



Highland Ridge

## **ANNEXURES**

**Annexure A:** Special Conditions

**Annexure B:** Seller's Restrictive Covenants & Design Guidelines

**Annexure C:** Lot Plan

**Annexure D:** GST With Holding



## 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 ("Offer and Acceptance"):

**BUYER:** \_\_\_\_\_

**SELLER:** DJM Jane Brook Pty Ltd ACN 169 666 255

**PROPERTY:** Lot \_\_\_\_ Highland Ridge Private Estate, JANE BROOK.

### 1. DEFINITIONS AND INTERPRETATION

In these Special Conditions and in the Annexures to the Contract, unless the context requires otherwise:

- (a) words and expressions used but not defined in these Annexures have the same meaning as they are given in the 2018 General Conditions;
- (b) "2018 General Conditions" means the Joint Form of Conditions for the Sale of Land 2018 Revision;
- (c) "Annexure" means any document marked "Annexure" which is provided to the Buyer annexed to, together with or at the same time as the Offer and Acceptance;
- (d) "Approval" means any approval, consent, authority or permission of any description whatsoever required by the Seller to complete the Subdivision and register the Subdivision Plan for the Subdivision including (without limitation) a development approval, subdivision approval and any other approval required under any Act;
- (e) "Authority" means any government, statutory or other public body or authority having jurisdiction over any part of the Subdivision, including but not limited to the Planning Commission and relevant local government;
- (f) "Contract" means the Offer and Acceptance referred to above, including these Special Conditions, all Annexures and the 2018 General Conditions;
- (g) "Latest Date" means the date 24 months after the Contract Date;
- (h) "Seller's Restrictive Covenants" means the restrictive covenants substantially in or to the effect of the covenants set out in Annexure B to the Contract, amended if required as contemplated by clause 6.2;
- (i) "Special Conditions" means the special conditions set out in this Annexure A to the Contract;
- (j) "Subdivision" means the subdivision of the Subdivision Land that the Seller intends undertaking as part of which the Land will be created as a separate Lot; and

- (k) "Subdivision Land" means the land commonly known as Lot 9006 Litchfield Promenade Jane Brook (Lot 9006 on Deposited Plan 400724 and being the whole of the land comprised in Certificate of Title volume 2872 folio 839), which includes the Land and from which (upon Subdivision) the Land will be created as a separate Lot; and
- (l) "including" and similar expressions are not words of limitation.

## 2. RIGHT FOR SELLER TO TERMINATE CONTRACT

The Seller may terminate the Contract by written notice served upon the Buyer at any time up to and including 5.00pm on the Latest Date if:

- (a) any Authority refuses to issue an Approval;
- (b) any Authority imposes any condition on an Approval which the Seller is unable or unwilling, in its absolute discretion, to comply with;
- (c) the Seller forms the opinion, in its absolute discretion, that the deposited plan for the Subdivision will not be registered at Landgate by the Latest Date; or
- (d) 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 Land is no longer financially viable.

## 3. BUYER ACKNOWLEDGMENTS

### 3.1 General Acknowledgements

The Buyer acknowledges and agrees that:

- (a) the Buyer has read and understood the Contract including all Annexures, schedules and appendices;
- (b) the Buyer 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 the Buyer has fully understood and comprehended those rights and obligations;
- (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;
- (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 Land will void or annul the sale of the Land or give rise to any claim or right of action against the Seller; and
- (f) the Buyer has entered into the Contract in reliance solely upon its own examination, inspection, enquiries, opinions and advices received and not upon any statement, warranty or representation whatsoever made by or on behalf of the Seller or the Seller Agent and notwithstanding the contents of any brochure, document, letter or publication made, prepared or published by or on behalf of the Seller or the Seller Agent including, but not limited to, any artists' impressions.

### 3.2 Subdivision Acknowledgments

The Buyer acknowledges and agrees that:

- (c) the Land 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.
- (e) it is the intention of the Seller, although it is under no obligation, to register the Seller's Restrictive Covenants over all or some of the Lots to be created upon Subdivision to maintain and enhance the standard and visual amenity of the Subdivision;

## 4 FIRE MANAGEMENT

**INITIAL HERE**

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

The Buyer acknowledges that:

- (a) the Land falls within a designated bushfire prone area and is therefore at an increased risk of bush fire attack;
- (b) all habitable buildings on the Land must be constructed in accordance with Australian Standard AS3935-2009 Construction of Buildings in Bush Fire Prone Areas;
- (c) a fire management plan (**FMP**) applies to the Land which the Buyer must comply with. Amongst other things, the FMP assigns a Bush Fire Attack Level (**BAL**) rating to the Land and imposes other restrictions and obligations on the landowner in respect of the Land;
- (d) the Buyer must ensure that the design and construction of any habitable building on the Land is constructed to the required BAL rating;
- (e) compliance with the FMP does not guarantee that any building on the Land will survive a bushfire event;
- (f) the FMP is yet to be formally approved by the relevant Authorities and may be subject to amendments. These amendments may affect, amongst other things, the construction costs of the Buyer's chosen home design and the positioning of the home on the Land;
- (g) 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; and
- (h) the Buyer has received a copy of DFES's 'The Homeowners Bush Fire Survival Manual' and a copy of the City of Swan's firebreak notice.

