

# COVENANT INSTRUMENT TO NOTE LAND COVENANT

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

Approval  
2018/6263  
Registrar-General of Land

## Covenantor

FRANCO FARMS PROPERTY LIMITED

## Covenantee

FRANCO FARMS PROPERTY 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 covenants(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		Lots __ DP ____ (_____)	Lots __ DP ____ (_____)
Land Covenant		Lots __ DP ____ (_____)	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 1]

## ANNEXURE SCHEDULE 1

The Covenantee when registered owner of the land formerly contained in Record of Title CB35A/20 subdivided the land into lots in the manner shown and defined on Deposited Plan [TBC] (hereinafter referred to as 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 described in Schedule A as the Benefited Land, and for the benefit of the Covenantee in gross, the land covenants set out herein over the land described in Schedule A as the Burdened Land.

**AND** so as to bind the Burdened Land for the benefit of the Benefited Land and the Covenantee in gross, the Covenantor **DOTH HEREBY COVENANT AND AGREE** in the manner set out herein so that the covenant runs with the Burdened Land for the benefit of the Benefited Land and the Covenantee in gross.

**"Covenantor"** means the registered owner of any of the Burdened Land from time to time.

**"Development"** means the Developer's subdivision and development known as Red Barn Estate, of which the Burdened Land forms part.

**"Developer"** means Danne Mora Holdings Limited or its duly appointed agent, assignee or associated person or entity, including for the avoidance of doubt Franco Farms Property Limited.

**"Dwelling"** means a building designed and used for residential purposes.

**"Lot"** or **"Lots"** means any one or more of the respective Lots described in Schedule A as the Burdened Land as the context requires, and includes any lot created by further subdivision from time to time of any of the Burdened Land.

**"Red Barn Estate Design Guidelines"** means the Developer's guidelines as to Streetscape Architectural Controls, Landscaping & Fencing, including as amended from time to time.

1. The Covenantor shall:

1.1 Not erect or place, or permit to be erected or placed, on the Lot any building, Dwelling, garage, structure, fence or landscaping unless such building, Dwelling, garage, structure, fence or landscaping in all respects:

1.1.1 complies in all respects with the version of the Red Barn Estate Design Guidelines as is current at such time;

1.1.2 is entirely consistent with final plans for the same that have first been submitted to, and approved in writing by, the Developer in its sole discretion; and

1.1.3 complies in strict accordance with the Hanmer Springs Design Standards found under Rule 4.6.19 in Chapter 4 of the Hurunui District Plan or any Hanmer Springs design standards issued in replacement of the same ("Hanmer Springs Design Standards") or is in strict accordance with a resource consent or approval issued by Hurunui District Council.

1.2 Without limiting clause 1.1, not erect or permit to be erected any Dwelling on the Lot unless such Dwelling has a floor area (including the garage) of no less than:

1.2.1 100 square metres, for Lots having an area of up to and including 750 square metres; and

- 1.2.2 150 square metres, for Lots having an area of over 750 square metres.
- 1.3 Without limiting clause 1.1, not erect or permit to be erected on Lots 1-6, 8-10, 14-21, 24, 25, 27-30, 33, 34, 38, 40-43, 45, 46, 50, 51, 53-55, 58, 60-67, 74-77, 81, 83-86, 89 and 90, any Dwelling other than a single storey Dwelling.
- 1.4 Not permit more than one Dwelling to be erected on the Lot.
- 1.5 Not permit to be placed or erected on the Lot any Dwelling, or accessory building or other structure not being a Dwelling ("Accessory Structure"), which has been previously inhabited or used.
- 1.6 Not use or allow to be used any second-hand materials in the construction of any Dwelling or Accessory Structure, except in relation to internal fit outs. For the purpose of clauses 1.5 and 1.6, children's playhouses, garden sheds, fences, water tanks, rainwater detention tanks and other forms of water tanks, black water (sewer) tanks and grey water tanks are expressly excluded from the definition of Accessory Structure.
- 1.7 Not permit any construction on the Lot unless the building site at all times complies with the requirements of the Health and Safety at Work Act 2015 or any legislation in substitution thereof;
- 1.8 Not undertake or permit during the course of construction the storage of building materials other than within the boundaries of the Lot;
- 1.9 Not carry out any construction unless an adequate rubbish skip is present at all times (and regularly emptied or replaced) nor allow during the course of construction any rubbish outside the boundaries of the Lot;
- 1.10 Not during the course of construction allow any vehicles to be washed down other than within the boundaries of the Lot;
- 1.11 Not allow the Lot to become untidy or unsightly and in particular, without limitation, not allow any grass on the Lot grow to a height of more than 150mm and shall, if the Developer requests, immediately comply with any request to mow such grass to ensure that at no times is any grass on any of the Lot more than 150mm in height;
- 1.12 Not permit any works to be carried out on the Lot (including site preparation) prior to the erection and completion of all side and rear boundary fences (which must comply with the requirements set out in the Red barn Estate Design Guidelines) or where permanent fencing is not being erected, temporary fencing shall be installed and removed prior to occupation of the Dwelling;
- 1.13 Not commence construction of a Dwelling until such time as vehicle access from the road to the Lot has been completed (including berm and curb crossing) up to and including metalling or sealing;
- 1.14 Not access the Lot over any area not allocated for vehicle access.
- 1.15 Not permit the Lot to be occupied or used as a residence either prior to construction of the Dwelling being completed (including a Code Compliance Certificate having issued for the same and any damage caused to any part of the Development having been fully repaired), or at any time by the erection of temporary buildings or structures or by the placing thereon of caravans and/or vehicles for human occupation.

