

Schedule 3

LAND COVENANTS

1. Operative Clause

The Grantor, for the Grantor and the Grantor's successors in title and permitted assigns covenants with and for the benefit of the Grantee the Developer and the registered proprietors for the time being of all of the other Lots in the Development or subdivision that it will forever be bound by and will observe and perform all of the covenants set out in this Instrument to the end and intent that each of the covenants will forever endure for the benefit of the Lots.

2. Definitions and Interpretation

2.1 Definitions

In this Instrument:

“Covenants” means the Covenants contained herein.

“Developer” means Wallace Development Company Limited and its successors in title.

“Development” or “Subdivision” means the staged subdivision and development to be undertaken by the Developer on the Land.

“Grantee” means Wallace Development Company Limited and its successors in title.

“Grantor” means Wallace Development Company Limited and its successors in title.

“Instrument” means this Easement Instrument creating land covenants.

“Land” means all the land in Computer Freehold Register 554287 (Wellington Land Registration District).

“Local Authority” means the Palmerston North City Council.

“Lot” means each of the Lots identified on the Plan attached.

“Plan” means the Preliminary Plan **attached** to be finalised and allocated a number by Land Information New Zealand.

“Works” means the undertaking of any work in relation to any dwelling(s), ancillary buildings and structures (including the erection and any alteration), water tanks, all fencing (boundary and internal) and any site works or earthworks (including landscaping) of any nature whatsoever.

2.2 Interpretation

(a) In this Instrument words and expressions denoting the singular will include the plural.

(b) The Grantor, the Grantee and the Developer includes the successors and permitted assigns (as the case may be) of the Grantor, the Grantee and the Developer.

3. Introduction

3.1 The Grantor and the Grantee are the registered proprietors of the Land.

3.2 It is the Developer's intention to undertake the development and subdivision and to ensure that the Lots will be subject to a general scheme applicable to and for the benefit of each of the Lots, to the intent that a high standard development and subdivision will be enjoyed by the registered

proprietors of the Lots, and that the owner/occupier for the time being of each of the Lots will be bound by the covenants set out in this Instrument as far as they affect each Lot and that the owner/occupier for the time being of any Lot will be able to enforce the observance of such covenants by the owners or occupiers for the time being of any of the other Lots and the Developer will ensure each of the servient Lots are subject to like covenants.

4. **Building Covenants**

4.1 The Grantor will not undertake any Works without first obtaining from the Local Authority all necessary consents and permits for such Works.

4.2 The Grantor when undertaking any Works will:

- (a) Comply with any applicable consents, permits, Local Authority requirements, conditions of the subdivision resource consent or any variation and any consent notice registered on the title to the Lot pursuant to Section 221 of the Resource Management Act 1991;
- (b) Comply with good industry building and engineering standards and specifications and with the covenants contained in this Instrument.

4.3 The Grantor must provide concept plan to and consult with the Developer before commissioning any final plans or specifications for any Works to be undertaken on the Lot or any part thereof and not commence to do, erect or place or permit to be done on the Lot or any part thereof any Works without first obtaining the Developer's approval (such approval not to be unreasonably withheld or delayed) to:

- (a) The final plans and/or specifications for the Works and, if in respect to any building, to be prepared by a Registered Architect or member of Architectural Designers New Zealand (Inc) or the Design Association of New Zealand who must be suitably experienced in the design of the proposed Works provided that within the Land no two or more residential dwellings will be of the same or significantly similar design (in the reasonable opinion of the Developer) for which the Developer will be entitled, at its sole discretion, to withhold its approval required in accordance with this clause;
- (b) The materials, finishes and exterior colours to be used in the construction of the Works.

