



## ANNEXURE A - SPECIAL CONDITIONS

These are the Special Conditions referred to in and that form part of the Contract for Sale of Land by Offer and Acceptance dated \_\_\_/\_\_\_/\_\_\_ made between the following persons concerning the following property ("Contract"):

BUYER: \_\_\_\_\_  
SELLER: **DJM SEVILLE GROVE PTY LTD**  
PROPERTY: **Lot \_\_\_\_\_ on Deposited Plan 404236 of SEVILLE CENTRAL, SEVILLE GROVE.**

### 1. DEFINITIONS AND INTERPRETATION

In these Special Conditions, unless the context requires otherwise:

- (a) a word or expression defined in the 2011 General Conditions shall have the corresponding meaning in these Special Conditions;
- (b) **"2011 General Conditions"** means the Joint Form of Conditions for the Sale of Land 2011 Revision;
- (c) **"Authority"** means any government statutory authority having jurisdiction over any part of the Subdivision, including but not limited to the Planning Commission and relevant local authority;
- (d) **"Contract"** means the Contract referred to above, including these Special Conditions and the 2011 General Conditions;
- (e) **"Latest Date"** means 24 months after the Contract Date;
- (f) **"Seller's Restrictive Covenants"** means a Restrictive Covenant, substantially in the form of that comprising Annexure B of the Contract, that the Seller intends imposing on and registering against the Property for the purpose of maintaining and enhancing the standards and visual amenity of the Subdivision;
- (g) **"Special Conditions"** means the special conditions comprising this Annexure A of the Contract; and
- (h) **"Subdivision"** means the subdivision that the Seller intends undertaking in which the Property will be created as a separate Lot.

### 2. RIGHT FOR SELLER TO TERMINATE CONTRACT

- (a) The Seller may terminate the Contract by written notice served upon the Buyer at any time up to and including the Latest Date:
  - i. if any Authority refuses to issue an approval for the Subdivision;
  - ii. if any Authority imposes any condition on an approval for the Subdivision which the Seller is unable or unwilling, in its absolute discretion, to comply with;
  - iii. if the Seller forms the opinion that the deposited plan for the Subdivision will not be registered at Landgate by the Latest Date; or
  - iv. if the Seller considers, in its absolute discretion, that as a result of a change in any circumstance, the Subdivision or the creation and/or sale of the Property is no longer financially viable.
- (b) If the Seller terminates the Contract in accordance with condition 2(a), the Seller must repay to the Buyer the Deposit and all other money (if any) paid by the Buyer under the Contract without deduction (except for duty and any other taxes payable on the Deposit) and upon such repayment the Contract shall be at an end and cease to have any further effect and neither the Buyer nor the Seller shall have any claim against the other.

### 3. ACKNOWLEDGMENTS

#### 3.1 General acknowledgements

The Buyer acknowledges and agrees that:

- (a) he/she has read and understood the Contract including all annexures, schedules and appendices;
- (b) he/she has sought independent legal advice with respect to his/her individual rights and obligations pursuant to the Contract or has had the opportunity to do so and chosen not to on the basis that he/she has fully understood and comprehended those rights and obligations;

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- (c) the Seller may assign all or any of its rights under the Contract to a third party at any time;
- (d) the Seller provides no representation or warranty that the location of any survey pegs is correct and is under no obligation to maintain any survey pegs; and
- (e) all materials provided to the Buyer by the Seller or its agents (including advertising, sales brochures and plans) have been prepared and provided in good faith and are believed to be, and taken as, correct. No error, omission or mis-description of the Property will void or annul the sale of the Property or give rise to any claim or right of action against the Seller.

### 3.2 Subdivision acknowledgments

The Buyer acknowledges and agrees that:

- (a) he/she is are purchasing Land that is part of a Subdivision that is yet to receive final approval from all Authorities and be the subject of a final survey;
- (b) an Authority may require the Property to be encumbered by an easement, restrictive covenant, memorial, notification or other encumbrance as a condition to an approval to the Subdivision;
- (c) the Property may contain or utilise shared services/infrastructure such as drainage pits. Those properties utilising any shared services/infrastructure shall have unfettered access to these services/infrastructure.
- (d) following final approval and survey, the Property may vary in respect of:
  - i. its lot or street number/name;
  - ii. its boundaries (including location and angle) and accordingly its dimensions, size and area;
  - iii. its ground level (height, gradient or otherwise);
  - iv. the provision or position of any retaining walls;
  - v. the provision or location of any services, utilities or the like to or affecting the Property; and/or
  - vi. its Encumbrances; and
- (e) it is the intention of the Seller, although it is under no obligation, to register the Seller's Restrictive Covenants over all or part of the Subdivision to maintain and enhance the standard and visual amenity of the Subdivision.

