

# Building Covenants Capestone Estate



BETWEEN: **KINSELLA HEIGHTS DEVELOPMENTS PTY LTD** hereafter called "The Seller"

AND: \_\_\_\_\_

hereafter called "The Buyer"

## 1.00 PRELIMINARY

### Building Covenants

- 1.1 The Buyer acknowledges that the land is part of a premier residential subdivision being developed by the Seller and it is desirable in the interests of all Buyers of lots in the subdivision that the Seller exercises supervision and control to ensure that a high standard of design and construction of dwellings on the subdivision is maintained.
- 1.2 As a result of the Seller's desires and intentions in this regard the Seller has also produced Capestone Housing Design Guidelines (hereinafter called 'the Guidelines') which set out inter alia design controls for dwellings being built on the Estate and which form part of these Building Covenants as provided for in Clause 4 hereof. A copy of the Guidelines is annexed hereto.
- 1.3 In consideration of the execution of the Contract of which this schedule forms part, the Buyer covenants and agrees to the building covenants (which are deemed to incorporate the Guidelines).
- 1.4 The Buyer acknowledges that these covenants are given by the Buyer for the benefit of the Seller, and may be forced by or at the direction of the Seller (whether named in the contract or not).

### Information Supplied by Seller

- 1.5 Any information supplied by or on behalf of the Seller is supplied for the convenience of the Buyer and does not form part of the Contract. The accuracy of any information supplied is not warranted by the Seller and the Buyer acknowledges that it has entered into this Contract solely on the basis of the Buyer's own investigation. The Seller will not be liable in Contract or in Tort for the accuracy, adequacy or suitability of any information, documents or advice in relation to the condition of the Lot or its surroundings. The buyer further acknowledges that this contract constitutes the whole of the agreement between the Seller and the Buyer and that that the buyer has not relied on any statement or representation by the Seller, the Sellers agent, or any other person in entering into this contract other than as set out in this contract.

### Seller's right to vary or exclude any Covenant Conditions

- 1.6 Subject to 1.4 ("Building Covenant") above the Seller reserves the right at the request of the Buyer or at its own discretion to vary or exclude any of the obligations under the Covenants provided that such action will only be taken by it in keeping with the aims to establish a modern well designed residential estate. No variation will be effective unless it is in writing and signed by both parties. The Buyer hereby absolves the Seller from any liability whatsoever for any action taken in the variation or exclusion of any Covenant including a Covenant with any other Buyer in the estate. The Seller acknowledges that new products designed as substitutes or alternatives for the various materials listed herein will be marketed from time to time and provided these products, in its opinion, are not inconsistent with the aims of the covenant, they will, at the absolute and sole discretion of the Seller, be acceptable.

## Legal Duty or Obligation

- 1.7 The Buyer and the Seller acknowledge and agree that these provisions relating to building covenants do not create any legal duty or obligation for the benefit of or enforceable by a third party in terms of Section 55 of the Property Law Act 1974 as amended and the operation of that section is hereby expressly excluded in respect of this Contract.

## 2.00 DEFINITIONS

- 2.1 In these building covenants, unless the contrary intention appears:

“Building Operation” means all dwellings, garages, garden sheds, pergolas, driveways, landscaping and outbuildings proposed to be constructed on the lot.

“The Council” means the Moreton Bay Regional Council.

“The estate” means the residential estate described in the heading of this Contract owned by the Seller.

“Lot” means that land identified in the Contract of Sale between the Seller and the Buyer.

“Works” means any building operation.

“Fonzie Flat” means a self-contained dwelling unit, physically separated from the main detached dwelling.

## 3.00 APPROVAL PROCEDURES

### Council’s Requirements

- 3.1 The following development requirements establish a minimum standard which is to be maintained by Buyers when undertaking building operations. It is the responsibility of the Buyer to identify all of the Council’s building requirements for inclusion on building plans.

### Submission of Plans to Seller

- 3.2 Before commencing any works upon the lot (including any outbuilding or extensions to any building completed on the Lot) the Buyer will produce to the Seller complete written plans and Specifications which shall be in the form to be submitted to the Council. Such plans shall disclose all building operation and works to be carried out on the lot for the residential dwelling house proposed to be erected upon the lot having regard to the Guidelines. The Seller may at its discretion, approve the plans outright, or approve the plans subject to modification or disapprove the plans. The Seller agrees that they will not disapprove the plans unreasonably. The Seller shall advise its decision within 14 working days of receipt of the plans and specifications.
- 3.3 The Seller’s decision will be communicated to the Buyer in writing. Until the plans are approved outright by the Seller the Buyer will not submit the plans to the Council or carry out any works on the lot.

