

**Form 26**

**Covenant Instrument to note land covenant**

(Section 116(1)(a) & (b) Land Transfer Act 2017)

**Covenantor**

Fern Lindsay Limited

**Covenantee**

Fern Lindsay Limited

**Grant of Covenant**

**The Covenantor**, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (and, if so stated, in gross) the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

**Schedule A**

*Continue in additional Annexure Schedule, if required*

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenant	DP 607358	Lots 1-8 DP 607358  (RTs 1207394- 1207401)	Lots 1-8 DP 607358  (RTs 1207394- 1207401)

**Covenant rights and powers (including terms, covenants and conditions)**

*Delete phrases in [ ] and insert memorandum number as required.*

*Continue in additional Annexure Schedule if required.*

The provisions applying to the specified covenants are those set out in the Annexure Schedule.

## Annexure Schedule

### 1. Interpretation

1.1. In this Instrument unless the context otherwise requires:

<b>Benefited Land</b>	means: (a) any part of the Land for which a separate Record of Title has issued; and  (b) in relation to the Covenants the land described on the front page of this Covenant as the Benefited Land which has the benefit of that Covenant.
<b>Burdened Land</b>	means: (a) any part of the Land for which a separate Record of Title has issued; and  (b) in relation to the Covenants the land described on the front page of this Covenant as the Burdened Land which has the burden of that Covenant.
<b>Common Property</b>	means any shared infrastructure which forms part of the Development, any exterior solar lighting bollards, electric access gate and any right(s) of way and/or access way(s) to such Common Property.
<b>Covenantee</b>	means the registered owner(s) of the Benefited Land and any successors in title (if applicable) to the Benefited Land from time to time.
<b>Covenantor</b>	means the registered owner(s) of the Burdened Land and any successors in title (if applicable) to the Burdened Land from time to time.
<b>Covenants</b>	means the covenants set out in this Instrument, including any covenant described as an obligation.
<b>Developer</b>	means Fern Lindsay Limited being the entity that has carried out the Development.
<b>Development</b>	means: (a) the 8-lot fee simple title development being undertaken by the Developer on the Land, including but not limited to those new Units constructed, open spaces, pathways and gardens; and  (b) the Common Property.
<b>Instrument</b>	means the front page of this Instrument.
<b>Land</b>	means the land located at 196 Hills Road, Christchurch, which comprises the land formerly contained in Record of Title CB19B/118.
<b>Member</b>	means a member of the Residents Association.
<b>Owner</b>	means each registered proprietor of a Property and together are the <b>Owners</b> .
<b>Property</b>	means each of the 8 separate properties which comprise part of the Development and together are the <b>Properties</b> .

**Residents Association** means the association that Owners by virtue of their ownership of a Property are Members of, which shall not be an incorporated body, and which is governed by the covenants and obligations set out in this Instrument.

**Unit** means each of the 8 dwellings which the Developer has constructed and which each form part of a Property.

1.2. For the avoidance of doubt:

- (a) Words importing the singular include the plural and vice versa;
- (b) A covenant to do something is also a covenant to permit or cause that thing to be done and a covenant not to do something is also a covenant not to permit or cause that thing to be done; and
- (c) This instrument binds and benefits the parties and their executors, successors and assigns in perpetuity and also any lessee or occupier of the Land, the Burdened Land and the Benefited Land.

## **2. Background**

2.1. The Developer has developed the Land, including both the Burdened Land and the Benefited Land.

2.2. The Developer requires that, the Burdened Land and the Benefited Land be subject to the provisions of this Instrument for the benefit of each of the Burdened Land and the Benefited Land to ensure that the Development is administered in a co-ordinated and harmonious manner and to conserve and enhance the character, value and amenity values of the Development.

2.3. The purposes of this instrument are to:

- (a) require the Covenantor to be bound by (where applicable) the covenants under this Instrument and to receive the benefit of (where applicable) the covenants under this Instrument;
- (b) require the Covenantor to insure its Property, as more specifically recorded in clause 6 (the **Insurance Obligations**); and
- (c) set out the Covenantor's obligations in respect of the maintenance of its Property and the Common Property, as more specifically recorded in clause 6 (the **Property Obligations**).

2.4. The Developer requires that this Instrument shall be and remain registered against the Records of Title to the Burdened Land and Benefited Land so that:

- (a) the Covenantor (and/or any occupier or lessee of the Covenantor's Property) for the time being of the Burdened Land shall be bound by the provisions of this Instrument; and
- (b) the Covenantee (and/or any occupier or lessee of the Covenantee's Property) for the time being of any Benefited Land can enforce the observance of the provisions of this Instrument by any Covenantor and/or occupier or lessee for the time being of any of the Burdened Land, whether in equity or otherwise.

