

**Form 26**

**Covenant Instrument to note land covenant**

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

**Covenantor**

**BREEN 1939 LIMITED**

**Covenantee**

**BREEN 1939 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**

| Purpose of covenant   | Shown (plan reference) | Burdened Land<br>(Record of Title)               | Benefited Land<br>(Record of Title) or in<br>gross |
|-----------------------|------------------------|--------------------------------------------------|----------------------------------------------------|
| <b>Land Covenants</b> |                        | <b>Lots 1 to 15<br/>(inclusive) on DP<br/>XX</b> | <b>Lots 1 to 15<br/>(inclusive) on DP XX</b>       |

**Covenant rights and powers (including terms, covenants and conditions)**

The provisions applying to the specified covenants are those set out in:

**Annexure Schedule 1**

## **Annexure Schedule 1**

### **PROVISIONS APPLYING TO COVENANTS**

#### **Background**

- (a) The Developer is the registered proprietor of land intended to be subdivided and developed as a residential subdivision known as the Tiger Hill Estate Development.
- (b) The Developer intends that parts of the Tiger Hill Estate Development be subject to a general scheme applicable to and for the benefit of the Benefited Land to ensure that the Tiger Hill Estate Development is and remains a quality and well-designed subdivision with a consistent standard of development, amenity, appearance and environmental quality.
- (c) The parties intend that the obligations and covenants of the Covenantor under this instrument enure for the benefit of the Developer (in accordance with the privity of contract provisions of the Contract and Commercial Act 2017).

#### **Covenant Terms**

- 1. The Covenantor covenants and agrees with the Covenantee:
  - (a) To at all times observe and perform the Covenants set out below unless the Developer has given its written consent authorising non-observance and performance of the Covenants or any one or more of the Covenants;
  - (b) That the Covenants will forever run with and bind the Burdened Land for the benefit of the Benefited Land; and
  - (c) To ensure that all tenants, 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 and performs all relevant and applicable Covenants at all times.
- 2. In this Instrument the following words have the following meanings:
  - “Approved Development Fence” means a fence which is:**
    - (a) **Not more than 1.5 metres in height;**
    - (b) **Post and wire or post and rail in design; with the posts being square macrocarpa fence posts;**
    - (c) **Natural wood with no staining or painting permitted, to maintain a cohesive look in the Tiger Hill Estate Development fencing;**

“Covenantee” means and includes all persons executing this Instrument as Covenantee jointly and severally (if more than one) and their executors, administrators, assigns, successors in title and their tenants, licensees and invitees.

“Covenantor” means and includes all persons executing this Instrument as Covenantor jointly and severally (if more than one) and their executors, administrators, assigns, successors in title and their tenants, licensees and invitees.

“Dwelling” means a self-contained building used or capable of being used solely or principally for residential purposes and occupied or intended to be occupied exclusively as the home or residence of not more than one household unit and includes normal accessory structures such as a garage, garden shed, and/or glasshouse.

“Developer” means Breen 1939 Limited.

“District Plan” means the Central Otago District Council District Plan.

“Improvements” means improvements constructed or to be constructed by the Developer, the Covenantor (or by a utility provider at the request of the Covenantor) on or under the Tiger Hill Estate Development and adjoining road or reserves, including (but not limited to) roading, plant, pumps, conduits, pipes, footpaths, kerbs, gutters, swale crossings, landscaping, planting, open spaces and walkways.

“Instrument” means this covenant instrument creating a land covenant to be registered on the Burdened Land’s record of title, together with and all its schedules, annexures and amendments.

“LRV” means a light reflective value measuring the percentage of visible light a surface reflects on a scale of 0 to 100.

“Lodge any Submission” means (without limitation) to personally or through any agent or servant, directly or indirectly, lodge any objection or submission to any Planning Proposal and includes taking part in any planning hearing, or appeal or reference arising in respect of a Planning Proposal.

“Lot” means any lot that is recorded as being Burdened Land in this Instrument (and “Lots” shall have a corresponding meaning).

“Lot Owner” means the registered owner(s) of a Lot.

“Legal Road” means all parts of any road vested in the Territorial Authority as legal road and includes footpaths, kerbing, channelling and any grassed or landscaped areas situated on any Legal Road.

“Maximum Building Height” means 7.5 metres above the finished floor level of the Dwelling.

“Minimum Setbacks” means:

- (a) 4.5 metres from the boundary of the Lot facing Cobham Crescent;
- (b) 4.5 metres from the boundary of the Lot facing Alton Street; and
- (c) 4.5 metres from any other boundary of the Lot.

“Planning Proposal” includes (without limitation) any application for resource consent and/or plan change and/or variation of any nature under the relevant District Plan and/or proposed District Plan in respect of any land owned by the Developer (or which the Developer has an interest in) and which is situated within 2 kilometres of any Lot.

“Resource Consent” means RC 250088 and any variation, amendment and/or replacement of that consent.

“Secondary Dwelling” means a secondary dwelling or minor residential unit (commonly referred to as a granny flat).

"Subdivide" has the meaning set out in section 218(1) of the Resource Management Act 1991.

