

BUILDING COVENANTS SECTION

1. Meanings of “you” and “Developer”

1.1 In this Section, the word -

- (a) “you” means the **person** named as the “**Buyer**” in the Contract Form;
- (b) “**Developer**” means the Seller; and
- (c) “**party**” means **you** or the **Developer**.

1.2 But, if this Section or a reproduction of it is attached to or otherwise forms part of a **Building Covenants Deed Poll** -

- (a) “you” means the **person** named as “**Buyer**” in the deed poll; and
- (b) “**Developer**” means the person named as “**Developer**” in the deed poll.

2. Buy-Back Provisions

What you will do

2.1 If there is a **buy-back event** and the **Developer** so requires, **you** will transfer the **Land** to the **Developer** or nominee upon and subject to the **buy-back rules**.

2.2 A **buy-back event** occurs if -

- (a) **you** decide to **sell** the **Land**; or
- (b) **you** list the **Land** for sale with any real estate agent or other **person**; or
- (c) the **Land** is advertised or otherwise offered for sale; or
- (d) **you** otherwise attempt to **sell** the **Land**; or
- (e) **you** do not make substantial commencement of construction of a **house** (in accordance with **plans approved** by the **Developer**) by the first anniversary of the **date of possession**; or
- (f) **you** commence to **erect** a **proposed structure** before **you** obtain the **Developer’s approval** of the **plans** for that structure; or
- (g) **you** commit any other **breach**.

But a **buy-back event** cannot occur after **you** have made substantial commencement of construction of a **house** (in accordance with **plans approved** by the **Developer**).

2.3 If a **buy-back event** occurs **you** will give a **Transfer Notice** to the **Developer**, immediately.

What the Developer may do

2.4 If -

- (a) a **buy-back event** occurs; and
- (b) **you** have not given a **Transfer Notice** to the **Developer**

the **Developer** may give a **Transfer Notice** to **you**.

2.5 The **Developer** may waive its rights under **clause 2.1**, in respect of a particular **buy-back event**, by written notice to **you** before the **Date for Completion**.

3. Other Sale Provisions

What you will not do

3.1 **You will not sell** the **Land** or any estate or interest in the **Land** to any person other than the **Developer** unless -

- (a) the **Developer** gives **you** a written notice under **clause 2.5**, if a **buy-back event** has occurred; and
- (b) **you** obtain from the disponee a **deed poll** in favour of the **Developer** and deliver it to the **Developer** immediately upon the occurrence of the event which **constitutes** the sale; and
- (c) by that **deed poll**, the **Disponee** promises the **Developer** that the **Disponee** will at all times in the future observe and perform the stipulations set out in the **Building Covenants** so that the **Disponee** will be bound by the provisions of the **Building Covenants**.

What you will do

3.2 If **you** sell the **Land** or any estate or interest in the **Land** to any **person** other than the **Developer**, **you will** give the **Developer** a certified copy of the Contract or other document evidencing the sale immediately after the execution of that document.

What the Developer will do

3.3 Upon written request to the **Developer** or the **Developer’s** solicitor, stating the full name and address of the **Disponee**, the **Developer** will cause a copy of its standard form of deed poll and a copy of the

Building Covenants to be given to **you** or **your** solicitor for the purposes of **clause 3.1**.

4. Land Use

What you will not do

- 4.1 **You will not** use the **Land** for any purpose other than –
- (a) the construction of a **detached house** on it; and
 - (b) the subsequent occupation of that house as a single unit private dwelling.
- 4.2 **You will not** do anything if that thing is prohibited under the **Building Covenants** or under any **laws**.
- 4.3 **You will not** apply to the **Local Government** or to any other person which has jurisdiction over the **Land** to use the **Land** or any other part of the **Property** for a home-based business without the consent of the **Developer**.

What the Developer May Do

- 4.4 The **Developer** may refuse, arbitrarily or capriciously, to give its consent to the type of application referred to in **clause 4.3** or give its consent subject to conditions.

What you will do

- 4.5 **You will do** everything which the **Building Covenants** require **you** to do.
- 4.6 On demand, **you will** pay compensation to the **Developer** for any damage, loss or injury which the **Developer** suffers as a consequence of a **breach**.

5. Building Plans Approval, Refusal, Variations and Occupancy

What you will do

- 5.1 If **you** wish to **erect** a **proposed structure**, **you will** first –
- (a) give the **Developer** the **plans**; and
 - (b) fully complete and sign an **Application for Building Covenants Approval / Check List**; and
 - (c) give that application and check list to the **Developer**; and
 - (d) obtain the **Developer's approval** of the **plans**.
- 5.2 After completion of **building construction**, **you will** promptly give the **Developer** a set of as-built **Plans** for that **building construction** and a **builder's compliance certificate** in respect of those works, if the **Developer** gives **you** a written notice to do so.

What you will not do

- 5.3 Until **you** have complied with **clause 5.1**, **you will not** make application to the **local government** for approval to **erect** the **proposed structure**.
- 5.4 **You will not erect** a **proposed structure** unless and until –
- (a) **you** have complied with **clause 5.1**; and
 - (b) the **local government** has given **approval** for the erection of the **proposed structure**, if that approval is required at law.
- 5.5 **You will not** erect a **proposed structure** unless **you** comply with the **Building Covenants** in relation to that structure.
- 5.6 After **you** have obtained the **Developer's approval** of **plans**, **you will not** depart from those **plans**.
- 5.7 **You will not** occupy or otherwise use any **structure** on the **Land** –
- (a) unless the **structure** has reached the stage of **practical completion**, or
 - (b) if there has been a **breach** before the **structure** has reached the stage of **practical completion** and the **breach** has not been remedied or waived by the **Developer**.

What the Developer will not do

- 5.8 Subject to the **Building Covenants**, if **you** ask the **Developer** to approve **plans**, the **Developer will not** withhold its **approval**, unless –
- (a) the **Building Covenants** permit the **Developer** to do so; or
 - (b) the **Developer** is of the **opinion** that a **structure** built in accordance with those **plans** is not permitted by the **Building Covenants**; or
 - (c) the **plans** (if they are for a **house**) do not include **plans** for **complying fences** and a plan for **landscaping** for the curtilage of the **house**; or
 - (d) the **plans** show that more than twenty per centum (20%) of the external wall surfaces of the **proposed structure** will include **alternate materials**; or
 - (e) the **Developer** is of the **opinion** that the erection of the **proposed structure** will -
 - unreasonably prevent or interfere with any person's use or enjoyment of other land in the **Development**; or

- adversely impact upon the amenity of the **Development** or any part of it; or
- adversely affect the value of other land or houses in the **Development** or the sale price of vacant land or houses in the **Development**;
- result in a **house** of such a size as to be incompatible with the **Developer's preferred house sizes**.

6. Structures – Workmanship and Materials

What you will not do

- 6.1 **You will not erect** any **proposed structure** unless **you** erect it in a **workmanlike manner**.

