

**Covenant  
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## Terms and Conditions of Covenant

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this Covenant:

- (a) **"Authority"** means any government or governmental, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency, public utility provider, competent authority or entity.
- (b) **"Benefited Land"** means the land described next to the heading "LAND RECEIVING THE BENEFIT" on the Form 59 (Creation of Covenant) on the front page of this Covenant.
- (c) **"Building"** includes (without limitation) any of the following whether a fixture or not:
  - (i) a house, garage, carport or garden shed;
  - (ii) a structure or outbuilding;
  - (iii) a shadecover or pergola;
  - (iv) a fence or retaining wall;
  - (v) a swimming pool, spa, tennis court or other outdoor recreational facility;
  - (vi) a satellite dish or antenna;
  - (vii) any poles to support floodlights or spotlights;
  - (viii) all pathways and hard standing areas, including a driveway;
  - (ix) earthworks involving a cut or fill in excess of 100mm in depth; and
  - (x) repairs (including painting or changing colours), improvements, alterations or additions.
- (d) **"Building Certifier"** means a person, firm or corporation registered under section 24 of the *Building Act 1993* (NT) in the category of building practitioners known as building certifiers.
- (e) **"Construct"** means to construct, erect, install, place on, alter, add to or remove any Building on the Property and includes excavating and all works undertaken in establishing the Landscaping on the Property.
- (f) **"Covenant"** means this document including all schedules, annexures and attachments to this document and imputed by reference.
- (g) **"Covenantee"** means the registered proprietor or registered proprietors of the Benefited Land from time to time.
- (h) **"Covenantee's Agents"** means the Covenantee's consultants, contractors, employees, builders, tenants, invitees or any of them.

- (i) **"Covenantor"** means the registered proprietor or registered proprietors of the Property from time to time.
- (j) **"Covenantor's Agents"** means the Covenantor's consultants, contractors, employees, builders, tenants, invitees or any of them.
- (k) **"Design Guidelines"** means the 'Kilgariff Estate Design Guidelines' at Annexure 1 and as may be amended from time to time.
- (l) **"Developer"** means the Land Development Corporation (ABN 11 768 147 358) while the Land Development Corporation remains a Covenantee.
- (m) **"Development Consent Authority"** means the Northern Territory Development Consent Authority established under the *Planning Act 1999* (NT) (and includes any organisations which may in the future, carry out the relevant responsibilities of the Development Consent Authority).
- (n) **"Land"** means that part of NT Portion 7652 as shown on the plan at Annexure 3.
- (o) **"Landscaping"** means the physical elements of landscaping including all deep planting (and for the purpose of reaching Practical Completion includes shallow planting), ancillary and outdoor structures, screen walls, retaining walls, driveways and pavements and changes of levels to integrated drainage control elements including flood retention and designated soaks either on or over the Property.
- (p) **"Law"** includes any requirement of any statute, regulation, proclamation, code, standard, ordinance or by-law, present or future, whether Territory, State, Federal or otherwise.
- (q) **"Natural Ground Level"** means the level which is to be regarded as natural ground level after engineering works associated with the subdivision of the Land for the Property has been completed.
- (r) **"NT Planning Scheme"** means the Northern Territory Planning Scheme as defined in the *Planning Act 1999* (NT).
- (s) **"Permit to Occupy"** has the same meaning as an "occupancy permit" as defined under section 4 of the *Building Act 1993* (NT).
- (t) **"Practical Completion"** means Construction of the Building and Landscaping on the Property to a stage where (except for any minor defects or omissions):
- (i) the Building is complete and can be lawfully used, and all Permits to Occupy have been issued for the Building; and
  - (ii) the Landscaping has been completed.
- (u) **"Property"** means each lot or portion of land described next to the heading "LAND BURDENED" on the Form 59 (Creation of Covenant) on the front page of this Covenant and where the context permits, means all of those lots or portions of land collectively.
- (v) **"Residential Premises"** means premises intended and used for residential occupation.

- (w) **"Street"** means any road (under the *Control of Roads Act 1953* (NT)) other than a footway, alley or right of way.
- (x) **"Substantially Commenced"** means the completion of piling and footings for the Building on the Property.

## 1.2 Interpretation

In this Covenant:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) all grammatical derivations of defined terms have a corresponding meaning;
- (c) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (d) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (e) a reference to a party includes that party's executors and administrators;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a reference to a document (including this Covenant) is to that document as varied, novated, ratified or replaced from time to time;
- (h) successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;
- (i) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (k) **"includes"** in any form is not a word of limitation.

