

## **FURTHER TERMS OF SALE**

*Flat Bush School Road*

### **19.0 BUILDING COVENANT**

19.1 The Purchaser for himself and his successors in title hereby covenants with and for the benefit of the vendor its successors in title and the registered proprietors for the time being of all the Allotments ("lots") described in the First Schedule hereto ("the lots") for the purposes of creating a building scheme for the benefit of all the lots to take effect from the date of signing of this agreement and continuing thereafter until the later of first day of January 2050 or the date the dwelling is removed, demolished or destroyed after which date this covenant shall be of no further effect:

- (a) On Lots 1-30 to complete the construction of a dwelling including fencing, driveway and landscaping as soon as possible but in any event no later than four years after the date of issue of the Section 224(c) Certificate for the lots described in the First Schedule.
- (b) On lots 1-30 (inclusive) not to erect or permit to be erected or placed on each lot any dwelling other than a single new dwelling which has a minimum floor area of 180m<sup>2</sup> (one hundred and eighty square metres) and which complies with all the provisions of this covenant.
- (c) To construct any dwelling with 80% of the non-glazed exterior cladding of the dwelling consisting of any of the following materials; kiln fired brick or concrete brick or plastered textured finish, stone, timber weatherboards, or pre-finished metal weatherboard bonded to solid timber boards (i.e. Lockwood type construction). Any dwelling with an exterior finish in the form of flat cladding, concrete or polystyrene block, poured concrete or similar shall have the surface textured in such a manner as to fully cover the base material. Factory prefinished weatherboards made of other materials (ie James Hardie Linea weatherboards) may be used but only with the prior written approval of the vendor as to finished colour, texture, profile and type of the weatherboards. Other buildings e.g. garden sheds, pool sheds must not be greater than 2.0m (two metres) in height or exceed 10.0m<sup>2</sup> (ten square metres) in floor area and the building materials must comply with this clause. All downpipes, conduits, water pipes or similar attached to the exterior walls of the dwelling are to be as closely colour matched as possible to the exterior cladding of the dwelling except copper downpipe which can be left in their natural colour.
- (d) Not to paint or use materials on any exterior of the dwelling with any garish, bright or excessively contrasting colours such as orange, blue, green or red or variations thereof.
- (e) To use only such roofing materials that have a tile profile, or incorporate wood, fibre cement, glass fibre, bitumen or slate products by way of roofing shingles for all roofing other than flat roofs (refer to paragraph (f) below). Factory pre-finished metal roofing material (ie Colorsteel type or similar) may be used but only with the prior written approval of the Vendor as to colour and profile of the roofing material. Longrun roofing material which is described as "Corrugate" or similar as shown on the website [www.dimond.co.nz](http://www.dimond.co.nz) will not be permitted to be used on any dwelling.
- (f) To construct any dwelling on lots 1-30 (inclusive) with:
  - (i) more than one hip or one gable in the roofline, and
  - (ii) to construct such dwelling to a shape other than a simple square or rectangle excluding breaks for back and front door entries. Flat roofed dwellings are acceptable provided they meet all covenants except clause 19.1 (e) and the roof has more than one level.
- (g) To complete any dwelling within 12 months of laying down the foundations for such dwelling and within 15 months of laying down the foundations to complete all ancillary work such as fencing and landscaping and further will within that 15 months construct in a proper and tradesmanlike manner a driveway or vehicle access in a permanent continuous surfacing of concrete, concrete block, brick paving, tar sealing or similar.
- (h) Not to place on the lot any form of temporary accommodation (e.g. caravan etc) other than a builder's shed for the purpose of the builder's usual day to day use. Such shed is to be removed upon completion of the dwelling and in all respects shall not remain on the lot for any period greater than one year from the date of

issue of the building consent for the dwelling by the Council or from the date the shed is first placed on the lot whichever is the earlier date.

