

FIRST SCHEDULE

DEFINITIONS

“Building” includes any structure, dwelling, garage, shed or other ancillary building other than a shed temporarily located on the Land for use by the registered owner or the registered owner's servants, agents or contractors solely for the purpose of use during the course of construction of any other building on the Land.

“Development” means GTJM's residential subdivision development of its land situated at 336 and 336A Portobello Road, Dunedin and contained in Record of Titles OT312/165 and OT310/57 and in terms of resource consent application SUB-2023-117 and LUC-2023-353.

“Existing Ground Level” means the ground level of the Land as of the date that the Grantor takes and registers a transfer of the Land from the Vendor/GTJM.

“Grantor” means the registered owner of the Land/Lot from time to time;

“GTJM” means GTJM Property Limited at Dunedin, Company number 7796017 and its successors or assigns.

“Lot” means any of proposed lots 1-9 as outlined in the Subdivision Plan described in this agreement.

“the Land” means the Property described in this agreement

“the Vendor” means GTJM;

A COVENANTS

1.0 DESIGN COVENANTS

1.1 The Grantor covenants and agrees:

- (a) not to construct a Building on Lots 1 and/or 3 that exceeds 5.7m metres in height above the Existing Ground Level;
- (b) for the purpose of clause 1.1(a) in calculating height no account shall be taken of chimneys only, provided that the maximum height for any Building that is subject to this clause is not exceeded by more than 1.5m and any chimney has a maximum width of 1.1m in any direction provided further that Council has approved the proposed design of any Building featuring a chimney
- (c) that all external lighting installed within the boundaries of the Land/Lot shall be down lighting only and shall not create any light spill beyond the boundary of the Land/Lot;
- (d) not to use roof materials on any Building other than one, or a combination of, steel (corrugated or tray), cedar shingles, slate or similar, or any other roof materials approved in writing by GTJM,

provided that zincalume plain galvanised or other similar steel finishes shall not be permitted;

- (e) that roof colours must be of dark, natural tones of grey, brown or green with a light reflectivity value of between 6 and 30%;
- (f) unless otherwise approved by GTJM in writing, not to use wall cladding materials other than one, or a combination of, the following:
 - (i) timber, smooth plaster, concrete, corrugated iron, stone, or high-quality materials approved by GTJM in writing; and
 - (ii) all cladding shall be recessive in colour or in a range of browns, tussock, greys, or natural greens;
- (g) not to use joinery materials other than one or a combination of the following:
 - (i) timber, steel or aluminium; and
 - (ii) joinery colours (except timber) shall complement roofing, guttering and spouting colours or as otherwise approved in writing by GTJM;
- (h) not to occupy any Building until it has achieved practical completion or has received a current code compliance certificate issued by the local council authority under the Building Act 2004;

2.0 BUILDING AND USE COVENANTS

2.1 The Grantor covenants and agrees:

- (a) not to erect or place, or permit to be erected or placed, on the Land/Lot any caravan, mobile home(s), hut or other temporary accommodation for use as temporary accommodation. The storage of a mobile home, caravan and/or boat is permitted on the Land/Lot once a dwelling has been constructed provided it is screened from the road frontage;
- (b) not to construct or place any pre-used, second-hand and/or relocated Building on the Land/Lot;
- (c) not to use the Land/Lot or permit the same to be used for any use other than residential purposes, and in particular, not to use the Land/Lot or permit the same to be used, for any trading, industrial or commercial purpose. It is acknowledged that the use of a dwelling as a registered Homestay as defined in the Dunedin City Council Operative District Plan as of 1 December 2015 will not be in breach of the provisions of this clause;
- (d) not to permit the parking of trucks or large commercial vehicles on or adjoining the Land/Lot other than for temporary delivery purposes;
- (e) that any Building must be constructed on site from new materials;

