

**COVENANT INSTRUMENT TO NOTE LAND COVENANT***Sections 116(1)(a) & (b) Land Transfer Act 2017*

**Approval  
2018/6263  
Registrar-General of Land**

**Covenantor****RAUKAWA IWI DEVELOPMENT LIMITED****Covenantee**

**BGL TRUSTEE 2012 LIMITED AND GARETH ROBERT WHITE  
SAMOAN COMMUNITY WELFARE (TOKOROA) INCORPORATED  
WANANAVU HOLDINGS LIMITED  
BRUCE PAUL PHYTHIAN, MAGDALENE CHEOK FONG TEO PHYTHIAN AND TIENA  
ANNE ELIZABETH ELLIOTT-JAMES, MARK GREGORY JAMES AND MAIN ROAD  
INVESTORS LIMITED  
SOUTH WAIKATO DISTRICT COUNCIL  
RAUKAWA IWI DEVELOPMENT 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***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 Covenant	All of the burdened land	Lots 1 to 56 DP [TBA] (TBA)	Lots 5 and 6 DPS 23458 (SA21D/953 and SA21D/954)  Lots 2-3 DPS 23458 and Lot 1 DPS 75758 (SA59C/735)  Part Lot 2 DP 23371 (SA649/190)  Part Lot 1 DP 20029 (SA1048/279)  Part Section 1 SO 60019 (SA56A/9)  Part Lot 2 DP 20029 (SA25C/317)  Lot 1 DP 28782 (SA27A/1372)  Lot 3 DPS 27348 (972991)

			Lot 3-6 DPS 2424 and Lot 3 DPS 27348 and Section 82 Block VIII Patetere South Survey District and Lot 3 DPS 4625 and Lot 3 DPS 16048 and Lot 1 DPS 19497 and Part Lot 4 DPS 4625 and Part Lot 3 DP 23421 and Lot 2 DPS 35656 and Lot 1 DPS 8069 and Lot 1 DP 33166 (972991)  Lots 100 and 101 DP [TBA] (TBA)
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**Covenant rights and powers (including terms, covenants and conditions)**

*Delete phrases in [ ] and insert Memorandum number as require; 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]

## **ANNEXURE SCHEDULE 2**

### **1. Covenants**

- 1.1 The Covenantor covenants with the Covenantee that it shall not:**
  - 1.1.1 complain about or object to the lawful use of the Benefited Land being used as a permitted and lawfully established commercial activity or for recreational and event activities undertaken at the Tokoroa Memorial Sportsground;**
  - 1.1.2 bring any proceedings against the Covenantee for any cause of action (including but not limited to nuisance or annoyance) arising out of the use of the Benefited Land as a permitted and lawfully established commercial activity or for recreational and event activities undertaken at the Tokoroa Memorial Sportsground;**
  - 1.1.3 make, lodge, be a party to, finance or contribute to the cost of, or procure a third party to make, lodge, be a party to, finance or contribute to the cost of any submission, application or proceedings designed or intended to limit, prohibit, modify or restrict the operation of the business of the permitted and lawfully established commercial activity or recreational and event activities undertaken at the Tokoroa Memorial Sportsground on the Benefited Land.**

### **2. General**

- 2.1 For the purposes of this instrument, the Covenantor and Covenantee agree that this instrument binds and benefits their successors in title and also any lessee or occupier of the Burdened or Benefited Land.**
- 2.2 The illegality, invalidity or unenforceability of a provision of this Covenant Instrument under any law will not effect the legality, validity or enforceability of that provision under any other law, or the legality, validity or enforceability of any other provision of this Covenant Instrument.**
- 2.3 No failure to exercise nor a delay in exercising any right or remedy available to a party will constitute a waiver by that party of that or any other right or remedy available to that party under this Covenant Instrument or at law.**
- 2.4 The liability of a Covenantor under this Covenant Instrument shall enure only for such period as that Covenantor is the registered proprietor of the Burdened Land or any part of the Burdened Land to the intent that no Covenantor shall be liable for breaches committed by that Covenantor's predecessors or successors in title but that Covenantor shall be and remain liable for all breaches committed in the period during which that Covenantor owns any part of the Burdened Land.**
- 2.5 If the Covenantor breaches any of these covenants then without prejudice to any other cause of action that the Covenantee may take, the Covenantor shall, upon demand in writing being made by the Covenantee, pay to the Covenantee as liquidated damages, a sum equating to any loss suffered by the Covenantee as a result of the Covenantor's breach of these covenants, together with the Covenantee's costs of enforcing these covenants on a solicitor client basis.**

