

## SCHEDULE OF LAND COVENANTS

### **1. Background**

- 1.1 The Covenantor is the Registered Proprietor of the Burdened Land and the Benefited Land.
- 1.2 The Burdened Land and the Benefited Land are the second stage of a residential development.
- 1.3 The Covenantor has agreed to create the covenants as set out herein in favour of the Covenantee in order to ensure that the character of the residential estate is maintained, preserved and enhanced.

### **2. Definitions and Interpretation:**

- 2.1 In this Schedule, except where a contrary intention appears from the context:
  - (a) Accessory Building means a building on a Lot which is not a Main Dwelling but which is permitted under these rules and the applicable rules and regulations of the Council but does not include a Garden Shed.
  - (b) Council means the Far North District Council.
  - (c) Café means a business establishment where you can buy drinks and simple meals to be consumed on the premises and includes any building, structure, chattels or equipment, installed or used in the Café Lots.
  - (d) Café Lots means Lots 5, 6 and 7 on the Deposited Plan.
  - (e) Childcare Centre means a childcare facility for childminding, day-care or preschool and includes any building, structure, chattels or equipment to be constructed, installed or used in the Childcare Lots.
  - (f) Childcare Lots means Lots 5, 6 and 7 on the Deposited Plan.
  - (g) Deposited Plan(s) means DP 596768.
  - (h) Covenantor means the Covenantor and its successors and assigns.
  - (i) Development means the residential subdivision undertaken by Traverse Limited on the Land as shown by the Deposited Plan(s) and includes but is not limited to dwellings, roads, open spaces and all other associated infrastructure.
  - (j) Developer means Traverse Limited and its successor and assigns.

- (k) Front Yard means:
- (i) For Lots 5 to 22 inclusive on the Deposited Plan(s) Front Yard means that part of those lots situated between the road boundary of Lot 50 on the Deposited Plan(s) and a line drawn parallel to the boundary of the said Lot 50 from the point of the Main Dwelling closest to the said Lot 50. If the land has frontage to more than one road then for the purpose of these covenants it shall have a front yard facing each road.
  - (ii) For Lot 4 on the Deposited Plan(s) Front Yard means that part of Lot 4 situated between the road boundary of Lot 50 on the Deposited Plan(s) and a line drawn parallel to the boundary of the said Lot 50 from the point of the Main Dwelling closest to the said Lot 50 AND that part of Lot 4 situated between the boundary of Lot 49 on the Deposited Plan(s) and a line drawn parallel to the boundary of the said Lot 49 from the point of the Main Dwelling closest to the said Lot 49.
  - (iii) For Lots 1, 2, 3 and 33 on the Deposited Plan(s) Front Yard means that part of those lots situated between the boundary of Lot 49 on the Deposited Plan(s) and a line drawn parallel to the boundary of the said Lot 49 from the point of the Main Dwelling closest to the said Lot 49.
  - (iv) For Lot 30 on the Deposited Plan(s) Front Yard means that part of Lot 30 situated between the boundary of Lot 49 on the Deposited Plan(s) and a line drawn parallel to the boundary of the said Lot 49 from the point of the Main Dwelling closest to the said Lot 49 AND that part of Lot 30 situated between any road boundary and a line drawn parallel to the boundary of the road from the point of the Main Dwelling closest to the road boundary. As Lot 30 has frontage to more than one road then for the purpose of these covenants it shall have a front yard facing each road and the said Lot 49.
- (l) Garden Shed means a single storey building on a Lot having a floor area not exceeding 10m<sup>2</sup>.
- (m) Land means the Burdened Land as set out in Schedule A.
- (n) Lot means each and all of the lots shown on the Deposited Plan(s).
- (o) Main Dwelling means the principal dwelling on a Lot.
- (p) Owner means the registered owner for the time being of a Lot.
- (q) Traverse Limited, and its successors and assigns is the Developer of the subdivision of which the Land forms part.

2.2 In interpreting this Schedule, unless the context otherwise requires:

- (a) Words importing the singular number include the plural and vice versa and words importing one gender also include the other genders; and
- (b) Any covenant or agreement on the part of two or more persons will bind those persons jointly and severally.

### 3. Covenants

3.1 The Covenantor for the Covenantor and the Covenantor's successors in title with and for the benefit of the Covenantee and the Covenantee's successors in title, so as to bind the land set out in Schedule A ("the Land") in favour of all of the other lots now or hereafter comprising the Land, that the Covenantor shall:

- (a) Not place, erect construct or permit to remain on any part of the Land any Main Dwelling or other building or structure that:
  - (i) Is constructed in whole or in part with second-hand materials with the exception of bricks and native timbers; or
  - (ii) Incorporates fibrolite, hardiflex, hardiplank or any like product or flat plywood (soffits excepted), unless such cladding is coated externally with a plastered or rendered finish. Areas of outdoor cladding can be low profile long run, board and batten and products such as Corten are also acceptable cladding **or** alternative modern claddings.
  - (iii) Uses any exterior roofing product or material which is not factory pre-finished.
  - (iv) Is greater than 2 stories in height.
- (b) Not place, erect, construct or permit to remain on any part of the Land any Accessory Building other than a Garden Shed unless the Accessory Building is constructed in the same materials as are used for the construction of the Main Dwelling and does not detract from the visual amenity of the Development.
- (c) Not place, erect, construct or permit to remain on any part of the Land any Garden Shed unless the Garden Shed:
  - (i) Has a floor area less than 10m<sup>2</sup>;
  - (ii) Is single storey only;
  - (iii) Is constructed in new permanent materials, appropriately painted, or is a new proprietary brand Garden Shed precoated with a factory colour finish that will not detract from the visual amenity of the Development.

