

BLANK INSTRUMENT FORM**S.136D Restrictive Covenant**

(Note 1)

BY

MIRVAC (WA) PTY LTD (ACN 095 901 769) formerly of Level 3, 502 Hay Street SUBIACO WA 6008 and now of Level 39, 108 St Georges Terrace PERTH WA 6000
(the "Developer")

RECITALS

- A The Developer is the registered proprietor of the Land.
- B The Developer intends to subdivide the Land in manner shown on the Plan and has obtained the approval of the Commission to such subdivision.
- C In accordance with section 136D of the Act, the Developer requires the Lots to be encumbered by the Restrictive Covenants so that the Restrictive Covenants will be noted on the Plan and, when separate certificates of title issue for the Lots, the burden of the Restrictive Covenants will be noted on each certificate of title.

OPERATIVE PART**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Deed the following words and expressions shall have the following meanings:

Act means the *Transfer of Land Act 1893 (WA)*, as amended;

City means the local government of the City of Swan and any replacement of it;

Commercial Vehicle means any commercial vehicles including trucks, utilities, caravans, boats, trailers, or any other mobile machinery;

Commission means the Western Australian Planning Commission;

Corner Lot means any Lot that is situated on the corner, or intersection, of a Primary Street and Secondary Street;

Developer's Agent means Mirvac Real Estate Pty Ltd (ACN 003 342 452) of Level 39, 108 St Georges Terrace, Perth, Western Australia;

Display Home means a dwelling that is constructed, decorated, and, usually, furnished for prospective homebuyers to view;

dwelling means a permanent non-transportable private residence;

Guidelines means the 'Iluma Private Estate Design Guidelines' and which comply with the City's specifications;

Land means Lot 1 on Diagram 95703, being the whole of the land comprised in Certificate of Title Volume 2141 Folio 628, Lot 77 on Plan 2747, being the whole of the land comprised in Certificate of Title Volume 1299 Folio 213 and Lot 78 on Plan 2747, being the whole of the land comprised in Certificate of Title Volume 1644 Folio 470 ;

Lots means lot 365, lots 425 to 429 (inclusive), lots 457 to 460 (inclusive), lot 473, Lot 474, lot 481, lot 482, lots 516 to 523 (inclusive), lots 529 to 534 (inclusive), lots 538 to 560 (inclusive) and lots 623 to 634 (inclusive), all of which are identified on the Plan, and **Lot** has a corresponding meaning;

Outbuilding means a shed, storeroom, studio, or workshop, or granny flat or other such structure that does not comprise part of the main dwelling;

Overhanging Eaves means eaves that are not less than 350 millimetres in width;

Plan means Deposited Plan 411129;

Primary Elevation mean the elevation of the dwelling which is usually inclusive of the main entry and the majority of its architectural features and which faces or is oriented towards the Primary Street;

Primary Street means the street that the Lot primarily fronts or faces;

Restrictive Covenants means the restrictive covenants, the subject of this Deed, being more specifically the covenants referred in the Schedule;

Schedule means the schedule to this Deed;

Secondary Street means any street that the Lot does not primarily front or face; and

Secondary Street Frontage means a dwelling design which, with the approval of the City:

- (a) uses the Secondary Street as the dwelling's primary frontage by locating both the vehicular and pedestrian access points on the Secondary Street; or
- (b) locates the pedestrian access point on the Primary Street and the vehicular access point on the Secondary Street, or vice versa.

1.2 Interpretation

Unless the context otherwise requires, in this Deed:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to persons includes corporations;
- (d) references to a party hereto or to any other person include the legal personal representatives, successors and permitted assigns of that party or person;
- (e) the Schedule forms part of this Deed and the terms used in the Schedule have the meanings given to them in clause 1.1 of this Deed;
- (f) if a word or phrase is defined, cognate words and phrases have corresponding definitions; and
- (g) an obligation incurred by two or more parties shall bind them jointly and severally and an obligation incurred in favour of two or more parties shall be enforceable by them jointly and severally.