- 3.4 After the Plans are approved outright by the Seller, the Buyer shall promptly submit such plans to the Council for its approval and the Buyer shall not thereafter erect any dwelling house upon the lot differing from the said Plans, without the prior written consent of the Seller.

#### **Buyer to Obtain Building Approval**

- 3.5 The Buyer acknowledges that the risk in relation to seeking and obtaining the approval of the Council to the plans and specifications referred to above, rests solely with the Buyer notwithstanding that such plans and specifications may have been approved by the Seller.

#### **Filling**

- 3.6 The Buyer shall not allow or cause to be performed the excavation, filling or building up of the level of the lot without the prior written approval of the Seller, the Council and any other necessary authority.

#### **Geotechnical Investigations**

- 3.7 The Buyer acknowledges and agrees that the lot may have been filled. The Buyer must make its own investigations to satisfy itself concerning any proposed building operation as to the suitability of any footing, foundations or proposed construction given the nature of the lot and as to any requirements of the Council in that regard.

#### **Adequacy of Plans**

- 3.8 No approval or consent granted by the Seller shall constitute any agreement or representation as to the adequacy, suitability or fitness of any plans, designs or proposed structures and the Buyer acknowledges that no reliance shall be placed on such approval or consent.

### **4.00 BUILDING OPERATION REQUIREMENTS**

- 4.1 The Buyer acknowledges that he/she/they have received a copy of the Guidelines which set out the architectural controls in relation to building of dwellings on the Estate.
- 4.2 The Buyer agrees to be bound by these Guidelines and each and every term thereof is hereby incorporated within this Deed and wheresoever there is any conflict between the Housing Design Guidelines and these Building Covenants then the Housing Design Guidelines will prevail.
- 4.3 With the exception of designated Fonzie Flat lots (refer plans in Appendix 1), only one dwelling for residential purposes may be erected on the lot, together with a lock-up garage which must be suitably screened and be fitted with a vehicular access door and form an integral part of the design of the dwelling. Designated Fonzie Flat lots, while suitable for single dwellings have been identified by the developer and Council as being suitable for Fonzie Flats. A code assessable application is required to be lodged with Council for approval of a Fonzie Flat. The draft Council Fonzie Flat code is available from the Seller upon request.

### **Outbuildings**

- 4.4 The design, appearance and external colours and building materials of all outbuildings (such as garages, garden sheds and pergolas etc) shall comply with the Housing Design Guidelines and Building Covenants and be integrated with the design of the residential house.

### **Building Setbacks**

- 4.5 The Buyer shall not erect or permit to remain upon the lot part of any building operation or structure less than the minimum setback requirements of the Council and in addition any Setback Plan and Development Requirement Plan (refer Plan Appendix 1).

### **Existing or Temporary Structures**

- 4.6 No temporary dwelling, caravan, privy, container, tent or sub-standard dwelling shall be brought onto the Lot. No person shall reside in any portion of the dwelling house prior to completion of the dwelling house, and no person shall reside in the workshops at any time.
- 4.7 No existing structures are to be relocated onto the land.

### **Uncompleted Works**

- 4.8 The Buyer shall not allow any uncompleted works to be left without work being carried out for more than three (3) months and shall ensure that the works are finally complete within twelve (12) months of the commencement of construction. The buyer shall commence works within twelve (12) months of completion of this contract.

### **Landscaping Controls**

- 4.9 The buyer acknowledges that he/she and/or his/her builder or nominee shall not remove, fell or trim any trees on the lot, footpath, verge, pathway or any adjoining land whether for building, landscaping, retaining wall, fencing or any other purpose, without the prior written consent of the Council and the Seller. The Buyer shall not remove any trees without the consent of the Council and the Seller.
- 4.10 The Buyer shall complete all landscaping between the dwelling house on the land and the front boundary line to a reasonable standard within three (3) months of the date of completion of the dwelling house.

### **Site Management**

- 4.11 During construction of any works on the lot, appropriate soil erosion and sediment control measures shall be adopted to minimize silt run-off.

### **Vehicle Parking and Driveways**

- 4.12 **General** – No trailer, commercial vehicle, caravan or boat shall be parked or stored in front of the dwelling house erected on the land, except in accordance with these covenants or in an approved structure erected for that purpose.
- 4.13 **Motor Vehicles** – Formed off-street car parking is to be provided on the land for a minimum of 2 motorcars.