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## 2. Covenantor separately covenants

- (a) The Covenantor covenants and agrees, as a separate covenant with each and every Covenantee and each and every person claiming under or through the Covenantee, to perform and observe the obligations and stipulations specified in this Covenant, to the intent that:
  - (i) the burden of this Covenant runs with and binds the Property; and
  - (ii) the benefit of this Covenant attaches to and runs with the Benefited Land.

- (b) From the date that a person ceases to be the Covenantor of the Property, that person is released from all future obligations under this Covenant but is not released and remains liable for any breach or default of this Covenant that occurred before that date.

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### **3. Residential Premises**

- (a) The Covenantor acknowledges and agrees that notwithstanding any permitted uses of the Property as set out in the NT Planning Scheme (whether or not consent is required by the relevant Authority) the Covenantor must not use the Property for any purpose other than for a Residential Premises without first obtaining the prior written consent of the Developer (such consent will be at the sole discretion of the Developer).
- (b) Subject to clause 3(a) the Covenantor must not Construct, permit to be Constructed or allow to remain, any Building on the Property:
  - (i) which is for any purpose other than a Residential Premises; and
  - (ii) which does not comply with the Design Guidelines (as published at the time approval for Construction is sought) or the terms of this Covenant.

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### **4. Construction on the Property**

The Covenantor must not Construct or permit to be Constructed or remain on the Property any Building or Landscaping other than a Building or Landscaping that is Constructed in accordance with:

- (a) the Design Guidelines (as published at the time approval for Construction is obtained);
- (b) the terms of this Covenant;
- (c) the approval of a Building Certifier under clause 6; and
- (d) the requirements of any relevant Authorities.

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### **5. Developer's Approval**

#### **5.1 Application of clause 5**

This clause 5 applies to a Covenantor who purchases the Property as vacant land and continues to bind the Covenantor until the Building and Landscaping has been Constructed on the Property in accordance with this clause 5 and Practical Completion has been reached.

#### **5.2 Initial approval to build on the Property**

- (a) The Covenantor must not Construct, commence to Construct, or make application under the *Building Act 1993* (NT) and/or *Planning Act 1999* (NT) to Construct any Building or Landscaping in, on or over the Property without first applying for, and obtaining, the prior written approval of the Developer to the Construction of such Building and Landscaping.

- (b) In seeking approval from the Developer under clause 5.2(a), the Covenantor must, within 6 months from the date the Covenantor becomes the registered proprietor of the Property, provide such details, plans and specifications as are necessary for the Developer to consider the application (and such other information as may be required by the Design Guidelines as published at that time), including without limitation:
- (i) plans of any Building detailing all elevations and dimensions of any Building, including the total floor area (both open and fully enclosed) of all floor levels;
  - (ii) details of the external appearance of the Building as is necessary to indicate the architectural style;
  - (iii) plans indicating the location of all windows and doors forming part of the Building;
  - (iv) plans indicating the relative position of any such Building in relation to all boundaries of the Property;
  - (v) the position and dimensions of all car parking facilities;
  - (vi) the position and dimensions of all fences and driveways to be provided or Constructed on the Property;
  - (vii) details of the colours and materials which will be used in the Construction of the Building;
  - (viii) the proposed use of the Building and parts of the Building;
  - (ix) details and plans of all site works to be carried out (including fencing, excavation, filling or Construction of retaining walls);
  - (x) plans and details of the Landscaping including a species list and details of existing trees on the Property;
  - (xi) plans and details of how stormwater is to be handled; and
  - (xii) as are otherwise referred to in, or required by, the Design Guidelines (as published at that time).
- (c) When considering an application by the Covenantor under this clause 5.2, the Developer will use its best endeavours to:
- (i) respond to the Covenantor within a reasonable time;
  - (ii) not unreasonably refuse or withhold its approval; and
  - (iii) not impose unreasonable conditions in relation to its approval.
- (d) A failure by the Developer to approve, or the imposition of conditions by the Developer in respect of its approval to, the application will not be unreasonable if the Building or Landscaping or any materials to be used or any other feature or aspect of the Building or Landscaping is considered by the Developer to be inconsistent with:
- (i) the Design Guidelines;

- (ii) the development, appearance or amenity of (or any part of) the Kilgariff Estate Development; or
  - (iii) this Covenant.
- (e) Where the Developer approves the Covenantor's application, the Developer will provide such approval to the Covenantor in writing which will include any conditions of such approval.
- (f) No variation to any Building or Landscaping approved by the Developer under this clause will be permitted other than in accordance with the terms of any subsequent written approval of the Developer in accordance with this clause which has been provided prior to commencement of such variation.