4.4 The Grantor will not erect or place or permit to remain on the Lot any dwelling or other building or structure other than a residential house designed for and occupied exclusively as one single family household unit for residential purposes only with a floor area of not less than 160 m² excluding garaging, carports, decking, cloisters or roof overhang, provided however:

- (a) The minimum cost per square metre (materials and construction) for the primary residential dwelling and a secondary residential dwelling (if any) will not be less than \$1,500.00 plus GST provided that this rate will be adjusted over time by reference to the increase in the Consumer Price Index from the date of this Instrument and the date that the plans are submitted for approval.
- (b) The Grantor may subject to Clause 4.3 also erect garage(s) and other utility buildings or structures ancillary to the primary residential dwelling or any secondary residential dwelling provided that they are designed to be in keeping with the primary residential dwelling.

4.5 The primary residential dwelling and any secondary residential dwelling to be constructed on the Lot:

- (a) Will not have less than 75% of the exterior cladding consisting of any of the following materials:
 - (i) kiln fired bricks;
 - (ii) solid plaster or a textured plaster finish;
 - (iii) stone or timber;
 - (iv) pre-primed fibre cement weatherboard with a maximum finishing width not more than 180mm;
 - (v) pre-finished metal “weatherboard” bonded to solid timber board; or
 - (vi) any other exterior cladding material for which the Grantor has first obtained the Developer’s consent in writing.
- (b) Will not use any metal clad roof that has not been factory pre-painted.
- (c) Will not have flat panel fibre cladding or metal cladding on more than 5% of the exterior wall cladding surface area.

4.6 The Grantor:

- (a) Will not relocate on to the Lot any second-hand or transportable building or structures unless prior written approval is given by the Developer and on terms and conditions determined by and at the sole discretion of the Developer;
 - (b) Must submit to the Developer all information required under Clause 4.3 and any other information requested by the Developer.
- 4.7 Builders’ sheds or such other buildings or structures that are required during the course of the construction and erection of any Works may be placed on the Lot but must be removed on completion of construction or relocation.
- 4.8 The Grantor will not use any second-hand or recycled materials in the construction or exterior finish of any building without the prior written consent of the Developer.
- 4.9 The Grantor will erect any boundary fence of a quality not less than the specimen types of fence 1-5 (inclusive) (described in the Second Schedule to the Fencing Act 1978) and shall comply with the District Plan. The Developer will fence reserve and common areas and the Grantor shall maintain and repair such fences at the Grantor’s cost.
- 4.10 The Grantor will complete at the Grantor’s cost all service connections (including power supply, gas, telecommunications and any water supply) required in the Lot from the point of supply to any Works. The connections will be laid underground.
- 4.11 All storm water run-offs will be properly channelled in compliance with Local Authority requirements and engineering standards. The Grantor will ensure that run-off does not adversely affect stability or cause adverse effects to any of the Lots or the Land.
- 4.12 All driveways, paths or hard stand parking areas are to be constructed of dust free permanent materials and placed where shown in accordance with the Grantor’s accepted plans. Any unsealed shared driveway will be landscaped and properly maintained by the Grantor at all times.
- 4.13 All clotheslines will be sited and screened within the Lot so as not to be visible from any other Lot or from the road.
- 4.14 Any television or media antenna or dish installed on the Works or the Lot will be appropriately sited so as to not to impede the view or enjoyment of any other Lot owner in the subdivision and so as not to detract from the aesthetic quality of the subdivision.

- 4.15 The Grantor will not install any wind power energy generation or water pumping equipment on the Lot without the prior written approval of the Developer.
- 4.16 All exterior lighting will be designed and erected in order to minimise light spill that affects the night sky and to otherwise minimise any interference or nuisance to the landowners of the other Lots.
- 4.17 Prior to commencing any Works on the Lot the Grantor will construct:
- (a) An all weather access crossing for the purpose of avoiding unsightly mud and rubbish being deposited on to any road. The all weather access crossing will consist of not less than 100mm thick metal where it crosses the berms (if any) and will be not less than 3m wide and will be laid from the kerb of the road to the building site. Except where the access is not to be used as part of the driveway to the Lot the access crossing will, on completion of the construction of the primary residential dwelling on the Lot, be removed by the Grantor and the surface of the ground will be restored to its condition immediately prior to the laying of the all weather access crossing.
 - (b) A mud free hard stand loading pad next to the building site.

