

**Form 26****Covenant Instrument to note land covenant**

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

**Covenantor****CDL LAND NEW ZEALAND LIMITED****Covenantee****CDL LAND NEW ZEALAND 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 Covenants	DP 576745	Lot 975 (RT 1063170), Lots 979-981 (RT 1063171-1063173), Lot 1048 (RT 1063174), Lot 1041 (RT 1063188), Lots 1042 and 1043 (RT 1063175 and 1063176), Lots 1044-1047 (RT 1063178-1063181), and Lots 976-978 (RT 1063182-1063184) on DP 576745	Lot 975 (RT 1063170), Lots 979-981 (RT 1063171-1063173), Lot 1048 (RT 1063174), Lot 1041 (RT 1063188), Lots 1042 and 1043 (RT 1063175 and 1063176), Lots 1044-1047 (RT 1063178-1063181), and Lots 976-978 (RT 1063182-1063184) on DP 576745
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**Covenant rights and powers (including terms, covenants and conditions)**

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

*Insert instrument type*

**Land Covenants**

*Continue in additional Annexure Schedule, if required*

**Scope and definitions**

- 1 The Covenantor hereby covenants and agrees with the Covenantee in the manner set out below so that such covenants shall:
  - (a) Burden and run with the burdened land referred to in Schedule A; and
  - (b) Be for the benefit of and appurtenant to the benefited land referred to in Schedule A and for the benefit of the Covenantee in gross referred to in Schedule A.
  
- 2 For the purposes of this instrument the following terms have the following meaning (unless the context otherwise requires):
  - (a) "**corner section**" means Land which (in the reasonable opinion of the Developer) has two legal road frontages;
  - (b) "**Developer**" means CDL Land New Zealand Limited or its nominee, or if CDL Land New Zealand Limited ceases to exist and there is no nominee, means any director of CDL Land New Zealand Limited immediately before that company ceased to exist;
  - (c) "**fence**" includes a wall;
  - (d) "**Land**" means the burdened land described in Schedule A;
  - (e) "**Subdivide**" means subdivide or subdivided within the meaning of the Resource Management Act 1991 or any modification, amendment or re-enactment of it.

**Restrictions on development and use of the Land**

- 3 The Covenantor shall, in relation to any Land owned by the Covenantor:

*Dwelling size and garaging*

  - (a) Not erect or permit to be erected on the Land any dwelling unless both of the following apply:
    - (i) the dwelling has fully integrated garaging:
      - (A) with a minimum garage door width of 3.6 metres, for Land in a title
      - (B) containing less than 400m<sup>2</sup>; or
      - (C) with (at least) a double garage, for Land in a title containing 400m<sup>2</sup> or more; and
    - (ii) the dwelling has a floor area (including the floor area of the fully integrated garage, and taken over the foundation) of more than:
      - (A) 120m<sup>2</sup> for Land in a title containing 400m<sup>2</sup> or less; and
      - (B) 130m<sup>2</sup> for Land in a title containing more than 400m<sup>2</sup>.

*Dwelling construction*

- (b) Ensure that the perimeter (on a horizontal plane) of the roof of any dwelling on the Land shall not form a rectangle unless the roof contains at least one roof break or full valley.
- (c) Ensure any dwelling on the Land has at least 80% of its non-glazed exterior cladding in any one or more of the following materials:
  - (i) Kiln fired or concrete brick;
  - (ii) Stucco textured finish;
  - (iii) Stone;
  - (iv) Timber weather boards;
  - (v) Linea weather boards;
  - (vi) Metal laminate on timber;
  - (vii) Any other exterior cladding material for which the Covenantor has obtained the Developer's written consent.
- (d) Not use metal clad roofing that has not been pre-painted, nor use copper or unpainted metal roof material, gutters, downpipes or external cladding.

*Restrictions on certain improvements*

- (e) Without limiting any other covenant, not permit a building to be erected on the Land other than:
  - (i) a new dwelling (with a fully integrated garage);
  - (ii) a building normally appurtenant to a residential dwelling, provided that any walls of the building visible from the road frontage of the Land are of the same material as the walls of the dwelling.
- (f) Not erect or permit to be erected or placed on the Land any carport unless attached and fully integrated into the roofline of the dwelling or garage and screened from view from the road by fencing or landscaping approved by the Developer.
- (g) Not erect or permit to be erected or placed on the Land more than one dwelling.

*Design approval*

- (h) Not do any work or permit any work for the erection of buildings, accessory buildings, landscaping, fences, driveways, or other improvements (and this shall also include exterior finishes and excavation of foundations upon the Land) unless plans and specifications and all other details of construction, finish and location as the Developer at the Developer's absolute discretion may require, have first been submitted to the Developer and have received the Developer's written approval.