**5. ENCUMBRANCES AND RESTRICTIVE COVENANTS**

**5.1 Encumbrances**

- (a) The Property is sold to the Buyer subject to:
  - i. the Seller's Restrictive Covenants;
  - ii. all easements, rights, reservations and other conditions affecting any part of the Land, and all memorials, covenants, restrictive covenants, Title Notifications and Title Restrictions that are now or are later registered on the Certificate of Title for the Land on or before Settlement whether required by an Authority, required by the Seller, required to complete the Subdivision or in respect of any matter referred to in clause 3.2(b), 3.2(c) or 3.2(e));
  - iii. all claims, demands, conditions (including building conditions) and restrictions imposed or made by any Authority;
  - iv. any maintenance of public open space levy or other statutory levy imposed in respect of the Land;
  - v. all interests notified or to be notified on the Subdivision Plan for the Subdivision and any memorial or other notification affecting the Land which exists at the Contract Date or which may be created or imposed before, on or after the Settlement Date arising from the requirement of any Authority or under any Act; and
  - vi. all easements, encroachments, restrictions, covenants and requirements of any Authority;
  - vii. any other rights, interests, limitations, notifications and encumbrances required to give effect to the terms and conditions of the Contract.
- (b) Without in any way limiting clause 5.1(a) above, the Buyer acknowledges and agrees that the Land may be subject to the following limitations, interests, encumbrances and notifications:

Lot Affected	Limitations, interests, encumbrances and/or notification
All Lots (Lots 2159-2170 & 2230)	'Any development on the land is to be in accordance with design guidelines prepared by the subdivider to the specifications of the City of Swan' (Notification on title)  'Dwellings and buildings are to be located within specified building envelopes and

**INITIAL HERE**

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

Lot Affected	Limitations, interests, encumbrances and/or notification
	<p>also their design and construction should have regard for Australian Standard 3935' (Notification on title)</p> <p>'A reticulated sewerage service is not available to the lot' (Notification on title)</p> <p>'The lot is subject to a Fire Management Plan which contains a number of measures that are the responsibility of the registered proprietor to comply with, including a requirement that any dwelling on the Lot be constructed in accordance with Australian Standard 3959 'Construction of Buildings in Bush Fire Prone Areas' (as amended). Further information is available from the City of Swan' (Notification on title)</p> <p>Restrictive covenant or memorial prohibiting in perpetuity the clearing of any tree or native vegetation on the Land in order to maintain and preserve potential foraging and breeding habitat for protected Black Cockatoos. Clearing includes: to cut down, lop any branch, top any branch, uproot, deliberately damage or destroy, remove or sever or ringbark any trunk or branch. (Restrictive covenant or memorial on title)</p>
Lots 2159, 2160, 2161, 2162 & 2230	'This lot is situated in the vicinity of the future Perth-Adelaide national Highway and may in the future be affected by transport noise associated with the operations on this road. Therefore, residential amenity may be the subject of impacts with regard to noise and vibration. As a result there may be a need to incorporate appropriate features in the design and construction of residences to mitigate against any impacts and special consideration should be given to noise attenuation measures for two storey dwellings' (Notification on title)
Lot 2230	'No vehicular access is permitted to or from the future Perth-Adelaide Highway and/or its reservation' (Restrictive covenant on title)

## 5.2 Seller's Restrictive Covenants

- (a) The Buyer acknowledges and agrees that:
- i. restrictive covenants substantially in or to the effect of the terms of the Seller's Restrictive Covenants will burden the Land and will be registered and recorded as a limitation, interest, encumbrance or notification on the Certificate of Title for the Land; and
  - ii. the Buyer (and the Buyer's assigns, transferees and successors in title to the Land) must observe and perform the Seller's Restrictive Covenants.
- (b) The Seller may amend (or cause to be amended) any of the Seller's Restrictive Covenants to maintain and enhance the standard and visual amenity of the Subdivision or to the extent required by any relevant Authority.
- (c) Where the Seller (in its absolute discretion) considers appropriate, additional or different restrictive covenants may apply to some Lots comprised in the Subdivision (other than the Land) and some of the Seller's Restrictive Covenants may not apply to some Lots comprised in the Subdivision.
- (d) The Seller's Restrictive Covenants may be created (at the Seller's election) by:
- i. the Seller lodging at Landgate a Deed of Restrictive Covenant containing the Seller's Restrictive Covenants in respect of Lots the subject of the Subdivision Plan for the Subdivision, pursuant to the Transfer of Land Act; and/or
  - ii. the inclusion of the Seller's Restrictive Covenants on the form of the Transfer and registering the Transfer at Landgate after Settlement.
- (e) If the Subdivision is carried out in stages and by registration of a number of plans or diagrams of subdivision, the Seller's Restrictive Covenants may be registered in respect of Lots by separate Deeds of Restrictive Covenants or on transfers of land as contemplated by clause 5.2(d) and the