7. External Wall Surfaces

What you will not do

- 7.1 If the **proposed structure** is to be a **house** or some other **structure** which is to have an external wall with a face brick surface, **you will not** build the wall unless the brick used in the wall is **standard size brick**.
- 7.2 If the **proposed structure** is to be a **house** or some other **structure** which is to have an external wall, **you will not** build the wall unless at least eighty per centum (80%) of its external surface will be –
- (a) brick with textured or smooth rendered mortar and painted finish; or
 - (b) concrete block with textured or smooth rendered mortar and painted finish.
- 7.3 If the **proposed structure** is to be a **house** or some other **structure** which is to have an external wall, **you will not** build any part of the wall out of **alternate materials** except to the extent shown on any **plans** which have the **Developer's approval**.

8. Roofs - Gable

What you will not do

- 8.1 If a **proposed structure** is a **house** or some other **structure** which is to have a gable roof, **you will not** build a gable roof which –
- (a) is a full end gable and is visible from the **front road**;
 - (b) is flush with the underlying wall or walls; or
 - (c) has a projection of less than 300mm; or

- (d) does not have relief and character (on the gable) in the nature of decorative trim or features.

- 8.2 If a proposed **structure** is to have a gable roof, **you will** obtain the **Developer's approval** of the decorative trim and features for the gable.

9. Roofs - Pitch and Eaves

What you will not do

- 9.1 If a **proposed structure** is to have a roof, **you will not** build the roof unless –
- (a) it has a pitch of 25 degrees or more, in the case of a **house**;
 - (b) it has a pitch of 25 degrees or more, in the case of any other **structure**;
 - (c) the eaves will be more than 450 millimetres, in depth, unless **you** obtain the **Developer's approval** to something less; and
 - (d) the roof material covering is –
 - colour concrete tiles; or
 - clay tiles; or
 - colourbond (or equivalent) non-reflective material with a custom orb profile.

- 9.2 But, if the **proposed structure** is to be a **garage** which is to be **built to boundary**, clause 9.1(c) will only apply so as to require eaves for a distance of 1.00 metre from the nearest **front building alignment**.

What the Developer will not do

- 9.3 If **you** ask the **Developer** to approve eaves which will be less than 450 millimetres in depth, the **Developer will not** withhold its **approval**, unless it is of the **opinion** that something less would not complement the architectural style of the **proposed structure**.

10. Painting

What you will not do

- 10.1 **You will not erect** a **proposed structure** unless, when **you** are doing so, **you** paint or stain all external parts of the structure which, according to best building practice, should be painted or stained.

11. High-Set or Suspended Floor House

What you will not do

- 11.1 **You will not** occupy any **house** unless **you** have enclosed that **structure**, fully, at ground level, in accordance with **plans approved** by the **Developer**.

What the Developer will not do

- 11.2 The **Developer** will not require **you** to enclose the extremities of a patio or similar outdoor living or entertainment area which forms part of the **structure**.

12. Excavation

What you will not do

- 12.1 **You will not** –

- (a) locate;
- (b) site;
- (c) design; or
- (d) build

on the **Land** any **structure** which does not take advantage of the natural slope conditions of the **Land**.

[For example - a split level house could be designed to follow natural slope conditions and to avoid ugly and expensive earthworks which may scar the natural landscape.]

- 12.2 **You will not** –

- (a) excavate; or
- (b) fill

any part of the **Land** so that its level is altered by more than 1 metre, unless –

- (c) **you** construct a wall, in conjunction with that work, to retain the excavation or fill; and
- (d) **you** have obtained the **approval** of –
 - (i) the **Developer**; and
 - (ii) the **local government** (if necessary)

for the construction of the wall.

- 12.3 **You will not** –

- (a) excavate; or
- (b) fill

any part of the **Land** so that its level is altered by less than 1 metre, unless **you** –

- (c) slope the gradient of any batter to 25 degrees or less (measured from a horizontal plane); and
- (d) completely turf and/or **landscape** the slope.

- 12.4 **You will not** –

- (a) excavate; or
- (b) fill

any part of the **Land** so as to alter the general surface drainage characteristics of the **Land**.

- 12.5 **You will not** –

- (a) excavate;
- (b) fill; or
- (c) dig or drill (except for the purposes of soil sampling)

any part of the **Land** before **you** have done everything which **you** are required to do under **clause 5.1**, including, in particular, obtaining the **Developer's** approval under **clause 5.1(d)**.

13. House Construction Delays

What you will not do

- 13.1 **You will not** delay beyond –

- (a) the first anniversary of the **date of possession**, the commencement of construction of a **house**; or
- (b) two months, any **stop-work period**; or
- (c) eight months, the total construction time, once **you** have commenced to construct a **house**.

14. House Removal

What you will not do

- 14.1 **You will not erect** any **house** or other **structure** on the **Land** if it has been moved from another place.

15. Storage and Disposal of Rubbish

What you will not do

- 15.1 **You will not** do anything which could cause the **Land** or any **other land** to become –

- (a) untidy; or
- (b) **contaminated**,
by **rubbish** –
 - (c) during the course of **building construction**; or
 - (d) at any other time.

- 15.2 **You will not** accumulate or place any **rubbish** on or near the **Land** in any manner which is contrary to **laws** or in any manner which permits the emission of odour or fumes.

- 15.3 **You will not** put any **rubbish** on **other land**.

- 15.4 Subject to and/or in accordance with any **laws**, except with the **Developer's approval**, after–

- (a) completion of **building construction**; and

- (b) occupation of the **Land** as a residence,

you will not use or locate on the **Land** any **rubbish receptacle** other than a domestic bin.

- 15.5 **You will not** use or locate any incinerator on the **Land**.

- 15.6 After the completion of **building construction**, **you will not** locate a **rubbish receptacle** on the **Land** so as to be visible from the **front road**.

What you will do

- 15.7 Subject to any **laws**, during –

- (a) the course of **building construction**; and
(b) at all other times,

you will store all **rubbish** in a **rubbish receptacle** on the **Land**.

- 15.8 During the course of **building construction** and at all other times, **you will** –

- (a) empty or remove any **rubbish receptacle** before it becomes overloaded; and
(b) dispose of the contents in accordance with the relevant **laws**.

16. Damage to Adjoining Roads and Lands

What you will not do

- 16.1 **You will not** damage any **other land**. In particular, **you will not** damage the surface of any **other land**.

What you will do

- 16.2 If any **other land** is damaged and –

- (a) **you** caused the damage;
(b) permitted the damage to be done; or
(c) the damage was done by a **contractor**

then, at your expense, **you will** repair the damage, immediately, and, in particular, **you will** –

- (d) relay, restore and/or replace any damaged turf; and
(e) water and otherwise cultivate any such relaid, restored and/or replaced turf until it is established.

17. Lawns and Gardens – Establishment

What you will do

- 17.1 As soon as reasonably practicable after completion of any **building construction**

which includes a **house**, **you will landscape** the **Land** and the **nature strip** by establishing lawns and gardens.