Headings shall be ignored in construing this Deed.

2. RESTRICTIVE COVENANTS

- (a) Each of the Lots is to be encumbered by the Restrictive Covenants.
- (b) Pursuant to section 136D of the Act and this Deed, the burden of the Restrictive Covenants shall run with each of the Lots for the benefit of every other Lot and the Restrictive Covenants shall be enforceable against the registered proprietor of each Lot by the Developer and every subsequent registered proprietor of a Lot.

3. TERM OF RESTRICTIVE COVENANTS

The Restrictive Covenants shall expire and cease to have effect from and including 31 December 2037.

4. AUTHORITY

The Developer authorises LSV Borrello Lawyers of Unit 1/9 Mercer Lane, Joondalup, Western Australia, and any solicitor employed by LSV Borrello Lawyers, to comply with any requisitions issued by the Registrar of Titles, and, within this general authority, the Developer gives the power to LSV Borrello Lawyers and any solicitor employed by LSV Borrello Lawyers to make any minor alterations to this Deed which may be necessary to effect the registration of this Deed.

**SCHEDULE
RESTRICTIVE COVENANTS**

The registered proprietor for the time being of each Lot covenants:

1. Dwelling features

not to construct, erect or install or permit to be constructed, erected or installed on a Lot that has a single street frontage, a dwelling:

- 1.1 that is not designed in compliance with the mandatory requirements of the Guidelines;
- 1.2 that does not have the main entry door or defined entry structure and approach clearly visible from the street;
- 1.3 that does not have at least one habitable room window overlooking the Primary Street and/or public reserve where identified by the Developer or the Developer's Agent;
- 1.4 that has publicly visible elevations that are not carefully articulated by way of the inclusion of one or more of the following acceptable integrated feature elements:
 - (a) a veranda with a separate roof and supporting posts, pillars, or piers;
 - (b) an entry feature such as a portico (minimum 1 pier/post), masonry gateway wall, or entry pergola;
 - (c) a balcony;
 - (d) a projecting blade wall (minimum 500 millimetres in width projecting at least 300 millimetres above the eaves);
 - (e) a built-in planter box (at least 1 metre in length) that is a minimum of 2 courses above finished floor level;
 - (f) a roof feature such as a gambrel, end gable, panel clad spandrel to a skillion roof; and/or
 - (g) a window hood/canopy; and
- 1.5 that does not have main windows that are of a square or vertical proportion and that are consistent in shape and style (minor horizontal windows can be used in feature or minor wall sections only).

2. Dwelling features for Corner Lots

not to construct, erect or install or permit to be constructed, erected or installed on a Corner Lot:

- 2.1 a dwelling where the materials and colours comprising the Primary Elevation do not continue to the side return fence location to provide consistency in appearance;
- 2.2 a dwelling that does not provide passive surveillance of all street front boundaries by not including a window opening to a habitable room that has a clear view of the street; and
- 2.3 in the case of any dwelling that is to have a Secondary Street Frontage, a dwelling where both of the street front elevations do not meet the mandatory requirements for the Primary Elevation under the Guidelines.

3. Garages, Driveways and Storage

- 3.1 not to construct, erect or install or permit to be constructed, erected or installed on the Lot a dwelling that does not possess a garage or a carport (whether single or double) that:
 - (a) is located under the main roof of the dwelling;
 - (b) is constructed in the same materials as the dwelling;
 - (c) matches or complements the dwelling in respect of the pitch of the roof, materials used and the design and external appearance, including colour and the quality of construction;
 - (d) is fitted with a remote controlled sectional door facing the street (so as to completely screen the interior of the garage or carport from the street);
 - (e) in the case of a carport only, is set back 0.5 metres behind the main dwelling; and
 - (f) in the case of a garage only, is set back behind the dwelling;

