

Covenant Instrument to note land covenant

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

Covenantor

Ernst FREI and Renate Katharine FREI

Covenantee

Ernst FREI and Renate Katharine FREI

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

Annexure Schedule, if required

Continue in additional

Purpose of covenant	Shown on DP 559822	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenant (contained in Annexure Schedule 2)		See Annexure Schedule 2	See Annexure Schedule 2

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 209 of the Land Transfer Act 2017].~~

[Annexure Schedule 2].

*Insert instrument type***Covenant Instrument***Continue in additional Annexure Schedule, if required***1. Land Covenant (“Covenants”)**

- 1.1 Bushland Park is a unique development in respect of its vision, as well as its history, locality, fauna and flora and is situated on land that in pre-European times used to be an indigenous mixed Kahikatea forest.

The Developer has endeavoured to build a timeless neighbourhood in a park-like setting with high quality and sustainable homes around large expanses of greenspace.

It is in this context that these Covenants have been created, and which will ensure a high-quality built environment and distinctive sense of place and community.

All provisions of these covenants are primarily intended to protect an environment that is in tune with its residents and the surrounding natural features, namely native bush, wetlands, swales, Hoon Hay Valley and Cashmere Streams, as well as the lands indigenous wildlife.

To achieve this, the Covenantor hereby covenants with the Covenantee, as registered owners, as set out below and hereby requests that such covenants be noted against all the titles having the benefit and those having the burden of these Covenants.

- 1.2 These Covenants shall:

- (a) Run with each of the following;

Lot	Record of Title
1 to 6 (inclusive) on DP 567317	1016643 to 1016648 (inclusive)
8 to 12 (inclusive) on DP 567317	1016650 to 1016654 (inclusive)

- (b) be for the benefit of and appurtenant to each of the following Lots;

Lot	Record of Title
1 to 6 (inclusive) on DP 567317	1016643 to 1016648 (inclusive)
8 to 12 (inclusive) on DP 567317	1016650 to 1016654 (inclusive)

- (c) be for the benefit of **ERNST FREI** and **RENATE KATHARINA FREI** in Gross;
- (d) expire on 31 December 2046 and be void for all purposes including antecedent breach.

Provided that and notwithstanding the foregoing, the within Covenants shall cease to have any effect on any allotments which shall vest or be dedicated as road or reserves in any subsequent stages of the Subdivision. Such date of cessation shall be the date of approval of the subdivision plan for the relevant stage by the territorial authority.

2. Interpretation

2.1 In this document the following words will mean:

“**Allow**” includes do, facilitate, permit and suffer.

“**Building**” includes all structures and construction, including (but not limited to) dwelling houses, flats, units, garages, glass-houses and sheds.

“**Construct**” and “**Construction**” includes to install, erect, relocate, repair, renovate, replace or place on the Land, Lot or in any Building and also includes “Allow” to construct.

“**Developer**” means **ERNST FREI** and **RENATE KATHARINA FREI** and does include their executors and administrators.

“**Land**” and “**Lot**” means any lot having the burden and/or the benefit of these Covenants as described above.

“**Lane**” means Kahika Lane being the shared access and right of way shown as Lot 501 on DP 567317.

“**Landscape Features**” includes all fences, walls, wind-breaks, washing lines, letterboxes, satellite dishes, street &/or house numbering and the design of that lettering or numbering), kerbs, footpaths, road frontages, retaining walls, planting of trees, shrubs and plants, driveways, driveway crossings, entranceways and concrete areas.

“**Subdivision**” means all of the lots contained in Deposited Plan 567317 and any other land title plan deposited at Land Information New Zealand, including subsequent stages, in respect of the Bushland Park subdivision at Cashmere Road, Christchurch.

3. General

3.1 The Covenantor and the Covenantee agree that the Developer does not have nor shall have any legal responsibility or liability for the enforcement, enforceability, applicability or lack of action with respect to enforcement or applicability of any of these Covenants. In addition, apart from the exercise of their discretion with respect to consents, approvals or disapprovals of matters referred to in these Covenants, the Developer does not undertake to enforce or monitor compliance of these Covenants.

3.2 All approvals or consents required by these Covenants shall be:

- (a) obtained by the Covenantor from the Developer (or their appointed agent) in writing prior to any work being carried out on the Land; and
- (b) given or refused in the sole, absolute and unfettered discretion of the Developer (or their appointed agent); and
- (c) subject to the Developer reserving the right to approve requests for one party without creating any form of precedent for another party. Further, the Developer may refuse an identical request from another party without having to give reasons.

