

**Covenant Instrument to note land covenant**

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

**Covenantor**

**JOHNS ROAD HORTICULTURAL LIMITED**

**Covenantee**

**JOHNS ROAD HORTICULTURAL LIMITED (as registered owner of the Benefited Land in Schedule A) and INFINITY BELFAST LIMITED (in gross)**

**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	Deposited Plan 552856	Lots 1-42 (RT 1004223-1004264), 89-108 (RT 1004265-1004284), 148-151 (RT 1004285-1004288), 169-175 (RT 1004289-1004295) and 223-230, (RT 1004296-1004303) on DP 552856	Lots 1-42 (RT 1004223-1004264), 89-108 (RT 1004265-1004284), 148-151 (RT 1004285-1004288), 169-175 (RT 1004289-1004295) and 223-230, (RT 1004296-1004303) on DP 552856
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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

### 1. Purpose

- 1.1. The purpose of these covenants is to protect the market and aesthetic value of the Benefitted Lots, the privacy, peace and security of the occupants of the Benefitted Lots, and the quality of the environment affecting the Benefitted Lots for the benefit of the Benefitted Lots, Belfast Subdivision, and its associated community in general.

### 2. Definitions

- 2.1. In the following covenants:
- (a) Headings are for ease of reference only and do not form part of any covenant nor affect the meaning of any covenant.
  - (b) Words imputing the singular include the plural and vice versa.
  - (c) **Approved** means approved by IBL either in accordance with clause 4.1 or as may otherwise be required by any of the covenants.
  - (d) **Belfast Subdivision** means the development near the corner of Johns Road and Main North Road, in Belfast, Christchurch, being carried out by IBL.
  - (e) **Belfast Subdivision Building Covenants** means the Belfast Subdivision Building Covenants document published, maintained and amended by IBL from time to time.
  - (f) **Belfast Subdivision Design Guidelines** means the Belfast Subdivision Design Guidelines document published, maintained and amended by IBL from time to time.
  - (g) **Benefitted Lots** means the land listed as the benefitted land in Annexure Schedule A.
  - (h) **Building** comprises a building as defined by the Building Act 2004 (or latest version).
  - (i) **Burdened Lots** means the land listed as the burdened land in Annexure Schedule A.
  - (j) **Dwelling** or **Dwellinghouse** means and includes a residential dwelling house, or family residence.
  - (k) **IBL** means Infinity Belfast Limited and any successor party or organisation nominated by it (or by any such nominated successor party or organisation) to deal with applications required for approvals by IBL under any of these covenants.
  - (l) **Landscape Feature** means any visible structural or landscape design or enhancement feature or utility to be provided on any Lot.
  - (m) **Lot** means any Lot that is subject to these covenants and in respect of any Lot that is further subdivided with the written approval of IBL in accordance with clause 3.41 means, instead, each of the newly created allotments.
  - (n) **Lot Owner** means the owner of any Lot.

### 3. Covenants

#### *Building Construction and Lot Development*

- 3.1. No more than one Dwellinghouse may be constructed on any Lot.
- 3.2. All Buildings to be used as a Dwellinghouse must have a ground floor area of not less than 90m<sup>2</sup> (inclusive of any garage under the same roof structure).
- 3.3. No re-locatable Buildings may be brought onto any Lot nor any other previously used Building be

transported to or re-erected on any Lot unless previously agreed in writing by a duly authorised representative of IBL.