*Restriction on subdivision*

- (i) Not Subdivide the Land nor amalgamate the title to the Land with another title.

*Fencing and fencing contributions*

- (j) Ensure that all internal boundary fences are erected in a tradesman like manner using appropriate materials.
- (k) Without prejudice to clause 3(h), not erect or permit to be erected on the Land a fence:
  - (i) Which is made out of corrugated iron or post and wire; or
  - (ii) Which does not comply with Christchurch City Council requirements (such as, for example, rule 14.5.2.10 in the District Plan) unless authorised by a resource consent; or

- (iii) Which, if it is an internal boundary fence, is higher than 1.2 metres above the natural ground level at any point within 2 metres of the road boundary (except where approval has been granted by the Developer to erect a front fence within the building setback on a corner section); or
  - (iv) Which, if it is a fence between the Land and an adjoining reserve, is less than 80% open if it is more than 1.2 metres in height above the natural ground level; or
  - (v) Which is higher than 1.8 metres above the natural ground level, at any point (subject to clauses 3(k)(ii) & (iii)); or
  - (vi) Which is made of materials which (in the Developer's opinion) are not harmonious with the materials used in the dwelling on the Covenantor's Land.
- (l) Not call upon Christchurch City Council to pay for or contribute towards the cost of erection or maintenance of any boundary fence between the Land and any adjoining reserve or other land owned by Christchurch City Council.
  - (m) Not call upon the Developer to pay for or contribute towards the cost of erection or maintenance of any boundary fence between the Land and any adjoining Land owned by the Developer, provided that this covenant will not enure for the benefit of any subsequent registered proprietor of any such adjoining Land. This clause 3(m) overrides clause 3(n).
  - (n) Pay 50% of the reasonable cost of a Qualifying Fence to any neighbour that erected the Qualifying Fence, if that neighbour has not previously received a contribution towards the cost of the Qualifying Fence in accordance with this clause 3(n). A "**Qualifying Fence**" means a fence on a shared boundary between the Covenantor's Land and adjoining Land owned by the neighbour. However this clause does not benefit the Developer or need to be complied with by the Developer.
  - (o) If the Land is adjoining a reserve, maintain the fence between the Land and the adjoining reserve and if such fence is wholly or partly destroyed, replace with a new fence that complies with clause 3(k) and has Christchurch City Council approval.

*Building timeframes and crossings*

- (p) Ensure that:
  - (i) any building, driveway and landscaping is completed within nine months of laying down the foundations for such building and no building once under construction shall be left without substantial work being carried out for a period exceeding three months;
  - (ii) entry and exit to and from the Land during building is via a single entry/exit point on the Land boundary, of a maximum 4 metre width, which must be notified to and approved by the Developer as part of the approval required under clause 3(h);
  - (iii) any other requirements for the construction phase which form part of the Developer's approval under clause 3(h) are complied with by the Covenantor.

*Tidy appearance*

- (q) Not permit a temporary building or structure to be erected on the Land except that which may be used in conjunction with the construction of permanent buildings and which will be removed from the Land upon completion of the work.

- (r) Keep the Land in a neat and tidy condition and shall not permit excessive growth of grass (beyond 100mm in length).
- (s) Maintain all road reserves adjoining the Land in a neat and tidy condition and immediately repair (to the satisfaction of the Developer) any damage to the footpath and berms adjoining the Land caused by the Covenantor or its contractors, employees, agents and invitees.
- (t) Not cut, trim, damage, remove or relocate any tree, shrub or plant on the road reserve without the prior approval of the Developer and the Christchurch City Council.

*Monitoring*

- (u) Not prevent the Developer, its officers, employees or agents from entering onto the Land at all reasonable times for the purposes of ensuring compliance with the foregoing covenants and remedying any breaches thereof subject to the Developer first giving at least 48 hours' prior written notice of its intention to enter on to the Land. If the Developer enters on to the Land it shall not be responsible for any damage occasioned to the Land or anything placed thereon as a result of a reasonable exercise by the Developer of its powers.

*Aerials etc*

- (v) Not install or attach any accessory (including but not limited to satellite dishes, television aerials, and solar panels) on the Land, unless they are constructed in such a way as to be discreetly integrated with the design of buildings on the Land so that they are not highly visible from any road, thoroughfare or any other Land.
- (w) Fully encase any chimney in materials and in a manner approved by the Developer in writing.
- (x) Ensure that any garden shed on the land is adequately screened from view from any road, thoroughfare, reserve or any other land by fencing or landscaping approved by the Developer in writing.

