

## Covenant Instrument to note land covenant

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

### Covenantor

**MERC DEVELOPMENTS LIMITED**

### Covenantee

**MERC DEVELOPMENTS 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

*Annexure Schedule, if required*

*Continue in additional*

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenants		Lots 1 -30 DP [ ] (RTs [ ] - [ ])	Lots 1 -30 DP [ ] (RTs [ ] - [ ])

### 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 B].

## ANNEXURE SCHEDULE B

### LAND COVENANTS ("Covenants")

- 1.1 The Covenantor and the Covenantee wish to protect the building and visual concepts and standards and integrated appearance of the Covenantor's subdivision shown on DP [ ] (together with further stages, if any) as a whole (such subdivision shall be known as "*Redvale Estate*"). To achieve this, the Covenantor hereby covenants with the Covenantee, as set out below and hereby requests that such Covenants be noted against each of the Records of Title having the benefit and those having the burden of these Covenants.
- 1.2 For the purposes of binding the Burdened Land for the benefit of the Benefited Land the Covenantor covenants and agrees in the manner set out in Schedule B so that the Covenants run with the Burdened Land for the benefit of the Benefited Land.
- 1.3 The Covenants contained within this Instrument will automatically cease to have any effect on any allotment that will vest as road, or reserve in any subsequent stage of the Redvale Estate subdivision upon the deposited plan for such subsequent stage, being approved as to survey by Land Information New Zealand.

### SCHEDULE B

#### 1. INTERPRETATION:

- 1.1 In these Covenants unless the context otherwise requires:

**"Allotment"** means any of the allotments shown on DP [ ];

**"Benefited Land"** means the Allotment(s) shown in Schedule A;

**"Burdened Land"** means the Allotment(s) shown in Schedule A;

**"Covenantor "** means the registered owner(s) of any Lot together with their permitted successors and assigns;

**"Covenantee"** means the registered owner(s) of the Benefited Land together with their permitted successors and assigns;

**"Developer"** means MERC Developments Limited, or its nominee;

**"Permitted Colour"** means the permitted colours described in Conditions 8 and 9 of Resource Consent RM220753;

**"Subdivide"** means subdivision of land as that term is defined in section 218 of the Resource Management Act 1991;

**"Lot"** or **"Lots"** means the Burdened Land;

**"Landscaping"** means the vegetation identified as "Proposed Planting Areas" shown on Plan B of RM220752 prepared by Glasson Huxtable Limited.

## **2. PROHIBITED CONSTRUCTION AND ACTIVITIES:**

- 2.1 The Covenantor shall not, for a period of 10 years after registration of these covenants, Subdivide any of the Lots provided however that any boundary adjustment that does not create or lead to the creation of a separate building site and/or building platform shall not be in breach of this clause 2.1.
- 2.2 The Covenantor shall not permit, construct, allow to construct or use the following on the Lot:
- 2.2.1 Any temporary building or structure or any caravan, tent or other contrivance for temporary residential accommodation for any period exceeding 12 months from the date of settlement;
  - 2.2.2 Any previously constructed or occupied or relocated dwelling building or structure;
  - 2.2.3 Any building or structure clad or roofed in pre-used materials;
  - 2.2.4 Any building other than a single dwelling unit and outbuilding of which the area of such dwelling exclusive of any garage shall not be less than 120 m<sup>2</sup> and no more than 40% of the area of the Lot shall be covered by buildings or hard or impervious surfaces provided that an additional dwelling unit contained within any outbuilding for the sole purpose of housing a relative of the Registered Owner of the Lot ("*Granny Flat*") shall not be in breach of these covenants;
  - 2.2.5 Any kitset building constructed substantially off-site to be assembled on-site;
  - 2.2.6 Any attachment to any building including aerial solar heating panels and radio mast which extend beyond the form of the building (however the Developer will permit solar panels, solar hot water heating devices, and aerials that are not unsightly or do not unduly interfere with the building's visual amenity are permitted so long as they are attached to the building and are inside the building footprint);
  - 2.2.7 Any building or structure which has or includes:
    - (i) Greater than 20% of the total cladding area in Hardiplank or similar cladding;
    - (ii) Greater than 50% of Corrugated iron, "*Coloursteel*," or other metallic cladding;
    - (iii) PVC or plastic or materials coated with PVC or plastic whether or not such cladding is painted or unpainted or coated in any other way during or subsequent to manufacture, save for products known as "*Linea Board*";noting that pursuant to Clause 4.1 of these Covenants that the Developer may permit a greater percentage of such wall claddings under its discretionary rights contained within Clause 4.1 of these Covenants.
  - 2.2.8 Any building or other structure with a roof cladding of corrugated iron; whether painted or unpainted provided that Decramastic and Coloursteel products or products of similar construction pre-painted or coated in the manufacturing process shall not be in breach of this covenant;
  - 2.2.9 Any building or structure of an 'A' frame style of construction;

