



AVALON
AT BALDIVIS

Annexure "A"

1. Restrictive Covenants

1.1 The Lot is sold subject to the following Restrictive Covenants which will be registered against the Certificate of Title to the Lot prior to settlement:

"The registered proprietor covenants:

- (1) *Not to construct, erect or install or permit to be constructed, erected or installed on the Lot:*
 - (a) *Where the Lot is equal to or less than 500 square metres in area, any dwelling other than a single, private, non-transportable residential dwelling having a floor area of 100 square metres or more and being constructed predominantly of clay face brick, painted cement rendered brick or stone elevations. The area of the dwelling is to be calculated so as to exclude any areas comprised in any garages, storerooms, verandas, balconies, pergolas, alfresco areas and other out-buildings of any nature whatsoever;*
 - (b) *Where the Lot is greater than 500 square metres in area, any dwelling other than a single, private, non-transportable residential dwelling having a floor area of 140 square metres or more and being constructed predominantly of clay face brick, painted cement rendered brick or stone elevations. The area of the dwelling is to be calculated so as to exclude any areas comprised in any garages, storerooms, verandas, balconies, pergolas, alfresco areas and other out-buildings of any nature whatsoever;*
 - (c) *Any dwelling having a roof pitch of less than 24 degrees, or any dwelling with a roof constructed of zincalume or any other significantly reflective material;*
 - (d) *Any dwelling not having at least one feature (for example, a gable, bay window, verandah, portico, window hood) to the front façade to add visual interest;*
 - (e) *Any dwelling without, at the same time providing for a carport or garage for at least two motor vehicles, parked side by side, which:*
 - (i) *Includes a garage door sufficient to completely screen the interior of the garage or carport from the street;*
 - (ii) *Is built under the main roof of the dwelling, or constructed in a manner that matches the dwelling in respect of the design, materials used, roof pitch and external appearance, including colour and quality of appearance; and*
 - (iii) *Includes a driveway and cross-over constructed of brick paving or liquid limestone and extending to the road kerb in the same material;*

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- (f) *Any pergola or like structure which is visible from the street or road adjacent to the Lot or from adjacent lots unless the pergola or like structure is constructed of the same materials and of the same colour and style as the walls and the roof of the main dwelling constructed on the Lot;*
- (g) *Any retaining wall that faces a street frontage unless constructed of:*
 - (i) *the same brick or with the same finish as the walls of the main dwelling on the Lot; or*
 - (ii) *the same material used in the construction of retaining walls for the Estate;*
- (h) *Any fence forward of the front building line of the dwelling or any fence to the front boundary facing the street;*
- (i) *Any free-standing structure (including a garden shed) of 9 square metres or less, unless the structure:*
 - (i) *Is substantially hidden from public view from immediately adjacent streets and parks;*
 - (ii) *Is not constructed of zincalume or any other significantly reflective material; and*
 - (iii) *Does not project above the height of any surrounding boundary fence by more than 300mm.*
- (j) *Any free-standing structure (including a garden shed) of greater than 9 square metres but less than 36 square metres, unless such structure:*
 - (i) *Is substantially hidden from public view from immediately adjacent streets and parks;*
 - (ii) *Is not constructed of zincalume or any other significantly reflective material;*
 - (iii) *Does not project above the height of any surrounding boundary fence by more than 600mm; and*
 - (iv) *Has been approved in writing by the registered proprietor of each lot immediately adjoining and to the front and back of the Lot.*
- (k) *Any free-standing structure (including a garden shed) in excess of 36 square metres, unless the structure matches the dwelling in respect of materials used, design and external appearance including colour and quality of construction;*
- (l) *Any structure attached to the dwelling, unless the structure matches the dwelling in respect to materials used, design and external appearance including colour and quality of construction, unless it is hidden from public view;*