- 3.4. All Buildings must be constructed on-site from new or high quality recycled materials unless previously agreed in writing by a duly authorised representative of IBL.
- 3.5. Exterior cladding for all Buildings on any Lot (except for the cladding of soffits or gable ends) shall be of the following materials:
  - (a) Brick;
  - (b) Natural stone;
  - (c) River rock;
  - (d) Textured plaster over brick, or polystyrene or other suitable sub-base for plaster;
  - (e) Stained or painted timber weatherboard, wooden shingles, timber board & batten;
  - (f) Surface coated concrete block;
  - (g) Solid plaster or glazing; or
  - (h) Such other materials as may be approved by IBL.
- 3.6. All roofing material on any Building shall be either:
  - (a) Tiles, (including clay, ceramic, concrete, decramastic, pre-coated or pressed steel);
  - (b) Steel (comprising pre-painted, long-run pressed or rolled steel);
  - (c) Shingle;
  - (d) Slate;
  - (e) Membrane roofing; and
  - (f) Such other roofing material as may be approved by IBL.
- 3.7. No reflective or visually obtrusive roof, wall or joinery materials, colours or mirror glass may be used for any Building.
- 3.8. No Buildings shall be erected on any Lot using concrete or treated wooden piles without providing a solid and durable skirting board or other enclosure around the exterior of the Building(s) from ground height to the underside of the wall cladding.
- 3.9. No garages or subsidiary Buildings shall be erected on any Lot except in conjunction with or following construction of the main Building and all such Buildings shall be constructed with permanent materials comprising timber, stone or other permanent materials in character with the main Building on each Lot.
- 3.10. A Dwellinghouse must be constructed on the Lot in compliance with these covenants, the Belfast Subdivision Building Covenants, the Belfast Subdivision Design Guidelines and all relevant regulatory requirements and in accordance with the Building plans approved in accordance with clause 4.1. Construction of the Dwellinghouse must commence within two years of settlement of purchase by the Lot Owner, and once construction of the Dwellinghouse has commenced it must continue in good order until construction of the Dwellinghouse has been completed. The Lot Owner acknowledges and IBL gives no warranty or undertaking that similar conditions or requirements will be imposed in respect of other Lots within Belfast Subdivision.
- 3.11. No Lot (or any part of the Lot) may be sold or otherwise disposed of until a Dwellinghouse has been constructed on the Lot in compliance with clause 3.10.
- 3.12. All construction works required to complete a Dwelling on any Lot including any required painting or staining of exterior surfaces shall be completed within a period of twelve months from the date of commencement of construction work. Earthworks and landscaping works associated with such development (including lawns, drives, paths and fencing) visible from the street similarly shall be completed within three months of receipt of a Code Compliance Certificate for the Dwelling.
- 3.13. No Building on any Lot may be occupied as a residence in any way until:

- (a) The Code Compliance Certificate(s) has been issued by either the Christchurch City Council or an approved Building Certifier; and
- (b) The Buildings have been completed in accordance with all the terms of these Covenants; and
- (c) All exterior work, decoration and final interior window coverings are completely installed; and
- (d) All areas viewable from the street are in a tidy state. These areas must be completed in accordance with your approved landscape plan within three months of receipt of Code of Compliance.

- 3.14. Any external air conditioning units must be properly screened so as not to be visible from the street and noise proofed to ensure they are not a nuisance to neighbours.
- 3.15. Diesel, petrol, oil or gas tanks which have a capacity of over 100 litres are prohibited on any Lot or within any Building unless approved by IBL.
- 3.16. Driveways, driveway crossings and entranceway locations and plans and specifications must be approved by IBL prior to construction.
- 3.17. Lots that have rear vehicular access available from a lane or right of way may not have vehicular access to the Lot from the street frontage, unless approved in writing by IBL and subject at all times to any restriction or requirement of the Christchurch City Council. Parking is prohibited on any access lane or right of way unless specifically provided for within the lane or otherwise approved by IBL.
- 3.18. No Building shall be erected, altered, placed or permitted to remain on any Lot other than Buildings designed for residential use and associated garage(s) and outbuildings. IBL and its designated representative(s) and/or builders approved by IBL may use residential Buildings as show homes or offices, provided such use is in furtherance of the primary purpose of construction and sale of Lots and dwellings within Belfast Subdivision.

#### *Landscape Features*

- 3.19. Construction of any Landscape Features on any Lot shall not be commenced until the plans and specifications have been approved by IBL.
- 3.20. No Landscape Feature may exceed a height of 2m above the original sub-division ground level of a Lot without the express written approval of IBL.
- 3.21. Clotheslines and letterboxes must be unobtrusive and of good quality in terms of design and location. The positioning of any clothesline shall be on the rear half of each Lot with appropriate screening to ensure it will not be highly visible from the street. The positioning of any letterbox shall be adjacent to but not on the road reserve.
- 3.22. All attachments to any Buildings or structures on any Lot (including television antenna, solar hot waterpanels, satellite dish, mast, garden statues, fountains or any other exterior ornamental decoration or similar garden or Landscape Feature) must not be of a nature that would devalue the neighbouring properties in the opinion of IBL. Any such offending item must be removed or screened to IBL's satisfaction.
- 3.23. The location of and construction of swimming pools (including fencing and screening on any Lot), must be approved by IBL.

