

BLANK INSTRUMENT FORM

RESTRICTIVE COVENANT DEED SECTION 129A

(Note 1)

THIS DEED is made the _____ day of _____ 201...

BY:

..... of
..... (**Registered Proprietor**)

and

Pindan Capital Two Rocks Pty Ltd (ACN 162 707 655) of 191 Great Eastern Highway, Belmont (**Developer**)

BACKGROUND:

- A. The Registered Proprietor is the registered proprietor in fee simple of the land described in Item 1 of the Schedule (**Burdened Land**) subject to the encumbrances notified in Item 2 of the Schedule.
- B. The Developer is the registered proprietor in fee simple of the land described in Item 3 of the Schedule (**Benefitted Land**).
- C. The Developer sold the Burdened Land to the Registered Proprietor on the condition that it enter into a restrictive covenant on the terms and conditions contained in this Deed.
- D. The Registered Proprietor enters into this Deed to create, pursuant to section 129A of the *Transfer of Land Act 1893 (WA)*, the restrictive covenant in favour of the Developer, required to comply with the requirements of the contract for sale relating to the sale and purchase of the Burdened Land.

The Parties agree:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Restrictive Covenant:

“**Agreed Local Structure Plan**” means the structure plan lodged with the City of Wanneroo and the Planning Commission (as may be amended from time to time) as part of the original subdivision of the parent lot to the Burdened Land, being Deposited Plan 52013.

“**Benefitted Land**” means the lots described in Item 3 of the Schedule.

“**Burdened Land**” means the lot described in Item 1 of the Schedule.

“**Carport**” means an open, self supporting structure or a structure under the main roof of the Dwelling supported by posts, pillars or piers.

“**Constructed**” means:

- (a) constructed, erected, installed or carried out; and
- (b) permitted to be constructed, erected, installed or carried out;

on the Burdened Land, and “**Construct**” has a corresponding meaning.

“**Dwelling**” means the dwelling or dwellings to be Constructed on the Burdened Land.

“**Gable**” means a triangular top section of a wall on a building with a pitched roof.

“**Gablet**” means small triangular top section at the top of a hip roof.

“**Party**” means the Registered Proprietor or the Developer.

“**Parties**” means the Registered Proprietor and the Developer.

“**Restrictive Covenants**” means the restrictive covenants, the subject of this Deed, being more specifically the covenants referred to in clause 3.

1.2 Interpretation

In this Restrictive Covenant unless the context otherwise requires:

- (a) a reference to any Act or statute is a reference to a State Act or Statute and includes all statutory amendments and re-enactments of that Act or statute for the time being in force;
- (b) the singular number includes the plural number and a gender reference includes every other gender and words importing persons include corporations;
- (c) a covenant entered into by more than one person is deemed to be entered into by those persons jointly and each of them severally;
- (d) a reference to a clause is to a clause in this Deed;
- (e) the headings have been inserted for convenience only and are not to be taken into account in interpreting the provisions of this Deed;
- (f) a reference to a schedule or annexure means a schedule or annexure included in or annexed to this Deed;
- (g) where a word or expression is defined in this Deed, another part of speech or grammatical form of that word or expression has a corresponding meaning;
- (h) the headings shall not affect the interpretation or construction of this Deed; and
- (i) including means “including, but not limited to”.

2. RESTRICTIVE COVENANTS TO BIND SUCCESSORS IN TITLE

- (a) The Restrictive Covenants will bind the successors in title and the registered proprietors from time to time of the Burdened Land.
- (b) The Restrictive Covenants will benefit the successors in title and the registered proprietors from time to time of each Benefited Land.

3. GRANT OF RESTRICTIVE COVENANT

The Registered Proprietor, for itself and its successors in title with the intention of binding so far as possible the Burdened Land, hereby creates in favour of the Developer a restrictive covenant pursuant to section 129A of the *Transfer of Land Act 1893 (WA)* and covenants that it will not:

- (a) Construct a Dwelling if:
 - (i) it is not a permanent and non- transportable structure;
 - (ii) does not comply with the requirements and provisions under the Agreed Local Structure Plan;
 - (iii) the Dwelling does not have a single, or larger, Carport or garage;
 - (iv) a Carport or garage, which is not under the main roof of the Dwelling;
 - A. is not Constructed from the same wall and roof materials, including colour, of that

