

WESTERN AUSTRALIA  
TRANSFER OF LAND ACT 1893 AS AMENDED

**BLANK INSTRUMENT FORM**

DEED OF RESTRICTIVE COVENANT - ACCESS  
(Deposited Plan 55207)

(Note 1)

THIS DEED is made the 9 day of OCTOBER 2007

**BETWEEN**

1. **HOUSING AUTHORITY** of 99 Plain Street, East Perth, formerly known as The State Housing Commission under the *Housing Act 1980* of 99 Plain Street, East Perth (**HA**)

**AND**

2. **TOWN OF KWINANA** of Cnr. Gilmore Avenue and Sulphur Road, Kwinana, Western Australia (**the Town**)

**RECITALS**

- A. HA is registered or is entitled to be registered as proprietor in fee simple of Lots 601-641 and 648 on Deposited Plan 55207 being the land in Certificates of Title Volume          Folios  
(**the restricted lots**)
- B. The restricted lots are subject to the encumbrances mentioned in the Schedule.
- C. The restricted lots are located within the district of the Town.
- D. HA has received approval to subdivide the land of which the restricted lots form part provided that HA restricts vehicular access from the restricted lots as set out in this Deed and as shown on Deposited Plan 55207.

**1. OPERATIVE PART**

HA for itself and its successors in title hereby covenants with the Town under and by virtue of the provisions of Section 129BA of the *Transfer of Land Act 1893* (**the Act**) not to use or permit the use of the restricted lots for vehicular access from the restricted lots as follows:

Restricted Lots	Restriction
Lot 613 ( <u>2674/28</u> )	No vehicular access to Gilmore Avenue between points A to B as shown on Deposited Plan 55207.
Lot 601 ( <u>2674/16</u> )	No vehicular access to Gilmore Avenue between points C to D as shown on Deposited Plan 55207.

**BLANK INSTRUMENT FORM**

DEED OF RESTRICTIVE COVENANT – Wellard Stage 14  
(Deposited Plan 55207)

(Note 1)

DEED dated 9 OCTOBER 2007

BY HOUSING AUTHORITY of 99 Plain Street, East Perth formerly known as The State Housing Commission under the *Housing Act 1980* of 99 Plain Street, East Perth (HA)

**RECITALS**

- A. HA is the registered proprietor of the Land.
- B. HA intends to subdivide the Land.
- C. Pursuant to section 136D of the *Transfer of Land Act 1893* HA 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:

'Floor Area' means the area between the external walls of the outbuilding;

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

'Lots' means the lots described in item 2 of the Schedule;

'Plan' means Deposited Plan 55207;

'Restrictive Covenant' means the Restrictive Covenant specified in item 3 of the Schedule;  
and

'Schedule' means the Schedule to this Deed.

**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 includes a reference to the 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 in favour 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 has 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*, HA requires 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**

HA intends 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 HA and each and every subsequent registered proprietor of the Lots.

**4. LAND TO BE BENEFITED BY THE RESTRICTIVE COVENANT**

HA intends the benefit of the Restrictive Covenant to be for the Lots.

**5. TERM OF THE RESTRICTIVE COVENANT**

The Restrictive Covenant shall expire and cease to have effect from and including 31 December 2014.

## SCHEDULE

**1. Land**

Lot 9010 on Deposited Plan 55195, the whole of the land in Certificate of Title  
Volume 2601 Folio 985

**2. Lots**

All Lots on the Plan except Lot 9011.

**3. Restrictive Covenant**

The proprietors of each of the Lots will not:

**3.1 Construct or permit to be constructed on the Lot any house unless with respect to each house:**

- (a) a minimum of 80% of the area of all external walls (excluding windows) are constructed with bricks or masonry or limestone finished face work, painted render or rammed earth or any other material approved by HA;
- (b) roofs are pitched at an angle of not less than 24.3 degrees or greater than 42 degrees unless it is demonstrated to HA's satisfaction the merit of the design of low mono pitched skillion or flat roofs.
- (c) the house contains a carport or garage making provision for parking of not less than two motor vehicles, side by side;
- (d) the driveway and crossover between the road and the parking area on the Lot are constructed and completed prior to the occupation of the house;
- (e) the driveway and crossover are constructed of paved materials using brick or block paving or reconstituted limestone/concrete but not standard broom finished in situ concrete or grey slabs;
- (f) the side and rear boundaries of the Lot are fenced; and
- (g) any carport and garage that is accessed from a rear laneway is fitted with a roller or sectional door to ensure security.

