) of the Sale of Land Act 1962 to have given the deposit release authorisation referred to in section 27(1), the purchaser is also deemed to have accepted title in the absence of any prior express objection to title."*
- (g) General Condition 15.2(b) is deleted.
- (h) General Condition 15.2(c) is deleted.
- (i) General Condition 20 is deleted.
- (j) The second sentence of General Condition 21 is amended to read:  
*"The purchaser may enter the property at reasonable times and following prior written notice to the vendor to comply with that responsibility where action is required before settlement. The purchaser must use its reasonable endeavours not to disrupt the use and occupation of the property by the vendor and indemnifies the vendor for any loss or damage suffered by the vendor as a consequence of the purchaser exercising its rights under this general condition."*
- (k) General Conditions 24.4 to 24.6 (inclusive) are deleted.
- (l) General Condition 25 is amended by adding the following new paragraph at the end of the Condition:

*"The purchaser acknowledges that the following items constitute 'a reasonably foreseeable loss':*

- (i) expenses payable by the vendor under any existing loan secured over the property or other property of the vendor;*
  - (ii) the vendor's legal costs and expenses as between solicitor and client incurred due to the breach, including the cost of issuing any default notice agreed at \$660 plus GST for each notice;*
  - (iii) any commission or other expenses claimed by the Vendor's Estate Agent or any other person relating to the sale of the property; and*
  - (iv) penalties and any other expenses payable by the vendor due to any delay in completion of the purchase of another property."*
- (m) General Condition 28 is amended by including a new paragraph 28.6 as follows:
- "Unless the price includes GST, the reference to "the price" in this General Condition 28 refers to the price plus any GST payable on the price."*
- (i) General Condition 28.4(a) is amended to read as follows:
- "an amount equal to 10% of the price is forfeited to the vendor as the vendor's absolute property".*

### **3. Acknowledgements**

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#### **3.1 Disclosure**

The Purchaser acknowledges that prior to the signing of this Contract or any other documents relating to this sale, the Purchaser received a Vendor's Statement.

#### **3.2 Estate Agents Act 1980 (Vic)**

- (a) The Purchaser acknowledges that it received a copy of this Contract at the time of execution of this Contract.
- (b) The Purchaser warrants that it has not received any promise from the Vendor's Estate Agent (or any person acting on behalf of the Vendor's Estate Agent) in relation to obtaining a loan for the purchase of the Property.

#### **3.3 Further acknowledgements**

The Purchaser acknowledges and agrees that:

- (a) having sufficient opportunity to carry out investigations and to make enquiries in relation to the Property before signing this Contract;
- (b) that no information, representation or warranty provided or made by or on behalf of the Vendor other than expressed in this Contract was provided or made with the intention or knowledge that it would be relied upon by the Purchaser;
- (c) that no information, representation or warranty referred to in Special Condition 3.3(b) has been relied upon by the Purchaser;
- (d) the Vendor gives no warranty and makes no representation as to the fitness of the Property for the construction thereon of any particular style, type or model of dwelling and the Purchaser must satisfy itself in this regard;
- (e) that the Purchaser relied only on the Purchaser's inspection of, and searches and enquiries in connection with, the Property when entering into this Contract; and



- (f) that to the maximum extent permissible by law and equity, the Vendor is not liable to the Purchaser in connection with any information, representation or warranty provided or made by or on behalf of the Vendor.

### 3.4 Grants or rebates

Without limiting Special Condition 3.3, the Purchaser acknowledges and agrees that:

- (a) neither the Vendor nor the Vendor's Estate Agent has made any promise, representation or warranty to the Purchaser regarding any grants, rebates or other financial assistance that the Purchaser may be entitled to receive or claim in respect of the purchase of the Property (**Financial Assistance**);
- (b) the Purchaser has relied on its own searches and enquiries regarding what (if any) Financial Assistance the Purchaser may claim or receive; and
- (c) the Purchaser may not Object if the Purchaser is not entitled to any Financial Assistance.

### 3.5 Disclosure of payments

The Purchaser must disclose to any financier, valuer, Authority or other party the existence of any payments, rebates, incentives or other inducements offered to the Purchaser in respect of this Contract by the Vendor or any other party.

### 3.6 Advice and negotiation

Despite anything else in this Contract, the Purchaser acknowledges and agrees that:

- (a) the Vendor gave the Purchaser the opportunity to seek advice on the terms and conditions, and effect of, this Contract prior to signing this Contract;
- (b) the Purchaser has had a genuine and effective opportunity to review and negotiate the terms of this Contract prior to signing this Contract; and
- (c) the Vendor's rights and the Purchaser's obligations in this Contract are reasonably necessary to protect the Vendor's genuine and legitimate commercial interest.

## 4. Laws and Planning

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### 4.1 Laws

The Purchaser acknowledges and agrees that it buys the Property subject to all restrictions on its use or development that are imposed or prescribed by the Laws that apply to it.

### 4.2 Planning

The Purchaser buys the Property subject to:

- (a) any restriction or condition affecting or imposed on the Property or its use or development (including any restriction imposed by any Authority and any restriction imposed under any planning permit, approval or agreement); and
- (b) the applicable planning scheme and any other relevant planning controls.

### 4.3 Planning Permit

- (a) The Purchaser agrees to comply with the provisions of the Permit and any other planning permit or permits as they affect the use and development of the Property.

- (b) The Purchaser acknowledges the Vendor may apply for amendments to the existing Permit or one or more new planning permits or amendments to the planning scheme in connection with any Development Works, at its absolute discretion, including but not limited to use of any part of the Development Land as shopping centres, activity centres, childcare centres, retirement villages, medium density sites and other purposes. The Purchaser must not:
- (i) object, assist in or encourage any objection, to any application by or on behalf of the Vendor for a planning permit or amendments to planning permits for the Development Works;
  - (ii) oppose, or assist or encourage the opposition of, any amendment to the planning scheme proposed by or on behalf of the Vendor to enable the Development Works;
  - (iii) object, or assist in or encourage any objections to any planning permit application or oppose, or assist or encourage the opposition of any amendment to the planning scheme which relates to any proposed Development Works; or
  - (iv) make any requisitions or objections, claim compensation or refuse or delay payment of the Price or rescind or terminate this Contract on account of any amendment or proposed amendment to the Permit or the grant of any new planning permit in relation to the Property.

#### **4.4 Measurements**

The Vendor does not represent, and gives no warranty, that the area, measurements, boundaries, occupation or location of the Property are identical with those of the land described in the Plan of Subdivision.

#### **4.5 No Claims**

The Purchaser may not Object in respect of any matters referred to in this Special Condition 4.

### **5. Services**

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The Purchaser acknowledges that the Property is sold subject to the Services. To the extent permitted by law, the Purchaser may not make any Claim, nor require the Vendor to take or refrain from taking any action, in relation to:

- (a) the nature, location, availability or non-availability of any Services;
- (b) any defects in any Services;
- (c) there being or not being an easement or other right in respect of any Services;
- (d) any Service being a joint service with any other land or building;
- (e) any Service for any other land or building passing through or over the Property;
- (f) any Service installed in, on or under the Property not having been approved by an Authority; or
- (g) any sewer, vent, manhole or water or sewerage main or connection passing through, in or over the Property.

### **6. Goods**

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#### **6.1 Ownership**

Ownership of the Goods will not pass to the Purchaser until the Vendor receives full payment of the Price.

## **6.2 No Warranty**

The Vendor makes no representation or warranty as to the state of repair or condition or suitability of the Goods nor any compliance or non-compliance of the Goods with any Law.

## **7. Deposit**

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### **7.1 Deposit Paid to Vendor's Legal Practitioner or Vendor's Estate Agent**

The Purchaser must pay the Deposit to the Vendor's Legal Practitioner or to the Vendor's Estate Agent within the time required by this Contract (time being of the essence) to be held by either of them as stakeholder.

### **7.2 Investment of Deposit**

- (a) The Vendor and the Purchaser authorise the Vendor's Legal Practitioner (but it is not obliged) to hold the Deposit in an interest bearing trust account with a bank nominated by the Vendor or the Vendor's Legal Practitioner.
- (b) Subject to Special Condition 7.2(c), any Deposit Interest will accrue for the benefit of the Vendor.
- (c) If the Purchaser lawfully rescinds this Contract the Purchaser is entitled to the Deposit Interest.
- (d) The Vendor and the Purchaser authorise and direct the Vendor's Legal Practitioner to pay the Deposit Interest to the party entitled to it at the Settlement Date or immediately following lawful rescission or termination of this Contract (whichever occurs first).
- (e) The Vendor and the Purchaser release the Vendor's Legal Practitioner from any claim concerning the investment of the Deposit.

### **7.3 Tax file number**

Within 7 days after the Day of Sale, the Purchaser must give the Purchaser's tax file number either to the Vendor's Legal Practitioner or to the Bank. If the Purchaser gives its tax file number to the Bank it must, as soon as it has done so, give the Vendor's Legal Practitioner verification of this from the Bank. The Purchaser must not make any claim on the Vendor's Legal Practitioner for any matter arising out this Special Condition 7.3.

### **7.4 Entitlement to interest**

The interest earned on the Deposit (if any) will belong to the Vendor unless the Purchaser becomes entitled to a refund of the Deposit. If this happens, then, subject to Special Condition 7.3, interest earned on the Deposit (if any) will belong to the Purchaser.

## **8. GST**

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### **8.1 Interpretation**

In this Special Condition 8:

- (a) words or expressions used in this Special Condition which have a particular meaning in the GST Law have the same meaning, unless the context otherwise requires;
- (b) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
- (c) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
- (d) if the GST Law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

### **8.2 Margin Scheme**

Provided that the Vendor is eligible, the parties agree that the GST payable on the taxable supply of the Property will be calculated by the Vendor using the Margin Scheme under Division 75 of the GST Law.

### **8.3 GST Exclusive**

Unless otherwise stated, any amount specified in this Contract as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.

### **8.4 Liability to pay GST**

If the Vendor makes a taxable supply under this Contract, then the Purchaser must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply as follows:

- (a) in relation to the supply of the Property, on the earlier of settlement and the date on which a taxable supply of the property occurs; and
- (b) in relation to any other supply, at the time the consideration for the supply is payable.

## 8.5 Reimbursement of Expenses

If a third party makes a taxable supply and this Contract requires a party to this Contract (**the payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

## 8.6 Non Merger

This clause does not merge on settlement and will continue to apply after expiration or termination of this Contract.

# 9. Duty

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## 9.1 No stamp duty warranty

The Purchaser acknowledges and agrees that:

- (a) no representation or warranty has been made to the Purchaser regarding the amount of stamp duty that will be payable; and
- (b) the Purchaser will not Object because of the amount of stamp duty payable on a transfer of the Land to the Purchaser or to any nominated or substituted purchaser.

## 9.2 Indemnity

The Purchaser is liable for and indemnifies the Vendor against any stamp duty that becomes payable in respect of a transfer of the Land to the Purchaser or to any nominated or substituted purchaser.

## 9.3 Stamp duty: Purchasers buying unequal interests

If the Purchaser comprises more than one person or entity:

- (a) it is each Purchaser's responsibility to ensure the Contract correctly records at the Day of Sale the proportions in which they are buying the Property;
- (b) if the proportions recorded in the transfer of land document differ from those recorded in the Contract, it is each Purchaser's responsibility to pay any additional duty or charge which may be assessed as a result of the variation; and
- (c) each Purchaser jointly and severally indemnifies the Vendor, the Vendor's Estate Agent and the Vendor's Legal Practitioner against any claims or demands which may be made against any or all of them in relation to any additional duty or charge payable as a result of the proportions in the transfer of land document differing from those in the Contract.

## 9.4 Non Merger

This Special Condition 9 will not merge on the transfer of the Land but will continue to have full force and effect.

# 10. Encumbrances

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## 10.1 Purchaser buys subject to Encumbrances

The Purchaser:

- (a) admits that the Property is sold subject to the provisions of the Subdivision Act;
- (b) buys the Property subject to:

- (i) the Encumbrances;
  - (ii) all restrictions on its use or development that are imposed or prescribed by the Laws that apply to it;
  - (iii) all easements and encumbrances affecting the Site including those created or implied by the *Subdivision Act*; and
  - (iv) the rights of the Vendor under Special Condition 10.2; and
- (c) agrees that the matters specified in Special Condition 10.1(b) do not constitute a defect in the Vendor's title to the Property.

The Purchaser must not Object in relation to any matter referred to in this Special Condition 10.1.

## 10.2 Further encumbrances

The Purchaser acknowledges that the Vendor:

- (a) may create or grant easements, covenants, restrictions and other rights and obligations affecting the whole or any part of the Site;
- (b) may enter into agreements under section 173 of the *Planning and Environment Act 1987* (Vic);
- (c) may grant leases or other occupation rights to third parties over the Site (excluding the Property) including, without limitation, statutory authorities and suppliers of utilities;
- (d) is entitled to require that:
  - (i) the instrument of transfer incorporate a covenant; or
  - (ii) the Purchaser create an easement or other restriction that will burden the Land,
 if any one or more of these are:
  - (iii) required by any Authority; or
  - (iv) in the opinion of the Vendor (acting reasonably), necessary or desirable for the development, use, occupation, proper management or adequate servicing of the Site or of any part of it.

## 10.3 Sale of Land Act

Section 10(1) of the Sale of Land Act does not apply to this Contract in respect of the final location of an easement shown on the certified Plan of Subdivision.

# 11. Surface Level Works

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## 11.1 Existing Fill

The Purchaser:

- (a) acknowledges that the Property may have been filled, raised, levelled, compacted or cut prior to or after the Vendor becoming registered proprietor of that part of the Site; and
- (b) may not Object in respect of anything referred to in Special Condition 11.1(a).

## 11.2 Subdivisional works

- (a) The Purchaser acknowledges that the Property has been, or is, or will be, in the course of subdivisional works and may be filled, raised, levelled, compacted or cut as disclosed in the Plan of Surface Level Works ("**subdivisional works**").
- (b) The Purchaser acknowledges and agrees that the plans disclosing the subdivisional works are design plans only and are not as built plans and that such plans and subdivisional works may be changed before settlement in accordance with Special Condition 11.3.

### 11.3 Works

At the Day of Sale:

- (a) if no works affecting the natural surface level of the Lot or any land abutting the Lot which is in the Plan of Subdivision are proposed to be carried out, then the Vendor has not given disclosure pursuant to section 9AB(1) of the Sale of Land Act;
- (b) if works affecting the natural surface level of the Lot or any land abutting the Lot which is in the Plan of Subdivision are proposed to be carried out, then the Vendor has given disclosure pursuant to section 9AB(1) of the Sale of Land Act; and
- (c) if such works are proposed after the Day of Sale or if any change occurs to any proposed works, the Vendor will provide disclosure in accordance with section 9AB(2) of the Sale of Land Act as soon as practicable after the details required for disclosure come to the knowledge of the Vendor.

