**CONTRACT FOR SALE AND PURCHASE OF LAND**

**Lot [ ] on [ ]**

**SHIRE OF MINGENEW**

(“Seller”)

AND

**[ ]**

(“Buyer”)

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THIS CONTRACT is made the          day of                                                     20[ ]

BETWEEN

**SHIRE OF MINGENEW** of 21 Victoria Street, Mingenew, Western Australia and postal address PO Box 120, Mingenew, WA 6522 (“Seller”)

AND

**[ ]** of [ ] Western Australia (“Buyer”)

**RECITALS**

1. The Seller is the registered proprietor of the Land.
2. The Seller has agreed to sell and the Buyer has agreed to buy the Land at the Purchase Price.
3. The Buyer and Seller wish to formalise and document the terms and conditions of the sale and purchase of the Land as set out in this Contract.

**THE PARTIES COVENANT AND AGREE:**

# DEFINITIONS

Unless otherwise required by the context or subject matter:

**Business Day** means any day other than a Saturday, Sunday, public holiday in Western Australia, or 27, 28, 29, 30 or 31 December;

**Buyer’s Covenants** means all of the covenants, undertakings, warranties and obligations given or imposed on the Buyer in this Contract;

**Contract** means this Contract as varied, amended and supplemented from time to time;

**Contract Date** has the meaning given to it in the General Conditions;

**Encumbrance** means a mortgage, easement, restrictive covenant, notification, memorial or any charge over the Land;

**General Conditions** means the Law Society of Western Australia (Inc) and the Real Estate Institute of Western Australia (Inc) Joint Form of General Conditions for the Sale of Land (2018 edition) annexed as Annexure A to this Contract;

**GST** means the goods and services tax imposed by the GST Act;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* and any legislation replacing or amending that Act;

**Land** means the vacant land described in item 1 of Schedule 1;

**Purchase Price** means the purchase price specified in item 2 of Schedule 1;

**Schedule** means a schedule to this Contract;

**Settlement** means the settlement and completion of all the matters set out in this Contract to be performed by the Seller and the Buyer in accordance with this Contract;

**Settlement Date** means the date specified in item 3 of Schedule 1;

**Special Conditions** means the special conditions of contract set out in Schedule 2; and

**Transfer** has the meaning given to it in the General Conditions.

# INTERPRETATION

### Unless otherwise required by the context or subject matter, a reference to a party includes that party’s executors, administrators, personal representatives, successors and assigns, and if a party comprises two or more persons, the executors, administrators, personal representatives, successors and assigns of each of those persons.

### If a party comprises two or more persons, the covenants and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them.

### A reference to a statute includes a regulation, by-law, requisition or order made under that statute and any amendment to or re-enactment of that statute, regulation, by-law, requisition or order from time to time in force.

### Subject to any provision to the contrary, a reference to any other contract, agreement, instrument or deed includes a reference to that other contract, agreement, instrument or deed as amended, supplemented or varied from time to time.

### When the day or last day for doing an act is not a Business Day, the day or last day for doing the act will be the next following Business Day.

# SALE OF Land

The Seller shall sell, and the Buyer shall purchase, the Land for the Purchase Price free of Encumbrances.

# PURCHASE PRICE

(a) The Buyer shall pay the Purchase Price to the Seller on the Settlement Date.

(b) The parties acknowledge that if GST is payable on the Purchase Price the Buyer shall pay the GST in addition to the Purchase Price.

# GENERAL CONDITIONS

### The General Conditions are incorporated into this Contract except to the extent that they are varied by, or are inconsistent with, the express conditions of this Contract.

