

WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED.

BLANK INSTRUMENT FORM

RESTRICTIVE COVENANT

(Note 1)

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THIS DEED is made the 5 day of October

BETWEEN: 85 SPRING STREET PROPERTIES PTY LTD (ACN 005 822 275)
~~CHATHAM INVESTMENT CO. LIMITED~~ ~~000 091 361~~ / level 4,
85 SPRING STREET PROPERTIES PTY LTD (ACN 005 822 275) of 34 Hunter Street, Sydney, New South Wales,
LANDROW LIMITED (ACN 009 285 287) of 3rd Floor, 22 Mount Street, Perth, Western Australia, **DCA PROJECTS**
PTY LTD (ACN 088 957 813) of Pye & Quartemaine, of Level 1, 89 St Georges Terrace, Perth, Western Australia, and
MARTINDALE PTY LTD (ACN 008 690 604) of Level 3, Reserve Bank Building, 45 St Georges Terrace, Perth Western
Australia (together the "Grantor")

*formerly of Level 5, 20'Connell Street,
Sydney, New South Wales*

AND

INSURANCE COMMISSION OF WESTERN AUSTRALIA of 221 St Georges Terrace, Perth, Western Australia (the "Grantee")

WHEREAS:

- A. The Grantor is the registered proprietor of the Burdened Land.
- B. The Grantee is the registered proprietor of the Benefited Land.
- C. The Grantor has agreed to grant the Restrictive Covenant to the Grantee on the terms of this Deed.

NOW THIS DEED WITNESSES as follows:

1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Deed the following words have the following meanings:

"Benefited Land" means all of the land in Lot 3432 on Deposited Plan 39242 being the whole of the land in Certificate of Title Volume 2226 Folio 365;

"Bulky Goods Retailing" means:

- (i) the undertaking of any activity which requires a large display area (usually comprising, but not limited to, floor areas in excess of 500m²) usually associated with, but not limited to, white goods, furniture, sporting, leisure or recreational goods and equipment, lighting, office plant and equipment and supplies, computers, carpets, electrical goods, toys and gardening products; and
- (ii) DIY homewares and home improvement stores incorporating hardware and building materials on a large scale of greater than 3,000m²;

"Burdened Land" means all of the land in Lot 1 on Plan 18925 being the whole of the land in Certificate of Title Volume 2209 Folio 747;

"Commercial Enterprise Use" means use for:

- (i) car park;
- (ii) car sales lot;
- (iii) car sales showroom;

- (iv) consulting rooms;
- (v) consulting rooms: group;
- (vi) convenience store of a floor space not exceeding 300m²;
- (vii) cultural use;
- (viii) dwelling: multiple;
- (ix) education establishment;
- (x) factory tenement building;
- (xi) funeral parlour;
- (xii) hire services - industrial;
- (xiii) hire services - non-industrial;
- (xiv) industry - cottage;
- (xv) industry - light;
- (xvi) industry - service;
- (xvii) medical centre;
- (xviii) motor repair station not part of a service station;
- (xix) motor vehicle assembly;
- (xx) nursery;
- (xxi) office: general;
- (xxii) office: professional;
- (xxiii) vehicle sales and services; and
- (xxiv) veterinary hospital;

“Core Retail Purpose” means any retail use whatsoever, including but not limited to:

- (i) the retail uses specified in Appendix 4 of the Policy Statement;
- (ii) any retail use involving the retail sale or supply of homewares, whitegoods, sporting, leisure or recreational goods and equipment, furniture (including bedding and baby furniture), lighting, office plant and equipment and supplies, computers, carpets, electrical goods and toys;
- (iii) any use as a supermarket, store selling food and other ancillary items, video store, amusement parlour, betting agency, fast food outlet, variety discount store, factory outlet, service station, car wash or tavern; and
- (iv) Bulky Goods Retailing;

“Core Retail Purpose” and **“Bulky Goods Retailing”** shall in no circumstances include:

- (i) any use or retail use involving:
 - (A) a medical centre;

- (C) DIY homewares and home improvement stores incorporating hardware and building materials on a scale of less than 3,000m²;
 - (D) a home based business carried on a residential lot; and
 - (E) a Commercial Enterprise Use provided that in relation to the uses described in sub-paragraph (i), (iv), (v), (vii)-(xix) (inclusive) and (xxi)-(xxiv) (inclusive) of the definition of "Commercial Enterprise Use" any retail use or retail component of that use must be ancillary to that use; and
- (ii) after 31 December 2010, DIY homewares and home improvement stores incorporating hardware and building materials on a large scale of greater than 3,000m²;

"Deed" means this deed as amended or varied from time to time;