## 4. ENCUMBRANCES

- (a) The Property is sold to the Buyer subject to any:
  - i. easement, right, reservation or other condition affecting any part of the Property, or any Memorial, restrictive covenants or Title Restrictions that is or will be registered against the Property at Settlement (including but not limited to any that relates to a matter referred to in clauses 3.2(b), 3.2(c) and 3.2(e));
  - ii. claims, demands, conditions (including building conditions) and restrictions imposed or made by any Authority; and
  - iii. maintenance of public open space levy or other statutory levy imposed on the Property.
- (b) If the Property becomes subject to any easement, restrictive covenant, memorial, notification or other encumbrance not described in clauses 3.2(b) which does not unreasonably affect the use of the Property:
  - i. the Property will be treated as being sold subject to the easement, restrictive covenant, memorial, notification or other encumbrance; and
  - ii. the Buyer will have no right or claim against the Seller in respect thereto.

## 5. VARIATIONS TO SUBDIVISIONS

### 5.1 Staging

The Buyer acknowledges and agrees that the Subdivision and release of the resulting lots may occur in one or more stages, separately or concurrently, in the Seller's absolute discretion. The Seller makes no representations as to whether any stage will be undertaken and if undertaken the timing and final number and size of lots. The Seller retains absolute control over determining the timing and make up of any stage of the Subdivision.

### 5.2 Variations

The Seller may make any change to the Subdivision, including but not limited to the dimensions of the Property:

- (a) where arising from any condition imposed by an Authority;
- (b) in accordance with any recommendation of the Seller's planners, surveyors, environmental consultants, engineers or the like and not materially adversely affecting the Buyer's reasonable use and enjoyment of the Property;
- (c) due to matters that arise which the Seller could not have reasonably foreseen; or
- (d) where the Seller in good faith believes the changes will enhance the Subdivision.

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**6. CLAIMS FOR ENCUMBRANCES OR VARIATIONS**

**6.1 Limitation on objections**

The Buyer shall make no objection, requisition or claim for compensation nor have any right to terminate the Contract or attempt to delay settlement by virtue of any matter referred to in clauses 3, 4 or 5, provided that such matters have not resulted in a reduction of the size of the Property (as compared to that shown in Annexure D - Lot Plan) by greater than three percent (3%) or materially prejudiced the reasonable use of the Property. Should the Property's size be reduced by greater than three percent (3%) or its reasonable use be materially prejudiced due to such matters, the Buyer may at anytime within thirty (30) days of becoming aware of the matter, by notice in writing, terminate the Contract.

**6.2 Increase in Property size**

Should the size of the Property (as compared to that shown in Annexure D - Lot Plan) be increased by greater than three percent (3%), the Seller may, by notice in writing to the Buyer, inform the Buyer of its intention to increase the Purchase Price by the same percentage that the Property's size has increased. The Buyer may within thirty (30) days of receiving such notice, by notice in writing, agree to or reject the increase in the Purchase Price. Should the Buyer fail to agree to the increase in the Purchase Price the Seller may, at anytime thereafter by notice in writing to the Buyer, terminate the Contract.

**6.3 Notification**

The Seller shall notify the Buyer, within a reasonable time of it becoming aware, of any matter referred to in clauses 3, 4 or 5 that is not disclosed in the Contract and will have a material adverse impact on the size or reasonable use of Property.

**6.4 Settlement is Waiver**

Settlement constitutes a full waiver of any right, action or claim whatsoever that a Party may have due to any matter referred to in clauses 3, 4, 5 or 6.

