

Covenant Instrument to note land covenant

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

Covenantor

Vincero Holdings Limited

Covantee

Vincero Holdings Limited

Grant of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covantee** (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	DP 474223	Lots 1-15 DP 474223 (being part of the land contained in Computer Registers 650167 to 650181)	Lots 1-15 DP 474223 (being part of the land contained in Computer Registers 650167 to 650181)
		Lot 17 DP 474223 (being part of the land contained in Computer Registers 650167 to 650181)	Lots 1-15 DP 474223 (being part of the land contained in Computer Registers 650167 to 650181)
		Lots 1-15 DP 474223 (being part of the land contained in Computer Registers 650167 to 650181)	Lot 17 DP 474223 (being part of the land contained in Computer Registers 650167 to 650181)

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

Delete phrases in [] and insert memorandum number as required.

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].~~

[The attached Annexure Schedule].

1.0 Definitions

1.1 In this covenant, unless the context otherwise requires:

Ancillary Building means any smaller, secondary building constructed on the Lot to be used in conjunction with the dwelling including but not limited to a garden shed, garage, or carport.

Boardinghouse means a dwelling in which board or lodging is provided for reward or payment for three or more boarders or lodgers.

Brothel means any premises kept or habitually used for the purposes of prostitution.

Common Areas means all the land contained in Lot 17 Deposited Plan 474223.

Consent Notice means the consent notice registered on the Certificates of Title for the Lots on the same Deposited Plan 474223.

Design Review Panel means those persons making up the approval body acting on behalf of Vincero Holdings Limited, with the function of approving dwelling plans and specifications for all dwellings including ancillary buildings and landscaping and also with the function of monitoring compliance with the Ohau Sands Design Guide.

Encumbrance or Memorandum of Encumbrance shall mean the Memorandum of Encumbrance to be entered into by the Grantee or by its successors in title to secure to the Grantor and to the Residents Association the payment of the contributions payable by the Grantee under the terms of this Land Covenant or the constitution of the Residents Association.

Land means lots 1 – 15 (each with a 1/15th share in Lot 17) on Deposited Plan 474223 (inclusive) being all the land in the Certificates of Title 650167 to 650181 (inclusive) Wellington Registry.

Land Covenant means this instrument and all the terms and conditions contained herein.

Local Authority means the Horowhenua District Council or the local authority for the time being having jurisdiction over the Land and includes any other local or territorial authority that has jurisdiction over the Land and any employee and agent of a Local Authority.

Lot means any one of the lots detailed in the definition of Land.

Management Plan means the Muhuona Forest Park Management Plan, together with any subsequent variations thereto, forming part of the Resource Consent.

Ohau Sands Design Guide means the document made available by Vincero Holdings Limited setting out the overall vision for the Ohau Sands development. The Design Review panel will update this document on a periodic basis.

Owner means the registered proprietor for the time being of a Lot.

Owners means all of the registered proprietors for the time being of the Lots.

Residents Association means the Ohau Sands Residents Association Incorporated which is registered under the Incorporated Societies Act 1908 and includes such other association, corporate or unincorporated body that acts in the place of the Ohau Sands Residents Association Incorporated.

Resource Consent means the resource consent given by the Local Authority for the land use and the subdivision of the Land into Lots and includes each and every condition of the Resource Consent.

Single Unit Dwelling means one household unit or principal residence which may include separate accommodation for an immediate relative or relatives of the occupier of the household unit or residence or a domestic employee of the owner of the household unit or residence and includes garages, outbuildings and other similar farm structures.