- (f) no Building shall be erected on the Land/Lot that has concrete or treated wooden piles without providing a solid and durable skirting board or other enclosure around the exterior of the Building from ground height to the underside of the wall cladding;
- (g) the Land/Lot must be maintained in a neat and tidy condition and to a standard that grass and other ground cover shall not exceed a height of 150mm. Until a dwelling is erected on the Land/Lot, GTJM shall be entitled to enter onto the Land/Lot without prior notice and carry out any mowing or grass needed to ensure compliance with this requirement at the land owner's expense;
- (h) no use may be made of any adjacent land or lot adjoining the Land/Lot for access, parking or dumping of rubbish;
- (i) to reinstate, replace, and be responsible for costs arising from damage to, the landscaping, roads, curbing, berms, concrete or other structures with the Development arising directly or indirectly from the construction of any Building on the Land/Lot, or the landscaping of the Land/Lot or the Grantor's use of the Land
- (j) prior to the commencement of the construction of any dwelling or building on the Land/Lot the Grantor shall first construct a suitable vehicle crossing to the satisfaction of GTJM across the curb to protect it from damage;
- (k) once construction of a dwelling on the Land/Lot has commenced the Grantor shall:
 - (i) complete construction of the dwelling over a period of 24 months from the commencement of construction; and
 - (ii) complete the landscaping on the Land/Lot within 30 months from the commencement of construction of the dwelling or the next growing season, whichever is sooner;
- (l) no garages or outbuildings shall be erected on the Land/Lot except in conjunction with or following construction of a dwelling, and all such buildings shall be constructed with permanent materials of timber, stone or other permanent materials in character with the dwelling on the Land/Lot or as otherwise approved in writing by GTJM;
- (m) that the further subdivision of the Land/Lot is prohibited except where:
 - (i) the subdivision is a boundary adjustment, and
 - (ii) the subdivision does not create any additional, separate saleable residential lots or areas that additional dwellings may be built on;

Nothing in this clause shall prevent a Residential Flat as defined in the Dunedin City Council Operative District Plan being constructed as part of a dwelling.

- (n) no landscape feature on the Land/Lot may exceed a height of 2.5m above Existing Ground Level;
- (o) no plants, shrubs or trees shall be allowed to exceed a height of 1.8m within 2m of the boundary of the Land/Lot and (except for any trees established by GTJM) no planting shall be allowed to exceed a height of 5m in any other place on the Land/Lot;
- (p) that diesel, petrol, oil or gas tanks that have a capacity of over 500 litres are prohibited on the Land/Lot or within any building on the Land/Lot unless first approved in writing by GTJM;
- (q) to ensure all gas cylinders, diesel, petrol, oil or gas tanks and/or air conditioning units shall be suitably screened from both the road frontage and the dwellings on any neighbouring lots and shall not be sited within 5m of any dwelling on the neighbouring lots; and
- (r) Allow any animal (including dogs and other domestic pets) to be kept in or upon the Land/Lot or Building on the Land/Lot that is or is likely to cause a nuisance or annoyance to other occupiers in the Development or to detract from the Development as a whole. In particular, the registered owner of the Land/Lot shall not allow on or about the Land/Lot or any Lot in the Development any dog which in whole or in part is or resembles the pit bull terrier or doberman pinscher breeds.

3.0 FENCING COVENANTS

- 3.1 For so long as any Lot forming part of the Development is owned by GTJM, GTJM shall not be liable to contribute to the cost of, or assist in the erection or maintenance of any boundary or dividing fence between any such Lot owned by GTJM and any Lot that is not owned by GTJM;
- 3.2 Boundary fencing of any contiguous residential Lots comprised in the Development shall use live hedges, and/or wooden trellis style, and/or similar fencing materials first approved in writing by GTJM.
- 3.3 Unless otherwise first approved in writing by GTJM, all fencing within the Development shall not:
 - (a) exceed 1.8m in height; and
 - (b) be sited within 4.5 metres of the boundary to any road frontage unless live hedging is used (in which case this restriction shall not apply).

4.0 APPROVAL PROCESS FOR BUILDINGS AND SITE DEVELOPMENT

- 4.1 The Grantor shall not build on the Land any Building unless the plans and specifications of that Building have first been approved in writing by GTJM in accordance with this covenant.
- 4.2 Prior to submitting a resource consent application or a building consent application (as the case may be) to the Council for the necessary approvals, and prior to the commencement of construction, the owner of each Lot within

the Development shall obtain the written approval of GTJM to their building plans and landscaping plans and in particular approval in respect of:

- (a) Site plan showing the location of all buildings, landscaping and vehicle access;
- (b) Elevations- which shall include a description of all exterior finishes and colours and materials;
- (c) Landscaping plans detailing any retaining walls;
- (d) Concept plans and specifications.