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- (m) *Any air conditioner or evaporative cooler except in accordance with the manufacturer's instructions and which is of a similar colour to the roof of the dwelling;*
- (n) *Any fence unless the fence is a powder coated steel fence the same or substantially similar to a "colorbond" fence, in a grey ridge colour.*
- (2) *Not to park or allow to be parked on the Lot or on the road reserve next to or adjacent to the Lot any Commercial Vehicle unless the Commercial Vehicle is housed or contained wholly within the Lot and hidden from public view.*
- (3) *Once a dwelling is completed, not to drive or allow to be driven any vehicles over the Lot unless those vehicles are driven over driveways or crossovers constructed on the Lot or for the purpose of ingress and egress to and from the Lot;*
- (4) *Not to conduct or permit to be conducted any repairs or restorations that take longer than 14 consecutive days to complete of any motor vehicle, boat, trailer, aircraft, or any other vehicle, on the Lot or any part other than wholly within a garage on the Lot or any part of the Lot;*
- (5) *Not to damage, alter, extend, build up or affect the visual appearance of any retaining wall or Estate wall on the Lot;*
- (6) *Not to allow the front yard and verge abutting the Lot to become overgrown or invaded by weeds or to allow any trees planted on the verge adjoining the Lot to fall into a state of disrepair or damage;*
- (7) *Not to erect or display on the Lot or adjoining verge any sign hoarding or advertising of any description whatsoever, except for professional signage advertising the sale or lease of a fully completed dwelling constructed on the Lot or advertising a business operating from the Lot, provided such sign does not exceed 500mm by 500mm in its dimensions. Any sign or advertising material erected or displayed on the Lot or adjoining verge in breach of this covenant may be removed without notice;*
- (8) *Not to permit or authorise any part of a dwelling constructed on the Lot to be used in any way directly or indirectly for any retail, business, commercial or non-residential purpose other than a business purpose which is quiet and unobtrusive and which does not in any way detract from the peace and enjoyment by other owners of lots in the Estate and the amenity of the Estate generally;*
- (9) *Not to raise, breed or keep or permit to be raised, bred or kept any insects, reptiles, animals, livestock or poultry on any part of the Lot provided that this restriction does not operate to prevent the registered proprietor of the Lot from keeping domestic pets on the Lot;*

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- (10) *Not to accumulate or permit to accumulate any rubbish or other waste material on any part of the Lot except in an appropriate waste container located in an appropriate area which is screened or concealed from view so as not to be visible from any street on to which the Lot fronts.*

*The above covenants ensure for the benefit of and run at law and in equity with every allotment on the plan of subdivision of which the Lot forms part until **31 December 2020** to the intent that the covenants bind the registered proprietor, its transferees, executors, administrators, successors in title and assigns for the benefit of the registered proprietor or proprietors of the remainder of the lots comprised in the plan of subdivision or any part or parts."*

- 1.2 The Buyer, for itself and its successors in title, covenants with the Seller to:
- (a) Observe and perform the Restrictive Covenants; and
 - (b) Indemnify the Seller from and against any breach or failure to observe and perform the Restrictive Covenants.
- 1.3 The Buyer acknowledges the Restrictive Covenants will only encumber lots on the Plan of Subdivision which the Seller intends as single residential lots. The Seller reserves the Seller's right in all things to create lots on the Plan of Subdivision which may be multiple dwelling lots and/or non-residential lots. Those lots will not be subject to the Restrictive Covenants.
- 1.4 The Seller advises the Buyer and the Buyer acknowledges that the Restrictive Covenants set out in Clause 1.1 are provisional only and are subject to alteration at the request of the City of Rockingham ("City") and / or the Western Australian Planning Commission ("WAPC") prior to Settlement. If alterations are required by the City and / or the WAPC, the Seller must advise the Buyer of the alterations, following which, if the alterations are material alterations and the Buyer can show that the alterations will materially affect the Buyer's right and ability to build on the Lot, the Buyer will be entitled, at any time up to seven (7) days thereafter, to terminate this Contract by notice in writing to the Seller, and the Seller will refund the Buyer's Deposit in full and neither the Buyer nor the Seller will have any further claim against the other. In the event that the Buyer, having received notice of the alteration, does not advise the Seller of its intention to terminate this Contract as provided above within the seven (7) days, the Buyer will be deemed to have accepted the alterations as if they were incorporated in full in this Contract.