What you will not do

- 17.2 **You will not** plant any tree, shrub or bush on the **nature strip** unless –

- (a) the **local government** has given its **approval** for that planting;
(b) the **Developer** has given its **approval** for that planting; and
(c) the tree, shrub or bush is of the same species and variety as that planted by the **Developer** on other parts of the **road** of which the **nature strip** is part.

What the Developer may do

- 17.3 If **you** do not –

- (a) **landscape** the **nature strip** and that part of the **yard** which lies between the **house** and any **front road** within one (1) month after **practical completion** of a **house**, or, in any event, before **you** occupy or otherwise use the **house**; or
(b) **landscape** all of the **Land** and the **nature strip**, by establishing lawns and gardens, within two (2) months after **practical completion** of the **house**

a **breach** shall have occurred and the **Developer** may **landscape** the **nature strip** and enter upon the **Land** and **landscape** the **Land** or complete any such landscaping which had been commenced but not completed and recover the **cost of the works** from **you**.

18. Lawns and Gardens – Maintenance

What you will not do

- 18.1 **You will not** let any weed –

- (a) grow to maturity;
(b) grow out of control; or
(c) remain

on the **Land** or on the **nature strip**.

- 18.2 **You will not** let any **lawn** –

- (a) grow to a height in excess of 100 millimetres; or
(b) become or remain unsightly;
on the **Land** or its **nature strip**.

What you will do

18.3 **You will** regularly maintain and preserve according to good horticultural practices and in a proper and husband-like manner, all

- (a) **lawns**;
- (b) **lawn** edges; and
- (c) **gardens**

on the **Land** and on its **nature strip**.

18.4 **You will** replace any **trees, shrubs or bushes** which have –

- (a) been removed;
- (b) been damaged; or
- (c) perished

with trees, shrubs or bushes of the same or similar species and of the same of similar variety.

19. House Type

What you will not do

19.1 **You will not** build a **house** on the **Land** unless the width of the external face of the **house wall** (“**width measurement**”) is equal to or greater than three quarters of the width of the **Land** at the **front building alignment** of the **house**.

19.2 **You will not erect** a **house** on the **land**, unless –

- (a) the **house** includes at least two lock-up **garages**; and
- (b) the lock-up **garages** and the rest of the **house** are located under the same roof.

What you will do

19.3 **You will erect** either a single-storey or a two-storey **house** on the **Land**.

20. Carports

What you will not do

20.1 **You will not** construct a **carport** on the **Land**.

21. Sheds

What you will not do

21.1 **You will not erect** a shed on the **Land** unless **you** have obtained the **Developer’s approval** of the **plans** and specifications for that **structure**.

21.2 In **any** event, **you will not erect** a shed on the **Land** if, when it is constructed, it will be –

- (a) visible from the **road**; or

- (b) forward of any **front building alignment**.

21.3 **You will not** use any shed on the **Land** as a residence.

What the Developer may do

21.4 The **Developer may** withhold **approval** to the erection of a shed on the **Land** if the **proposed structure** does not satisfy the following criteria –

- (a) in the case of a shed which will have a floor area of less than eight (8) square metres, the cladding must be –
 - colourbond (or other similar material); and
 - predominately green in colour with a non-reflective surface; or
 - compliant with **clause 21.4(b)**.
- (b) in the case of a shed which will have a floor area of more than eight (8) square metres, the shed must be designed and constructed so as to complement –
 - in shape, the shape of the **house**; and
 - in materials and colour, the materials and colours used in the external wall surfaces and roof of the **house**.
- (c) the maximum floor area of the **proposed structure** must not exceed twenty (20) square metres.

22. Temporary Structures

What you will not do

22.1 Subject to **clause 22.2**, **you will not** bring onto or **erect** on the **Land** –

- (a) any temporary dwelling;
- (b) a caravan;
- (c) a privy; or
- (d) any other thing which may be or become an eyesore or a nuisance to any **person**.

What you may do

22.2 Subject to **clause 22.3**, **you may** bring onto or **erect** on the **Land**, during the course of construction of a **house** -

- (a) a shed;
- (b) a workshop; or
- (c) an office.

What you will do

22.3 If **you** bring onto or **erect** on the **Land**, during the course of construction of a **house** –

- (a) a shed;
- (b) a workshop; or
- (c) an office;

you will remove it immediately after completion of that **building construction**.

23. Pathways, Driveways and Crossings

What you will not do

23.1 **You will not** permit any weeds, leaves, branches, twigs, lawn clippings and other **rubbish** to grow or remain on any driveway, path or **crossing**.

What you will do

23.2 **You will** sweep away or otherwise remove all leaves, branches, twigs, lawn clippings and other **rubbish** from paths, driveways and **crossings** on or adjacent to the **Land**, regularly.

24. Verandas

What you will not do

24.1 **You will not** use any **veranda** for -

- (a) storage purposes; or
- (b) as a workshop.

25. Signs

What you will not do

25.1 **You will not** place or **erect** a sign on or near the **Land** or the **nature strip**, unless it is a **permitted sign**.

26. External Fixtures

What you will not do

26.1 **You will not** place, **erect** on or attach to the **Land** or any **structure** on the **Land**, any **external fixture** if it will be visible from a **front road**.

26.2 **You will not** place or **erect** on or attach to the **Land**, or any **structure** on the **Land**, any antenna or satellite dish if it will be forward of the main roofline at the rear of the **house**.

26.3 **You will not** place or **erect** on or attach to –

- (a) the **Land**; or
- (b) any **structure** on the **Land**, above ground level

any **prohibited satellite dish**.

26.4 **You will not** place or **erect** on or attach to the **house** any **prohibited solar module**.

27. Parking

What you will not do

27.1 **You will not** park any **motor vehicle** forward of the **front building alignment** unless **you** park it on the **driveway**.

27.2 **You will not** park any **motor vehicle**, caravan trailer, boat or other **vehicle** or **vessel** behind the **front building alignment**, unless **you** park it –

- (a) in a **garage**; or
- (b) in a location which is screened by **landscaping**

so as not to be visible from a **front road**.

27.3 **You will not** park any **vehicle** (other than a passenger car or utility) or any boat or other **vessel** on any **road** in the **Development** for any period in excess 12 hours during any period of 24 consecutive hours.

27.4 **You will not** park any **motor vehicle**, caravan, trailer, boat or other **vehicle** or **vessel** on any footpath or footpath crossing in the **Development**.

What you will do

27.5 If **you** park a passenger car or a utility on a **road** in the **Development**, you will do so in a lawful manner.

28. Display Homes

What you will not do

28.1 **You will not** use the **Land** for the purpose of a **display home** unless **you** have obtained the **approval** of –

- (a) the **Developer**; and
- (b) the **local government** (if necessary).

29. Driveways

What you will do

29.1 Before **you** occupy any **house** as a residence, **you will** build a driveway from its **garages** to the **front road** out of concrete with an exposed aggregate surface.

What the Developer may do

29.2 If you do not build a driveway from the **garages** to the **front road** in accordance with **clause** 29.1, a **breach** shall have occurred and the **Developer** may enter upon the **Land** and undertake that work or the completion of that work and recover the **cost of the works** from you.

