

“CHERRYBROOK”
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. Sale Provisions

What you will not do

- 2.1 **You will not sell** the **Land** or any estate or interest in the **Land** to any person unless –
- (a) **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
 - (b) 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

- 2.2 If **you** sell the **Land** or any estate or interest in the **Land** to any **person**, **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

- 2.3 **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 2.1**.

3. Land Use

What you will not do

- 3.1 **You will not** use the **Land** for any purpose other than –
- (a) the construction of a **dwelling house** on it; and
 - (b) the subsequent occupation of those premises as a residence.
- 3.2 **You will not** do anything if that thing is prohibited under the **Building Covenants** or under any **laws**.

What you will do

- 3.3 **You will do** everything which the **Building Covenants** requires **you** to do.
- 3.4 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**.

4. Building Plans Approval, Refusal, Variations and Occupancy

What you will do

- 4.1 If **you** wish to erect a **structure** on the **Land**, **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**.
- 4.2 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 they involve a **dwelling house** and the **Developer** gives **you** a written notice to do so.

What you will not do

- 4.3 Until **you** have complied with **clause 4.1**, **you will not** make an application to the

local government for approval to erect a **structure** on the **Land**.

4.4 **You will not** erect a **structure** on the **Land** unless and until –

- (a) **you** have complied with **clause 4.1**; and
- (b) the **local government** has given **approval** for the erection of the **structure** on the **Land**, if that approval is required by **law**.

4.5 **You will not** erect a **structure** on the **Land** unless **you** comply with the **Building Covenants** in relation to that structure.

4.6 After **you** have obtained the **Developer's approval of plans**, **you will not** depart from those **plans** without the **Developer's approval**.

4.7 **You will not** occupy or otherwise use any **structure** on the **Land** –

- (a) unless the **structure** has reached the stage of **practical completion**;
- (b) unless, if the structure is a **dwelling house**, the **Land** has been **fenced**, and **landscaped** and **you** have built a **driveway**; or
- (c) if **you** are in breach of any of the **Building Covenants**.

What the Developer will not do

4.8 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** permits 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 **dwelling house**) do not include **plans** for **fencing** and **landscaping**; or
- (d) the **plans** for **fencing** do not comply with the **Building Covenants Outline**; or
- (e) the **plans** (if they are for a **dwelling house**) do not include a design for the provision of adequate **visual privacy** for any person who occupies or who, in the future, may occupy **adjoining land**; or
- (f) 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**; or
- result in a **dwelling house** of such a size as to be incompatible, in the **Developer's** opinion, with the **Developer's preferred house sizes**.

5. Structures – Workmanship and Materials

What you will not do

5.1 **You will not** erect any **structure** on the **Land** unless **you** erect it in a **workmanlike manner**.

6. External Wall Surfaces

What you will not do

6.1 If a **structure** which is proposed for the **Land** is to be a **dwelling 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**, namely, a brick which measures 230mm x 110mm x 86mm.

6.2 If a **structure** which is proposed for the **Land** is to be a **dwelling house**, **you will not** build –

- (a) its **façade** unless it is built out of two (2) or more **feature materials**; and
- (b) its other **house walls** out of one or more **feature materials**.

7. Roofs - Pitch and Eaves

What you will not do

7.1 If a **structure** which is proposed for the **Land** is to have a roof, **you will not** build the roof unless –

- (a) it has a pitch of 5.0 degrees or more, in the case of a **dwelling house** with a skillion roof;
- (b) it has a pitch of 22.5 degrees or more, in the case of a **dwelling house** which has a hipped roof;

- (c) it has a pitch of 22.5 degrees or more in the case of any other **structure**;
- (d) the eaves will be 450 millimetres or more, in depth, unless **you** obtain the **Developer's approval** to something less; and
- (e) the roof is clad in non-reflective finished standard corrugated profile metal.