**3.2 Commence, carry out, erect, construct or alter any development on the Lot without:**

- (a) plans and specifications (including finishes schedules) being first submitted to and approved by HA; and
- (b) compliance with any condition (consistent with these covenants) imposed by HA in giving its approval.

**3.3 Construct or permit to be constructed or bring onto the Lot any outbuilding (including any detached garage, workshop, garden shed, storage shed or other outbuilding) which exceeds 10m<sup>2</sup> in Floor Area or more than 2 metres in height above the natural surface level of the Lot or is visible from any public road reserve or open space unless constructed in the same materials as the house or houses (as the case may be) on the Lot;**

**3.4 Construct or permit to be constructed on the Lot:**

- (a) any fence abutting any public road reserve greater than 8 metres wide (except for any

fence erected by HA) unless:

- (i) the front fence is constructed with rendered brick or limestone piers to a maximum height of 1.2 metres and infilled with either solid rendered masonry or visually permeable panels to a maximum height of 1.0 metre, or tall fencing with rendered brick or limestone piers to a maximum height of 1.5 metres and infilled to a maximum height of 1.3 metres with visually permeable panels or solid rendered masonry to a maximum height of 1.0 metre with visually permeable material on top; and
  - (ii) any side fence is constructed of rendered brick or limestone piers, 1.8 metres in height and infilled with either solid rendered masonry or proprietary brand capped colourbond metal fencing or visually permeable panels to a maximum height of 1.8 metres. Any side fence is to extend for a distance of two thirds of the side boundary from the rear boundary and the remaining one third of the side boundary to be constructed in accordance with clause 3.4(a)(i) above.
- (b) any gate unless it is constructed of complementary material to the fence;
  - (c) any dividing fence unless such fence is constructed of proprietary brand capped colourbond metal fencing to a maximum height of 1.8 metres which does not project past the front building line;
  - (d) any fence forward of the building line (except for any fence erected by HA) unless such fence is constructed of rendered brick or limestone piers to a maximum height of 1.2 metres and infilled with either solid rendered masonry or visually permeable panels to a maximum height of 1.0 metre or tall fencing with rendered brick or limestone piers to a maximum height of 1.5 metres and infilled to a maximum height of 1.3 metres with visually permeable panels or solid rendered masonry to a maximum height of 1.0 metre with visually permeable material on top; and
  - (e) any fence abutting any rear laneway unless such fence is constructed and infilled with either solid rendered masonry or proprietary brand capped colourbond metal fencing including a component of visually permeable panels with solid fencing limited to storage/service areas.
- 3.5 Take or permit any action to be taken to remove, alter, mark, or remove any wall or fence constructed by HA (unless additional blocks are required to be added for the purpose of retaining) 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 or 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 and colour as the existing wall and fence.
- 3.6 Permit any rubbish disposal containers on the Lot to be in front of the building line except on days allocated by the local authority for rubbish collection from the Lot.
- 3.7 Permit any clothes hoist or satellite dish to be visible from any public street or thoroughfare or public open space.
- 3.8 Permit any television antenna to exceed a height of 1 metre above the roofline of the house constructed on the Lot in the direction of reception.
- 3.9 Permit any newspaper, aluminium foil or similar materials to be used to cover windows within the house constructed on the Lot.
- 3.10 Permit any roof mounted airconditioning or evaporative cooling plant to be installed unless it is of similar colour to the roof of the house constructed on the Lot.

