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SOLD ON KĀPITI
REAL ESTATE

Form 26

Covenant instrument to note land covenant

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

Covenantor

FAIRFIELD ESTATE LIMITED

Covenantee

FAIRFIELD ESTATE 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		TBC	TBC

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:

[Memorandum number _____, registered under section 209 of the Land Transfer Act 2017].

[Annexure Schedule 1].

ANNEXURE 1

Creation of Land Covenants

1. It is the Covenantor's intention to create for the benefit of the Benefited Land, the covenants over the Burdened Land as described in this Annexure Schedule so that the covenants and conditions run with the Burdened Land for the Benefit of the Benefited Land.
2. The Covenantor for itself and its successors in title to the Burdened Land hereby covenants and agrees with the Covenantee and its successors and assigns that the Covenantor will at all times:
 - (a) Observe and perform the covenants contained in this schedule for the benefit of the Covenantee and;
 - (b) Ensure that all occupiers, employees, contractors, invitees and anyone or thing that is present on the Burdened Land under the control of, or at the direction or invitation of the Covenantor, observes the same Covenants.

Definitions

3. In this Covenant Instrument, unless context otherwise requires:
 - 3.1 **Authority** means any local body government or other authority having jurisdiction or authority over or in respect of any part of the Burdened Land.
 - 3.2. **Benefited Land** means the land described in Schedule A of this Covenant Instrument as the benefited land.
 - 3.3. **Building** means any structure on the Burdened Land, including a Dwelling, other than:
 - (a) a fence or wall less than one metre in height above ground level; and
 - (b) any other structure less than five square metres in area and less than two metres in height above ground level.
 - 3.4. **Burdened Land** means the land described in Schedule A of this Covenant Instrument as the burdened land.
 - 3.5. **Covenant Instrument** means the covenants contained in this instrument.
 - 3.6. **Developer** means Fairfield Development Limited or their nominee or assignee or successor nominated by them to complete the Development.
 - 3.7 **Development** means the Fairfield Estate development being carried out on the Burdened Land and Development Lot, or, any land which the Developer is or is to become registered owner, whether contiguous with or adjacent to the Burdened Land, intended to form part of the Development, or otherwise, and includes any subdivision, dwellings, outdoor areas, utilities and any shared spaces.
 - 3.8 **Development Lot** means any land which the Developer is or is to become registered owner which is intended to form part of the Development.
 - 3.9 **Development Period** means a period which has commenced and which will end when the Developer no longer retains any material interest in the Development as a land developer;
 - 3.10. **Dwelling** means a building being used as one household unit for the purposes of residential activities and includes kitchen and bathroom facilities.
 - 3.11. **Lot** means an individual lot (or together "lots") forming part of the Burdened Land.
 - 3.12. **Registered Owner(s)** means each registered owner of a Lot comprising the Burdened Land and their agents, tenants, licensees, occupants and other invitees.
 - 3.13. **Resource Consent** means the resource consents issued by the Authority for the Development and includes any variations or modifications.
 - 3.14. **RMA** means the Resource Management Act 1991 and extends to any replacement legislation.
 - 3.15. **Working Day** means any day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day;
 - (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - (c) a day in the period commencing on the 24th day of December in any year and ending on the 5th of January in the following year, both days inclusive; and
 - (d) the day observed as the anniversary of any province in which the property is situated.

A working day shall be deemed to commence at 9:00am and to terminate at 5:00pm.

4. The following provisions shall apply in the construction and interpretation of this schedule (unless the context otherwise requires):

- (a) headings are for convenience only and shall not affect the interpretation of this schedule; and
- (b) words importing the singular number include the plural and vice versa.
- (c) any obligation not to do anything includes and obligation not to cause or allow that thing to be done or continue.
- (d) the term including means including without limitation and other derivatives of including will have a corresponding construction.
- (e) references to a statute include references to regulations, orders or notices made under or pursuant to such statute and references to a statute or regulation include references to all amendments to that statute or regulation

This approved format may be used for lodgement as an electronic instrument under the Land Transfer Act 2017

whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to, or incorporating any of its provisions