30. Fences

What you will do

- 30.1 Subject to **clause 5.1**, **you will** build a **complying back fence**, a **complying back side fence** and a **complying return fence** before **practical completion** of a **house**.
- 30.2 If **you** do not do so and the **Developer** exercises its rights under **clause 30.7**, **you will** pay the **Developer**, on demand, the **cost of the works**.
- 30.3 If **you** build a **complying front fence**, then you must also build a **complying front side fence**.

What you will not do

- 30.4 **You will not** build a **fence** unless it will be a **complying fence**.
- 30.5 **You will not** build a **return fence** unless the **fence** is located more than 300 mm to the rear of the **front building alignment** which is nearest to the **boundary**.
- 30.6 **You will not** claim any contribution towards the cost of construction of a **complying front side fence** from an adjoining land owner.

What the Developer may do

- 30.7 If **you** do not complete the construction of **complying fences** before **practical completion** of a **house**, the **Developer** may enter upon the **Land** and construct or complete the construction of those **fences** and recover the **cost of the works** from **you**.

31. Animals

What you will not do

- 31.1 **You will not** keep on the **Land** -
- (a) a cat unless it is fitted with a collar and bell;
 - (b) a dog unless the **Land** has been fenced in a way –
 - which does not conflict with the **Building Covenants**; and
 - which will restrain the dog from leaving the **Land**;
 - (c) more than two of the one species of animal;
 - (d) any animal in contravention of any **laws** relating to the keeping or treatment of animals.

32. Trespassing

What you will not do

- 32.1 **You will not** –
- (a) trespass on **other land**;

- (b) enter upon any **other land** (other than a **road**) without the **approval** of the registered owner of that land;
- (c) damage the surface or any other part of **other land**.

33. Security Bond for Breach of Building Covenants

What you will do

- 33.1 On demand, **you will** pay a **Security Bond** to the **Developer** as security for the payment of any damage, loss or injury which the **Developer** may sustain if there is a **breach**.

What the Developer may do

- 33.2 The **Developer** may apply a **Security Bond** (or any part of it), which it receives or recovers from **you**, to satisfy (in whole or in part) –
- (a) any claim which the **Developer** may have against **you**, at any time, for a **breach** and whether the **Security Bond** was received in respect of that particular **breach** or otherwise; and
 - (b) any other debt which **you** owe to the **Developer**.

What the Developer will do

- 33.3 Before the **Developer** makes a demand for a **Security Bond**, a **breach** must have occurred and the **Developer** must have given **you** a written notice –
- (a) specifying the particular **breach** complained of; and
 - (b) if it is capable of remedy, requiring **you** to remedy the **breach**; and
 - (c) if the **Developer** seeks compensation in money for the **breach**, requiring **you** to pay that money
- and **you** must have failed to –
- (d) remedy the **breach** (if it is capable of remedy); or
 - (e) pay reasonable compensation to the **Developer** for the **breach**

within fourteen (14) days after the notice is given to **you**.

[**Note** – a written notice under this **clause 33.3** may be given in separate parts and at the same or different times. For example, the first part of such a notice may specify the particular **breach** complained of and require **you** to remedy it and another part may be given at the same or later time requiring **you** to pay compensation in money.]

- 33.4 The **Developer** will repay to **you** the balance (if any) of the **Security Bond** after

providing for the payment of any claim referred to in **clause 33.2**.

- 33.5 But, if a claim referred to in **clause 33.2** is otherwise satisfied, the **Developer** will repay the **Security Bond** or any balance of a **Security Bond** then held by the **Developer** unless there is an outstanding **breach** in respect of which the **Developer** would be entitled to make a demand under **clause 33.3**.

34. Breach of Building Covenants

What the Developer may do

- 34.1 To satisfy itself that **you** have complied with the **Building Covenants**, the **Developer** may –

- (a) at all reasonable times; and
- (b) upon giving **you** reasonable notice (except in an emergency when no notice need be given);

enter the **Land** and inspect the **Land** and **structures** on the **Land**.

- 34.2 The **Developer** may remedy any **breach** and, for that purpose, the **Developer** may enter the **Land** and –

- (a) remove any **structure**, chattel or animal; or
- (b) perform any works.

- 34.3 Without prejudice to the generality of any other provision in this Section, as liquidated damages, the **Developer** may recover from **you** any moneys (including costs of storage or disposal) which it spends in the exercise of the **Developer's** powers under the **Building Covenants**.

35. Variation of Building Covenants

What you will not do

- 35.1 **You will not** –

- (a) make any claim; or
- (b) commence or prosecute any proceedings (whether for injunctive relief or otherwise)

if the **Developer** makes a **Building Covenants variation**.

What you will do

- 35.2 If the **Developer** makes a **Building Covenants variation**, **you** will be bound by the **Building Covenants**, as varied, once the **Developer** gives **you** a copy of the **Building Covenants** as varied by the **Building Covenants variation**, except to the extent that **you** would be materially prejudiced by being so bound.

What the Developer may do

- 35.3 Subject to **clause 35.4**, the **Developer** may make a **Building Covenants variation**, at any time.

What the Developer will not do

- 35.4 The **Developer** will not make a **Building Covenants variation** if, in the **Developer's** opinion, the effect of the **Building Covenants variation** (if made) would be contrary to the **building scheme**.

36. Exit and Sunset Provisions

What you will do

- 36.1 **You will** –

- (a) observe;
- (b) perform; and
- (c) fulfil

all of your obligations under the **Building Covenants** until the **end date** to the extent that they require **you** to do or not to do any act or thing.

[**Note** – this **clause** is without prejudice to any rights or obligations which may have accrued to or against any **person** under or by virtue of the **Building Covenants** before the **end date**.]

What the Developer may do

- 36.2 At any time, the **Developer** may –

- (a) assign its rights and any of the obligations which it has under or by virtue of the **Building Covenants** to any **person**;
- (b) appoint, in addition to or in place of the **Developer**, any **person**, either by power of attorney or otherwise, to exercise any of the **Developer's** rights and powers (including the right to appoint a substitute or substitutes) under the **Building Covenants**;
- (c) appoint, in addition to or in place of the **Developer**, any other **person**, either by power of attorney or otherwise, to perform any function intended, by the **Building Covenants**, to be performed by the **Developer**; and
- (d) at any time, revoke any such appointment and substitute or appoint another **person** or **persons** in place of any such appointee.

- 36.3 The **Developer** may (but is not bound to) –

- (a) establish;
- (b) assist in; or
- (c) promote

the establishment of an association (whether incorporated or not) of owners of land in the **Development** for the purposes, amongst other things, of –

- (d) exercising any of the rights and powers which the **Developer** has under the **Building Covenants**; and/or
- (e) performing any function intended, by the **Building Covenants**, to be performed by the **Developer**.

[**Note** – the provisions of this **clause (if implemented)** are intended to have effect so that some **person** will continue to have power to give or withhold approvals under the **Building Covenants** if and when the **Developer** ceases to be the registered owner of any land in the **Development**.]