#### *Building and Lot Maintenance*

- 3.24. No Lot Owner shall display or permit to be displayed on any Lot or Building any advertisement, sign or hoarding (except for compulsory statutory signage, real estate signage pending sale and builder's signage during construction and pending sale). All such signage (including its construction and location) must comply with relevant Christchurch City Council requirements and

first be approved by IBL.

- 3.25. No livestock, poultry or animals which may be likely to cause a nuisance to any other Belfast resident shall be raised, bred or kept on any Lot or in any Buildings; provided, however, that dogs and cats, or other common domesticated household pets that are not dangerous or annoying may be raised and kept. Such permitted pets shall be kept on the owner's Lot and if a dog it shall not be allowed off the owner's Lot except under controlled supervision. Any dog which in whole or in part, resembles any of the Pit Bull Terrier, the Japanese Tosa, the Dogo Argentino or the Fila Brasileiro breeds and any other potentially aggressive or noisy breed of animal is prohibited if it causes a nuisance in any way. No permitted pet shall be allowed to make noise in a manner or of such volume as to annoy or disturb other Lot Owners. Any Lot Owner who allows or keeps a pet on their Lot is responsible for any loss or liability of any kind arising from the keeping of such pet. The keeping of pets by a Lot Owner shall be subject to any other restrictions required by IBL from time to time in the interests of maintaining a good residential environment.
- 3.26. Buildings and Landscape Features must be maintained and not be allowed to deteriorate to a point where the standard of presentation is either:
- (a) Less than that represented in the rest of Belfast Subdivision developed residential area, or
  - (b) Inadequate, taking into account fair wear and tear and the original condition at the time that the residential Building on the Lot was occupied as a residence and the condition of its neighbourhood properties.
- 3.27. Lots must otherwise be kept and maintained in a neat and tidy condition at all times, including the grounds, lawns, gardens and the Local Authority owned road frontage to each of the Burdened Lots. Grass and other ground cover must not exceed a height of 120mm.
- 3.28. Lot Owners must not alter the original subdivision contour and levels of the Lots without prior approval from IBL.
- 3.29. No tree, shrub or other vegetation shall:
- (a) Protrude beyond 3m in height within 2m of any Lot boundary;
  - (b) Protrude beyond 5m in height within the area of any Lot between 2m and 5m on the easternmost and southernmost boundary of any Lot; or
  - (c) Protrude beyond an absolute height of 7m elsewhere on the Lot, with 'height' taken from the original subdivision ground level of a Lot when IBL's sale of the Lot settled.
- 3.30. To ensure reasonable amenity to each Lot, if any tree, shrub or other vegetation on any Lot is very substantially shading or very materially affecting the outlook or view from any neighbouring Lot or is creating any significant nuisance and that Lot Owner neglects or refuses for a period of thirty days following notice in writing to them from the affected Lot Owner(s) requesting reduction to the height and/or the canopy area or remedying of the nuisance involved with such tree, shrub or other vegetation, then the parties involved shall be bound to resolve the same by arbitration in accordance with clause 7 (Dispute Resolution).

#### *Fencing Provisions*

- 3.31. The Lot Owner shall be bound by a Fencing Covenant within the meaning of section 2 of the Fencing Act 1978 in that neither IBL nor the Christchurch City Council shall be liable to pay for or contribute towards the cost of the construction or maintenance of any fence between any Lot and any adjoining land owned by IBL or the Christchurch District Council.
- 3.32. A Lot Owner who takes title to a Lot having a boundary fence already constructed on a Lot boundary which has been paid for in full by an adjoining Lot Owner(s) shall be liable to reimburse each such Lot Owner for one half of the actual cost of that boundary fence (if not already reimbursed by any other party). Such cost shall not exceed \$115.00 (plus GST) per linear metre for the fence, annually adjusted based on the all groups Consumer Price Index effective from 1st

January 2023 until the date the reimbursement is demanded.