- 4.14 **Driveways** - Only one driveway will generally be permitted for access to the land.
- 4.15 **Construction** - The driveway is to be formed and surfaced of coloured patterned concrete, clay or concrete pavers or exposed aggregate finishes and is to be constructed on or before completion of the dwelling house in accordance with the local government requirements. Where a footpath has been constructed in front of the lot by the Seller, the driveway must abut and not cut through the footpath. The balance of the driveway between the footpath and the kerb may be plain concrete to match the footpath.

#### **Additions and Extensions**

- 4.16 Additions and extensions to the dwelling house, outbuildings and other structures, including new verandahs, pergolas, outbuildings, sheds, swimming pools and garden structures are subject to the same covenant requirements and application for approval must be made to the Seller in the same manner as the original building applications.

#### **Acoustic Requirements**

- 4.17 Design and construct all proposed residential dwellings affected by road and/or rail traffic noise to comply with the requirements of part “MP4.4 – Buildings in a Transport Noise Corridor” of the Queensland Development Code 2010.

### **5.00 COST OF SHARING FENCE CONSTRUCTION**

- 5.1 Notwithstanding anything in the Dividing Fences Act 1953 as amended to the contrary, the Seller shall not be bound and the Buyer shall not make any claim against the Seller to contribute to the construction of any dividing fences between the lot or any adjoining lot owned by the Seller.

### **6.00 ESTATE WALL/FENCING**

- 6.1 In the event that there is any fence or wall erected on or partly erected on the land as at the date of the Settlement, the Buyer acknowledges that such fence or wall has been constructed for and on behalf of the Seller or its predecessor/s in Title for the purposes of enhancing the value of the land and also the estate generally. The Buyer agrees that it shall not remove, damage or disfigure the fence or wall and to maintain and keep the fence or wall in the same good order and condition and standard of presentation of the fence or wall as at the date of this Contract. Furthermore, the Buyer agrees not to alter the fence or wall (either aesthetically or materially) in such way as would interfere with the uniformity of the total fence or wall part of which is on the land.

## 7.00 MAINTENANCE OF LOTS

- 7.1 The Buyer shall not allow any rubbish including site excavations and building materials to accumulate on the lot or allow excessive growth of grass or weeds upon the lot. The Buyer shall not place any rubbish including site excavations and building materials on adjoining land or in any waterway. The Seller or its Agents may enter upon and have access over the lot at any time without creating liability for trespass or otherwise to maintain, slash or mow the lot with no obligation and in consideration for the Seller so doing, the Buyer shall pay to the Seller the sum of up to Five Hundred dollars (\$500.00) upon presentation of an invoice.

## 8.00 ADVERTISING SIGNS

- 8.1 **General** – No advertisement, boarding, sign or similar structure is to be erected on the land or affixed to any tree and/or structure erected on the land.
- 8.2 **For Sale Signs** – No For Sale sign may be erected on the land for the full duration of the marketing period, as determined by the Seller, without the prior written consent of the Seller which consent may be granted unconditionally or subject to conditions.
- 8.3 The Buyer hereby authorises the Seller or its servants or agents to enter upon and have access across the lot for the purpose of removing any sign erected without written consent. Such entry and access shall not constitute trespass and the Buyer shall not make any claim against the Seller arising from such entry or access.

## 9.00 MERGER

- 9.1 The Seller and Buyer agree that all of the terms and conditions as set out in these Building Covenants and the Guidelines shall remain in force and effect, notwithstanding completion of this contract and the registration of the transfer of the land to the Buyer.

## 10.00 ASSIGNMENT/COVENANT ON RESALE

- 10.1 The Buyer will not sell, transfer or otherwise dispose of the said land without first delivering to the Seller a Deed of Covenant given by the Buyer, Transferee or Disponee in favour of the Seller containing covenants on the same terms (mutatis mutandis) as are set forth herein including liability to obtain such Deed of Covenant from any further Buyer, Transferee or Disponee.

**11.00 LIQUIDATED DAMAGES**

- 11.1 The Buyer and Seller hereby agree that in the event of a breach by the Buyer of any of the provisions of this covenant and the Guidelines, the Seller shall suffer loss.
- 11.2 The Buyer hereby agrees that in the event of such a breach the Seller shall be entitled to issue proceedings for damages.

_____	_____	_____	_____
BUYER	Date	WITNESS	Date
_____	_____	_____	_____
BUYER	Date	WITNESS	Date
_____	_____	_____	_____
SELLER	Date	WITNESS	Date