37. Charge on Land

You hereby charge the **Land** and all your estate and interest in the **Land** from time to time with the performance of your obligations under the **Building Covenants** and with the payment by **you** to the **Developer** of any **Security Bond** and all other moneys which **you**, whether by way of damages or otherwise, now or at any time in the future may become liable to pay to the **Developer** under or by virtue of the **Building Covenants**.

38. Appointment of Attorneys

- 38.1 **You** hereby appoint the **Attorneys** jointly and severally as your attorneys to do and suffer all such acts and things which ought to be done by **you** under the **Building Covenants** or which the **Developer** is authorised or empowered to do and also to execute all such documents and instruments, under any statute or otherwise, as the **Attorneys** in their absolute discretion think necessary or advisable for the purposes of exercising the powers granted to the **Developer** under or by virtue of the **Building Covenants**.
- 38.2 Any act or thing which the **Attorneys** are authorised to do under the powers conferred by **clause 38.1** may be done in your name (or in any other manner showing an intent to bind **you**) or in the name of the **Developer** or in the name of the **Attorneys**.
- 38.3 Without prejudice to or restriction of the generality of the powers conferred by this **clause 38**, the **Attorneys** are authorised and empowered to –
 - (a) execute, on your behalf, any consent or other instrument which may be required for the purposes of giving

full effect to anything which the **Attorneys** do or intend to do for the purposes of the powers conferred by **clause 38**; and

- (b) appoint a substitute or substitutes for all or any of the purposes mentioned above.
- 38.4 **You** agree to ratify and confirm everything the **Attorneys** or their substitute or substitutes shall lawfully do or cause to be done by virtue of the power of attorney created by **clause 38**.
- 38.5 **You** authorise the **Attorneys** to register the said power of attorney under any statute and to do whatever the **Attorneys** consider necessary to give validity and effect to it.
- 38.6 **You** declare that the **Attorneys** shall not be responsible for any loss which may happen in the exercise or as a consequence of the exercise of the powers conferred upon them by **clause 38**.
- 38.7 **You** declare that the power of attorney created by **clause 38** is irrevocable because it is granted for the purposes of securing the performance of obligations owed by **you** to the **Developer**.
- 38.8 The **Attorneys** shall not exercise any of the powers conferred upon them by **clause 38** unless the **Developer** shall have become entitled to make demand for a **Security Bond**.

[**Note** - Refer to **clause 33.3**]

39. Dictionary, Interpretation and Miscellaneous Provisions

- 39.1 In the **Building Covenants** –
 - “**Accredited Property Law Specialist**” means a lawyer who, at the relevant time, is accredited by the **Law Society** as a specialist in property law.
 - “**Alternate materials**” includes timber, textured panels and thermal cladding.
 - “**Application for Building Covenants Approval/Check List**” means the application/check list published by the **Developer**, from time to time, in conjunction with the **Building Covenants** for the purposes of assisting the **Developer** in examining and assessing **plans**, particularly for compliance with the **Building Covenants**.
 - “**approval**” means a written approval.
 - “**approved**” means approved by an **approval**.

“Attorneys” means the **Developer**, any director of the **Developer**, any secretary of the **Developer**, the Chief Executive Officer of the **Developer** and any solicitor for the **Developer**.

“back fence” means a **fence** which is located to the rear of the **front building alignment**.

“boundary” means a boundary of the **Land**.

“breach” includes any of the following –

- **your** failure to do or **your** threatening not to do something which the **Building Covenants** require **you** to do;
- something which the **Building Covenants** require **you** to do and which **you** have failed to do or which **you** have threatened not to do;
- **your** doing or **your** threatening to do anything which the **Building Covenants** require **you** not to do;
- anything which the **Building Covenants** require **you** not to do and which **you** have done or threatened to do;
- anything which the **Building Covenants** describe as a **breach**.

“builder” means any **person** engaged, from time to time, by **you** or on your behalf under any contract of service or contract for services, for the purposes of carrying out any **building construction**.

“builder’s compliance certificate” means a written statement addressed to the **Developer** and signed by a **builder** to the effect that **building construction** carried out by that **person** has been completed strictly in accordance with **plans approved** by the **Developer** for those works.

“building alignment” means the outside face of a **house wall** as is or would be drawn as a straight line on “as constructed” **plans** for the **house**.

“building construction” means works involving the erection of a **proposed structure** or of any other **structure**.

“Building Covenants” means the provisions of this Section as varied, from time to time, by a **Building Covenants variation** and includes those provisions as reproduced in booklet or other form from time to time.

“Building Covenants Deed Poll” means the deed poll referred to in **clause 3.1**.

“Building Covenants variation” includes an addition to or other amendment or a

repeal of anything in the **Building Covenants**.

“building-integrated” in relation to a **solar module** means a module which is integrated directly into a building in place of ordinary roofing materials – for example a ceramic or clay roof tile in what is known as a ‘BIVP’ system.

“building scheme” means the building scheme or schemes which the **Developer** has established for the **Development**.

“built to boundary” means built with a **zero set back** from the boundary.

“buy-back rules” means the rules set out in **clause 39.22**.

“Buyer” means the **person** who purchases the **Land** from the **Developer** and that **person’s** successors and assigns.

[for example, “Buyer” could mean any future registered owner of the **Land**]

“carport” means a detached carport or an attached carport on the **Land**.

“clause” means a clause in the **Building Covenants**.

“complying back fence” means a **fence** which will comply with all **laws** relating to fences and which will be on or near a **boundary** and be –

- constructed to a height of 1.8 metres; and
- constructed either of masonry or brick (rendered and painted) or of CCA treated timber with posts, three railings, palings and paling capping securely screwed to the upper rail.

“complying back side fence” means a **fence** which will comply with all **laws** relating to fences and which will be –

- on or near a side boundary of the **Land** and between the front building alignment and a rear boundary of the **Land**; and
- constructed of masonry or brick, (rendered and painted) to a minimum height of 1.8 metres or of CCA treated timber with post, railings, palings and paling capping to a minimum height of 1.8 metres.

“complying fence” means a **fence** which is –

- a **complying front fence**; or
- a **complying back fence**; or
- a **complying front side fence**; or
- a **complying back side fence**; or

- a **complying return fence**.

“**complying fences**” means all of the following –

- a **complying back fence**; and
- **complying back side fences**; and
- **complying return fences**.

“**complying front fence**” means a **front fence** which will comply with all **laws** relating to fences and which will be on or near a **boundary** and be constructed to a height of 1.6 metres and of brick, stone or rendered or painted masonry piers which have decorative infill panels and which, in the opinion of the **Developer**, are either in harmony with or complement the architectural design and the quality, style, colour, materials and aesthetics of any **house**.

“**complying front side fence**” means a **fence** which will comply with all **laws** relating to fences and which will be –

- on or near the side **boundary** of the **Land** between a **front building alignment** and a front **boundary** of the **Land**; and
- constructed solely of masonry or brick (rendered and painted) and have a minimum height of 1.6 metres and of brick, stone or rendered or painted masonry piers which have decorative infill panels and which, in the opinion of the **Developer**, are either in harmony with or complements the architectural design and the quality, style, colour, materials and aesthetics of any **house**.

