

**BLANK INSTRUMENT FORM****Annexure A**

Restrictive Covenant

(Note 1)

**Date**

2022

**Parties****Gold Estates Holdings Pty Ltd** ACN 097 065 944 of Level 1, 189 Hay Street SUBIACO WA 6008 (**Developer**)**Background**

- 1 The Developer is the registered proprietor of the Land.
- 2 The Developer has subdivided the Land and lodged a plan of subdivision with the Commission which has been approved and is now known as **Deposited Plan 424093 (Plan)**.
- 3 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 such certificate of title.

**Operative Part****1 Definitions and Interpretation****1.1 Definitions**

In this deed:

- (a) **Act** means the Transfer of Land Act 1893 as amended;
- (b) **Commission** means the Western Australian Planning Commission;
- (c) **Land** means:
  - (i) Lot 9034 on Deposited Plan 419657 and being the whole of the land contained in Certificate of Title Volume 2992 Folio 800;
  - (ii) Lot 9035 on Deposited Plan 419657 and being the whole of the land contained in Certificate of Title Volume 2992 Folio 801
  - (iii) Lot 9038 on Deposited Plan 420887 and being the whole of the land contained in Certificate of Title Volume 4011 Folio 296
  - (iv) Lot 9042 on Deposited Plan 423026 and being the whole of the land contained in Certificate of Title Volume 4018 Folio 719
- (d) **Lots** means all of the Lots on the Plan except Lots 167, 9044, 9045 and 9046;
- (e) **Project Manager** means the Project Manager for Vivente Estate being Richard Noble & Company of 189 Hay Street SUBIACO WA 6008;

- (f) **Registered Proprietor** means the registered proprietor for the time being of each of the Lots including, but not limited to, the Registered Proprietor who acquires a Lot from the Developer; and
- (g) **Restrictive Covenants** means the restrictive covenants set out in the Schedule to this deed.

## **1.2 Interpretation**

In this deed, unless the context otherwise requires:

- (a) headings and clause numbers are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) a reference to a person includes a corporation and any entity capable of being the subject of legal proceedings;
- (e) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (f) if a word or phrase is defined in this deed, its other grammatical forms have a corresponding meaning;
- (g) 'including', 'such as' and similar expressions are not words of limitation;
- (h) a reference to a party to this deed includes the party's successors, permitted substitutes and permitted assigns and, where applicable, the party's legal personal representatives; and
- (i) a right or obligation of any two or more persons confers that right or imposes that obligation, as the case may be, on each of them severally and on any two or more of them jointly.

## **2 Restrictive Covenants**

Pursuant to section 136D of the Act, each of the Lots is to be encumbered by the Restrictive Covenants. The burden of the Restrictive Covenant shall run with each of the Lots for the benefit of each and every other of the Lots and the Restrictive Covenants shall be enforceable against the Registered Proprietor of each of the Lots by the Developer and every subsequent Registered Proprietor of every other of the Lots. During the period that the Developer is the Registered Proprietor of any Lot the Developer accepts no responsibility, at law or at equity, for enforcement of the Restrictive Covenants.

## **3 Term of Restrictive Covenants**

The Restrictive Covenants shall expire and cease to have an effect from and including 30 June 2031.

## Schedule

The Registered Proprietor for the time being of each of the Lots (**Lot**) covenants not to build on or develop the Lot otherwise than in accordance with the following requirements:

### 1 Introduction

In order to attain a superior standard and to encourage home design excellence at Vivente, these Restrictive Covenants set out the minimum standards and conditions under which single residential development within the estate will normally be approved. These Restrictive Covenants apply in addition to, and not in lieu of other statutory requirements. Approval from the City of Cockburn will be required in addition to any approval issued by the Developer.

### 2 Building Plan Approval

One full set of plans and specifications must be submitted to the Vivente Estate Project Manager (email [sales@rnoble.com.au](mailto:sales@rnoble.com.au)) prior to the plans being submitted to the City of Cockburn under the normal building approval procedure. The Project Manager will peruse such plans for compliance with the Restrictive Covenants and if considered to comply will return an approval advice to the sender of the plans. Electronic transmittal of plans is the preferred method.

### 3 Development

No development is to be commenced on any Lot without the plans and specifications having been approved in writing as set in clause 2. Development must commence within 12 months of the settlement date of the Lot and be completed within 24 months from the Settlement Date unless written consent from the Project Manager has first been obtained.

### 4 Minimum Residence Size

The following are applicable for single residential development.

- (a) Lots under 250 sqm No minimum floor area.
- (b) Lots 251 - 349 sqm 80 sqm of floor area.
- (c) Lots 350 - 449 sqm 130 sqm of floor area.
- (d) Lots over 450 sqm 160 sqm of floor area.

The minimum floor area is the area of the residence excluding porches, garages, verandahs etc, but including alfresco areas.

### 5 Garages

- (a) Frontages 12m or greater (including truncation): residences constructed must incorporate double side-by-side garage comprised of the same materials as the residence.
- (b) Frontages less than 12m (including truncation): residences constructed must incorporate a minimum single garage or carport comprised of the same materials as the residence. If a carport is used, a garage door must also be installed.

### 6 Street Elevation

6.1 All single residential homes on the Lot must incorporate the following:

- (a) A clearly defined and articulated entry feature such as a portico, verandah, gateway or porch. If a porch is used as an entry feature, a second element such as a balcony, blade wall, a planter box or other feature will also be required subject to the Project Managers approval.
- (b) A composite number of wall materials (minimum 2) must be used to the front façade. These may include brick, painted render, stone, weatherboard, rammed earth, timber or any other material approved by the Project Manager.