2. Re-Survey and Set Backs

- 2.1 The Seller makes no warranty in relation to the accurate location of any survey pegs which may be on the land and is not obliged to maintain any survey pegs marking the boundary of the Lot. The Buyer agrees to bear the cost of any replacement pegs or resurvey required to identify the boundaries of the Lot.

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- 2.2 The Buyer acknowledges and agrees that owners of adjoining land will be permitted to construct a dwelling on the boundary of the Lot with a zero setback and that the Seller may provide such consent where the Lot is unsold at the time of receipt of the request from the adjoining buyer. The Seller is under no obligation to disclose the details of any consent provided to an adjoining land owner unless the Buyer makes a written request for such details to the the Project Manager.

3. Dividing Fences

- 3.1 Subject to Annexure B, if applicable, the Buyer:
- (a) covenants with the Seller that so long as the Seller remains registered as the proprietor of any land adjoining the boundaries of the Property, the Buyer will not make any claim against the Seller for any contribution to the cost of erecting any dividing fences or walls under the provisions of the Dividing Fences Act 1961 or otherwise howsoever including any sums or liabilities which the Seller may have incurred with any adjoining owners; and
 - (b) agrees that the provisions of this clause may be pleaded by the Seller as an absolute bar to any action for relief or claim for compensation made by the Buyer against the Seller.
- 3.2 Upon request, the Buyer will provide the Seller with details of all costs of such dividing fences or other information as may be required by the Seller to satisfy any inquiry in that regard by the Buyer of any other lot on the Plan of Subdivision.

4. GST Notification

Conditions 18.1 and 18.2 of the General Conditions are hereby excluded, and the Seller advises the Buyer and the Buyer acknowledges that the Seller elects to sell under the "Margin Scheme" as set out in Division 75 of A New Tax System (Goods and Services Tax) Act 1999 (Cth) and that the Purchase Price includes the Seller's liability to pay GST calculated under the Margin Scheme.

5. Clarification, Modification & Exclusion of General Conditions

- 5.1 Condition 4.2 of the General Conditions shall be modified to the extent that the Seller will not be liable to allow for compensation to the Buyer at the Prescribed Rate on the balance of the Purchase Price payable at Settlement for any reason.
- 5.2 (a) It is agreed that conditions 7.3, 7.4, 7.5 and 7.6 of the General Conditions shall not apply and that Land Tax shall be adjusted between the Seller and the Buyer irrespective of the purpose for which the land has been purchased.

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- (b) The Buyer is aware that the Seller is a land developer and as a consequence receives a bulk assessment from the Office of State Revenue (“Bulk Assessment”) for all land tax payable by the Seller in respect of its entire land holdings. Regardless of any clause in the General Conditions that might otherwise oblige the Seller to pay land tax in relation to the property at or prior to settlement the Buyer acknowledges and agrees that the Seller will not be required to pay any land tax in respect of the property until the Seller has received its Bulk Assessment. The Seller undertakes to the Buyer to pay its Bulk Assessment within the time frame stipulated for payment in the Bulk Assessment. The Buyer must pay the Buyer’s proportion of Land Tax at settlement.
- (c) If a separate land tax assessment is not issued for the Lot, the Land Tax to be apportioned will be calculated in accordance with the following formula and with reference to the Land Tax assessment for the land of which the Lot forms part:
- $$\frac{A \times B}{C}$$
- Where:*
A = land area of Lot
B = bulk assessment amount
C = land area in the bulk assessment
- (d) If a separate land tax assessment is issued for the Lot, the Land Tax to be apportioned will be the “Proportional Tax” value shown on the Certificate of Liability for Land Taxes and it is this amount that will be adjusted between the Parties irrespective of the single ownership value of the Lot or the fact that the Seller may own other land.