“**complying return fence**” means a **return fence** which is –

- painted in the same colour as or a colour which in a reasonable opinion of the **Developer** compliments the colour of the **house**; and
- no higher than the adjacent **fence**.

“**contaminated**” means contaminated by a **hazardous contaminant**.

“**contractor**” means **your** invitees, licensees and contractors and other **persons** (other than trespassers) who are on or near the **Land** from time to time.

“**cost of the works**” means the aggregate amount of all expenses incurred by the **Developer** in carrying out any works on or near the **Land** in the exercise of a right or power conferred by the **Building Covenants** plus an amount equal to 15% of the amount of that aggregate to cover overheads and commission.

“**crossing**” means a crossing on a **nature strip**, being a crossing which has, as some of its main uses, use by **motor vehicles** and pedestrians.

“**Date for Completion**” means the date specified as the date for completion in a **Transfer Notice**.

“**date of possession**” means the date on which the **original occupier** became entitled to take possession of the **Land**.

“**deed poll**” means a document in or to the effect of the **Developer’s** standard form of deed poll from time to time which *inter alia* –

- will contain a waiver by the **Disponee** of any right to claim from the **Developer** a contribution towards the cost of building, maintaining or repairing any dividing fence between the **Land** and any adjoining land owned by the **Developer**; and
- may contain a promise by the **Disponee** in favour of the **Developer** that the **Disponee** will, in the future, observe and perform any of the ongoing contractual obligations of the **original occupier** to the **Developer**.

“**defined term**” means words or phrases which are defined or explained in **clause 39.1**.

“**detached house**” means a detached dwelling house.

“**Developer**” means Easterly Projects Pty Ltd ABN 14 104 780 618 and its successors and assigns.

“**Developer’s preferred house sizes**” means –

- for a two-storey **house**, one which has –
 - a **floor area** which exceeds 180 square metres (excluding the floor area of verandas, patios, porches, connecting breezeways and garages); and
 - a floor area on the upper level which exceeds, in measurement, 55% of the area of its **footprint**;**or**
- for a single-storey **house on a lot equal to or over 400 square metres**, one which has a **floor area** which exceeds 130 square metres (excluding the floor area of verandas, patios, porches, connecting breezeways and garages).
- for a single-storey **house on a lot under 400 square metres**, one which has a **floor area** which exceeds 120 square metres (excluding the floor area

of verandas, patios, porches, connecting breezeways and garages).

“**Development**” means the residential development known as “The Pocket” at Redlynch, Cairns, Queensland.

“**display home**” means a **house** used or intended for use for –

- displaying a type of dwelling that can be built; or
- displaying a dwelling as a prize.

“**Disponee**” means a **person** from whom **you** must procure a **deed poll** under **clause 3.1(b)**.

“**end date**” means the 31st day of December 2025.

“**erect**” includes undertaking any preparatory works for a **proposed structure**, for example, digging trenches or holes, excavating, filling, retaining, clearing and removal of vegetation.

“**external fixtures**” includes an air conditioning generator or condenser, tank, clothesline, antenna, satellite dish and **solar module**.

“**fence**” means a fence on or about the **Land** and includes a swinging, rotating, retracting or other type of gate.

“**footprint**” means a part of the **Lot** at ground level being a part which is designated on **plans** for use as a **house** and which is defined on the **plans** by the perimeter of the **house** (with verandas, patios, porches and connecting breezeways included).

“**front building alignment**” – see **clause 39.8**.

“**front fence**” means a **fence** which is located forward of the **front building alignment**.

“**front road**” means any **road** which is adjacent to the **Land**.

“**frontage**” means the common **boundary** between the **Land** and a **front road**.

“**garages**” means the garages which form or which are required by the **Building Covenants** to form part of any **house**.

“**hazardous contaminant**” has the same meaning as that expression has in the *Environmental Protection Act 1994* (Qld).

“**house**” means a **detached house** on the **Land**.

“**house-front**” means the external face of any **house wall** which faces a **front road**.

“**house wall**” means an external wall which forms part of a **house**.

“**Land**” means the lot which **you** have purchased in the **Development**.

“**landscape**” means (as a verb) the laying out of grounds so as to produce the effect of natural scenery and “**landscaped**” and “**landscaping**” bear similar meaning.

“**Law Society**” means the Queensland Law Society Inc.

“**lawn**” means any grass or similar ground cover on the **Land** or its **nature strip** which has been laid as turf and includes any weeds in that ground cover.

“**laws**” includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law or other instrument of subordinate legislation, present or future, and whether state, federal or otherwise.

“**letterbox**” means any receptacle on or about the **Land** which has the appearance of being for the purpose of mail delivery.

“**local government**” means the local government in whose area the **Land** is located.

“**mortar**” includes other types of grouting.

“**motor vehicle**” has the same meaning as that which the expression has in the *Transport Operations (Road Use Management) Act 1995* (Qld).

“**nature strip**” means that part of any **road** which adjoins the **Land** and which is designed or intended for pedestrian traffic or use and includes an appurtenant **lawn** or garden and a **crossing**.

“**neighbourhood**” means anywhere in the locality of the **Land**.

“**opinion**” means an opinion honestly held, whether reasonably or otherwise.

“**original occupier**” means **you**, if **you** purchased the **Land** from the **Developer**; otherwise it means the **person** who purchased the **Land** from the **Developer**.

“**other land**” means any land (including a **road**) in the vicinity of the **Land**.

“**permitted sign**” means a sign the dimensions of which do not exceed 900 mm x 600 mm and which either advertises -

- the name and other particulars of the builder of a **structure** on the **Land**; or
- the fact that a **house** is for sale or available for letting.

“**person**” includes a corporation and *vice versa*.

“**plans**” means the plans for a **proposed structure**.

“**practical completion**”, in relation to a **house**, means the practical completion stage as defined for the purposes of the *Domestic Building Contracts Act 2000* (Qld).

“**prohibited satellite dish**” means a satellite dish which –

- has a diameter of more than 650 mm; or
- would be visible from a **front road**.

“**prohibited solar module**” means a **solar module** which will –

- not match the colour of the roof to which it will be mounted;
- not be mounted so as to be and remain parallel to the roof plane; or
- be mounted so as to protrude more than 300 millimetres above the roof plane

but, for the avoidance of doubt, “**prohibited solar module**” does not include a **solar module** which is **building-integrated**.

“**proposed structure**” is a **structure** which you intend to **erect** on or about the **Land**.

“**return fence**” means a **fence** between a side **boundary** and a **house**, whether the fence incorporates a gate or not.

“**road**” has the same meaning as that which the expression has in the *Transport Operations (Road Use Management) Act 1995* (Qld).

“**rubbish**” includes contaminants, building debris or other waste or garbage.

“**rubbish receptacle**” means a bin, skip, cage or other vessel which is suitable for the temporary storage of **rubbish**.

“**Security Bond**” means \$30,000.00.

