

BULLSBROOK LANDING



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 ___/___/ 2018 made between the following persons concerning the following property ("Contract"):

BUYER: _____

SELLER: **DJM BULLSBROOK No.2 PTY LTD**

PROPERTY: **Lot _____ on Deposited Plan 412005 - STAGE 7 BULLSBROOK LANDING, Bullsbrook**

1. DEFINITIONS AND INTERPRETATION

In these Special Conditions, unless the context requires otherwise:

- (a) a word or expression defined in the 2018 General Conditions shall have the corresponding meaning in these Special Conditions;
- (b) **"2018 General Conditions"** means the Joint Form of Conditions for the Sale of Land 2018 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 2018 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), 3.2(e) and 16);
 - 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 clause 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.

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. Deposits will only be returned upon receipt of a genuine "Finance Decline" from the Lender.

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 2018 General Conditions do not apply to the Contract.
- (b) Should there be any inconsistency between these Special Conditions and the 2018 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 twenty one (21) 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. FIRE MANAGEMENT

14.1 Fire Management Plan

The Buyer acknowledges and agrees that:

- (a) a Fire Management Plan (the FMP) has been prepared for Stage 7 of Bullsbrook Landing Private Estate which assesses the level of risk of a bushfire of future dwellings within the estate, identifies objectives for fire management, and outlines strategies to increase the level of bushfire preparedness for future residents of the estate;
- (b) The FMP has assessed that dwellings on certain lots in Stage 7 should be constructed to increased construction standards and/or be subject to mandatory setback requirements in accordance with *Australian Standard 3959 Construction of Buildings in Bushfire-Prone Areas (AS 3935)* in order to afford those dwellings additional fire protection and to ensure the safety of future residents;
- (c) the requirements of the FMP may increase the construction costs and/or the design of the Buyer's chosen home; and
- (d) the Buyer has been provided with a copy of the FMP before entering into this Contract and has familiarised and satisfied itself with the requirements set out therein.

14.2 DFES Map of Bushfire Prone Areas

The Buyer acknowledges and agrees that:

- (a) the State Government has prepared a state wide map (updated annually) - the *Map of Bush Fire Prone Areas* - identifying land in Western Australia that is potentially subject to bushfire risk due to its proximity to 'bush fire prone' vegetation (the Map);
- (b) as at September 2017, the majority of Stage 7 Bullsbrook Landing Private Estate was identified in the Map as being in a bush fire prone area;
- (c) should the Land or part of the Land be designated by the Map as being in a bushfire prone area at the time the Buyer seeks to develop the Land, the Buyer may need to undertake (at his/her cost) a Bushfire Attack Level (BAL) Assessment and design and construct any proposed dwelling on the Land to the specified construction requirements of the BAL Assessment as set out in AS 3959, which may increase the Buyer's costs of developing the Lot and/or impact the Buyer's home design;
- (d) The BAL Assessment in the FMP is current as at the time it was prepared (June 2017) and a later BAL Assessment may differ from the assessment in the FMP;
- (e) the Seller makes no warranty, representation or guarantee that the BAL Assessment in the FMP will be the same as any BAL Assessment undertaken at the time the Buyer develops the Land; and
- (f) the Buyer bears the risk of any change in the BAL rating of the Land.

15. LOCAL DEVELOPMENT PLAN

The Buyer acknowledges and agrees that

- (a) the Land may be affected by a Local Development Plan which the Buyer will need to comply with when developing the Land;
- (b) the requirements of the Local Development Plan may impact the construction costs of the Buyer's chosen home design and the positioning of the home on the Land;
- (c) if a draft or final/ approved Local Development Plan is provided to the Buyer at the time of entering into this Contract, the Buyer enters into this Contract accepting the provisions of that Local Development Plan;
- (d) if a draft Local Development Plan has not been prepared by the Seller and/or approved by the relevant Authority as at the Contract Date, then:
 - i) the Seller envisages the Local Development Plan may at least include the restrictions, notifications or requirements set out in clause 16;
 - ii) the Seller will provide the Buyer with a copy of the draft Local Development Plan and final, approved Local Development Plan within a reasonable time of the draft/approved Local Development Plan becoming available to the Seller; and
 - iii) should the draft or final Local Development Plan include provisions not disclosed in this Contract and as a result the costs and expenses of constructing a residence on the Land will, or are likely to, substantially increase to such an extent that it is no longer economically viable for the Buyer to buy the Property for the Purchase Price, the Buyer may terminate the Contract within 14 days of having received a copy of the Local Development Plan by written notice to the Seller. Should the Buyer terminate the contract within that time, clause 23.5 shall apply. Should the Buyer fail to terminate the Contract within that time, the Buyer shall be deemed to have accepted the Local Development Plan.