2.0 Introduction

- 2.1 The Grantor desires to create a high quality residential/lifestyle development and carry out a plan for the development and improvement of all the Lots comprising the Dominant and Servient Tenements and the Common Areas being all of the Land.
- 2.2 The Grantor having deemed it desirable for the efficient operation and management of the development has created the Residents Association to maintain the Common Areas and administer and enforce the covenants, conditions and restrictions as contained herein.
- 2.3 The Management Plan has been prepared for the management of the Land by the Residents Association. This Land Covenant ratifies the aims of the Management Plan and the Ohau Sands Design Guide with regard to the construction of Single Unit Dwellings on the Land.
- 2.4 Each Owner also acknowledges that the Management Plan may be updated from time to time, in accordance with the Resource Consent. If updates to the Management Plan are inconsistent with this Land Covenant, the provisions of the updated Management Plan shall prevail.
- 2.5 The Grantor and Grantee have agreed mutually to covenant each for the benefit of the other and their successors in title to each of the Lots comprising the Dominant and Servient Tenements to the end and intent that the same shall benefit all the Lots therein with the covenants hereafter contained being mutually enforceable inter se by all the Owners of the Land from time to time to the fullest extent permitted by the law of New Zealand.

3.0 General Covenants

- 3.1 Each Owner covenants and agrees with the Owners that they will assist the Residents Association in the implementation of the Management Plan.
- 3.2 Each Owner covenants with the Owners that they will comply with all conditions and provisions of the Management Plan, the Consent Notice and all conditions and provisions of the Local Authority and other regulatory authorities attaching to the Resource Consent and the building requirements for the time being in force prescribed by the Local Authority.
- 3.3 Each Owner irrevocably appoints Vincero Holdings Limited or any nominee of Vincero Holdings Limited to be the true and lawful attorney of the Owners for the purpose of executing all documents and plans and to perform all acts, matters and things as may be necessary to complete the development and any further re-development of the Land.

4.0 Use of Land

- 4.1 Each Owner covenants with the Owners:
 - a. that to preserve and maintain the amenity value of the Land, no Owner will erect or permit to be erected any signs (including builder's signs and for sale signs), billboards, banners, flags, flag-poles, indigenous or political insignia or visual displays of any form without the express prior written approval of the Residents Association. The Residents Association may permit or prohibit signs advertising the Lots for sale as it elects in its absolute sole discretion;
 - b. that each Owner will abide by the requirements set out in the Management Plan relating to plants on the Land, and will not bring onto the Land any species of plant not provided for in the Management Plan;
 - c. each owner will take all reasonable steps to:
 - i. control the introduction and spread of noxious plants and weeds;
 - ii. promptly repair any damage to native flora and fauna by replanting and reseedling using local indigenous species; and
 - iii. prevent erosion as far as practicable;
- provided that nothing in this Land Covenant will prevent an Owner from trimming or pruning any trees, bush or flora to protect the reasonable expected views and sunlight to a Lot or any adjoining Lot or the health and safety of any person;

- d. that the Lots are for residential use only, and there shall not be constructed on any Lot or maintained thereon more than one Single Unit Dwelling, together with any approved ancillary buildings embodied in the plans and designed to conform aesthetically with the dwelling;
- e. that each Owner must not use or permit their Lot to be used for any trading or commercial purpose;
- f. that no Lot may be used as a Boardinghouse or a Brothel;
- g. that each Owner shall not conduct any offensive, undesirable, immoral or illegal activity on their Lot or permit a cause of unreasonable noise or nuisance to neighbouring Lots. As to what constitutes an offensive, undesirable or immoral activity shall be a matter to be determined at the sole discretion of the Residents Association;
- h. no Owner may bring onto, operate or use within any Lot or the Common Areas any motorcycle, unmuffled vehicle or any vehicle that creates excessive or unreasonable noise. As to what constitutes excessive or unreasonable noise shall be a matter to be determined at the sole discretion of the Residents Association;
- i. vehicles shall only be operated within a Lot and the Common Areas in such a way and at such speeds so as not to cause a nuisance or annoyance to any other Lot or Owner, endanger any person or cause any damage to the surface of the ground or any formed track;
- j. no Owner may bring onto, raise, breed or keep any animal, livestock or poultry on their Lot without the express prior written approval of the Residents Association, provided that in any event cats shall be strictly prohibited and further that all approved dogs must be kept on leads at all times when in the Common Areas;
- k. that no rubbish or debris of any kind shall be placed or permitted to accumulate upon the Lots and no odours shall be permitted to arise therefrom so as to render the Lots or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other Lots or to the occupants thereof. Refuse, garbage and rubbish shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or otherwise appropriately screened from view. No rubbish or debris permitted to be maintained on the Lots shall be burned on the Lots;
- l. each Lot will not be further subdivided, other than minor boundary adjustments if required;
- m. that the Common Areas shall be used by the Owners for walking, exercise and other reasonable recreational purposes, such use being exercised in a manner which does not unreasonably interfere with the like use by other Owners and does not annoy, be a nuisance to, endanger, injure or damage other Owners or their property. No buildings or improvements shall be erected on the Common Areas other than those allowed by the Residents Association and approved in writing. No Owner shall erect or place or permit to be erected or placed any buildings on any part of the Common Areas, nor park vehicles or trailers thereon except in places and in compliance with