“**sell**” means sell, transfer, lease or otherwise dispose of or agree to do any of those things and what constitutes a “**sale**” of the **Land** for the purposes of the **Building Covenants** is the execution by **you** or on your behalf of a Contract or other document which creates in favour of any other **person** any equitable or legal estate or interest in the **Land**.

“**set back**” in relation to a building means the distance, measured horizontally, from the outermost projection of the building to the vertical projection of a boundary of land. If a building is built against a boundary it has a **zero set back**.

“**solar module**” includes a solar photovoltaic panel, a solar photovoltaic module, a solar thermal module, a solar hot water panel and any other apparatus which is designed or intended to generate electrical power from the sun.

“**standard size brick**” means a brick which measures 230mm x 110mm x 86mm.

“**stop-work period**” means any period of time after the commencement of construction of a **proposed structure** when, for any reason, substantial **building construction** is not carried out.

“**structure**” includes a **fence**.

“**Transfer Documents**” means a properly executed form of transfer under the *Land Title Act 1994* (Qld) required to transfer title in the **Land** and any other document necessary for the purpose of stamping or registering the transfer.

“**Transfer Notice**” means a notice in writing which states that a **buy-back event** has occurred and which identifies the **buy-back event** and complies with **clause 39.20**.

“**trees, shrubs or bushes**” means trees, shrubs or bushes which have been planted on the **Land** or the **nature strip**.

“**vehicle**” has the same meaning as that which the expression has in the *Transport Operations (Road Use Management) Act 1995* (Qld) and includes, amongst other things, a caravan, a mobile home, a motorhome, a camper van, a trailer and a camper trailer.

“**veranda**” means a veranda which forms part of a **house**.

“**vessel**” has the same meaning as that which the expression has in the *Transport Operations (Road Use Management) Act 1995* (Qld).

“**Waiver Notice**” means a notice in writing to the effect that the **Developer** waives its rights under **clause 2.5**.

“**width measurement**” – see **clause 19.1** and **clause 39.11**.

“**workmanlike manner**” includes a manner which is in accordance with best building practices and the use only of new materials of first class quality.

“**yard**” means that part or those parts of the **Land** which are not covered by a **house** or other structures.

“**you**” means the **Buyer**.

“**your email address**” means any address shown in the records of the **Developer** as the address for communication with **you** by email and if more than one such address is recorded, then, it means any address which appears in the most recent record.

“**your facsimile number**” means any number shown in the records of the **Developer** for the purposes of communicating with **you** by facsimile

transmission and if more than one such number is recorded, then it means any number which appears in the most recent record.

A derivative of a **defined term** has a corresponding meaning.

The singular includes the plural and *vice versa*.

If “**you**” is a reference to two or more **persons**, the **Building Covenants** bind all of **you**, together, and each of **you**, separately.

Likewise, if “**Buyer**” is a reference to two or more **persons**, the **Building Covenants** bind all of those **persons**, together, and each of them, separately.

- 39.2 **Clause 39.1** applies only to the extent that a contrary intention is not apparent.
- 39.3 If any **clause** has a heading, the heading is not to be taken into account in the construction or interpretation of the **clause** to which it is attached.
- 39.4 Where the **Building Covenants** say that **you will not** do something, it also means that **you will not** permit any **person** to do that thing and that **you** will prevent any **person** from doing that thing.
- 39.5 Where the **Building Covenants** say that **you will do** something, it means that **you will** either do that thing or cause it to be done by another **person**.
- 39.6 Whether a colour or other thing complements another colour or other thing or not is solely a matter for the **Developer’s opinion**.
- 39.7 If there is more than one **front road**, each **boundary** which abuts a **front road** is deemed to be a front **boundary**.
- 39.8 Any **building alignment** which faces a **front road** will be treated, for the purposes of the **Building Covenants**, as a **front building alignment**.
- 39.9 If a **house-front** cannot be represented graphically by one straight line, each part of the **house-front** that can be represented graphically by a straight line will be treated, for the purposes of the **Building Covenants**, as a separate **building alignment**.
- 39.10 For the purposes of the **Building Covenants**, a thing will be visible from a **front road**, if any part of it is capable of being seen, with the naked eye, from any point up to two (2) metres above any part of the surface of the **front road**.
- 39.11 In calculating a **width measurement** –
- (a) the width of the face of the **garage** wall, to the extent that it exceeds 6.5

metres, will not be taken into account;

- (b) the width of a wall opening, for example, for a door or a window, will be taken into account; and
- (c) the width of each **house-front** will be taken into account.

39.12 To establish a **home** on the **Land**, **you** will need to complete the construction of –

- (a) a **house** in accordance with the **plans** which have the **Developer’s approval**;
- (b) a driveway from the **garages** and **carport** (if any) to the **front road** in the way described in **clause 29.1**; and
- (c) **complying fences**

and you will need to **landscape** the **Land** and the **nature strip** by establishing lawns and gardens and, in particular, by turfing any part of the **yard** which lies between the **house** and any **front road** and by turfing the **nature strip**.

39.13 For the avoidance of doubt, the expression “external wall” does not include any **fence** which divides or which is intended to divide the **Land** from any adjoining land or **road**.

39.14 The **Developer** has the right to determine a **floor area** based on a particular design for a **house** in the event of a difference of opinion between **you** and the **Developer** over the area and that determination will bind **you**.

39.15 If the **Developer** makes an assignment or appointment under **clause 36.2**, all references in the **Building Covenants** to the **Developer** will be read as references to the assignee or to the appointee or substitute or substitutes during the term of their appointment, as the case may be.

39.16 Without prejudice to any other lawful method of giving or serving a written notice or other written communication which a **person** desires or is required to give to or serve upon **you**, for the purposes of the **Building Covenants**, that notice or communication will be deemed to have been given or served upon **you** if and when it is left in an envelope addressed to **you** in the **letterbox** or if and when it is placed under a door of a **house** or if and when it is otherwise placed on or attached to any **structure** on the **Land** or if and when a copy of it is sent to **your facsimile number** or if and when a copy of it is sent to **your email address**.

39.17 If **you** consist of two or more **persons**, any such written notice or other written communication which a **person** desires or is required to give to or serve upon **you** shall

be deemed to have been given to or served upon **you** if and when it is given to or served upon one of **you**, despite any subsequent giving or serving of the notice or communication to or upon the other or others of **you**.

39.18 For the avoidance of any doubt, **you** agree that **you** will have no rights against the **Developer** if the **Developer** makes a **Building Covenants variation**.

39.19 The **Developer** will withhold its **approval** to anything under the **Building Covenants** at any time or during any period when –

- (a) there is a **breach**; or
- (b) any **Security Bond** or compensation under the **Building Covenants** remains unpaid; or
- (c) the **Developer** has claimed but not recovered from **you** damages for a **breach**.

39.20 A **Transfer Notice** must specify a date for completion of the transfer pursuant to **clause 2.1** and that date must not be earlier than 4 months after the date upon which the **Transfer Notice** is given to the other party.