16. SPECIFIC RESTRICTIONS, NOTIFICATIONS OF DESIGN REQUIREMENTS AFFECTING LOTS

The Buyer acknowledges and agrees that the following restrictions, notifications or requirements will likely apply to the below lots within Stage 7 Bullsbrook Landing Private Estate and may be enforced by provisions of the Local Development Plan and/or via an Encumbrance or Title Notification registered against the title to the relevant lot:

- (a) **Lots 326, 327 and 301:** these lots share a common boundary with an area of public open space (a park or reserve), uniform fencing that is visually permeable (open) above 1.2m may be required to be installed along this common boundary, the Seller will install the fencing and will decide on the type of fencing in its absolute discretion, the Buyer may not amend or alter this fencing. Any dwelling constructed on the lot must be designed so that habitable room windows are orientated towards the park/ reserve for passive surveillance purposes;
- (b) **Lots 301 – 308:** no vehicle access or egress to or from Kimberley Street is permitted, the dwelling and driveway must front the internal subdivision road, not Kimberley Street. The Seller may need to install a large retaining wall along the rear boundary of the lot (the boundary adjacent to Kimberley Street), the Buyer must not alter or remove any such retaining wall.
- (c) **Lots 320 – 326:** vehicles can only enter/exit Kimberley Street in forward motion i.e. vehicles cannot reverse directly into Kimberley Street.

- (d) **All or some lots:** Title Notification advising the lot may be in a designated bush fire prone area or subject to a Fire Management Plan and additional construction requirements may apply.

17. RMD CODES

- (a) The City of Swan's Local Planning *Policy POL-LP-11 - Variation to Deemed to Comply Requirements of the R-codes - Medium Density Single House Development Standards (R-MD Codes)* allows the lots in Stage 7 Bullsbrook Landing **zoned R25** to be developed to RMD-25 standards (for single dwellings) without the need to first apply for development approval.
- (b) The Buyer acknowledges and agrees that if the City policy is revoked then the standard R25 R-Code provisions would apply to the development of the R25 zoned lots. The Buyer bears the risk of any change to City policy in this regard.

18. SOIL CLASSIFICATION

The Buyer is aware that the soil classification relating to the Land may affect the extent and costs of site works and footings for residences to be constructed on the Land. The Buyer should make their own enquiries with the local authority and their builder to ascertain whether there may be additional costs involved in construction of a residence or other improvements on the Land due to the soil classification of the Land.

19. FINISHED SITE LEVELS & RETAINING WALLS

The Buyer acknowledges that:

- (a) the only boundary retaining walls to be provided by the Seller are those that are installed on the Land at Settlement and any additional retaining walls required by the Buyer shall be supplied and installed by the Buyer at the Buyer's cost;
- (b) should the Buyer alter the finished site levels of the Land during the development of the Land, additional boundary retaining walls may be necessitated by such alteration of levels and shall be supplied and installed by the Buyer at the Buyer's cost;
- (c) for the avoidance of doubt, the boundary fencing incentive offered by the Seller does not include the supply and installation of boundary retaining walls or under fence plinths; and
- (d) if the Seller's boundary fencing contractor is of the opinion that it is not practicable to install boundary fencing to the Land unless a boundary retaining wall is first installed, any such boundary retaining wall is to be provided by the Buyer at the Buyer's cost and the Seller is under no obligation to supply the boundary fencing under the fencing incentive until the Buyer has installed the required boundary retaining wall.