4. Covenants

4.1 The Covenantor covenants with the Covenantee that the Covenantor **shall not**, without first receiving the prior written approval of the Developer:

- (a) Allow any Building on the Land to be occupied or used as a residence prior to its construction being completed (including the construction of any Landscape Features which may be reasonably visible by any other occupier in the Subdivision standing on any kerb, street, road or right of way in the Subdivision) and prior to the issue of a Code of Compliance Certificate by the Christchurch City Council in relation to the Building.
- (b) Construct, place or permit to be placed on the Land any caravan, temporary Building and/or vehicle for human occupation.
- (c) Place or permit to be placed on the property any storage container including but not limited to any shipping container.
- (d) Leave any unrepaired damage to any Landscape Features, berms or roading constructed by the Developer within the Subdivision that has arisen directly or indirectly from the use of the Land by the Covenantor or its occupiers, agents, invitees or trades people, but will ensure that any such damage to any Landscape Feature, berm or roading is repaired at the Covenantor's sole cost.
- (e) Allow any rubbish, including builders waste to accumulate or to be placed upon the Land or any adjoining Land or permit grass or weeds to grow to a height exceeding 100mm or to otherwise leave the Land in a condition that, in the Developer's sole opinion, may be detrimental to the Subdivision. The Developer shall have the right to remove any building materials from the Land or adjoining land, or to maintain the Land in a reasonable condition to avoid the Land being, or becoming, detrimental to the Subdivision, with all reasonable costs to be met by the Covenantor.
- (f) Allow any clothesline(s) or clothes drying apparatus to be reasonably visible by any other occupier in the Subdivision standing on any kerb, street, road or right of way in the Subdivision.
- (g) Allow a further "Subdivision of Land" (with the meaning given to those words by the Resource Management Act 1991).
- (h) Allow the erection of any sign on the Land other than a professionally written sign installed for the purpose of marketing the Land for sale. No sign larger than 2m² shall be permitted. The Developer shall have the right to remove any sign, which in Developer's sole discretion does not comply with the provisions of this covenant, without prior warning.
- (i) Allow any Building to be used as a show home without the prior written consent of the Developer. The Developer shall retain sole discretion over the number of Buildings to be used for show home purposes.
- (j) Not directly or indirectly in any manner oppose, object to, frustrate, appeal or take any action, or encourage or cause others to oppose, object to, frustrate, appeal or take any action, that might in any way prevent or hinder the Covenantee (or any party related to or associated with the Covenantee) from progressing and completing the Subdivision and/or effecting any zone change, or obtaining any land use consent needed to give effect to the further development of the Subdivision. This clause shall not enure for the benefit of any subsequent purchaser for value of benefited land.

Buildings

4.2 The Covenantor covenants with the Covenantee that the Covenantor **shall not**, without first receiving the prior written approval of the Developer:

- (a) Erect any Building (which is to be used as a residence) other than a two-story Building

without any incorporated or stand-alone car garaging. The Building needs to be designed with a single pitch gable roof with a roof pitch between 35° and 45°.

- (b) Erect or permit to be erected on the Land any Building (which is to be used as a residence) that has a ground floor footprint of less than 60m².
- (c) Erect or permit to be erected on the Land any Building (which is to be used as a residence) that has a footprint of more than 30% of the total area of the Land.
- (d) Erect or permit to be erected any Building on the areas shown as “D”, “E”, “F”, “G”, “H”, and “J” on DP 567317.
- (e) Use a roofing material for any Building constructed on the Land of any type other than metal tray roofing finished in a dark colour. Acceptable and preferred colours are Ironsand or Flaxpod. Any alternative colour requires the prior written approval of the Developer. All gutters, downpipes and flashings are to be pre-finished to match either the Building or roof colour.
- (f) Use external cladding for any Building constructed on the land of any type other than:
 - (i) Vertical Cedar or Abodo or similar approved, natural or stained in natural brown colours only. Redwood type stains are not permitted;
 - (ii) Tanalised Plywood with 50 x 25 battens at maximum 300mm centres;
 - (iii) Tilt panels or in-situ concrete in a finish approved by the Developer;
 - (iv) Cement plaster finish over masonry in off-white colours and matt finish only;
 - (v) A combination of two of the above;
 - (vi) Natural stone (preferably grey schist) as a secondary cladding only.
- (g) Allow the construction of more than two (2) auxiliary buildings on the Land (For the purposes of these covenants, auxiliary buildings shall include a bike, pram, garden or tool shed) with a combined footprint of more than 25m² and with no one auxiliary building having a footprint greater in size than 15m². Only one auxiliary building shall be situated at the front of the Land (the front of the Land being that area between the front façade of the Building (to be used as a residence) and the property boundary adjacent to any road formed within the Subdivision or the Lane). Any such auxiliary building is required to exactly match the appearance of the Building (to be used as a residence) situated on the Land in materials and colour. The auxiliary building on the front of the Land can be located on a side boundary or a minimum of 1m away from any other boundary where it has to be suitably screened with native hedging. The maximum height of any guttering on the auxiliary building is to be 2.2 metres above ground level. The roof pitch is required to match the roof pitch of the Building (to be used as a residence) or otherwise must be a flat mono-pitch roof.
- (h) Erect or permit to be erected any carport or similar structure on the Land without first obtaining the prior written approval of the Developer which, for the purposes of this clause, will include the Developer’s approval of the design of the carport or similar structure. Any carport or similar structure must not have a roof area larger than 36m² and will be required to have a flat roof (up to 3° pitch) and be no higher than 3m above ground level at any point.
- (i) Attach to, or allow to protrude from, the front of any Building (being the side of a Building