### 11.4 No Objection

Subject to the Sale of Land Act, the Purchaser may not Object in respect of any works affecting the natural surface level of the Property or any land abutting it or any variations or alterations to those works.

### 11.5 Fill levels

The Purchaser acknowledges and agrees that:

- (a) the Vendor makes no representation or warranty regarding the amount of any:
  - (i) topsoil that has been, or may be, removed from the Property; or
  - (ii) filling and regrading that may be required;
- (b) the Purchaser has relied upon its own searches and enquiries regarding what works to the Land (including the natural surface level of the Land) may be required to permit or allow any construction that the Purchaser does, or proposes to, undertake on the Property; and
- (c) the Purchaser may not Object in respect of any works that the Purchaser may be required to undertake to or on the Land.

### 11.6 Indemnity

The Purchaser is liable for and indemnifies the Vendor against any Claim made by any person in respect of subdivisional works.

## 12. Development Works

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### 12.1 Undertaking of Development Works

The Purchaser acknowledges and agrees that to facilitate the progressive development of the Development, the Vendor may undertake further Development Works on other lots after settlement and, notwithstanding that the works in any part of the Development or on lots to be built subsequently may block out or impede access to light and air available to the Lot currently or at Settlement or any other time, the Vendor will be entitled to carry out those works.

## 12.2 Acknowledgement

The Purchaser acknowledges and agrees that:

- (a) at the Settlement Date, the construction of the Development Works may not be wholly completed;
- (b) the Vendor and any contractor contracted for works on any part of the Site may enter and carry out other Development Works on other lots on the Plan of Subdivision and for that purpose may bring upon the Site any machinery, tools, equipment, vehicles and workmen to facilitate the carrying out of the Development Works;
- (c) the Vendor may continue to cause or permit such works to be carried out after the Settlement Date;
- (d) any contractor working on the Site shall be entitled to full, free and uninterrupted access over and to any lot to carry out and undertake the Development Works and that the Purchaser shall not make any claim or objection to the Vendor in relation to such access; and
- (e) the Purchaser is not entitled to Object in respect of any Development Works which the Vendor is permitted by an Authority to complete after registration of the Plan of Subdivision.

## 12.3 No proceedings

As long as the Vendor takes all reasonable steps to minimise inconvenience to the Purchaser in completing the Development Works, the Purchaser will take no objection to the Development Works or to the dust and noise and other discomforts which might arise therefrom and will not institute or prosecute any action or proceedings for injunctions or damages arising out of or consequent upon the Development Works or to the dust and noise and other discomforts which might arise therefrom.

## 12.4 No responsibility

The Purchaser acknowledges and agrees that the Vendor is not responsible for any contractor carrying out works under contracts with the purchasers of any other lots forming part of the Site.

## 12.5 No Objection

Without limiting any other provision of this Contract, the Purchaser may not Object by reason of:

- (a) the operations associated with any construction, completion, improvement or extension of any facilities in the Development and the noise and other discomforts which might arise therefrom;
- (b) during construction of the Development, the use by the Vendor, its employees, agents, contractors, consultants and others of the other lots in the Site for the purpose of:
  - (i) gaining access or egress to any part of the Site or any adjoining land whether by foot or in vehicles and heavy machinery; or
  - (ii) for the storage of building materials, vehicles, equipment or fill associated with the construction of the Development,and will not institute or prosecute any action or proceedings for an injunction or damages arising out of or consequent upon such further Development Works;
- (c) any easements restrictions or other encumbrances created or implied by the Subdivision Act or created or executed by the Vendor;
- (d) construction of any services on or under the Site which may not be protected by easements;
- (e) any alteration to the area or dimensions of the Site;



- (f) non-completion of the facilities to be constructed on the Site;
- (g) the siting or location of service pits, service markers, man-holes, telephone or electricity poles, or electricity substations on the Site;
- (h) any boundary on the Site not being fenced or any boundary fence or wall not being on or within the boundary; and
- (i) the methods used by the Vendor in its efforts to sell lots in the Development, including but without limiting the generality of the foregoing use of signs and the maintenance of display units provided that in such sales efforts the Vendor shall display at all times reasonable consideration for the comfort and convenience of the Purchaser.

## **13. Planning and Building Controls**

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### **13.1 Disclosure**

The Purchaser acknowledges and agrees that:

- (a) the Planning and Building Controls as at the Day of Sale are contained in the Vendor's Statement;
- (b) the Purchaser read the Planning and Building Controls prior to signing this Contract; and
- (c) the Purchaser had an opportunity to receive advice regarding the Planning and Building Controls prior to signing this Contract.

### **13.2 Restrictions**

- (a) The Purchaser covenants and agrees with the Vendor to be bound by, and comply with, the Restrictions.
- (b) The Purchaser must not do anything or allow anything to be done which would not be allowed by the Restrictions.
- (c) If the Purchaser breaches its obligations under Special Condition 13.2(a), the Purchaser grants the Vendor an irrevocable licence to enter the Property and do whatever is required to rectify the Purchaser's breach, and indemnifies the Vendor against all costs and expenses incurred by the Vendor in respect of rectifying such breach.
- (d) The Purchaser acknowledges that where permitted by law to do so, the Vendor can, at its absolute discretion, consent to variation or waiver of the Restrictions for any particular lot on the Plan of Subdivision and that the Purchaser may not Object because of that consent.

### **13.3 Alternative Controls**

- (a) The Purchaser acknowledges and agrees that the Vendor can, at any time prior to Settlement, substitute or introduce alternative or additional forms of planning and building controls (including but not limited to design guidelines, memoranda of common provisions and restrictive covenants) to implement and enforce additional controls which are consistent with the Planning and Building Controls or required by the Planning Documents.
- (b) The Purchaser may not Object because of any such additional controls.

### **13.4 Variation and Waiver**

- (a) The Purchaser acknowledges that where permitted by law to do so, the Vendor can, at its absolute discretion, consent to variation of, or waive, any of the Planning and Building Controls for any particular lot on the Plan of Subdivision.
- (b) The Purchaser must not Object because of any such consent or waiver.

### 13.5 **Purchaser Covenants**

The Purchaser:

- (a) acknowledges that the Vendor, being responsible for the Development, has an interest in ensuring the overall quality of the subdivision and the Development;
- (b) covenants with the Vendor to fully observe and comply with the Planning and Building Controls and agrees that the Planning and Building Controls:
  - (i) will not merge on completion of this Contract; and
  - (ii) will bind the Purchaser, their successors-in-title, their heirs, executors, administrators and assigns;
- (c) must comply with, and do all reasonable things (at the expense of the Purchaser) to give effect to the Planning and Building Controls and without limitation, if the Purchaser sells or transfers the Property, the Purchaser must ensure that any contract for sale by the Purchaser as vendor includes a Special Condition in the form of this Special Condition 13; and
- (d) covenants with the Vendor to complete Construction within 12 months of commencement of Construction.

### 13.6 **Conflict in Planning and Building Controls**

In the event of any conflict between the Planning and Building Controls, then the same shall be ranked in priority as follows:

- (a) first, the Restrictions; and
- (b) second, these Special Conditions.

### 13.7 **MCP**

- (a) The Purchaser acknowledges that:
  - (i) the Purchaser will be bound by the terms and conditions of the MCP; and
  - (ii) the Purchaser must not Object or require the Vendor to take any action in respect of the MCP.

### 13.8 **Design Guidelines**

- (c) The Purchaser acknowledges and agrees that it has read and understood the Design Guidelines and it will comply with the Design Guidelines at all times.
- (d) The Purchaser must:
  - (i) obtain approval from the Vendor for the Purchaser's Construction Plans before lodging an application for Construction Permits with the local government or commencing Construction; and
  - (ii) comply with:
    - (A) the Design Guidelines; and
    - (B) any conditions of consent or approval given by the Vendor under the Design Guidelines.
- (e) The Purchaser further covenants with the Vendor that:

- (i) it is an essential term of the Contract that this Special Condition and the Design Guidelines are included in any contract of sale relating to the future sale or transfer of the Property by the Purchaser; and
  - (ii) it must procure a deed executed in a form satisfactory to the Vendor, with the Vendor as a party to the deed, from any purchaser and/or transferee (**New Purchaser**) containing agreement by the New Purchaser to observe and comply with the covenants in this Special Condition and the Design Guidelines.
- (f) If the Purchaser fails to comply with this Special Condition or the Design Guidelines, the Vendor is entitled in addition to any other rights:
- (i) to seek an injunction to prevent the Purchaser, its agents, successors or assigns from continuing with the Construction of the Residence;
  - (ii) to remove any non-complying structures or works at the Purchaser's cost; and
  - (iii) to seek damages for breach of this Special Condition or the Design Guidelines.
- (g) The Purchaser indemnifies the Vendor for any costs, expenses, damages or other liabilities incurred by the Vendor as a result or in connection with a breach by the Purchaser of this Special Condition or the Design Guidelines.
- (h) The Purchaser acknowledges that the Vendor may:
- (i) amend, modify or vary the Design Guidelines (or cause the Design Guidelines to be amended, modified or varied) in its absolute discretion. The Purchaser is not entitled to Object by any reason of any such amendment, modification or variation;
  - (ii) approve any application in relation to another lot that does not comply with the Design Guidelines (or cause such approval to occur). The Purchaser is not entitled to Object by reason of any such approval in relation to another lot.

### 13.9 **Rescode**

- (a) The Purchaser acknowledges that:
- (i) ResCode legislation sets standards for building heights, setbacks, access to daylight, overlooking and overshadowing; and
  - (ii) ResCode may apply to development on or in respect of the Property.
- (b) The Purchaser may not Object in respect of any Rescode requirements.

### 13.10 **Bushfire Attack Level**

Without limiting any other Special Condition in this Contract, the Purchaser acknowledges and agrees:

- (a) the Property may be, or is, in a bushfire prone area and that the Purchaser may be required to obtain a Bushfire Attack Level (**BAL**) rating assessment prior to undertaking any works, including but not limited to construction and renovation works, on the Property;
- (b) unless otherwise stated in the Vendor's Statement, the Vendor gives no warranty and makes no representation as to whether the Property is in a bushfire prone area or as to its BAL rating and the Purchaser must satisfy itself in this regard;
- (c) when undertaking works on the Property, the Purchaser may have to comply with building regulations and standards (including Australian Standard 3959-2009) that regulate construction and renovation works on land in a bushfire prone area;

- (d) that, unless otherwise stated in the Vendor's Statement, no information, representation or warranty was made by the Vendor, the Vendor's Estate Agent (if any) or any other party as to whether the Property is in a bushfire prone area or as to its BAL rating and that:
  - (i) the Purchaser has made or procured its own inspections, investigations, examinations and enquiries in respect of all aspects of whether the Property is in a bushfire prone area and its BAL rating; and
  - (ii) the Purchaser has purchased the Property as a result of the Purchaser's own inspection, investigation, examination or enquiries and in its present condition subject to any requirements if the Property is in a bushfire prone area and its BAL rating;
- (e) that it must not Object in respect of any matter relating to whether the Property is in a bushfire prone area or its BAL rating.

#### **13.11 Vendor Access**

The Vendor has the right to access the Property after Settlement on provision of prior written notice to ensure compliance with this Special Condition 13.

#### **13.12 Construction**

- (a) The Purchaser must not alter, or cause to be altered any retaining walls or lot drainage on the Property, unless:
  - (i) the Purchaser obtains:
    - (A) all necessary permits, consents or approvals required from any Authority; and
    - (B) approval in writing from a qualified engineer; and
  - (ii) the structural integrity of any retaining wall(s) on the Property is not affected; and
  - (iii) the alterations do not affect any part of the Site (including the lots adjoining the Property) and any structures (including, without limitation, retaining walls) constructed or being constructed on any part of the Site.
- (b) The Purchaser acknowledges that any retaining walls constructed on the Property, prior to Settlement, form part of the Property and must be maintained by the Purchaser.

#### **13.13 No Merger**

This Special Condition 13 does not merge on Settlement.

### **14. Environment**

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#### **14.1 Acknowledgment**

The Purchaser acknowledges that:

- (a) the Property may be contaminated; and
- (b) Contaminants may have emanated from the Property in the past.

#### **14.2 Release and indemnity**

From the date of actual settlement, the Purchaser:

- (a) will be responsible at its own expense for complying with all Laws, including without limitation, all directions and orders made and policies declared, under Laws, in relation to;

- (b) releases the Vendor and the Vendor's employees, agents and officers from all liability in relation to; and
- (c) indemnifies the Vendor and the Vendor's employees, agents and officers, and will keep them indemnified, against all liability, claims and proceedings in respect of any loss, damage or expense arising from or in any way connected with,

any Contaminant in, on, under or emanating from, or which may have emanated from, the Property, regardless of when the Contaminant may have come onto the Property or emanated from it.

The Vendor need not incur any expense or make any payment to enforce the indemnity in Special Condition 14.2(c).

#### **14.3 No objection**

The Purchaser may not Object or require the Vendor to take any action on account of any Contaminants in, on, under or emanating from the Property, any part of the Site or any adjoining land.

### **15. Fences**

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#### **15.1 Definitions**

In this Special Condition 15, the words "Fencing Works" means the fencing works to be carried out in accordance with Special Condition 13.7.

#### **15.2 Purchaser acknowledgement**

The Purchaser acknowledges and agrees that:

- (a) the Purchaser buys the Property subject to this Special Condition 15 and that the Purchaser will not make any requisition, objection or exercise the Purchaser's rights in respect of any matter referred to in this Special Condition 15;
- (b) the Vendor may undertake the Fencing Works on the Property prior to settlement;
- (c) if the Vendor undertakes the Fencing Works, the Purchaser must reimburse the Vendor for fifty per cent of the costs of the Fencing Works by way of an adjustment in the Vendor's favour at settlement;
- (d) if, before settlement, the Vendor receives one or more fencing notices from the owners of the land adjoining the Property then the Purchaser will be liable for the full cost set out in each of the fencing notices; and
- (e) while the Vendor is the owner of any land adjoining the Property, the Vendor is not required to contribute towards the cost of any dividing fence, as the Vendor's share of the cost of any such dividing fence is included in the Price.

#### **15.3 Purchaser's obligations**

If the Vendor does not complete the Fencing Works prior to settlement:

- (a) the Purchaser must undertake the Fencing Works on the Property;
- (b) the Purchaser indemnifies the Vendor from any Claims resulting from the Fencing Works; and
- (c) except as otherwise provided in this Contract, the Purchaser agrees with the Vendor that the Purchaser will not make any Claim against the Vendor for any contribution to the cost of undertaking the Fencing Works or any other types of fencing on any other part of the Property or the Development Land pursuant to the provisions of the *Fences Act 1968* (Vic),

including any sums for liabilities which the Vendor may (whether or not it was aware of any) have incurred with any adjoining owners.

