

ST THOMAS ESTATE RESTRICTIVE COVENANTS

The Vendor and Purchaser wish to protect the visual concept and integrated appearance of St Thomas Estate Subdivision.

April 2016

ST THOMAS ESTATE LIMITED

LAND COVENANTS

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1. Land Covenants (“Covenants”)

- 1.1 The Vendor and Purchaser wish to protect the visual concept and integrated appearance of the St Thomas Estate Subdivision as a whole. To achieve this, the Purchaser hereby covenants with the Vendor, as registered proprietors, as set out below, and hereby requests that such Covenants be noted against all the titles having the benefit and those having the burden of these Covenants.
- 1.2 These Covenants shall:
- a) run with each residential lot in the relevant Stage of the St Thomas Estate Subdivision.
 - b) be for the benefit of and appurtenant to each residential lot in the relevant stage of the St Thomas Estate Subdivision.
 - c) all expire on 31 December 2030 (except Clause 3.2 which expires 31 December 2021) and be void for all purposes including antecedent breach.

2. Interpretation

- 2.1 For the purposes of these Covenants:
- a) “St Thomas” means St Thomas Estate Limited.
 - b) “Allow” includes facilitating, permitting and suffering.
 - c) “Building” includes all structures and construction, including (but not limited to) dwelling houses, garages and sheds.
 - d) “Construct” and “Construction” includes to install, erect, repair, renovate, replace or place on the Land, Lot or in any Building and also includes “Allow” to construct.
 - e) “Council” means the Tauranga City Council and its successors.
 - f) “Land” or “Lot” means any lot having the burden and/or benefit of these covenants as described in clause 1.2 above.
 - g) “Landscape Features” includes all fences, walls, wind-breaks, washing lines, letterboxes, satellite dishes, street and/or house numbering, kerbs, footpaths, road frontages, planting of trees, shrubs and plants, driveways, driveway crossings, entranceways and concrete areas.
 - h) “Subdivision” and “St Thomas Estate Subdivision” means all of the residential lots contained on Certificate of Title SA30A/593 and on any other land title plan deposited at Land information NZ by St Thomas Estate Limited in respect of the land located on Joyce Rd, Pyes Pa and shall include any subsequent stages in the subdivision.
- 2.2 The following provisions shall apply in the construction and interpretation of this instrument (unless the context otherwise requires):
- a) the headings are for convenience only and shall not affect the interpretation of this instrument.
 - b) words importing the singular number include the plural and vice versa and the masculine gender includes the feminine and neuter genders and vice versa.

3. Approvals

3.1

- a) The Purchaser will NOT allow any site works, pegging out or preparation work for the erection of a house, or other building to be carried out until a concept plan of the house or accessory building and a landscape plan of the property have been approved in writing by St Thomas (or its appointed agent).
- b) When St Thomas exercises its discretion (as referred to in clause 3.1a) it may also take into account its own assessment of the effects on any land, building, the visual concept, or integrated appearance of all or any lots in the subdivision.
- c) Without limiting its discretion, St Thomas may refuse to approve some dwelling or alteration plans or landscape designs and plants if such could, in its sole opinion, have a shade or other detrimental or negative affect on other Buildings or other Lots in the subdivision, now, or at a later date.
- d) Approval shall be given or refused in the sole, absolute and unfettered discretion of St Thomas.
- e) Approval is subject to St Thomas reserving its right to approve requests for one party without creating any form of precedent for another party. Further, St Thomas may refuse an identical request from another party without having to give reasons.
- f) In erecting the dwelling house or accessory building and in carrying out the landscaping the Purchaser will not deviate from the approved concept plan without obtaining the consent from St Thomas of such deviation. The granting of such further consent shall be at the discretion of St Thomas.

3.2 The restrictions contained in this clause 3.1 shall not apply to any works commenced after 31 December 2021.

3.3 The email address of St Thomas Estate (or its agent) for approvals is dave@stthomasestate.co.nz or other such address as the Vendor may from time to time notify to the Purchaser.

4. Covenants

BUILDING

4.1 The Purchaser **shall NOT**:

- a) construct any building other than a single new dwelling house (and accessory buildings) nor allow any pre-built, transportable or re-locatable dwelling house or any previously lived in dwelling house to be moved on to the Lot.
- b) construct any dwelling house with a ground floor area of less than 120 square metres (excluding garage, carport, decking, roof overhang and accessory buildings). Garaging for not less than one car must be incorporated into the dwelling house. Such dwelling house may include a granny flat.
- c) construct any dwelling house with less than a minimum of 75% of the non-glazed exterior cladding of such dwelling house consisting of any of the following materials: Kiln fired or concrete brick, concrete block, stucco textured finish, stone, linea or timber weatherboard construction or such other exterior cladding as shall first have been approved by St Thomas (whether for this dwelling house or as part of any other dwelling house where St Thomas has approved the concept plan).

- d) construct any garage, carport or other outbuilding in materials other than those set out in sub-clause 4.1c and to complete construction in an integrated architectural design with the dwelling house.
- e) use any metal clad roof that has not been factory pre-painted.
- f) bring onto or to allow to remain on the Lot any temporary dwelling, caravan, campervan, trade vehicle or other equipment or materials unless garaged or screened so as to preserve the amenities of the neighbourhood.
- g) regularly park any caravan, campervan or trade vehicle on any road, road reserve or berm in the subdivision.
- h) take up residence on the Lot unless the buildings on same have been substantially completed in accordance with the covenants herein and the requirements of the Council.

