

Annexure A

Special Conditions of Sale

1. Definitions

1.1 In this Contract:

Adjoining Land means the means Lot 4 on Diagram 41398 and being the whole of the land comprised in Certificate of Title Volume 598 Folio 181A and, where the context requires, includes any part or parts of that land;

Amalgamated Land means the amalgamation of the Land and the Adjoining Land;

Approvals means all approvals of any description whatsoever required by the Buyer, in the Buyer's absolute and unfettered discretion, to amalgamate the Land with the Adjoining Land;

Buyer's Cost of Remediation means all costs incurred by the Buyer to:

- (a) investigate, contain and remove any Contamination:
 - (i) on the Property; and
 - (ii) any other property which has migrated from the Property; and
- (b) remediate any Contamination on:
 - (i) the Property;
 - (ii) any other property where Contamination has occurred which migrated from the Property,

to the satisfaction of the relevant authorities including the cost of any third party engaged by the Buyer in obtaining reports in respect of the Contamination.

Contamination means anything that presents or may present a direct or indirect risk or harm to human health or the Environment.

Development means the construction of commercial and/or retail buildings and associated infrastructure and services on the Amalgamated Land. The Buyer may in its absolute and unfettered discretion make any changes to the Development and to the Land provided that such changes are approved or required by any competent Authority;

Environment means all components of the Earth, including each and any combination of the constituents of:

- (c) the land, air and water and any living organism in any of them;
- (d) the atmosphere;

- (e) any organic or inorganic matter; and
- (f) structures, buildings and other human-made areas.

Force Majeure means, in relation to either Party, any circumstances beyond the control of that Party including, without limitation, any act of God, strike, lock-out or other interference with work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, expropriation, prohibition, intervention, embargo, unavailability or delay in availability of supplies, equipment or transport, refusal of or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations, that results in it being unable to perform in whole or in part any obligation under this Contract.

Land means Lot 5 on Diagram 41398 and being the whole of the land comprised in Certificate of Title Volume 1357 Folio 796 and, where the context requires, includes any part or parts of that land;

- 1.2 A covenant or agreement entered into or made by more than one person or persons and/or corporation or corporations shall be binding upon such person or persons and/or such corporation or corporations jointly and each of them severally.
- 1.3 The singular number includes the plural number and the masculine gender includes the feminine and neuter gender and vice versa.
- 1.4 The headings to these Special Conditions shall not affect the construction and interpretation thereof.
- 1.5 Nothing in this Contract is to be interpreted against a party on the ground that the party put it forward.
- 1.6 Reference to any statute or enactment (State or Federal) shall include all statutory amendments and re-enactments thereof for the time being in force and regulations or by-laws thereunder.
- 1.7 Wherever the term Land, is used in this Contract those terms shall, where the context permits, be construed as if the words "or any part thereof" were inserted immediately following each occasion upon which those terms are used.
- 1.8 Where there is any inconsistency between the 2011 General Conditions applying to this Contract and the Special Conditions, the Special Conditions will prevail.
- 1.9 Words of inclusion are not words of limitation.

2. Contract conditional

- 2.1 This Contract is subject to the condition precedent that the Buyer is satisfied, in the Buyer's absolute and unfettered discretion, of the results of the report of the investigations in respect of any Contamination on the Property or other properties where Contamination on those other properties has migrated from the Property (**Investigations Report**).

- 2.2 Should the Buyer not be satisfied, in its absolute and unfettered discretion, of the results of the Investigations Report, the Buyer may at any time up to one month after receiving the Investigations Report, by notice in writing ("Notice") terminate the Contract, whereupon the Contract shall be at an end.
- 2.3 If the Buyer does not deliver a Notice within the time specified in sub-clause 2.2, then the Buyer shall be deemed to have waived the benefit of the condition precedent in this clause.
- 2.4 The condition precedent in this special condition may be waived by the Buyer but not the Seller.
- 2.5 The Seller must provide reasonable access to the Buyer and the Buyer's agents, contractors and employees for the purposes of carrying out the investigations of any Contamination on the Property or other properties where Contamination on those other properties has migrated from the Property.
- 2.6 The Buyer must use all reasonable efforts to expeditiously:
- (a) arrange an inspection of any Contamination on the Property and other properties where Contamination on those other properties has migrated from the Property;
 - (b) procure an Investigations Report; and
 - (c) deliver a copy of the Investigations Report to the Seller.
- 2.7 If this Contract terminates under this special condition, then:
- (a) each party will be released from its obligations to further perform this Contract except for the obligations under this sub-clause (g);
 - (b) each party will retain its rights against the other in respect of any past breach of the Contract;
 - (c) the Seller, in accordance with special condition 10, shall pay to the Buyer, the Buyer's Cost of Remediation; and
 - (d) all moneys paid by the Buyer shall be repaid to the Buyer.