#### **15.4 Fencing**

- (a) The Purchaser must not Object or require the Vendor to take any action if:
  - (i) one or more of the boundaries of the Property is not fenced; or
  - (ii) any boundary fence or wall is not on or within the boundaries of the Property.
- (b) The Purchaser acknowledges that Special Condition 13.7 applies in respect of any fence the Purchaser proposes to erect on the Property, and the Purchaser must obtain approval from the Vendor prior to erection of any fence, in accordance with Special Condition 13.7.

#### **15.5 Payment**

Any amounts payable by the Purchaser under this Special Condition may be payable to the Vendor under Special Condition 19 by way of an adjustment to the Balance.

### **16. Vendor's Rights**

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#### **16.1 Completion of the Development**

The Vendor may, for the purposes of completion of the Development, after settlement:

- (a) carry out works (including demolition, alterations and repairs) on the Site;
- (b) use, operate, install, repair, maintain, remove, replace and temporarily interrupt services; and
- (c) appoint agents or others to exercise any of the Vendor's rights,

but in doing so, the Vendor must take reasonable steps to minimise interference with the Purchaser's enjoyment and use of the Property.

#### **16.2 Vendor may conduct activities**

The Purchaser acknowledges that both before and after the date of actual settlement, the Vendor and the Vendor's employees and agents may:

- (a) conduct selling activities from the Site;
- (b) place and maintain on and outside the Site (excluding the Property) signs in connection with those selling activities; and
- (c) place and maintain on and about the Site an office, suite or facility or both for representatives of the Vendor and their representatives.

#### **16.3 No Objection**

The Purchaser may not Object because of anything contemplated by Special Conditions 16.1 or 16.2.

### **17. Dealings**

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#### **17.1 No resale**

- (a) The Purchaser must not prior to settlement sell, agree to sell or agree to transfer the Land without the prior written consent of the Vendor (which may be given or withheld at the Vendor's absolute discretion) until every lot on the Plan of Subdivision has been sold by the Vendor.
- (b) In addition to Special Condition 17.1(a), the Purchaser must not, prior to constructing any house or dwelling on the Land in accordance with the terms of this Contract, sell, agree to sell or agree to transfer the Land without the prior written consent of the Vendor (which may be given or withheld at the Vendor's absolute discretion).

#### **17.2 Authorised sale or transfer**

Where the Vendor consents to sale or transfer or where consent is not required in accordance with Special Condition 17.1, the Purchaser may and only with the prior written consent of the Vendor, sell or transfer the Land if:

- (a) the Purchaser has complied with all of the Purchaser's obligations under this Contract to the Vendor's satisfaction (acting reasonably); or
- (b) the Purchaser procures the transferee of the Land to sign a deed on terms acceptable to the Vendor pursuant to which the transferee agrees to comply with all of the obligations in this Contract which remain to be performed at the date of the proposed transfer of the Land.

#### **17.3 No release**

The Purchaser will not be released from its obligations under this Contract upon any sale or transfer of the Land.

#### **17.4 Dealings by the Vendor**

- (a) The Purchaser acknowledges and agrees that the Vendor may assign, transfer or otherwise dispose of its rights under this Contract to a third party.
- (b) The Vendor will notify the Purchaser if it deals with its rights under this Contract pursuant to Special Condition 17.4.
- (c) The Purchaser agrees not to Object if the Vendor deals with its rights under this Contract.
- (d) If the Vendor does any of the things contemplated by this Special Condition, the Purchaser agrees to enter into a deed or agreement as may be required by the Vendor to give effect to such actions and to acknowledge that the Purchaser will comply with its obligations under this Contract in favour of the party to whom this Contract has been assigned, transferred or novated.

#### **17.5 Mortgages and charges**

The Vendor may grant mortgages or charges over the Site or the Land at any time up until settlement.

#### **17.6 Essential term**

- (a) This Special Condition 17 is an essential term of this Contract and does not merge on settlement. The Purchaser must ensure that its related bodies corporate, employees, agents, representatives, nominees, assigns and successors in title comply with this Special Condition 17.
- (b) The Purchaser acknowledges that damages of themselves will not be sufficient remedy for breach by the Purchaser of this Special Condition 17 because the Vendor must be able to specifically enforce the Purchaser's obligations under this Special Condition 17.

### **18. Settlement**

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## 18.1 Settlement

Settlement must take place before 3pm on the Settlement Date. If Settlement takes place after 3pm on the Settlement Date, the Purchaser will be deemed to be in default of the Balance until the next Business Day and the Vendor will be entitled to interest on the Balance in accordance with this Contract.

## 18.2 Charges

- (a) General Condition 7 does not apply to this Contract.
- (b) The Vendor is not required to provide at any time any:
  - (i) release from any secured party releasing a security interest in respect of the Property; or
  - (ii) a statement in writing in accordance with section 275(1)(b) of the *Personal Property Securities Act 2009* (Cth) setting out that the amount or obligation that is secured is nil at the Settlement Date; or
  - (iii) a written approval or correction in accordance with section 275(1)(c) of the *Personal Property Securities Act 2009* (Cth) indicating that, on the Settlement Date, the personal property included in the Contract is not or will not be property in which the relevant security interest is granted.
- (c) The Purchaser may not Object, or require the Vendor to take any action, in respect of any charge or security interest registered under the *Personal Property Securities Act 2009* (Cth).

## 19. Adjustment of Outgoings

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### 19.1 No application

General Condition 15 does not apply to this Contract.

### 19.2 Apportionment

All Outgoings in respect of the Property shall be apportioned between the Vendor and Purchaser as from the Settlement Date.

### 19.3 Bulk assessment

The Property is part of land which is part of a subdivision for which outgoings are nominally assessed under a bulk assessment. If there is no separate assessment issued for Outgoings for the Property at the Settlement Date the Outgoings attributable to the Property for apportionment purposes shall be that proportion of the total assessment which the area of the Lot bears to the total area of all lots on the Plan of Subdivision (or of all lots subject to the assessment, as the case may be).

### 19.4 Separate assessments

If a separate assessment for the same period issues to the Purchaser or the Vendor after the Settlement Date any further adjustment necessary shall be based on the amount payable after deducting any discount for early payment and after allowance being made for any refund made or to be made by the relevant Authority. Any such readjustment must be made within 12 months after the Settlement date and be accompanied by a copy of the original notice.

### 19.5 Payment

The Vendor will pay the Outgoings when they are due to be paid and the Purchaser acknowledges and agrees that it cannot require them to be paid at or before Settlement under any circumstances.

### 19.6 Apportionment as if paid by the Vendor



Despite Special Condition 19.5, the Outgoings must be apportioned as if they had been paid by the Vendor.

#### 19.7 Land tax

- (a) Despite any other provision in this Contract, the parties agree that:
  - (i) for the adjustment of land tax the relevant assessment for land tax is that effected on 31 December of the year preceding the Settlement Date which includes all the titles that comprise the Development Land (**Land Tax Assessment**); and
  - (ii) land tax will be adjusted:
    - (A) based on the proportional land tax stated in the Land Tax Assessment;
    - (B) between the Vendor and the Purchaser on the basis that the amount to be apportioned between them is the proportion of the proportional land tax equal to the proportion which the lot liability of the Property bears to the total liability of all of the lots on the Plan of Subdivision; and
    - (C) from the Settlement Date.
- (b) Despite Special Condition 19.7(a), payment of the Price will not be delayed and no money will be withheld by the Purchaser from the Vendor out of the Price on account of any land tax which may be or may subsequently become charged on the Land.
- (c) The Vendor acknowledges that:
  - (i) it is liable and responsible for payment of land tax chargeable on the Land until the date upon which the Purchaser becomes entitled to possession; and
  - (ii) subject to Special Condition 19.7(a), it must pay any such land tax for which it receives an assessment notice within the time limit specified in the assessment notice.

### 20. Nomination

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#### 20.1 Application

Any common law right to effect a nomination is expressly excluded from this Contract.

#### 20.2 Interpretation

In this Special Condition 20:

- (a) **Associated Person** has the same meaning as in Section 3 of the *Duties Act 2000*; and
- (b) **Nominee** means the substitute or additional purchaser, together with the Purchaser in the case of nomination of an additional purchaser.

#### 20.3 Right of Nomination

- (a) Subject to Special Condition 20.3(b), the Purchaser may, with the prior written consent of the Vendor, nominate one Nominee for the Property by giving to the Vendor, not less than 14 Business Days and not more than 30 Business Days before the Due Date:
  - (i) a signed notice nominating the Nominee;

- (ii) if the Nominee is or includes a company (other than a company listed on an Australian Stock Exchange) the company shall, simultaneously upon execution of the nomination notice, procure the execution by all of its directors of the Guarantee and Indemnity and provide the fully executed Guarantee and Indemnity to the Vendor; and
  - (iii) payment to the Vendor's solicitors by the Nominee of \$350.00 plus GST, being the Vendor's legal costs of dealing with the Nominee.
- (b) The Purchaser is not entitled to nominate a Nominee under this Special Condition 20 if:
  - (i) at the time it purports to nominate a Nominee, the Purchaser is in default under the Contract; or
  - (ii) the Nominee is not an Associated Person of the Purchaser.

#### 20.4 Purchaser liability

- (a) The Purchaser remains personally liable for the due performance of all of the Purchaser's obligations and liabilities under or arising out of the Contract notwithstanding a nomination under this Special Condition 20.
- (b) Wherever this Contract prohibits the Purchaser from doing or obliges the Purchaser to do any matter or thing, the Purchaser will be deemed to have done or failed to have done that matter or thing if it is done or not done by the Nominee.
- (c) Except as expressly permitted by this Special Condition 20 the Purchaser must not, without the prior written consent of the Vendor, assign, transfer or otherwise deal with its interest in, or any rights or obligations under or arising out of, the Contract.

#### 20.5 Indemnity

The Purchaser:

- (a) must fully and truthfully disclose (and must procure that the Nominee fully and truthfully discloses) a nomination under this Special Condition 20 to the State Revenue Office of Victoria; and
- (b) indemnifies the Vendor from and against any Claim or loss, damage or expense arising out of or in connection with a nomination under this Special Condition 20.

#### 20.6 Foreign Purchaser

If the Nominee is or includes a person required to give notice of its intention to purchase the Property under the *Foreign Acquisitions and Takeovers Act 1975* (Cth), the Purchaser warrants that the Nominee has obtained any necessary consent or approval from the FIRB and any other relevant Authority to the purchase of the Property by the Nominee on the terms and conditions set out in this Contract.

### 21. Substitute Vendor

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#### 21.1 The Purchaser acknowledges that:

- (a) the Vendor may enter into a contract with a substitute vendor (**Substitute Vendor**) whereby the Vendor agrees to sell, transfer or dispose of its interest in the Development Land to the Substitute Vendor;
- (b) the Vendor has the right to assign its interest in this Contract to the Substitute Vendor and the Substitute Vendor is entitled to enforce all of the Vendor's rights under this Contract provided that the Substitute Vendor and the Vendor give a written notice to the Purchaser to that effect; and

- (c) the Purchaser must, if required by the Vendor or the Substitute Vendor, enter into a deed releasing the Vendor from its obligations and/or confirming its obligations to the Substitute Vendor under this Contract.

## **22. Guarantee and Indemnity**

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If the Purchaser is or includes a corporation (other than a corporation whose shares are listed on the Australian Securities Exchange), the Purchaser must deliver to the Vendor a Guarantee and Indemnity on the Day of Sale:

- (a) duly completed and executed by every director of the Purchaser; or
- (b) if the Purchaser is a wholly owned subsidiary of a corporation whose shares are listed on the Australian Securities Exchange, duly completed and executed by that listed corporation.

## **23. FIRB**

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### **23.1 Warranty**

The Purchaser warrants that one of the following apply:

- (a) the Purchaser:
  - (i) is not required to provide notice of the entering into of this Contract or the purchase of the Property to the FIRB or any other relevant Authority; and
  - (ii) does not require any consent or approval under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) or in compliance with the foreign investment policy of the Commonwealth of Australia to enter into this Contract; or
- (b) the Purchaser has obtained any necessary consent or approval from the FIRB and any other relevant Authority to the purchase of the Property by the Purchaser on the terms and conditions set out in this Contract.

### **23.2 Indemnity**

If the warranty in Special Condition 23.1 is untrue in any respect the Purchaser must indemnify the Vendor against any claim, liability, loss, damage, cost or expense arising (directly or indirectly) from or incurred by the Vendor in having relied on this warranty when entering into this Contract.

### **23.3 Non merger**

This Special Condition 23 will not merge on the transfer of the Land but will continue to have full force and effect.

## **24. Default**

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### **24.1 Specific breaches**

If:

- (a) the Purchaser breaches:
  - (i) Special Condition 7.1; or
  - (ii) Special Condition 22; or
- (b) an Insolvency Event occurs,

General Condition 27 will not apply and the Vendor may terminate this Contract by notice in writing to the Purchaser at any time after the breach or the Insolvency Event occurs.

#### 24.2 **If Vendor terminates**

If the Vendor terminates this Contract under Special Condition 24.1, General Condition 28.4(a) will apply as if this Contract had been terminated by notice under General Condition 28.2.

#### 24.3 **Time remains of the essence**

The Purchaser's obligation to pay interest under Special Condition 25.1 does not mean that time is not of the essence for the performance of the Purchaser's obligations under this Contract.

#### 24.4 **Other rights unaffected**

Nothing in this Special Condition 24 limits the rights of the Vendor if the Purchaser defaults under this Contract.

#### 24.5 **Land tax**

If, as a result of a breach of this Contract by the Purchaser, the Property is registered in the name of the Vendor at midnight on 31 December following the Due Date, land tax will be adjusted on the basis that the Purchaser pays all of the land tax assessed, charged and levied on the Vendor in respect of the Property after the Due Date.

### 25. **Costs of Default**

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#### 25.1 **Interest on Default**

- (a) If the Purchaser does not complete this Contract by the Due Date or the Purchaser defaults in payment of any amount due under this Contract then (without prejudice to any other rights, powers or remedies of the Vendor) the Purchaser must pay interest to the Vendor on the Due Date or earlier on demand:
  - (i) calculated daily at a rate of 2% higher than the rate for the time being fixed under the *Penalty Interest Rates Act 1983* (Vic); and
  - (ii) on the amount overdue for the period of the default.
- (b) The Purchaser may not require the Vendor to settle this Contract unless interest payable under this Contract is paid to the Vendor.
- (c) This Special Condition 25 is an essential term of this Contract.

#### 25.2 **Payments on Default**

If the Vendor gives to the Purchaser a notice of default under this Contract, the default will not be remedied until the last to occur of the following:

- (a) remedy by the Purchaser of the default, or if the default is incapable of remedy, compensation paid to the Vendor to the Vendor's satisfaction; and
- (b) payment by the Purchaser to the Vendor of all expenses incurred by the Vendor as a result of the default including:
  - (i) legal costs and disbursements (calculated on a full indemnity basis) incurred in drawing and giving the notice and any advice;
  - (ii) all additional costs incurred by the Vendor including bridging finance, relocation costs, interest, discount on bills and borrowing expenses; and
  - (iii) the payment of interest in accordance with this Contract.

