

WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED

BLANK INSTRUMENT FORM

DEED OF RESTRICTIVE COVENANT – Baldivis Parks
Stage 11 (Deposited Plan 426548)

(Note 1)

Page 1 of 6 pages

Date:

DEED dated

20

BY **AUSTRALAND INDUSTRIAL NO. 88 PTY LTD ACN 107 355 706** of Level 3 1C Homebush Bay Drive RHODES NSW 2138 and **BONVEST PTY LTD ACN 009 087 343** of Level 1, 24 Outram Street WEST PERTH WA 6005 (**Owners**)

RECITALS

- A. The Owners are the registered proprietors of the Land.
- B. The Owners intend to subdivide the Land.
- C. Pursuant to section 136D of the *Transfer of Land Act 1893* the Owners require the Lots to be encumbered by the Restrictive Covenant so that the Restrictive Covenant will be noted on the Plan and when individual certificates of title issue for the Lots, the burden of the Restrictive Covenant is to be registered as an encumbrance on the certificates of title.

OPERATIVE PART

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context otherwise requires or a contrary intention appears:

Floor Area means the area between the external walls of the house including any alfresco area located under the main roof of the house but excluding the area of any carport or garage, patios, balconies, verandahs, storage area, workshop, pergola, outbuilding, shed or other unenclosed area;

Land means the land described in item 1 of the Schedule;

Lots means the lots specified in item 2 of the Schedule and shown on the Plan;

Outbuilding means any building constructed on the Lot other than a house, including but not limited to any workshop, garden shed or storage shed;

Plan means Deposited Plan 426548;

Restrictive Covenant means the restrictive covenants specified in item 3 of the Schedule;

Schedule means the Schedule to this deed; and

Settlement means the date of registration of the transfer of the Lot from the Owners to the proprietor of the Lot.

1.2 Interpretation

- (a) A reference to a person includes a reference to the person's personal representatives, executors, administrators, successors and assigns and a reference to a corporation includes a reference to a corporation's successors and assigns.
- (b) A reference to any person if that person ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred to any other person, refers respectively to the person established or constituted in its place or succeeding to its powers or functions.

- (c) An obligation, covenant, representation, or warranty on the part of 2 or more persons is for the benefit of them jointly and each of them severally.
- (d) An obligation, covenant, representation or warranty on the part of 2 or more persons binds them jointly and each of them severally.
- (e) A reference to any thing includes the whole or any part of that thing and a reference to a group of things or persons includes each thing or person in that group.
- (f) A reference to a clause or paragraph, the Schedule or an annexure is a reference to a clause or paragraph in this deed and the Schedule and the relevant annexure to this deed respectively.
- (g) The index and all headings have been included for ease of reference only and they are not to be used to construe or interpret any part of this deed.

2. SECTION 136D OF THE TRANSFER OF LAND ACT 1893

Pursuant to section 136D of the *Transfer of Land Act 1893*, the Owners require each certificate of title which issues for the Lots to be encumbered by the Restrictive Covenant.

3. LAND TO BE BURDENED BY THE RESTRICTIVE COVENANT

The Owners intend the burden of the Restrictive Covenant to:

- (a) run with the land described in the certificates of title for the Lots; and
- (b) be enforceable by the Owners and each and every subsequent registered proprietor of the Lots.

4. LAND TO BE BENEFITED BY THE RESTRICTIVE COVENANT

The Owners intend the benefit of the Restrictive Covenant to be for the Lots.

5. VALIDITY AND ENFORCEABILITY

Each of the restrictive covenants specified in item 3 of the Schedule is a separate and distinct covenant and if any covenant or its application to any person or circumstances is or becomes invalid or unenforceable then the remaining covenants will not be affected and each remaining covenant will be valid and enforceable to the fullest extent permitted by law.

6. TERM OF THE RESTRICTIVE COVENANT

The Restrictive Covenant shall expire and cease to have effect from and including the date that is 10 years from the date of issue of the certificates of titles for the Lots.