facing a road or a private right of way access) or allow to be constructed on the land, any fixture that is reasonably visible by any other occupier in the Subdivision standing on any kerb, street, or road in the subdivision and that in the Developer's sole discretion is obtrusive including, but not limited to, air-conditioning units, television or radio aerials and gas bottles. Solar panels are to be installed parallel to the roof and recessed into the roof plane (surface).

- (j) Install any floodlighting or accent lighting. Only low intensity, low level indirect light sources are to be used for all exterior lighting applications.

Roads and parking

4.3 The Covenantor covenants with the Developer that the Covenantor **shall not**:

- (a) Have more than two (2) hard surface parking spaces on the Land and not allow more than two (2) cars to be parked on the Land at any one time.
- (b) Place or permit any boat, caravan, camper van, trailer or storage container to be brought onto or remain on the Land or any part of the Subdivision.
- (c) Bring or allow to be brought in the Subdivision:
 - (i) a vehicle which is in a poor state of repair, unsightly, damaged or without a current warrant of fitness and which may cause a hazard to any person;
 - (ii) any motor vehicles of a gross laden weight of more than 4500kg or any agricultural and contracting plant or similar machinery.

Kahika Lane (Shared Road/ Private Right of Way)

4.4 The Covenantor covenants with the Covenantee that the Covenantor **shall not**:

- (a) Prevent the Lane from being used as a playground/shared space by the Covenantee, their families and invitees. The Covenantor acknowledges that the primary purpose of the Lane is for use as a playground/shared space and only secondarily serves as a vehicle access to Lots 1 to 6 and 8 to 10.
- (b) Use the Lane as a playground between the hours of 10pm and 7am.
- (c) Drive any motorised vehicle along the Lane at a speed greater than 10km/h (walking speed). The Covenantor acknowledges that pedestrians will always have right of way.
- (d) Stop or park any motorised vehicle on the lane other than for the short-term loading or unloading of delivery vehicles.

Boundary treatment, fencing and screening *Note: Bushland Park tries to portray a friendly, connected neighbourhood in a park-like setting and fences are to be kept to a minimum.*

4.5 The Covenantor covenants with the Covenantee that the Covenantor **shall not**:

- (a) Remove or relocate from the Land any Landscape Feature constructed or planted by the Developer as part of the Subdivision without the prior written consent of the Developer.
- (b) Erect or permit to be erected on the Land any solid fence or wall other than on Lots 1 to 6 and Lots 8 to 10 where the Covenantor shall be able to have one single solid wall that shall

have a maximum length of 4.8m and shall be no greater in height than 1.8m and with any such wall extending from, and being in line with, the southern wall of the Building that is to be used as a residence toward the rear boundary of the lot (the rear boundary being the boundary furthest away from the Lane) and can be at the same minimum distance from the side boundary as the dwelling. Any such fence or wall must blend in with the Building that is to be used as a residence and be of the same material and colour. The preferred construction and finish to be cement plaster finish over reinforced masonry.

- (c) Erect any fencing between the front façade of the Building to be used as a residence and the boundary with any road formed within the Subdivision or the Lane.
- (d) Erect any fencing other than pool-type (black painted aluminium) fencing matching the fencing installed by the Developer or wooden "post and rail" fencing with maximum height of 1.3m above ground level.
- (e) Erect or permit to be erected any privacy screening other than wooden lattice or trellis type screens and providing that it conforms to the following:
 - (i) If possible, be considered a temporary screen until live screening (hedges and shrubs) can be established.
 - (ii) Not be placed between the front façade of the Building to be used as a residence and the boundary with any road formed within the Subdivision or the Lane.
 - (iii) Have a minimum of 30% transparency.
 - (iv) Not be greater in height than 1.8m above ground level.
 - (v) Not exceed 4.8m in length in any one direction and a total length of 6m with one 90° corner incorporated.
 - (vi) A maximum of two (2) such privacy screens.
 - (vii) Any screen (lattice or trellis) running parallel with a boundary to have a minimum 1m setback and to be itself screened with suitable plantings (hedge or shrubs).
 - (viii) Any screen (lattice or trellis) seen from any road within the Subdivision or the Lane is to be itself screened with suitable plantings (hedge or shrubs).
 - (ix) To be stained in same colour as any wood on the timber cladding of the Building to be used as a residence.
- (f) Not call upon the Developer to pay or contribute towards the cost of maintenance of any boundary fence between the lot and any adjoining land owned by the Developer.

