

# DRAFT

## S.136D Restrictive Covenant

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### RECITALS

- A. The Vendor is the registered proprietor of the Land.
- B. The Land is free of all encumbrances.
- C. The Land has been subdivided in manner shown on the Plan and has obtained the approval of the Commission to such subdivision.
- D. In accordance with section 136D of the Act, the Developer requires the Lots to be encumbered by the Restrictive Covenants so that the Restrictive Covenants will be noted on the Plan and when separate certificates of the title issue for the Lots the burden of the Restrictive Covenants will be noted on each certificate of title.

### OPERATIVE PART

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Deed the following words and expressions shall have the following meanings:

**Act** means the Transfer of Land Act 1893 (WA), as amended;

**Commission** means the Western Australian Planning Commission;

**Land** means Lot ----- on Deposited Plan -----, being the whole of the Land comprised in Certificate of Title Volume ----- Folio -----;

**Lots** means Lots ----- (inclusive), Lots ----- (inclusive), Lots ----- (inclusive), Lots ----- to --- -----(inclusive) and Lot ----- and Lot has a corresponding meaning;

**Plan** means Deposited Plan -----;

**R Codes** means the Western Australian Residential Design Codes;

**Restrictive Covenants** means the restrictive covenants, the subject of this Deed, being more specifically the covenants referred in the Schedule;

**Schedule** means the Schedule to this Deed;

**Primary Street** means the street designated as the front of the property and which provides access to the main entrance to the house on the Property;

**Secondary Street** means any other street frontage to the Property;

**Skillion** means a pitched roof falling in a single direction;

**Major Opening** means a window of more than 1sqm in area;

**Floor Area** means the area between the external walls of the house but excluding the area of any patios, balconies, verandahs, alfresco areas, storage area, workshop, pergola, outbuilding or other unenclosed area.

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## 1.2 Interpretation

In this Deed unless the context otherwise requires:

- a) Words importing the singular include the plural and vice versa;
- b) Words importing any gender include the other genders;
- c) References to persons include corporations;
- d) References to a party hereto or to any other person include the legal personal representatives;
- e) Successors and permitted assigns of that party or person;
- f) If a word or phrase is defined cognate words and phrases have corresponding definitions;
- g) An 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;
- h) Headings shall be ignored in construing the Deed.

## 2. RESTRICTIVE COVENANTS

Each of the Lots is to be encumbered by the Restrictive Covenants. Pursuant to a 136D of the Act, the burden of the Restrictive Covenants shall run with each of the Lots for the benefit of every other Lot and the Restrictive Covenants shall be enforceable against the registered proprietor of each lot by the Developer and every subsequent registered proprietor of the Lots.

The Buyer must make its own enquiries about the impact of the protective covenants imposed by the Seller as they affect the Property and shall be taken to have satisfied itself about the protective covenants prior to the Contract Date.

The Buyer acknowledges that the burden of the protective covenants in this annexure runs with the Property for the benefit of every other purchaser of land in the CY O'Connor Village Residential Estate excluding any land which is not residential, and shall be enforceable against the Buyer and every subsequent registered proprietor of the Property.

The Buyer acknowledges that each protective covenant is separate from the other and therefore if any protective covenant becomes invalid or unenforceable then the remaining protective covenants will not be affected and each covenant will be valid and enforceable to the fullest extent permitted by law.

The Buyer acknowledges that the protective covenants will not be modified, surrendered, released, abandoned whether wholly or partially except with the Seller's written consent.

## 3. TERM OF RESTRICTIVE COVENANTS

The Restrictive Covenants shall expire and cease to have effect five years from registration.

## 4. AUTHORITY

The Vendor authorises -----, Perth, Western Australia to comply with any requisitions issued by the Registrar of Titles and within this general authority and power to make any minor alterations which may be necessary to effect registration of this Deed.

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## SCHEDULE

### RESTRICTIVE COVENANTS

#### 1. STREETScape

##### 1.1 LAND USE

**The Registered Proprietor must not;**

- a) Use or permit the Lot to be used other than for the construction and occupation of a residential dwelling or dwellings.
- b) Carry out or permit to be carried out on the Property any repairs, restorations or wrecking of any motor vehicle, boat, trailer or any other vehicle unless screened from public view at all times.
- c) Change the finished ground level of the Property from the finished ground level of the property, provided that this does not include:
  - (i) Minor changes to parts of the Property for construction of swimming pools or spa baths, gardening and related landscaping purposes; or
  - (ii) Cutting into the finished ground level for the purpose of construction of one level of basement, cellar or other room substantially below the finished ground level of the property.