- 3.33. All fences on the side and rear Lot boundaries shall be constructed and maintained in accordance with the Belfast Subdivision Design Guidelines and:
- (a) Shall not exceed 1.8m;
  - (b) Side fences and rear fences must be erected prior to any building construction;
  - (c) The maximum height of any fence in the required building setback from a road boundary shall be 1.2m;
  - (d) Must be contiguous with neighbouring fencing; and
  - (e) Any Lot which abounds a reserve must be fenced to a maximum height of 1.2m and have a minimum visual permeability/openness of 50% (e.g. Warner fence) – except where required to screen a bin storage area as detailed in the Belfast Subdivision Design Guidelines, or unless otherwise approved by IBL.
- 3.34. Fencing requirements may be varied by IBL where desirable to ensure a high standard of appearance or where fencing is undesirable or unnecessary in the view of IBL.

#### *Land Use Restrictions*

- 3.35. No Lot shall be used for any form of temporary residential purposes either by the construction of temporary Buildings or by the placement of caravans, modular homes, mobile homes, motor homes, house trailers, buses, tractors, huts, tents and/or vehicles able to be used for human habitation except for a builder's shed at the commencement of, and for the duration of construction, of any dwelling being erected on the Lot.
- 3.36. Lot Owners must not use any Lot for any primary purpose other than for residential occupation unless previously agreed in writing by a duly authorised representative of IBL. Ancillary purposes are governed by the planning provisions under any regulatory land use controls applicable from time to time.
- 3.37. No Lot shall be sold, leased, transferred, assigned or otherwise disposed of to any Governmental agency or Territorial Authority for the purposes of public or institutional housing without the prior approval of IBL.
- 3.38. No inflammable, explosive or noxious materials are to be stored or used on any Lot or in any Building. The Lot Owner must not allow any offensive activity to be conducted or permitted to exist upon any Lot, or in any Building, nor shall anything be done or permitted to exist on any Lot or in any Building that may be or may become an annoyance or private or public nuisance. An annoyance or private or public nuisance includes loud sounds or noises or offensive smells.
- 3.39. No Lot, driveway or common area shall be used for the purpose of long term vehicle parking, repair or maintenance. No unregistered, non-licensed or expired license or inoperable vehicles of any kind shall be permitted to remain on any Lot (unless parked inside the garage).
- 3.40. No recreational or commercial vehicles boats or trailers are to be regularly located on the road or in front of the Building line of the main Building constructed or to be constructed on the Lot.
- 3.41. No Lot may be further subdivided, nor shall any further easements or similar rights (by whatever name called) granting rights commonly found in easements be agreed to, granted or registered on any Lot, including rights of way unless approved in writing by IBL.

#### *Enforcement*

- 3.42. IBL may enforce these covenants in the same manner as a Lot Owner and in particular, where a Lot Owner does not comply with any covenant IBL may request such owner in writing to remedy such non-compliance within a specified time (not to be less than fourteen days from the date of such request). At the end of the specified time and where the Lot Owner remains in default in remedying such non-compliance, IBL may employ a suitably qualified or experienced person to enter such Lot and carry out work necessary to achieve compliance with the covenant(s) involved,

and may recover as a debt due from the defaulting Lot Owner all costs incurred by IBL in such remedial work.

- 3.43. IBL may take steps to ensure observance of these covenants but shall not have any legal responsibility or liability for any lack of enforcement or enforceability or application or waiver of any of these covenants or any consents or approvals given by IBL under these covenants. The Lot Owners agree to keep IBL fully indemnified from any claim, liability, loss or action arising against it or its agents in respect of these covenants having regard to their intent to provide for the interests of Lot Owners inter se and their individual obligations of observance and rights of enforcement of the covenants.