**7. CAVEAT**

- (a) The Buyer must not, before the issue of a separate Certificate of Title for the Property, lodge any caveat against all or any part of the land comprising the Subdivision to give notice of the Buyer's interest under the Contract. If the Buyer lodges any such caveat, he/she irrevocably and unconditionally:
  - i. appoints the Seller and each of its directors, agents and employees jointly and severally as his/her attorney to take all such actions and execute all such documents in the Buyer's name as the Seller, acting reasonably, deems necessary to withdraw and/or remove such caveat (including but not limited to lodging any applications or forms at Landgate);
  - ii. indemnify the Seller and shall keep the Seller indemnified against all costs, expenses and/or damages that the Seller may suffer as a result of such caveat, the Seller taking any action to withdraw and/or remove the caveat and any delay the caveat may cause in the completion of the Subdivision and sale and settlement of the resulting lots;
  - iii. ratify and confirm all things whatsoever done under this power of attorney; and
  - iv. within fourteen (14) days of receiving a written demand from the Seller, execute a power of attorney in registrable form to give effect to this clause 7(a).
- (b) Any person, including Landgate, dealing with the attorney or a person purporting to be an attorney under clause 7(a), is entitled to rely on execution of any document by that person as conclusive evidence that:
  - i. the person holds the office set out in the power;
  - ii. the power of attorney has come into effect;
  - iii. the power of attorney has not been revoked; and
  - iv. the right or power being exercised or purported to be exercised is properly exercised and that the circumstances have arisen to authorise the exercise of that right and power, and is not required to make any inquiries in respect of any of the above matters.
- (c) Nothing contained or implied in this clause prejudices, limits or otherwise affects the Seller's right to otherwise claim damages from the Buyer from any breach of this clause

**8. DEPOSIT**

The risk of the Deposit and any interest that may accrue is that of the person who is ultimately entitled to those amounts. The Deposit Holder is not responsible for any loss on any investment of the Deposit pursuant to the Contract.

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Buyer **X** \_\_\_\_\_ Buyer **X** \_\_\_\_\_

**9. AMENDMENTS TO GENERAL CONDITIONS**

- (a) Clauses 4.2, 9.1(a)(4), 9.1(a)(5), 9.1(c), 9.1(e), 13, 15, 18 and 24.7 of the 2011 General Conditions do not apply to the Contract.
- (b) Should there be any inconsistency between these Special Conditions and the 2011 General Conditions, these Special Conditions will prevail to the extent of the inconsistency.

**10. NO REPRESENTATIONS OR WARRANTIES**

- (a) The Seller makes no representations and gives no warranties regarding the Property or Subdivision, other than those that are an express term of the Contract or imposed by statute, mandatory and cannot be excluded by agreement of the Parties.
- (b) The Buyer must make and rely on his/her own inquiries concerning the Property and all conditions relating to the Property. The Buyer has or is taken to have entered into the Contract in sole reliance of these inquiries and not upon any alleged statement, warranty, condition, or representation whatsoever made to or alleged to have been made to the Buyer by the Seller or any agent of the Seller.

**11. SETTLEMENT**

- (a) The Settlement Date shall be that stated in the Offer and Acceptance or, where none is mentioned in the Offer and Acceptance, the date that is fourteen (14) days after the later of:
  - i. the Contact Date; or,
  - ii. where a separate Certificate of Title has not issued for the Property before the Contract Date, the date on which the Seller notifies the Buyer that a separate Certificate of Title has issued for the Property.
- (b) The Buyer shall deliver the Transfer to the Sellers Settlement Agent, duly executed and stamped, no less than seven (7) days prior to the Settlement Date.

**12. FENCES**

- (a) The Buyer acknowledges that any dividing fences erected by the Seller on the Property may not be on the boundaries of the Property and that the Buyer shall have no claim or right of action against the Seller should they not be.
- (b) The Buyer shall not make any claim against the Seller pursuant to the Dividing Fences Act 1961.

**13. SIGNAGE**

Except with the Seller's prior written consent, which may be withheld in its absolute discretion, **no sign hoarding or advertising** of any description shall be erected or displayed on the Property other than professional signage of dimensions not exceeding 500mm high by 500mm wide which advertises:

- (a) the sale or lease of a fully completed dwelling constructed on the Property; or
- (b) a business operating from the Property.

The Seller may, without notice, remove any sign hoarding or advertising that breaches this clause 13.