### Without limiting the generality of clause 5(a), the General Conditions are expressly varied as follows:

1. General Condition 1 is deleted;
2. For the purpose of General Condition 3.2(b), the “reasonable time before the Settlement Date” for delivery of the Transfer to the Seller shall be seven (7) Business Days (not including either the day on which the Transfer is received by the Seller or the day of Settlement);
3. General Condition 4 is deleted;
4. General Conditions 8.2 to 8.9 inclusive are deleted;
5. General Condition 9 is deleted;
6. General Condition 10 is deleted;
7. General Conditions 11.2(d) – (f) and 11.3 are deleted and the Buyer acknowledges that the Buyer is solely responsible for and shall pay all of the costs in relation to the connection of the Land to a Water Corporation sewer;
8. General Condition 14 is deleted;
9. General Conditions 15.3 to 15.5 inclusive are deleted;
10. General Condition 19 is deleted;
11. General Condition 17.4 is deleted; and
12. General Conditions 24.17 and 24.18 are deleted.

# TRANSFER

The Buyer will deliver to the Seller the Transfer in respect of the Land, duly executed by the Buyer, at least seven (7) Business Days before the Settlement Date. The Transfer must comply with the requirements of Landgate.

# SETTLEMENT

### Settlement of the sale is to take place no later than 4.00 pm on the Settlement Date at the offices of Landgate, Perth or as otherwise determined by the Seller.

# possession

Subject to the performance of all of the Buyer’s Covenants, the Buyer will be entitled to possession of the Land immediately following Settlement.

# COSTS AND OUTGOINGS

### Each Party is responsible for all of its own costs and expenses associated with the negotiation, preparation and execution of this Contract and the settlement of the sale of the Land.

### The Buyer shall pay:

#### the transfer duty (if any) pursuant to the *Duties Act 2008 (WA)*;

#### all costs associated with lodging the Transfer with the Office of State Revenue; and

#### the Landgate registration fee and subsequent requisition fees (if any) on the Transfer.

### The Seller shall pay all costs associated with the removal of any Encumbrances over the Land.

# MISCELLANEOUS

## Proper Law

This Contract is governed by the law in force in Western Australia, or where applicable, the Commonwealth of Australia and the parties consent to the jurisdiction of the courts of Western Australia.

## Time

Unless otherwise indicated, time shall be of the essence in all respects.

## Parties may act by agent

All acts and things which may be done by a party to this Contract may be done by a solicitor, agent, employee or contractor of that party.

## Variation

This Contract may not be varied except in writing signed by each party.

## Further assurances

Each party to this Contract must execute and do all acts and things necessary to give full force and effect to this Contract.

## Effect of execution

This Contract binds each person who executes it notwithstanding the failure by any other person to execute this Contract.

## 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 shall continue to have full force and effect.

## Entire Agreement

This Contract constitutes the entire agreement of the parties of the matters dealt with in this Contract and supersedes all prior agreements, understandings and negotiations in respect of the matters dealt with in this Contract.

## No Moratorium

The provisions of any statute which extends a date for paying any money under this Contract or which abrogates, nullifies, postpones or otherwise affects any provision of this Contract shall not apply to limit the terms of this Contract.

## Counterparts

This Contract may be executed by any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

## Assignment prior to Settlement

## A party may not assign or transfer any of its rights or obligations under this Contract without obtaining the prior written consent of the other party.

## Special Conditions

The Special Conditions form part of this Contract.

**SCHEDULE 1**

**ITEM 1 LAND**

### Lot [ ] on Deposited Plan [ ] being the whole of the land comprised in Certificate of Title Volume [ ] Folio [ ] and being situate and known as [ ], Mingenew, Western Australia.

**ITEM 2 PURCHASE PRICE**

$[ ]

**ITEM 3 SETTLEMENT DATE**

The date for Settlement shall:

### be determined by the Seller; and

### be no earlier than thirty (30) Business Days after the Contract Date; and

### be notified by the Seller to the Buyer in writing.

**SCHEDULE 2**

**SPECIAL CONDITIONS**

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**THE PARTIES AGREE:**

**DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In these Special Conditions:

**Approval** means an approval, consent or permission that the Buyer requires from an Authority in order to:

* + 1. carry out the Development; or
    2. permit the structure(s) constructed as part of the Development to be occupied,

including any development approval or building licence;