Seller's Restrictive Covenants will apply to and benefit the lots the subject of an individual plan or diagram of subdivision and may also benefit lots the subject of other plans or diagrams of subdivision.

- (f) The Seller's Restrictive Covenants will bind the Buyer, run with the Land, bind the Buyer's assigns, transferees and successors in title and may benefit the proprietors from time to time of all or some of the Lots that were formerly comprised in the Subdivision Land.
- (g) The Buyer will take title to the Land subject to the Seller's Restrictive Covenants and to this clause 5.2. The Buyer must execute all documents and (at the Buyer's expense) do all things required by the Seller to give effect to this clause 5.2.

## **6. VARIATIONS TO SUBDIVISION**

### **6.1 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.

### **6.2 Variations**

The Seller may make any change to the Subdivision (including but not limited to the dimensions of the Land):

- (a) where required by 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 Land;
- (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.

## **7. CLAIMS FOR ENCUMBRANCES OR VARIATIONS**

### **7.1 Limitation on Objections**

- (a) 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(f), 5 or 6, provided that such matters have not resulted in a reduction of the size of the Land (as compared to that shown in Annexure C - Lot Plan) by greater than three percent (3%) or materially prejudiced the reasonable use of the Land. Should the Land'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 any time within fourteen (14) days of becoming aware of the matter, by notice in writing, terminate the Contract.
- (b) The Buyer may not terminate this Contract under this clause by reason only of material prejudice unless the Buyer provides to the Seller (as part of the required written notice) an explanation to the Seller's reasonable satisfaction as to why the Buyer considers that the Buyer is materially prejudiced by the relevant matters.
- (c) If the Buyer fails to give notice to the Seller in accordance with this clause 7.1, the Buyer loses any right to claim compensation or terminate the Contract (both pursuant to the Contract and at general law).

### **7.2 Increase in Land Size**

Should the size of the Land (as compared to that shown in Annexure C - 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 Land's size has increased. The Buyer may within fourteen (14) 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 any time thereafter by notice in writing to the Buyer, terminate the Contract.

### **7.3 Notification**

The Seller will use reasonable endeavours to notify the Buyer, within a reasonable time of it becoming aware, of any matter referred to in clauses 3, 4(f), 5 or 6 that is not disclosed in the Contract.

### **7.4 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(f), 5, 6 or 7.

## **8. CAVEAT**

- (a) The Buyer must not, before the issue of a separate Certificate of Title for the Land, lodge any caveat against all or any part of the Subdivision Land whether to give notice of the Buyer's interest under the Contract or otherwise. If the Buyer lodges any such caveat, the Buyer (in consideration for the Seller entering into this Contract) irrevocably and unconditionally:
- i. appoints the Seller and each of its directors, agents and employees jointly and severally as the Buyer's attorney to (at the Buyer's cost) take all such actions and execute all such documents in the Buyer's name as the Seller, acting reasonably, considers necessary to withdraw and/or remove the caveat (including but not limited to lodging any applications or forms at Landgate);
  - ii. indemnifies the Seller and must keep the Seller indemnified against all costs, expenses and loss 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. ratifies and confirms all things whatsoever done under this power of attorney; and
  - iv. agrees to, 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 9(a).
- (b) Any person (including Landgate, the Registrar of Titles of Western Australia and any other registration authority in Australia or elsewhere) dealing with the attorney or a person purporting to be an attorney under clause 9(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.

## **9. 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.

## **10. AMENDMENTS TO GENERAL CONDITIONS**

- (a) Clauses 2.1, 4.2, 9.1, 13, 15.3 to 15.5 (inclusive), 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.

**11. 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 and those which are imposed by statute, mandatory and cannot be excluded by agreement of the Parties. To the extent legally permitted, all other terms, conditions, representations, warranties and covenants that would otherwise bind the Seller are excluded from this Contract.
- (b) The Buyer must make and rely on his/her own enquiries 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 enquiries 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.