conditions from time to time designated by the Residents Association; nor leave or store any object, material or rubbish on any part of the Common Areas;

- n. that each Owner shall permit each and every other Owner to enjoy the use of the Common Areas equally subject to the terms of the constitution of the Residents Association, and every easement or other instrument affecting the Common Areas, the provisions of this Land Covenant and the future resolutions and decisions of the Residents Association;
 - o. that no washing machines or dryers shall be placed on front porches or at the front of the Lots. Clothes lines or other structures intended for drying laundry shall be located so as to be screened from view from any adjoining or opposite Lot or public or private thoroughfares and no laundry shall be draped over plants, trees or fences anywhere on the Lots or Common Areas; and
 - p. that no butane or fuel tank or other structure or facility for the storage of combustible fuel (other than a gas cylinder certified for use in connection with a gas barbeque, heater or light) shall be placed or maintained on the Lots unless approved in writing by the Residents Association. Any such approval shall be subject to the requirements of the Local Authority.
- 4.2 The Owners and members of their family, invitees, and licensees shall have the use of the Common Areas at their own risk. Neither the Grantor, the Residents Association, its servants or agents, nor the Owners will be liable for any accidental injury to or damage to the property of the Grantee, members of the Grantee's family, invitees and licensees whether caused by negligence or otherwise howsoever, excluding gross negligence or wilful misconduct, and the Grantee shall keep the Grantor, the Owners, the Residents Association, its servants or agents and the Owners indemnified against all claims, actions, losses and expenses of any nature which the Grantor, the Residents Association, its servants or agents or the Owners may suffer or incur or become liable for in respect of any such claims, actions, losses, and expenses.

5.0 Building Covenants

5.1 Each Owner covenants with the Owners that:

- a. they will not commence to erect a Single Unit Dwelling or Ancillary Building on a Lot without first obtaining a building consent from the Local Authority and design approval from the Design Review Panel (such approval to be at the sole discretion of the Design Review Panel) (subject to clause 8.2);