"Territorial Authority" means the Central Otago District Council or any successor to that Council.

"Tiger Hill Estate Development" means the integrated development undertaken by the Developer at Cobham Crescent, Omakau and Alton Street, Omakau in accordance with the Resource Consent including (but not limited to) Dwellings, Improvements and all other associated infrastructure.

"Truck" means a goods vehicle that has a gross vehicle mass exceeding 3.5 tonnes.

"Vehicle Crossing" means the part of a driveway or vehicle access-way situated on Legal Road between the road carriageway and the boundary of a Lot which is formed to enable vehicle access from the road carriageway to the Lot.

3. In this Instrument, a covenant to do something is also a covenant to permit or cause that thing to be done, and a covenant not to do something is also a covenant not to permit or cause that thing to be done.

#### **Lot 15**

4. The Covenants in this Instrument shall not apply to the existing dwelling, fencing and improvements located on Lot 15 as at the date of registration of this Instrument, and the owner shall not be required to modify such existing dwelling, fencing or improvements to achieve compliance. All other Covenants in this Instrument that relate to any other matters, shall apply to Lot 15.

#### **The Covenants**

##### **Approved Use**

5. The Covenantor shall not use any Lot or permit the same to be used for any use other than residential purposes and not to use any Lot or permit the same to be used for any trading, industrial or commercial purposes, provided however that it is acknowledged that the use of a residential dwelling as a show home, for a home enterprise use as permitted by the District Plan, use as a bed and breakfast will not be in breach of the provisions of this Instrument.
6. Subject to clause 7, the Covenantor shall not erect and maintain more than one Dwelling on any Lot.
7. The Lot Owner may erect a Secondary Dwelling on a Lot, provided that:
  - (a) The Secondary Dwelling complies in all respects with the District Plan.
  - (b) The Secondary Dwelling remains ancillary to the principal Dwelling and is not capable of separate ownership or separate subdivision.
  - (c) The external design, materials, colours, and finishes of the Secondary Dwelling are consistent with the architectural, aesthetic, and design controls imposed by these Covenants.
  - (d) The Lot Owner obtains all necessary building consents and resource consents prior to the construction of the Secondary Dwelling.
8. The Covenantor shall not Subdivide any Lot.

9. The Covenantor shall not erect or place, or permit to be erected or placed any caravan, mobile home, hut, boat or any structure capable of providing temporary accommodation or other vehicles on any Lot, provided that the storage of mobile homes, caravans, cars, boats and other such items is permitted on a Lot once a Dwelling has been constructed and completed on that Lot.
10. The Covenantor shall not permit any rubbish or waste material to be or remain on any Lot other than within suitable enclosed structures (which for the avoidance of doubt will include Territorial Authority approved rubbish and/or re-cycling bins) or otherwise appropriately screened from view, and the Covenantor shall keep the Lot in a neat and tidy condition at all times.
11. The Covenantor shall promptly make good any damage caused by the Covenantor to Improvements or any Legal Road or Vehicle Crossing on the Tiger Hill Estate Development.

### **Construction**

12. The Covenantor shall not
  - (a) Erect any Dwelling, chimney, aerial, solar panel or other such structure above the Maximum Building Height.
  - (b) Erect any Dwelling (excluding the Secondary Dwelling) of less than 150 square metres.
  - (c) Permit the Dwelling or Second Dwelling to encroach on the Minimum Setbacks.
  - (d) Permit the Dwelling or Secondary Dwelling to have:
    - (i) Feature cladding of more than 10% of the total exterior cladding.
    - (ii) A total area of more than 40% of the Lot.
    - (iii) External walls (including downpipes and joinery) with colours of an LRV of more than 40.
    - (iv) A roof structure with colours of an LRV of more than 25.
    - (v) Any second-hand materials.
  - (e) Cause any damage to any part of the Improvements or any Legal Road or Vehicle Crossing on the Tiger Hill Estate Development.
13. For the purposes of clause 12(e) any damage caused by any employee, contractor or other person carrying out any works or activities on a Lot or by a vehicle driven by any person carrying out such works is deemed to be carried out by the owner of the Lot on which the works or activities are being carried out.

### **No Objection and Reverse Sensitivity**

14. The Covenantor shall not:
  - (a) Object to or Lodge any Submission against any Planning Proposal.
  - (b) Obtain an order, injunction or any other remedy or make any complaint against any contractor or any consultant which relates to the Tiger Hill Estate Development.

- (c) Object to marketing methods employed by the Developer in an endeavour to sell other Lots, including the use of signs, the placement of signs and the maintenance of display units, and/or a sales office on Tiger Hill Estate Development while the Developer remains a Lot Owner, provided that the Developer does not cause unreasonable interference to the comfort and convenience of the Covenantee.

### **Fencing**

- 15. The Covenantor shall only erect an Approved Development Fence.
- 16. The Developer shall not be liable to contribute to the cost of or assist in the erection or maintenance of any boundary or dividing fence between any of the Lots within the Tiger Hill Estate Development or between any of the Lots and any other land owned or occupied by the Developer.
- 17. Clause 16 is intended for the benefit of the Developer only and shall not enure for the benefit of any other person or persons.