#### 25.3 **Failure to Settle**

- (a) The Purchaser acknowledges and agrees that if the Purchaser fails to settle on the date and at the time and place settlement is due in accordance with this Contract, time being of the essence (**Settlement Default**):
  - (i) the Purchaser will be in default of this Contract;
  - (ii) the Purchaser must pay to the Vendor's Legal Practitioner an amount of \$250 (plus GST) for each and every Settlement Default; and
  - (iii) the Purchaser must pay any costs of the Vendor's mortgagee for each and every Settlement Default.

For the avoidance of doubt, the Purchaser must pay the Vendor's Legal Practitioner both of the amounts contained in Special Condition 31.3(a)(ii) and 31.3(a)(iii) for each and every Settlement Default.

## **26. Purchaser's indemnity**

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- 26.1 The Purchaser indemnifies the Vendor against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against the Vendor or which the Vendor may pay, sustain or incur as a direct or indirect result of any one or more of the following:
- (a) breach or non-performance of this Contract by the Purchaser; or
  - (b) breach of warranty under this Contract by the Purchaser.

## **27. Confidentiality**

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### **27.1 Confidentiality**

The parties acknowledge that the terms of this Contract and all information exchanged between the parties under this Contract or under negotiations preceding this Contract are confidential. A party must not (without the prior written approval of the other party) disclose such information to any person unless the disclosure is to:

- (a) the extent required by law (which includes the rules of the Australian Securities Exchange); or
- (b) a party's officers, employees, consultants, advisers or financiers as is necessary to enable the parties to perform their obligations under this Contract or to seek professional advice.

### **27.2 Public Announcements**

A party must not make any public announcement, press statement or press release concerning this Contract (other than disclosure to the extent required by law or to be made to the Australian Securities Exchange) without the prior written consent of the other party (which consent must not be unreasonably withheld or delayed).

## **28. Purchaser as trustee**

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If the Purchaser enters into this Contract in its capacity as a trustee of any trust ("**Purchaser Trust**") then the Purchaser covenants and warrants to the Vendor that:

- (a) the Purchaser is the only trustee of the Purchaser Trust and no action has been taken or to the best of its knowledge, is proposed to remove it as trustee of the Purchaser Trust;
- (b) the Purchaser will provide a true, correct, up to date and complete copy of the trust deed which discloses all of the terms of the Purchaser Trust to the Vendor not less than 10 Business Days before the Settlement Date;

- (c) the Purchaser is complying in all material respects with the terms of the Purchaser Trust;
- (d) the Purchaser has the power and authority under the terms of the trust deed creating the Purchaser Trust to enter into and perform this Contract;
- (e) the entry into and performance of this Contract is for the benefit of the beneficiaries of the Purchaser Trust;
- (f) it has a right to be fully indemnified out of the trust assets of the Purchaser Trust in respect of all of its obligations and liabilities incurred by it under this Contract;
- (g) pending Settlement, the Purchaser will not:
  - (i) resign as trustee of the Purchaser Trust or willingly permit any substitute or additional trustee to be appointed;
  - (ii) do anything which effects or facilitates the termination of the Purchaser Trust;
  - (iii) willingly do anything which effects or facilitates the variation of the terms of the Purchaser Trust;
  - (iv) vest or distribute or advance any property of the Purchaser Trust to any beneficiary or sell any of the property of the Purchaser Trust except in the ordinary course; or
  - (v) willingly do anything which effects or facilitates the resettlement of the Purchaser Trust funds.

## 29. Capacity

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The Purchaser warrants to the Vendor that:

- (a) the Purchaser has full legal capacity and power to enter into, exercise its rights and observe its obligations under this Contract;
- (b) the Purchaser has in full force and effect the authorisations necessary to enter into this Contract, exercise its rights and observe its obligations under this Contract and to allow this Contract to be enforced;
- (c) the Purchaser's obligations under this Contract are valid and binding and are enforceable against it in accordance with their terms; and
- (d) this Contract does not contravene the Purchaser's constituent documents (where the Purchaser is incorporated) or any of its obligations or undertakings by which it or any of its assets are bound.

## 30. Vendor as trustee

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- (a) In this Special Condition 30, the word "**Trust**" means the Hobbs Road Wyndham Trust.
- (b) The Purchaser acknowledges and agrees that the Vendor enters into this Contract solely in its capacity as the trustee of the Trust and in no other capacity.
- (c) A liability arising under or in connection with this Contract can be enforced against the Vendor only to the extent to which it can be satisfied out of the Property of the Trust out of which the Vendor is actually indemnified for the liability.
- (d) The limitation of the Vendor's liability contained in this Special Condition 30 applies notwithstanding any other provisions of this Contract and extends to all liabilities and obligations of the Vendor in connection with this Contract.
- (e) The Purchaser may not sue the Vendor in any capacity other than as trustee of the Trust,

including seeking the appointment to the Vendor of a receiver (except in relation to the property of the Trust), a liquidator, administrator or any other similar person.

- (f) The provisions of this Special Condition 30 will not apply to any liability or obligation of the Vendor to the extent there is a reduction in the extent of its indemnification out of the assets of the Trust as a result of the operation of the Law or the application of any provision of the Trust's constitution or to the extent the liability arises out of the Vendor's own fraud, gross negligence or breach of trust or breach of duty.

## **31. Access for Construction and Post Settlement Matters**

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- (a) The Purchaser acknowledges and agrees that:
  - (i) the Vendor may conduct marketing activities in or about the Development generally in respect to the marketing of any unsold Lots within the Development and the Purchaser grants the Vendor an irrevocable right to access the Development after the Settlement Date for those purposes;
  - (ii) the Purchaser must not make and furthermore will use its best endeavours to procure that the Owners Corporation (if any) of which the Purchaser is a member does not make, any objection or requisition or bring any claim or action, or issue, injunctive proceedings or any proceedings of any description against either the Vendor or any builder or other contractor appointed by the Vendor (**Contractor**) or any other person as a consequence of anything connected with:
    - (A) any application for a permit or approval in connection with the Development;
    - (B) any continuing surveying, engineering and construction works or rectification and repair works being carried out from time to time after the Settlement Date or in the Development, the Common Property or on any Lot on the Plan and in respect to any access or use rights exercised by the Vendor or its Contractors or other person in respect of them and in respect to any inconvenience, nuisance, noise, dust, vibration, loss of amenity or discomfort that may result from those works and/or the Vendor's or its Contractor's exercise of their rights under this Special Condition; or
    - (C) the Vendor's marketing activities conducted from any lot on the Plan or any part of the Development after the Settlement Date involving, among other things, the placement and maintenance in any lot or lots on the Plan (except the Property) or upon the Common Property or other part of the Development, of sale signs, insignia and other fixtures and fittings for marketing purposes which the Vendor in its absolute discretion thinks fit and in respect to any access rights exercised by the Vendor in respect of those activities and any inconvenience that may result from those activities;
  - (iii) the Vendor intends using or may in the future decide to use a lot for the marketing and selling of any unsold lots on the Plan and the Purchaser hereby consents thereto;
  - (iv) the Vendor or its Contractors may need access to the Property or to the Development after the Settlement Date to carry out rectification and repair works to the Development or to the Property or to another lot on the Plan or to carry out rectification or repair works, or for surveying, engineering and construction works and the Purchaser hereby grants to the Vendor, its servants or agents and its Contractors an irrevocable right of access to the Property and the Development after the Settlement Date for those purposes.

## **32. Subject to finance**

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### **32.1 Application**

This Special Condition 32 only applies if the "Loan" section has been completed in the Particulars of Sale.

### 32.2 Definition

In this Special Condition 32:

- (a) **"Approval Date"** means the approval date specified in the "Loan" of the Particulars of Sale;
- (b) **"Loan"** means a loan for not less than the Loan Amount for the purchase of the Property from a bank licensed to conduct banking business in Australia; and
- (c) **"Loan Amount"** means the loan amount specified in the "Loan" of the Particulars of Sale.

### 32.3 Purchaser's' Obligations

The Purchaser must:

- (a) apply for the Loan before, or within 2 Business Days after, the Day of Sale (time being of the essence);
- (b) do everything reasonably required to obtain approval of the Loan prior to the Approval Date;
- (c) keep the Vendor and the Vendor's Legal Practitioner informed of the progress of the Loan application; and
- (d) if the Loan application is refused or has not been approved on or before the Approval Date, promptly obtain and deliver to the Vendor and the Vendor's Legal Practitioner a copy of the letter signed by its lender stating why the Loan application was refused.

### 32.4 Non-satisfaction of condition

- (a) If the Loan is not approved on or before the Approval Date (time being of the essence) and the Purchaser is not and has not been in default under this Contract, the Purchaser may end this Contract by giving written notice and a copy of the letter required by Special Condition 32.3(d) to the Vendor by 5.00pm on the day after the Approval Date (time being of the essence).
- (b) If the Purchaser validly terminates this Contract under Special Condition 32.4(a):
  - (i) the Vendor will refund the Deposit paid by the Purchaser to the Purchaser; and
  - (ii) neither party shall have any claim against the other except for any antecedent breach of this Contract.

### 32.5 Waiver

If the Purchaser does not end this Contract within the time specified in Special Condition 32.4(a) (time being of the essence), the Purchaser is taken to have waived this condition.

## 33. Entire Contract

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### 33.1 Acknowledgment

The Purchaser warrants that except as is provided in this Contract or the Vendor's Statement:

- (a) the Purchaser has not relied on any information, representation or warranty (express or implied) provided or made by or on behalf of the Vendor, the Vendor's Estate Agent or the Vendor's Legal Practitioner, including in relation to:



- (i) any present use of the Property or any use to which the Property may be put or the fitness of the Property for any lawful purpose;
  - (ii) compliance with any Laws affecting the Property;
  - (iii) any development or subdivision which may be undertaken on or in relation the Property;
  - (iv) the existence or non-existence of any Contamination of the Property;
  - (v) the amenity or neighbourhood in which the Property is located; or
  - (vi) any financial return or income that may be derived from the Property;
- (b) no information, representation or warranty (express or implied) provided or made by the Vendor, the Vendor's Estate Agent or the Vendor's Legal Practitioner was provided or made with the intention or knowledge that it would be relied upon by the Purchaser and no information, representation or warranty has in fact been relied upon;
- (c) the Purchaser relies entirely upon the Purchaser's own inspection of and searches and enquiries in connection with the Property, including in relation to those matters referred in Special Condition 33.1(a);
- (d) to the extent permitted by law, the Vendor is not liable to the Purchaser as a result of or in connection with any information, representation or warranty having been provided or made by or on behalf of the Vendor, the Vendor's Estate Agent or the Vendor's Legal Practitioner; and
- (e) the Purchaser may not make any Claim by reason of any matter, thing or liability arising from:
- (i) any actual or alleged representation or warranty by any person;
  - (ii) any actual or alleged agreement or understanding not embodied in this Contract; and
  - (iii) any actual or alleged agreement with an owner of an adjoining property,
- in relation to anything concerning the Property.

### **33.2 Entire Agreement**

This Contract contains the entire agreement between the parties and supersedes any other communications, negotiations, arrangements and agreements between the parties, whether oral or in writing, in connection with the subject matter of this Contract.

## **34. General**

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### **34.1 Applicable Law**

This Contract is governed by and construed in accordance with the laws of the State of Victoria and the Commonwealth of Australia.

### **34.2 Waiver**

A right may only be waived in writing, signed by the party giving the waiver. A waiver by a party of any breach or a failure to enforce or to insist upon the observance of a provision of this Contract will not be a waiver of any other or of any subsequent breach.

### **34.3 Severance**

If any part of this Contract is invalid, unenforceable, illegal, void or voidable for any reason, this Contract will be construed and be binding on the parties as if the invalid, unenforceable, illegal, void or voidable part had been deleted from this Contract, or read down to the extent necessary to overcome the difficulty.

#### **34.4 Co-operation**

Each party must do anything (including execute any document) to give effect to this Contract and to the transactions contemplated by it, and must ensure that its employees and agents do anything (including execute any document) that the other party may reasonably require to give full effect to this Contract.

#### **34.5 Continuing Obligations**

The provisions of this Contract capable of having effect after the Settlement Date do not merge on transfer of the Land and continue to have full force and effect irrespective of whether this Contract expressly provides that this is the case.

#### **34.6 Indemnities**

If a party is required to indemnify another party under this Contract, that party must pay on demand the amount the other party is liable to pay by the time the other party is required to make payment.

#### **34.7 Amendment**

This Contract can only be amended, supplemented or replaced by another document signed by the parties.

#### **34.8 Notices**

- (a) A notice may be served by being sent by fax to the fax number of a party or that party's solicitors specified in this Contract or last notified to the sender.
- (b) A notice may be signed by a party or a party's officer, legal representative or attorney.
- (c) A demand, notice or document will be considered received from a party:
  - (i) if delivered, on delivery;
  - (ii) if sent by pre-paid post, 2 Business Days after posting (if posted within Australia to an address in Australia) or 7 Business Days after posting (if posted to or from a place outside Australia); and
  - (iii) sent by fax, when the transmitting machine produces a written report that the notice has been sent in full.
- (d) If a notice is delivered or received by fax on a day that is not a Business Day or after 5pm on a Business Day, the notice will be considered delivered or received on the next Business Day.

#### **34.9 Attorneys and Authorised Representatives**

- (a) Each person who executes this Contract on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.
- (b) Each person who executes this Contract on behalf of a party as that party's authorised representative or agent declares that he or she has authority to do so.

#### **34.10 Counterparts**

This Contract may be signed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same document.

#### 34.11 **Electronic delivery**

If a party delivers an executed counterpart of this Contract or any other document executed in connection with it (**Relevant Document**) by facsimile or other electronic means:

- (a) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and
- (b) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not effect the validity or effectiveness of the Relevant Document.

#### 34.12 **Rule of Construction**

The parties acknowledge and agree that no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Contract or part of it.

### 35. **Digital Duties Form and SRO Settlement Statement**

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#### 35.1 **Definitions**

In this Special Condition 35:

**DDF** means the online form called "Digital Duties Form" generated from the SRO website.

**Due Date** means the date settlement is due in the Particulars of Sale or such other date agreed by the parties in writing.

**SRO** means the State Revenue Office of Victoria.

**SRO Settlement Statement** means the statement called "Settlement Statement" generated from the SRO website after completion of a DDF.

