

**Form 26**

**Covenant Instrument to note land covenant**

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

**Covenantor**

**Benrogan Estates Limited**

**Covenantee**

**Benrogan Estates 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*

<i>Purpose of covenant</i>	<i>Shown (plan reference)</i>	<i>Burdened Land (Record of Title)</i>	<i>Benefited Land (Record of Title) or in gross</i>
Land Covenant		Lots 1 to 4 DP 584661 inclusive [RT 1101153 to 1101156 inclusive]  Lot 12 DP 584661 [RT 1101157]  Lots 28-39 DP 584661 inclusive [RT 1101158 to 1101169 inclusive]  Lots 45 to 56 DP 584661 inclusive [RT 1101170 to 1101181] inclusive  Lots 58 to 61 DP 584661 inclusive [RT 1101182 to 1101186] inclusive	Lots 1 to 4 DP 584661 inclusive [RT 1101153 to 1101156 inclusive]  Lot 12 DP 584661 [RT 1101157]  Lots 28-39 DP 584661 inclusive [RT 1101158 to 1101169 inclusive]  Lots 45 to 56 DP 584661 inclusive [RT 1101170 to 1101181] inclusive  Lots 58 to 61 DP 584661 inclusive [RT 1101182 to 1101186] inclusive  Lot 303 DP 584661 [RT 1101188]

**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:

Annexure Schedule 2.

## ANNEXURE SCHEDULE 2

### LAND COVENANTS

The Covenantor intends to create for the benefit of the registered owners of the benefited land in Schedule A, the land covenants set out in Schedule B **WITH THE INTENTION** that the burdened land in Schedule A shall be bound by the stipulations and restrictions set out in Schedule B.

#### SCHEDULE B

##### 1. Purpose

- 1.1. The purpose of these covenants is to protect the market and aesthetic value of the Benefited Lots, the privacy, peace and security of the occupants of the Benefited Lots and the quality of the environment affecting the Benefited Lots for the benefit of the Benefited Lots, the Developer and its associated community in general.

##### 2. Definitions

In the following covenants:

- 2.1. Headings are for ease of reference only and do not form part of any covenant or affect the meaning of any covenant.
- 2.2. Words imputing the singular include the plural and vice versa.
- 2.3. For the purposes of this covenant, the following words and phrases mean:

**Approved** means approved by the Developer either in accordance with clause 3.2 or as may otherwise be required by any of the covenants.

**Benefited Lots** means the land listed as the benefited land in Schedule A.

**Building** comprises a building as defined by the Building Act 2004 (or latest version) and includes a Dwelling.

**Building Plans** means elevations, floor plan for a Building and site plan showing Lot and DP number and details of exterior cladding and the name of the builder.

**Developer** means Benrogan Estates Limited and includes any party nominated by the Developer to deal with applications required for approvals by the Developer under any of these covenants.

**Dwelling** means and includes a residential dwelling house, or family residence and includes a Building.

**Lot** means any Lot that is subject to these covenants.

**Lot Owner** means the owner of any Lot and includes occupiers, agents or invitees.

**Survey Plan** means any survey plan relating to future subdivision of Lot 303 DP 584661.

### **3. Building Covenants**

The Lot Owners **shall**:

- 3.1. Not erect any Buildings on the Lot other than a single family Dwelling and accessory Buildings unless the Developer has first provided written approval.
- 3.2. Not erect or carry out any building, fencing or place any other structure on the land unless the Developer has first provided written approval of all Building Plans and building consent has been obtained.
- 3.3. Not further subdivide the Lot in any way unless the Developer has first provided written approval.
- 3.4. Not build any Dwelling on the Lot that is not constructed on site or that is pre-built, transportable, relocatable or is a kit-set home unless the Developer has first provided written approval.
- 3.5. Not move any caravan, garage or similar structure onto the Lot (other than for the purposes of constructing the Dwelling or accessory Buildings). The Lot Owner will remove any such structures from the Lot as soon as construction of the Dwelling or accessory Building is completed. For the avoidance of doubt, the Lot Owner is not permitted to use such structures for the purposes of any permanent or temporary residential accommodation.
- 3.6. Not permit a Dwelling to be occupied until a Code of Compliance Certificate has been issued by the Christchurch City Council and all driveways, pathways, letterbox and fences to the Lot boundaries are completed.
- 3.7. Not permit the Dwelling to be used as a show home unless the Developer has first provided written approval. The Developer shall retain sole discretion over the number of dwellings to be used for show homes purposes. This clause 3.7 shall expire and be of no further effect on a date three (3) years after registration of this Instrument.
- 3.8. Ensure that any Buildings being built on the Lot have been fully completed within twelve (12) months of the date that construction of the Building commenced or within twenty four (24) months from the date of possession whichever is the earlier and ensure that no Building under construction is left without substantial work being carried out for a period exceeding three (3) months.
- 3.9. Ensure that all building sites have a skip and not to allow any rubbish (including builder's waste materials) to accumulate or to remain unsecured, or to be placed upon the Lot, or any adjoining land or to permit grass or weeds to grow to a height exceeding 100 mm. If, in the Developer's sole discretion, the Lot is in a state that may be detrimental to the subdivision, the Developer shall have the right to remove any rubbish or building materials from the site or any adjoining site, or to maintain the site in a reasonable condition. All reasonable costs incurred by the Developer in such removal or maintenance shall be met by the Lot Owner and shall be payable upon demand.

- 3.10. Ensure that each Lot has a letter box that is constructed of a permanent nature.
- 3.11. Ensure that all street frontage landscaping visible from the street is completed, and any unpaved areas are properly grassed or landscaped within four (4) months of the date of occupation of the Dwelling.
- 3.12. Not remove or relocate any fence, street tree or shrub or alter any landscape feature within two (2) metres of the front of the Lot or between the road frontage and the Lot that has been installed or planted by the Developer without the prior written approval of the Developer. The removal of any fence, street tree or shrub or alteration of any landscape feature will be in the manner and form directed by the Developer and/or the Christchurch City Council and shall be at the Lot Owner's sole cost.
- 3.13. Not carry out landscaping on the adjacent local authority owned road frontage other than in accordance with the general overall landscaping plan prepared by the Developer including (if required) re-seeding the road frontage with seed of a similar variety.
- 3.14. Reinststate, replace and be responsible for all costs arising from any damage to landscaping, road frontage, roading, footpaths, kerbs, concrete or other structures arising directly or indirectly from the use of the Lot by the Lot Owner.
- 3.15. Not permit any works to be carried out on the Lot (including site preparation) prior to the erection and completion of all side, front and rear boundary fences (complying with clause 4) or, where permanent fencing is not being erected, temporary fencing shall be installed and removed prior to occupation of the dwelling.
- 3.16. Complete the vehicle access from the road to the Lot (including road frontage and kerb crossing) up to and including metalling or sealing prior to construction of the dwelling in accordance with plans approved by the Developer. The Lot Owner shall only have vehicle access to the Lot over the area allocated for vehicle access (including road frontage and kerb crossing) on plans approved by the Developer.

#### **4. Fencing**

The Lot Owners **shall**:

- 4.1. Not erect or permit to be erected:
  - 4.1.1. Any fences of post and wire or galvanised iron irrespective of profile whether painted, factory prefinished or otherwise; or
  - 4.1.2. Any fences that exceed 1.83m in height or are constructed from second hand materials without the prior written approval of the Developer; or
  - 4.1.3. Any fence along a boundary with frontage to a road or right of way that is constructed of rough sawn wooden posts, railing or paling; or
  - 4.1.4. Any additional fences within three (3) metres of (and generally parallel to) fencing along the boundary with a reserve, reserve walkway or drainage reserve. This does not preclude hedging or planting.