**Authority** means any government, statutory, public or other authority or body having jurisdiction over the Land or any matter or thing relating to the Land including, without limitation, the Seller in its capacity as a local government;

**Development** means the construction of a dwelling on the Land by the Buyer and all associated works;

**Repurchase Price** means the price payable for the Land if the Seller exercises its option to repurchase the Land from the Buyer under clause 6.3, and shall be the repurchase price specified in clause 6.6 of these Special Conditions;

**Written Law** has the meaning given to that term in the *Interpretation Act 1984* (WA); and

Any other terms used but not defined shall have the meaning given to them elsewhere in this Contract.

1. **DISCRETION OF SELLER IN ITS CAPACITY AS AN AUTHORITY**

The parties agree and acknowledge that nothing in this Contract shall fetter or be construed as an attempt to fetter the discretion or the powers of the Seller, in its capacity as an Authority, under any Written Law and in particular does not fetter the Seller in its capacity as a local government with regard to the approval or imposition of conditions on any Approval required for the Development or the carrying out of any works by the Buyer in accordance with this Contract.

1. **BUYER’S ACKNOWLEDGEMENTS**

3.1 The Buyer represents and warrants to the Seller that the Buyer was entitled prior to the Contract Date to inspect the Land and had the opportunity to conduct a due diligence and has satisfied itself in relation to matters arising from any inspection and due diligence.

3.2 As a result of the Buyer's due diligence, and its own inspection and enquiries, the Buyer:

1. has satisfied itself with respect to the physical characteristics of the Land, including soil types, levels, slopes and vegetation and any impacts including building restrictions or costs which may result;
2. is satisfied as to the nature, quality and condition of the Land;
3. is satisfied as to the location of the boundaries of the Land and any easement or encumbrances affecting the Land;
4. is satisfied about the purpose for which the Land may be used and about all restrictions and prohibitions on its development; and
5. is satisfied as to the fitness and suitability of the Land for the Buyer’s purposes, including the Development.
6. **NO REPRESENTATIONS OR WARRANTIES EXCEPT IN CONTRACT**

4.1. The Buyer represents and warrants that, in entering into this Contract, the Buyer has not relied on any statement, representation or warranty or other conduct which may have been made by the Seller about its subject matter except those expressly included in this Contract.

4.2. To the full extent permitted by law, all warranties, representations, terms and conditions implied by statute or otherwise on the part of the Seller in relation to the Land are expressly excluded.

1. **CONDITION OF LAND**

The Land is sold as it stands as at the Contract Date and the Buyer takes the Land in an “as is, where is” condition.

1. **COMPLETION OF DEVELOPMENT**

6.1. The Buyer must complete the Development within two (2) years of the Contract Date (“**Latest Completion Date**”).

6.2. The Buyer’s obligation in clause 6.1 of this Special Condition will be satisfied upon the Buyer giving a notice in writing to the Seller within two (2) years of the Contract Date confirming that the Development has been completed by the Latest Completion Date. If such notice is not given to the Seller by the Buyer within the specified time then the Buyer will be taken to have failed to complete the Development by the Latest Completion Date.

6.3. If the Buyer has not completed the Development by the Latest Completion Date, the Seller shall have an option to repurchase the Land and all improvements to the Land at the Repurchase Price.

6.4. The Seller may exercise its option under clause 6.3 of this Special Condition by giving the Buyer twenty one (21) Business Days’ notice in writing (“**Repurchase Notice**”) that it wishes to repurchase the Land from the Buyer for the Repurchase Price.

6.5. To exercise the option to repurchase, the Seller must serve the Repurchase Notice on the Buyer no later than ninety (90) calendar days after the relevant Latest Completion Date.