7.2 But, if the **structure** is to be a **garage** which is to be **built to boundary**, **clause 7.1(d)** 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

7.3 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**.

8. Painting

What you will not do

8.1 **You will not** erect a **structure** on the **Land** 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.

9. Excavation

What you will not do

9.1 **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**.

9.2 **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.

9.3 **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.

9.4 **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**.

9.5 **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 4.1**, including, in particular, obtaining the **Developer's approval** under **clause 4.1(d)**.

10. House Construction Delays

What you will not do

10.1 **You will not** delay beyond –

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

11. House Removal

What you will not do

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

12. Storage and Disposal of Rubbish

What you will not do

12.1 **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.
- 12.2 **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.
- 12.3 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 or green waste bin.
- 12.4 **You will not** use or locate any incinerator on the **Land**.
- 12.5 After the completion of **building construction** of a **dwelling house**, **you will not** locate a **rubbish receptacle** on the **Land** so as to be visible from the **front road** at the **frontage**.
- 12.6 After the completion of **building construction** of a **dwelling house**, **you will not** locate or permit to remain on the **Land** any object other than garden furniture so as to be visible from the **front road** at the **frontage**.

What you will do

- 12.7 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**.
- 12.8 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**.

13. Damage to Adjoining Roads and Lands

What you will not do

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

What you will do

- 13.2 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.

14. Lawns and Gardens – Establishment

What you will do

- 14.1 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.
- 14.2 In particular, **you will** plant, maintain and preserve on that part of the **yard** which lies between the **house** and any **front road** (according to good horticultural practices and in a proper and husband-like manner) two (2) shade trees which must –
- (a) be a specimen size in excess of 45 litres; and
 - (b) be mulched to a diameter of 1 metre at the trunk (at ground level); and
 - (c) not be of a palm tree species or type.

What you will not do

- 14.3 **You will not** plant any tree 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 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.
- 14.4 You will not plant any shrub or bush on the **nature strip**.

What the Developer may do

14.5 If **you** do not –

- (a) **landscape** the **nature strip** and that part of the **yard** which lies between the **house** and any **front road** before **practical completion of building construction** of the **house**; or
- (b) **landscape** all of the **Land**, 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**.

15. Lawns and Gardens – Maintenance

What you will not do

What you will do

15.1 **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**.

15.2 **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 or similar variety.

15.3 **You will** replace any tree which has –

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

on the **nature strip** with a tree of the same or similar species and of a same or similar variety.

16. House Type

What you will not do

16.1 **You will not** build a **dwelling house** on the **Land** unless the width of the **house-front** including eaves (“**width measurement**”) is-

- (a) equal to or greater than eighty percent (80%) of the width of the **Land** at the **front building**

alignment of the **dwelling house**, if the width of the **frontage** which is nearest to that alignment is 14 metres or less; or

- (b) equal to or greater than seventy-five percent (75%) of the width of the **Land** at the **front building alignment** of the **dwelling house**, if the width of the **frontage** which is nearest to that alignment is greater than 14 metres.

16.2 **You will not** erect a **house**, unless –

- (a) the **house** includes 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

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

17. Carports

What you will not do

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

18. Sheds

What you will not do

18.1 **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**.

18.2 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** at its **frontage**; or
- (b) forward of any **front building alignment**.

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

What the Developer may do

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

- (a) in the case of a shed which will have a floor area of eight (8) square metres or less, the cladding must be non-reflective finished standard corrugated profile metal.
- (b) in the case of a shed which will have a floor area of more than eight (8)

square metres and not more than twenty (20) square metres –

- the cladding must be non-reflective finished standard corrugated profile metal;
- the **Land** must be a **pre-approved lot**
- the shed must be adjacent to but not on a **common boundary**.

- (c) The maximum floor area of the **structure** must not exceed twenty (20) square metres.

19. Temporary Structures

What you will not do

- 19.1 Subject to **clause 19.2**, **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

- 19.2 Subject to **clause 19.3**, **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

- 19.3 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**.