Landscaping

4.6 The Covenantor covenants with the Covenantee that the Covenantor **shall not:**

- (a) Allow any trees, shrubs or hedges to be planted on the Land other than New Zealand native trees, shrubs and hedges and edible fruit, berry and nut trees and shrubs.
- (b) Allow any shaped hedge to exceed 1.8m in height. The Covenantor will immediately trim any hedge back to 1.8m in height when this restriction is exceeded.
- (c) Allow any tree (or part of it) to grow outside of the Land and shall ensure that any tree

grows and remains within the following recession plane: 2.5m above ground level at each side boundary and a 30-degree incline from thereof at a right angle from the boundary towards the centre of the lot.

- (d) Remove or relocate from the Land any Landscape Feature constructed by the Developer without obtaining the prior written consent of the Developer. This includes all native plantings on the eastern parts of lots 1 to 6, mainly above and below the retaining walls and the specimen tree in the North/West corner of Lot 1.

Communal areas *Note: The developer of Bushland Park is contributing a large area of land including a private playground shown as Lot 7 on DP 567317 and areas of established native bush including the wetland in the stormwater management area (to be called the “communal area”) for the enjoyment of the residents in perpetuity.*

4.7 The Covenantor covenants with the Covenantee that the Covenantor **shall not:**

- (a) use the communal areas between the hours of 10pm and 7am.
- (b) Allow any part of the communal areas including but not limited to playground equipment, any fireplace, tables, seating or any other communal fixtures to be damaged in any way to and to treat the same with respect and care.
- (c) Take any vehicles, including bicycles (but excluding push bikes for pre-school aged children) onto such communal areas and its walking tracks.
- (d) Allow any dogs on the communal areas unless on a leash.

Pets and domestic animals *Note: Bushland Park is also home to a variety of native birds (Bellbirds, Kereru, Fantail and others) and native lizards. We try to protect and enhance their environment.*

4.8 The Covenantor covenants with the Covenantee that the Covenantor shall not:

- (a) Permit any animal to be kept on the Property which is likely to cause a nuisance or annoyance to other registered proprietors or that may detract from the subdivision as a whole. The keeping of pigeons and any dog which in whole or in part resembles a Pit Bull Terrier, Rottweiler, Doberman Pinscher, Japanese Akita, Tosa, Dogo Argentino or Brazilian Fila is expressly prohibited.
- (b) Keep any cats that are not entirely “indoor cats” and that the Covenantor understands that cats found outside their owner’s lot (Bushland Park and surrounding farmland) are defined as strays and are subject to being trapped and humanely disposed of.

5. Disputes and Enforcement

5.1 If there is any breach or non-observance of any of the foregoing Covenants (and without prejudice to any other liability which the Covenantor may have to any other person having the benefit of these Covenants) the Covenantor in breach agrees to and shall, at their cost, (with respect to each individual breach):

- (a) Upon written notice being given by the Developer (or its agent, or any other party having the benefit of these Covenants) to the party in breach, pay to each such notice giver agreed liquidated damages in the sum of \$150.00 (One Hundred and Fifty Dollars) per day for every day that such breach or non-observance continues after the date 30 days after the date upon which each written notice has been given; and

- (b) Forthwith upon receipt of such notice to remove or cause to be removed from the land any Building, Landscape Feature or other item erected on the Land in breach or in non-observance of the foregoing Covenants; and
- (c) Forthwith upon receipt of any such notice to replace any such building materials or other non-conforming item used in breach or non-observance of the foregoing Covenants with the approved materials; and
- (d) Carry out such other remedial work specified in the notice and any other work so as to remedy such breach or non-performance of these Covenants.

5.2 Except as relates to the exercise of any discretion, opinion or consent requested of the Developer under these Covenants, and without prejudice to the enforcement provisions of this document, if a dispute arises in relation to these covenants:

- (a) The party initiating the dispute must provide full written particulars of the dispute to the other party.
- (b) The parties must promptly meet and in good faith try to resolve the dispute within 10 working days of the dispute being raised pursuant to clause 5.2 (a).
- (c) If the dispute is not resolved in accordance with clause 5.2 (b), the dispute shall be, within a further 10 working days, referred to arbitration in accordance with the Arbitration Act 1996 to be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the Canterbury and Westland Branch of the New Zealand Law Society.

6. Severability

6.1 If any part of these Covenants are held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of these Covenants, which shall remain in full force.