In constructing the all weather access crossing and loading pad the Grantor will ensure that no damage is caused to any existing berms, private or public road.

- 4.18 When undertaking any Works or subsequent improvements on the Lot, the Grantor will ensure that all construction materials and where possible all vehicles involved in the Works are contained within the Lot and will use its best endeavours not to impede the enjoyment of any other owner within the Subdivision or the aesthetic quality of the Subdivision.
- 4.19 The Grantor must complete any Works including the exterior of the building and where appropriate paint or stain the exterior of any building within twelve (12) months of commencement of laying down the foundations for such building.
- 4.20 The exterior walls including any aluminium or other joinery and including the roof of all buildings or structures that are clad or finished in paint or materials shall have finished colours which do not make a contrasting statement against the landscape and which are complimentary to the colours found within the development in the reasonable opinion of the Developer.
- 4.21 All letterboxes shall be of a design and shape approved by the Developer and of a colour which does not make a contrasting statement against the landscape.

5. **Landscape Covenants**

- 5.1 The Grantor shall not:
- (a) Plant pinus radiata or macrocarpa trees on the Lot.
 - (b) Permit trees to grow on the Lot to a height which unreasonably obstructs the view of any other Lot within the Subdivision and if in the opinion of the Developer any such tree does unreasonably obstruct the view of any other Lot the Grantor shall at the request of the Developer trim such tree to a height of 5 metres.
 - (c) Grow a hedge line along any boundary of more than 1.8 metres in height above the ground level or grow a hedge line of more than 0.5 metres in height within the building line, road, right of way/access frontage area.

(d) allow the road frontage of the Lot to become untidy.

6. **Maintenance Covenants**

- 6.1 The Grantor shall be responsible for all costs of repairing the damage caused to the landscape, roading, kerbs or other parts of the Subdivision arising from its use of the Lot directly or indirectly including any damage caused by any visitor or invitee of the Grantor.
- 6.2 At all times from possession date, the Grantor will keep the Lot and adjacent road or access way frontage in a good and tidy order and condition and free from any rubbish or debris with the residential curtilage maintained and lawns mown. The Grant will ensure that any trees planted by the Grantee on any road or access way frontage are regularly watered by the Grantor.
- 6.3 The Grantor must repair any damage to the Lot or any buildings or improvements on the Lot at the Grantor's expense within a reasonable timeframe.
- 6.4 The Grantor acknowledges that the access road may be used by the Local Authority or by Network Utility Operators for the purpose of maintaining services or utilities that provide a benefit to the owners of the Lots (including the Grantor) and the Grantor shall not object to or in any way interfere with the use of the access road for that purpose.

7. **Restrictive Covenants**

7.1 The Grantor shall not:

- (a) Permit to be used upon the Lot any caravan for residential purposes.
- (b) Bring on or allow to remain on the Lot any vehicle, equipment, machinery or rubbish (inorganic or organic) which is unsightly or which is or likely to become a nuisance to the owners or occupiers for the time being of any other Lot.
- (c) Place or leave any immobile or broken down vehicle or any equipment on any road in the Subdivision.
- (d) Use the Lot for construction of a boat or similar.
- (e) Use the Lot in any way (other than for residential purposes) which in the opinion of the Developer (whose decision shall be final) would detrimentally affect the amenities of the Subdivision and in particular the Grantor will not use the Lot for any industrial purposes or for any trade or commercial purposes (except where a Lot is used by the Developer as a site office for the Subdivision including sales) or pastoral farming of any kind (excluding lifestyle grazing approved by the Developer or the business of providing visitor/homestay accommodation) and all such uses shall not by reason of visual impact, noise or smell or otherwise unreasonably interfere with the quiet enjoyment of the landowners of any other Lots in the Subdivision and the Developer will have the sole right to determine any issue and its decision will be final.
- (f) Use the Lot for any commercial activity without the written consent of the Developer.
- (g) Permit any advertising sign or boarding to be erected on the Lot or on the road frontage of the Lot during or after the course of construction of a primary residential dwelling on the Lot or display a builders sign exceeding 1.2 square metres provided that with the prior approval of the Developer no more than one advertising sign or boarding (not exceeding 1.2 square metres) can be displayed on the Lot if the owner or occupier of that Lot is in the business of providing business/home stay accommodation.