part of the main Dwelling adjacent to the Carport or garage; and

- B. has a pitch that is not consistent with, or complementary to, the roof pitch of the main Dwelling;
- (v) the external walls to the Dwelling are predominately Constructed from materials (each of which must be used on not less than 10% of the front wall area of the Dwelling, excluding windows and doors) which are not paint or rendered concrete, rendered masonry, clay bricks, limestone, natural coloured concrete block works, split face block feature walls, timber or weatherboard that has a stained or painted finish, fibre cement cladding, metal deck cladding custom orb and/or mini orb, reverse brick veneer or composite materials (including a mixture of fibre cement products) or other similar material finished in facework or render;
- (vi) the front external wall area of the Dwelling (excluding windows and doors);
- A. has less than 10% of any of the materials specified in clause 3(a)(v) used; or
- B. does not have a minimum of two materials (specified in clause 3(a)(v)) or two colours used;
- (vii) the roof to the Dwelling:
- A. is not Constructed of clay tiles, concrete tiles, zincalume or Colorbond metal roofing;
- B. subject to clause 3(a)(ix)A, does not have:
- I. a minimum pitch of 24° 43' to the main portion of the roof;
- II. a minimum pitch of 20° 30' to the main portion of the roof where there are eaves of at least 600mm to the windows on the front elevation; or
- III. eave lines perpendicular to the primary frontage, or a secondary frontage (as applicable), with substantial roof elements (similar to verandahs), if a skillion roof; and
- C. comprises more than 50% of the width of the frontage of the primary street to the Burdened Land, if a flat roof;
- (viii) does not include a driveway:
- A. and crossover which is completed at the same time as practical completion of the Dwelling or before occupation of the Dwelling, whichever is earlier;
- B. and crossover which is Constructed of brick paving, coloured or textured concrete, coloured limestone or coloured bitumen; or
- C. which is located on the Property within 6m of either side boundary of the Burdened Land;
- (ix) the front elevation to the Dwelling does not include at least one of the following:
- A. a Gable;
- B. a Gablet;
- C. at least one arch to the brickwork Constructed with projecting masonry corbels;
- D. a portico with a minimum width of 1500mm and which extends forward of the main front roof line;
- E. projecting sill courses to the windows;
- F. a verandah with a depth of 1500mm and width of not less than 50% of the length of the front elevation; and

- G. a cement render finish to the walls on the front elevation to the Dwelling;
- (b) Construct any alterations or additions to a Dwelling that:
- (i) is not are predominately Constructed of those materials specified in clause 3(a)(v);
 - (ii) have less than:
 - A. 10% of any of those materials specified in clause 3(a)(v) used on its external walls; or
 - B. two materials (as specified in clause 3(a)(v)) or two colours used on it walls;
 - (iii) has a roof that is not Constructed of clay tiles, concrete tiles, zincalume or Colorbond metal roofing;
- (c) Construct an outbuilding or shed on the Burdened Land:
- (i) with walls comprising of zincalume or a material with a reflective finish; and
 - (ii) if the floor area of that outbuilding or shed is greater than 20sqm and the outbuilding or shed is not Constructed from the same material that the Dwelling is predominately Constructed from;
- (d) Construct any fencing on any boundary of the Burdened Land, unless completed at the same time as practical completion of the Dwelling or before occupation of the Dwelling, whichever is earlier;
- (e) subject to the specific requirements in clause 3(g), Construct a fence on the Burdened Land forward of the front building line of the Dwelling;
- (f) subject to the specific requirements in clause 3(g), Construct a fence on the side or rear boundary of the Burdened Land if it is not Constructed in timber, brushwood, masonry, brick, Colorbond (being capped and painted on both sides in "Domain" coloured paint) or Hardifence (being capped and painted on both sides in "Domain" coloured paint);
- (g) Construct a fence on any boundary of the Burdened Land, which is serviced by a laneway at its rear boundary and/or which has a retaining wall greater than 600mm in height on its front boundary, if the fence is not:
- (i) more than 1750mm high;
 - (ii) Constructed in the same material as the Dwelling or limestone or open picket timber; and
 - (iii) at least 50% visually permeable above 750mm high;
- (h) Construct an air-conditioning unit or evaporative cooler which:
- (i) is not Constructed wholly within the Dwelling;
 - (ii) protrudes significantly above the ridgeline of the Dwelling; or
 - (iii) is not of a similar colour to the roof or wall, immediately adjacent to the unit, of the Dwelling;
- (i) Construct a solar hot water system which is not:
- (i) similar to roof profile of the Dwelling;
 - (ii) screened from the view of any street or public space; and
 - (iii) integrated into the roof of the Dwelling;
- (j) store bins (excluding on bin collection days) or hang clothes to dry unless screened from the view of any street or public space;