20. SERVICES

- (a) The Seller will comply with all necessary requirements of Western Power, Water Corporation and the relevant telecommunications service provider (the Service Provider) to enable electrical power, wastewater services, water supply and telecommunication services to be connected to the Land.
- (b) The Buyer acknowledges, however, that on the date of Settlement the Seller may not yet have complied with all the Service Provider's requirements or the Service Provider may not have completed the connection of their service to the Land and therefore the Buyer may need to procure at his/her cost, an interim service supply to the Land. Notwithstanding this, the Buyer will pay the balance of Purchase Price and complete Settlement on the Settlement Date without delay and will not make any claim of whatsoever nature against the Seller or the Seller Agent in respect of any delay in connection of services to the Land.
- (c) **Gas:** The Buyer acknowledges that mains gas is not available to the Land and the Buyer will need to make arrangements for bottled gas if required.
- (d) **NBN:** The telecommunication network provided at the Subdivision is the NBN Co network. The Buyer acknowledges:
 - i) that the Buyer has been referred to read NBN Co's guideline '*Residential Preparation and Installation Guide: SDUs and MDUs*' which is available via NBN Co's website;
 - ii) that any building constructed on the Land must comply with NBN Co's building ready specifications to enable connection to NBN Co's fibre network. Failure to comply with NBN Co's building ready specifications will prevent connection to the fibre network and/or will require the Buyer to incur additional costs in order to connect to the network infrastructure; and
 - iii) that the Buyer is responsible for providing this information to their new home builder and for connection of the new home to the NBN Co fibre network and for all internal cabling of the new home and associated costs.

(e) **Changing Regulatory Events and Provision of Infrastructure by Utility Providers:** changing laws, regulations and policies of any relevant Authority and policy changes by utility providers may affect the services to be provided to the Land. Such events include but are not limited to technological changes in telecommunications and the provision of services by a utility provider. The Buyer will have no claim or other rights against the Seller as a consequence of the kinds of changes described in this clause.

21. SEWER PLAN

The Buyer acknowledges that if the Water Corporation is for any reason whatsoever unable to, before Settlement, provide the Buyer or the Buyer's Representative with a copy of the proposed sewer plan relating to the Land, the Buyer may not terminate the Contract or delay Settlement by reason of that fact.

22. DELAY IN TITLE

The Buyer agrees that if there is any delay in obtaining a separate Certificate of Title for the Land, the Seller will not be responsible to compensate the Buyer for any additional costs or expenses of whatever nature (including, without limitation, those relating to any price increases pursuant to any building contract entered into by the Buyer) which the Buyer alleges is caused, whether directly or indirectly, by that delay.

23. MISCELLANEOUS

23.1 GST

The Purchase Price is inclusive of GST. The Seller and Buyer agree that the GST Margin Scheme, pursuant to Division 75 of the A New Tax System Goods and Services Tax (Act) 1999, will be applied in calculating any GST payable by the Seller. The Buyer acknowledges it will not be entitled to claim an input tax credit on any GST paid in respect of the Purchase Price.

23.2 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 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.

23.3 Land Tax

(a) For the purposes of clause 7.4(b) of the 2018 General Conditions, the Seller hereby notifies the Buyer that:

- i) if the Land is a Lot at the Contract Date – the Seller is the registered proprietor of the Land;
- ii) if the Land is not a Lot at the Contract Date – the Seller is the registered proprietor of the Subdivision Land of which the Land forms part and will be the registered proprietor of the Land once the relevant Subdivision Plan is registered at Landgate;
- iii) the Seller is also the registered proprietor of land other than the Land or the Subdivision Land of which the Subdivision Lot forms part (as the case may be); and
- iv) all of the land referred to in clauses 23.3(a)(i)-(iii) is liable to Land Tax.

(b) If:

- i) the Settlement Date is before or on 30 June in one year;
- ii) a separate Certificate of Title has been issued for the Land before 1 June of the same year;
- iii) the Contract is dated before 1 June of the same year; and
- iv) Settlement does not occur before 5:00pm on 30 June of the same year for a reason attributable to the Buyer,

then the Buyer must pay to the Seller at Settlement all Land Tax assessed in respect of the Land for the Financial Year which commences on 1 July in the same year, including any Land Tax calculated on the basis that the Land is not the only land owned by the Seller.

(c) The Buyer must make its own enquiries concerning the consequences of failing to settle by 30 June in the relevant year and the additional Land Tax which will be payable as a result thereof.

23.4 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.

23.5 Termination

Should the Contract be terminated pursuant to clauses 2, 6.1, 6.2 or 15(d)(iii), 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.

23.6 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.

23.7 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.

23.8 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 Swan under the standard approval process. The Developer 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 Swan under the standard approval process.