6.2 Homes on corner Lots require the same detail and colour scheme of the primary street frontage for the visible portion of the secondary frontage, including the second storey.

6.3 Lots backing on to a public reserve must include in addition to above at least one architectural feature orientated towards the reserve. Roof features, arches, window hoods, blade walls and any other feature acceptable to the Project Manager.

6.4 **Roofing:** Clay or concrete tiles and colorbond metal roofing are acceptable. A minimum 24° pitch for pitched roofs. Skillion and flat roofs are also acceptable. Flat roofs are to be concealed by parapet walls from any public areas, primary or secondary street views. The construction of the roof must be in a single material and colour.

6.5 **Driveways:** Each residence on the Lot is to have a driveway and crossover which is to be provided and completed by the Registered Proprietor at the same time as the residence and before occupation. Maximum width of crossover shall be 6 metres. All pathways, driveways and crossovers must comprise brick paving, liquid limestone, limestone block or only exposed aggregate concrete.

## 7 **Setbacks and Site Coverage**

To be in accordance with the requirements of the current Residential Design Codes unless varied by a 'Local Development Plan'.

## 8 **Fencing**

8.1 All side and rear boundary fencing must be fully installed on completion of construction of the residence on the Lot prior to occupation. All boundary fencing shall consist of dual sided colorbond fencing.

8.2 The Developer is responsible for the installation of side and rear boundary fencing.

8.3 Except for retaining walls constructed by the Developer prior to the Lot being acquired by the Registered Proprietor, the Registered Proprietor, must, at its expense, construct any retaining walls where required prior to any fence being erected.

8.4 The obligation to erect side fences will commence at the line where construction of the dwelling on the Lot commences.

8.5 Fencing to boundaries and retaining walls, where provided by the Developer, must not be altered in any way unless written consent from the Project Manager has first been obtained.

8.6 Any fencing which is either damaged or dismantled is to be reinstated by the Registered Proprietor in identical style and colour and with materials as previously placed. In the event of failure by the Registered Proprietor to repair the fencing, the Developer may do so and reclaim the cost from the Registered Proprietor.

## 9 **Site Levels**

The general level of the site may not be altered and on all Lots the finished site level must not be raised by more than 0.3 metres unless written consent from the Project Manager has first been obtained.

## 10 **Retaining Walls**

Any retaining or other walls provided may not be altered in any way unless written consent from the Project Manager has first been obtained.

## 11 **Air Conditioning or Cooling Unit/Solar Hot Water Units**

Air conditioning or cooling units must be the same colour as the roof. Air conditioning or cooling units must be positioned to minimise noise impact to adjoining neighbours. Air conditioning or cooling units must not be visible from the primary or secondary street frontages of the residence constructed on a lot as well as not be located in positions that are visible from areas of public open space. Solar hot water units must be integrated with and match the roof profile and pitch of the residence.

## 12 **Landscaping**

All garden areas within public view to be completely landscaped within three months of occupation of the residence and shall be maintained thereafter by the Registered Proprietor in a neat and tidy manner.

## 13 **Garbage**

All garbage must be kept in a mobile garbage bin and (where appropriate) a recycling bin and screened from the public except immediately prior to garbage collection.

14 **Washing Lines / Rainwater Tanks / Rubbish Bins**

All washing lines, rainwater tanks and rubbish bins should be screened from the street and public places. All washing lines and rainwater tanks must be installed in accordance with the manufacturer's instructions.

15 **Signs**

No advertising or business signage is to be placed on the Lot or in the front window or on the walls of any residence except for a sign erected by a builder during the course of construction or real estate signage.

16 **Display Homes**

The completed residence shall not be used for display purposes unless approved by the Developer and the City of Cockburn.

17 **Animals**

In keeping with the City of Cockburn's local laws, only domestic pets may be kept on the Lot.

18 **Commercial Vehicles / Boats, Etc**

No commercial vehicles, caravans, buses or boats shall be parked or stored on a Lot unless they are contained within a garage or screened from public view. Prior approval of the City of Cockburn must also be obtained for the parking of any commercial vehicles. No repairs or restorations of any motor vehicle, boat, trailer, aircraft or any other vehicle shall be conducted on the Lot other than wholly within a garage on the Lot.

19 **TV Antennae**

No television or radio antennae or satellite dish shall be constructed, erected or installed on the primary and secondary street frontages of the residence constructed on a Lot.

20 **Swimming Pool**

Where a swimming pool is installed a fixed retractable pool cover is to be installed.

21 **Water Efficient Appliances and Fixtures**

All appliances (dishwashers and washing machines) are to achieve a high water efficiency labelling and standards (**WELS**) rating.

All fixtures installed in the dwelling are to be water efficient and as a minimum satisfy the following:

- (a) all showerheads are to have a minimum WELS rating of 3 stars;
- (b) all tap fittings are to have a minimum WELS rating of 4 stars; and
- (c) all toilets are to have a minimum WELS rating of 4 stars.

**Executed** as a deed.

**Executed by Gold Estates Holdings Pty Ltd** ACN 097 065 944 in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
Director's signature

.....  
Director/Secretary's signature

.....  
Director's name (please print)

.....  
Director/Secretary's name (please print)

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**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.

EXAMINED

OFFICE USE ONLY

**Restrictive Covenant**

LODGED BY

ADDRESS

PHONE No.

FAX No.

REFERENCE No.

ISSUING BOX No.

PREPARED BY CWS Lawyers

ADDRESS Level 3, 150 St Georges Terrace, PERTH WA 6000

PHONE No. 6210 7070 FAX No. query@cwslawyers.com

REFERENCE: PW:GM2105358

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

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| 2. | Received        |
| 3. | items           |
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| 5. | Nos.            |
| 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.