

BLANK INSTRUMENT FORM**RESTRICTIVE COVENANTS**

(Note 1)

This Deed is made the _____ day of _____ 2016

PARTIES

LOWE PTY LTD A.C.N. 009 354 143 of Suite 6, 132-136 Railway Street, Cottesloe and the **HOUSING AUTHORITY** of 99 Plain Street, East Perth, Western Australia ("the Owner") which expression where the context so admits or requires shall extend to and include the legal assigns and transferees of the Owner.

RECITALS

- A. The Owner is registered as the proprietor of an estate in fee simple of the Land located at Albany, Western Australia subject to the Encumbrances (if any) specified in clause 7.
- B. The Land is proposed to be subdivided in accordance with the Subdivision Plan.
- C. Pursuant to the Subdivision Plan the Lots will be created.
- D. The Owner wishes to create on the Subdivision Plan in respect of each of the Lots a restrictive covenant as set out in this deed pursuant to the provisions of Section 136D of the Act.
- E. The terms of this Deed shall bind the Owner and its respective successors in title and assigns as the registered proprietors for the time being of the Lots and any part of the Lots.

NOW THIS DEED WITNESSES:-**1. Definitions and Interpretation**

1.1 In this Deed the following terms have the following meanings:

1.1.1 "the Act" mean the Transfer of Land Act 1893, as amended;

1.1.2 "Dwelling" means a permanent non-transportable residential dwelling constructed on any of the lots or part thereof;

1.1.3 "Lots" means Lots 86 to 97 inclusive, 107 to 114 inclusive and 133 to 137 inclusive as shown on the Subdivision Plan and where the content so admits includes any other lot created in substitution over all or part of the land contained within Lots 86 to 97 inclusive, 107 to 114 inclusive and 133 to 137 inclusive as the case may be;

1.1.4 "Nominated Representative" means a person nominated by the Owner to represent the Owner on all or any of the matters specified in the Restrictive Covenants requiring the Owner's consent;

1.1.5 "Restrictive Covenants" means the restrictive covenants created in clause 2 of this Deed;

1.1.6 "the Land" means Lot 9006 on Deposited Plan 401409 and being the whole of the land in Certificate of Title Volume 2835 Folio 84, Lot 9100 on Deposited Plan 401409 being the whole of the land contained in Certificate of Title Volume 2835 Folio 86 and Lot 9010 on Deposited Plan 406170 being the whole of the land contained in Certificate of Title Volume ____ Folio ____;

1.1.7 "Owners of Lots" means the registered proprietors from time to time of all or any lot or lots from time to time which may be created within the area of the Lots; and

1.1.8 "Subdivision Plan" means Deposited Plan 406183.

1.2 In this Deed unless the context otherwise requires:

1.2.1 words importing the singular include the plural and vice versa;

1.2.2 words importing any gender include the other genders;

- 1.2.3 references to a person include corporations and bodies politic;
- 1.2.4 references to a person includes the legal personal representatives, successors and assigns of that person;
- 1.2.5 a reference to a statute includes a regulation, by-law, requisition, order or other delegated or subordinate legislation made under that statute and any amendment to or re-enactment of that statute or any delegated or subordinate legislation thereunder;
- 1.2.6 an obligation on two or more parties shall bind them jointly and severally;
- 1.2.7 headings in this Deed are for convenience and identification of clauses only and do not otherwise affect its interpretation; and
- 1.2.8 a reference to an association, body, government department or authority (statutory or not) which ceases to exist or which has been reconstituted, amalgamated, reconstructed, merged, renamed or replaced or where its powers or functions are transferred to any other person organisation in its place, shall be taken to refer to that association, body, government department or authority established or constituted in its place or by which its functions and powers have become exercisable.