- 2.2.10 Any buildings or roofs of buildings that are not of a Permitted Colour. Reflective metal finishes shall not be allowed;
- 2.2.11 Any building with greater than 600mm in height (measured from natural ground level) foundation, piles or poles visible from anywhere outside the building without satisfactory cladding or screening (which is to be noted on the full working drawings to be approved by the Developer);
- 2.2.12 Any building with more than a single storey and with a maximum roof height of 6.5 metres measured from the building platform formed upon the Lot by the Developer and/or its contractors, except for Lots 2 and 3 which shall have a maximum roof height of 6.0 metres and otherwise in accordance with, and subject to the Consent Notice conditions imposed by the Tasman District Council under subdivision consent RM220752;
- 2.2.13 Any trees or other plants to be grown on the Lot in such density or to such a height that the views of properties within Redvale Estate are adversely affected to a material degree as determined by the Covenantee. Trees or other plants that may grow to any height are acceptable under this rule if planting is scattered to minimise the detrimental effect on neighbours' views. For the avoidance of doubt and dispute, it is recorded that this rule is to assist in protecting the views and outlook for nearby property owners and to minimise the cumulative effect from neighbours and determination on detrimental effects will be solely at the discretion of the Covenantee;
- 2.2.14 Any above-ground or otherwise visible water tanks;
- 2.2.15 Not permit, suffer or allow the use of the Lot for other than private residential purposes to the intent that such Lot shall not be used for institutional residential purposes or as a hostel, lodge or boarding house, or as a correctional facility. For the purposes of this clause "*Institutional residential purposes*" shall include the use of the Lot for housing purposes by Central or Government agencies or public or private health or education sector or correctional sector agencies;
- 2.2.16 Not to permit or cause any rubbish to accumulate be placed or stored upon the Lot;
- 2.2.17 Not permit any excessive growth of grass, or any growth of gorse, bracken, fern or other vegetation that becomes unsightly or poses a fire risk. For the purposes of this clause 2.2.17 and to mitigate any potential fire hazard the Covenantor shall mow the grass and remove from the Lot any growth of gorse, bracken, fern or other vegetation at least once during the period between 1 December and 31 December in each calendar year.

In the event that the Covenantor fails to comply with this 2.2.17 the Covenantor agrees that the Covenantee or the Developer may carry out the Covenantor's obligations under this clause and recover (without limiting the Default Provisions contained in clause 9) any costs or charges reasonably incurred in doing so on demand as liquidated damages.

- 2.2.17 Not bring onto, raise, breed or keep on the Lot any of the following:
  - (a) Any breed of dog specified as dangerous by the Tasman District Council at any time and it is acknowledged by the Covenantor and the Covenantee that such specification of dog breed may change from time to time; and

(b) Pigs.

- 2.2.18 Not to suffer, permit or allow any Granny Flat to be let out or tenanted by any person who is not a dependant relative of the owner of the dwelling on the Lot;
- 2.2.19 Not to keep or suffer or allow to be kept the Lot in other than a neat tidy and attractive condition including the road frontage and perimeter planting;
- 2.2.20 Not to suffer, permit or allow recreational or commercial vehicles or trailers to be parked or located on the berm or on the road in front of the Lot, excepting during the period of construction;
- 2.2.21 Not themselves, nor allow their agents or invitees to post advertising or hoardings during the construction phase of any dwelling without the prior written consent of the Developer. Such consent will be given or withheld at the Developer's sole discretion;
- 2.2.22 The Covenantor shall not allow damage to any Allotment or Redvale Estate, including (but not limited to) landscaping, roading, berms, footpaths, kerbs, concrete or other structures, or underground services in the subdivision arising from the use of the Lot directly or indirectly through the Covenantor's actions or omissions or those of any agents, servants, invitees or workpeople, and to meet all costs of reinstatement;
- 2.2.23 The Covenantor shall not, nor suffer permit or allow, the storage on any allotment or road within the subdivision any boats, caravans, campervans, trailers, trade vehicles, machinery, shipping containers or portable storage units of any kind and materials or other plant and equipment that is not within the building or completely screened from any view from the road or other allotments in the subdivision with the exception of the Covenantor's own caravan, campervan, boat or trailer which must be stored in such a way as to minimise its visual impact on any other Lots within the subdivision and any roads.
- 2.2.24 The Covenantor shall not cut, trim, maim, injure or remove nor suffer, permit or allow to be cut, trimmed, maimed, injured or removed any of the Landscaping (as defined herein) without the consent of the Developer first had and obtained, which consent may be given subject to conditions or absolutely refused;
- 2.2.25 The Covenantor shall not permit, suffer or allow any animals (including without limitation dogs, cats and domestic pets) to be kept on the Lot which animal or animals cause, or are likely to cause a nuisance or unreasonable annoyance to the owner or occupier of any of the Lots in the subdivision;
- 2.2.26 The Covenantor shall not build outside of the building location area for the relevant Lot as shown on Plan A of RM220752, and shall not make any application for Resource Consent to Tasman District Council or any other Authority to move alter or relocate the building location area;