2.5. The obligations and covenants of the Covenantor under this Instrument are for the benefit of the Covenantee and also for the benefit of the Residents Association.

## **3. General Covenants**

3.1. The Covenantor covenants and agrees:

- (a) to observe and perform all the Covenants at all times; and

- (b) that the Covenants shall run with and bind the Burdened Land for the benefit of the Benefited Land.

3.2. The Covenantor covenants with the Covenantee that on becoming the registered Owner of a Property the Covenantor will:

- (a) automatically become a Member;
- (b) remain a Member while the Covenantor continues to be the registered Owner of that Property; and
- (c) fulfil and continue to fulfil the obligations of a Member as set out in this Instrument

3.3. The Covenantor covenants and agrees:

- (a) to pay the Covenantee's legal costs of and incidental to the enforcement or attempted enforcement of the Covenantee's rights, remedies and powers under this Instrument;
- (b) to indemnify the Covenantee against all claims and proceedings arising out of a breach by the Covenantor of any of its obligations set out in this Instrument; and
- (c) to pay the Covenantee interest on all amounts due by the Covenantor to the Covenantee at the rate of 12.0% per annum from the date of demand until the date that the full amount owed is paid.

#### **4. The Residents Association**

4.1. The rules of the Residents Association (as recorded in this clause 4) shall dictate how the Owners make those decisions that they are required to under this Instrument.

4.2. The Covenantor agrees that the primary method of communication for matters relating to the Residents Association will be via email. In this regard, the Covenantor covenants with the Covenantee that it will:

- (a) provide the other Owners (and any other third party reasonably requiring it, such as a property manager) with its contact email address as soon as practicable following settlement of its purchase of a Property; and
- (b) upon receipt of the above information, compile it into a list which records each Owner's email address (**Owners List**).

4.3. The Covenantor agrees that all decisions of the Residents Association shall be made at a meeting of the Residents Association (**Meeting**) and covenants with the Covenantee to abide by the below requirements of a Meeting:

- (a) any Owner can convene a Meeting by giving a minimum of ten (10) working days' notice in writing to each of the Owners (in accordance with clause 11.2), with that notice to record the date, time and place of that Meeting, and the proposed agenda;
- (b) decisions shall be made by majority vote unless stated otherwise in this Instrument;
- (c) each Owner shall exercise one vote for each Property that Owner owns. In the event there is more than one Owner of a Property, then:
  - (i) those Owners must exercise their vote jointly;
  - (ii) one person/entity can exercise a vote on behalf of a jointly owned Property, unless written notice has been issued to the other Owners, which records that all of the Owners of that Property must be at a Meeting to exercise a vote jointly; and

- (iii) an Owner may nominate a proxy (such as a property manager) by way of notice (in accordance with clause 11.2) to all the other Owners who are eligible to attend that Meeting to vote on their behalf;
- (d) voting at a Meeting can be exercise by way of a show of hands, a private vote or by way of email. If it is to be conducted by private vote, such private vote can be done under the supervision of a non-Owner (such as a property manager or solicitor) appointed by agreement between the Owners present at the particular meeting.

4.4. The Covenantor acknowledges and agrees that:

- (a) the Residents Association shall hold one combined Meeting in relation to matters concerning the Property Obligations and the Insurance Obligations;
- (b) the quorum for a Meeting shall be three Owners; and
- (c) at any Meeting, one Owner must be elected as secretary of that Meeting. Alternatively, a non-Owner, such as a property manager can be nominated as secretary by a majority of those in attendance. Crockers Body Corporate Management Limited is appointed the initial secretary in respect of any Meetings. In any event a copy of the minutes must be delivered to all Owners (in accordance with clause 11.2) within five (5) working days following the Meeting.

## 5. Bank Accounts

- 5.1. The Covenantor acknowledges and agrees that the Owners will decide at a meeting, to either nominate a property manager, accountant or similar, or three (or more) of the Owners as stakeholder (**Stakeholder**) to hold and operate a bank account, for the benefit of the Owners in relation to the Property Obligations and the Insurance Obligations (the **Bank Account**). Crockers Body Corporate Management Limited is appointed the initial Stakeholder to hold and operate the Bank Account.
- 5.2. The Covenantor acknowledges and agrees that all payments from the Bank Account must first be approved at a Meeting.
- 5.3. The Covenantor acknowledges that the Owners must procure that the Stakeholder make available to all Owners, at each Meeting, the most recent statement of each bank account to which that Meeting relates.

## 6. Obligations of the Owners

6.1. The Covenant covenants with the Covenantee to:

- (a) contribute to each Bank Account in accordance with clause 7 below;
- (b) keep its Property in good order and repair; and
- (c) keep the Common Property in good order and repair.