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Restrictive Covenants

- 2.1 As to each of the Lots the Owner in its capacity as registered proprietor of each of these lots for itself and all of the Owners of the Lots and each of them pursuant to the provisions of Section 136D of the Act for the purpose of creation of a restrictive covenant on the Subdivision Plan HEREBY COVENANTS and AGREES that none of the Owners of the Lots shall at any time:-
 - 2.1.1 construct, erect, build or install or permit to be constructed, erected, built or installed on any of the Lots or any part of them:
 - (a) a residence other than a permanent non transportable residential dwelling ("Dwelling");
 - (b) a Dwelling, unless the Dwelling or other building or structure adjoining the Dwelling contains a garage making provision for parking of not less than two motor vehicles, side by side;
 - (c) a building or structure containing a garage which is not identical to the Dwelling in respect of the roof pitch, the materials used, the design, external appearance, including colour and the quality of construction;
 - (d) a Dwelling which does not contain at least one of the following structures on each external wall fronting the street:-
 - i. a gable;
 - ii. a gablet;
 - iii. a bay window;
 - iv. a balcony;
 - v. a portico;
 - vi. a projecting corbel; or
 - vii. a verandah.
 - (e) a Dwelling using roof materials which are not concrete or clay tiles or Colourbond metal;
 - (f) any structure, erection or building with walls and which has a roof area exceeding 20 square metres which does not match or complement the Dwelling in respect of materials used, the design, external appearance, including colour and the quality of construction;
 - (g) any structure, erection or building which uses zincalume, zinc-aluminium coated steel or natural aluminium or aluminium coloured sheeting for roofing or wall cladding unless such materials be of a non-reflective nature.

- (h) any building, structure, renovation works, additions or alterations which are not by their nature strictly for residential purposes;
 - (i) a Dwelling unless all rear and side boundary fencing is constructed or completed prior to occupation of the Dwelling;
 - (j) any side or rear fencing which:-
 - i. is less than 1800 millimetres in height;
 - ii. does not match or complement the Dwelling;
 - iii. extends forward of the building frontage setback line (or in the case of a corner Lot the designated building frontage setback line) unless such fence is constructed by the Owner prior to the commencement of the construction of the Dwelling; or
 - iv. is constructed using corrugated fibre cement sheeting or otherwise contains fencing materials other than painted Hardie Supalock panels, masonry, brushwood, Timberlap panelling or Colourbond corrugated steel.
 - (k) any fence along or in front of the building frontage setback line (or in the case of a corner Lot the designated building frontage setback line) unless:-
 - i. such fence be part of the building design approved by the Owner and all materials used for such fencing be approved by the Owner;
 - ii. such fence is constructed by the Owner prior to the commencement of the construction of a Dwelling.
 - (l) a Dwelling, unless a driveway and the cross-over between the road and the parking area on the Lot are constructed and completed prior to occupation of the Dwelling;
 - (m) a driveway crossover which is wider than 6 metres or less than 0.5 metres from any side boundary of the Lot or which is not constructed of brick paving or block paving.
 - (n) a letterbox which is not adjacent to the driveway, clearly numbered or is made of materials which do not match or complement the Dwelling;
 - (o) a solar hot water system, unless it is hidden from public view from the front of the Lot, fits the roof profile and is not elevated at any angle to the roof profile and otherwise matches or complements the Dwelling;
 - (p) an air conditioning unit or evaporative cooler, unless it is hidden from public view from the front of the Lot and is of similar colour to the roof or unless it is contained wholly within the volume of the building including the roof space between the ceilings of the Dwelling and the underside of the roof of the Dwelling;
 - (q) any roof mounted service or equipment (including but not limited to a free to air television antennas, a satellite dish or a radio antenna or aerial) to the roof of the Dwelling unless it is architecturally integrated into the Dwelling and of the same colour as the roof and hidden from public view; or
 - (r) a clothes line or rain water tank except in accordance with manufacturer's instructions and which is not screened from public view.
- 2.1.2 alter or remove or permit to be altered or removed any retaining wall or fencing on the Lot or on a boundary of the Lot constructed or built by the Owner or allow or permit such retaining wall or fencing to fall into a state of disrepair or repair or renew such retaining wall or fencing except in the same style and colour as the existing retaining walls and fences;
- 2.1.3 alter the level of the surface of the Lot by elevating the level by more than 0.5 metre if a retaining wall or fencing has been erected or installed by the Owner on the boundary of the Lot;
- 2.1.4 commence construction of a Dwelling on the Lot (or any part thereof) unless it has first obtained the consent of the Owner or its Nominated Representative to the proposed plans and specifications of the residence to be constructed. The Owner acknowledges that the Owner or its Nominated Representative shall automatically approve the plans and specifications of the proposed Dwelling if they comply with these restrictive covenants;
- 2.1.5 park or allow to be parked on the Lot or on the road or on any other land near to or next to the Lot, any commercial vehicle (which have an aggregate weight greater than 3.5 tonnes or a height greater than 2.0 metres) or caravans, trailers, boats or any other mobile machinery ("vehicles") unless the vehicles are housed or contained wholly within a garage on the Lot or are screened from public view;

