

COVENANT INSTRUMENT TO NOTE LAND COVENANT

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

Covenantor
CAPITALS

Surname(s) must be underlined or in

LINITA DEVELOPMENTS LIMITED

Covenantee
CAPITALS

Surname(s) must be underlined or in

LINITA 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
required

Continue in additional Annexure Schedule, if

| Purpose of covenant | Shown (plan reference) | Burdened Land (Record of Title) | Benefited Land (Record of Title) or in gross |
|--|------------------------|--|--|
| Restrictive Build and Land Covenants | N/A | Lots 23-49 on Deposited Plan 586901 (RoT 1119329-1119355) | Lots 23-49 on Deposited Plan 586901 (RoT 1119329-1119355) |

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 200 of the Land Transfer Act 2017.]

[Annexure Schedule B].

Insert instrument type

Covenant Instrument to Note Land Covenants

Continue in additional Annexure Schedule, if required

Schedule B

Where these covenants are in conflict with the registered covenants in instruments 9189364.3, 9795733.4 and 12458686.11, these covenants must prevail.

- 1) The Covenantor covenants:
 - a) Not to erect any building (including pre-built transportable or relocatable dwellings) without first obtaining the written approval of Linita Developments Limited (and in the event that company is wound up, the directors Lindsay Stuart Gray and Melita Fay Gray) ("Linita") to the plans and specifications of the proposed building including details of the proposed driveways, planting, landscaping and fencing. The dwelling erected on the burdened land must be single level. Such consent will not be unreasonably or arbitrarily withheld provided the plans and specifications meet the standards required by these covenants and the appearance of the proposed building is aesthetically in keeping with other dwellings already constructed. No dwelling erected on the burdened land shall have a closed in floor area of less than 150m² (the floor area measurements shall be exclusive of garage, carports, decking breezeways and roof overhang) with the exception of Lots 41 to 49 on Deposited Plan 586901 inclusive and Lots 28 and 30 on Deposited Plan 586901 which shall have a floor area of not less than 80m² (the floor area measurements shall be exclusive of garage, carports, decking breezeways and roof overhang). Any carport erected on the burdened land shall be attached to the dwelling. Any garage erected on the burdened land may be attached or separate from the dwelling.
 - b) Not carry out any construction without due allowance being made for adequate current and future drainage of all excess storm water from the residential lot, the Covenantor remaining responsible for all costs, claims or demands for any remedial action undertaken for any breach hereof.
 - c) Not carry out any construction or development work on the land without being liable to reinstate (or to be responsible for all costs arising from reinstatement) any damage or replace any loss to the landscape, roading, footpaths, kerbs, concrete or other structures in the subdivision arising from the Covenantor's use of the burdened land directly.
 - d) Not to use or permit to be used in any building on the burdened land, any second-hand materials for outer wall sheathing of any such buildings including corrugated iron, flat fibrolite or flat asbestos cement.
 - e) Not erect or permit to be erected or placed on the burdened land any permanent or temporary structure including but not limited to a garden shed or trampoline, within 1.5 metres of a boundary fence.

Insert instrument type

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Continue in additional Annexure Schedule, if required

- f) Not to erect or allow to be erected any fencing or boundary wall on the burdened land without first obtaining the written approval of Linita. The Covenantor must not materially alter, or permit to be altered the location, dimensions, materials or appearance of any fencing or boundary wall erect on the burdened land. This clause will not apply so long as Linita is the registered owner of the burdened land.
- g) Notwithstanding the covenants in clause 1(f) hereof or the terms and provisions of the Fencing Act 1978, the Covenantor must not erect any fence or boundary wall on the burdened land nor permit any hedge or trees to be planted or grown as a living fence of any kind unless such fences comply in full with the following criteria:
 - i) No fence will be erected using zincalume corrugated iron or second-hand or demolition materials;
 - ii) No side boundary fence or rear boundary fence will be erected that is greater than 1.8 metres in height measured from the natural ground level at the relevant point on the burdened land where the fence is to be erected;
 - iii) No side boundary fence from the front of the dwelling to the road frontage shall exceed a height of 1.2 metres measured from the natural ground level at the relevant point on the burdened land where the fence is to be erected;
 - iv) As a general exception to the provisions of subclauses 1(g)(i-iii) relating to fencing, Lots 3, 5, 7 and 9 shall be entitled to construct a fence or boundary wall of post, rails and palings or post and seven wire PROVIDED THAT that the fence is not erected within 10 metres from the dwelling.
- h) Not to leave the exterior of any building uncompleted for a period of more than 9 months after laying down the foundations for such building including any ancillary work such as fencing, driveway or vehicle access [to be completed in accordance with details on the approved plans]. The Covenantor shall complete all landscaping (including lawns) immediately following the completion of the dwelling taking into account the time of year and weather conditions. The Covenantor shall ensure that all buildings are completed within the specified time period, in a tradesmanlike manner and to a high quality.
- i) Not to permit occupation of any dwelling constructed on the burdened land until such dwelling has been substantially completed in accordance with this agreement, a building consent and compliance certificate issued by the local territorial authority.