Dwelling Restrictions

- 5.1 Only one Dwelling, which must have an aggregate floor area of no less than 110 square meters, shall be erected on each Burdened Land Lot, including garaging, excluding carports, decking, roof overhang and accessory buildings which may be constructed in addition to the Dwelling.
- 5.2 Any Dwelling or Building shall be single storey.
- 5.3 The exterior of all buildings shall be constructed of materials that create texture and shadow such as:
 - unit brick
 - natural stone
 - concrete block
 - timber/linea weather boards.
- 5.4 No second-hand building materials shall be used for any part of a Building, unless approved in writing by the Developer
- 5.5 Only a new Dwelling and new accessory buildings may be erected, and no transportable buildings will be allowed.
- 5.6 Prior to the commencement of construction of any new Buildings on any part of any Burdened Land, no temporary Building, tent, truck, caravan, campervan, bus or tram (nor any other vehicle providing a similar temporary residential function) shall be permitted to remain on any part of any Burdened Land.
- 5.7 Prior to the commencement of construction of any new Buildings on any part of any Burdened Land, the Registered Owner must maintain the Lot in a mown condition until the date construction commences.
- 5.8 Once construction has been completed no tent, truck, caravan, campervan, bus, temporary building trailer, boat, trail bike, machinery or unsightly object (not including any motor vehicle, small van or utility truck that is in good working order, repair and appearance) shall be parked or permitted to remain for any material period of time on any part of any Burdened Land unless garaged or screened so as to preserve the amenities and tidiness of the neighbourhood.
- 5.9 Within three (3) months of completion of the Dwelling on the Burdened Land, the Registered Owner shall complete all landscaping on the Burdened Land, including laying any lawn, completing driveways and removing any dirt, debris or building materials.
- 5.10 The Dwelling on each Lot must not be occupied as a residence or used unless the Dwelling has been completed and the Authority has issued the required Code of Compliance Certificate(s).

Use and Maintenance

6. The Burdened Land shall be subject to the burden of the covenants set out below for the benefit of each of the Benefited Land:
- 6.1 No Lot whether in part or wholly may be subdivided, converted from fee simple or undergo a boundary adjustment.
- 6.2 No caravan, tent, caravan, campervan or other similar facility or temporary building or structure shall be used for temporary or permanent rental accommodation or work for rent arrangement on any part of any Burdened Land.
- 6.3 No part of any Burdened Land or Buildings thereon shall be allowed to deteriorate in any way which detrimentally affects the amenity of the Development and must be continually maintained to a good standard.
- 6.4 No noxious weeds including gorse shall be allowed to grow on any Burdened Land.
- 6.5 Driveways or vehicle access ways shall be kept in a neat and tidy condition.
- 6.6 The Burdened Land will be used for residential purposes only, and may include a home office.
- 6.7 The Burdened Land may not be used for commercial purposes.
- 6.8 Animals (including dogs and other domestic pets) shall only be kept in or about any Burdened Land and buildings thereon if they do not cause undue nuisance or annoyance to other Registered Owners or do not detract from the Development as a whole.
- 6.9 No rubbish or waste materials shall be allowed to accumulate on any part of any Burdened Land and no Burdened Land shall be allowed to become untidy or unsightly. Rubbish and recycling bins will be stored behind a screen, fence or the Dwelling so they are not visible from the street except when out for collection on the allotted day.
- 6.10 All landscaping, berms, roading, footpaths and kerbs shall be kept clean and tidy and free from debris at all times and during and after any works or construction. Any damage caused by the Registered Owner to the landscaping, berms, roading, footpaths, kerbs, streetlights, street signs, concrete or any other structures in the Development shall be repaired or re-instated and the Registered Owner at its cost.

Fencing

7. A Registered Owner will not call on the Developer to pay or contribute towards the cost of erection or maintenance of any boundary fence between any two Burdened Land Lots provided that this covenant will not endure for the benefit of any subsequent Registered Owner of any adjoining Burdened Land.
8. No fences shall be constructed on the Burdened Land that exceed 1.8 metres on rear and side boundaries between Lots and must be constructed of timber.
9. The maximum height of any fence or wall on a road frontage boundary in the front yard shall be 1.2m.

Any fence exceeding this height must be approved from the developer.

10. Fencing on any Lot adjoining the Reserves have been constructed by the Developer as at the date of this Covenant Instrument. Any fencing constructed by the Developer must not be altered, interfered with, added to or otherwise changed without the consent of the Developer, and must be maintained in the same good condition by the Registered Owner of the adjoining Burdened Land.

Driveways

11. Driveways must be constructed from permanent materials, being concrete, asphalt and pavers. Other materials are prohibited unless approved by the Developer.