#### 35.2 **Vendor's obligations**

The Vendor must:

- (a) complete, or procure the Vendor's Legal Practitioner to complete, those parts of the DDF which are to be completed by the Vendor in respect of the sale of the Property under this Contract (**Vendor DDF**);
- (b) send, or procure the Vendor's Legal Practitioner to send, to the Purchaser's Legal Practitioner (or if none then the Purchaser), the completed Vendor DDF at least 3 Business Days prior to the Due Date; and
- (c) if the Purchaser has complied with Special Condition 35.3 sign or approve the DDF prior to Settlement, unless there is manifest error in which case the Vendor must notify the Purchaser of the error and request the Purchaser to amend it.

#### 35.3 **Purchaser's obligations**

The Purchaser must:

- (a) complete, or procure the Purchaser's Legal Practitioner to complete, those parts of the DDF which are to be completed by the Purchaser (**Purchaser DDF**) at least 2 Business Days prior to the Due Date;

- (b) sign or approve the DDF at least 2 Business Days prior to the Due Date, unless there is manifest error in which case the Purchaser must promptly notify the Vendor of the error and request the Vendor to amend it;
- (c) make any changes to the DDF requested by the Vendor or the Vendor's Legal Practitioner and sign or approve (or re-sign or re-approve) the amended DDF within 1 Business Day of being requested to do so;
- (a) prior to Settlement:
  - (i) generate a SRO Settlement Statement in respect of the sale of the Property under this Contract; and
  - (ii) deliver to the Vendor or the Vendor's Legal Practitioner, the SRO Settlement Statement in respect of the sale of the Property under this Contract; and
- (e) not make or require any changes to the DDF except as requested by the Vendor or the Vendor's Legal Practitioner less than 2 business days prior to the due date.

#### **35.4 No Objection**

The Purchaser may not Object if the Vendor or the Vendor's Legal Practitioner request amendments to the DDF at any time prior to Settlement.

#### **35.5 Settlement if not an electronic conveyance**

- (a) This Special Condition 35.5 only applies if settlement is not conducted electronically in accordance with the Electronic Conveyancing National Law.
- (b) Subject to the Vendor complying with Special Condition 35.2:
  - (i) Settlement is not conditional upon:
    - (A) the Purchaser signing or approving a DDF; or
    - (B) production of an SRO Settlement Statement; and
  - (ii) the Purchaser may not Object if:
    - (A) the DDF is not completed prior to Settlement or at all; or
    - (B) an SRO Settlement Statement is not generated (or able to be generated) prior to Settlement.

#### **35.6 Settlement if an electronic conveyance**

- (a) This Special Condition 35.6 only applies if Special Condition 35.5 does not apply.
- (b) Special Condition 35.3 is a fundamental term of this Contract.
- (c) The Purchaser acknowledges and agrees that unless and until the Purchaser complies with Special Condition 35.3, Settlement will not be able to proceed and the Purchaser will be in breach of this Contract.

#### **35.7 Breach of Purchaser's obligations**

Without prejudice to the Vendor's other rights in this Contract, if the Purchaser breaches any of its obligations in Special Condition 35.3, the Purchaser must pay the Vendor's reasonable legal costs incurred as a result of the breach, which the parties agree is \$150.00 plus GST for each and every breach and which may be charged on multiple occasions by the Vendor's Legal Practitioner in the event of multiple breaches by the Purchaser.

### 35.8 **General Condition 10.1**

The Purchaser acknowledges and agrees that the DDF (other than the Vendor DDF) and the SRO Settlement Statement in respect of the sale of the Property under this Contract are not title documents for the purposes of General Condition 10.1(b)(i) (as that General Condition is amended by Special Condition 2.1(c)).

## 36. **GST Withholding**

---

### 36.1 **Definitions**

In this Special Condition 36:

**Commissioner** means the Commissioner of Taxation.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST Withholding Amount** means the amount payable to the Commissioner and determined under section 14-250 of the Withholding Law.

**Withholding Law** means Schedule 1 to the *Taxation Administration Act 1953* (Cth).

### 36.2 **Interpretation**

In this Special Condition 36, words or expressions that are defined or used in the Withholding Law have the same meaning given to them in the Withholding Law, unless the context suggests otherwise.

### 36.3 **Vendor's Notice**

If the Property qualifies as residential premises or potential residential land (and the exceptions in section 14-255(2) of the Withholding Law do not apply), the Vendor will, before the date of Settlement, provide a written notice to the Purchaser stating:

- (a) whether the Purchaser will be required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property; and
- (b) if the Purchaser is required to make a payment referred to in Special Condition 36.3(a):
  - (i) the name and ABN of the Vendor;
  - (ii) the GST Withholding Amount;
  - (iii) when the GST Withholding Amount is required to be paid;
  - (iv) where some or all of the consideration for the supply of the Property is not expressed as an amount of money - the GST inclusive market value of the non-monetary consideration; and
  - (v) any other information required by law.

### 36.4 **Withholding**

- (c) This Special Condition 36.4 applies if the Purchaser is required to pay a GST Withholding Amount on the taxable supply of the Property under this Contract.

- (d) For the purposes of General Condition 11, the Vendor irrevocably directs the Purchaser to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner (**GST Cheque**) and:
  - (i) the Purchaser must provide the GST Cheque to the Vendor on or before the date of Settlement; and
  - (ii) on the date of Settlement, or within such further period as may be allowed by the Commissioner, the Vendor must give the GST Cheque to the Commissioner.
- (e) If Settlement is to be conducted through the system operated by Property Exchange Australia Ltd for settlement of conveyancing transactions, the Vendor and the Purchaser will be taken to have complied with Special Condition 36.4(d) if the electronic settlement schedule within the electronic workspace used for Settlement specifies payment of the GST Withholding Amount to the bank account nominated by the Commissioner.

#### 36.5 No Effect on Other Terms

Except as expressly set out in this Special Condition 36, the rights and obligations of the parties under this Contract are unaffected, including (without limitation) any agreement to apply the margin scheme to the supply of the Property.

#### 36.6 Other Information

If the Property qualifies as potential residential land and:

- (a) the Purchaser is registered (within the meaning of the GST Act); and
- (b) the Purchaser acquires the Property for a creditable purpose,

then the Purchaser must give written evidence to the Vendor of these matters, no later than 10 Business Days before the date of Settlement.

### 37. Introduction Fee

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- (a) The Purchaser acknowledges and agree that the Vendor may:
  - (i) enter into service or referral agreements or arrangements with third parties (including without limitation with any building practitioners) that relate to the Property; and/or
  - (ii) pay a fee or incentive to, or receive a fee or incentive from, third parties (including building practitioners), under any such service or referral agreements or any other arrangements.
- (b) The Purchaser must not make any Claim with respect to any matter referred to in this Special Condition 37.

### 38. Exclusion from promotions

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- (a) For the purposes of this Special Condition 38, the words "**Promotional Offer**" means any package, voucher or other offer made available to purchasers who proceed with a purchase of a property within the Development.
- (b) The Purchaser acknowledges and agrees that at no time was a Promotional Offer made available to the Purchaser as a result of the Purchaser's purchase or acquisition of the Property or entry into this Contract.
- (c) The Purchaser acknowledges and agrees that notwithstanding any Promotional Offer advertised or made available at any time, the Purchaser is not entitled to claim or redeem any Promotional Offer.

## 39. Community Infrastructure Levy

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### 39.1 The Purchaser acknowledges and agrees that it:

- (a) will required to make a payment to Council as a community infrastructure payment prior to obtaining any building approval in respect of the Property which as at 30 September 2020, is \$1,210.00 and is subject to change by Council as published on the below website:

<https://www.wyndham.vic.gov.au/payments/community-infrastructure-levy-payments>

- (b) must not make any Claim or Object or make any requisition or be entitled to any compensation from the Vendor in respect of any such payment or increase by Council in the amount of the payment;
- (c) if the Vendor has made the community infrastructure payment prior to Settlement then the Purchaser must reimburse or pay the Vendor the amount of the community infrastructure payment at Settlement.

## 40. Electronic Conveyancing

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### 40.1 Electronic Conveyancing (Adoption of National Law) Act

In this Special Condition 37 all references and defined terms correlate with the *Electronic Conveyancing (Adoption of National Law) Act 2013*.

### 40.2 Application of Special Condition

This Special Condition 37 has priority over any other provision to the extent of any inconsistency. This Special Condition applies if this Contract specifies, or the parties subsequently agree in writing, that Settlement and lodgement of the instruments necessary to record the Purchaser as registered proprietor of the Land will be conducted electronically in accordance with the Electronic Conveyancing National Law.

### 40.3 Agreement

- (a) Each party must:
  - (i) be, or engage a representative who is a subscriber for the purposes of the Electronic Conveyancing National Law;
  - (ii) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the Electronic Conveyancing National Law; and
  - (iii) conduct the transaction in accordance with the Electronic Conveyancing National Law.
- (b) The Vendor must open the Electronic Workspace ('**workspace**') as soon as reasonably practicable. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.
- (c) The Vendor must nominate a time of the day for locking of the workspace at least 2 Business Days before the due date for Settlement.
- (d) Settlement occurs when the workspace records that:
  - (i) the exchange of funds or value between the financial institutions in accordance with the instructions of the parties has occurred; and
  - (ii) the documents necessary to enable the Purchaser to become registered proprietor of the land have been accepted for electronic lodgement.

## **41. Nominated Lots**

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### **41.1 Definitions**

In this Special Condition 41 the following terms have the corresponding meaning:

**Nominated Lots** means lots **1131** to **1136** (both inclusive) on the Plan;

**Minimum Number** means 5 lots;

**Release Date** means the date that all of the Nominated Lots have been made available by the Vendor for sale to the public (or such later date to be determined by the Vendor in the Vendor's absolute discretion; and

**Sunset Date** means the date that is 9 months from the Release Date or such later date as determined by the Vendor in its absolute discretion.

### **41.2 Contract is conditional**

Unless the Vendor gives written notice to the Purchaser waiving the benefit of this Special Condition 41, this Contract is subject to and conditional upon the Vendor entering into unconditional contracts of sale for at least the Minimum Number of the Nominated Lots.

### **41.3 Acknowledgement**

The Vendor and the Purchaser acknowledge that Settlement cannot occur until the conditions set out in this Special Condition 41.2 has been satisfied or waived by the Vendor.

### **41.4 Vendor's Right to Terminate**

If:

- (a) the Vendor has not exchanged unconditional contracts of sale for the Minimum Number of the Nominated Lots by the Sunset Date; or
- (b) the Vendor elects not to proceed with sale and development of the Nominated Lots in accordance with this Contract for any reason,

then, the Vendor may at any time elect to terminate this Contract by notice in writing to the Purchaser.

### **41.5 Refund of Deposit**

If the Contract is terminated by the Vendor in accordance with Special Condition 41.4:

- (a) this Contract will be at an end;
- (b) all moneys paid by the Purchaser will be refunded to the Purchaser; and
- (c) neither party will have any right to compensation or damages against the other party as a result of the terminated.



## **Annexure A – Guarantee and Indemnity**

In consideration of the Vendor named and described in the Schedule annexed hereto entering into the Contract with the Purchaser named and described in the Schedule the party described as the Guarantor in the Schedule hereto (**Guarantor**) agrees to guarantee and indemnify the Vendor as follows:

1. The Guarantor guarantees to the Vendor prompt performance of all of the obligations of the Purchaser contained or implied in the Contract.
2. If the obligation of the Purchaser is to pay money, the Vendor may if the Purchaser has not paid the money when due immediately recover the money from the Guarantor as a liquidated debt without first commencing proceedings or enforcing any other right against the Purchaser or any other person.
3. The Guarantor is liable for and indemnifies the Vendor against any cost (including legal fees and disbursements on a full indemnity basis and any counsel or consultant's fees and expenses at the rate charged to the Vendor), liability, loss, fine, penalty, suit, claim or damage that the Vendor may suffer because of:
  - (a) a failure by the Purchaser to pay any money to the Vendor under the Contract; or
  - (b) the Vendor having no legal right to recover any money from the Purchaser under the Contract; or
  - (c) any money payable by the Purchaser to the Vendor under the Contract not otherwise being payable.
4. The indemnity in clause 3:
  - (a) is in addition to and separate from the guarantee in clause 1; and
  - (b) is a principal obligation and is independent of the Purchaser's obligations to the Vendor.
5. The Guarantor must pay the Vendor the amount owing under the indemnity in clause 3 on demand by the Vendor.
6. The Vendor may without affecting this Guarantee grant time or other indulgence or compound or compromise with or release the Purchaser or any person or corporation whatsoever (including any person or corporation liable jointly with the Guarantor or severally in respect of any other guarantee or security) or release, part with, vary, relinquish or renew in whole or in part any security, document of title, asset or right held by the Vendor.
7. All moneys received by the Vendor from or on account of the Purchaser including any dividends upon the liquidation or bankruptcy of the Purchaser or from any other person or corporation or from the realisation or enforcement of any security capable of being applied by the Vendor in reduction of the indebtedness of the Purchaser will be regarded for all purposes as payment in gross without any right on the part of the Guarantor to stand in place of the Vendor or claim the benefit of any moneys so received until the Guarantor has repaid the total indebtedness of the Purchaser and so that in the event of the liquidation or bankruptcy of the Guarantor the Vendor will be entitled to prove for the total indebtedness of the Purchaser.
8. In the event of the liquidation or bankruptcy of the Purchaser the Guarantor authorises the Vendor to prove for all moneys which the Guarantor has paid hereunder and to retain and to carry to a suspense account and appropriate at the discretion of the Vendor any dividends received until the Vendor has with the aid thereof been paid in full in respect of the indebtedness of the Purchaser to the Vendor. The Guarantor waives in favour of the Vendor all rights against the Vendor and the Purchaser and any other person or corporation estates and assets so far as necessary to give effect to anything contained in this Guarantee.

9. The remedies of the Vendor against the Guarantor will not be affected by reason of any security held or taken by the Vendor in relation to the indebtedness of the Purchaser being void, defective or informal.
10. The Guarantor is liable for and indemnifies the Vendor against any loss which the Vendor may suffer by reason of the Purchaser having exceeded his powers or being incompetent to enter into the Contract and against any loss which the Vendor may suffer by reason of the Purchaser going into liquidation or becoming bankrupt.
11. Any demand or notice under this Guarantee may be made in writing signed by the Vendor or its solicitors on its behalf and (without prejudice to any other mode of service for the time being permitted by law) may be served on the guarantor by prepaid letter addressed to the Guarantor at his address herein mentioned. Such notice or demand when posted will be deemed to be properly given on the day next following the day of posting.
12. Where not inconsistent with the context the expression Guarantor as herein used will where there is only one Guarantor mean and include the Guarantor, his executors and administrators or in the case of a corporate Guarantor that Guarantor and its successors and will when there are two or more Guarantors mean and include those Guarantors and each and every or any of them and the executors, administrators or successors of each and every one of them. When two or more Guarantors are parties hereto the covenants and agreements on their part herein contained will bind them and any two or more of them jointly and each of them severally.