**14. DETAILED AREA PLAN**

The Buyer acknowledges that:

- (a) a Detailed Area Plan (**DAP**) applies to this Lot; and
- (b) a copy of the DAP has been provided to the Buyer.

**15. MISCELLANEOUS**

**15.1 GST**

**The Purchase Price is inclusive of GST.** The Margin Scheme will be applied in calculating any GST payable by the Seller.

**15.2 Adjustments where Outgoings not yet issued**

If a separate assessment of any Outgoing has not been issued for the Property before the Settlement Date, then the Seller's Settlement Agent will prior to the Settlement Date notify the Buyer (via his/her settlement agent, if any) of a reasonable estimate of the proper proportion of that Outgoing payable by the Buyer and the Buyer will pay this amount to the Seller's Settlement Agent to be held by them in their trust account until an actual assessment of the Outgoing has been received whereupon the Seller's Settlement Agent will apportion

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Buyer **X** \_\_\_\_\_ Buyer **X** \_\_\_\_\_

the Outgoing and deduct from their trust account the Buyer's proportion. If after the apportionment there is any balance due to the Buyer then the Parties irrevocably direct the Seller's Settlement Agent to pay that balance to the Buyer as soon as is practicable. If after the apportionment there is any shortfall in the amount due by the Buyer then the Buyer shall pay that amount to the Seller within fourteen (14) days of receiving a written demand to do so.

**15.3 Referral arrangements**

The Seller may have referral arrangements with various persons including registered builders. Should the Buyer have been referred to the Seller by any such person, the Buyer acknowledges that a fee may be payable by the Seller to the referee and consents to such fee being paid.

**15.4 Termination**

Should the Contract be terminated pursuant to clauses 2, 6.1 or 6.2, the Deposit shall be promptly refunded to the Buyer in full following which neither Party shall have any claim or right of action against the other for the termination.

**15.5 Severability**

If any part of the Contract can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any part of the Contract is illegal, unenforceable or invalid, that part is to be treated as removed from the Contract, but the rest of the Contract is not affected.

**15.6 Waiver**

The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon that Party by the Contract does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under the Contract.

**15.7 Building Plan Approval**

Building Plans: Two sets of plans must be submitted to the Developer (DJ MacCormick Property Group, Ground Floor, 200 Adelaide Terrace East Perth WA 6004) prior to plans being submitted to the City Of Armadale under the standard approval process. The developers will review the plans for compliance with the Restrictive Covenants and if considered to comply will return an approved set of plans to the Buyer. If the property is sold by the Buyer prior to a residence being constructed on the Property then the Buyer will ensure that a Special Condition is inserted in the Contract for Sale specifying that building plans must be submitted to the Developer prior to plans being submitted to City of Armadale under the standard approval process.

**SIGNED BY:**

Buyer **X** \_\_\_\_\_

Buyer **X** \_\_\_\_\_

Witness **X** \_\_\_\_\_

Date **X** \_\_\_\_ / \_\_\_\_ /2017

Seller \_\_\_\_\_

Witness \_\_\_\_\_

Date \_\_\_\_\_ / \_\_\_\_\_ /2017



## ANNEXURE B - RESTRICTIVE COVENANT

### OPERATIVE PART

The Buyer acknowledges and agrees that the Seller may, pursuant to section 136D of the *Transfer of Land Act 1893*, note on a Deposited Plan based on the [Lot Plan in Annexure D] ("**Deposited Plan**") a restrictive covenant substantially in the following terms to which any one or more of the Lots on the Deposited Plan (including the Lot sold by this Contract) are to be subject:

1. The Registered Proprietor (including all transferees, assigns and successors in title of the Registered Proprietor) covenants not to:

#### Compliance

- (a) develop a lot or construct upon a lot a dwelling unless such development or construction is in compliance with the requirements of the residential design codes, the town planning scheme, or an approved detailed area plan (if applicable) and all relevant by-laws and policies of the City Of Armadale;

#### Area of Residence

- (b) construct on a lot less than 440 sqm a residence of less than **120m<sup>2</sup>** (living area) excluding verandas, garages/carports and alfresco areas or construct on a lot more than 440 sqm a residence of less than **140m<sup>2</sup>** (living area) excluding verandas, garages/carports and alfresco areas;