**12. SETTLEMENT**

- (a) The Settlement Date is the date 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 Land before the Contract Date, the date on which the Seller notifies the Buyer that a separate Certificate of Title has issued for the Land.
- (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.

**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 Land 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 Land; or
- (b) a business operating from the Land.

The Seller may, without notice, remove any sign hoarding or advertising that breaches this clause 14.

**14. 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.

**15. FENCES**

- (a) The Buyer acknowledges that any dividing fences erected by the Seller on the Land may not be on the boundaries of the Land 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.

**16. BUILDING ENVELOPES**

- (a) Dwellings, and all ancillary structures, must be constructed entirely within the designated building envelope for the Land. Ancillary structures include but are not limited to garages, carports, effluent disposal systems, water tanks, toilets, sheds, pools, gazebos etc.
- (b) The designated building envelopes cannot be re-located, extended, re-configured or split without the prior consent of the City of Swan and the Seller.

## 17. SERVICES

- (a) The Seller will comply with all necessary requirements of Western Power, Water Corporation, ATCO gas and the relevant telecommunications service provider (**Service Provider**) to enable electrical power, water supply, gas 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 Providers 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) **Sewer:** The Buyer acknowledges that mains sewer is not available to the Land and the Buyer will need to incorporate an on-site effluent disposal system into the Buyer's home design at the Buyer's cost.
- (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 (such as gas reticulation) 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.

## 18. MISCELLANEOUS

### 18.1 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.

Where the supply is not eligible for the GST Margin Scheme pursuant to Division 75 of the A New Tax System Goods and Services Tax (Act) 1999, then the supply will be a taxable supply.

### 18.2 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.

### **18.3 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 21.3(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.

### **18.4 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.

### **18.5 Termination**

If the Contract is terminated pursuant to clauses 2, 7.1 or 7.2, then upon termination:

- (a) the Seller must repay to the Buyer the Deposit and all other money (if any) paid by the Buyer under the Contract; and
- (b) neither Party will have any action or claim against the other for breach of this Contract (except for any breach which occurred before the Contract was terminated).

### **18.6 Entire agreement**

This Contract (including the 2018 General Conditions, these Special Conditions and all Annexures) constitutes the entire agreement between the parties with respect to the sale and purchase of the Property and:

- (a) supersedes any previous agreement between the parties relating to the sale and purchase of the Property;
- (b) contains all of the representations, warranties, covenants and agreements of the parties in respect of the sale and purchase of the Property; and

- (c) there are no written or oral statements, representations, undertakings, covenants or agreements given or made by the Seller or the Seller Agent or otherwise existing between the parties (express or implied) except as are contained in the Contract or implied by law.

**18.7 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.

**18.8 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.

**18.9 Applicable law**

For all purposes, this Contract is to be governed by and construed in accordance with the laws of Western Australia and the parties submit to the jurisdiction of the Courts of Western Australia in determining any matter or dispute arising under or incidental to the Contract.

**18.10 Building Plan Approval**

- (a) The Buyer must not construct a dwelling or structure on the Land, or apply to the relevant local authority for approval to construct a dwelling or structure on the Land, without the building plans first having been approved by the Seller in accordance with the procedure set out in this clause.
- (b) The Buyer must submit two sets of his/her building plans to the Seller’s developer DJ MacCormick Property Group (“Developer”) (DJ MacCormick Property Group, 200 Adelaide Terrace East Perth WA 6004). The Developer will review the plans for compliance with the Seller’s Restrictive Covenants and if considered to comply will return an approved set of plans to the Buyer whereupon the Buyer can proceed to submit the plans to the relevant local authority under the standard approval process. If not considered compliant, the Developer will provide recommendations to the Buyer in writing about how compliance with the Seller’s Restrictive Covenants can be achieved.
- (c) If the Land is sold by the Buyer to a third party before a dwelling or other building is constructed on the Land, the Buyer will ensure that a special condition is inserted into the contract for sale requiring the third party to comply with this clause 21.10 and which makes the Seller’s Restrictive Covenants binding upon the third party.

**18.11. Electronic communications**

- (a) This Contract and any variation to it may be signed by the parties in any number of identical copies. Each identical copy is deemed to be an original document, and all identical copies together constitute one and the same document.
- (b) The Buyer’s offer, the Seller’s acceptance, and each identical copy of this Contract and any variation to it may be communicated or exchanged by fax or e-mail sent to the addressee’s fax number or e-mail address as provided by the addressee to the sender (whether under this Contract or otherwise).
- (c) If a fax number or e-mail address is provided or specified (whether by Notice or otherwise) by a Party or a Representative as the fax number or e-mail address of that Party or Representative, then:
  - i. a Notice to that Party or Representative may be transmitted by fax or as an attachment to an e-mail, provided that the Notice is given on the sender’s letterhead, signed by the sender, and transmitted to the fax number or e-mail address provided or specified by the recipient; and
  - ii. a Notice transmitted by fax or e-mail will be treated as served on the day on which it is transmitted but if it is transmitted after 4pm or on a day which is not a Business Day it will be treated as having been served on the next Business Day. However, the Notice will not be treated as served unless the fax machine or computer which transmits the Notice produces an acknowledgement that the Notice has been transmitted to the specified fax number or e-mail address.

