

Section 136D Deed of Restrictive Covenant

Belvedere Hills Estate: Stage 17A

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THIS DEED IS MADE THE

DAY OF

2008

BY:

HOCKING LAND COMPANY (ACN 084 881 309) and WESTEND ASSET PTY LTD (ACN 106 132 790) both of PO Box 1130, Canning Bridge in the State of Western Australia (collectively "the Developer").

RECITALS:

- A. The Developer is the registered proprietor of an estate in fee simple of the whole of the land described as the following:
- (i) Lot 9007 on Deposited Plan 57016 being the whole of the land contained in Certificate of Title Volume _____ Folio _____;
 - (ii) Lot 9008 on Deposited Plan 57017 being the whole of the land contained in Certificate of Title Volume _____ Folio _____;
 - (iii) Lot 9009 on Deposited Plan 57017 being the whole of the land contained in Certificate of Title Volume _____ Folio _____;
 - (iv) Lot 9010 on Deposited Plan 57017 being the whole of the land contained in Certificate of Title Volume _____ Folio _____; and
 - (v) Lot 2 on Diagram 32723 being the whole of the land contained in Certificate of Title Volume 1 Folio 157A;
- (collectively "the Land").
- B. The Developer has made an application to register Deposited Plan 60384 in relation to the Land ("the Subdivision Plan").
- C. Pursuant to section 136D of the *Transfer of Land Act 1893*, the Developer wishes to create the following restrictive covenants on **lots 210 to 222 (inclusive), lots 233 to 238 (inclusive), lots 262 to 288 and lots 354 to 358 (inclusive)** on the Subdivision Plan ("the Lot" or "the Lots" as the context requires) for the benefit of the Lots.

OPERATIVE PART:

1. Pursuant to section 136D of the *Transfer of Land Act 1893*, the Developer hereby creates restrictive covenants on all the Lots, unless otherwise specified, in the following terms:

A registered proprietor shall not:

Zoning

- (a) Use the Lot for any purpose other than the erection thereon of a single residential dwelling with its usual conveniences and that no building erected on the Lot shall be used for any purpose other than a single residential dwelling;

Area

- (b) In relation to any Lot that is zoned R20 under the Western Australian Planning Commission's Residential Design Codes, construct on the Lot a residential dwelling with a floor area (living area) of less than 150m², with such floor area excluding garages, verandas, eaves, outbuildings, patios and open alfresco areas but including the external walls to the dwelling;
- (c) in relation to any Lot that is zoned R30 under the Western Australian Planning Commission's Residential Design Codes, construct on the Lot a residential dwelling with a floor area (living area) of less than 105m², with such floor area excluding garages, verandas, eaves, outbuildings, patios and open alfresco areas but including the external walls to the dwelling;

External Finish

- (d) Construct a dwelling with external wall materials not primarily made of stone, face brick or painted or coloured cement render;
- (e) Construct a dwelling with roofing materials other than concrete or clay tiles or colorbond sheeting (Zincalume is not permitted);
- (f) Construct a flat roof unless it is shielded from view by parapet walling;

Garage

- (g) Construct a dwelling without a garage capable of housing at least two (2) motor vehicles. Such garage shall not be constructed other than in a manner which compliments the dwelling in respect to roof pitch, materials used, design, colour and external appearance;
- (h) Construct a garage without a roller or tilt type door to shield vehicles parked in the garage from the street;
- (i) Construct out buildings greater than 20m² and/or higher than 3m unless they are constructed from materials that compliment the dwelling in appearance;

Driveways

- (j) Construct driveways and crossovers after occupation of the dwelling. Any driveway or crossover constructed shall not be greater than 6.0m wide and not be less than 3.0m wide or constructed from anything other than brick pavers;

Solar Heaters

- (k) Install solar heaters and air conditioners on that part of a roof facing a street and the solar heaters and air conditioners shall not be painted (or consist of coloured materials) of any colours that do not match the roof colour;

Commercial Vehicles

- (l) Park commercial vehicles including trucks, buses and tractors 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;

Repairs

- (m) Repair, restore or maintain any motor vehicle, motor cycle, boat, trailer or any other vehicle unless carried out behind the building line and screened from public view at all times;

Fences

- (n) Construct side and rear boundary fencing using anything other than brick, limestone, or colorbond (Hardifence is specifically excluded). If colorbond fencing is used it shall not be any colour other than "Riversand" with "Slate Grey" posts and rails;
- (o) Construct fencing between the dwelling and the side boundary of the Lot, that is visible from the street, from any materials other than the materials of the dwelling, which match the appearance of the dwelling;
- (p) Construct fencing exceeding 0.8m in height that extends forward of the dwelling building line;
- (q) Complete construction of fencing to the dwelling any later than fourteen (14) days from either the date of builder's handover or the date of occupation of the dwelling, whichever occurs first;

Use of Dwelling

- (r) Use a completed dwelling for display purposes without first obtaining prior written approval from the Developer or its agent; and

For Sale Signs

- (s) In relation only to Lots upon which a dwelling is yet to be constructed, from the date that a separate certificate of title for the Lot issues and for a period of two (2) years after that date, display or erect thereon any "For Sale" sign. For the purposes of clarity, this clause is not intended to prevent the registered proprietor of the Lot from selling or otherwise disposing of the Lot.

2. The burden of the covenants and restrictions contained in the preceding clauses, hereof or otherwise implied hereunder shall run and bind each of the Lots and bind the registered proprietors and their successors in title, transferees and assigns and shall endure for the benefit and be enforceable by each and every other registered proprietor of the Lots, and their successors in title, transferees and assigns.
3. When at any time two or more persons or corporations own a joint interest in any of the Lots, their liability hereunder will be joint and several. Any person who becomes, is or was a registered proprietor of any of the Lots will be liable for any breach of the restrictive covenant affecting the Lot which occurs while that person or corporation was the (or one of the) registered proprietor(s) of that Lot.
4. A person who becomes a registered proprietor of any of the Lots, may whilst that person is the registered proprietor, enforce or take action in respect of a breach of the restrictive covenants created by this deed notwithstanding the breach complained of, in respect of any of the Lots, may have occurred prior to the person seeking to enforce the breach becoming the registered proprietor of the Lot.
5. The restrictive covenants outlined in this deed shall cease to exist on 30 June 2015.
6. Headings and sub-headings are inserted for convenience of reference only and shall not affect the interpretation of this deed.
7. In this deed "construct" shall mean to construct, commence to construct, permit of suffer to be constructed or commenced to be constructed.