SCHEDULE

1. Land

Lot 9031 on Deposited Plan 425987 being the whole of the land comprised in Certificate of Title Volume Folio .

2. Lots

All Lots on the Plan except Lots 990, 991 and 9032.

3. Restrictive Covenant

The proprietors of each of the Lots will not:

- 3.1 use or permit the Lot to be used other than for residential purposes;
- 3.2 construct or permit to be constructed on the Lot any house which is transportable or otherwise not of a permanent nature;
- 3.3 construct or permit to be constructed on the Lot any house unless:
 - (a) subject to clause 3.3(b), all external walls (excluding windows) are constructed with bricks or masonry or limestone finished facework or painted render or any other materials approved by the Owners at the Owners' absolute discretion;
 - (b) the walls to the front of the house facing the street are constructed with a minimum use of two (2) colours or materials;
 - (c) the house has at least one (1) feature (for example, planter box, gable or gablet, portico, archway, protruding sill course to windows, blade wall or feature wall) to the front elevation;
 - (d) all retaining walls visible from any public space or road are constructed from materials approved by the Owners at the Owners' absolute discretion;
 - (e) the roof is pitched at an angle of not less than 23 degrees excluding any part of the roof which covers verandah areas (a skillion roof design or a flat roof behind parapets excepted but no flat roof visible from the public street);
 - (f) the roof is covered with tiles or Colorbond (no zincalume or any other materials);
 - (g) the house contains a carport or garage which is constructed using the same materials as the house except where the garage or carport are screened from view from any public street or thoroughfare;
 - (h) the driveway and crossover between the road and the parking area on the Lot are constructed and completed with paved materials, coloured or decorative concrete or any other materials approved by the Owners at the Owners' absolute discretion;
 - (i) window treatments such as curtains or blinds are erected or installed immediately upon practical completion of the construction of the house;
- 3.4 construct or permit to be constructed any Outbuilding visible from the primary road or any Outbuilding which exceeds:
 - (a) 20m² in floor area; or
 - (b) 2.2 metres in wall height and 2.5 metres in gable height,unless approved by the Owners;
- 3.5 without the prior consent of the Owners, construct or permit to be constructed on the Lot:
 - (a) any side or back fence abutting any public open space or public reserve or road reserve unless such fence is constructed of Smartascreen Colorbond, limestone or the same brick as any house on the Lot and is not less than 1800mm high;