**SIGNED BY:**

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

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

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

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

Date **X** \_\_\_\_ / \_\_\_\_ /20\_\_\_\_

Date **X** \_\_\_\_ / \_\_\_\_ /20\_\_\_\_

Seller \_\_\_\_\_

Witness \_\_\_\_\_

Date \_\_\_\_\_ / \_\_\_\_ /20\_\_\_\_



## ANNEXURE B – SELLER’S RESTRICTIVE COVENANTS

### 1. DEFINED TERMS

In this Annexure:

- (a) “Buyer” includes the Buyer’s assigns, transferees and successors in title to the Land and the registered proprietor of the Land from time to time;
- (b) “Commercial Vehicle” includes without limitation, trucks buses, motor homes, utility vehicles, caravans, trailers, boats (including recreational boats) and any form of mobile machinery;
- (c) “construct” means to construct, commence to construct, permit or suffer to be constructed or commenced to be constructed;
- (d) “Design Guidelines” mean the ‘Highland Ridge Design Guidelines’ for the Subdivision prepared and issued by the Developer from time to time and which comply with the specifications of the City of Swan;
- (e) “Developer” means the Seller;
- (f) “lot” means a Lot created as part of the Subdivision, being a lot that was formerly comprised in the Subdivision Land; and
- (g) “Seller” includes the Seller’s successors in title to all of the Lots comprised in the Subdivision Plan for the Subdivision.

### 2. INTERPRETATION

Unless the context otherwise requires, in this Annexure:

- (a) ‘including’ and similar expressions are not words of limitation;
- (b) words importing the singular include the plural and vice versa;
- (c) if a determination or assessment of whether something is substantial, pre-dominant, minimal, light, dark and the like is necessary in the interpretation of the application of the restrictive covenants in this Annexure or Design Guidelines, this determination and/or assessment shall be determined by the Developer in its sole discretion;
- (d) if a word or phrase is defined in this Annexure, its other grammatical forms have a corresponding meaning;
- (e) headings and clause numbers are for convenience only and do not affect the interpretation of this deed;
- (f) a reference to a person includes a corporation and any entity capable of being the subject of legal proceedings;
- (g) a reference to a party to this deed includes the party’s successors, permitted substitutes and permitted assigns and, where applicable, the party’s legal personal representatives;
- (h) any obligation incurred by two or more parties shall bind them jointly and severally and an obligation incurred in favour of two or more parties shall be enforceable by them jointly and severally; and

- (i) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

**3. EXPIRY DATE**

The Seller's Restrictive Covenants cease to have any effect from 31 December 2025 (**Expiry Date**).

**4. RESTRICTIVE COVENANTS**

The Buyer covenants and agrees with and for the benefit of the Seller that, until the Expiry Date, the Buyer **WILL NOT** do or permit any of the following:

**Compliance**

- (a) develop a lot or construct upon a lot a dwelling (or any alteration or addition to a dwelling) unless such development or construction is in compliance with:
  - (i) the mandatory requirements of the Design Guidelines; and
  - (ii) the residential design codes, the town planning scheme and all relevant by-laws and policies of the City of Swan;

**Approvals**

- (b) develop a lot or construct upon a lot a dwelling (or any alteration or addition to a dwelling) unless the plans and specifications for the development, dwelling or alteration/ addition have been:
  - (i) first submitted in duplicate to the Developer's representative, DJ MacCormick Property Group, Ground Floor, 200 Adelaide Terrace, East Perth (or any other representative nominated by the Developer) and have been approved by DJ MacCormick Property Group or other nominated representative; and
  - (ii) subsequently approved by the City of Swan;

**Area of Residence**

- (c) construct on a lot a residence of less than 200m<sup>2</sup> (living area) excluding verandas, garages and alfresco areas;

**Building Envelope**

- (d) construct a residence or any ancillary structure or any part thereof except within the designated building envelope for the lot. In this clause 'ancillary structure' includes but is not limited to garages, effluent disposal systems, water tanks, toilets, sheds, pools and gazebos.
- (e) re-locate, extend, re-configure or split the designated building envelope for the lot without the prior consent of the City of Swan and the Developer.