"Development" means the construction of a retail complex on the Benefited Land;

"District Centre" has the same meaning as specified in the Policy Statement;

"DSTM" means the total available department store type merchandise spend for the main trade area discount department stores referred to in Table 5.1 of the Jebb Report;

"Jebb Report" means the report prepared by Jebb Holland Dimasi for LWP Property Group Pty Limited for the Ellenbrook Town Centre dated July 2001 entitled "Assessment of Retail Potential";

"Neighbourhood Centre", subject to the proviso to this definition, has the same meaning as specified in the Policy Statement provided that a Neighbourhood Centre must have a total floor space greater than 2,000m²;

"Policy Statement" means the Metropolitan Centres Policy Statement for the Perth Metropolitan Region prepared by the Western Australian Planning Commission and Gazetted on 17 October 2000;

"Restrictive Covenant" means the restrictive covenant granted by the Grantor to the Grantee set out in clause 2;

"Stage One of the Development" means the first stage of the Development comprising no less than 5,000m² of retail floor area;

"Stage Two of the Development" means the second stage of the Development comprising not less than 10,000m² of retail floor area which does not include Stage One of the Development but shall include any construction after the completion of Stage One of the Development;

"Stage Three of the Development" means the third stage of the Development being the development of the balance of the Benefited Land.

1.2 Interpretations

In interpreting this Deed, unless the contrary intention appears:

- (a) a references to a clause is a reference to a clause of this Deed; and
- (b) a reference to the Grantee or the Grantor shall include a reference to their permitted assigns and successors in title or legal personal representatives as the case may be.

2 RESTRICTIVE COVENANT

The Grantor covenants with the Grantee that, until the earlier of:-

- (i) 31 December 2018;
- (ii) the date that the resident population of the main trade area (which is shown on Map 2.2 in the Jebb Report as the aggregate of the "Primary Trade Area" and the "Secondary Trade Area" and detailed in Table 2.8 of the Jebb Report as the "Main Trade Area") reaches 63,300; or
- (iii) the date that the Grantee notifies the Grantor that the Grantee does not intend to proceed with Stage Three of the Development,

the Grantor shall not:

- (iv) use or permit or suffer to be used the whole or any part of the Burdened Land for a Core Retail Purpose or any purpose incidental or ancillary to a Core Retail Purpose, except that the Grantor shall notify the Grantee of all proposals received for Bulky Goods Retailing within the Burdened Land and give the Grantee 14 business days within which to consider whether the proposal is suitable in the reasonable discretion of the Grantee for the Development, and if the Grantee considers that the proposal is not suitable, the Grantee shall notify the Grantor that the particular proposal (on the terms contained therein) is excluded from the application of this clause 2;
- (v) sell or enter into any contract, arrangement or understanding to sell or otherwise dispose of the whole or any part of the Burdened Land to any person or entity who intends to or whom it would be reasonable for the Grantor to expect would intend to develop or otherwise use the land for a Core Retail Purpose or any purpose incidental or ancillary to a Core Retail Purpose; or
- (vi) develop or create or permit or suffer to be developed or created in any part of the Burdened Land a District Centre or a Neighbourhood Centre;

provided that:

- (vii) the Grantee completes Stage Two of the Development by 31 December 2010 or such later date having regard to Stage Two of the Development not commencing until the resident population of the main trade area (which is shown on Map 2.2 in the Jebb Report as the aggregate of the "Primary Trade Area" and the "Secondary Trade Area" and detailed in Table 2.8 of the Jebb Report as the "Main Trade Area") reaches 44,600 and the DSTM is no less than the DSTM specified in table 5.1 of the Jebb Report for 2010/11. Early commencement of Stage Two of the Development shall not affect the completion date contemplated in this clause;
- (viii) the Grantor may permit the establishment of a small stand alone delicatessen or corner convenience store or stores to service local needs including (but not limited to) coffee shops and hairdressers with a floor space of less than 300 m² or medical centre where the establishment of such delicatessen or convenience store or stores to service local needs or medical centre does not thereby result in the development or creation of a District Centre or Neighbourhood Centre;
- (ix) if the Grantee does not by 31 December 2007 develop the Benefited Land or any part of the Benefited Land for use as a car wash, fast food outlet, service station and a tavern, then clause 2(iv) to (vi) shall cease to apply in respect to the development or use of any part of the Burdened Land by the Grantor as a car wash, fast food outlet, service station or a tavern to the extent that the Grantee has not developed the Benefited Land for that use; and
- (x) after 31 December 2014, the Grantor may permit the establishment of a small stand alone delicatessen or corner convenience store or stores to service local needs including (but not limited to) coffee shops and hairdressers with a floor space of less than 1,000m² or medical centre where the establishment of such delicatessen or convenience store or stores to service local needs or medical centre does not thereby result in the development or creation of a District Centre or Neighbourhood Centre.