- 1.16 Not permit any commercial business or activity to operate on or from the Lot. Without limiting this restriction, the use of the Lot as a bed and breakfast or church is expressly prohibited. This clause does not prevent the Lot from being used for short-stay accommodation such as Airbnb or similar.
- 1.17 Not allow the use of the Lot to unreasonably interfere with the quiet enjoyment of the owners or occupiers of other Lots.
- 1.18 Not remove or relocate from the Lot any fence, tree or shrub constructed, installed or planted by the Developer without the written consent of the Developer.
- 1.19 Not permit any Dwelling on the Lot to be used as a show home without the written consent of the Developer. The Developer shall retain sole discretion over the number of Dwellings within the Development to be used for show home purposes.
- 1.20 Reinstall, replace and be responsible for all costs arising from any damage to landscaping, berms, roading, footpaths, kerbs, concrete or other structures in the Development arising directly or indirectly from the use of the Lot by the Covenantor or its occupiers, agents or invitees.
- 1.21 At the time of completing the landscaping on the Lot re-seed the berm in front of the Lot with a seed of similar variety.
- 1.22 Ensure that waste management bins are at all times stored in a manner that ensures that they are not visible from the frontage of the Lot.
- 1.23 Ensure that all water tanks, rain water detention tanks and other forms of water tanks, black water (sewer) tanks and grey water tanks on any Lot are visually screened and concealed from plain view by a hedge or fence that does not exceed a height of 1.8 metres from ground level (being the ground level following completion of subdivision of the underlying land by the Developer).
- 1.24 Not make or permit any noise within the Development which exceeds the noise control levels set by the local authority from time to time, nor act in any fashion so as to annoy or disturb other residents within the Development.
- 1.25 Not permit to be kept in or about the Development, any pigeons, or any dog which in whole or part appears to a Pitbull Terrier, Rottweiler, Japanese Akita, Japanese Toza, Dogo Argentino or Brazilian Fila; or any dog or other pet which at any time causes a nuisance or annoyance to residents of the Development, or in the opinion of the Developer detracts from the Development.
- 1.26 Ensure that the Lot, including all fences and other improvements thereon, is kept in a well maintained and attractive condition and shall not permit the accumulation thereon of unsightly rubbish or materials or in any other way permit the appearance of a property to detract from the general standards established for the Development. Without limiting the generality of the foregoing, the Covenantor shall arrange for regular cutting of grass areas, and pruning of trees, removal of weeds and rubbish and the repair and maintenance of all buildings, driveways, paths and landscaping features upon the Lot.
- 1.27 Not use the Lot, or permit the Lot to be used, for any purpose other than a purpose permitted or consented to under current local body planning requirements.
- 1.28 Not undertake any house alterations or landscaping (including fencing) on the Lot otherwise than in accordance with the then current Design Guide (as applicable) and as prescribed by, or consented to under, current local planning requirements.