- 5.3 Clause 15 of the General Conditions is deleted and any error or misdescription in respect of the Property will be dealt with as set out in Clause 7 of this Annexure A.
- 5.4 Condition 24.18 of the General Conditions is deleted.
- 5.5 The Buyer, having made its own enquiries, agrees not to make any Requisitions on title to the Seller who makes no representations and gives no warranties in relation to the Lot other than those specifically contained in this contract and in the General Conditions.

6. Buyer’s Acknowledgements

The Seller advises the Buyer and the Buyer:

- (i) acknowledges; and
- (ii) undertakes to make any subsequent Buyer of the Lot aware via appropriate notifications in any sale contract for the Lot:

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- 6.1 That retaining walls and/or fences may have been erected by the Seller within the boundaries of the Lot. The Buyer acknowledges that it has satisfied itself as to the location and construction of the retaining walls and/or fences and any building restrictions which may result;
- 6.2 That the Buyer has satisfied itself with respect to the physical characteristics of the Lot, including (but not limited to) soil types, levels, slopes and vegetation and any impacts including (but not limited to) building restrictions or costs which may result;
- 6.3 That, in the event that the land the subject of this offer is a proposed residential lot to be created by subdivision:
- (a) The Seller shall use its best endeavours to complete the subdivision of the land of which the Lot forms part so as to create the Lot and achieve the issuance of a separate Certificate of Title to the Lot;
 - (b) The time period referred to in Clause 13.3(a)(1) of the General Conditions shall be altered to twenty four (24) months and the time period referred to in Clause 13.3(a)(2) of the General Conditions shall be altered to six (6) months;
 - (c) The Buyer shall not at any time prior to settlement of this Contract of Sale be entitled to caveat the Lot or any other property of which the Lot currently forms part;
 - (d) Notwithstanding the Settlement Date nominated in this Contract of Sale, settlement of the purchase of the Property by the Buyer cannot proceed until the Certificate of Title to the Lot has issued. The Buyer acknowledges that house construction may not commence until after settlement has taken place, and agrees that the Seller will not be responsible for any additional building costs or any other costs that may result from settlement being delayed until the Certificate of Title to the Lot has issued.
- 6.4 That the Project Manager may from time to time release the Buyer's name an address and information relating to the Buyer's purchase of the Property to buyers of the adjoining land, the Buyer's settlement agent, the Seller's settlement agent, the Buyer's finance broker, any lender to whom the Buyer has made an application for finance and any builder engaged by the Buyer or Seller in relation to the Property.

7. Errors & Misdescriptions

- 7.1 In this Clause:
- | | |
|-----------------|-------------------------------------|
| <i>Area</i> | means the area of the Property; |
| <i>Boundary</i> | means any boundary of the Property; |

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<i>Encumbrance</i>	means any legal restriction or encumbrance (including but not limited to easements) on the Property;
<i>Sales Plan</i>	means the plan attached to this Contract or previously given to the Buyer which identifies the Property; and
<i>Subdivision Plan</i>	means the subdivision plan or diagram approved by the Titles Office as being in order for dealings on which the Property is shown.

- 7.2 If the Area or a Boundary shown on the Sales Plan varies from that shown on the Subdivision Plan, such that the total Area varies by 5 square metres or less from the area shown on the Sales Plan the error or misdescription of the Property will not annul the sale and nor will such variation entitle the Buyer to compensation.
- 7.3 If the Area or a Boundary shown on the Sales Plan varies from shown on the Subdivision Plan, such that the total Area varies by more than 5 square metres from that shown on the Sales Plan, the Buyer may terminate the Contract by notice in writing to the Seller at any time up to 3 Business Days before the Settlement Date.
- 7.4 If the Buyer terminates the Contract under Clause 7.3, the Seller must return the Deposit to the Buyer and neither party shall have any claim against the other, nor will the Buyer have a claim against the Seller's Agent.
- 7.5 If the Buyer does not terminate the Contract under Clause 7.3, the Buyer will be deemed to be satisfied with the Property and the error or misdescription of the Property will not annul the sale and nor will the Buyer be entitled to compensation.