- 3.11 Permit any solar hot water system to be installed unless it matches the profile of the house constructed on the Lot.
- 3.12 Construct any letterbox unless clearly numbered and complementing the house constructed on the Lot.
- 3.13 Permit any real estate agents' 'for sale' signs to be erected on the Lot until construction of the house is completed.
- 3.14 Permit garden areas on the Lot and within public view (including adjoining road verges) to remain unlandscaped after six months of occupation of any house on the Lot or in the case of a display house constructed on the Lot, after practical completion of the display house on the Lot.
- 3.15 Carry out or permit to be carried out on the Lot any repairs, restorations or wrecking of any motor vehicle, boat, trailer or any other vehicle unless screened from public view at all times.
- 3.16 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 behind the building line, unless when used during the normal course of business by a visiting tradesperson.

4. **Encumbrances**

Nil.

EXECUTED as a Deed

THE COMMON SEAL of the HOUSING )  
AUTHORITY formerly known as THE )  
STATE HOUSING COMMISSION OF )  
WESTERN AUSTRALIA was hereunder )  
affixed in accordance with the Housing Act 1980 )  
and the Regulations made thereunder by )  
authority of its Members in the presence of: )



*J. Miller*

\_\_\_\_\_  
Manager, Securities Conveyancing and  
Settlement Services

*M. May*

\_\_\_\_\_  
~~Director General~~

CHIEF EXECUTIVE OFFICER *my*  
*ca*

**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 address and occupation of the witness must be stated.

**EXAMINED**

29 Oct 2007 14:36:29

**K370511 RC**

09 Oct 2007 14:36:29 Midland



REG \$ 85.00

LODGED BY

ADDRESS

**DEPARTMENT OF  
HOUSING & WORKS**  
99 PLAIN STREET  
EAST PERTH W.A. 6004  
D.O.L.A. BOX 158L  
Ph: 9222 4556 Fax: 9222 4892

PHONE NO.

FAX NO.

REFERENCE

ISSUING BOX NO.

PREPARED BY

**Minter Ellison**

ADDRESS

Level 49 Central Park  
152-158 St George's Terrace  
PERTH WA 6000

PHONE NO. 9429 7444

FAX NO. 9429 7666

REFERENCE

YLC:JLP 60-1345228  
PERDM01\_246,920\_1

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

2  
3

TITLES, LEASES, DECLARATIONS ETC LODGED HERewith

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.



2. **TERM OF RESTRICTIVE COVENANT**

The restrictive covenant shall continue indefinitely unless discharged or modified in accordance with Sections 129BB or 129C of the Act.

**Schedule - Encumbrances**

Nil

**EXECUTED** as a DEED

**THE COMMON SEAL** of the **HOUSING AUTHORITY** formerly known as **THE STATE HOUSING COMMISSION OF WESTERN AUSTRALIA** was hereunder affixed in accordance with the Housing Act 1980) and the Regulations made thereunder by authority of its Members in the presence of: )



*J. Miller*

\_\_\_\_\_  
Manager, Securities Conveyancing and Settlement Services

*[Signature]*

\_\_\_\_\_  
~~Director General~~  
CHIEF EXECUTIVE OFFICER

Signed on behalf of **The Town of Kwinana** by person(s) authorised by its Council.

*[Signature]*

\_\_\_\_\_  
Authorised Officer

Neil Hartley  
Chief Executive Officer

\_\_\_\_\_  
Authorised Officer

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**EXAMINED**

29 Oct 2007

**K370510 RC**

09 Oct 2007 14:36:29 Midland



REG \$ 85.00

**DEPARTMENT OF  
HOUSING & WORKS**  
99 PLAIN STREET  
EAST PERTH W.A. 6004  
D.O.L.A. BOX 158L  
PH: 9222 7888 Fax: 9222 4892

PREPARED BY **Minter Ellison**  
ADDRESS Level 49 Central Park  
152-158 St George's Terrace  
PERTH WA 6000  
PHONE NO. 9429 7444 FAX NO. 9429 7666  
REFERENCE: YLC:JLP 60-1345228  
PERD01\_246942

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

1/3

TITLES, LEASES, DECLARATIONS ETC LODGED HEREWITH

1.	_____	Received items
2.	_____	
3.	_____	Nos.
4.	_____	
5.	_____	
6.	_____	Receiving Clerk <i>L</i>

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.



*A*