6.6. The repurchase price to be paid by the Seller will be one hundred per cent (100%) of the Purchase Price paid for the Land by the Buyer plus the value or the cost (whichever shall be the lesser) of any buildings or other authorised improvements constructed on the Land by the Buyer, or for and on behalf of the Buyer, provided that such costs can be substantiated by receipts or some other form of proof of payment that is acceptable to the Seller.

6.7. Any dispute as to the value created or the cost of any improvements constructed or effected by the Buyer on the Land will be referred to a single arbitrator to be appointed in accordance with the provisions of the *Commercial Arbitration Act* 2012. The Seller and the Buyer will each pay fifty per cent (50%) of the arbitrator’s costs and the arbitrator’s decision will be final and binding on the Seller and the Buyer.

6.8. The Settlement of the repurchase of the Land must occur within ninety (90) calendar days after the Repurchase Price has been determined either by agreement of the parties or in accordance with clause 6.7 of this Special Condition.

6.9. The contract for the repurchase of the Land shall incorporate the General Conditions, excepting conditions 4.1, 10 and 14, and shall be prepared by the Seller’s solicitors.

6.10. Each party will pay its own legal costs in relation to the preparation, negotiation and execution of the repurchase contract. However, the Buyer shall pay all other costs and disbursements of and incidental to the repurchase of the Land by the Seller, including (without limitation) the Seller’s solicitor’s costs, settlement agent fees and Landgate registration fees.

1. **SALE OR MORTGAGE OF LAND**

7.1. The Buyer shall not sell, assign, transfer or otherwise dispose of or lease, sub-lease, mortgage, charge, encumber or part with possession of the Land or any part thereof or any estate or interest in the Land or in this Contract prior to the Latest Completion Date without first obtaining the consent in writing of the Seller.

7.2. The Seller shall not unreasonably withhold its consent to a mortgage or other encumbrance if:

* + 1. the person or company to whom the mortgage, charge or encumbrance is to be granted (the Mortgagee) executes a deed of covenant to which the Buyer is a party in such form as the Seller’s solicitor shall approve (which shall be prepared by the Seller’s solicitors at the cost and expense in all respects of the Buyer) and which shall contain covenants by the Mortgagee that such Mortgagee (so long as it has any interest in the Land) shall:-
       1. comply in all respects with the Buyer’s Covenants as if named as a party to this Contract;
       2. in the exercise of any power under its security, not sell or otherwise dispose of the Land without the prior written approval of the Seller such approval not to be withheld if the transaction does not materially prejudice the Seller’s rights pursuant to this Contract; and
       3. in the event of the exercise of the option to repurchase by the Seller pursuant to clause 6.3 discharge any security taken over the Land in exchange for the payment of the Repurchase Price; and
    2. all moneys then due and payable by the Buyer under this Contract have been paid and there shall not then be any existing unremedied breach of the Buyer’s Covenants; and
    3. the mortgage or other encumbrances does not materially prejudice the Seller’s rights pursuant to this Contract.

7.3. The Buyer shall not without the prior written consent of the Seller hold the Buyer’s interest in the Land or this Contract on trust for any party nor declare a trust of the Buyer’s interest pursuant to this Contract.

1. **SECURITY FOR PERFORMANCE OF BUYER’S OBLIGATIONS**
   1. The Buyer charges the Land in favour of the Seller as security for the performance by the Buyer of the Buyer’s Covenants and the options granted to the Seller pursuant to clause 6 of these Special Conditions.
   2. The Buyer agrees that, subject to clause 8.3, the Seller may lodge an ‘absolute’ caveat over the Land pursuant to clause 8.1.
   3. Provided that the withdrawal and re-lodgement of the caveat does not materially prejudice the Seller’s rights pursuant to this Contact or the Seller’s ability to effectively enforce the Buyer’s Covenants and the options granted by this Contract the Seller will, as and when required to enable the Buyer to fulfil its obligations under this Contract, withdraw and re-lodge the caveat at the cost of the Buyer at such times as may be necessary to enable the Buyer to fulfil its obligations under this Contract
   4. The Seller will execute for collection by the Buyer a withdrawal of the caveat upon the completion of the Development in accordance with clause 6.1.
2. **DISPUTE RESOLUTION**

9.1. Disputes

Where there is a dispute or difference (“**Dispute**”) between the parties arising in connection with this Contract (including its construction and the rights conferred and obligations imposed by it), any party involved in the dispute may give notice at any time to the other party to the dispute setting out the matters that are the subject of the Dispute (“**Dispute Notice**”).