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**Approval  
2018/6263  
Registrar-General of Land**

**Covenantor****RAUKAWA IWI DEVELOPMENT LIMITED****Covenantee****RAUKAWA IWI DEVELOPMENT 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***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 Covenant	See attached Annexure Schedule	See attached Annexure Schedule	See attached Annexure Schedule
Land Covenant	See attached Annexure Schedule	See attached Annexure Schedule	In gross

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

*Delete phrases in [ ] and insert Memorandum number as require; 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]

## ANNEXURE SCHEDULE 2

The Covenantee when registered owner of the land formerly contained in Records of Title 668898, SA687/98, SA21D/955 and SA21D/956 subdivided the land into lots in the manner shown and defined on Deposited Plan [TBA] (hereinafter referred to as the "the Plan").

**WHEREAS** it is the Covenantee's intention to create a high quality subdivision. To enable this to occur it is the Covenantor's intention to create for the benefit of the land set out in Schedule 2C (hereinafter referred to as the "Benefited Land") and for the benefit of the Covenantee in gross referred to in Schedule A, the land covenant set out in Schedule 2B over the land set out in Schedule 2A (hereinafter referred to as the "Burdened Land"). The Covenantee's intention is to create a land covenant that is reciprocal that shall not be over and in favour of the Burdened Land and the Benefitted Land at the same time.

**AND** so as to bind the Burdened Land and for the benefit of the respective Benefited Land and the Covenantee in gross, the Covenantor **DOTH HEREBY COVENANT AND AGREE** in the manner set out in the Schedule 2B hereto so that the covenant runs with the Burdened Land set out in Schedule 2A for the benefit of each of the respective registered owners of the Benefited Land as described in Schedule 2C and for the benefit of the Covenantee in gross.

**AND** The obligations and covenants of the Covenantee under this Instrument enure for the benefit of the Covenantee (in accordance with Subpart 1 and Part 2 of the Contracts and Commercial Law Act 2017).

### SCHEDULE "2A"

<b>Lot No.</b>	<b>Record of Title</b>	<b>Lot No</b>	<b>Record of Title</b>
TBA	TBA	TBA	TBA

### SCHEDULE "2B"

#### **Defined Terms**

##### 1. **Definitions**

**Adjoining Land** means any land owned now or in the future by Raukawa Iwi Development Limited which will form part of the Development.

**Building** means any structure (excluding fences and landscaping) on the Burdened Land. For the avoidance of doubt, where the context requires, this includes a Dwelling.

**Council** means South Waikato District Council or its successor.

**Covenantee** means the owner of all or any part or parts of the Benefited Land and their executors, administrators, assignees and successors in title from time to time.

**Covenantor** means the owner of all or any part or parts of the Burdened Land and their occupiers, invitees, executors, administrators, assignees and successors in title from time to time.

**Covenants** means the covenants set out in this Instrument.

**Design Guide** means the design guide issued by the Developer as at the date of registration of this Instrument titled "[TBA]" which are available [TBA]. If there is any conflict between the terms of this Land Covenant and the Design Guide, the terms of this Land Covenant will prevail.

**Developer** means Raukawa Iwi Development Limited or its duly appointed agent.

**Development** means the subdivision of land into a number of sections, roads, access lots and reserves being the land contained within Records of Title 668898, SA687/98, SA21D/955 and SA21D/956.

**Dwelling** means a single self-contained residential unit including accessory Buildings.

**Instrument** means this covenant instrument creating a land covenant.

**Improvements** mean existing improvements constructed by the Developer on the Burdened Land and adjoining roads or reserves, including (but not limited to) roading, footpaths, kerbs, gutters, swale crossings, landscaping, street lights, open spaces and walkways.

**Lot/s** means each and all of the lots created by the Development as shown on Deposited Plan [TBA] (and Lot shall have a corresponding meaning) that can have a Dwelling constructed on it.

**Subdivide** and **Subdivision** has the meaning ascribed to subdivision of land in Section 218 (1) of the Resource Management Act 1991.