- (i) To construct a new letterbox at the time the dwelling is erected, and the design, colour and cladding of which shall be consistent with those of the dwelling or as approved by the Vendor.
- (j) To minimise any damage to footpaths and berms by nominating the position of any future driveways prior to the commencement of the construction to ensure that vehicular movement on the lot is confined to that one particular driveway during the construction period, such driveway to be no more than 4 metres in width. The Purchaser shall be responsible for the repair of any damage caused by the Purchaser, or his employees or contractors, to the footpaths and berms at the Purchaser's expense.
- (k) All clotheslines are to be located away from the road frontage and obscured from direct sight of the road, and no laundry shall be left to dry on any part of the property that is visible from the road.
- (l) To keep and maintain the exterior appearance of any dwelling on the land to a high standard of care and maintenance and in particular must: regularly clean and paint the exterior of any improvements as and when required to ensure the continued high standards of visual amenity within the Subdivision, and in particular without limitation shall promptly clean or remediate any graffiti.
- (m) To construct any fence in kiln fired brick, concrete, stucco textured finished, stone, brush timber, wrought steel or aluminum. Pre-painted metal fencing i.e. "Colourscreen" may be used only with the prior written approval of the Vendor.
- (n) To construct any fencing between the road frontage(s) and the dwelling (including the area between the road frontage and the front line of the dwelling extended to the side boundary(s) of the lot) that does not exceed 1.0m (one metre) in height and is visually permeable, and not to plant or allow to grow any continuous hedging on the road boundary or within 1.0m (one metre) of the road boundary that exceeds 1.2m (one point two metres) in height at any time. A screen wall or fence not exceeding 1.8m (one point eight metres) in height may be constructed to provide a private courtyard in part of this area providing the design, colour and materials used are consistent with the dwelling and are approved by the Vendor.
- (o) Not to permit the dwelling to be occupied or used as a residence unless the dwelling on the property has been substantially completed including driveways and landscaping in accordance with this agreement and the dwelling meets the requirements of the local authority.
- (p) Not to use the lot or permit the same to be used for any trading or commercial purposes without first obtaining the written consent of the registered proprietors of all adjoining lots which are contained within the Vendor's Ormiston Park Stage 3 Subdivision (the lots referred to in the first Schedule) other than as a show home or an office within the dwelling for the use of the residents of the property.
- (q) Not to erect any Satellite Dish in the Front Yard of the property.
- (r) A Satellite Dish which exceeds 750mm in diameter may be erected on the property providing:
  - (i) The Satellite Dish is not visible from the road adjacent to the frontage of the property and,
  - (ii) The owner has first obtained the written consent of the registered proprietors of all the adjoining lots which are contained within the Vendor's "Ormiston Park" Stage 3 Subdivision (the lots referred to in The First Schedule), and
- (s) Not to erect any solar panels or pool heating equipment on the roof of the dwelling unless such solar panels and/or pool heating is integrated with the roof design and colour and is not highly visible from the adjacent road.
- (t) Not to permit any berm on the road frontage of the property, or any grassed areas within the property, to remain in an untidy condition and not to allow grass, to grow to a height which exceeds 150mm.
- (u) Not to park or allow any person residing in or in occupation of the property to park any caravan, boat or trailer on the road to which that property has frontage (including parking bays) nor on any part of the property other than in the rear yard that is screened from public view or within the dwelling nor permit parking of trucks,

vans or large commercial vehicles on or within the road or property other than for delivery purposes.

- (v) Not to subdivide the Lot further apart from minor boundary adjustments.
  - (w) Ensure that any trees or vegetation planted will not exceed a height greater than 5.0m (five metres) at any time, and must be maintained to a maximum height of 5.0m (five metres).
  - (x) Not to use any part of the property, or permit the same to be used for a brothel, massage parlour or boarding house.
  - (y) Ensure that refuse and garbage is properly disposed of, is not left uncollected on berms or public areas, and is properly stored away from sight pending removal.
  - (z) Not bring onto, raise, breed or keep any animal, livestock or poultry on the property without the prior approval of the Relevant Authority, other than a domestic cat or dog registered with the Relevant Authority.
- 19.2 (a) If a dispute arises in connection with these Covenants, the parties will endeavour to settle the dispute by mediation before resorting to arbitration. Either party may initiate mediation by giving written notice to the other party. The mediator will be agreed on by the parties but if the parties cannot agree on a mediator within 7 working days after the mediation has been initiated then the mediator will be appointed by the President for the time being of the Auckland Branch of the New Zealand Law Society whose decision as to the appointment of the mediator will be final and binding on the parties.
- (a) If the dispute has not been settled within 14 working days after the appointment of the mediator, or within any longer period agreed on in writing by the parties, then the parties agree that resolution of the dispute will be determined by arbitration by giving a written notice to the other stating the subject matter and details of the dispute and the party's requirement to have the dispute determined by arbitration.
- (b) The arbitration will be conducted by a single arbitrator. If the parties cannot agree upon a single arbitrator within 14 working days of a party receiving a notice under this clause, then the arbitrator will be appointed by the President for the time being of the Auckland branch of the New Zealand Law Society and his/her decision will be final and binding on the parties as to the appointment of the arbitrator.
- (c) The parties agree that the arbitrator's award will be final and binding on them.
- 19.3 If any part of this covenant is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this instrument.
- 19.4 AND IF there should be any breach or non-observance of any of the foregoing covenants and without prejudice to any other liability which the purchaser may have to any person having the benefit of this covenant the purchaser will upon written demand being made by the vendor or any of the registered proprietors of the lots in the First Schedule:
- (a) Pay to the person making such demands as liquidated damages the sum of \$350.00 (Three Hundred and Fifty Dollars) per day for every day that such breach or non-observance continues after the date upon which written demand has been made;
  - (b) Remove or cause to be removed from the lot any second hand or used residential dwelling, garage, carport, building or other structure erected or placed on the lot in breach or non-observance of the foregoing covenants;
  - (c) Replace any building materials used or permitted to be used in breach or non-observance of the foregoing covenants.
- 19.5 There shall be inserted in the Memorandum of Transfer to the purchaser a Restrictive Covenant giving effect to the foregoing covenants in such form as the vendor considers appropriate and to run with the land PROVIDED HOWEVER that the vendors shall neither be required nor liable to enforce nor answerable to the purchaser for the breach of any covenants binding any of the lots and the vendor shall have in its absolute discretion the right to impose additional restrictions and stipulations in any restrictive covenant inserted in the Memorandum of Transfer in respect of any of the other lots described in the First Schedule hereto.

#### FIRST SCHEDULE

Lots 1-30 inclusive being a subdivision of Lot 52, DP 503757