##### 1.2 DWELLING

**The Registered Proprietor must not construct or permit to be constructed on the Lot;**

###### 1.2.1 Any house unless the house has:

- a) A minimum Floor Area of 180sqm;
- b) A minimum height of two storeys for the portion of the house addressing the Primary Street on Lot numbers 1034, 1035, 1039, 1040, 1041, 1042, 1043, 1047;
- c) A minimum floor-to-ceiling height of 2.7m, or 32 brick courses, for the main living areas and any rooms on the ground floor facing the Primary Street frontage;
- d) A clearly defined entry;
- e) A facade treatment with a feature element and degree of articulation designed to avoid straight flat sections to front walls;
- f) Demonstrates strong architectural character and incorporates the use of colour and materials to provide considerable interest and individuality, particularly the front elevation;
- g) An elevation facing the Primary Street Frontage with at least one of the following features:
  - (i) A veranda with a depth of at least 1.5m and a length at least one third of the width of the house frontage to the Primary Street;
  - (ii) A balcony with a balustrade consisting of open metal or timber elements, or a solid wall, or a combination thereof, to a room at the upper floor;
  - (iii) A porch over the main entrance; or
  - (iv) A bay window.
- h) A similar standard of materials and finishes to elevations facing the Primary Street frontage and Secondary Street frontage in the case of a Property located on a street corner.

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- i) A pitched roof at a pitch of at least 25 degrees where it is visible from the Primary Street boundary; and Roof Eaves with a minimum overhang of 450mm from the wall, or 300mm in the case of roof overhangs to gables.
- a) At least one Major Opening to the Primary Street frontage for single-storey buildings;
- b) At least two Major Openings to the Primary Street frontage for buildings of two-storeys or more;
- c) An opening facing both the Primary Street frontage and the Secondary Street frontage in the case of a ground floor corner room; and
- j) North-facing Major Opening shaded by roof eaves or other mean of shading.

## 1.2.2 Any house with;

- a) A Skillion roof visible from the Primary Street frontage or the or Secondary Street frontage, except in the case of a verandah roof; or
- b) A verandah with a roof pitch of less than 10 degrees.
- c) Openings with horizontally proportioned or square glazed panels visible from the Primary Street boundary, and the Secondary Street boundary in the case of a corner lot; or
- d) Openings glazed in dark-tinted or mirror glass.

## 2. BUILDING MATERIALS

### The Registered Proprietor must not construct or permit to be constructed on the Lot:

- a) Any house unless wall materials are predominantly constructed of painted or rendered concrete, clay bricks, limestone or other similar material in face work or render;
- b) Double pitched roofs at an angle of not less than 24.5 degrees or greater than 45 degrees where the roof is visible from street or public access areas excluding any part of the roof which covers the verandah areas;
- c) Skillion, curved or other roof designs without the prior written consent of the Vendor;
- d) Zinalume roofs.
- e) Any house unless the house has more than half of the wall area finished in:
  - (i) Face brick in red, brown or sand hues;
  - (ii) Textured render;
  - (iii) Painted brick or masonry block;
  - (iv) Natural limestone;
  - (v) Limestone finish concrete block;
  - (vi) Rammed earth;
  - (vii) A combination of the above; or
  - (viii) Other material with the written approval of the Seller or Seller's agent.
- f) Any house unless the house has a Colorbond metal roof or a tiled roof finished in a colour not consistent with the Seller's approved list of colours as illustrated in the Design Guidelines;
- g) Any house with walls painted in colours that are not consistent with the Seller's approved colour palette as illustrated in the Design Guidelines, or without the written approval of the Seller or Seller's agent.

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## 3. PARKING AND STOREROOM

The Registered Proprietor must not construct or permit to be constructed on the Lot:

- a) Any house unless the house contains a double garage making provision for parking of not less than two motor vehicles side by side.
- b) Any house with an open carport;
- c) Any house with a roller garage door visible from either the Primary Street boundary or the Secondary Street boundary;
- d) Any triple garage unless in a tandem or staggered configuration;
- e) A driveway and the crossover between the road and the parking area on the Lot which are not constructed and completed prior to occupation of the house
- f) A driveway and the crossover which is not constructed of segregated pavers or quality in-situ concrete finished with a pattern or limestone washed aggregate or similar; or
- g) A driveway which is wider than 6 metres at the street Lot boundary or less than 0.6 metres to the side boundary.
- h) A garage that is not set back behind the front-most part of the house.