- (k) park, store or permit to be parked or stored on the Burdened Land or on any street or road adjacent to the Burdened Land any vehicles of a commercial nature weighing more than 3.5 tonnes (other than commercial vehicles in use by non-resident tradepersons during the normal course of business directly related to the Burdened Land) including trucks, utilities, caravans, boats, trailers or any other mobile machinery, except where the vehicle is housed or contained wholly within the Burdened Land and screened from the street and public view;
- (l) conduct or permit to be conducted any repairs or restorations of any motor vehicle, motor cycle, boat, trailer, aircraft, caravan or any other vehicle on any part of the Burdened Land other than wholly within an enclosed garage on the Burdened Land or where the repairs can be conducted without being viewed from any street or public space;
- (m) alter the finished site level of any part of the Burdened Land by more than 500mm and if there is any retaining walls or boundary fences Constructed on Burdened Land or a neighbouring lot to the Burdened Land, then the Registered Proprietor must not alter the finished site level unless it (as necessary):
 - (i) reinforces, by earthworks or imported fill , and/or builds up, any retaining walls; and/or
 - (ii) reinforces, by earthworks or imported fill, repairs and/or re-Constructs any boundary fences damaged or affected by any such alteration;
- (n) alter, remove or allow to fall into disrepair any fencing or retaining wall or entry Constructed by the Developer (or any predecessor in title) Burdened Land, except with the prior written consent of the Developer; and
- (o) use the Dwelling for display purposes, except with the prior written consent of the Developer.

4. SEPARATE AND DISTINCT

- (a) Each Restrictive Covenant is a separate and distinct Restrictive Covenant.
- (b) If any Restrictive Covenant or its application to any person or circumstance is or becomes invalid or unenforceable then the remaining Restrictive Covenants will not be affected and each remaining Restrictive Covenant will be valid and enforceable to the fullest extent permitted by law.

5. TERM OF RESTRICTIVE COVENANTS

The Restrictive Covenants shall expire and cease to have effect from and including 1 January 2025.

6. RESTRICTIVE COVENANT TO BENEFIT AND BIND SUCCESSORS

This Restrictive Covenant continues for the benefit of, and binds, each successor in title of a Party including a person to whom a Party's rights and obligations are assigned or transferred.

7. COSTS

The Developer will be responsible for the fees arising from registration of this Deed.

SCHEDULE

1. Burdened Land

Lot _____ on Deposited Plan 52013 the whole of the land in Certificate of Title Volume 2891
Folio _____

2. Encumbrances

(a) except and reserving all metals, minerals, gems and mineral oil specified in Transfer 1466/1928;

(b) G407791 Memorial –Town Planning and Development Act;

(c) J817189 Notification Section 165 of the Planning and Development Act;

(d) J817194 Notification Section 165 of the Planning and Development Act;

(e) Restrictive Covenant Burden – See Deposited Plan 52013 and Instrument K471532 [if relevant];

(f) Restrictive Covenant Burden – See Deposited Plan 52013 and Instrument K471533;

**(g) Restrictive Covenant Burden – See Deposited Plan 52013 and Instrument K471534 [if relevant];
and**

(h) any others;

3. Benefitted Land

(a) Lots 664, 719, 720, 721, 722, 723, 734, 735, 736, 737, 738, 750, 751, 752, 754, 756, 757, 758 & 759 on Deposited Plan 52013, the whole of the land in Certificates of Title Volume 2861 Folios 303, 328, 329, 330, 331, 332, 343, 344, 345, 346, 347, 359, 360, 361, 363, 365, 367 and 368, respectively, except the Burdened Land; and

(b) Lots 117, 118, 119, 123, 126, 127, 133, 135, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 154, 165, 166, 167, 168, 169, 170, 171 and 172 on Deposited Plan 68534, the whole of the land in Certificates of Title Volume 2759 Folios 636, 637, 638, 642, 645, 646, 652, 654, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 673, 679, 680, 681, 682, 683, 684, 685 and 686, respectively.



EXECUTED as a Deed.

SIGNED BY

.....
Pindan Capital Two Rocks Pty Ltd
(ACN 162 707 655) under Power of Attorney
No N112500 in the presence of:



.....
Attorney's signature

.....
Signature of Witness

.....
Name of Witness

.....
Address of Witness

.....
Occupation of Witness

Signed by

.....
[Name of Buyer]
in the presence of:



.....
Signature

.....
Signature of Witness

.....
Name of Witness

.....
Address of Witness

.....
Occupation of Witness

Signed by

.....
[Name of Buyer]
in the presence of:



.....
Signature

.....
Signature of Witness

.....
Name of Witness

.....
Address of Witness

.....
Occupation of Witness

Executed by

.....
[Name of Buyer]
(ACN)
pursuant to section 127
of the *Corporations Act 2001* (Cth)



.....
Director/Secretary

.....
Director

.....
Full Name (please print)

.....
Full Name (please print)

INSTRUCTIONS

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1. _____ Received Items
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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