8. Finance

- 8.1 If in partial satisfaction of condition 1, of the Contract (Subject to Finance), a finance approval is obtained from the Lender before the Latest Time and such approval is expressed to be subject to any term or condition whatsoever ("the Conditional Approval") then the Seller may by notice in writing require the Buyer to waive the condition for such finance approval or tender an unconditional finance approval within 10 Business Days of the date of the Seller's notice to the Buyer.
- 8.2 If the Buyer fails to either provide an unconditional finance approval or waive the finance condition on the contract within 10 Business Days of the Seller's notice to the Buyer, the Seller may notify the Buyer that the Conditional Approval is insufficient and that finance approval is therefore deemed declined. The Contract will be at an end upon service of further notice by the Seller on the Buyer and all deposit monies paid shall be refunded.

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9. Settlement Date

Settlement is due 21 days from the date of title issue for the Property or the date stated on the Contract, whichever is later.

10. Assignment

- 10.1 The Seller is at liberty to assign its rights and obligations under this Contract.
- 10.2 The Buyer may not assign its rights and obligations under this contract without the prior written approval of the Seller, at the Seller's discretion, acting reasonably.

11. Variation

The Seller is at liberty to vary or waive any of the conditions of this contract with regard to the sale of any other lot in the Plan of Subdivision currently held by the Seller.

12. Entire Agreement

This Document constitutes the entire agreement between the Parties with respect to the subject matter of this Document and contains all of the representations, warranties and agreements of the Parties in relation to the subject matter of the Document as at the date of this Document, and each Party acknowledges that it has not relied on any oral statement, representation, undertaking or agreement made on or before the date of this Document relating to the subject matter of this Document and but which is not contained in this Document.

13. Landscaping

In addition to the requirement for the Buyer to comply with the Restrictive Covenants, the Buyer also agrees that the Buyer will landscape the front of the Lot to a standard reasonably required by the Seller within 3 months of the residential dwelling on the Lot being completed and occupied by the Lot owner or any other resident of the Lot, failing which the Seller may arrange to have the landscaping completed at the Buyer's cost.

14. No Merger

The matters set out in this Annexure A and the rights and obligations of the Parties will not merge on Settlement but will survive Settlement even if any Party has waived any rights under this Contract, or failed to take proceedings for any breach.



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15. Seller's Disclosure

The Buyer acknowledges and agrees that Terranovis Pty Ltd (as either Project Manager, the selling agent or both), and the directors and employees of Terranovis Pty Ltd may be related to or have a financial interest in the Seller.

16. Severance

If any part of this Contract is or becomes unenforceable or void or voidable, that part will be severed from this Contract and those parts that are unaffected will continue to have full force and effect.

17. Definitions

In this Contract unless the context otherwise requires:

Commercial Vehicles means trucks, utilities, caravans, boats, trailers, or any other mobile machinery;

Contract means the contract between the Buyer and the Seller which this annexure forms part;

Document means this contract as amended, varied or supplemented from time to time;

Dwelling means the dwelling house to be constructed by the Buyer on the Lot;

Estate means the estate comprising the lots on the Plan of Subdivision;

General Conditions means the 2011 Joint Form of General Conditions for the Sale of Land;

Lot means the lot being sold by the Seller and purchased by the Buyer pursuant to the Contract;

Parties means the Seller and the Buyer according to this Contract;

Plan of Subdivision means the plan of subdivision the registration of which creates or will create the Lot as a separate lot;

Project Manager means Terranovis Pty Ltd of Level 1, 1 Howard Street, Fremantle or PO Box 379 South Fremantle, WA 6162, Telephone 08 9435 3900 or Facsimile 08 9336 4672; and

Restrictive Covenants means the restrictive covenants set out in clause 1.1 of Annexure A.