## GUARANTOR SCHEDULE

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Vendor	Name	Avid Property Group Nominees Pty Ltd as trustee for the Hobbs Road Wyndham Trust ABN 47 262 319 891
	ACN	088 212 631
	Address	Ground Floor, 80 Dorcas Street, Southbank, Victoria 3006
<hr/>		
Purchaser	Name	
	ACN	
	ABN	
	Address	
<hr/>		
Guarantor	(1) Name	
	Address	
	Email	
	(2) Name	
	Address	
	Email	
	(3) Name	
	Address	
	Email	
<hr/>		
Contract	the contract for the sale and purchase of Lot on Plan of Subdivision PS 826701N, (a copy of which is contained in the Vendor's Statement) and being part of the land described in Certificate of Title Volume Folio	

EXECUTED AS AN AGREEMENT

SIGNED by Guarantor 1 named above:

on

\_\_\_\_\_  
Signature of Guarantor 1

SIGNED by Guarantor 2 named above:

on

\_\_\_\_\_  
Signature of Guarantor 2

SIGNED by Guarantor 3 named above:

on

SIGNED by Vendor

\_\_\_\_\_  
By its attorney under power of attorney

## **Annexure B - Design Guidelines**



# Home Design Guidelines

Stage 11 - October 2020



**savana**  
by AVID Property Group





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# 01 Introduction

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## 1.1 DESIGN GUIDELINES

These Design Guidelines apply to all allotments within the Savana Development approved under Wyndham Planning Permit No. WYP7871/14

All care has been taken to ensure that these guidelines comply with current Building Regulations. However, the owner is responsible for ensuring compliance with all statutory requirements.

In the event that requirements in this document contradict the provisions of the Small Lot Housing Code or ResCode, the Small Lot Housing Code and ResCode will prevail.

Owners, Designers and Builders should review this MCP and the current Design Guidelines in conjunction with the land sales contract.



Figure 1 – Approval Process

## 1.2 DEVELOPERS APPROVAL

The siting and design of homes at Savana is to be approved by The Savana Building and Design Approval Committee (SBDAC). Approval by the SBDAC is required before applying for a building permit for the construction of a new dwelling. Approval by the SBDAC is not a building approval nor does it imply compliance with the building code, Building Regulations or City of Wyndham Planning Scheme.

The SBDAC also reserves the right to approve applications based on architectural merit.

It is the applicant's responsibility to ensure that plans meet the relevant planning and building requirements, in addition to these design guidelines.

Only a fully scaled set of application documents will be considered. No concept designs will be accepted. The SBDAC will assess all designs and if they are compliant with the Design Guidelines, provide a letter of approval along with an endorsed copy of the plans and external colour schedule. Applications that substantially comply with the Design Guidelines may be given a letter of approval with conditions requiring the rectification of minor deviations. These deviations may also be noted on the plans. The SBDAC may also offer suggestions intended to improve designs.

If the design submission does not comply with the Design Guidelines, the SBDAC will advise the applicant of the reasons of non-compliance and suggest amendments. Applicants will then be required to re-submit amended plans in order to gain approval.

The final decision of all aspects of the Design Guidelines will be at the discretion of the SBDAC.

The SBDAC will endeavour to process applications as quickly as possible, generally within 7 business days of receipt. Once approval is obtained, an application for a building permit may be lodged with the City of Wyndham or an accredited building surveyor.



### 1.3 MEDIUM AND HIGH DENSITY LOTS

The design guidelines do not cover integrated development sites that require a separate planning permit. Medium or High density lots cannot be developed without obtaining a planning permit from Council. Prior to a planning application being lodged with Council for the development of a medium or high density lot, the plans must be assessed and approved by the SBDAC.

### 1.4 PLANNING PERMIT

A planning permit is not required to construct or extend one dwelling on a lot with an area less than 300m<sup>2</sup> where:

- > an approved building envelope as defined in Part 4 of the Building Regulations 2006 applies to the lot, and
- > the building envelope complies with the Small Lot Housing Code incorporated in the Wyndham Planning Scheme; and
- > the dwelling is constructed or extended in compliance with the building envelope.

If a dwelling is to be built outside of an approved building envelope an additional planning permit is required for the proposal prior to obtaining a Building Permit. Before applying for a planning permit approval must be obtained from the SBDAC.

### 1.5 COVENANTS

In the event that requirements under the Design Guidelines contradict covenants defined within the Plan of Subdivision or this MCP, the Plan of Subdivision or the MCP will prevail.

### 1.6 STATUTORY OBLIGATIONS

It is the purchaser's responsibility to ensure all submitted documents comply with the Victorian Building Code, Rescode and all other planning and authority requirements, along with current Victorian energy rating standards prior to construction.

## 02 Dwelling Design

### 2.1 DWELLINGS

Only one dwelling is permitted per property for lots under 600m<sup>2</sup>.

On a lot greater than 600m<sup>2</sup>, an additional dwelling is subject to approval from the SBDAC and City of Wyndham and may be considered for:

- (a) A dependant persons unit on lots greater than 600m<sup>2</sup>;
- (b) Corner lots and
- (c) Lots identified as integrated housing sites

No further subdivision is permitted without the approval of the SBDAC.

### 2.2 IDENTICAL FACADE ASSESSMENT



Figure 2 – Example of non compliance facades, identical facades too close together

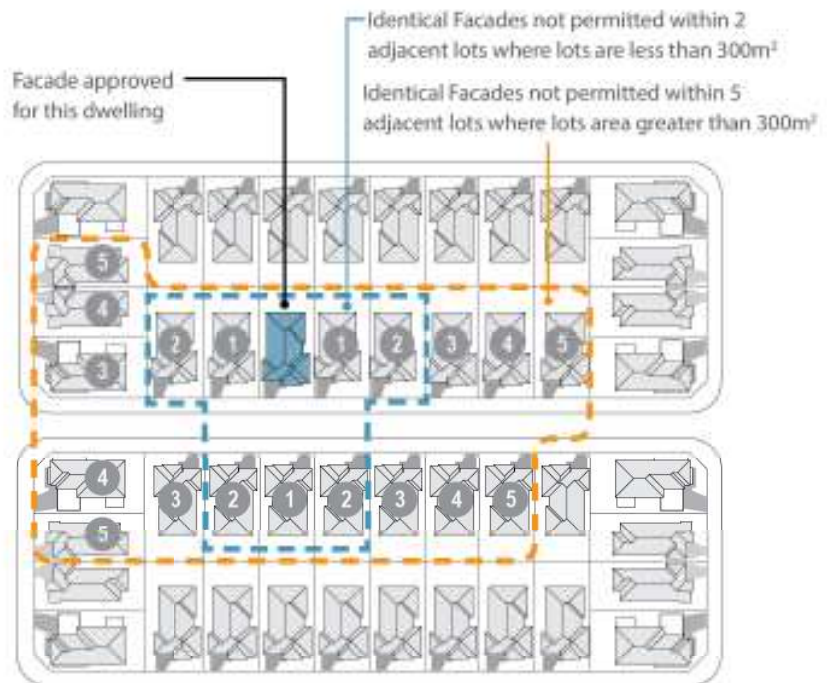


Figure 3 – Identical Facade Diagram

In order to uphold the integrity of all new homes, 2 dwellings of the same front facade shall not be built within:

- > 5 contiguous lot spaces of the original lot. Provision includes lots either side, opposite and encompassing other street frontages where applicable.
- > On lots less than 300m<sup>2</sup>, 2 dwellings with identical façades shall not be built within 2 contiguous lot spaces of the original lot. Under this clause, a mirrored (symmetrical) façade is not considered to be an identical facade.

This provision will not apply to integrated housing developments.

## 2.3 ARCHITECTURAL CHARACTERISTICS

Designs incorporating a variety of modern architectural styles are encouraged. Unique dwelling designs displaying innovation and originality will be assessed favourably if they are shown to be in keeping with the contemporary design intent of SBDAC.

Architectural features such as verandahs, porticoes, feature windows, façade detailing, roof features and articulated building forms are required. Building materials such as masonry, render, natural stone and timber cladding should be used and paint work should be complementary in colour selection.

Contemporary roof and awning themes coupled with articulation of single and double storey volumes are also preferred design initiatives.



Figure 4 – Articulated building forms



Figure 5 – Façade detailing with contemporary awnings



Figure 6 – Roof features



Figure 7 – Complementary building materials







Figure 8 – Compliant corner lot treatment with detailing for both street frontages



Figure 9 – Feature less wall on corner lots are to be avoided



Figure 10 – Entry feature and balcony

## 2.4 CORNER LOT CHARACTERISTICS

Dwellings constructed on corner blocks and on lots that abut public open space areas such as a park or reserve must address both street frontages through the use of wrap around verandahs, feature windows, detailing, etc. Well-articulated architectural treatments should be provided where built form is visible beyond the side fence line, and at upper levels.

Overall facade articulation and material variation is strongly encouraged. It will be at the discretion of the SBDAC to determine acceptable corner treatment for each corner lot submission.

Entries and/or garages facing the secondary street frontage may be considered by the SBDAC where they are located adjoining open space and linear pedestrian open space links.

## 2.5 PORCHES & ENTRIES

An entry feature complementary to the dwelling design must be incorporated to create a sense of entry. This can be a porch, portico, balcony or verandah and can be a central feature of the façade or located towards the end. Appropriate location of the entry will increase the character of the dwelling and contribute to a varied streetscape.



Figure 11 – Entry feature





Figure 12 – Building oversized for the lot



Figure 13 – Non compliant treatment to eaves



Figure 14 – Eaves that overhang the dwelling facades that face the street

## 2.6 DWELLING SIZE

The siting and proportion of the dwelling on the lot should be a well thought out response to the site.

## 2.7 BUILDING HEIGHTS

Maximum building heights should generally accord with Rescode requirements and where relevant, the Small Lot Housing Code.

Triple storey dwellings and/or basements should adhere to the relevant height requirements. Basements may have a maximum projection of 1.2m above natural ground level.

A ceiling height of 2590mm is encouraged for all single storey dwellings and the ground floor of double storey dwellings. A minimum ceiling height of 2440mm is permitted, subject to approval by the SBDAC but is not encouraged.

## 2.8 ROOFS

Applicants are encouraged to explore varying roof forms which could include combinations of pitched and flat roofs as well as curved elements. The minimum roof pitch must be 22° while skillion and accent sections may have a minimum pitch of 16°.

Eaves with a minimum overhang of 450mm must be provided on dwellings to any street face of single storey dwellings and to all faces of double storey dwellings. On single storey dwellings eaves must wrap around a minimum of 2000mm along the side of the dwelling from any street frontage (except where built to the boundary).

Permitted roof materials include masonry, slate, terracotta tiles or Colorbond®. Other non-reflective materials may be considered for review by the SBDAC.



Figure 15 – Varied Roof Forms



Figure 16 – Carports are not permitted



Figure 17 – Compliant treatment for garage with sectional door



Figure 18 – Non compliant treatment for garage, set forward from the main built form

## 2.9 GARAGES

A lock-up garage for 2 vehicles must be provided on all properties with frontages greater than 10.5m. Open carports to the front of the dwelling will not be permitted. Single garages will be considered for lots with a street frontage of 10.5m or less. Triple garages will be strongly discouraged.

The architectural character of the garage must be harmonious to the main body of the dwelling.

Garages must have a slim line, sectional, tilt or panel lift door to all street frontages. Roller doors will only be permitted at the rear of the garage, as an opening to the backyard and where they are not within public view.

Where the garage door is located to the front of a dwelling, the door or opening of any garage must occupy less than 50% of the width of the lot's street frontage to a maximum of 6.0m.

On 2 storey dwellings with garages that exceed 40% of the lot frontage, balconies or windows above the garage are required.

For lots with frontages less than 8.5m that are not rear-loaded, refer to the Small Lot Housing Code incorporated into the Wyndham Planning Scheme.

Refer to the Streetscape and Siting section for garage setback requirements.



Figure 19 – Maximum garage Frontage

## 03 **STREETSCAPE AND SITING**

### 3.1 **SMALL LOT SETBACKS**

Small lot setbacks must be in accordance with the Small Lot Housing Code incorporated into the Wyndham Planning Scheme.



Figure 20 – Compliant treatment for small lot setbacks



Figure 21 – Compliant treatment for small lot setbacks





### 3.2 STANDARD LOT SETBACKS

A standard lot is a lot which has an area greater than 300m<sup>2</sup>.

Dwellings must be setback from the front boundary by a minimum of 4.0m and a maximum of 6.0m.

Porches, porticos and verandahs less than 3.6m in height may encroach up to 1.0m into the minimum front setback.

Unless rear loaded, garages must be located behind the front wall of the main dwelling (not including the porch, portico or verandah) or a minimum of 4.9m from the front boundary, whichever is greater.

Garages may be built on side boundaries in accordance with Rescode.

Double storey dwellings must be setback from side boundaries in accordance with Rescode.

Rear setbacks are to be in accordance with Rescode. These requirements may be varied with the written approval of the SBDAC and the City of Wyndham.



Figure 22 – Garage is set back from facade



Figure 23 – Garage should be set back from the front wall



Figure 24 – Compliant treatment for double storey dwelling setback

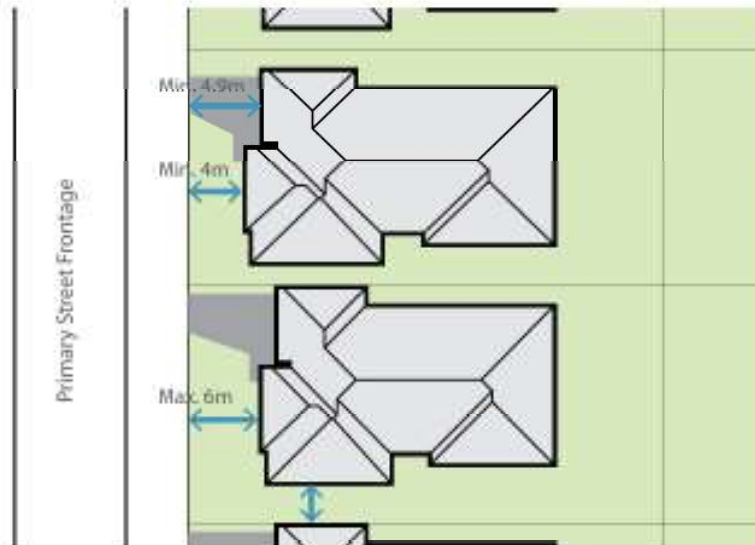


Figure 25 – Dwelling Setbacks plan



Figure 26 – Garage should be setback 5m from the Secondary Street



Figure 27 – Corner lot setback must comply with Rescode

### 3.3 STANDARD LOT CORNER SETBACKS

Where applicable, standard corner lots must comply with the setback requirements listed in item 17 of the Memorandum of Common Provisions, as well as the following.