6.2. In relation to the Insurance Obligations, the Covenantor covenants and agrees that:

- (a) it will procure and maintain a comprehensive insurance policy for the Covenantor's Property and a fair share of those common improvements which are located on the Land on either a replacement basis or on a sum insured basis reasonably sufficient to replace the Property and a fair share of those common improvements on the Land (Insurance Policy); and
- (b) pay all premiums and any other payments due under the Insurance Policy on time and otherwise take any other action that is required to ensure the Insurance Policy is maintained.

If demanded in writing by an Owner, the Covenantor must provide to any/all of the other Owners a Certificate of Currency of Insurance as proof of the Covenantor's Insurance Policy within five (5) working days of such demand being made.

- 6.3. The Owners acknowledge and accept that it is likely in their best interests for the Insurance Obligations to be satisfied by a collective insurance policy(s) for all Properties in the Development (**Collective Insurance Policy**). The Covenantor hereby agrees and accepts that there will be a Collective Insurance Policy, and covenants with the Covenantee that it will maintain the insurance cover for their Property under the Collective Insurance Policy and to pay its allocated amount of the premium for the Collective Insurance Policy, unless the Covenantor obtains at a Meeting the agreement of 75% or more of the Owners (who are a party to the Collective Insurance Policy) for it to satisfy its Insurance Obligations outside of the Collective Insurance Policy.
- 6.4. The Covenantor acknowledges that the requisite Owners may change the insurance provider of the Collective Insurance Policy upon the agreement at a Meeting of 75% or more of the requisite Owners.
- 6.5. The Covenantor covenants with the Covenantee that it will as part of the Common Property Obligations:
- (a) keep its Property in good order and repair and serviced in accordance with manufacturer recommendations (if any);
  - (b) keep the Common Property in good order and repair and serviced in accordance with manufacturer recommendations (if any); and
  - (c) maintain in good working order at all times the exterior solar lighting bollards situated on its respective Property such that in the hours of darkness the lighting illuminates the share accesses and entrances to the Properties, and any common/utility area within the Development. The lighting shall be maintained at the cost of each Owner of the particular Property to which the light(s) are located on and is to be set on an automatic night sensor switch.
- 6.6. The Covenantor must:
- (a) ensure its Property is kept clean at all times and any lawns, gardens, grounds, shrubs, trees, foliage, yards or paved areas within its Property are kept neat and tidy and are regularly maintained;
  - (b) not change the exterior colour of the Unit and improvements on its Property without the prior written consent of all Covenantors and must keep the same well maintained and in a clean and tidy condition including regularly clearing any guttering;
  - (c) not change the height or type of fencing on its Property;
  - (d) keep the roof of the Unit and the fascia, gutters and external cladding of the same Unit in good order and repair having regard to the overall condition of the Unit;
  - (e) not erect, fix or place any aerial, satellite dish, antenna or similar device on or to the exterior of its Unit or install any gas bottle, washing line or other structure so that it is visible from any public road;
  - (f) not leave rubbish or recycling material on its Property except in designated Christchurch City Council rubbish bins and such bins must not be left in such a way that interferes with the use of any right of way area by the other owners or occupiers of a Property;
  - (g) ensure that all rubbish bins are collected from the kerb and returned to the designated bin storage area on the designated Christchurch City Council rubbish collection day;
  - (h) not park on any part of the Land designated as a right of way area;

- (i) keep clean all glass contained in windows or doors of its Unit and replace any cracked or broken glass within 72 hours of the glass being broken with glass of the same or better weight and quality;
- (j) not make or permit any noise or carry out or permit any conduct or behaviour, on any Property, which is likely to interfere with the use and enjoyment of other Owners or occupiers of their Properties;
- (k) provide a full copy of these Covenants and any amendments thereof to any tenant or occupier of its Properties;
- (l) use its best endeavours to insure the Unit and improvements situated on its Property with the same insurance company as the other Owners. To assist with the adherence of this covenant the Covenantors must provide each other with their contact details and act in good faith in their dealings with each other.
- (m) contribute equally on a pro rata basis with all other Owners to any operating and maintenance costs associated with any exterior solar lighting bollards and the electric access gates installed on Common Property on the Land.

## **7. Contribution to Bank Account**

7.1. The Covenantor covenants that it will transfer to the Bank Account on the first day of each month the amount determined at a Meeting on account of the cost to meet the cost to satisfy the Property Obligations and the Insurance Obligations (including the Collective Insurance Policy).