7.2 The Grantor shall ensure that:

- (a) Once construction of the primary residential dwelling has been substantially completed, any caravan (including campervan) owned for recreational purposes is kept on the Lot at or near the rear of the primary residential dwelling concealed from the view of the landowners of any other Lots in the subdivision by a fence or enclosure. Any such caravan or campervan will not be used for residential use on the Lot. Notwithstanding the above, the Grantor shall not bring on to or allow to remain on the Lot or any internal road of the Subdivision any caravan, vehicle, boat or other equipment or materials or machinery that in the opinion of the Developer detrimentally affects the aesthetics or amenities of the Subdivision.
- (b) No primary residential dwelling or building on the Lot will be occupied until it has been substantially completed, all Local Authority code compliance certificates obtained, the exterior completed including where appropriate painted or stained and all ancillary works such as fencing, landscaping, lawn sowing, letterbox have been completed or installed and all driveways or vehicle access have been completed in a permanent continuous surfacing of concrete, concrete block, brick paving or sealing to the reasonable satisfaction of the Developer.
- (c) No more than two dogs are housed on any Lot. Dogs are at all times restrained so as not to cause stress, injury or harm to any person and any dog which has been aggressive or bitten any person is not permitted on any Lot. The Grantor at all times complies with the provisions of the Dog Control Act 1996.
- (d) No graffiti or similar disfiguring remains on any wall, fence, structure or building on the Lot for more than five (5) working days from the date that it occurred or is brought to the notice of the Grantor.

8. **No Further Subdivision**

- 8.1 The Grantor will not further subdivide the Lot without the prior written consent of the Developer. For the avoidance of doubt this clause will not apply to the Developer or to the balance of the Land or to the Subdivision or any future Subdivision the Developer may wish to undertake.
- 8.2 In consideration for the cost incurred by the Developer in undertaking the development, the Developer **or the Developer's successor(s) or nominee(s)** shall be entitled to charge a fee to consent to any proposed further subdivision of a Lot under clause 8.1 equal to 10% of the land value of the relevant Lot to be subdivided. Such value shall be the lower of the ratable value of the land or the value assessed by an independent valuer agreed by the parties (the cost of such valuation to be paid by the Purchaser).

9. **No Complaints Covenant**

- 9.1 The Grantor acknowledges that the Developer is undertaking the Development or Subdivision which involves subdividing and developing the balance of the Land contained in Computer Freehold Register 27594 by way of staged development. The Grantor will if called upon to do so by the Developer sign an affected party covenant and/or provide its written consent pursuant to Section 94 of the Resource Management Act 1991 to any resource consent or land use consent application to vary the Development or Subdivision within ten (10) working days of being so requested to do by the Developer and provide a reasonable degree of co-operation and support to the Developer in its staged development of the Land. The Grantor covenants and agrees not to:
 - (a) Bring any proceedings including any proceedings for damages, negligence, nuisance, trespass or interference arising from the use of that Land; nor
 - (b) Make nor lodge; nor
 - (c) Be party to; nor

- (d) Aid, procure or encourage (whether directly or indirectly) any third party to lodge; nor
- (e) Finance nor contribute to the cost of;

any submission, objection, application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the continuation of the Subdivision or any variation to its staged development.

10. **General Covenants**

- 10.2 The Grantor will not require any contribution from the Developer, nor the Local Authority towards the cost of fencing any common boundary between the Lot and Land owned by these parties and every transfer from the Developer will include a fencing covenant in accordance with the Fencing Act 1978 in favour of the Developer, and the Local Authority (where applicable).
- 10.3 No covenant to enforce the covenants recorded in this Schedule against any servient land will be implied or enforced against the Developer, and any such enforcement will be carried out entirely at the Developer's discretion.