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**Annexure "B"
REBATE**

1 If, and only if the Buyer completes (to the satisfaction of the Seller) the construction of the Dwelling in accordance with Annexure A, Condition 1 within EIGHTEEN (18) months from Settlement, but not otherwise, the Seller will:

1.1 Procure for the Buyer good quality landscaping and reticulation works ("Landscaping") to the front of the Lot to a maximum value of:

- (a) FOUR THOUSAND FIVE HUNDRED DOLLARS in the case of all corner lots (as determined by the Seller); and
- (b) THREE THOUSAND FIVE HUNDRED DOLLARS in the case of all other lots;

provided that:

- (c) The composition and extent of such Landscaping shall be at the discretion of the Seller and the maximum amount stated above may not be provided if in the Seller's opinion the front of the Lot does not require it;
- (d) Landscaping will be carried out at the direction of the Seller by a contractor or contractors nominated by the Seller;
- (e) The risk of all Landscaping (including but not limited to theft of plants or reticulation components, damage to any garden kerbing and the health of all plants and lawn areas) shall be at the sole risk of the Buyer from the time they are installed at the Lot;
- (f) Such landscaping works can be completed within six months of completion of the Dwelling and are thereafter maintained in good order by the Buyer.

1.2 Procure for the Buyer the provision and erection, by a contractor or contractors nominated by the Seller, of boundary fencing at the Lot in compliance with the Restrictive Covenants at a nominal height (not including the height of any retaining wall on which the fencing may be constructed) of 1.8 metres provided that:

- (a) Such fencing works can be completed within six months of completion of the Dwelling;

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- (b) Where there is a retaining wall along a boundary to be fenced, the fence may at the election of the Seller be erected on the inside of the high side of the retaining wall;
- (c) It is the Buyer's responsibility to ensure that the area of land to be fenced has been suitably retained;
- (d) For the purposes of this clause the Buyer hereby grants all reasonable access which may be required by the Seller, its servants, agents and contractors from time to time for the purpose of constructing the boundary fencing, and acknowledges that neither the Seller nor its servants, agents and contractors are required to consult with or otherwise obtain approval from the Buyer prior to the construction of a boundary fence on the Buyer's lot on behalf of the Buyer of any lot adjoining the Buyer's lot. Where boundary fencing is constructed pursuant to this condition, sections 7 to 13 (inclusive) of the *Dividing Fences Act 1961* shall not apply as between the Seller and the Buyer.

2 The benefits specified in Annexure B, Condition 1:

- 2.1 Are only available to the person or persons named as the Buyer in this contract; and
- 2.2 Are not available to the successors in title, assigns or personal representatives of the person or persons named as the Buyer in this contract.

3 Seller's Right to Reclaim Costs of Boundary Fencing

- 3.1 In the event that the Seller constructs any of the boundary fences described in Annexure B, clause 1.2 and in consideration of the Seller's undertakings in that regard, the Buyer hereby assigns to the Seller all of the Buyer's right, title and interest in any claims under the *Dividing Fences Act 1961* as amended ("Act") which the Buyer as the owner of the Lot might have against any owner of land adjoining the Lot ("Adjoining Owner") to claim the maximum amount payable by any Adjoining Owner to the Buyer under the Act ("Fence Contribution Amount") with respect to those boundary fences constructed by the Seller.
- 3.2 For the avoidance of doubt, the Buyer acknowledges and agrees that the Seller may take such action as the Seller sees fit for and in the name of the Buyer to recover a Fence Contribution Amount from any Adjoining Owner provided that all costs and fees in taking such action will be borne by the Seller.

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