- 2.1.6 carry out repairs to or restoration of any vehicle parked on the Lot or on the road or on any other land near to or next to the Lot unless such repairs or restoration is carried out wholly within a garage on the Lot or screened from public view;
- 2.1.7 erect or display or cause to be erected or displayed on the Lot or any part thereof, a sign, boarding or advertising of any description whatsoever other than a sign erected by a builder of the Dwelling in accordance with the Builders Registration Act or a "For Sale" sign until a Dwelling has been constructed and completed on the Lot in accordance with the plans and specifications approved by the Owner or its Nominated Representative under clause 2.1.4, or two years have lapsed from the date of settlement of the purchase of the Lot;
- 2.1.8 use or open or allow to be used or opened, any Dwelling erected on the Lot for display purpose; or
- 2.1.9 breach or caused to be breached the Oyster Harbour, Albany Design Guidelines relating to each of the Lots.

3 **Burden of Restrictive Covenants**

The land to be burdened by the Restrictive Covenants created pursuant to clause 2 is each of the Lots.

4 **Benefit of Restrictive Covenants**

The land to be benefited by the Restrictive Covenants created pursuant to clause 2 is each of the Lots.

5 **Term of Restrictive Covenants**

The Restrictive Covenants are intended to run with each of the Lots until the day being ten (10) years after the date of issuing of all of the separate Duplicate Certificates of Title for the Lots after which date the Restrictive Covenants will expire and be of no further force and effect.

6 **Modification of Restrictive Covenants**

The Restrictive Covenants shall not be modified, surrendered, released or abandoned either wholly or partially except with the prior written consent of the registered proprietors of all of the Lots, from time to time. The registered proprietor of any Lot, from time to time, shall not make an application to any Court, the Registrar of Titles, Landgate or any other local authority for the partial or total modification, removal or extinguishment of the Restrictive Covenants prior to expiry of the term specified in clause 5 except with the prior written consent of the registered proprietors for the time being of all of the other Lots.


7 **Encumbrances**

- 7.1 Lots 107 to 112 inclusive, 136 and 137 on the Subdivision Plan are each encumbered by a drainage easement benefiting the City of Albany and created pursuant to s 167 of the *Planning and Development Act 2005*.
- 7.2 Lots 90 to 93 inclusive on the Subdivision Plan are encumbered by a restriction on motor vehicle access benefiting the City of Albany and created pursuant to s.150 of the *Planning and Development Act 2005*.


EXECUTED AS A DEED


Executed by)
LOWE PTY LTD)
A.C.N. 009 354 143)
in accordance with)
s 127 of the Corporations Act 2001 by:)

Director: 
Print Name: COLIN REGINALD HEATH

Director / Secretary: 
Print Name: PAUL GRAEME QUINLIVAN

The COMMON SEAL of the)
HOUSING AUTHORITY)
was hereunto affixed)
in the presence of)

Authorised Officer: 
Print Name: MICHAELA GERARDETH GALE

Authorised Officer: 
Print Name: Eugene George Bowden



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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.

EXAMINED