4.3 GTJM undertakes to use its best endeavours to respond to each application submitted no later than 15 working days after receipt of the items noted in 4.2 above. GTJM may decline to approve any or all aspects or details of the proposed Building or landscape plans that GTJM in its sole and absolute discretion and determination may consider as prejudicial to the underlying objectives and purpose of these covenants- which include protecting the overall look and feel of the Development and to ensure it remains consistent with the balance of the Development.

4.4 In determining whether or not to approve the plans and specifications in part or in whole, GTJM will take into account the appearance of the proposed dwelling in relation to the appearance of other dwellings already forming part of the Development to the intent that the appearance of the proposed dwelling shall be generally compatible with a range of style, design and appearance of other dwellings proposed to be built or actually built within the Development, or that GTJM wishes to see built in the Development.

4.5 Approval of plans by GTJM does not constitute any representation that plans are otherwise compliant with these covenants or any other applicable building regulations or district plan, building or other land use requirements and compliance with all such covenants and requirements constitute separate responsibilities and obligations of the Grantor.

4.6 GTJM may nominate or delegate the approval process to any other suitably qualified person or entity at any time.

5.0 NO OBJECTION COVENANT

5.1 The Grantor covenants that the GTJM that they will not:

- (a) object to or lodge any submission against any planning proposal, resource consent application or plan change with the Dunedin City Council ("DCC") or any relevant authority such as any corporation, government, local, statutory or non-statutory authority or body having jurisdiction over the land or any part thereof "Relevant Authority"; or

- (b) obtain an order, injunction or any other remedy intended to prevent, delay, hinder or frustrate any planning proposal, resource consent application or plan change with the DCC or any Relevant Authority; or
- (c) encourage or support any other person to:
- (d) object or to lodge any submission against any planning proposal, resource consent application or plan change with the DCC or any Relevant Authority; or
- (e) obtain an order, injunction or any other remedy intended to prevent, delay, hinder or frustrate any planning proposal, resource consent application or plan change with the DCC or any Relevant Authority;

that relates to any land owned by the Vendor/GTJM (at any time) situated within a 1-kilometre radius of the boundaries of the Land comprised in the Development.

B. ENFORCEMENT

1. GTJM may, at its absolute discretion at all times enforce these covenants in the same manner as any other person having the benefit of these covenants and in particular, if the registered owner from time to time of the Land/Lot is in breach of any of the foregoing covenants (and without prejudice to any other liability which the registered owner from time to time of the Land/Lot may have to any other person having the benefit of those covenants) they will upon written demand from GTJM
 - (a) Immediately remedy the breach or non-observance of the covenants;
 - (b) Pay to GTJM as liquidated damages the sum of five hundred dollars (\$500.00) per day for each day that such breach or non-observance continues after the date upon which written demand was made.
2. GTJM does not have any legal responsibility or liability for the enforcement, enforceability, applicability or lack of action with respect to enforcement or applicability of any of these covenants. In addition, GTJM does not undertake to enforce or monitor compliance of these covenants. The registered owner from time to time of the Land/Lot in his capacity as grantee in the proposed easement instrument creating these covenants also agrees to keep GTJM indemnified, free and harmless from any claim, liability, loss or action arising against it or its agents in this regard.

C. DISPUTE RESOLUTION

1. Without prejudice to the enforcement provisions of this document, if any dispute arises between or among any persons concerning the covenants,

then such persons shall enter into negotiations in good faith to resolve their dispute.

2. If the dispute is not resolved within twenty (20) working days from the date on which the parties begin their negotiations, then the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties agree, that person appointed may act as an expert and not an arbitrator.
3. If an arbitrator cannot be agreed upon within a further ten (10) working days, then an independent arbitrator will be appointed by the President of the time being of the New Zealand Law Society.
4. Such arbitration shall be determined in accordance with the Arbitration Act 1996 (and its amendments) or any enactment passed in its substitution