- (d) Not place erect construct or permit to remain any fencing:
- (a) On any part of the Front Yard;
  - (b) On any part of the balance of the Land which exceeds 1.8 metres in height measured from the original ground level of the Land;
  - (c) That is constructed using long run metal, corrugated iron, fibre cement boards or planks or any pressed material.
- (e) Not place, erect, construct or permit to remain on any part of the Land any second hand, relocatable or transportable building, or shipping container or similar structure provided however relocatable or transportable buildings are permitted as long as they are new buildings that comply with these covenants and do not incorporate any re-cycled, used or second hand materials. Builders sheds or such other buildings as are reasonably required during the course of the construction of a Main Dwelling may be placed on the Land but must be removed immediately on completion of construction of the Main Dwelling to which it relates.
- (f) Ensure that all clothes lines, satellite dishes, aerials, antennae, air conditioning units and heat pumps are installed/located so as not to detract from the visual amenity of the Development.
- (g) Not occupy or use any building erected on the Land (whether temporarily or permanently) as a residence unless all buildings on the Land have been substantially completed in accordance with the provisions of this Schedule of Covenants and the Council building consent relating thereto.
- (h) Ensure that once construction of a Main Dwelling has commenced, the exterior of the same is fully closed in and finished within nine (9) months from the date of commencement of construction and that construction is fully completed within twenty-four (24) months from the date of commencement.
- (i) Within the same period of twenty-four months as referred to above complete all driveways, vehicle accessways, parking areas and paving to a proper and tradesmen like standard in concrete seal or a similar product or like product. All concrete that will be visible once construction is completed shall be finished either as exposed aggregate or with 5kg per m<sup>3</sup> of colour oxide (at 5kg kilograms per cubic metre) in the concrete mix.
- (j) Ensure that the Covenantor and the Covenantor's contractors will maintain a tidy construction site during the construction process and (without affecting the generality of this sub-clause) will:

- (i) Have an adequate rubbish skip or receptacle on site at all times from the commencement of construction until construction is complete; and
  - (ii) Ensure that washing of all plant and machinery, including but not limited to concrete trucks, takes place on the lot in question and not on public property, road or access strips, and ensure that all run-off is contained within the lot in question.
- (k) Not bring or permit to be brought or remain upon the Land (except in the course of construction of a permitted structure) any debris, rubbish, garden rubbish, unregistered vehicles, vehicle body parts or any other item which might in any way detract from the appearance or reputation of the Development or the quiet enjoyment of its residents
- (l) Keep the Land in a neat and tidy condition and ensure that grass is kept mown and weeds are kept under control. Any area that lies between the road frontage or road adjoining any Lot and formed carriage ways or access ways or right of ways shall be maintained in grass and regularly mown.
- (m) Ensure that exposed banks or sloping ground on the Land are planted in grass or shrubs so that there are no areas of bare clay.
- (n) Not place erect construct or permit to remain on the Land any retaining walls or structures (other than a Main Dwelling, Accessory Building or Garden Shed) in excess of 1 metre in height.
- (o) Not bring onto, raise, breed or keep any animal, livestock or poultry on the Land other than a domestic dog or cat, which shall be registered with the Relevant Authority as required.
- (p) Not allow the Land to be used as a dog kennel facility, cattery or animal breeding facility.
- (q) Not place, erect, construct or permit to remain on any part of the Land any advertisement, sign or hoarding of a commercial nature other than one sign advertising the Land "For Sale". Any advertisement, sign or hoarding advertising a show home as permitted in covenant 3.1(r) herein will not be deemed to be a breach of this covenant provided that the Covenantor has first obtained the prior written consent of the Developer to such advertisement, sign or hoarding.
- (r) Not use any part of the Land wholly or partly for any trading or commercial purpose and no commercial building will be erected on any part of the Land. However, a home office complying in all respects with the applicable Council rules and bylaws will be permitted. A show home will not be deemed to be a breach of this covenant provided that the Covenantor has first obtained the prior written consent of the Developer to such show home.