## 4. PARKING VEHICLES

The Registered Proprietor must not park or allow to be parked on the Lot or on the road or on any other Lot near or next to the Lot any commercial vehicles including but not limited to trucks, caravans, trailers, boats or any other mobile machinery ("commercial vehicles") unless such commercial vehicles are housed or contained within a carport or garage on the Lot or screened from public view behind the building line, unless when used during the normal course of business by a visiting tradesperson.

## 5. SHEDS/OUTBUILDINGS

- a) The Registered Proprietor must not construct or permit to be constructed or bring on to the Lot any outbuilding (including any detached garage, workshop, garden shed, storage shed or other outbuilding) which exceeds 2m in height or 12m<sup>2</sup> in Floor Area unless constructed in predominantly the same design and materials as the house.
- b) The Registered Proprietor must not construct or permit to be constructed any outbuilding less than 12m<sup>2</sup> in Floor Area unless it is coloured to compliment the house and not extend more than 320mm above the Lot fence line.

## 6. FENCING

- a) The Registered Proprietor must not take or permit any action to be taken to remove, alter, mark, or remove any wall or fence constructed by the Vendor (unless additional blocks are required to be added for the purpose of retaining) on or about any of the boundaries of the Lot, not to permit such wall or fence to become damaged, unsafe or fall into a state of disrepair, not to permit any roots or any tree, plant or building or other thing on the Lot to cause such wall or fence to become structurally unsound and not to alter such wall or fence without the Vendor's prior written consent.
- b) The Registered Proprietor must not alter the level surface or the Lot without the express permission of the Vendor.
- c) Fencing is to be completed prior to occupation of the residence.
- d) The registered proprietor must not Construct, erect, install or permit to be constructed, erected or installed on the Property, a fence along the Primary Street boundary or within the front setback area of the Property greater than 1.2m in height;

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- e) The registered proprietor must not Construct, erect, install or permit to be constructed, erected or installed on the Property, a fence along the Primary Street boundary or within the front setback area of the Property, unless the fence consists of:
  - (i) Masonry construction to a maximum height of 0.6m for any wall element and a maximum height of 1.2m for any piers, and in a finish that that matches the house;
  - (ii) Timber or metal infill panels with a visual permeability of at least 40% between masonry piers; or
  - (iii) Timber pickets with a visual permeability of at least 30%.
- f) The registered proprietor must not Construct, erect, install or permit to be constructed, erected or installed on the Property:
  - (i) A gate in the front fence unless the gate matches the fence;

## 7. LANDSCAPING

### **The Registered Proprietor must not;**

- a) Permit garden areas on the Lot and within public view to remain unlandscaped after three months of occupation of any house on the Lot, including adjoining road verges. In the case of display homes the garden areas are to be landscaped at practical completion.
- b) Construct, erect, install or permit to be constructed, erected or installed on the Property:
  - (i) Paved or in-situ cast concrete surfaces that cover more than 50% of the front setback area of the Property between the Primary Street boundary and the house and any other associated structures; or
  - (ii) Artificial turf within the front setback area of the Property or the verge of any adjacent road reserve.

## 8. SERVICES

### **The Buyer must NOT construct, erect, install or permit to be constructed, erected or installed on the Property:**

- g) Any house unless the house has:
  - (i) All pipes, wired services, clothes-drying areas, hot water storage tanks and other such service items screened from view from the Primary Street boundary, and the Secondary Street boundary in the case of a corner property;
  - (ii) TV Antennae, satellite dishes, and ny roof-mounted air conditioning units located below the highest roof ridgeline and away from the Primary Street frontage, and the Secondary Street boundary in the case of a corner property; and
- (iii) Any roof mounted air conditioning units finished in the same colour as the roof.
- h) Any house with:
  - (i) Meter boxes located on the front face of the house;
  - (ii) Photo-voltaic cells located on a roof pitch facing the Primary Street, except where the Primary Street boundary is on the northern side of the Property; or
  - (iv) Ground level air conditioning units visible from the Primary Street boundary, and the Secondary Street boundary in the case of a corner property.