- 4.2. Not call upon the Developer to pay for or contribute towards the expense of construction or maintenance of any fence between the Lot and any contiguous land of the Developer PROVIDED HOWEVER that this covenant shall not enure for the benefit of any subsequent owner of the contiguous land.

## 5. General covenants

The Lot Owners **shall:**

- 5.1. Not park any vehicle, caravan or boat on or within five (5) metres of any street or right of way unless situated within enclosed garages constructed on the Lot.
- 5.2. Not permit any rubbish, noxious substances, noxious livestock and/or birds or animals likely to cause nuisance or annoyance to the neighbouring occupiers to accumulate and/or be placed on the Lot.
- 5.3. Not position any clothesline, gas bottles, television aerial or satellite dish or solar hot water panels so that they are highly visible from any road, thoroughfare or adjacent property or install or allow to be installed any control equipment for gas or meter boxes on the road front elevation of the dwelling. All gas bottles and household rubbish bins are to be screened from the road frontage.
- 5.4. Maintain the Lot to a high standard and regularly mow both the grass on the Lot and on any road berm fronting the Lot and trim any boundary weeds or long grass including maintenance of any gardens that may be planted fronting the Lot.
- 5.5. Not allow any dog brought onto or kept on the property to roam free without proper supervision by the dog's owner. Any such dog shall, at all times in the owners' absence, be located in a secure yard at the rear of the Dwelling or alternatively secured in a kennel at the rear of the Dwelling.

## 6. Breaches

- 6.1. The Lot Owners shall not allow or cause any breach or non-observance of any of the foregoing covenants (and without prejudice to any other remedies available at law to the Covenantor or to any other liability which the Registered Owner may have to any person having the benefit of these covenants) and the Registered Owner will on written demand being made by the Covenantor or any of the Lot Owners:-
- 6.1.1. Pay to the person making such demand as liquidated damages the sum of \$100.00 per day for every day that such breach or non-observance continues after the date on which written demand has been made; and
- 6.1.2. Remove or cause to be removed from the Lot any item including Dwelling, Building, fence or other structure erected or placed on the Lot in breach or non-observance of any of the foregoing covenants.
- 6.1.3. Make good generally and/or replace any building materials used in breach or non-observance of the foregoing covenants.

- 6.2. The Developer shall neither be required nor shall be liable to enforce the covenants in this Instrument or any non-conformance with the provisions of the covenants in this Instrument.

## **7. Vesting of roads and reserves**

- 7.1. The Lot Owners consent to the deposit of any Survey Plan which has the effect of vesting any land in any local authority, territorial authority or the Crown or where land is to be transferred for utilities or road. The Lot Owners agree that the covenants in this Instrument shall cease to apply in respect of the land to vest or to be transferred for utilities or road upon the date of lodgement with Land Information New Zealand (or any such replacement entity) of the required documents to deposit the Survey Plan. The Lot Owners covenant that this clause will be deemed to be the consent of the Lot Owner to the deposit of the Survey Plan (including under section 224(b)(i) Resource Management Act 1991 (or any like or similar provision in any variation, consolidation or replacement Act)).
- 7.2. If it is determined by the Developer that additional written consent is required from the Lot Owners to the deposit of any Survey Plan under clause 7.1 then:
- 7.2.1. At the request of the Developer, the Lot Owners will immediately give such written consent to the Developer; and
- 7.2.2. In addition to clause 7.1 and 7.2.1 the Lot Owner irrevocably appoints the Developer or its successor in title as its attorney to sign any consent necessary in the required form to deposit any Survey Plan or to remove the covenants in this instrument from any land to be transferred for utilities or road. No person dealing with the Lot Owner as the attorney in this capacity need inquire if the Developer is validly exercising its powers as attorney under this clause 7.2.

## **8. Duration and cessation of effect**

- 8.1. The covenants contained in clause 3 of Schedule B will automatically cease to have any force and effect on the date that is 10 years from the date of registration of this Instrument. Such cessation shall be without prejudice to any rights accruing for any breach of the covenant prior to this date.