- (b) any boundary fence unless such a fence is constructed of Smartascreen Colorbond, brick or limestone or other similar material at a height of 1800mm;
 - (c) any Smartascreen Colorbond fence unless the colour of the fence is 'Grey Ridge/Woodland Grey';
 - (d) any gates unless such gates are constructed of materials which are complementary to the boundary fence; and
 - (e) any fencing forward of the front building line unless such fencing consists of side and front fencing together, constructed of brick, rendered brick or limestone piers and infilled with timber or wrought iron, or a painted timber picket fence and is no greater than 1.2 metres in height;
- 3.6 take or permit any action to be taken to remove, alter or mark any wall or fence constructed by the Owners (unless additional blocks are required to be added to a retaining wall) on or about any of the boundaries of the Lot, permit such wall or fence to become damaged, unsafe or fall into a state of disrepair, permit any roots of any tree, plant or building or other thing on the Lot to cause such wall or fence to become structurally unsound and repair or renew such wall or fence except in the same style, material and colour of the existing wall and fence;
- 3.7 construct a house unless all side and rear boundary fencing are constructed and completed at the same time or prior to occupation of the house;
- 3.8 subject to clause 3.5(e) of this deed, construct any fence forward of the front building line which:
- (a) exceeds 1.2 metres in height;
 - (b) has more than 740 millimetres in height of the fence constructed of solid and impermeable materials; or
 - (c) is constructed from fibre cement, Colorbond or other sheet material products;
- 3.9 carry out or permit to be carried out on the Lot any repairs or restorations of any motor vehicle, boat, trailer, aircraft, mobile machinery or any other vehicle on the Lot or any part of the Lot other than wholly within a garage on the Lot and screened from public view at all times;
- 3.10 permit any commercial vehicle which have an aggregate weight greater than 3.5 tonnes, caravans, trailers, boats or any other mobile machinery to be parked on the Lot, on the road or on any other land near to or next to the Lot unless the commercial vehicles, caravans, trailers, boats or mobile machinery are parked or contained wholly within the garage on the Lot or are screened from public view;
- 3.11 permit any garden areas on the Lot and within public view to remain unlandscaped after three (3) months of practical completion of the house;
- 3.12 permit any rubbish, trash, garbage or other waste material to be accumulated or kept on the Lot or any part of the Lot or any rubbish disposal containers on the Lot to be in the front of the building line except on days allocated by the local authority for rubbish collection from the Lot;
- 3.13 if the Lot is vacant land, permit any 'For Sale' sign to be erected on the Lot within any time before the second anniversary of Settlement;
- 3.14 permit the installation of any air conditioning unit that protrudes greater than 500mm above the ridgeline of the house and is not of similar colour to the roof;
- 3.15 permit the installation of any solar hot water unit that is not integrated with and matches the roof profile of the house;
- 3.16 permit the installation of any air conditioning unit to the front roof hip or fascia;
- 3.17 permit any washing line or clothes hoists to be erected that are visible from any public street or thoroughfare;
- 3.18 permit any satellite dish to be visible from the street on which the house is located;
- 3.19 permit any TV antennas to be visible above the roofline from the street on which the house is located;
- 3.20 permit the installation of any letterbox unless such letterbox is clearly numbered and complements the house;

- 3.21 permit any temporary window treatments such as paper, plastic, cotton sheeting or foil to be affixed to the windows that are visible from any public street or thoroughfare;
- 3.22 permit the front yard and verge abutting the Lot to become overgrown or invaded by weeds or fall into a state of disrepair or damage any trees planted on the verge abutting the Lot;
- 3.23 permit concreting or construction of hardstand of the entire area forward of the building on the Lot; and
- 3.24 permit any building materials to remain at the front of the house constructed on the Lot or otherwise in a place visible from the street more than three (3) months after the practical completion of the construction of the house.

4. Encumbrances

M637212 Mortgage to United Overseas Bank Ltd

EXECUTED as a Deed

Executed on behalf of **Australand Industrial No. 88 Pty Ltd ACN 167 317 204** and **Bonvest Pty Ltd ACN 009 087 343**

by its Attorney
 under Sub-Power of Attorney No. O368267
 in the presence of:

 Signature of witness

 Attorney

 Name of witness (print)

 Address

 Occupation

INSTRUCTIONS

1. This form may be used only when a "Box Type" form is not provided or is unsuitable. It may be completed in narrative style.
2. If there is insufficient space Additional Sheet, Approval No B1191, should be used.
3. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
4. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.

NOTES

1. Insert document type.
2. A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The full name, address and occupation of the witness must be stated.

EXAMINED

OFFICE USE ONLY

LODGED BY

ADDRESS

PHONE NO.

FAX NO.

REFERENCE

ISSUING BOX NO.

PREPARED BY Minter Ellison

ADDRESS Allendale Square, 77 St Georges Tce
PERTH WA 6000

PHONE NO. (08) 6189 7800 FAX NO. (08) 6189 7999

REF: JC:LJR 1469496

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY

TITLES, LEASES, DECLARATIONS ETC LODGED HEREWITH

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|----|-------|-----------------|
| 1. | _____ | Received items |
| 2. | _____ | |
| 3. | _____ | Nos. |
| 4. | _____ | |
| 5. | _____ | Receiving Clerk |
| 6. | _____ | |

Registered pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered in the Register.