9.2. Good Faith Meeting

* + 1. Within seven (7) Business Days of receipt of a Dispute Notice, the Seller and the Buyer agree that a representative on behalf of the Seller and a representative on behalf of the Buyer must meet together to resolve the Dispute in good faith and acting reasonably.
    2. Both parties are committed to use their reasonable endeavours to resolve any Dispute under this clause without first resorting to termination of the agreement evidenced by this Contract or by litigation.
    3. If the parties fail to resolve a Dispute under this clause, the parties will submit the Dispute to mediation with a LEADR accredited mediator (“**Mediator**”).

9.3. Mediation

* + 1. The mediation must be conducted on the following terms:
       1. the Mediator will assist the parties to explore the options for and, if possible, achieve expeditious resolution of the Dispute by agreement;
       2. the Mediator will not make decisions for a party or impose a solution on the parties;
       3. the Mediator will not obtain from any independent person advice or an opinion as to any aspect of the Dispute unless:

(A) the Mediator is requested in writing by both parties to do so;

(B) both parties have agreed upon the identity of the independent person to give such advice or opinion; and

(C) both parties have agreed on who will be responsible to pay for the costs or fees in relation to the advice provided by the independent person;

* + 1. both parties will co-operate in good faith with the Mediator and each other during the Mediation;
    2. each party will use its reasonable endeavours to comply with reasonable requests made by the Mediator to promote the efficient and expeditious resolution of the Dispute;
    3. the mediation, including all preliminary steps, shall be conducted in such manner as the Mediator considers appropriate having regard to the nature and circumstances of the Dispute, the agreed goal of an efficient and expeditious resolution to the Dispute and, to the extent that the Mediator may deem appropriate, to the view of each party as to the conduct of the mediation;
    4. the proceedings, discussions and all documents created during the course of the mediation and all things said or disclosed during the course of the mediation shall be privileged and shall for the purposes of any future matters or actions between the parties be without prejudice save to the extent that the parties shall reach an enforceable agreement;
    5. if, after consultation with the parties, the Mediator forms the view that the Mediator will be unable to assist the parties to achieve resolution of a Dispute, the Mediator may immediately terminate its engagement as mediator by giving written notice to the parties of that termination, upon which the Mediator’s role shall cease;
    6. the mediation shall be terminated immediately upon the earlier of:
       1. execution of a settlement agreement in respect of the Dispute; and
       2. ten (10) Business Days after the appointment of the Mediator; and
    7. the costs of the mediation shall, unless otherwise agreed by the parties, be paid equally by the Seller and the Buyer.

9.4. Not to Limit Right to Enforce

* + 1. Nothing in this clause will prevent either party from exercising any right pursuant to this Contract, or their right to commence legal proceedings in any court of appropriate jurisdiction, as a consequence of any default arising under this Contract.
    2. This clause does not prevent a party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.
    3. Despite the submission of a Dispute to mediation or the reference of a Dispute to arbitration, the parties must continue to perform their obligations under this Contract.

EXECUTED BY THE PARTIES.

***Executed by the Seller:***

THE COMMON SEAL of the )

**SHIRE OF MINGENEW** )

was hereunto affixed in the presence of: )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Shire President

Print Name:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Chief Executive Officer

Print Name:

***Executed by the Buyer:***

EXECUTED by the said )

**[ ]** )

in the presence of: )

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

EXECUTED by the said )

**[ ]** )

in the presence of: )

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

**ANNEXURE A**

**GENERAL CONDITIONS OF CONTRACT**