**Carport/Garage**

- (f) construct on a lot a dwelling without a garage or carport capable of housing at least two (2) motor vehicles parked side by side and otherwise constructed in compliance with the Design Guidelines;
- (g) construct on a lot a carport unless one side of the carport is connected to the dwelling;

**Driveways**

- (h) construct on a lot a dwelling, unless a driveway and cross-over between the road and the garage/carport on the lot are constructed and completed at the same time as or prior to occupation of the dwelling and otherwise constructed in compliance with the Design Guidelines;

**Fencing & Retaining Walls**

- (i) construct or alter or extend any fence except in in compliance with the Design Guidelines;
- (j) damage, alter, extent, build up or affect the visual appearance of any retaining wall constructed by the Developer on the lot, unless first approved by the Developer;

**Commercial Vehicles**

- (k) park any Commercial Vehicles 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;
- (l) repair, restore or maintain any vehicle (including but not limited to Commercial Vehicles and motor vehicles or motor cycles for personal and/or recreational use) unless carried out behind the building line and screened from public view at all times;

**Landscaping**

- (m) construct a dwelling on a lot unless landscaping in in compliance with the Design Guidelines has been implemented within ninety (90) days of occupancy;

**Signage**

- (n) 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;

**Lot Maintenance**

- (o) permit or allow the lot or any part of it to fall into a state of disrepair or disorder;
- (p) store any excess building materials on the lot;
- (q) store any bins where they are visible from the street, except at rubbish collection times; and
- (r) store any sea containers on the lot or any part of it.

**SIGNED BY:**

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

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

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

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

Date **X** \_\_\_\_ / \_\_\_\_ /20\_\_\_\_

Date **X** \_\_\_\_ / \_\_\_\_ /20\_\_\_\_

Seller \_\_\_\_\_

Witness \_\_\_\_\_

Date \_\_\_\_\_ / \_\_\_\_ /20\_\_\_\_



## ANNEXURE TO SELLER’S RESTRICTIVE COVENANT– HIGHLAND RIDGE DESIGN GUIDELINES

### 1. DESIGN VISION

- The vision for Highland Ridge at Jane Brook is to create unique, contemporary rural home sites which are sensitively designed to take advantage of, but also seamlessly coexist with, the existing natural features of the site.
- Your home must, in the opinion of the Developer, be designed in the spirit of the design vision and these guidelines.
- Although not mandatory, the preferences of the City of Swan (as outlined in these Guidelines) should be considered and adopted where practicable and financially feasible for you to do so.
- These guidelines should be read in conjunction with all other relevant statutory planning and building construction documents.

### 2. BUILDING ENVELOPES

- Each lot in Highland Ridge has a unique designated building envelope.
- Dwellings, and all ancillary structures, must be constructed entirely within the designated building envelope. Ancillary structures include but are not limited to garages, carports, effluent disposal systems, water tanks, toilets, sheds, pools, gazebos etc.
- The designated building envelopes cannot be re-located, extended, re-configured or split without the prior consent of the City of Swan and the Developer.

### 3. DWELLING CONSTRUCTION METHOD

- No one dwelling construction method is prescribed. A concrete slab on the ground, split level or framed elevated construction method (to name a few) are all permitted.
- However, the unique features of your building envelope and lot (topography, slope, views, solar access, existing native vegetation to be retained, bush fire requirements etc) will be crucial in determining which construction method is both feasible and consistent with the design vision.

### 4. COLOUR PALATE

- In keeping with the rural bush character of Highland Ridge, the external features of your home (roof, walls, gutters, downpipes, driveways, doors etc) should be in predominantly warm earthy colours to reflect the surrounding rural tones.
- Overly bright colours should be avoided.

#### ➤ **City of Swan Preference**

*In order to minimise the visual impact of buildings as viewed against the scarp, the City of Swan’s preference is that external colours generally, but particularly for roofs, should be earthy, muted or green colours to complement the rural surroundings. Colours which are visible from a long distance away, such as light colours (cream, white or off-white) or bright colours, should be limited where possible/practicable.*

### 5. EXTERNAL WALL MATERIALS

- The external walls of your home should be constructed of:
 

✓ stone cladding	✓ face brick
✓ rammed earth	✓ painted or coloured cement render
✓ lightweight claddings (such as weatherboards, fibre cement & corrugated metal)	✓ clear finished, stained or painted timber sheets or boards

Incorporating a composite of these finishes is recommended.

- Corrugated metal cladding may be in Colorbond™ (warm earthy colours) or other non-reflective metals. Zinalume is not permitted.
- External columns should be square.

### 6. STREET FACING FAÇADES

To ensure a varied and interesting streetscape:

- Each street facing façade should be made up of two (2) and a maximum of three (3) different colours or materials with each such colour or material (as

applicable) making up at least ten percent (10%) of the total surface area of the relevant façade. For the purpose of this clause the term 'façade' does not include the roof, gutters, downpipes, windows or doors.