- b. they will not permit the Lot to be occupied or used as a residence unless and until the Single Unit Dwelling on the Lot has been completed in accordance with this Land Covenant and the building consent issued by the Local Authority;
- c. they will erect only one Single Unit Dwelling and Ancillary Buildings on a Lot;
- d. their Single Unit Dwelling, Ancillary Buildings and driveway will be constructed and designed in accordance with the construction and design guidelines set out in the Ohau Sands Design Guide and the Management Plan;
- e. a registered proprietor of a lot shall commence works to construct a dwelling and any approved ancillary buildings on their lot within 24 months of purchasing the lot, construction of a Single Unit Dwelling will be completely finished within 12 months of commencement of excavation for foundations;
- f. they will complete all ancillary work including planting of lawns, landscaping and any other development work of that nature within 18 months of commencement of excavation for foundations;
- g. they will not bring or construct on a Lot a pre-built, transportable or relocatable dwelling or building that has previously been lived in;
- h. the maximum height of a Single Unit Dwelling will be no more than 9.0 metres above finished ground level;
- i. they will not construct fires or fireplaces, other than approved gas appliances specified in the Ohau Sands Design Guide;
- j. they will not permit a caravan, hut, tent, shed, pole or similar structure to be placed or erected on any Lot other than as may be required for use in the construction of the Single Unit Dwelling. Any such caravan, hut, tent, shed, pole or similar construction permitted pursuant to this clause shall be removed upon completion of the Single Unit Dwelling, unless garaged or screened so as to preserve the amenity of the Land;
- k. they will promptly replace, restore, reinstate and repair at the cost of the Owner all damage that may arise or be caused to the landscaping, planting, or other structures on the Land and arising from the construction of the Single Unit Dwelling or driveway or landscaping of a Lot;
- l. they will not permit or allow any building material, building waste material or rubbish to accumulate on any Lot or allow the Single Unit Dwelling and other structures or fencing to become dilapidated or fall into disrepair; and
- m. they will not commence any future additions and alterations to their Single Dwelling Unit or Ancillary Buildings without first obtaining the approval of the Design Review Panel (subject to clause 8.2) and any necessary building consent from the Local Authority.

6.0 Fencing

- 6.1 Any fences erected on a Lot shall comply with the Ohau Sands Design Guide.
- 6.2 Each Owner will not require Vincero Holdings Limited to contribute towards the cost of erection or repair of any dividing or boundary fence between the Lots and any adjoining land owned by Vincero Holdings Limited. The benefit of this fencing covenant shall not benefit the transferee of such adjoining land.

7.0 Vegetation

- 7.1 All plantings on Lot are to be in accordance with the Management Plan and the Ohau Sands Design Guide and are to be planted and maintained in such a way that they do not shade the dwelling or living areas on adjacent Lots.

8.0 Design Review Panel

- 8.1 The Design Review Panel will make available the Ohau Sands Design Guide and in addition to the approval function will have the ongoing role following approval, to monitor compliance with those guidelines throughout the works.
- 8.2 In the event the Design Review Panel is no longer in operation, the registered proprietor of the servient lot shall still conform to the Ohau Sands Design Guide in relation to any further ancillary buildings to be constructed or in relation to any dwelling or ancillary building or alterations.
- 8.3 The Design Review Panel may refuse to approve any plans or specifications for reasons, which shall be communicated to the registered proprietor, but any such refusal is at the sole discretion of the Design Review Panel.
- 8.4 Vincero Holdings Limited may overrule any Design Review Panel guidance or guidelines at its discretion.
- 8.5 The Design Review Panel reserves the right to grant any exemption from provisions within the Ohau Sands Design Guide, or to grant extensions to any timeframes or other conditions imposed simultaneously with approval to works on any servient lot, provided any such exemption or waiver shall be recorded in writing. Any approval, exemption, or waiver shall be binding on all registered proprietors of all servient lots from time to time.
- 8.6 No Owner may bring any action, claim, or proceedings against Vincero Holdings Limited or against any person making up the Design Review Panel in respect of any exemption, extension, variation or waiver granted by Vincero Holdings Limited or the Design Review Panel to any Owner of a Lot.

9.0 Water and Wastewater

- 9.1 Each Owner covenants with the Owners that they will provide a suitable on-site water disposal system that, at the time of construction:
 - a. complies with the relevant Local Authority requirements;
 - b. the design of which is approved by the Design Review Panel;