20. Verandas

What you will not do

- 20.1 **You will not** use any **veranda** for –
- (a) storage purposes; or
 - (b) as a workshop.

21. Signs

What you will not do

- 21.1 **You will not** place or erect a sign on or near the **Land** or the **nature strip**, unless it is a

permitted sign.

22. External Fixtures

What you will not do

- 22.1 **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** at the **frontage**.
- 22.2 **You will not** place or erect on or attach to the **Land**, or any **structure** on the **Land**, any antenna or satellite dish unless it is located below the main roofline and to the rear of the **dwelling house** on the **Land**.
- 22.3 **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**.
- 22.4 **You will not** place or erect on or attach to any **structure** on the **Land** any **prohibited solar panel**.
- 22.5 **You will not** erect or place on the **Land** more than one **letterbox** or other receptacle for the receipt of mail.

23. Parking

What you will not do

- 23.1 **You will not** park any **motor vehicle** forward of the **front building alignment** unless **you** park it on the **Driveway**.
- 23.2 **You will not** park any caravan, trailer, boat or **other vehicle** or **vessel** on the **Land** so as to be forward of the **front building alignment**.
- 23.3 **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** at the **frontage**.
- 23.4 **You will not** park any **vehicle** (other than **motor vehicle**) or any boat or other **vessel** on any **road** in the **Development** for any period in excess of 12 hours during any period of 24 consecutive hours.
- 23.5 **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

23.6 If **you** park a motor **vehicle** on a **road** in the **Development**, **you will** do so in a lawful manner.

24. Display Homes

What you will not do

24.1 **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).

25. Driveways

What you will do

25.1 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

25.2 If **you** do not build a driveway from the **garages** to the **front road** in accordance with **clause 25.1**, 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**.

26. Fences

What you will do

26.1 Subject to **clause 4.1**, **you will fence** the **Land** before **practical completion** of a **house**.

26.2 If **you** do not do so and the **Developer** exercises its rights under **clause 26.4**, **you will** pay the **Developer**, on demand, the **cost of the works**.

What you will not do

26.3 **You will not** build a **fence** unless it will be a **complying fence**.

What the Developer may do

26.4 If **you** do not complete the construction of the **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**.

27. Animals

What you will not do

27.1 **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 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.

28. Trespassing

What you will not do

28.1 **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**; or
- (d) deposit **rubbish** on **other land**.

29. Structures to be built to boundary on adjoining land

What you will not do

29.1 If the **building envelope plan** for **adjoining land** indicates that part of a structure may be **built to boundary** on that land, **you will not** object to the building of that structure or obstruct or attempt to prevent or delay the building, in any other way.

What you will do

29.2 For the purposes of the building of a structure of the kind referred to in **clause 29.1** and thereafter for the maintenance and repair of the structure, **you will** give the **owner** of the **adjoining land** and that person's contractors and workers a licence or licences to enter upon the **Land** (with or without vehicles, machinery, equipment, tools and building materials) free of charge and otherwise on reasonable terms and conditions, including as to times and duration of access and compensation for damage to the **Land**.

What the Developer may do

29.3 If

- (a) **you** do not grant a licence of the kind referred to in **clause 29.2**; or
- (b) in the **opinion** of the **Developer**, **you** do not grant it on reasonable terms and conditions

then, by written notice given to to **you**, the **Developer** may grant the licence on your behalf and/or prescribe the terms and conditions which are to apply to the licence

and, if it does so, you will be bound by the grant and/or the terms and conditions, as the case may be.

30. Security Bond for Breach of Building Covenants

What you will do

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

What the Developer may do

30.2 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** 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

30.3 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** 30.3 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.]

30.4 The **Developer** will repay to **you** the balance (if any) of the **Security Bond** after providing for the payment of any claim or other debt referred to in **clause** 30.2.