7.2. The Covenantor acknowledges:

- (a) those contributions recorded in clause 7.1 shall be adjusted up every three years from the date of this Instrument in accordance with any increase in the Consumer Price Index published by Statistics New Zealand (or the like index in the event that index is replaced) over that same period, provided that the Owners (by way of a decision at a Meeting) may elect to increase or decrease the amount and/or frequency of those contributions; and
- (b) in the event that there is insufficient funds held in the Bank Account to enable the Owners to meet the Property Obligations and Insurance Obligations, then (by way of a decision at a Meeting) the Owners may require each Covenantor to make a payment to the Bank Account equal to a 1/12<sup>th</sup> share of the amount that is required to ensure sufficient funds.

## **8. Sale of a Property**

8.1. In the event that the Covenantor sells its Property, the Covenantor covenants with the Covenantee that it will:

- (a) provide all other Owners with notice recording when settlement of the sale is to take place, and the email address, postal address (if different from the Property being sold) and mobile number for the new Owner;
- (b) ensure that contemporaneously with settlement of the sale, that its name(s) is removed from the Bank Account; and
- (c) provide the Owners List to the new Owner.

## **9. Enforcement**

9.1. The Covenantor and the Covenantee agree that:

- (a) the Covenantor's obligations and covenants under this Instrument are for the benefit of the Covenantee and also for the benefit of the Residents Association (being all other Owners);

- (b) the Residents Association (being all other Owners) may facilitate the observance of this Instrument by the Covenantor by taking all necessary steps to enforce its observance on behalf of the Covenantant;
- (c) in the event that the Covenantor does not make any contribution to the Bank Account that it is required to in accordance with clauses 6 and 7 or is otherwise in breach of the terms of this Instrument then from the date that is five (5) working days from the date that the Covenantor receives written notification of such breach (such notice to be sent by a non-defaulting Owner(s) or their representative) the Covenantor will be liable to pay to the Bank Account liquidated damages equal to \$10.00 per day for each day that the Covenantor remains in breach of the terms of this Instrument. This payment(s) will be without prejudice to the other rights of the Covenantant in relation to the enforcement of this Instrument, including but not limited to the recovery from the Covenantor of an amount equal to the Covenantant's loss and costs as a result of the breach of this Instrument by the Covenantant;
- (d) the Covenantant is able to instruct a law firm and/or debt collector to act for the Covenantant in respect of the recovery of the debt owned by the Covenantor and in such event the Covenantant may recover the cost of the same from the Covenantor; and
- (e) if any default by the Covenantor results in the Bank Account not maintaining sufficient monies for the Owners to meet their relevant obligations, then the other relevant Owners are required to contribute to the Bank Account an equal share of the amount required to enable the requisite Owners to meet the relevant Obligations. Each Owner who contributes a share pursuant to this clause shall be able to recover the amount of that share, together with interest (at the rate of 12.0% per annum) from the Covenantor.

## **10. Dispute Resolution**

10.1. If a dispute arises between the Covenantor and Covenantant in relation to matters touching or concerning this Instrument (**Dispute**), the following procedure must be followed:

- (a) the party initiating the Dispute must provide full written particulars of the Dispute to all other Owners and call a Meeting for the Owners to discuss the Dispute, and endeavour to resolve the Dispute at that Meeting;
- (b) if the Dispute is not resolved at the Meeting, the Owners must appoint a mediator by mutual agreement (or if agreement cannot be reached, that mediator is to be appointed by the President for the time being of the Canterbury-Westland Branch of the New Zealand Law Society or the body that replaces that society) to attend a Meeting, for the purposes of resolving the Dispute; and
- (c) if the Dispute is not resolved at the Meeting which is attended by the mediator, the Dispute must be referred to arbitration in accordance with the Arbitration Act 1996 and conducted by a single arbitrator to be agreed on by the Owners (or failing agreement, to be appointed by the President for the time being of the Canterbury-Westland Branch of the New Zealand Law Society or the body that replaces that society).

## **11. General**

11.1. The Covenantor's liability under this Instrument shall not be released, varied or affected in any way by any delay, extension of time or other indulgence to the Covenantor suffered or permitted by the Covenantant or by any failure or neglect of the Covenantant to enforce the rights or powers recorded in this Instrument.

11.2. The Covenantor agrees that a delivery of a notice under this Instrument is effective when:

- (a) it is placed in the mailbox at the Property of the Owner upon whom the notice is to be served (unless the requisite Owner has previously provided written notice to the other Owners that notices are to be sent to a different postal address, in which case the notice will be effective three (3) working days after it is sent to that address); and/or



- (b) emailed to an Owner, with the requisite email address for that Owner having previously been provided in writing to the other Owners with instructions that email address can be used for services of notices under this Instrument.