#### **4. Approvals for Buildings and Site Development by Lot Owner and IBL**

- 4.1. Prior to submitting Building plans and Building consent applications to any Consent Authority for any necessary approvals and prior to the commencement of building construction the Lot Owner of each Lot shall obtain the written approval of IBL (such approval to be considered in an impartial and reasonable manner) in respect of the:
- (a) Site plan (location of building on the lot showing proposed access from the streets or rights of way and off-street parking);
  - (b) Floor plan (with dimensions and elevations);
  - (c) Completed exterior finishes checklist;
  - (d) A landscape plan for the Lot; and
  - (e) Proposed fencing (shown either on the site plan or landscape plan).
- 4.2. All building construction work must be carried out in accordance with and comply with the Belfast Subdivision Building Covenants and each Lot Owner is required to enter into and agree to comply with such Covenants (intended to ensure all on site works are undertaken in a safe and competent manner) as a requirement for approval of IBL to all building works.
- 4.3. Each Lot Owner agrees to execute and comply with the Belfast Subdivision Design Guidelines and Belfast Subdivision Building Covenants which are provided and maintained by IBL. It is the responsibility of each Lot Owner to ensure that builders, sub-contractors, workmen and suppliers fully comply with these covenants.
- 4.4. IBL may delegate such approval process to a nominated and suitably qualified party.
- 4.5. Each Lot Owner agrees to:
- (a) 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 in respect of the subdivision and sale of any land owned by or under contract to IBL within Belfast Subdivision.
  - (b) 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 or under contract to IBL within Belfast Subdivision.
  - (c) 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 or under contract to IBL within Belfast Subdivision.
  - (d) Provide affected party approval to any planning application referred to in clause 4.5(a) in accordance with the provisions of section 95D(e) Resource Management Act 1991 (and each Lot Owner acknowledges this clause shall constitute such affected party approval without the need for a separate approval document).

(e) Irrevocably appoint IBL to be the Lot Owner's true and lawful attorney for the purposes of executing an affected party approval pursuant to clause 4.5(d) if required.

- 4.6. Each Lot Owner acknowledges that Belfast Subdivision 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 Belfast Subdivision, to the Christchurch City Council or IBL.

## 5. Vesting of Roads and Reserves

- 5.1. Each Lot Owner consents to the deposit of any survey plan (**Survey Plan**) by IBL or its successor or nominee in respect of Belfast Subdivision which has the effect of vesting any land in any local authority, territorial authority or the Crown (**Land to Vest**), or where land is to be transferred for utilities or road (**Land for Utilities**). Each Lot Owner agrees that the covenants in this Instrument shall cease to apply in respect of the Land to Vest and any Land for Utilities upon the date of lodgement with Land Information New Zealand (or any such replacement entity) of the required documents to deposit the Survey Plan. Each Lot Owner covenants that this clause will be deemed to be the consent of the Lot Owner to the deposit of the Survey Plan (including under section 224(b) (i) Resource Management Act 1991 (or any like or similar provision in any variation, consolidation or replacement Act)) and for the removal of the covenants in this instrument from any Land for Utilities.
- 5.2. If it is determined by IBL that additional written consent is required from any Lot Owner to the deposit of any Survey Plan or for the removal of the covenants in this Instrument from any Land for Utilities, under clause 5.1, then:
- (a) at the request of IBL, the Lot Owner, at its cost, will immediately give such written consent to IBL; and
  - (b) in addition to clause 5.1 and 5.2(a), the Lot Owner irrevocably appoints IBL or its successor in title as its attorney to sign any consent necessary in the required form to deposit any Survey Plan or to remove the covenants in this Instrument from any Land for Utilities. No person dealing with the Lot Owner as the attorney in this capacity need inquire if IBL is validly exercising its powers as attorney under this clause 5.2.

## 6. Other circumstances in which these covenants cease to apply

- 6.1. Any requirement in these covenants to submit plans and specifications to IBL, or to obtain IBL's approval, will cease to apply 15 years after the date of this instrument (but without prejudice to the liability of any party for any breaches which have already occurred).
- 6.2. Despite any other provision of this instrument, if the written consent of IBL 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, the Belfast Subdivision Design Guidelines or the Belfast Subdivision Building Covenants.

## 7. Dispute Resolution

- 7.1. Should any dispute arise concerning any aspects of these covenants that cannot be resolved by agreement between the parties involved, the Lot Owners are bound to resolve the same by arbitration in accordance with the Arbitration Act 1996 (**Act**), and the following provisions shall apply:
- (a) There shall be a single arbitrator who shall be appointed by the President for the time being of the Canterbury and Westland branch of the New Zealand Law Society (or any successor organisation) as a sole arbitrator.



- (b) The arbitrator shall determine all questions in issue between the parties including questions as to the scope of the dispute and as to procedure.
- (c) The arbitrator's award shall be binding on all parties to the dispute.
- (d) Any party to a dispute may initiate arbitration in accordance with the provisions of the Act.