30.5 But, if a claim or other debt referred to in **clause** 30.2 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** 30.3.

31. Breach of Building Covenants

What the Developer may do

31.1 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**.

31.2 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.

31.3 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**.

32. Variation of Building Covenants

What you will not do

32.1 **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

32.2 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

32.3 Subject to **clause 32.4**, the **Developer** may make a **Building Covenants variation**, at any time.

What the Developer will not do

32.4 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**.

33. Exit and Sunset Provisions

What you will do

33.1 **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

33.2 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.

33.3 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**.]

34. 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**.

35. Appointment of Attorneys

35.1 **You** hereby appoint the **Attorneys** jointly and severally your attorneys to do and suffer all such acts and things which ought to be done by **you** under the **Building Covenants** or by or under 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**.

35.2 Any act or thing which the **Attorneys** are authorised to do under the powers conferred by **clause 35.1** 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**.

35.3 Without prejudice to or restriction of the generality of the powers conferred by this **clause 35**, 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 35**; and
- (b) appoint a substitute or substitutes for all or any of the purposes mentioned above.

35.4 **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 35**.

35.5 **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.

35.6 **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 35**.

35.7 **You** declare that the power of attorney created by **clause 35** is irrevocable because it is granted for the purposes of securing the performance of obligations owed by **you** to the **Developer**.

35.8 The **Attorneys** must not exercise any of the powers conferred upon them by **clause 35** unless the **Developer** shall have become entitled to make demand for a **Security Bond**.

[Note - Refer to **clause 30.3**]

36. Dictionary and Interpretation

36.1 In the **Building Covenants** –

“**adjoining land**” means a lot which is in the **Development** and which has a boundary in common with the **Land**.

“**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**.

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

“**breach**” includes –

- **your** failure to do something which the **Building Covenants** requires **you** to do;
- **your** doing anything which the **Building Covenants** requires **you** not 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 **structure** on the **Land**.

“**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 form, online or in other form from time to time.

“**Building Covenants Deed Poll**” means the deed poll referred to in **clause 2.1**.

“**Building Covenants Outline**” means a document so titled and published by or on behalf of the **Developer** for the **Development** and includes any reproduction in booklet form, online or in other form, as varied from time to time.

“**Building Covenants variation**” includes an addition to or other amendment or a repeal of anything in the **Building Covenants**.

“**building envelope plan**” means a building envelope plan which has been or is approved as part of the development approval which attaches to the **Land** under the Planning Act.

“**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.

“**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**.

“**common boundary**” means a boundary between the **Land** and **adjoining land**.

“**complying fence**” means a fence which is built or is to be built in accordance with **plans** which have been approved by the **Developer** under **Clause 4**.

“**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 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 36.1**.

“**Developer**” means Walker Road Pty Ltd ABN 86 122 861 367 and its successors and assigns.

“**Developer's preferred house sizes**” means for lots in the **Development** which contain areas of 600 square metres or more –

- for a two-storey **house**, one which has –
 - a floor area which exceeds 210 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**, one which has a floor area which exceeds 145 square metres (excluding the floor area of verandas, patios, porches, connecting breezeways and garages).

“**Developer's preferred house sizes**” means for lots in the **Development** which contain areas of less than 600 square metres –

- for a two-storey **house**, one which has –
 - a floor area which exceeds 190 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**, one which has a floor area which exceeds 125 square metres (excluding the floor area of verandas, patios, porches, connecting breezeways and garages).

“**Development**” means the residential development known as “Cherrybrook” at Bentley Park, 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 2.1(a)**.

“**driveway**” means a driveway built in accordance with clause 25.

“**dwelling house**” means a stand-alone house and includes a dwelling house and a **secondary dwelling**.

“**end date**” means the 31st day of December 2035.

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

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

“**façade**” includes the front door but does not include windows (frames or panes), roller or tilt doors or other door types;

“**feature materials**” means **standard size brick**, stained or painted timber, painted pre-finished fibro-cement panel, cladding, tile and painted and rendered masonry.