Insert instrument type

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Continue in additional Annexure Schedule, if required

- j) Not to bring onto or to allow to remain on the burdened land or any carriageway used for access in the subdivision including the footpath, any temporary building, recreation vehicles which includes any caravan, motorhomes, van/truck campers, trade vehicles, trailers or other equipment or materials or machinery unless on a hard stand only. Notwithstanding the restriction contained herein, during construction of the dwelling this clause shall not apply.
- k) To keep and maintain the burdened land in a neat and tidy condition to prevent it from becoming unsightly/untidy.
- l) On completion of the dwelling the Covenantor must landscape the burdened land with lawns, shrubs and trees such works to be completed in accordance with the landscaping plans approved by Linita prior to commencement of the work. The maximum height for any tree or shrub shall be 3 metres from natural ground level and every consideration must be taken to ensure neighbour's views are not impeded. Grass height shall not exceed 100mm and the Covenantor must ensure all gardens and lawns are maintained in a tidy condition at all times. Such landscaping shall be completed within 3 months after occupation of the dwelling.
- m) Not carry out landscaping on the road frontage whether Council owned land or not except in accordance with the general overall landscaping plan prepared by Linita or, with prior written approval of Linita.
- n) Not allow the road frontage of the burdened land, whether Council owned or not, or any plantings thereon to become untidy or neglected or indirectly through the Covenantor's agents or invitees.
- o) Not to allow any of the buildings, structures or fencing or boundary wall erected or placed on the burdened land to become dilapidated or to fall into disrepair.
- p) Not to operate a business from the burdened land that is not able to meet residential zoning requirements.
- q) Not to display any advertisement, sign or hoarding of a commercial nature on any part of the burdened land or building that unless it is a non-illuminated and non-fluorescent and does not exceed the maximum size of 900x300mm.

Insert instrument type

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- r) Not to allow the burdened land to be rented at anything less than a normal market rate for residential properties, of the nature and quality of the subject land in the Haruru Falls and Paihia areas at that time and the tenancy period shall not exceed 12 months. This provision shall not apply where there is relationship between the landlord and tenant of a non-commercial nature.
 - s) Not bring on, to raise, breed or keep any animals or livestock including domestic fowl such as chickens, turkeys, ducks and geese, on the burdened land except to keep a maximum of one large dog and one small dog or two small dogs and two cats per dwelling.
- 2) The Covenantor acknowledges that Linita reserves to themselves the following rights:
- a) of amalgamation of two or more parcels of land and the right to further subdivide any land of which Linita is the registered owner whether contiguous with or adjacent to the burdened land. The Covenantor will not oppose or object to any application by Linita for Resource Consent or building consent under the Resource Management Act 1991 and/or the Building Act 2004 in respect of such land provided that such application does not interfere with the Covenantor's use of the burdened land; and
 - b) to amend the covenants to be registered on all lots of future stages of the development until the entire development is complete. The Covenantor will not oppose or object to any covenants that differ from those registered on the burdened land for which they are the registered owner.
- 3) The Covenantor acknowledges that Linita (including its contractors) shall construct dwellings on the lots in the development including the burdened and benefited land ("Construction Activities") which activities may result in effects such as noise generation and increased traffic flow being the potential effects of such activities and which may have an impact on the burdened land. Noise generation and increased traffic flow is an unavoidable effect of such Construction Activities. Linita wishes to ensure that the Covenantor and its successors in title to the burdened land (or any part thereof or interest in that land) do not restrict in Linita's ability to undertake the Construction Activities on the burdened and benefited land in the development.
- 4) The Covenantor (including its successors in title and those legally entitled to occupy the Covenantor's land) covenants that it will:

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Continue in additional Annexure Schedule, if required

- a) Allow Linita to undertake the Construction Activities and any activities which are the same or similar in effect to those activities on the burdened and benefited land in the development without interference, objection or restraint from the Covenantor;
 - b) Make no complaint or objection in relation to the effects of the use of the burdened or benefited land for Construction Activities;
 - c) Bring no proceedings for damages, negligence, nuisance, trespass or interference arising from the use of the burdened and benefited land for the Construction Activities;
 - d) Not:
 - (i) Make or lodge;
 - (ii) Be a party to or procure;
 - (iii) Finance or contribute to the cost of;

any submission, application or proceeding (under the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the Construction Activities or other activities which are the same or similar in effect to those currently being undertaken on the burdened and benefited land, including without limitation any action to require the Covenantor to modify the activities carried out on the burdened and benefited land;
 - e) When requested to do so, give its written approval to any applications for resource consent or variation of resource consent for activities which are the same or similar in effect to those currently being undertaken on the burdened and benefited land.
- 5) The Covenantor acknowledges that Linita shall not be liable for or contribute towards the cost of erection or maintenance of any dividing or boundary fence between the burdened land and any adjoining land owned by Linita (or any related party of Linita). The benefit of this covenant shall not enure for the benefit of any subsequent transferee (which is not a related part of Linita) of such adjoining land.
- 6) If any dispute arises under these covenants, the Covenantor and Covenantor will in good faith:
- a) Attempt without delay to resolve the dispute by negotiations between them; and
 - b) Failing such resolution refer the dispute to mediation with the assistance of a suitably qualified and experienced mediator agreed between them or failing such agreement, appointed by the President of the Auckland District Law Society; and
 - c) The Covenantor and Covenantor will bear their own costs of any mediation under this clause.

Insert instrument type

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- 7) If there is any breach or non-observance of any of the forgoing covenants, then without prejudice to any other liability which the Covenantee may have to the Covenantor and any person or persons having the benefit of the covenants, the Covenantee will upon written demand being made by the Covenantor of any registered owner of the benefited land:
- a) Pay to the person making demand, as liquidated damages, \$250.00 per day for every day that the breach or non-observance continues after the date upon which written demand is made;
 - b) Remove or cause to be removed from the burdened land any second hand or used dwelling, garage, carport, building or other structure constructed or placed on the burdened land in breach of the covenants contained in clause 1 hereof; and
 - c) Replace any building materials used and not permitted to be used in breach of the covenants in clause 1 hereof.