Setbacks from the secondary street frontage must comply with Rescode.

Where facing the secondary street frontage, the garage must be setback a minimum of 5.0m from the secondary street frontage. An easement running along the rear of the lot cannot be built over, and the garage may have to be setback from the rear boundary to accommodate the easement. Garages must be located adjacent to the lot boundary but are not permitted adjacent to boundaries abutting public open space.

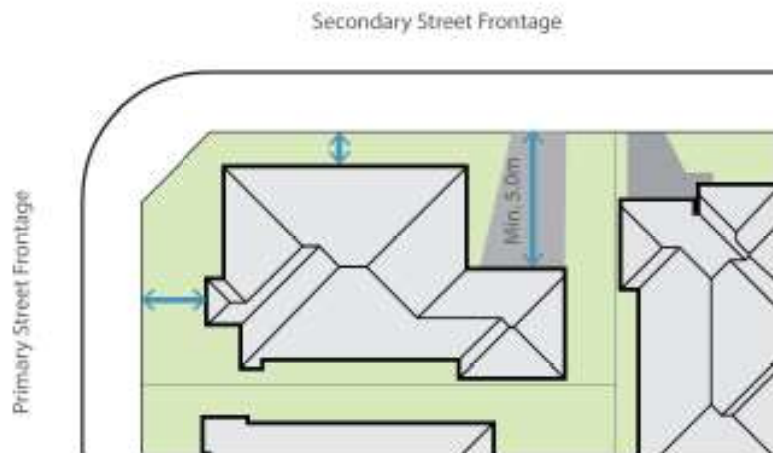


Figure 28 – Corner lot garage on secondary street setback plan

### 3.4 BUILDING ENVELOPES

All dwellings must be constructed in accordance with rescode and where relevant to the Small Lot Building Code.

It is the responsibility of the applicant to investigate the existence of any building envelopes prior to design and submission to the SBDAC.

## 04 EXTERNAL MATERIALS AND COLOURS



Figure 29 – 25% of the facade should be of a contrasting colour

### 4.1 MATERIALS

External walls must be constructed from a minimum of 75% face brick, brick or masonry veneer or other approved texture coated material. At least 25% of the facade of the home must be finished in a contrasting/feature element in a different texture, material or colour.

The utilisation of materials such as natural stone, exposed timber or other feature cladding materials will be considered and encouraged as key design articulation elements. Use of quality materials and finishes is encouraged to give a timeless appeal.

Homes in kit or modular form and the use of second hand materials will be subject to approval by the SBDAC and City of Wyndham. New building materials based on recycled content is permitted.

Unless otherwise approved by the SBDAC, unpainted and/or untreated metalwork and reflective glazing will not be permitted. Infill fibre sheet panels are not permitted above window and door openings where visible from the street.

Fibre-cement sheeting may be permitted if finished as either a textured, painted or rendered surface except as above.

### 4.2 COLOUR SCHEMES

A harmonious colour palette consisting of natural, subdued hues which are complimentary to the surrounding environment and colour tones which reflect the theme of the dwelling will be encouraged. Limited use of strong or bold colours may be adopted to reinforce the contemporary nature of the dwelling design.

In order to avoid further information being requested in regards to colour schedules, the applicant must ensure that all relevant information is provided when applying for design approval.

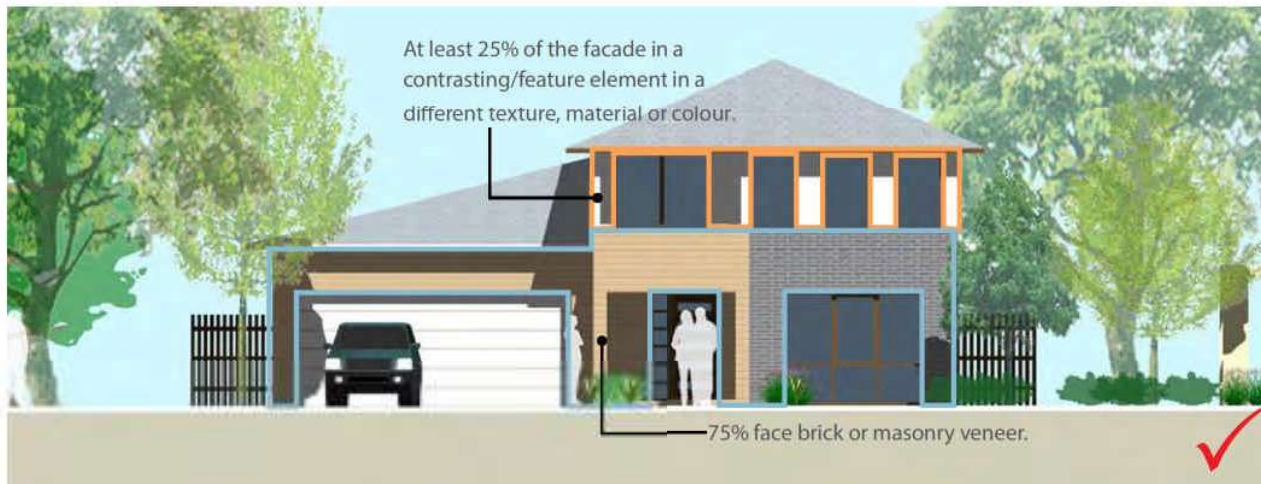


Figure 30 – 25% of the facade should be of a contrasting colour



Masonry colours should be similar to:

#### Light Tone Masonry Colour Range



Austral Urban One Nougat



Austral Homestead Mushroom



Boral Nuvo Aspire Moss



Boral Nuvo Aspire Mist



Boral Nuvo Aspire Coco

#### Mid Tone Masonry Colour Range



Austral Symmetry Grey



Austral Access Fawn



Boral Smooth Face Cinnamon



Boral Elan Signature Grey Nuance

#### Dark Tone Masonry Colour Range



Austral Elements Graphite



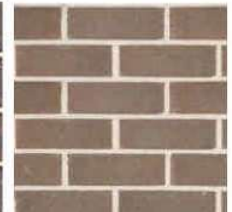
Austral Access Chestnut



Boral Nuvo Aspire Storm



Boral Labassa



Boral Nuvo Aspire Mangrove

Dwelling materials should be similar to:



Lightweight Cladding types - vertical panel



Lightweight Cladding types - horizontal panel



Lightweight Cladding types - timber



Lightweight Cladding types - flat panel



Lightweight Cladding types - corrugated and battened



## 05 DRIVEWAYS, FENCING & LANDSCAPING

### 5.1 DRIVEWAYS

There must be only one driveway per lot, located to align with the crossover. Garages should be sited on the lot in response to the location of existing crossovers with driveways tapered to match crossover width. There must be at least 300mm of screen planting between the driveway and the adjacent side boundary.

Driveways must be fully constructed prior to the issue of the Occupancy Permit.

All driveways, porches and any other concreted areas within the front yard must be constructed of masonry pavers, exposed aggregate, coloured concrete, fixed granular surfaces or stamped or stencilled masonry surface. The colour selection must complement the building design and external colour scheme.

No plain concrete will be permitted unless it is out of public view.



Figure 31 – Plain concrete is not permitted



Figure 32 – Plain Concrete is not permitted, but driveway does taper to align with cross over



Figure 33 – Textured concrete surface



Figure 34 – Textured concrete surface with tapering to match crossover

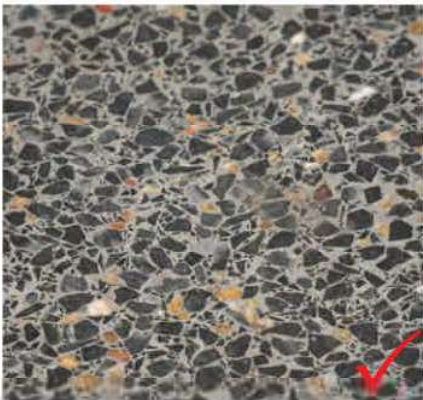






Figure 35 – Largely transparent front fencing



Figure 36 – Fence is too high and too opaque



Figure 37 – Wing Fence

## 5.2 BOUNDARY FENCING

Fencing type will be consistent throughout SBDAC. Fencing is a common link binding the streetscape and highlighting the individuality of each dwelling.

All fencing must be shown on plans submitted to the SBDAC for approval.

In addition to meeting the requirements within section 23 of the Memorandum of Common Provisions, all fencing must also be in accordance with the provisions set out in the Small Lot Housing Code.

### 5.2.1 FRONT FENCING

Front fencing is permitted on lots identified on Figure 38 – Front Fencing Plan, subject to approval. Proposed front fences that are up to 1.2m in height and are largely transparent (ie. 50% or more) in construction are preferred. It is expected that any front fences will return along the side boundary, and extend to meet the side fence. Low masonry walls not exceeding 0.9m height which complement the façade of the building will be permitted. Where a front fence is to be constructed on a corner allotment, it must turn around and extend to meet the side fence.

Front Fencing on all lots adjacent to and fronting public open space must not exceed 1.2m in height.

### 5.2.2 SIDE AND REAR FENCING

All side and rear boundary fencing must be constructed from timber palings, to a height of 1900mm (+/- 50mm). Side boundary fencing must terminate and return to the dwelling at least 1.0m behind the front building line. This part of the fence that returns to the house is known as a wing fence. Wing fencing must also be constructed from timber palings, unless approved by the SBDAC. Wing fencing must be 1900mm (+/- 50mm) in height. It is encouraged to include a gate within the wing fencing; however, direct access to the rear yard may be possible either via a gate or directly from your garage. Where timber paling fencing is used, timber capping is encouraged. Fencing constructed along the side boundary forward of the dwelling or along the front boundary is *not encouraged*.





## FENCING

boundary that forms the rear boundary of an adjoining lot, that boundary can continue to the front boundary. On corner lots, the secondary street frontage should be setback a minimum of 10m from the primary street frontage.

On corner lots, a reserve and on corner allotments, a minimum secondary street frontage is required to have no / transparent fence. If the remaining 70%, the length of solid fence along the side must not exceed 30%. The remaining side fence must be transparent to provide a minimum of 25% transparency (Figure 40).

Fencing must be constructed from timber palings to a maximum height of 2.0m. Exposed posts on both sides of the palings are permitted, but must be on the external side fronting the street.

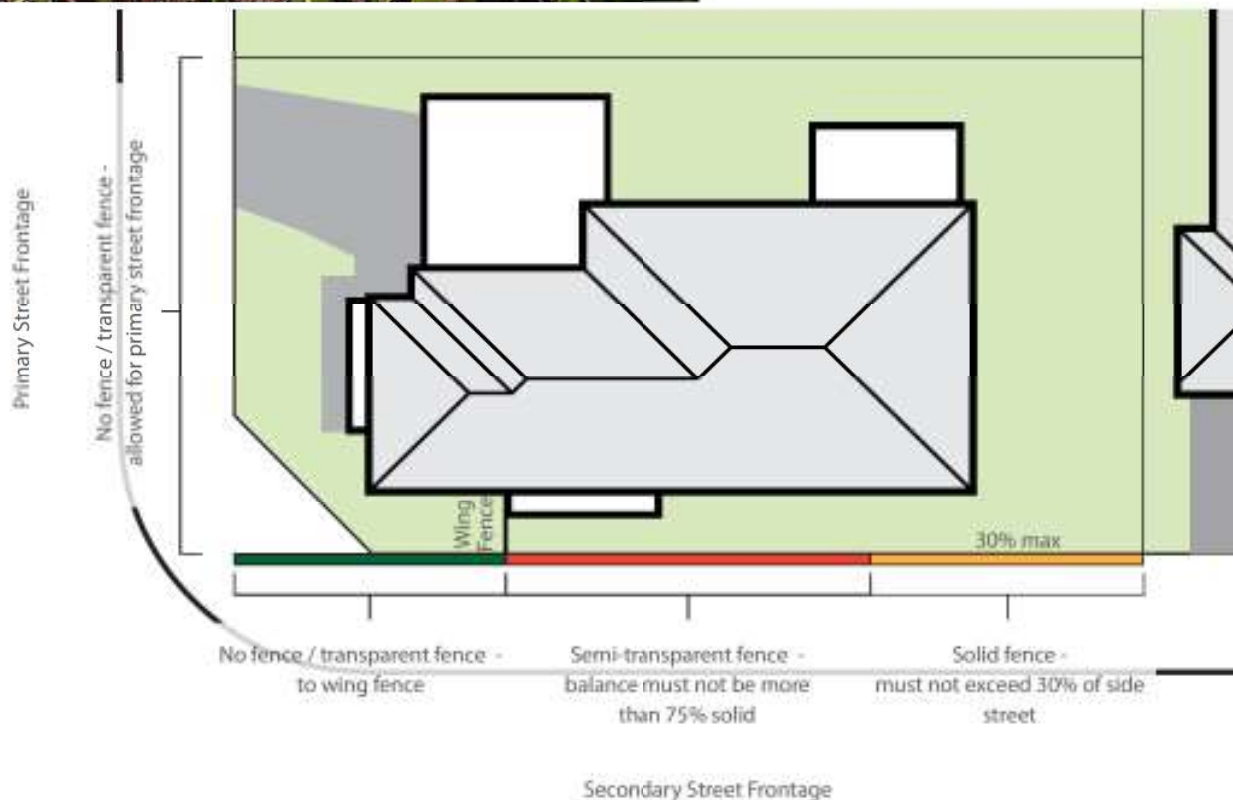


Figure 40 – Side street fencing on corner lots



### Transparent Fencing - Front / Side Street Fencing

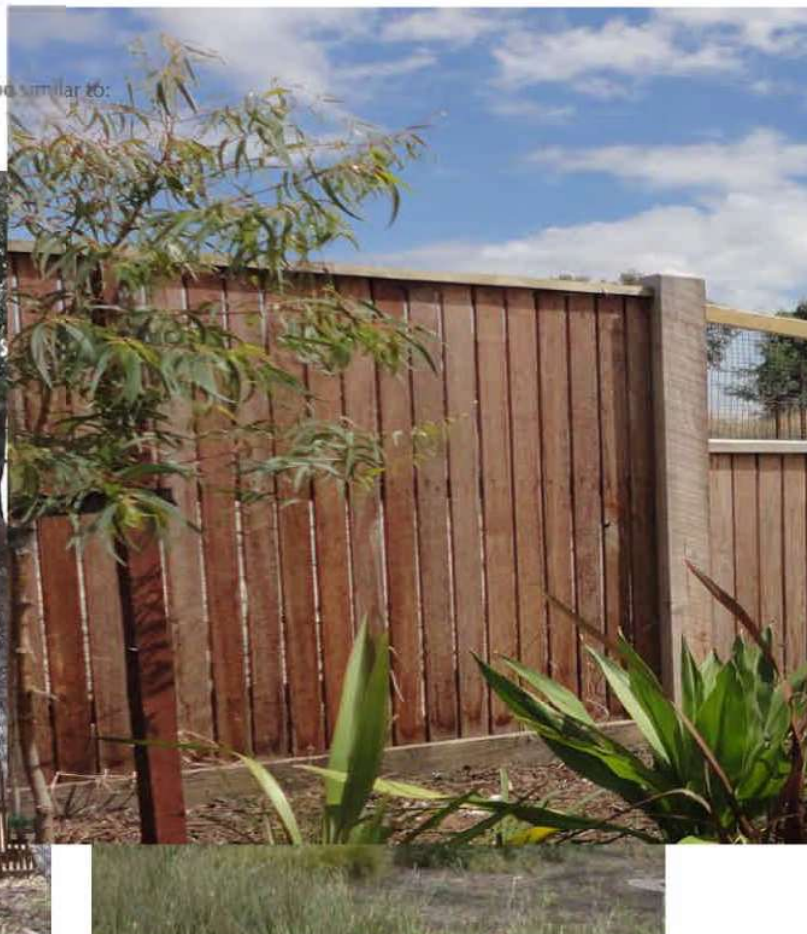
Transparent Fencing (Front / Side Street Fencing) should be similar to:





### Semi Transparent Fencing - Side Street / Wing Fencing

Semi Transparent Fencing (Side Street / Wing Fencing) should be similar to:





### Solid Fencing - Side Street Fencing

Solid Fencing (Side Street Fencing) should be similar to:





### 5.3 FRONT LANDSCAPING

To promote an attractive neighbourhood, residents are encouraged to install quality landscaping.