### 5.3 Commencement and Completion of Construction

- (a) The Covenantor must:
  - (i) have Substantially Commenced the Construction of the Building on the Property within 12 months from the date the Covenantor becomes the registered proprietor of the Property ("**the Date for Substantial Commencement**"); and
  - (ii) reach Practical Completion within 12 months from the date that the Covenantor Substantially Commenced Construction of the Building ("**Date for Practical Completion**"),
- (b) subject to any extension to these dates that the Developer may agree to in writing upon request by the Covenantor (such agreement will be at the sole discretion of the Developer). Time is of the essence in this clause.
- (c) The Covenantor must notify the Developer in writing as soon as the Building and Landscaping has reached Practical Completion and must provide to the Developer a copy of the Permit to Occupy issued in respect to any Building on the Property.
- (d) The Covenantor must, at any reasonable time and upon reasonable notice, permit the Developer to enter and inspect the Property and any Building and Landscaping that is Constructed on the Property to ensure compliance with the Developers approval under clause 5.
- (e) The Covenantor must not reside or permit any person to reside in a Building on the Property without first allowing the Developer to inspect the Property and the Developer confirming compliance with the Developers approval under clause 5.3(c).

### 5.4 Sale of the Property

Subject to the Developer's approval, the Covenantor must not transfer, sell, lease or otherwise dispose of its interest in the Property until the Covenantor satisfies all of its obligations under this clause 5.

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## 6. Approval by Building Certifier

### 6.1 Application of Clause 6

This clause 6 applies where a Covenantor purchases the Property once Practical Completion has been reached either by it or a predecessor in title to the Property, any further Construction or improvements to the Property including renovations or extensions must be carried out in accordance with this Covenant and approved by a Building Certifier.

### 6.2 Approval

- (a) The Covenantor must not Construct, commence to Construct, or make application under the *Building Act 1993* (NT) and/or *Planning Act 1999* (NT) to Construct any Building or Landscaping in, on or over the Property without first obtaining the prior written approval of a Building Certifier that such Construction will comply with this Covenant.
- (b) Any approval received from a Building Certifier under this clause 6 will not exclude the Covenantor from liability under this Covenant or be a waiver of any default or breach of this Covenant where such approval has been given incorrectly.

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## 7. Covenantor's Covenants

### 7.1 General Covenants

The Covenantor must not:

- (a) allow any Building or any part of the Property to fall into disrepair or become dilapidated or unaesthetically pleasing;
- (b) allow any part of the Property or any footpath, sidewalk or verge bordering the front of the Property to become overgrown or untidy;
- (c) allow the accumulation or dumping of any rubbish, debris, unsightly material or refuse on the Property or any footpath, sidewalk or verge bordering the front of the Property;
- (d) use or allow any land in the vicinity of the Property to be used for any Construction on the Property (including without limitation, storage of materials for disposal or waste);
- (e) allow the Property to be in any condition other than in good order and repair and a clean and tidy condition;
- (f) allow any painted part of the Building to fall into disrepair or become unaesthetically pleasing;
- (g) allow any part of the Building on the Property to be painted other than in a proper and workmanlike manner and with good quality paint;
- (h) use any colours for roofing other than allowed in the Design Guidelines;
- (i) use any colours and materials for fencing other than those allowed under the Design Guidelines;

- (j) conduct any activity or perform any action which causes or is likely to cause pollution, or leave refuse, litter or waste in or on the Property or the Benefited Land other than in bins for the purpose of disposal of such material;
- (k) allow any outdoor structures such as and including any clothesline or shed to be located on the Property where they would be visible from the Street;
- (l) do anything on the Property which is a nuisance to the Benefited Land;
- (m) erect or display a sign, billboard or other form of advertisement of any kind on the Property without the written approval of the Covenantee;
- (n) keep any rubbish bins or similar containers on the Property or land adjoining the Property where visible from any adjoining Street unless properly screened;
- (o) allow the Covenantor's Agents to do anything on the Property other than in accordance with this Covenant; or
- (p) allow storm water to concentrate on the Property or run off into adjacent properties.