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

“**fencing**” means the construction of **fences** on the **Land**.

“**fenced**”, in relation to the **Land**, means that **fences** have been constructed in accordance with **plans** approved under **Clause 4**.

“**footprint**” means a part of the **Land** 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 36.8**.

“**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 stand-alone 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.

“**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**” means a motor car, station wagon or utility which is built or fitted to carry no more than eight (8) persons, including the driver and which is not more than 4.5t gross vehicle mass.

“**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**.

“**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**.

“**other vehicle**” means any type of transport that moves on wheels but does not include a **motor vehicle**.

“**owner**” in relation to land, means a person who, for the time being and from time to time, is or is entitled to be registered as owner of an estate in fee simple.

“**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*.

“**Planning Act**” means the Planning Act 2016 (Qld).

“**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).

“**pre-approved lot**” means a lot which appears in the Sales Plan and which is identified on that plan as being approved for shed construction.

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

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

“**prohibited solar panel**” means a **solar panel** 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

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

“**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 and other waste (including green waste) or garbage.

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

“**secondary dwelling**” means a dwelling that–

- (a) is on the same lot as a stand-alone house;
- (b) can be self-contained;

(c) can be detached or attached to the stand-alone house;

(d) is subordinate to the stand-alone house and is smaller in size; and

(e) is in all other respects, a “secondary dwelling” as that term is defined for the purposes of the **Town Plan**.

“**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 panel**” 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 **structure** on the **Land** when, for any reason, substantial **building construction** is not carried out for that structure.

“**structure**” includes a **fence**.

“**Town Plan**” means the planning scheme for the time being for the area of the **local government**.

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

“**vehicle**” and includes, amongst other things, a caravan, a mobilehome, a motorhome, a camper van, a trailer and a camper trailer.

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

“**vessel**” means a boat, punt and any kind of vessel used or apparently designed for use on water whatever may be its means of propulsion.

“**visual privacy**” means the quality or condition of being secluded from the gaze or view of or surveillance by others.

“**width measurement**” – see **clause 16.1** and **clause 36.11**.

“**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.

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** binds all of **you**, together, and each of **you**, separately.

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

36.2 **Clause 36.1** applies only to the extent that a contrary intention is not apparent.

36.3 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.

36.4 Where the **Building Covenants** says 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.

36.5 Where the **Building Covenants** says that **you will do** something, it means that **you will** either do that thing or cause it to be done by another **person**.

36.6 Whether a colour or other thing complements another colour or other thing or not is solely a matter for the **Developer’s opinion**.

36.7 If there is more than one **front road**, each **boundary** which abuts a **front road** is deemed to be a front **boundary**.

36.8 Any **building alignment** which faces a **front road** will be treated, for the purposes of the **Building Covenants**, as a **front building alignment**.

36.9 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**.

36.10 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** at the **frontage**.

36.11 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;
- (c) the width of each **house-front** will be taken into account; and
- (d) the length of any eave to the extent that it protrudes beyond the end of a **house wall** which faces a **front road** will be taken into account.

36.12 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** to the **front road** in the way described in **clause 25.1**; 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**.

36.13 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**.

36.14 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**.

36.15 If the **Developer** makes an assignment or appointment under **clause 33.2**, 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.
- 36.16 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 email address**.
- 36.17 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**.
- 36.18 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**.
- 36.19 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**.
- 36.20 **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.
- 36.21 **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 as regards 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 2.1.
- 36.22 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) 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.

36.23 If –

- (a) you are in **breach** of **clause 23.4** or **clause 23.5** 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 30** and its right to apply for and obtain injunctive relief against you under **clause 36.21** in respect of a breach of **clause 23.4** or **clause 23.5**, 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**.

36.24 If the **Developer** exercises a right under **clause 36.23**, **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.