Notification

12. The Registered Owner shall ensure all agents, employees, contractors, sub-contractors, tenants, licensees and other occupiers of the Burdened Land are made aware of the restrictions created by these covenants and are required to comply with these covenants.

Modification and Consent

13. During the Development Period, the Developer reserves the right to itself (with the intent that this right does not endure to its successors in title(s)) to waive or modify any of the covenants in the Covenant Instrument, but it will only do so if, in its opinion, such action does not impinge on the integrity of the Development in its entirety.
14. Where the Developer is required to provide its consent, waiver or approval to a matter in this Covenant Instrument:
 - 14.1 such consent, waiver, approval or disapproval will be in the Developer's sole and absolute discretion to determine; and
 - 14.2 the requirement to obtain the Developers consent or approval will only be applicable during the Development Period.

Responsibility

15. The Covenantors agree that the Developer does not have any legal responsibility or liability for the enforcement, enforceability, monitoring of, applicability or lack of action, with respect to these covenants, but it will use its discretion enforce these covenants as it requires. The Covenantors jointly and severally agree to keep the Developer indemnified, free and harmless from any claim, liability, loss or action arising against it or its agent in this regard.

Development

16. Each registered proprietor acknowledges that they shall not make any complaint or lodge any objection to the development, including but not limited to the works associated with that development, the layout of the future development, any common easements granted between the stages, and any noise arising from the future development works.
17. Each Registered Owner acknowledges and agrees to comply with any local Authority requirement or stipulation under the Resource Consent or any other requirement applicable to the Lot.
18. During the Development Period, an owner must not transfer a Lot unless:
 - (a) The dwelling has been completed, and appropriate Code Compliance Certificate has issued
 - (b) Driveway has been completed
 - (c) Any landscaping has been substantially completed; and
 - (d) Approval has been received from the Developer.

Default

19. If there is a breach or any non-compliance of the covenants in this instrument and without prejudice to any other liability which the Registered Owner may have to any person having the benefit of these covenants, the Registered Owner will, upon written demand being made by the Developer, Covenantor or any of the Registered Owners with the benefit of these covenants:
 - (a) immediately remove or cause to be removed from any Burdened Land any improvements, dwelling house, garage, building, out-building, fence or other structure erected on it or placed on the land in breach or non-observance of the foregoing covenants; and
 - (b) where any breach or non-compliance of the foregoing covenants continues for ten (10) Working Days after demand has been made to remedy the non-compliance the Registered Owner shall pay to the person making demand as liquidated damages the sum of \$400.00 per day for every day that such breach or non-compliance of the covenants continues together with any costs and expenses incurred by the Covenantor or any such person making such demand.
20. The Registered Owners will not have any claim in damages against the Developer on account of any refusal to grant or the grant of any approval or exercise of discretion, or for transferring or assigning its interest and right to grant or withhold approvals as provided, and such transferee or assignee fails to observe those obligations.
21. Without limiting any other rights at law or in equity available to the Developer or Covenantor, a breach of these covenants will entitle the Developer or Covenantor to seek interlocutory relief.
22. The Covenantor will pay the Covenantors proper and reasonable costs (including legal costs as between solicitor and client) and disbursements attributable to the enforcement or attempted enforcement of this

Notices

23. Any notice required to be served on any party shall be in writing and in accordance with the Property Law Act 2007.

Disputes

24. If a dispute arises in relation to this Covenant Instrument:
- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party;
 - (b) the parties must promptly meet and in good faith try to resolve the dispute; and
 - (c) subject to clause 25, if the dispute is not resolved within ten (10) working days of the written particulars being given (or any longer period agreed by the parties) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996 to be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the Wellington Branch of the New Zealand Law Society.
25. Notwithstanding clause 25(c) if any dispute arises in relation to this Covenant Instrument including as to what may constitute a breach or as to matters of interpretation of this Covenant Instrument whilst the Developer is the owner of any Benefited Land or the Development Lot then the same shall be referred to the Developer for resolution whose decision shall be final.

Severability

26. If any provision of this Covenant Instrument is judged invalid, unlawful or unenforceable for any reason whatsoever by a Court of competent jurisdiction, such invalidity, unenforceability or illegality will not affect the operation, construction or interpretation of any other provision of this Covenant Instrument to the intent that the invalid, unenforceable or illegal provision will be treated for all purposes as severed from this Covenant Instrument.