## **7.2 Easements**

The Covenantor must not Construct any Building over an easement on the Property unless:

- (a) permitted by the easement; or
- (b) the consent of all parties whose land enjoys the benefit of the easement is obtained.

## **7.3 Setback Restrictions**

- (a) Subject to receiving approval from the Developer and any relevant Authority (including the Development Consent Authority), the Covenantor must not Construct any Building or Landscaping, or permit any part of a Building (except for any roof overhang) or Landscaping to be constructed or remain, on any part of the Property other than within the boundaries specified on the setback requirements in the Design Guidelines and any applicable requirements in the NT Planning Scheme. These setback requirements specify the required shortest distance from a particular boundary or Building to another boundary or Building (as the context requires).

## **7.4 Subdivision**

- (a) Where the Property is zoned SD, it is prohibited, and the Covenantor shall not carry out or permit any of the following:
  - (i) the subdivision of the Property;
  - (ii) the Construction, use or existence of more than one dwelling on the Property;

- (iii) the division of the Property or any Building into parts for, or available for, separate occupation; and
  - (iv) the provision of more than one electricity and water service to the Property.
- (b) Where the Property is zoned MD:
- (i) subdivision for the purpose of creation of unit titles is permitted if allowed by Law; and
  - (ii) the Covenantor is prohibited from carrying out or permitting any of the following:
    - 1) any other subdivision of the Property other than that specified in clause 7.4(b)(i);
    - 2) the Construction use or existence of more than one free standing dwelling on the Property; and
    - 3) any other division of the Property or any Building into parts for, or available for, separate occupation.

## **7.5 Temporary Accommodation**

The Covenantor must not:

- (a) reside on or allow any person to reside on the Property other than in a Building that is Constructed in accordance with this Covenant; or
- (b) temporarily or permanently use, or permit to be used, any shed, caravan, tent, mobile home or demountable structure on the Property as living accommodation whether or not the same would be permitted under Law.

## **7.6 Demountable Buildings**

The Covenantor must not at any time allow any demountable building, cargo or other container to be used or placed on or about the Property for any purpose except for the purpose of Constructing the approved Building.

## **7.7 Parking of Vehicles**

The Covenantor must not permit vehicles, trailers, caravans, boats, watercrafts or items of mobile plant and equipment to be parked or stored:

- (a) on the Property other than in designated car parking areas including carports or garages or otherwise in a location that are not visible from the Street at the front of the Property;
- (b) for any period greater than 7 days on the Street or Street verge adjacent to or near the Property; or
- (c) unlawfully on the Property or surrounding areas.

## **7.8 Driveway**

Without limiting clause 4, the Covenantor acknowledges that:

- (a) on single dwelling (SD) blocks, a driveway accessing the Property must be Constructed within the 3.6 metre 'driveway zone' shown on the drawing described as 'Driveway Plan' as available from the Developer and as may be amended from time to time; and
- (b) on multiple dwelling (MD) blocks, the location and width of driveways remain subject to approval by the Development Consent Authority. As such, final location and width of driveways on those lots may differ from those indicated on the drawing described as 'Driveway Plan' as available from the Developer and as may be amended from time to time.

## **7.9 Satellite Dishes and TV Antennae**

The Covenantor must not install:

- (a) any TV Antennae on the Property which is visible from the Street;
- (b) satellite dishes or other ancillary equipment on the Property other than in a position where such equipment is not visible from the Street.

## **7.10 Air conditioning Units and Ancillary Equipment**

- (a) The Covenantor must not install or place any roof or window mounted air conditioning compressor units on the Property.
- (b) Subject to clause 7.10(a) the Covenantor must not install air conditioning units or ancillary equipment on the Property unless such equipment:
  - (i) is not visible from the Street; and
  - (ii) external units placed higher than above 1200mm above Natural Ground Level are wall mounted and appropriately screened.

## **7.11 Comply with Laws**

The Covenantor must not do anything which will or may contravene any applicable Laws when:

- (a) fulfilling the terms of this Covenant;
- (b) occupying the Property; or
- (c) Constructing a Building or Landscaping on the Property.

## **7.12 Stormwater Infrastructure**

- (a) This clause 7.12 applies if the Property has a connection point for the disposal of storm water to the Council stormwater infrastructure (Connection Point) situated on that part of the Property as delineated by x on the plans attached at Attachment 2 as the infrastructure is essential to the disposal of stormwater for the affected properties.
- (b) Despite anything to the contrary in this Covenant the Covenantor must not:

- (i) remove, block, place any Landscaping or structure above the Connection Point, or otherwise interfere with the Connection Point; and/or
- (ii) undertake any works on the Property which may impact upon the Connection Point in any manner whatsoever.