Clauses numbered 2 to 4 only apply to the Lots where the Developer has erected the Building on the Lot.

### **Replacement**

2. In the event the Building and/or fencing is destroyed or damaged such that it requires to be rebuilt, the Covenantor shall not commence construction or undertake any work on the Building without first obtaining (if required) a building consent and any other required consents from the relevant local or territorial authority.
3. The Covenantor must construct any replacement Building and/or fencing such that it has the same general size, appearance and shape as the Building and/or fencing built by the Developer. Any decision that may be required as to whether the replacement Building and/or fencing are in compliance with this clause, shall be at the Developer's sole discretion.
4. The Covenantor must erect any replacement Building and/or fencing on the same or similar footprint as the Building and fencing constructed by the Developer.

Clause 5 only applies to the Lots where the Covenantor is responsible for erecting the Building on the Lot.

### **Developer Approval**

5. The Covenantor shall not erect on the Lot any Building, structure or fence or landscaping unless the building plans (including site plan, landscape plan, finish and external colour scheme) ("Plans") have received Developer consent in accordance with the Design Guide. Developer consent shall be deemed to have been given to such Plans in respect of any Building which has been erected and occupied for a period of five (5) years or more without the Developer objecting to same.

### **Construction**

6. The Covenantor shall:
  - 6.1. Ensure no building material or waste is placed on any allotment adjoining the Property. A refuse skip will be used during construction and emptied regularly.
  - 6.2. Ensure that its building contractor has full contract works insurance and public liability cover for an amount deemed adequate by the Developer, being no less \$1 million for contract works insurance and \$2 million for public liability cover. The Covenantor shall, upon request by the Developer, provide a copy of said insurance cover to the Developer prior to any works on the Lot commencing.
  - 6.3. Allow the Developer to enter on to any building site for the purpose of inspecting the Dwelling to ensure that the provisions of this Instrument and any site maintenance requirements are observed.
  - 6.4. Not use or occupy any Building or replacement Building as a residence until such time as construction has been completed and a property Code Compliance Certificate (CCC) has been issued by South Waikato District Council.

- 6.5. Complete the driveway or replacement driveway prior to Dwelling occupation.
- 6.6. Complete all Building, replacement Building, fencing, and hard landscaping within 12 months of commencing construction.
- 6.7. Ensure that no trade vehicles cross or park on the road berms during the construction of the Building or the replacement Building and/or fence construction.
- 7. The Covenantor shall ensure that the building contractor:
  - 7.1. Takes all practicable steps to ensure that no harm comes to any persons on the Lot or in the vicinity of the Lot;
  - 7.2. Controls the building site on the Lot as a place of work within the meaning of the Health and Safety at Work Act 2018, and shall comply with all the applicable statutory requirements, regulations and codes of practice regarding safety in its operations on the Lot;
  - 7.3. Erects and maintains appropriate temporary construction fencing around the Lot when undertaking any construction works on the site.
  - 7.4. Ensure appropriate Health & Safety signage is displayed on the Lot.
  - 7.5. Is informed of these covenants prior to commencing work on the Lot.

#### **No Temporary or Ancillary Buildings**

- 8. With the exception of temporary relocatable buildings permitted during the construction of the Building or replacement Building, no Kitset pre-built transportable or relocatable house, caravan, shed or garage may be erected or permitted for permanent or temporary accommodation.

#### **Remediation**

- 9. The Covenantor shall reinstate, replace, and be responsible for any and all costs arising from any damage to any Improvements or other structures in the Development arising directly or indirectly by the Covenantor or its occupiers, agents or invitees.

#### **Fencing/Landscaping**

- 10. The Covenantor shall ensure that no fence, tree or shrub constructed, installed or planted by the Developer is removed or relocated without the written consent of the Developer.
- 11. No tree or shrub shall be planted, maintained, or allowed to grow to a height exceeding 6 metres on any portion of the Lot, except with the prior written approval of the Developer. If a tree exceeds this height, the Covenantor shall be required to reduce its height or remove it at their cost. This clause is to ensure the preservation of sightlines, aesthetic quality, and safety of the Development.