3. Development

The Buyer shall, as soon as practicable after Settlement, arrange for the construction of the Development, including applying for any required approvals for the Development.

4. Option to Repurchase

- 4.1 If at least three (3) years after Settlement the Buyer has not Commenced Construction of the Development and the Seller, acting in good faith, provides written notice to the Buyer requiring the commencement of the Development within six (6) months after such written notice to the Buyer and the Buyer has not commenced the Development after the expiration

of that notice the Seller shall have the option upon giving to the Buyer thirty (30) days notice in writing to re-purchase the Property for an estate in unencumbered fee simple in possession from the Buyer for the re-purchase price (as determined pursuant to special condition 4.2 hereof).

4.2 Subject to special condition 4.3, the re-purchase price to be paid by the Seller will be the higher of:

- (a) the Purchase Price; and
- (b) the current market value of the Property,

plus the Buyer's reasonable costs and expenses to re-subdivide the Amalgamated Land to remove the Land from the Amalgamated Land. For the sake of clarity, the amount of the rebate provided in special condition 6 shall not be deducted from the re-purchase price.

4.3 Any dispute as to the current market value of the Property will be determined by a valuer appointed by the President for the time being of the Australian Property Institute (Inc) Western Australian Division. The appointed valuer who will act as an expert and the valuer's decision will be final and binding on the Seller and Buyer.

4.4 The Buyer hereby charges the Property in favour of the Seller for the purpose of securing the Buyer's obligation to complete the Development and acknowledges and agrees that the Seller may lodge an absolute caveat against the title to the Property in respect of the option granted to the Seller pursuant to this Condition and the Buyer shall not take any action to remove such caveat. The option hereby granted shall continue notwithstanding any transfer or other dealing with the Property. The Seller will execute and lodge with Landgate a withdrawal of the caveat within 14 days after the Seller has been notified by the Buyer that the Development has Commenced Construction.

4.5 Upon the exercise of the option to re-purchase by the Seller under special condition 4.1:-

- (a) settlement shall take place on the date being thirty (30) days after the notice to re-purchase is given under special condition 4.1;
- (b) the Seller shall prepare and the Buyer shall execute a registrable transfer of the Property in favour of the Seller;
- (c) the re-purchase price as determined pursuant to special condition 4.2 shall be paid to the Buyer the transfer registered and possession given and taken on the date of settlement;
- (d) rates and taxes shall be adjusted as at the date of settlement;
- (e) the Seller shall pay the cost of the preparation and registration of the transfer and all stamp duties and registration fees; and
- (f) the Buyer shall sell the Property to the Seller free of all encumbrances except those existing at the date of Settlement of this Contract.

- 4.6 The consideration for the option to purchase hereby granted is the execution of the Contract.
- 4.7 In this clause **Commenced Construction** means the stage of construction where there is an initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

5. Contamination

- 5.1 The Parties acknowledge and agree that the Property may contain Contamination and that other properties may contain contamination which has migrated from the Property.
- 5.2 Subject to special condition 2, the Buyer agrees to undertake the following with respect to the Contamination on the Property and any Contamination on other properties which has migrated from the Property:
- (a) investigate the extent of any Contamination on the Property and on other properties where Contamination on those other properties has migrated from the Property;
 - (b) consult with the relevant authorities regarding remediation of any Contamination on the Property and on other properties where Contamination has migrated from the Property; and
 - (c) remediate any Contamination on the Property and on other properties where Contamination has migrated from the Property,

and may engage such consultants and contractors, that the Buyer considers are required, to undertake the matters referred to in special condition 5.2(a) to (c)