11. **Breach of Covenants**

- 11.1 Without prejudice to any other legal remedy, the Grantee and/or Developer may serve written notice to the Grantor requiring the Grantor to remedy a breach of these covenants within three (3) days of receipt of the notice in writing and upon the expiry of three (3) days a sum of \$100.00 per day (including GST) will be payable by the Grantor until such time as the breach is remedied and the Developer or other party serving the notice will in addition be entitled to recover all costs incurred including all professional and legal costs calculated on a solicitor/client basis and to exercise any other remedies available.
- 11.2 The Grantor will remove or cause to be removed from the Lot any building or structure or cease to carry out the activity that offends the covenants in this Instrument or places the Lot in breach for non-observance of the stipulations and restrictions.
- 11.3 The Grantor will replace any building materials used in breach of the stipulations and restrictions contained in these covenants in this Instrument so that the building or structure complies with these covenants.
- 11.4 The Developer reserves the right to enter onto the Lot upon giving reasonable notice in order to take whatever action it deems necessary to rectify any breach of these covenants. Where the Developer or its agent or any other party to these covenants is required to expend money to rectify or make good any damage or loss caused by a breach of these covenants by the Grantor (or the guests, servants, employees, agents, invitees, tenants or licensee of the Grantor) the Grantee or its agent will be entitled to recover the amounts (which will be payable 7 days after the date of invoice) they expended as a debt in any action in any Court of competent jurisdiction and such sum may include all costs howsoever incurred including the professional and legal costs calculated on a solicitor/client basis and interest on any monies from the date due until paid at an interest rate of 6% per annum plus the 90 day bill rate (current on the due date for payment).
- 11.5 The Grantor will at all times indemnify and keep indemnified the Grantee and the Developer against all proceedings, costs, claims and damages in respect of any breaches of any of the covenants in this Instrument by the Grantor.

12. **Dispute Resolution**

- 12.1 If any dispute arises between the parties in connection with this Instrument the matter will be referred to mediation. Mediation may be initiated by either party giving notice in writing to the

other and identifying the dispute whereupon the parties will agree on a mediator. If they cannot agree upon a mediator within ten (10) working days of such notice, then a mediator will be appointed by the President of the Arbitrators and Mediators Institute of New Zealand to act in accordance with the Mediation Protocol of the Institute.

- 12.2 Any dispute in respect of matters arising from this Instrument which is not resolved by mediation will be referred to arbitration under the Arbitration Act 1996. The arbitration will be by one arbitrator if the parties can agree upon one but failing agreement, an arbitrator will be appointed by the President of the Arbitrators and Mediators Institution of New Zealand.

13. **Waiver of Conditions**

- 13.1 Notwithstanding these covenants the Developer will be entitled to waive strict compliance with these covenants if the Developer decides in its sole discretion that any proposed waiver or amendment is generally in accordance with the aims expressed in Clause 3.2 and in accordance with the continued harmony of the Land within the Subdivision generally. For avoidance of doubt the decision as to any waiver or amendment by the Developer will be final and not subject to any review whatsoever.

14. **Limitation of Liability**

- 14.1 The liability of any Director of Wallace Development Company Limited under this Instrument and Covenants is limited to the net assets of Wallace Development Company Limited at the time of any claim.

15. **Developer's Rights and Powers**

- 15.1 The Developer may assign its rights and powers specified in this Instrument to another party provided that the Developer gives written notice of the assignment to the Grantor.

- 15.2 If prior to making an assignment specified in Clause 15.1 the Developer:

- (a) Is placed in liquidation;
- (b) Has a receiver, manager or statutory manager appointed;
- (c) Is wound up or removed from the Companies Officer Register

then the rights and powers of the Developer specified in this Instrument will pass to the owners from time to time of the Lots in this stage of the Subdivision and of any other stages in the Subdivision and any question to be determined will be determined by majority vote of those owners.