*No interference with development of Prestons Park subdivision*

- (y) Not at any time oppose, obstruct or object in any way, or provide support in any form to any person in opposition to, any planning proposal by the Developer in respect of the subdivision and sale of any land owned by the Developer within the Prestons Park subdivision.
- (z) Not make, lodge, be party to or finance any request, complaint, submission, application, appeal or other proceeding which is designed, intended or likely to limit, prohibit or restrict the completion (in accordance with these covenants) of the subdivision and sale of any land owned by the Developer within the Prestons Park subdivision.
- (aa) Not bring any proceedings in any Court or tribunal for damages, negligence, nuisance, trespass or interference or otherwise arising as a result of the completion of the subdivision and sale of any land owned by the Developer within the Prestons Park subdivision.
- (ab) Provide affected party approval to any planning application referred to in clause 3(y) in accordance with the provisions of section 95D(e) Resource Management Act 1991 (and the Covenantor acknowledges this clause shall constitute such affected party approval without the need for a separate approval).
- (ac) Irrevocably appoint the Developer to be the Covenantor's true and lawful attorney for the purposes of executing an affected party approval pursuant to clause 3(ab) if required.

- (ad) The Covenantor, in relation to any Land owned by the Covenantor, acknowledges that Prestons Park has or may in future have reserves which may contain playground equipment, and agrees not to complain about the existence, layout or reasonable use of any such playground within Prestons Park, to the Christchurch City Council or the Developer. Clauses 3(y) to 3(ab) inclusive will apply (with all necessary modifications) to the existence, layout and reasonable use of the playgrounds.

#### *Nuisance*

- (ae) Not allow any animal to be kept on or about the Land that is likely to cause a nuisance or annoyance to occupiers of other Land, and in particular without otherwise limiting this restriction, not to keep on or about the Land any dog which is not registered with the local authority or is classified as dangerous or menacing in the Dog Control Act 1996.
- (af) Not use the Land in any way which in the reasonable opinion of the Developer detrimentally affects the amenities of the neighbourhood including permitting noise to escape from the Land which is likely to cause offense or a nuisance to occupiers of other Land.

#### *Show Home*

- (ag) Not allow any building on the Land to be used as a show home without the written consent of the Developer (such consent to be at the Developer's absolute discretion and subject to such conditions as the Developer considers necessary). Any consent given by the Developer under this clause may be limited as to time.

### **Enforcement**

- 4 The Developer shall not be required or obligated to enforce all or any of the foregoing covenants, stipulations and restrictions, nor will the Developer be liable to any other party for any breach thereof by any Covenantor.
- 5 If there should be any breach or non-observance of any of the foregoing covenants then without prejudice to any other liability which the Covenantor may have to any Covenantee, the Covenantor will upon written demand being made by any Covenantee:
- (a) Pay to any Covenantee making such demand as liquidated damages the sum of \$250.00 (Two Hundred and Fifty Dollars) per day for every day that such breach or non-observance continues after the date upon which written demand has been made, provided that if more than one person is making such demand then that sum shall be shared between those persons; and
- (b) If applicable, remove or cause to be removed from the Covenantor's Land any second hand or used dwelling, garage, carport, building or other structure erected or placed on the Covenantor's Land in breach or non-observance of the foregoing covenants; and
- (c) If applicable, replace any building materials used or permitted to be used in breach or non-observance of the foregoing covenants.
- 6 The Covenantor covenants that the Covenantor will at all times indemnify the Covenantee from all proceedings, costs, claims and demands in respect of breaches by the Covenantor of any of the stipulations, restrictions and covenants in this instrument.

### **General**

- 7 Any requirement in this instrument to submit plans and specifications to the Developer, or to obtain the Developer's approval, will cease to apply 7 years after the date of this instrument (but without prejudice to the liability of any party for any breaches which have already occurred).

- 8 Without prejudice to clause 7, the covenants in this instrument will immediately cease to apply to any Land (or part thereof) which is intended to vest in the Crown or any territorial authority as a road or reserve, upon any survey plan relating to such vesting being approved as to survey and being accepted for deposit by Land Information New Zealand.
- 9 Subject to clause 3(l), but despite any other provision of this instrument, if the written consent of the Developer is obtained to any action or omission, that action or omission will be deemed to not constitute a breach of any covenant within this instrument.

**Waiver of Existing Covenant for Lot 1048 DP 576745 carried down from head title**

- 10 The Developer, being the Developer under Land Covenant 11091701.14 (**Existing Covenant**), in reliance on the power in clause 9 of the Existing Covenant, hereby waives for Lot 1048 Deposited Plan 576745 burdened by the Existing Covenant all of the obligations able to be waived in the Existing Covenant, with effect from the date this instrument is registered.
- 11 The waiver in clause 10 is without prejudice to the liability of any party other than the Developer for any breach of the Existing Covenant by that party prior to the date this instrument is registered.