- (s) Not cause or suffer to be done or caused any damage to the landscape, roads, jointly owned access lots, shared accessways, right of ways, kerbing, concrete or other structures in the Development arising directly or indirectly from the use of any Lot by the Owner or any agent or invitee of the Owner and the Owner will reinstate, replace or repair any such damage at the Owners sole cost.
- (t) Not locate any utilities, services or wiring above ground level on any part of the Land.
- (u) Ensure that all water tanks are fully buried provided however, if due to supplier specifications, or due to terrain or site position, it is necessary for any part of the tank(s) to remain above ground, then all exposed parts of the tank(s) are to be fully screened from view. All screening to be constructed of permanent materials and those materials further screened from view by planting.
- (v) Not make any changes to what the Developer has constructed in regard to fencing, vehicle crossings, gates, entrance ways, roads, access ways, right of ways, planting and landscaping as located on the Land as at the date of registration of this Covenant Instrument.
- (w) Not object to any operations of the Developer on neighboring Lots during daylight hours on the condition that the Developer will use its best endeavors to keep all inconvenience caused by the movement of earth, machinery plant and equipment to a reasonable level, having regard to the nature of the work being undertaken.

#### **4. Remedies for Breach or Non-Observance**

4.1 If there should be any breach or non-observance by the Covenantor of any of the covenants or restrictions expressed or implied in this Schedule, then without prejudice to any other remedy which the Covenantee or any other person or persons having the benefit of these covenants and restrictions may have against the Covenantor, the Covenantor will upon written demand made by the Developer or it's nominee or by the registered owner of any Lot in the Development:

- (a) Pay to the person making such demand as liquidated damages the sum of Five Hundred Dollars (\$500.00) (which sum will, on the 1<sup>st</sup> of April each year, commencing in the year immediately following deposit of the Deposited Plan, be adjusted to take account of movement in the preceding year in the Consumer Price (All Groups) Index) per day for every day or part of a day that the breach or non observance of the covenants continues from and after the date upon which written demand is made: and
- (b) Remove or cause to be removed from the Lot any building or structure erected, placed or located in breach or non observance of these

covenants and otherwise take all steps necessary to remedy the breach or non-observance of these covenants if it is capable of remedy.

- 4.2 The Developer shall be neither required nor liable to enforce or be answerable to any Covenantee or Covenantor for any breach of any of these covenants by the registered owner of any other Lot.

## **5.0 Further Development by the Developer**

- 5.1 The Covenantor acknowledges that the Developer will undertake the Development in stages and will not oppose, frustrate, object to, nor take any action or encourage others to oppose, frustrate, object or take any action that might, in any way, prevent or hinder the Developer from progressing or completing the further subdivision of the Developer's adjoining land. This covenant extends to and includes (but is not limited to) development, planning, resource consents, earthworks, Consent Authority matters, building consent matters (including without limitation any height to boundary dispensations that have or may in the future be granted by the Far North District Council) and any other consents, earthworks, development and general works.
- 5.2 The Covenantor agrees to the Developer undertaking further development on the adjoining land and to the Developer being permitted to vary any of these covenants for use on future stages of the Development.

## **6.0 Vestings**

- 6.1 The covenants in this instrument will cease to apply to any land that is intended to vest in the Crown or any territorial authority as a road or reserve, upon any survey plan relating to such vesting being approved as to survey and being accepted for deposit by Land Information New Zealand.
- 6.2 The Covenantee and the Covenantor together with any Mortgagee, Encumbrancee, Bondholder or Grantee (together referred to as "Registered Interest Holder") of any mortgage, encumbrance, bond, easement or land covenant registered on the Burdened Land and/or the Benefited Land after the date of registration of this instrument will take their interest in the Burdened Land and the Benefited Land subject to the terms of this instrument and, in particular (without limitation) irrevocably consent to any part of the Burdened Land and the Benefited Land being vested or dedicated as any road or reserve in the Far North District Council or any other territorial authority, NZ Transport Agency (or any such replacement entity) or the Crown.
- 6.3 Clause 6.2 will be deemed to be the Registered Interest Holder's irrevocable consent required to allow the roads and/or reserves to be vested or dedicated as road and/or reserves including (without limitation) under section 224(b)(i) of the Resource Management Act 1991 and section 114(2) of the Public Works Act 1981.

**7.0 Exceptions:**

7.1 The following exceptions apply to the covenants in this Schedule of Covenants:

7.2 The Developer is permitted to construct:

- (i) A Childcare Centre on any of the Childcare Lots; and
- (ii) A Café on any of the Cafe Lots.

7.3 The Covenantor is permitted to construct:

- (i) A Childcare Centre on any of the Childcare Lots; and
- (ii) A Café on any of the Café Lots

provided that the Covenantor has first obtained the prior written approval of the Developer (in its absolute discretion) to such business operation and such business operation complies in all respects with the Council's applicable rules, regulations, zoning and bylaws. The Covenantor will provide the Developer with full plans and specifications and hours of business when requesting the Developer's consent.

7.4 Nothing contained in the foregoing Schedule of Land Covenants shall apply to or affect the residential building, sheds, garages, reticulation/infrastructure services and fencing standing on or in Lot 1 on the Deposited Plan(s) at the date of registration of this instrument or to any demolition or repair, alteration, modification or extension thereof unless such demolition or repair, alteration, modification or extension is more than of a minor nature in which case all repairs, alterations, modifications and extensions must comply in all respects with the foregoing Schedule of Land Covenants.

**8.0 Qualifications**

8.1 The provisions contained in this Schedule of Land Covenants shall cease to have effect on and from the 25<sup>th</sup> anniversary of the deposit of the Deposited Plan(s).