- 3.2. not to construct, erect or install or permit to be constructed, erected or installed on the Lot a driveway or crossover that:
 - (a) is comprised or constructed of gravel (including pea gravel or compacted gravel), asphalt or grey concrete; or
 - (b) does not have a 90 millimetres diameter storm water pipe provided under the driveway to allow for future irrigation;
- 3.3. not to occupy or allow any person to occupy any dwelling on the Lot unless the driveway and crossover have been completed to the Seller's satisfaction;
- 3.4. not to remove any street trees to enable the construction, erection or installation of the driveway and crossover on the Lot;
- 3.5. if the Property comprises any one of Lots 625 to 633 on the Plan, not to construct, erect or install or permit to be constructed, erected or installed a crossover wider than 3 metres measured at the boundary of the Lot; and
- 3.6. not to construct, erect or install or permit to be constructed, erected or installed on the Lot a waste bin store area unless it is concealed from public view (for example, by adding storage areas within garages whilst maintaining the minimum vehicle parking requirement or by providing usable access to a screened area either behind the garage or the wing fence either side of the dwelling).

4. Roofs

not to construct, erect or install or permit to be constructed, erected or installed on the Lot:

- 4.1. a dwelling with a roof that:
 - (a) does not possess a traditional roof pitch of at least 24.5 degrees, provided however that minor integrated roofs, such as verandahs, may be lower; and
 - (b) has a skillion roof pitch of less than 5 degrees; or
- 4.2. a dwelling that has a minor area of flat roof which is not screened by a parapet wall or other façade element.

5. Elevations

not to construct, erect or install or permit to be constructed, erected or installed on the Lot a dwelling (single or two storey) that does not possess Overhanging Eaves to all elevations, provided that the following are exempt from this requirement:

- 5.1. garages;
- 5.2. carports; and
- 5.3. open structures such as alfresco areas.

6. Fencing

not to construct, erect or install or permit to be constructed, erected or installed on the Lot:

- 6.1. front fencing, which viewed from the street or a public space:
 - (a) is higher than 0.9 metres above the natural ground level of the Lot;
 - (b) is not at least 50% visually permeable above the height of 300 millimetres above the natural ground level of the Lot; and
 - (c) is not consistent with or complementary to the Primary Elevation's materials and colours;
- 6.2. side fencing (on common boundaries) forward of dividing fences that:
 - (a) is not accompanied by front fencing;
 - (b) is higher than 0.9 metres above the natural ground level of the Lot;
 - (c) is not at least 50% visually permeable above the height of 300 millimetres above the natural ground level of the Lot; and
 - (d) is not consistent with or complementary to the Primary Elevation's materials and colours;
- 6.3. return and dividing fences (side and rear) that:
 - (a) do not commence 0.5 metres behind the building line; and

- (b) are not constructed of 'Colorbond'® that is of the colour 'Dune';
- 6.4. fences on the Secondary Street boundary of a Corner Lot that:
- (a) do not commence 0.5 metres behind the primary street setback;
 - (b) are not constructed of Colorbond® that is of the colour 'Dune'; and
 - (c) exceed 1.8 metres in height above the natural ground level of the Lot.

7. Existing Feature Fencing

not to alter any existing feature estate fencing on any Lot installed by the Developer without the prior written approval of the Developer or the Developer's Agent.

8. Colours and materials

not to construct, erect or install or permit to be constructed, erected or installed on the Lot:

- 8.1. a dwelling which does not have a Primary Elevation comprised of a minimum of two different wall materials and two different wall colours (excluding colours and materials used on the roof, windows and any doors); or
- 8.2. a dwelling which does not use light or neutral base colours as the dominant colours on the Primary Elevation (primary colours and dark colours such as grey, brown, black, and purple may be used with the Developer's or the Developer's Agent's prior written approval but not as the dominant colour and the Developer or the Developer's Agent may refuse to approve the use of such bright primary and dark colours if their use is not in keeping with the balance of the estate of which the Lot forms part).