- The primary street façade should incorporate:
  - at least one substantial projecting feature element such as a portico, verandah, gable or feature wall; and
  - adequate windows for both passive surveillance and variation.

The inclusion of outdoor living areas (such as verandahs, balconies and decks) into the primary street façade is highly encouraged.

- For corner lots, secondary street walls greater than 8 metres in length without any windows or articulation must be avoided. The use of wrap around verandahs or decking fronting both the primary and secondary street is strongly encouraged.
- Windows facing the primary street should not be covered by security screens or security binds.
- Obscured windows (i.e. frosted windows) or windows to toilets and bathrooms should not front the primary street.

## 7. ROOFS

### 7.1 Form

Subject to the below, there are no restrictions on roof form i.e. hip, gable, skillion, partly flat and curved roofs are all permitted.

- No pitch restrictions apply. However, a roof pitch of around 22.5° is recommended<sup>1</sup> as optimum as a lower pitched roof can allow embers to gather during a fire event and steeply pitched roofs can contribute to the creation of wind eddies.
- Sections of flat roofs are permitted provided that the roof and gutter are concealed behind parapet walls.
- Domes, turrets or spires are not permitted.

### 7.2 Eaves

- A minimum eaves overhang of 450mm is required to all façades.
- Exceptions to the above are covered external areas such as porticos, verandahs, terraces etc, garage structures, areas of concealed roof such as framed parapets and built to boundary walls.

## 7.3 Materials

The use of reflective roofing materials, such as zincalume, is not permitted. All other roof materials are acceptable including concrete, clay, or Colorbond™.

## 7.4 Colour

Your roof, gutter and downpipes should complement the external wall colour of your home.

### ➤ City of Swan Preference

*The City of Swan's preference is that light roof colours (such as cream, white or off-white) should be avoided where possible/ practicable as these colours are more visible from a long distance away. An example of light roof colours are Colorbond™ colours Surfmist and Classic Cream.*

## 8. OUTDOOR AREAS

- Outdoor living areas should be directly accessible from an internal living area.
- Position your outdoor living area to get the most from your location: for example, an ideal outdoor area is one which has access to views as well as the sun in winter and the sea breezes in summer.
- For two story homes, balconies should be directly connected to some of the second floor habitable rooms and must be a minimum of 1.5m in depth and 6m<sup>2</sup> in total area.
- Incorporate design elements which ensure your outdoor living area is a useable space all year round, for example, consider installing shade sails, moveable or removable coverings, awnings and ceiling fans.
- Incorporate landscaping to or around your outdoor living area to help maximise energy efficiency, for example, planting trees/ shrubs which shade the area in summer.

## 9. GARAGE/ CARPORT

- Your house design must incorporate a garage or carport capable of housing at least two (2) motor vehicles parked side by side.
- Carports cannot be freestanding; one side of your carport should be connected to the dwelling.
- Your garage/ carport should complement your home in respect to roof pitch, materials used, design, colour and external appearance.
- Your garage opening should have a steel lintel over it with rendered brickwork, face brickwork or lightweight cladding to match the façade (at least 3 courses in height). Pressed metal cover plates over the garage door are not permitted.

<sup>1</sup> Refer Standards Australia Handbook HB330-2009 Living in Bushfire Prone Areas

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- Historical decorative ornamentation in the garage door profile is not permitted.

## 10. DRIVEWAYS

A driveway and cross-over between the street and your garage/ carport must be constructed before you occupy your home. Your driveway should:

- Be no less than 3m wide or greater than 9m wide.
- Be completed before or at the same time as your home.
- Take a logical and feasible route which has minimal impact on the natural topography and visual amenity of your lot. For example, your driveway should meander where possible to follow the natural lot contours and therefore minimise the need for additional (unnecessary) earthworks or clearing.
- Be engineered, particularly on steeply sloping lots, in order to effectively manage stormwater runoff.
- Be constructed of:
  - pavers (including brick pavers, natural crushed stone pavers, exposed aggregate pavers);
  - concrete (including coloured concrete and exposed aggregate concrete);
  - liquid limestone; or
  - a material similar to the above.

Grey concrete or black asphalt are not permitted.

- Be softened by the use of appropriate landscape treatments.

### ➤ **City of Swan Preference**

*In order to minimise the visual impact of driveways as viewed against the scarp, the City of Swan's preference is for light coloured materials (such as liquid limestone) and/or colours be avoided or limited where practical/ possible. Earthy/ dark tones are preferred.*

## 11. FENCING

### 11.1 Boundary Fencing

A uniform fencing design has been adopted by the Developer to retain the rural character of Highland Ridge and to minimise visual impact on the landscape. The Developer will provide:

- Post and wire fencing (a combination of pine posts and capped star pickets) along the rear and side boundaries of your lot.