The form and texture of the plantings should complement and enhance the architecture of the dwelling. Planting of canopy trees in appropriate locations is encouraged. Landscape designs should be prepared with an objective for low water usage.

Gardens are encouraged to be environmentally sensitive by utilising appropriate drought tolerant native plants, organic or mineral mulches and drip irrigation systems. Native plants that are common to Victoria and the Region are also encouraged.

Landscaping of your front garden must be completed within 6 months of issue of the Occupancy Permit. Hard paved or impervious surfaces must be limited to driveways and pedestrian pathways only.

The minimum front landscaping works will include:

- > Fine grading and shaping of landscaped and lawn areas.
- > Cultivation of existing soil in the garden beds to a 200mm depth, the addition of imported topsoil and fertiliser to all landscaped areas, as well as the use of mulch and/or other selected topping.
- > At least 1 mature tree (2.0m minimum height).



Figure 42 – Low quality landscaping with no canopy tree at least 2m high

### 5.4 LETTERBOXES

Letterboxes should be designed to match and compliment the dwelling design. Single post supporting letterboxes are discouraged.



Figure 43 – Letterbox colour matches the architecture



Figure 44 – Mail box integrated into a landscape feature wall



Figure 45 – Single posted letterboxes are discouraged







## 06 ENVIRONMENTAL SUSTAINABILITY



Figure 46 – Upper floor has sun protected from the eave and the lower floor from the pergola



Figure 47 – North facing windows have no passive sun control



Figure 48 – Trees used to provide shade for the house

### 6.1 LIVEABILITY CONSIDERATIONS

Applicants are encouraged to submit designs that are environmentally responsible.

The orientation of an allotment will determine the best siting of the house on the allotment. A building's orientation plays a large part in achieving the optimum solar access for a home during winter.

Allotments on the north side of a street will have sunny backyards – good for private outdoor living.

Allotments on the south side of a street will have sunny front yards – good for show piece gardens.

Allotments facing east-west will have sunny side yards to the north – these houses should be sited to leave the largest possible outdoor living space along the northern boundary.

Dwellings can become more liveable by taking into account the orientation of rooms and windows, shading of windows and walls, ceiling heights, sustainable building materials, cross flow ventilation, covered open spaces, insulation and water efficient fixtures. Eave design can act as excellent shading devices during warmer months. Implementing these features can also result into substantial financial savings for the home owner.

Double storey homes must respect the privacy of neighbouring dwellings, including potential overshadowing issues that may arise as a result of siting choices. It is the responsibility of applicants with double storey proposals to ensure their design has demonstrated these factors and to receive approval from the relevant authority and/or Building Surveyor prior to construction.

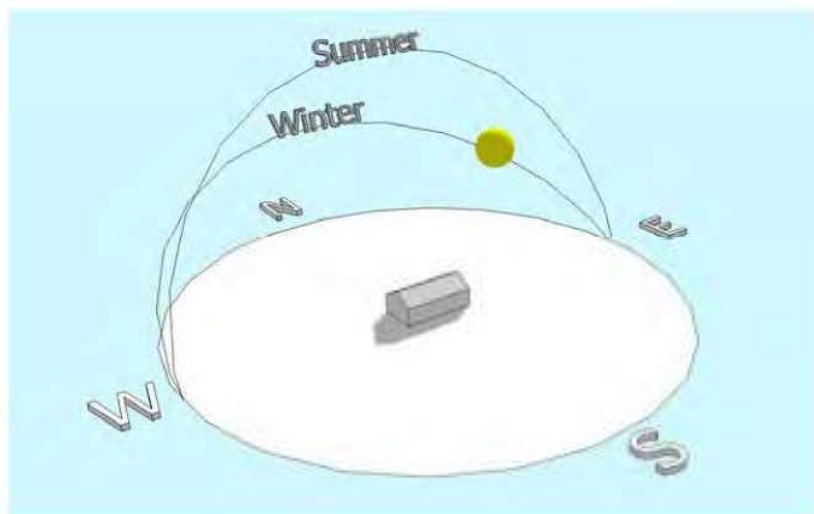


Figure 49 – Energy Efficient homes provide sun access in winter and shade in summer



Figure 50 – Solar panels follow the roof pitch



Figure 51 – Rainwater tanks must not be located in the front

## 6.2 SOLAR HEATING PANELS

Solar heating panels must be located on roof planes preferably not visible from public areas. The panels should follow the roof pitch.

Where visible from public areas, solar panels will be assessed on their merits with regard to scale, form and colour.

## 6.3 RAINWATER TANKS

Rainwater storage is encouraged. The rainwater tank and all accessories must not be located in front of the dwelling or be visible from the street and public spaces. The rainwater tank and all accessories must be coloured to match the dwelling.

To help calculate the size of water storage that may be required please contact the Department of Environment and Primary Industries for appropriate storage requirements in relation to the collection area provided.

## 6.4 RECYCLED WATER

Recycled water will be in use at SBDAC for toilet flushing and garden usage. All residents are required to connect to this service to reduce the consumption of potable water.

## 6.5 ENERGY RATINGS

It is the applicant's responsibility when building a home to comply with Victoria's energy rating requirements. Dwelling designs should be assessed by a licensed energy rating company, and they in turn will make recommendations regarding insulation and other resource saving measures. Dwellings must achieve the minimum standard as currently legislated.

## 6.6 NBN CO

The development qualifies for future NBN roll out. All premises must be aware of and conform with the NBN Co Preparation and Installation Guide for SDU's and MDU's.

## 07 ADDITIONAL BUILDINGS AND ANCILLARY STRUCTURES



Figure 52 – Sheds must not be larger than 15m<sup>2</sup> and must be hidden from public view

### 7.1 SHEDS

Sheds should be constructed of materials and colours consistent with and complimentary to, the materials used for the dwelling. Coloured steel and similar products are acceptable materials.

Sheds must be screened from any street and/or public view by locating to the rear or side of the dwelling. An appropriately located carport out of public view must be considered to store boats, trailers or any similar vehicles.

Sheds must not cover an area greater than 15m<sup>2</sup> and not exceed a maximum height of 2.5m.



Figure 53 – Coolers are to be located out of public view

### 7.2 PERGOLAS, PATIOS & DECKING

Any proposed additional buildings or ancillary structures including decking, pergolas, patios, carports, swimming pools, BBQ areas or similar, must be submitted to the SBDAC for approval. This can be done at the time of submitting the dwelling design or done at a later date as a standalone submission.

The SBDAC will assess these on their merits. Please note that later date stand-alone submissions will incur an additional assessment fee.

### 7.3 ANCILLARY ITEMS

All external plumbing must be out of public view, with the exception of gutters and downpipes. Downpipes must not be located on the front façade of the dwelling.

External TV antennae and other aerials must be unobtrusive and located towards the rear of the dwelling. Satellite dishes will only be approved if out of public view. Clothes lines must not be visible from public areas.



Figure 54 – Downpipes must not be on the front façade

Externally mounted spa equipment attached to side boundary walls of any dwelling must be positioned out of public view, be painted in a colour matching the adjoining wall surface and fitted with noise baffles.

Evaporative cooling units are to be located out of public view where possible and must be of low profile, located below the ridgeline and coloured to match the roof.

Metal security shutters are not permitted.



## 08 GENERAL



Figure 55 – Lot must be maintained and grass cut



Figure 56 – Caravans, recreational and commercial buildings should be screened from public view



Figure 57 – No signs

### 8.1 MAINTENANCE OF THE ALLOTMENT

Prior to the occupation of a dwelling, the allotment must be maintained by keeping the grass cut, and the allotment free from rubbish. Builder's waste materials and rubbish during construction must be removed on a regular basis and must not be allowed to accumulate. If any allotments are Should lots not be maintained to an acceptable level, the Developer reserves the right to carry out clean up works as necessary. Any such costs incurred by the Developer will be passed on to the allotment owner.

After occupation of the dwelling, front yards must be maintained to an acceptable level.

Rubbish and recycle bins must be stored out of public view. It will be at the discretion of the SBDAC to determine if allotments are being maintained to an acceptable level.

### 8.2 COMMERCIAL VEHICLES

Trucks or commercial vehicles (exceeding 1 tonne), recreational vehicles and caravans shall be screened from public view when parked or stored.

### 8.3 SIGNS

No signs, including 'For Sale' signs may be erected by the Purchaser other than a 'Home for Sale' sign which may be erected after completion of construction of a dwelling.

Builder's signs may be permitted (600mm x 600mm maximum) where they are required on allotments during construction. Only one advertising sign is permitted per dwelling at any one time and these signs must be removed once the property is sold.



## 09 DEFINITIONS

**ALLOTMENT** has the same meaning as in the Building Regulations. Articulation means both horizontal and vertical projection forward and back from the primary building face.

**SBDAC** means the Savana Building and Design Approval Committee that includes CRG Nominees Pty Ltd as the developer/owner of Savana Residential Estate.

**Building** has the same meaning as in the Building Regulations.

**Building Act** means the act of the Victorian Parliament known as the Building Act 1993.

**Building Envelope** means an area within each allotment (defined by the particular allotment setbacks) where development of a dwelling, shed and garage is allowed subject to the particular provisions of this document, and the Scheme.

**Building Permit** means a building permit in terms of the Building Regulations.

**Corner Allotment** means an allotment with a corner where each boundary connects to a street or public open space.

**Design Guidelines** mean the Design Guidelines which may be amended on occasions at the developer's discretion, subject to Wyndham City Council approval, to reflect changes in design trends or to coincide with the release of later stages.

**Dwelling** means a building used as a self-contained residence which must include:

- > A kitchen sink;
- > Food preparation facilities;
- > A bath or shower; and
- > A closet pan and wash basin,

It includes out-buildings and works normal to a dwelling.

**Frontage** means the road alignment at the front of an allotment. If an allotment abuts two or more roads, the one to which the building or proposed building faces.

**Front Garden** includes any area between the building line and the front boundary of an allotment and side street boundary or boundary abutting public open space of a corner allotment that is visible from a street.

**Height** has the same meaning as in the Building Regulations.

**On the Boundary** includes a setback of up to 200 millimetres from the allotment/property boundary.

**Private Open Space** means an unroofed area of land; or a deck, terrace, patio, balcony, pergola, veranda, gazebo or swimming pool.

**Regulations** mean the Building Regulations 2006 or any subsequent regulations made pursuant to the Building Act which relate to the siting of a building.

**ResCode** means the residential development provisions incorporated into the Wyndham Planning Scheme and the Building Regulations.

**Scheme** means the City of Wyndham Planning Scheme.

**Secluded Private Open Space** means that part of private open space primarily intended for outdoor living activities which enjoys a reasonable amount of privacy.

**Secondary Street** means the street that runs along the side boundary of a property when located on a corner.

**Setback** means the minimum distance from any allotment boundary to a building.

**Side Boundary** means a boundary of an allotment that runs between and connects the street frontage of the allotment to the rear boundary of the allotment.

**Site Coverage** means the proportion of a site covered by buildings.

**Storey** means that part of a building between floor levels. If there is no floor above, it is the part between the floor level and ceiling. It may include an attic, basement, built over car parking area, and mezzanine.

**Street**, for the purposes of determining setbacks, street means any road other than a footway or carriageway easement.

**Window** has the same meaning as in the Building Code of Australia.



## 11 APPENDIX

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### Building and Design Approval Application Form

#### Land Owners Details

Name	
Current Address	
Phone	
Email	

#### Land Owners Details

Lot Number	
Street Address	

#### Builder | Designer | Architect

Company Name	
Contact	
Address	
Phone	
Email	

#### Building Design Details

Builder	
Building Model (if applicable)	
Floor Area	

#### Submission Requirements

The following plans are required and should be submitted to [designapprovalvic@avid.com.au](mailto:designapprovalvic@avid.com.au).

- ☐ **Site Plan**  
Showing proposed structures, setbacks from all boundaries, eaves overhang, fencing locations, outbuildings, driveway and path areas. Minimum Scale 1:200.
- ☐ **Floor Plan/s**  
Including Roof Plan Minimum Scale 1:100.
- ☐ **Elevations**  
All elevations of the structure(s) including building and roof heights, roof forms and roof pitch. Minimum Scale 1:100.
- ☐ **Landscape Plan**  
Including driveway location and material, planting locations, lawn areas and planting schedule. Minimum Scale 1:200.
- ☐ **Schedule of Materials and Colours**  
In the form attached.

Approval of the Building proposal as detailed in this submission is requested. I/ we acknowledge that an incomplete application cannot be considered and that approval by the BBDAC is not a building approval nor does it imply compliance with

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Builder / Designer / Owner



#### DISCLAIMER:

1. The receipt of documents, including building plans, colour and materials specifications, any assessment of compliance by Investa or the Covenant Administrator, their review, assessment or comment on the those documents or any other documents prepared by or on behalf of or provided by the Owner, does not result in the assumption of any obligation or liability by Investa or the Covenant Administrator and does not affect the Owner's obligations or absolve the Owner from its obligations and its responsibility to comply with these Design Guidelines. Owners, Designers and Builders should review these Design Guidelines in conjunction with the land sales contract.
2. Avia Property Group may from time to time, in its absolute discretion, vary, relax or waive any of the requirements under these Design Guidelines. In the event that Avid Property Group allows a variation, relaxation or waiver of the application of the Design Guidelines, this will not set a precedent nor imply that any such action will apply again