39.21 If a party has been given a **Transfer Notice** in respect of a particular **buy-back event**, that party is not entitled to give a **Transfer Notice** to the other party in relation to that event.

39.22 The **buy-back rules** are –

- (a) The date for completion of the transfer pursuant to **clause 2.1** (“**Date for Completion**”) shall be the date specified in the **Transfer Notice** as the date for completion but if the **Land Value** has not been agreed upon or determined by that date, the **Date for Completion** will be the date of the twentieth **Business Day** next following the date upon which the **Developer** receives written notice of the determination of the **Land Value**.
- (b) The **Developer** will pay the **Land Value** to you on or before the **Date for Completion** in exchange for any instrument of title for the **Land**, **Transfer Documents** capable of immediate registration after stamping, free from all encumbrances other than any to which the **Land** was subject when you acquired title to it and vacant possession of the **Land**.
- (c) Subject to **clause 39.22(g)** the **Land Value** shall be deemed to be the aggregate of the following –

- the price paid by **you** for the **Land** when you purchased it;
- the amount of transfer duty paid by **you** on the transfer of the **Land** to **you**;
- the amount of registration fees paid by **you** on the transfer of the **Land** to **you**.

(d) If there is a dispute about the **Land Value**, the **Land Value** must be determined by an **Accredited Property Law Specialist** appointed for that purpose by the President for the time being of the **Law Society** who shall act as an expert and not as an arbitrator and whose decision will be final and binding upon **you** and the **Developer**.

(e) The **Land Value** will be deemed to be GST inclusive.

(f) Transfer duty and registration fees on the transfer will be payable by the **Developer**.

(g) But if a **Transfer Notice** is given after the first anniversary of the date on which **you** became the registered owner of the **Land** or after there has been substantial commencement of construction of a **house**, the **Land Value** shall be the amount which is the higher of the following –

- the **Land Value** as determined in accordance with **clause 39.22(c)**; or
- **market value**.

(h) For the purposes of these **buy-back rules**, “**market value**” means the amount determined as the market value of the **Land** as at the date on which the **Transfer Notice** is given as determined by an appropriately qualified valuer appointed for that purpose by the President for the time being of the **Law Society**.

(i) Either **you** or the **Developer** may request the President of the **Law Society** to **appoint an Accredited Property Law Specialist** or a valuer for the purposes of the **buy-back rules**.

(j) **You** will pay one half of the fees of an **Accredited Property Law Specialist** or a valuer pursuant to the **buy-back rules** and the **Developer** will pay the other half.

(k) Any person so appointed shall act as an expert and not as an arbitrator and his or her appointment and decision

shall be final and binding upon the **Developer** and **you**.

39.23 **You** acknowledge and agree that on any and every occasion on which the **Developer** has the right to enter upon the **Land** under the **Building Covenants**, the **Developer** may enter the **Land** with tradespersons and labourers and take upon the **Land** any vehicle, plant, equipment or materials required for those purposes.

39.24 **You** acknowledge and agree that –

- (a) the **Building Covenants** are fundamental to the creation and preservation of the amenity, quality and value of the **Development** and that the existence of the **Building Covenants** enhances the **Development**, including, *inter alia*, from both the marketing and ownership perspectives.
- (b) if **you** do or attempt or threaten to do anything which is or would be a **breach**, the damage, loss or injury incurred or suffered by the **Developer** and/or the buyers of other lots in the **Development**, by reason of such a **breach**, will not be sufficiently or adequately compensated by a judgment, order or other award of damages or the payment of damages;
- (c) the **Developer** has the right to apply for and obtain injunctive relief against **you** in respect of any such **breach** despite the nature or amount of inconvenience which any such relief might cause to **you** or any other **person**;
- (d) any such injunctive relief shall be in addition to and not in lieu of or in limitation of any other remedy which the **Developer** may have by virtue of any agreement or otherwise at law or in equity;
- (e) any legal proceedings instituted against **you** by the **Developer** shall be brought in the courts at Brisbane;
- (f) the **Building Covenants** shall be governed by and construed in accordance with Queensland law;
- (g) **you** will submit to the non-exclusive jurisdiction of the Queensland courts regarding any claim or matter arising under the **Building Covenants**;
- (h) the **Developer** is not obliged to notify **you** of any reason for not giving or withholding an **approval** under the **Building Covenants**;

- (i) the injunctive relief for which the **Developer** has the right to apply includes an injunction forbidding the sale or completion of the sale of the **Land** if **you** have not complied with your obligations under **clause** 3.1.

39.25 If **you** become obliged to transfer the **Land** to the **Developer** under **clause** 2.1, **you** will execute, immediately upon request by the **Developer** a consent in the appropriate form to the lodgement of a caveat over the fee simple of the **Land** by the **Developer** claiming an estate or interest in fee simple in the **Land**.

39.26 On any and every occasion when the **Developer** obtains an injunction from any Court to restrain **you** and any **contractor** or **you** or any **contractor** from doing anything which is or would be a **breach** or to require **you** and any **contractor** or **you** or any **contractor** to remedy any **breach**, **you** hereby grant to the **Developer** the licence to –

- (a) enter upon the **Land**; and
- (b) to erect any sign or signs to advise other **persons**, but particularly, other **persons** who own other land in the **Development** of the injunction or injunctions having been granted and/or its or their effect.

39.27 If –

- (a) you are in **breach** of **clause** 27.3 or **clause** 27.4 and the owner or occupier of any lot in the **Development** makes a complaint to the **Developer** about the **breach**; or
- (b) in the opinion of the **Developer** the continuation of the **breach** may affect, adversely, the amenity of the **neighbourhood** or disrupt the passage of any pedestrian or vehicular traffic along or across any road or footpath in the **Development** or otherwise be or become a public nuisance or a source of annoyance to any person

you agree that, in addition to its right to demand and recover from **you** a **Security Bond** under **clause** 33 and its right to apply for and obtain injunctive relief against **you** under **clause** 39.24 in respect of a breach of **clause** 27.3 or **clause** 27.4, the **Developer** may (but is not obliged to) move any **motor vehicle**, caravan, trailer, boat or other **vehicle** or **vessel** which has been parked in breach of either of those **clauses** and store it at another place and recover the costs of such removal and storage from **you**.

39.28 If the **Developer** exercises a right under **clause** 39.27, **you** will release the

Developer from and keep the **Developer** indemnified from and against all claims losses and demands arising out of such removal or storage, including, without limitation, for damage to or loss of the property which it moved or attempted to move.

39.29 Without prejudice to the generality of any other obligation which **you** have under or by virtue of the **Building Covenants**, **you** will pay to the **Developer**, on demand, all moneys, costs, charges and expenses paid and liabilities incurred by the **Developer** (including legal costs, charges and expenses ascertained as between solicitor and own client) on or in connection with or incidental to considering or enforcing or attempting to enforce any of the rights and powers conferred, whether by the **Building Covenants**, at law or otherwise, upon the **Developer** in relation to any **breach**.

39.30 **You** acknowledge and agree that the **Building Covenants** shall take effect as if each **party** had executed this Contract as a deed.