- A small section of white post and rail vinyl fencing around the front corner boundaries of your lot. The actual length of white post and rail fencing provided will be determined by the Developer in its sole discretion and will depend on the location of your cross-over and other features of your lot.



*Example of white post & rail fencing around the front corner of a lot<sup>2</sup>*

- No Colorbond™ fences are to be constructed along any boundaries, unless otherwise permitted by the Developer and the City of Swan.
- Only the post and wire fences can be replaced by an alternative style, however, where fences are located on property boundaries, consent from your neighbour must be obtained. The white post and rail fences are not to be modified (including change of colour) removed or replaced, unless approved by the Developer.
- A solid feature entry wall adjoining the driveway crossover to a maximum height of 750mm and maximum length of 3m is permitted provided the wall is consistent with the external colour scheme of your home and of complementary materials such as rammed earth or aggregate.

### 11.2 Building Envelope Fencing

- 'Ring lock' style fencing to a maximum height of 1.2 metres is permitted around or within the designated building envelope.
- Solid fencing or walls are not permitted unless used to a minimal extent behind the front facade and to a maximum height of 1.8m for the purpose of screening service and storage areas only (such as drying areas). Fence colours and materials should be complementary to the external colour scheme of the house.
- Swimming pool fencing is to be of a clear glass or semi-permeable material in colours complementary to the house and landscape treatment. All pool fencing is to meet City of Swan safety requirements.

### ➤ **City of Swan Note**

*Any solid fencing requires approval by the City of Swan prior to installation.*

<sup>2</sup> Photo from Googlemaps

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## 12. RETAINING WALLS

- Site sensitive home design is encouraged with minimal use of retaining walls.
- Twin-side retaining walls are permitted provided they are not visible from the street.
- Any retaining walls constructed by the Developer shall not be altered or removed without the Developer's prior consent.

### ➤ **City of Swan Note**

*Retaining walls generally require approval from the City of Swan prior to installation.*

### ➤ **City of Swan Preference**

*To limit visual impact on views towards the scarp the City of Swan's preference is for:*

- *retaining walls to be of earthy/ dark colours to complement the natural surrounds. Limestone should be avoided or limited where possible/ practicable, unless tinted or concealed from view;*
- *individual retaining walls to be no more than 3m high; and*
- *retaining walls to be staggered.*

## 13. OUTBUILDINGS

Free standing structures, aka 'outbuildings' (including garden sheds and workshops), are permitted provided the outbuilding is:

- approved by the City of Swan and the Developer;
- located wholly within the designated building envelope;
- constructed simultaneously with the dwelling and not before;
- of a material and form which matches or is complementary to those of your home; and
- substantially hidden from view from adjacent streets.

Outbuildings must not be used for habitation.

## 14. WASTE WATER TREATMENT

As a reticulated sewerage system will not be available to lots at Highland Ridge, your home design must incorporate an on-site effluent disposal system ('EDS'). Your EDS must:

- Be located within your designated building envelope;
- Not be visible from adjacent streets; and

- Be installed in accordance with State Government and City of Swan Health Department requirements.

Should you have any queries regarding EDSs, please contact the City of Swan's Health Services on 9267 9153 or visit [www.swan.wa.gov.au](http://www.swan.wa.gov.au).

## 15. SERVICES & ANCILLARY AREAS

- Roof mounted equipment (including but not limited to, solar heaters, solar panels, air conditioners, television aerials, satellite dishes and water storage tanks) should be located to minimise visual impact on views.
- The colour of any roof mounted air-conditioning unit or storage tank must match the colour of your roof.
- Owners are encouraged to install rainwater tanks. Rainwater tanks must be located within the building envelope, behind the front façade of the dwelling and in the least visually obtrusive location. Rainwater tanks should not exceed the roof height of the dwelling and the colour should be an earthy or green colour to complement the rural surroundings.
- All pipes and wired services should be concealed on the block and should not be seen from adjoining streets.
- Clothes drying areas and ground mounted hot water storage tanks and like items should be screened so as not visible from the street.
- Meter boxes should be located in the least visually obtrusive location from public view and colour matched to the external colour scheme of the home

## 16. LANDSCAPING

- Retention and protection of existing native vegetation on your lot is paramount.
- All additional landscaping should be water wise and comply with the Building Protection Zone requirements in the Fire Management Plan.
- Vegetation should be used to screen or soften the impact of retaining walls, driveways, ATUs, sheds and fencing.
- Planting of native plants should be preferred over introduced plant species and lawn. It is recommended that grassed areas be kept to a minimum to reduce water use and to prevent the spread of grass into the neighbouring National Park.

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