#### **General Appearance and Use**

- 12. The Covenantor shall not:
  - 12.1. Permit any dog or pet likely to cause a nuisance to be on the Lot at any time.
  - 12.2. Allow any gang insignia or identification of any kind to be on the Lot at any time.
  - 12.3. Permit the accumulation of any rubbish or noxious substances, including builders waste materials, on the Lot or the Development nor permit grass or weeds to grow on the Lot to such a height as to become unsightly.
  - 12.4. Park any caravan, campervan, house bus, boat, trailer, or large trade commercial vehicle under their control on the street on a regular basis, or for a continuous period exceeding 24 hours.

- 12.5. Park any caravan, campervan, or house bus on the Lot visible from the road for more than 24 hours.
- 12.6. Have any visually unattractive (at the Developers sole discretion) aerials, panels, dishes, protrusions or the like on any part of the Lot.
- 12.7. Further subdivide or amalgamate any of the Lots.

13. The Covenantor shall:

- 13.1. Ensure any solar panels are erected on the North West orientation of the roof of the Dwelling.
- 13.2. Construct a vehicle crossing and driveway in accordance with the Territorial Authority's standards and specifications prior to occupation of the Dwelling.

14. At the discretion of the Developer, the Covenantor may have a home occupation, however this activity is not to interfere with the quiet enjoyment of any neighbouring properties in the Development.

### **Non-Objection**

15. The Covenantor covenants with the Developer that it will not oppose, object to, frustrate or take any action, or encourage others to oppose, object to, frustrate or take any action, that might in any way prevent or hinder the Developer from progressing and completing the Developer's development plan, subdivision, or land use consents.

### **Breach of Covenants**

16. In the event of a breach of any of the covenants, conditions, or restrictions contained herein, any Covenantor, or any other party having a legal interest in the Development may seek one or more of the following remedies:

- 16.1. Any Covenantor shall have the right to seek an injunction in any court of competent jurisdiction to restrain or enjoin any person, firm, or corporation from violating or continuing to violate any covenant, condition, or restriction, or to compel compliance with the terms and provisions of this Instrument.
- 16.2. In addition to any other remedies available, any Covenantor may bring an action at law or equity to recover any actual damages suffered as a result of the breach of any covenant, condition, or restriction, including the cost of any corrective actions or repairs required to restore the property to its proper condition under the terms of this Instrument.
- 16.3. In any action or proceeding to enforce these covenants, the prevailing party shall be entitled to recover reasonable legal fees, court costs, and other expenses incurred in connection with the enforcement action, in addition to any other relief granted by the court.
- 16.4. The remedies provided in this Clause 16 are cumulative and not exclusive, and the pursuit of one remedy shall not preclude the pursuit of any other remedy available under law, in equity, or under the terms of this Instrument.
- 16.5. The failure of a Covenantor, or any other party to enforce any provision of this Instrument or to take action with respect to any breach shall not be deemed a waiver of the right to do so in the future or a waiver of any other provision of this Instrument.

17. If there be any breach or non-observance of any of these covenants:

- 17.1. There shall be no obligation on the Developer to take any steps to enforce these covenants.
- 17.2. If there is more than one Covenantor for any Burdened Land the liability of the Covenantors for the Burdened Land shall be joint and several.
- 17.3. The Covenantor in breach shall rectify any breach.

## **Miscellaneous**

18. If any provision or part of this Instrument is illegal, unenforceable or invalid, then such provision or part is deemed to be removed from and not form part of this Instrument, but the rest of this Instrument will not be affected and will continue in full force and effect.
19. The Covenantor and their successors in title shall indemnify the Developer from any liability whatsoever from any party breaching any of these Covenants.
20. In the event of any dispute which cannot be resolved by agreement between any of the Developer, the Covenantor and the Covenantee as to any matter relating to the abovementioned covenants, the same shall be resolved by arbitration under the provisions of the Arbitration Act 1996 or any Act passed in substitution or amendment thereof by a single arbitrator appointed for that purpose by the nominee of the President of the New Zealand Law Society and the decision of that arbitrator shall be final and binding on the Parties.
21. The covenants in this instrument will cease to apply to any land that is intended to vest in the Crown or any territorial authority as a road or reserve, upon any survey plan relating to such vesting being approved as to survey and being accepted for deposit by Land Information New Zealand.

## **SCHEDULE "2C"**

<b>Lot No.</b>	<b>Record of Title</b>	<b>Lot No</b>	<b>Record of Title</b>
TBA	TBA	TBA	TBA