- 1.29 Not park any vehicle in or on the Development other than within the spaces provided for that purpose. For the avoidance of doubt this rule shall not affect the right to park on legal roads which shall be governed by any relevant legislation and bylaws.
2. Any costs of enforcing compliance and/or remediation of any damage caused by the non-compliance with clause 1 shall be a debt that becomes immediately due and owing by the Covenantor to the Developer as liquidated damages.
3. Should any proposed or completed building, Dwelling, Accessory Structure, garage, structure, fence or landscaping not comply with the Red Barn Estate Design Guidelines, the Developer may, in its sole discretion, give written approval where in the sole opinion of the Developer such approval would not detract from the overall quality and appearance of the Development. Such approval may be given at any time and is subject to such terms as the Developer in its sole discretion thinks fit.
4. The Covenantor shall ensure that:
  - 4.1 the construction of any Dwelling (or other permitted building) on the Lot is completed and a Code Compliance Certificate has issued for the same, within eighteen (18) months of commencement of the works; and
  - 4.2 all landscaping on the Lot has been completed by such date that the Dwelling is occupied but in any event within six (6) months of completion of the construction of the Dwelling and or occupation of the Dwelling, whichever is the earlier. If there is any dispute as to whether or not the landscaping has been completed, it shall be at the Developer's sole discretion (acting reasonably) as to whether or not the landscaping has been completed.
5. The registered owners for the time being of Lots 7 and 8, which may have entry features such as (by way of example but without limitation) decorative signs, walls and post & rail fencing relating to the Development (each being an "Entry Feature"), shall in respect of any such Entry Feature situated on their respective Lot:
  - 5.1 ensure that at all times the Entry Feature is maintained and will at such owners sole cost, when required, replace and/or repair any part of the Entry Feature that requires the same so that it appears as it did when erected, subject to fair wear and tear;
  - 5.2 not allow any planting which the owner controls to block the view of the Entry Feature from any adjoining public road or footpath; and
  - 5.3 not change the colour or design of the Entry Feature.
6. The Covenantor shall not subdivide the Lot. Subdivide shall have the meaning "subdivide land" as set out in s218 of the Resource Management Act 1991. Without limiting this restriction, in the event that the Lot is further subdivided, any reference in this instrument to "Lot" shall include any new Record of Title resulting from such subdivision, and the covenants contained in this instrument shall apply to the registered owner as Covenantor in respect of any such Record of Title.
7. The Developer shall not be liable to pay for or contribute towards the expense of construction or maintenance of any fence between the Lot and any contiguous land owned by the Developer but this provision shall not endure for the benefit of any subsequent purchaser or proprietors of the contiguous land.
8. The Covenantor shall not oppose, frustrate, object to, nor take any action or encourage or support others to oppose, frustrate, object or take any action that might, in any way, prevent or hinder the Developer and/or the Local Authority from progressing or

completing subdivisions or any other aspect of the Development, or any other development being carried on by the Vendor or any related person or entity of the Developer, whether residential, commercial or otherwise. For the avoidance of doubt, this covenant extends to (without limitation) development planning, zone changes, resource consents, consent authority or Environment Court applications, building consent matters, any other consents, earthworks, developments and general works. The Covenantor will if called upon to do so by the Developer sign an affected party covenant and/or provide its written consent pursuant to the Resource Management Act 1991 to any resource consent or land use consent application in relation to the Development within ten (10) working days of being so requested to do by the Developer and provide a reasonable degree of co-operation and support to the Developer as it progresses the Development. The benefit of this covenant applies to the Developer and any properties now or hereafter owned by the Developer.

9. The Developer reserves the right at any time to waive or vary any of these covenants and if called upon to do so, the Covenantor will sign any documentation required to give effect to this waiver and/or variation.
10. The Developer shall, in respect of any other Lots and subsequent stages of the Development, have in its absolute discretion the right to impose alternative or additional restrictions or stipulations in any restrictive covenant relating to Lots in subsequent stages or to omit or vary in its absolute discretion any restrictive covenant.
11. If there be any breach or non-observance of any of these covenants:
  - 11.1 There shall be no obligation on the Developer to take any steps to enforce these covenants;
  - 11.2 If there is more than one Covenantor for any Lot the liability of the Covenantor for the Lot shall be joint and several; and
  - 11.3 The Covenantor in breach shall rectify any such breach including, as applicable, replacement of any building materials used in breach or non-observance of these covenants.
12. 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.
13. In the event of any dispute which cannot be resolved by agreement between the Covenantor and the Covenantee and/or the Developer as to any matter relating to these 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 single Arbitrator appointed for that purpose by the nominee of the Canterbury Westland Branch of the New Zealand Law Society and/or his/her nominee and the decision of that Arbitrator shall be final and binding on the parties.
14. The covenants contained in clauses 1 to 6 (inclusive) of this instrument shall cease to have effect after 31 December 2040, whereas all other covenants contained in this instrument shall run with the Lot for all time unless otherwise provided by statute.