SIGNED BY:

Buyer **X** _____

Buyer **X** _____

Witness **X** _____

Date **X** ____ / ____ /2018

Seller _____

Witness _____

Date _____ / _____ /2018

BULLSBROOK LANDING



ANNEXURE B - RESTRICTIVE COVENANT

OPERATIVE PART

1. Pursuant to section 136D of the *Transfer of Land Act* 1893 the Developer hereby creates restrictive covenants on all the Lots, unless otherwise specified, in the following terms:

A Registered Proprietor Shall Not:

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 Swan;

Area of Residence

- (b) construct on a lot less than 385 sqm a residence of less than **100m²** (living area) excluding verandas, garages/carports and alfresco areas;
- (c) construct on a lot more than 385 sqm a residence of less than **120m²** (living area) excluding verandas, garages/carports and alfresco areas;

External Finish

- (d) construct on a lot a dwelling with external wall materials not primarily made of stone, face brick or painted or coloured cement render;
- (e) 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;
- (f) construct on a lot a dwelling without incorporating either a portico, gable or feature wall into the street front elevation of the dwelling;
- (g) construct on a lot a dwelling with roofing materials other than concrete or clay tiles or colorbond sheeting (**Zincalume is not permitted**) and with a **pitch of less than twenty four degrees (24°)**

Carport/Garage

- (h) construct on a lot less than 385 sqm a dwelling without a **carport including a garage door or garage** capable of housing at least one (1) motor vehicle. 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 more than 385 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;
- (j) construct on a lot out buildings greater than fifteen square metres (15m²) and/or higher than three metres (3m) unless they are constructed from materials that compliment the dwelling in appearance;

Driveways

- (d) 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;

Roof Projections

- (l) 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;

Commercial Vehicles

- (m) 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;

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- (n) 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

- (o) 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;
- (p) 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;
- (q) 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

- (r) 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

- (s) 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.**

Maintenance

- (t) permit or allow the lot or any part of it to fall into a state of disrepair or disorder;

- 2. The burden of the covenants and restrictions contained in this deed shall run and bind each of the Lots and bind the 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, 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, their liability hereunder 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, may whilst that person is the registered proprietor, enforce or take action in respect of a breach of the restrictive covenants created by this deed 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 outlined in this deed shall cease to exist on **31 December 2025**.
- 6. If any part of this deed is void or voidable, then that part shall be severed from this deed so that all parts that are not void or voidable remain in full force and effect and are unaffected by that severance.
- 7. Headings and sub-headings are inserted for convenience of reference only and shall not affect the interpretation of this deed.
- 8. In this deed “construct” shall mean to construct, commence to construct, permit or suffer to be constructed or commenced to be constructed.

SIGNED BY:

Buyer **X** _____ Buyer **X** _____

Witness **X** _____ Date **X** ____ / ____ /2018

Seller _____ Witness _____

Date _____ / _____ /2018

BULLSBROOK LANDING



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 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, forward of the house, front building line.
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 ____ / ____ /2018

Seller _____

Witness _____

Date ____ / ____ /2018

BULLSBROOK LANDING



ANNEXURE D - LOT PLAN

BULLSBROOK LANDING



ANNEXURE E - BUYER DOCUMENT ACKNOWLEDGMENT

The Buyer acknowledges having received a copy of the following documents:

1. Fire Management Plan.
2. Local Development Plan.
3. "The Homeowners Bushfire Survival Manual" (2007) published by the Department of Fire and Emergency Services (formerly known as The Fire and Emergency Services Authority of WA).
4. City of Swan Annual Firebreak Notice.
5. Seller's Landscaping & Fencing Information Pamphlet.
6. GST With Holding (Annexure F)

SIGNED BY:

Buyer _____

Buyer _____

Witness _____

Date ____ / ____ /2018

Seller _____

Witness _____

Date ____ / ____ /2018



GST WITHHOLDING ANNEXURE 'F'

Name of Seller: DJM Bullsbrook No.2 Pty Ltd

ABN of Seller: 89 165 803 547

Address of Seller: Ground Floor, 200 Adelaide Terrace, EAST PERTH WA 6004

Phone: 08 9221 5121

Email: michaeld@djmaccormick.com.au

Name of Purchaser:

Proportion of withholding amount:

(10% of purchase price excluding GST) \$_____

Purchaser is required to pay the above amount at settlement of land.