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**8. Waiver, Release or Modify**

- (a) For the purposes of enforcing, varying or waiving the timeframes for Construction contained in this Covenant and for providing consent in relation to a permitted use of the Property pursuant to clause 3(a), the Covenantor hereby appoints the Developer as its sole attorney with the specific power to enforce, vary or waive the timeframes contained in this Covenant and to provide consent to a permitted use of the Property and the Covenantor is released from the obligations in this Covenant to the extent of that waiver and consent.
- (b) If the Covenantor obtained a waiver from compliance with some or all of the obligations (save and except for the time frames and the permitted use of the Property) in this Covenant or the Design Guidelines from the Developer at the time of Construction of any Building on the Property, the Covenantor is released from the obligations in this Covenant or the Design Guidelines to the extent of that waiver.
- (c) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this Covenant by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this Covenant.
- (d) A waiver or consent given by a party under this Covenant is only effective and binding on that party if it is given or confirmed in writing by that party.
- (e) No waiver of a breach of a term of this Covenant operates as a waiver of another breach of that term or of a breach of any other term of this Covenant.

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**9. Breach or Default**

**9.1 Notice**

- (a) If the Covenantor (including any predecessor in title) breaches or defaults or permits a breach or default of any of the terms of this Covenant, any Covenantee may without prejudice to any other rights and remedies available at Law:
  - (i) give 28 days notice in writing to the Covenantor to remedy such breach or default and, where the Covenantor fails to remedy such breach or default within 28 days, then, the Covenantee may (but is not obliged to do so) do all things and pay all monies necessary or expedient in the opinion of the Covenantee to make good (to the extent desired by the Covenantee) or attempt to make good (to the extent desired by Covenantee) such breach or default;

- (ii) seek and obtain immediate injunctive relief from such breach, default or non-compliance; and
  - (iii) sue the Covenantor for damages, as a result of such breach or default.
- (b) A right under clause 9.1(a)(i) includes the right to have removed all or part of any Building or Landscaping (including shallow planting) that has been Constructed on the Property.

## **9.2 Moneys payable by Covenantor**

All moneys paid or liabilities incurred by a Covenantee under clause 9.1(a) are payable by the Covenantor to the Covenantee as a debt due on demand.

## **9.3 Licence to Enter Property**

The Covenantor irrevocably authorises and licences the Covenantee, with or without the Covenantee's Agents, to enter the Property, at any time for the purpose of exercising its rights under clause 9.1(a)(i).

## **9.4 Notice in respect of more than one breach**

A notice can be given in respect of more than one breach or default or a breach or default of more than one covenant, and a failure to remedy all such breaches or defaults or to remedy all such covenants, shall be a failure to remedy to which clause 9.1(a)(i) applies.

## **9.5 Covenant may be pleaded by way of estoppel**

This Covenant may be pleaded and produced by way of estoppel and defence to any action, application or demand by the Covenantor for damages, costs or other relief or any action or prosecution by any person, (including for trespass), in respect of the exercise by the Covenantee of its rights under clause 9.1(a)(i).

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## **10. General**

### **10.1 Severability**

If it is held by a Court of competent jurisdiction that:

- (a) any part of this Covenant is void, voidable, illegal or unenforceable; or
- (b) this Covenant would be void, voidable, illegal or unenforceable unless any part of this Covenant was severed from this Covenant,

that part will be severed from and shall not affect the continued operation of the rest of this Covenant.

### **10.2 Governing Law and Jurisdiction**

- (a) This Covenant is to be governed by and construed in accordance with the laws of the Northern Territory of Australia.
- (b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Northern Territory of Australia and waives any immunity or any objection it may have to any action in those courts

and to a claim that any action has been brought in an inconvenient forum or to those courts not having jurisdiction.

**10.3 Developer to update title details upon subdivision of Land**

- (a) The Covenantor acknowledges that the Land is subject to subdivision by the Developer.
- (b) Upon subdivision, the Developer may update the definition of Land in clause 1.1 with the new title details.

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**Annexure 1 – Design Guidelines**

[to be inserted in final version]

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**Annexure 2 – Stormwater Infrastructure Plans**

[to be inserted in final version]

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**Annexure 3 – Plan**

[to be inserted in final version]

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