#### External Finish

- (c) construct on a lot a dwelling with external wall materials not primarily made of stone, face brick or painted or coloured cement render;
- (d) construct on a lot a dwelling unless each street facing facade is made up of at least **two (2) different colours or textures** with each such colour or texture (as applicable) making up at least ten percent (10%) of the total surface area of the relevant facade. For the purpose of this clause the term "facade" does not include the roof, gutters, downpipes, windows or doors;
- (e) construct on a lot a dwelling without incorporating either a portico, gable or feature wall into the street front elevation of the dwelling;
- (f) construct on a lot a dwelling with roofing materials other than concrete or clay tiles or colorbond sheeting (**Zincalume is not permitted**);
- (g) construct on a lot a dwelling which incorporates:
  - (i) a skillion roof with a pitch of less than 12 degrees;
  - (ii) a curved roof with a pitch of less than 12 degrees at its highest point;
  - (iii) a pitched roof with a pitch of less than 24 degrees EXCEPT WHERE a section of roof is at the rear or side of the dwelling and is substantially hidden from view from the primary street, in which case the pitch of that section of roof cannot be less than 17.5 degrees. The Developer shall determine what is substantial in its absolute discretion.

#### Carport/Garage

- (h) construct on a lot a dwelling without a **carport including a garage door or garage** capable of housing at least two (2) motor vehicles parked side by side. Such carport or garage shall not be constructed other than in a manner which compliments the dwelling in respect to roof pitch, materials used, design, colour and external appearance;
- (i) construct on a lot out buildings greater than fifteen square metres (15m<sup>2</sup>) and/or higher than three metres (3m) unless they are constructed from materials that compliment the dwelling in appearance;

#### Driveways

- (j) construct on a lot a dwelling, unless a driveway and cross-over between the road and the parking area on the lot are constructed and completed at the same time as or prior to occupation of the dwelling. Any driveway or crossover constructed shall not be less than three metres (3m) wide and no greater than six metres (6m) wide or constructed from anything other than brick pavers, concrete or similar;
- (k) install solar heaters and air conditioners on that part of a roof facing a street and the solar heaters and air conditioners shall not be painted (or consist of coloured materials) of any colours that do not match the roof colour;

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**Commercial Vehicles**

- (l) park on a lot commercial vehicles including trucks, buses and tractors at the dwelling or on a verge abutting the dwelling unless screened from public view at all times or unless parked during the normal course of business by a visiting tradesman;
- (m) repair, restore or maintain any motor vehicle, motor cycle, boat, trailer or any other vehicle unless carried out behind the building line and screened from public view at all times;

**Fences**

- (n) construct side and rear boundary fencing on a lot using anything other than “**Greyridge**” coloured “Colorbond” “Wavelok” fence panels or sheets with “**Greyridge**” coloured capping, posts and rails to a maximum height of one and eight tenths of a metre (1.8m) measured from the ground level up;
- (o) construct fencing between the dwelling and the side boundary of the lot or forward of the dwelling along the side and front boundaries, that is visible from the street, from any materials other than the materials of the dwelling, which match the appearance of the dwelling;
- (p) complete construction of fencing to the dwelling any later than twenty one (21) days from either the date of builder’s handover or the date of occupation of the dwelling, whichever occurs first;

**Landscaping**

- (q) construct a dwelling on a lot unless the area between the front building line and the kerb is reticulated and landscaped within **sixty (60) days of occupancy**.

**Signage**

- (r) not to erect or display on the lot any sign hoarding or advertising of any description whatsoever, except for professional signage advertising the sale or lease of a fully completed dwelling house constructed on the lot or advertising a business operating from the lot, provided such sign does not exceed 500mm by 500mm in its dimensions. **Any sign or advertising material erected or displayed on the lot in breach of this covenant may be removed, without notice, by the Developer.**