### **3. WETLANDS CONTAINED WITHIN LOTS 1 – 3, 9 – 11 AND 30**

- 3.1 Subject to condition 30 of resource consent RM220754 which requires the Developer to maintain the wetland areas for two years following issue of titles upon deposit of survey plan DP586060, the registered owners of Lots 1 – 3, 9 – 11 AND 30 shall maintain the wetland areas contained within each of their Lot boundaries by upkeeping fencing and

tending to the native vegetation within such wetland including removing any invasive non-native vegetation from such areas. For clarity and the avoidance of any doubt, each of the registered owners of the Lot numbers named within this clause 3.1 shall tend to the wetland contained within each Lot owner's boundary and such registered owner will be liable for any costs associated with such maintenance upon their Lot.

- 3.2 The registered owners of Lots 5 and 7 will provide access to the Developer or its agents at all reasonable times for the purposes of maintaining the wetland area.

**4. MODIFICATION OR WAIVER OF COVENANTS:**

- 4.1 While the Developer remains the registered owner of any of the land previously contained within Section 64 Block 1 Waimea Survey District contained in Records of Title ("Parent Title") (with the intent that this right does not enure to its successors in title) it reserves the right to waive, vary, alter, modify or add to any of the Restrictive Covenants contained in this instrument but will only do so if in its opinion (acting reasonably) such action does not impinge upon the integrity of Redvale Estate in its entirety and the Developer will not be liable because of any action it takes or fails to take or for any default in any dwelling, building, fence or other structure erected on any Lot or at all as a result of these covenants and the registered owner for the time being of the Lot and the Benefited Land shall indemnify and keep indemnified the Developer from any costs, claims, suits, demands, liabilities, actions or proceedings or otherwise arising out of hereunder.

**5. CONSTRUCTION TIMEFRAME:**

- 5.1 Construction of the dwelling on the Lot shall be completed within 18 months of commencing construction of the foundations for such building.
- 5.2 All ancillary works such as fencing (if fencing has commenced) and landscaping and driveways must be completed within 24 months of the commencement of construction of the foundations.
- 5.3 Substantial and continuous construction work on any building once construction has commenced shall not be halted for any period longer than 3 months.
- 5.4 If the Covenantor fences the land, such fencing shall be either post and rail or stock-proof posting wire fence constructed of new materials and in the form of a conventional farm fence.

**6. FENCING:**

- 6.1 The Developer shall not be liable to or be called upon to erect or contribute towards the costs of erection or repair of any boundary fences nor dividing fences between any Lot and any adjoining Allotments owned by the Developer or any other adjoining land owned by the Developer.

**7. NO OBJECTIONS**

- 7.1 The Covenantor shall not oppose, object to, frustrate, or take any action, or encourage or cause others to oppose, object to, frustrate or take any action that might in any way prevent or hinder the Developer from progressing or completing the Developer's subdivision or any future redevelopment of the Developer's land, such covenant extends to

and includes (without limitation) development planning, zone changes, resource consents for land uses and subdivisions, Consent Authority or Environment Court applications, Territorial Authority Building Consent matters, or any other necessary consent process involving land owned by the Developer.

**8. DISPUTES:**

- 8.1 If any dispute or difference arises between the Covenantor or any of their successors and the Covenantee or any of their successors or between the Covenantor or any of their successors and the Transferor in respect of any matter arising out of these covenants or their application, then the dispute shall be resolved by a third party appointed by the Developer for that purpose and that third party's decision shall be final and binding. Costs will fall where the third party determines as fair and reasonable as a result of that decision.
- 8.2 The Developer hereunder has full rights to assign the rights to enforce these Covenants to any other person at its sole discretion.

**9. DEFAULT PROVISIONS:**

- 9.1 If there is a breach or non-observance of any of the foregoing Covenants without prejudice to any other liability which the Covenantor may have to any other person having the benefit of a covenant the Covenantor will upon demand being made by the Covenantee or its nominee:
- (a) Pay to the person making such demand as liquidated damages the sum of \$1,000.00 plus GST per day for every day that such breach or non-observance continues after the date upon which written demand has been made;
  - (b) Remove or cause to be removed from the land any dwelling-house, garage, building, fence or other structure erected or placed on the land in breach or non-observance of the foregoing covenants at the cost of the registered owner thereof and the costs shall be recoverable as liquidated damages;
  - (c) Replace any building materials used in breach or non-observance of the foregoing covenants and the cost of such work shall be recoverable from the registered owner as liquidated damages.
  - (d) Replace landscaping (as herein defined) and the Covenantee may enter upon the Covenantor's land with machinery and equipment to make good such default at the cost of the registered owner of the relevant Lot and the cost thereof shall be recoverable from the registered owner as liquidated damages.