### **Driveways**

- 18. **Driveways shall be constructed by compacted gravel only**, and any vehicle crossing or entry to a Lot shall be constructed in accordance with the District Plan with all necessary consents obtained by the Lot Owner prior to construction.

### **Trees and Planting**

- 19. **The Covenantor shall not allow any tree or plant chosen or planted or any part on the Lot to grow beyond 5 metres in height or allow any tree or plant on the Lot to cause unreasonable shading or materially impeded any other Lot Owner's outlook.**
- 20. **The Covenantor shall not allow any grass and/or ground cover to exceed 200 millimetres in height on their Lot prior to construction of a Dwelling.**

### **Animal Controls**

- 21. No kennel or other facility for raising or boarding dogs, cats or other animals or birds, including poultry, for commercial purposes shall be kept on any of the Lots.
- 22. The keeping of ordinary household pets such as dogs, cats and birds is approved, provided that no breeding, raising or boarding of such pets for commercial purposes is permitted on any of the Lots.
- 23. Each Lot Owner must use its best endeavours at all times to keep its Lot free of rabbits and other pests.

### **Enforcement**

- 24. The Covenantor and Covenantee acknowledge and agree that:
  - (a) This Instrument is subject to the privity of contract provisions of the Contract and Commercial Law Act 2017 and that the Covenants that are intended to create obligations on the Covenantor, confer benefits on the Developer and are enforceable at the suit of the Developer as well as by the Covenantee.
  - (b) The Developer may (without being obliged) facilitate the observance of this Instrument by the Covenantor by taking all necessary steps to enforce its observance on behalf of any Covenantee.

- (c) The Covenantor irrevocably appoints the Developer to be its attorney and in its name and at its expense to do anything which the Developer considers necessary to enforce or attempt to enforce the Covenantor's rights or powers under this Instrument.
  - (d) Without limiting the appointment made in clause 24(c) that appointment may specifically extend to the Developer issuing proceedings in the name of any Covenantor, provided that in doing so the Developer indemnifies such Covenantor(s) against all costs arising from or incidental to those proceedings.
  - (e) If any Covenant or other provision of this Instrument conflicts with a condition/s of the Resource Consent then such Covenant and/or provision of this Instrument will be modified by the minimum amount required so that there is no conflict with the condition/s of the Resource Consent.
25. The parties acknowledge that the Covenantor and the Developer will not be liable for any loss, damage, claim or expenses for the failure to enforce the Covenants set out in this Instrument or (in the case of the Developer) for authorising the non-observance and performance of the Covenants or any one or more of the Covenants.
26. The Covenantor shall provide reasonable access to the Developer, its designated employees and contractors to inspect the Lot to check compliance with the Covenants.
27. In the event that the Covenantor fails to observe and perform the Covenants set out in this Instrument, a Covenantor and/or the Developer shall have a right (but not an obligation) to do whatever may be reasonably required to remedy such failure on the part of the Covenantor, and the cost incurred by the Covenantor and/or the Developer in remedying the default shall be refunded by the Covenantor to that Covenantor and/or the Developer as the case may be upon demand.
28. All notices relating to this Instrument are to be served in writing. The address for service of any notice to the Covenantor is either:
- (a) the current address recorded by the Territorial Authority as the address of that Lot for rating purposes (provided the Lot's Dwelling has obtained a code compliance certificate from the Territorial Authority); otherwise
  - (b) the address of the solicitor who undertook the conveyance for the Lot Owner.

#### **Liability**

29. Without prejudice to the Covenantor's and Covenantor's other rights, this Instrument binds the Covenantor's and Covenantor's successors in title so that contemporaneously with the acquisition of any interest in the Burdened Land all such successors in title become bound to comply with this Instrument. However, the liability of any Covenantor under this Instrument is limited to obligations and liabilities that accrue during that Covenantor's time as registered proprietor of the Burdened Land and only in respect of that part of the Burdened Land owned by that Covenantor. A Covenantor will not be liable for any breach of this Instrument which occurs during any period prior to or after its term as Lot Owner of the Burdened Land (however, for the avoidance of doubt, any Covenantor will remain liable for any such antecedent breach following the transfer of its interest in the Burdened Land).

#### **Costs**

30. The Covenantor will pay all costs directly or indirectly attributable to the enforcement and discharge of this Instrument.

31. If the Covenantor applies to the Developer to authorise non-observance and performance of the Covenants or any one or more of the Covenants then the Covenantor will pay the Developer a fee for considering that application together with the Developer's costs and expenses should the Developer decide that it requires professional advice in order to consider such an application.

#### **Implied terms**

32. No covenants by the Covenantor or by the Covenantor's successors in title are implied in this Instrument other than the covenants for further assurance implied by section 208 of the Land Transfer Act 2017.

#### **Arbitration**

33. Any dispute whatsoever, arising out of this Instrument and any issue relating to the existence, interpretation, or validity of such covenant shall be submitted to arbitration before a sole arbitrator.
34. The parties shall either agree upon the sole arbitrator or the arbitrator shall be appointed by the President at the time of the New Zealand Law Society or the President's nominee on the application of any party.