6. Settlement

- 6.1 Settlement shall take place on the day that is 20 Business Days after the later of:
- (a) the withdrawal of Memorial M035633 and any other limitation, interest, encumbrances and notification that may be on the title to the Property due to any Contamination on the Property; or
 - (b) the date the Buyer provides notice to the Seller that the Buyer is willing to proceed to Settlement with Memorial M035633 or any other limitation, interest, encumbrances and notification that may be on the title to the Property due to any Contamination on the Property remaining on the title to the Property.
- 6.2 The Parties acknowledge and agree that if Memorial M035633 is not to be removed and/or other limitation, interest, encumbrances and notification that may be on the title to the Property due to any Contamination on the Property is not to be removed, the Buyer may, by giving notice at any time, terminate this Contract and:
- (a) each party will be released from its obligations to further perform this Contract except for the obligations under this sub-clause 6.2;

- (b) each party will retain its rights against the other in respect of any past breach of the Contract; and
- (c) the Seller, in accordance with special condition 10, shall pay to the Buyer, the Buyer's Cost of Remediation
- (d) all moneys paid by the Buyer shall be repaid to the Buyer.

7. Rebate of Purchase Price

- 7.1 The Seller must allow to the Buyer, at Settlement, as a deduction of the Purchase Price, the Buyer's Cost of Remediation.
- 7.2 The Buyer shall, no later than 10 Business Days prior to Settlement, provide the Seller with an audited statement of the Buyer's Cost of Remediation.

8. Seller Warranties

The Seller represents and warrants to the Buyer as at Settlement (unless otherwise stated) that:

- (a) except in respect of any contamination referenced in Memorial M035633, there is nothing on the Land that presents or may present a hazard or a direct or indirect risk or harm to human health or to the environment, including, but not limited to, the soil, air and water and any living organism in any of them or in any structures or buildings or other improvements on the Land;
- (b) there is no litigation, prosecution, claim, investigation, arbitration or other proceeding in progress, pending or threatened against the Seller in respect of the Property which is material and the Seller is not aware of any circumstances which are likely to give rise to any such litigation, prosecution, claim, investigation, arbitration or other proceeding; and
- (c) there are no orders, notices or requirements of any government, governmental body or authority or provisions of any legislation affecting the carrying on of any business on the Land which have not been complied with and there are no proposals of any such body or authority known to the Seller which may result in any such order, notice or requirement being made or given.

9. Force Majeure

- 9.1 If either Party is affected by Force Majeure it must forthwith notify the other Party of the nature and extent thereof.
- 9.2 Neither Party is deemed to be in breach of this Contract, or otherwise be liable to the other, by reason of any delay in performance or non-performance, of any of its obligations under this Contract to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other Party and the time for performance of that obligation will be extended accordingly.

- 9.3 If the Force Majeure in question prevails for a continuous period in excess of six months, the Parties will enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

10. Buyer's Cost of Remediation

- 10.1 If, for any reason, Settlement does not occur and the Contract comes to an end, then in addition to any other rights the Parties may have, the Seller must, on termination of the Contract, pay to the Buyer, the Buyer's Cost of Remediation.
- 10.2 The Seller agrees to charge to the Buyer the Property to secure the payment to the Buyer of the Buyer's Cost of Remediation and agrees to do all that is necessary for the purpose of allowing the Buyer to lodge a subject to claim caveat against the Property to secure same.

11. GST

If any payment made by one party to any other party under or relating to this Contract constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breaches, termination, and indemnities arising from this Contract.

12. Confidentiality

- 12.1 The Parties, including their respective officers, employees and agents, must not (directly or indirectly) disclose to any person, or use or permit to be disclosed or used for any purpose other than a purpose contemplated by this Contract, the terms of this Contract or any matter or information whatsoever connected with the subject matter or the terms of this Contract except:
- (a) information that is in the public domain as at the Contract Date or subsequently enters the public domain without any breach of either party's obligations under this clause;
 - (b) as the Parties otherwise agree in writing;
 - (c) the information is required to be disclosed or used by employees in the proper performance of the obligations of this Contract;
 - (d) such disclosure is required by law or order of a court of competent jurisdiction or by order of an applicable governmental authority; or
 - (e) such disclosure is necessary for the purposes of the party receiving professional advice.
- 12.2 This clause 12 survives termination of this Contract.