

FORM APPROVAL NO. B1192

WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED.**BLANK INSTRUMENT FORM**DEED OF RESTRICTIVE COVENANT – Port Coogee Marina
Village (Deposited Plan 406517)

(Note 1)

DEED datedBy **PORT CATHERINE DEVELOPMENTS PTY LTD ACN 070 096 927** of Level 3, 1C Homebush Bay Drive,
RHODES NSW 2138 (**Developer**)**RECITALS**

- A. The Developer is the registered proprietor of an estate in fee simple of the Land.
- B. The Land is subject to the Specified Encumbrances but otherwise free of all encumbrances.
- C. The Developer has subdivided the Land and has lodged a plan of subdivision with the Western Australian Planning Commission, which has been approved and is now known as Deposited Plan 406517.
- D. Pursuant to section 136D of the *Transfer of Land Act 1893 (WA)*, the Developer requires 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:

Design Guidelines means the design guidelines attached to this document as Annexure A;

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

Local Development Plan means the local development plan approved by the City of Cockburn in relation to the Lots;

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 406517;

Restrictive Covenant means the restrictive covenants set out in clause 2 of this deed;

Schedule means the Schedule to this deed;

Settlement means the date of registration of the transfer of the Lot from the Developer to the proprietor of the Lot; and

Specified Encumbrances means the encumbrances specified in item 3 of the Schedule.

1.2 Governing Law

This deed is governed by and will be construed according to the laws of Western Australia.

1.3 Interpretation

In this deed, and unless the context indicates a contrary intention:

- (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; and
- (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. RESTRICTIVE COVENANTS

2.1 Development on the Lot

The registered proprietor for the time being of each Lot covenants and agrees that it will not (and will not allow any other person to):

- (a) breach, or undertake any development on the Lot which is not in accordance with:
 - (i) the Design Guidelines; or
 - (ii) the Local Development Plan;
- (b) construct a dwelling on the Lot:
 - (i) which is transportable or otherwise not of a permanent nature;
 - (ii) without, at the same time, constructing a letter box at the street frontage in the same material and finish as the walls of the dwelling; or
 - (iii) without a storage area (minimum 4m²) provided on the ground floor with a minimum dimension of 1.0m and shall not be impeded by any door or its swing. Where located external to the building/garage, the storage shall be enclosed;
- (c) construct a car port on the Lot;
- (d) install a clothes line or rain water tank which is visible from any street;
- (e) construct any Outbuilding on the Lot between a dwelling and primary street (or secondary street where applicable) unless it is not visible from the street in front of the dwelling or unless, if visible from any other street, it is constructed of material predominantly brick or Colorbond and in the same colour scheme as the dwelling constructed on the Lot;
- (f) allow any building materials or rubbish to remain at the front of the dwelling constructed on the Lot or otherwise in a place visible from the street or public open space for longer than one (1) month after the dwelling has become available for occupation by residents; or

- (g) leave any vacant area on the front of the Lot in an unlandscaped condition for longer than three (3) months after the dwelling has become available for occupation by residents. For the purpose of this covenant, 'unlandscaped position' means that the unlandscaped portion of the Lot is not grassed, planted with vegetation or otherwise beautified by natural or artificial means.

2.2 Use and maintenance of Lot

The registered proprietor for the time being of each Lot covenants and agrees that it will not (and will not allow any other person to):

- (a) carry out or allow the carrying out of repairs to any vehicle, motorcycle, trailer, boat or caravan on the Lot unless in a position not visible from any street, waterway or any lot adjacent to the Lot;
- (b) park or store (or allow to be parked or stored) any vehicle of a commercial nature, such as a truck or utility, or any caravan, trailer, boat or any mobile machinery (except for commercial vehicles in use by non-resident tradesperson during the normal course of business) unless any such vehicle or item is housed or contained wholly within a garage or other fully enclosed storage area on the Lot;
- (c) erect a "For Sale" sign on the Lot prior to the first anniversary of the date of Settlement; or
- (d) display any advertising or business sign on the Lot or in any window of or on the walls of the dwelling on the Lot except for a temporarily placed professionally produced real estate sign associated with the proposed sale of the Lot.

2.3 Retaining walls and fences

The registered proprietor for the time being of each Lot covenants and agrees that it will not (and will not allow any other person to):

- (a) construct any fence or wall from the dwelling on the Lot to the boundary of an adjoining lot unless the fence or wall is constructed from materials predominantly rendered brick or Colorbond material;
- (b) allow any boundary fence to fall into a state of disrepair;
- (c) in respect of any fence on the top of any retaining wall which was constructed by the Developer:
 - (i) fail to maintain the retaining wall fence in good condition; or
 - (ii) build any other fence in front of or immediately behind the retaining wall fence.

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

Pursuant to section 136D of the *Transfer of Land Act 1893 (WA)*, the Developer requires each certificate of title which issues for the Lots to be encumbered by the Restrictive Covenant.

4. LAND TO BE BURDENED BY THE RESTRICTIVE COVENANT

The Developer intends the burden of the Restrictive Covenant to:

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

5. LAND TO BE BENEFITED BY THE RESTRICTIVE COVENANT

The Developer intends the benefit of the Restrictive Covenant to be for each of the Lots and may be enforced by the registered proprietor for the time being of each Lot.

6. VALIDITY AND ENFORCEABILITY

Each of the Restrictive Covenants 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.

7. TERM OF THE RESTRICTIVE COVENANT

The Restrictive Covenant shall expire and cease to have effect from and including 10 years from the date of registration of the application for new certificates of title for the Lots.

8. NO OBLIGATION TO ENFORCE

The Developer has no obligation or responsibility for enforcement of the Restrictive Covenant, and has no liability to any other person in respect of any failure or neglect on the Developer's part to enforce any of the Restrictive Covenant, it being the intention that each registered proprietor for the time being of each Property has a right to enforce the Restrictive Covenants.

SCHEDULE

1. LAND

Lot 9162 on Deposited Plan 421729, being the whole of the land in Certificate of Title Volume 4016 Folio 388.

2. LOTS

Lots 1 to 17 (inclusive) on the Plan.

3. ENCUMBRANCES

Nil.

ANNEXURE A

[Design Guidelines to be inserted – refer to annexure D of the sale contract.]

EXECUTED as a Deed

Executed on behalf of **PORT CATHERINE DEVELOPMENTS PTY LTD**

ACN 070 096 927

by its Attorney

under Power of Attorney No.O368269 dated 7 February 2020

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 insufficient space hereon Additional Sheet Form B1 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. Execution by a corporation or body corporate must be in accordance with the Corporation Act.

EXAMINED

OFFICE USE ONLY

RESTRICTIVE COVENANT
(INSERT NAME OF DOCUMENT)

LODGED BY:
ADDRESS:

PHONE NO:
FAX NO:
REFERENCE NO.
ISSUING BOX NO:

PREPARED BY:	Corrs Chambers Westgarth
ADDRESS:	Level 6, 123 St Georges Terrace PERTH WA 6000
PHONE No.	(08) 9460 1666
FAX No.	(08) 9460 1667
EMAIL:	Nancy.zhao@corrs.com.au
REFERENCE NO.	9181737 – Port Coogee

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

[Empty box for instructions]

TITLES, LEASES, DECLARATIONS ETC LODGED
HEREWITH

1. _____	Received Items
2. _____	
3. _____	Nos
4. _____	
5. _____	
6. _____	Receiving Clerk

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.