9. Outbuilding, TV, and other antennae and services

9.1. not to construct, erect or install or permit to be constructed, erected or installed on the Lot without the prior written approval of the Developer or the Developer's Agent, an Outbuilding, unless the Outbuilding is concealed from public view, or which, in the Developer's or the Developer's Agent's opinion, is designed to complement the dwelling;

9.2. not to construct, erect or install or permit to be constructed, erected or installed on the Lot:

- (a) any pipes, wired services, clothes drying areas, hot water storage tanks and other such service items in a location in which they can be seen from immediately adjacent streets (photovoltaic panels due to their orientation requirements are exempt);
- (b) not to install or erect or permit the installation or erection of a TV antenna, satellite, or cable dish or radio mast:
 - (i) except in accordance with the manufacturer's instructions; and
 - (ii) in a location in which it can be seen from immediately adjacent streets; or
- (c) gas and electricity meter boxes in locations in which they can be seen from immediately adjacent streets, unless the boxes are painted to match the adjacent wall colour of the dwelling, garage, or carport.

10. Signage

10.1. subject to clause 10.2 of this Schedule, not to erect or display on the Lot any sign, hoarding or advertising of any description whatsoever, except for professional signage advertising the sale or lease of a fully completed dwelling constructed on the Lot. Any sign or advertising material erected or displayed on the Lot in breach of this covenant may be removed without notice by the Developer's Agent.

10.2. clause 10.1 of this Schedule does not apply to any Lot that is being used as a Display Home pursuant to an agreement with the Developer.

11. No disrepair

not to permit or allow the Lot or any part of it, including any dwelling, to fall into a state of disrepair or disorder.

12. Parking Large Vehicles, etc.


not to park any Commercial Vehicle on the Lot unless it is not visible from the street.

NOT USED

DATED this 26th day of July 2017

EXECUTED as a DEED:

Signed by TONY ALEKSOVSKI,
being an employee of **Mirvac (WA) Pty Ltd (ACN 095 901 769)** who holds the position
of SENIOR DEVELOPMENT MANAGER,
as attorney for **Mirvac (WA) Pty Ltd (ACN 095 901 769)** under Power of Attorney No. N367779 in the presence of:

)
)
)
)
)

Signature of attorney




Signature of Witness

WILLIAM JACOB FRENCH
Full Name of Witness (please print)

L39 / 108 ST GEORGES TCE PERTH 6000
Address of Witness (please print)

ASSISTANT DEVELOPMENT MANAGER
Occupation of Witness (please print)

Signed by VINCE PETRACCA,
being an employee of **Mirvac (WA) Pty Ltd (ACN 095 901 769)** who holds the position
of SENIOR DEVELOPMENT MANAGER,
as attorney for **Mirvac (WA) Pty Ltd (ACN 095 901 769)** under Power of Attorney No. N367779 in the presence of:

)
)
)
)
)

Signature of attorney



Signature of Witness

WILLIAM JACOB FRENCH
Full Name of Witness (please print)

L39 / 108 ST GEORGES TCE PERTH 6000
Address of Witness (please print)

ASSISTANT DEVELOPMENT MANAGER
Occupation of Witness (please print)

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 address and occupation of the witness must be stated.

N741243 RC

13 Oct 2017 15:08:15 Perth



Lodged By	LSV BORRELLO LAWYERS
Address	PO BOX 304 JOONDALUP WA 6919
Phone No.	9404 9100
Fax No	9300 1338
E-Mail	info@lsvb.com.au
Reference No.	BC:17029
Issuing Box No.	888V

Prepared By	LSV BORRELLO LAWYERS
Address	PO BOX 304 JOONDALUP WA 6919
Phone No.	9404 9100
Fax No.	9300 1338
E-Mail	info@lsvb.com.au
Reference No.	BC:17029
Issuing Box No.	888V

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

3 15/10/17

TITLES, LEASES, DECLARATIONS ETC. LODGED HEREWITH

1. _____	Received Items
2. _____	Nos. 0
3. _____	
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.

EXAMINED