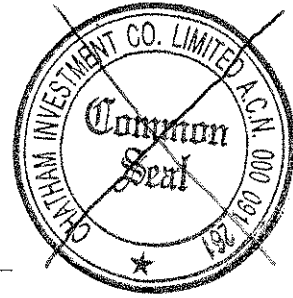
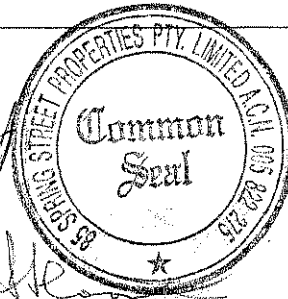
3 COVENANT BINDS SUCCESSORS

The Restrictive Covenant shall bind the Grantor and its successors in title as the registered proprietor or proprietors of the Burdened Land or any part or parts of it with the intent that the Restrictive Covenant will enure only for the benefit of the Grantee and its successors in title as the registered proprietor or proprietors of the Benefited Land or any part or parts of it. Without limiting the generality of this clause 3, the Restrictive Covenant will not enure for the benefit of any tenant for the time being of the Benefited Land or any part or parts of it.

4 COVENANT NOT TO APPLY TO RESIDENTIAL LOTS

Notwithstanding any other provision of this Restrictive Covenant to the contrary, upon subdivision of any part of the Burdened Land which results in the creation of residential lots of not more than 1,000m² in size each, this Restrictive Covenant shall cease to apply to those residential lots upon an application for subdivision and the creation of new titles for those residential lots being registered at the Department of Land Information.

EXECUTED BY THE PARTIES AS A DEED
85 SPRING STREET PROPERTIES PTY LTD
CHATHAM INVESTMENT CO. LIMITED
Executed by 85 SPRING STREET PROPERTIES
PTY LTD (ACN 003 822 287) in accordance with
Section 127 of the Corporations Act:



Kevin Douglas Adams
Signature of Director

John Laurence Coombs
Signature of Director/Secretary

FRANCIS GERARD GOOCH
Name of Director

JOHN LAURENCE COOMBS
Name of Director/Secretary

Executed by LANDROW LIMITED (ACN 009
285 287) in accordance with Section 127 of the
Corporations Act:

Terence John Prindiville
Signature of Director

TERENCE JOHN PRINDIVILLE
Name of Director

Richard Malcolm (S.D.)
Signature of Director/Secretary

RICHARD MALCOLM (S.D.)
Name of Director/Secretary



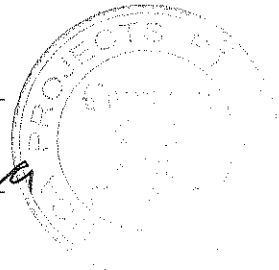
Executed by DCA PROJECTS PTY LTD
(ACN 088 957 813) in accordance with Section
127 of the Corporations Act:

John Bond
Signature of Director

John Bond
Name of Director

Helen Anclade Silva
Signature of Director/Secretary

Helen Anclade Silva
Name of Director/Secretary



Executed by ^{690 604} MARTINDALE PTY LTD
(ACN 008 622 275) in accordance with
Section 127 of the Corporations Act:

Deed
Signature of Sole Director and Sole Secretary

Deed
Name of Sole Director and Sole Secretary



The Common Seal of the INSURANCE
COMMISSION OF WESTERN AUSTRALIA
was hereunto affixed in accordance with the
Insurance Commission Regulations 1986 in the
presence of:

Ken McAvilly
Signature of authorised person

EMCOR CORPORATE SERVICES
Office held

KEN MCAVILLY
Name of authorised person

Vic Evans
Signature of authorised person COMMISSIONER

MANAGING DIRECTOR
Office held

VIC EVANS
Name of authorised person



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

1687188

RESTRICTIVE COVENANT

LODGED BY Downings Legal
ADDRESS Level 11
2 Mill Street
PERTH WA 6000
PHONE No. (08) 9321 1211
FAX No. (08) 9321 1272
REFERENCE No. SAG/20020622
ISSUING BOX No. 64v

PREPARED BY **DOWNINGS LEGAL**
ADDRESS LEVEL 11
2 MILL STREET
PERTH WA 6000
PHONE No. 9321 1211 FAX No. 9321 1272

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

TITLES, LEASES, DECLARATIONS ETC. LODGED HEREWITH

1. _____	Received Items
2. _____	Nos.
3. _____	
4. _____	
5. _____	Receiving
6. _____	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.