- c. is an advanced treatment and disposal system;
 - d. includes a disposal area that is of a sufficient area to dispose of the reasonably expected water generated from the Single Unit Dwelling, and is covered in at least 250mm of topsoil or peat;
 - e. includes an assessment that the disposal area is a sufficient height above the ground water level;
 - f. does not allow for the disposal of stormwater into the treatment system or disposal field; and
 - g. contains pressure-compensating trickle irrigation lines for ground disposal of waste water which is to be dose-loaded from the treatment system to provide a maximum area loading rate of 3.0 litres per square metre per day.
 - h. includes a stormwater attenuation device and on-site soakage system capable of dealing with a 1 in 10 year flood event where there is a secondary overflow path, or a 1 in 100 year flood event where there is no secondary overflow path.
- 9.2 Each Owner confirms they are aware that they are part of a managed area, whereby each lot is self-sufficient. Because of this sustainability initiative, water resources shall be provided by each Owner and as a minimum:
- a. capacity for 50,000 litres of water storage shall be made available to each Single Unit Dwelling; and which must be either buried or discreetly located and screened, so as not to be visible from the public road or from neighbouring dwellings; and
 - b. 25,000 litres of the above storage shall be dedicated for firefighting purposes, and each Owner shall contact the New Zealand Fire Service to determine the requirements for fire hose fittings.
- 9.3 In providing the above water resources, the Owners shall consider the treatment of the water in light of the publication “Household Water Supplies” (Revised April 2006) issued by the Ministry of Health.

10.0 Electricity and Communication

- 10.1 Accessories, such as electricity and gas meters, telecommunication aerials and solar panels must be integrated into the roof form or be placed in a visually discreet location, where they are screened from the public road and from neighbouring dwellings. Gas supply bottles and power and/or meter boxes, must likewise be in a visually discreet location, where they are screened from the public road and from neighbouring dwellings. Final locations shall require the approval of the Design Review Panel.
- 10.2 Any exterior lighting forming part of a dwelling or ancillary buildings shall adopt the “dark sky” lighting approach in accordance with the Ohau Sands Design Guide.

11.0 Residents Association

- 11.1 The Residents Association has been established for the purposes of making decisions and taking action, whether direct or indirect, to manage the Common Areas and ensure compliance with the clauses in this Land Covenant, the Management Plan and the Resource Consent.
- 11.2 Each owner shall be deemed to become a member of the Residents Association on acquisition of a Lot and will adhere to the requirements for the Residents Association as set out in the Consent Notice. Membership shall be appurtenant to and shall run with the Lots. Membership in the Residents Association may not be severed from the ownership of the Lots or in any way transferred, pledged, mortgaged or alienated except together with the title to the Lots.
- 11.3 The Grantee shall be bound by the constitution of the Residents Association and shall when conveying title to the Lots concurrently resign from the Residents Association and procure accession to membership of the Residents Association by any immediate Grantee. The Grantee must notify any immediate Grantee of the Lot of such Grantee's obligation to take such membership in the Residents Association and be bound by the constitution of the Residents Association.
- 11.4 As a member, each Owner will pay an annual levy to the Residents Association, such levy being set by the Residents Association at the Annual General Meeting.
- 11.5 Levies shall be used for the purposes of ensuring appropriate funding for the activities of the Residents Association (as set out in the constitution of the Residents Association), promoting the comfort, health, safety, security and welfare of the Owners and the maintenance and improvements of the Common Areas and for carrying out the purposes of the Residents Association as stated herein or as otherwise provided in the Residents Association's constitution.
- 11.6 Decisions of the Residents Association shall be complied with by all Owners and the Residents Association may from time to time impose rules and regulations and enforce these against an Owner or owners in the event of non-compliance. Failure to comply with any of the Residents Association rules and regulations shall constitute a breach of this Land Covenant and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Residents Association.
- 11.7 Should the Residents Association cease to exist for any reason, the Owners will establish a replacement association having the same powers as the Residents Association and, pending creation of that association, will act together as an unincorporated association for that purpose.

12.0 Encumbrance

- 12.1 All levies provided for in clause 11 but unpaid, together with all costs and expenses of collection, including reasonable legal fees, shall be secured by the Memorandum of Encumbrance for securing levies and shall constitute a charge on or against the Lot covered by such levy or charge, which shall bind such Lot in the hands of the Grantee, and the Grantee's executors, successors or assigns. The Grantee of a Lot and the Grantor whilst it remains an Owner shall execute the Memorandum of Encumbrance at the same time as he or she executes this Land Covenant. Such Encumbrance shall be in favour of the Residents Association to secure the payment of levies and shall

be superior to all other liens and charges against the Lot, except only for sum secured by a mortgage securing sums borrowed for the purchase of or improvements on the Lot. The Residents Association shall have the power to subordinate the aforesaid Encumbrance to any other lien, encumbrance or charge.