2. The burden of the restrictive covenants will bind the relevant registered proprietors and their successors in title, transferees and assigns and shall endure for the benefit and be enforceable by each and every other registered proprietor of the Lots on the Deposited Plan, and their successors in title, transferees and assigns.
3. When at any time two or more persons or corporations own a joint interest in any of the Lots on the Deposited Plan, their liability under the restrictive covenant will be joint and several. Any person who becomes, is or was a registered proprietor of any of the Lots will be liable for any breach of the restrictive covenant affecting the Lot which occurs while that person or corporation was the (or one of the) registered proprietor(s) of that Lot.
4. A person who becomes a registered proprietor of any of the Lots on the Deposited Plan, may whilst that person is the registered proprietor, enforce or take action in respect of a breach of the restrictive covenants notwithstanding the breach complained of, in respect of any of the Lots, may have occurred prior to the person seeking to enforce the breach becoming the registered proprietor of the Lot.
5. The restrictive covenants shall cease to exist on **31 December 2023**.
8. In the terms of the restrictive covenant, “construct” shall mean to construct, commence to construct, permit of suffer to be constructed or commenced to be constructed.

**SIGNED BY:**

Buyer **X** \_\_\_\_\_ Buyer **X** \_\_\_\_\_

Witness **X** \_\_\_\_\_ Date **X** \_\_\_\_ / \_\_\_\_ /2017

Seller \_\_\_\_\_ Witness \_\_\_\_\_

Date \_\_\_\_\_ / \_\_\_\_\_ /2017



## ANNEXURE C - LANDSCAPING & FENCING

### SECTION A - FRONT LANDSCAPING & RETICULATION

The Seller hereby agrees to design, supply and install landscaping and reticulation works to be placed in the front of the land between the dwelling to be erected on the land ("The Dwelling") and the street kerb alignment ("The Landscaping Package"), all of which is to be carried out by the Seller's Landscaping Contractor, subject to the following terms and conditions:

1. If the Buyer does not complete the construction of the dwelling within eighteen (18) months of the settlement date, the eligibility of the Buyer to claim a Landscaping Package from the Seller shall lapse;
2. If the dwelling constructed by the Buyer on the land is not in accordance with the estate covenants there shall be no obligation on the Seller to provide the Landscaping Package;
3. A driveway is to be constructed before the Landscaping Package is to be installed, the Buyer shall install beneath the driveway to a depth of 450mm a 90mm stormwater pipe at an onset of 2m from the front to the boundary line across the full width of the driveway and position clearly marked;
4. Before the Landscaping Package can be installed, the Buyer shall; have a licenced plumber install a brass ball valve with back flow preventer for connection of the reticulation and have a licenced electrician install a waterproof single GPO adjacent to the meterbox for connection of the reticulation controller;
5. The Buyer shall notify the Seller's contractor within thirty (30) days of completion of construction of the dwelling, in writing (letter, facsimile or email) that the land is generally contoured, cleared of all rubble and is ready for the performance of the Landscaping Package and has provided a plan of the dwelling on the land drawn at a scale at 1:200 scale. Failure by the Buyer to give such a notice shall result in the Landscaping Package lapsing;
6. The Landscaping Package is not transferable by the Buyer to a third party.
7. The Seller's Landscaping Contractor shall commence the Landscaping Package within sixty (60) days of receipt of valid notification by the Buyer.

### SECTION B - FENCING

1. If the Buyer completes the construction of the dwelling within eighteen (18) months of the settlement date, the Seller agrees to provide Colorbond fencing to the Buyer's land as per Clause 1(n) of the Restrictive Covenants herein, except to areas forward of the building line, free of cost to the Buyer;
2. The provision of the fencing by the Seller is not transferable by the Buyer to a third party;
3. If the dwelling constructed by the Buyer on the land is not in accordance with the estate covenants there shall be no obligation on the Seller to provide fencing;
4. Forty five (45) days prior to the completion of the dwelling the Buyer shall notify the Seller's nominated Fencing Contractor, in writing (letter, facsimile or email) of the expected date of the completion of the dwelling and failure to do so shall result in the provision of the fencing by the Seller lapsing;
5. The Seller's Fencing Contractor shall commence the fencing package within sixty (60) days of receipt of valid notification by the Buyer.

### SIGNED BY:

Buyer  \_\_\_\_\_

Buyer  \_\_\_\_\_

Witness  \_\_\_\_\_

Date  \_\_\_\_ / \_\_\_\_ /2017

Seller \_\_\_\_\_

Witness \_\_\_\_\_

Date \_\_\_\_ / \_\_\_\_ /2017