13.0 Dispute Resolution

- 13.1 Unless an Owner has first complied with clauses 13.2 to 13.4 (inclusive) that Owner (in this clause called a “party”) may not commence Court proceedings relating to any dispute arising from this Land Covenant (except where the party seeks urgent interlocutory relief in which case that party need not comply with this clause before seeking such relief) and where that party fails to so comply with those clauses the other party need not comply with those clauses before commencing Court proceedings relating to that dispute.
- 13.2 A party (referred to in this clause as “the first party”) claiming that a dispute has arisen under this Land Covenant between the parties shall give written notice to the other party (referred to in this clause as “the second party”) specifying the matter in dispute and designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute. The second party shall within 10 days after receiving the first party’s notice give written notice to the first party designating as its representative in negotiations relating to the dispute a person with similar authority.
- 13.3 The parties shall use their reasonable endeavours to procure that the persons designated under clause 13.2 shall within 10 days of the last designation required by clause 13.2 following whatever investigation each such person seems appropriate seek to resolve the dispute.
- 13.4 If the dispute is not resolved within the period referred to in clause 13.3 (or within such longer period as their respective representatives agree is appropriate) the parties shall within a further period of 10 days (or such longer period as the representatives may agree is appropriate) use their reasonable endeavours to agree in good faith on a process for resolving the whole or part of the dispute through means other than litigation and on:
- a. the procedure and timetable for any exchange of documents and other information relating to the dispute;
 - b. procedural rules and a timetable for the conduct of selected mode of proceedings;
 - c. a procedure for compensation of any neutral person who may be employed by the parties in dispute; or
 - d. whether the parties should seek assistance of a dispute resolution organisation.
- 13.5 After the expiry of the time established by or agreed under clause 13.4 for agreement on a dispute resolution process a party which has complied with the provisions of clauses 13.1 to 13.4 (inclusive) may, by written notice to the other party, terminate the dispute resolution process provided for in these clauses and may then commence court proceedings relating to the dispute.

14.0 Breach of Covenants

14.1 If there should be any breach or non-observance of any of the covenants and conditions contained in this Land Covenant and without prejudice to any other liability which an Owner may have to the Local Authority or any person having the benefit of such covenants and conditions and without in any way restricting the remedies available to any Owner or any person having the benefit of such covenants and conditions:

- a. the Owner shall remove or cause to be removed from the Lot any building or part thereof or any fence or other structure used, erected, commenced or repaired in breach or non-observance of covenants and conditions in this Land Covenant;
- b. the Owner shall on demand by the Residents Association or Vincero Holdings Limited replace any building material used or to be used in breach or non-observance of the covenants and conditions with building materials which comply with the Owner's obligations under this Land Covenant; and
- c. otherwise take all steps necessary to remedy the breach or non-observance of any of the covenants and conditions contained in this Land Covenant.
- d. Pay to each Grantee (or other person having the benefit of these Land Covenants) making such demand as liquidated damages the sum of \$150.00 per day for every day or part day that such breach or non-observance of the Land Covenants contained in this Easement. Instrument continues after the date upon which written demand has been made;

15.0 Severability

15.1 If any part of this Land 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 Land Covenant.

16.0 Waiver

- 16.1 Vincero Holdings Limited may in its sole and absolute discretion grant a waiver, dispensation, variation or amendment to any of the land covenants after considering all information and relevant factors and on such terms and conditions as it may determine (in its sole and absolute discretion).
- 16.2 No Owner of any Lot may bring any action, claim, or proceedings against Vincero Holdings Limited in respect of any waiver, dispensation, variation or amendment to any of the land covenants granted by Vincero Holdings Limited to any Owner of a Lot.