4.2 The Purchaser **SHALL**:

- a) ensure the elevations of any dwelling house predominantly facing any road frontages shall be finished in subdued, non-vibrant colours.
- b) ensure that whilst any dwelling house is under construction the Purchaser and the Purchaser's contractors and tradesmen shall comply fully and comprehensively with all relevant governmental legislation and local authority bylaws relating to workplace safety.
- c) commence construction of any building within one month of the Council issuing a building consent or similar approval and to complete construction (inclusive of dwelling, driveway, fencing and landscaping) within 12 months of any building commencing.
- d) construct any dwelling house with more than one hip or one gable in the roofline and to construct such dwelling house to a shape other than a simple square or rectangle. Flat roofed dwellings are acceptable.

NO ACCESS

- 4.3 The Purchaser **shall NOT** allow construction of any road or right of way on any part of the Lot which provides access to any other land adjoining the Lot, provided that this restriction shall not apply to St Thomas in relation to Lot 18.

LANDSCAPE FEATURES AND FENCES

4.4 The Purchaser **shall NOT**:

- a) construct any fence of shade cloth, netting, iron or steel of any profile, untextured fibre cement panel, plywood, fibrolite or post and wire.
- b) construct any solid (being non-see through) fence along the road front boundary.
- c) construct any fence along the road front boundary to a height exceeding 1.2 metres, nor allow any hedge to grow along that boundary in excess of that height.
- d) construct any fence or grow any hedge along any side or rear boundary to a height exceeding 1.8 metres, and the height of any such fence or hedge will not exceed 1.2 metres for that portion from the road front boundary to the street front façade of the dwelling house on the Lot.
- e) alter in any way, including but not limited to painting or repainting in any other style or colour any fencing and/or walls installed by St Thomas (nor create any opening or install any gate in such fence or wall). In the event of any damage to such fencing or walls whether by the Purchaser or otherwise the Purchaser shall reinstate such fence or wall in the style and colour as existing before such damage. If the Purchaser fails to promptly repair or reinstate such fence or wall St Thomas shall have the right (but without being obliged so to do) to so repair or reinstate such fence or wall and to recover the cost of so doing as a debt owing from the Purchaser to St Thomas.
- f) allow any rubbish to accumulate or be placed upon the Lot.
- g) allow any advertisement, sign or hoarding of a commercial nature to be erected on any part of the Lot with the exception of real estate sales signage directly related to the Lot or to any showhome on the Lot.
- h) allow to remain on any wall, fence, structure or building on or about the Lot any graffiti or similar disfigurement for more than five days from the date that such occurred or was brought to the notice of the Purchaser.

4.5 The Purchaser **SHALL**:

- a) keep and maintain the Lot in a neat and tidy condition and the Council owned road frontage adjacent to the Lot and should the grass grow longer than is generally the

- standard in the subdivision, St Thomas may by itself or its agents mow the same and recover the costs of doing so from the Purchaser.
- b) ensure that once construction of all buildings has been completed, any rubbish collection point, exterior heat pumps, gas bottles, washing lines and any mechanical plant associated with the dwelling house is screened from street view so as to preserve the amenities of the subdivision.
 - c) ensure that during construction of any building due allowance is made for the protection of the footpaths and the Council owned road frontage by way of placing appropriate material over those areas where vehicular traffic is to run to minimise dirt being carried onto the road and footpaths and kerbs being broken.
 - d) ensure that all landscaping, berms, roading, footpaths and curbs are kept clean and free from debris prior to, during and following construction of any building.
 - e) reinstate, replace and be responsible for all costs arising from damage to the landscaping, berms, roading, footpaths, kerbs, streetlights, street signs, concrete or any other structures in the subdivision arising from the Purchaser's use of the land directly or indirectly through the Purchaser's actions or those of the Purchaser's agents, consultants, contractors or invitees. Any notice given by St Thomas to the Purchaser advising that any damage has occurred to any of the infrastructure mentioned in this covenant is agreed as being prima facie evidence that such damage has been caused by the Purchaser or by the Purchaser's agents, consultants, contractors or invitees.

GENERAL

- 4.6 The Purchaser **shall NOT**:
- a) allow any animal (including dogs or other domestic pets) to be kept on the Lot that causes unreasonable nuisance or annoyance to other occupiers in the Subdivision or detracts from the Subdivision as a whole.
 - b) Subdivide the Lot (other than by way of a minor boundary adjustment)
 - c) use the dwelling house as a brothel, or allow the provision of commercial sexual services to be carried out in or from any building on the Lot.

5. Enforcement

- 5.1 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 these Covenants, should the Purchaser not rectify the breach or non-observance of any of the foregoing Covenants within 10 working days of written notice being made of the Purchaser by St Thomas or such other person having the benefit of these covenants, the Purchaser will pay to St Thomas or such person making such demand as liquidated damages the sum of \$150 per day for every day that such breach or non-observance continues after the date upon which written demand has been made until the breach is remedied together with any costs and expenses incurred by St Thomas or any such person making such demand.
- 5.2 The Vendor and the Purchaser agree that St Thomas does not have nor shall have any legal responsibility or liability for the enforcement, enforceability, applicability, or lack of action with respect to enforcement or applicability of any of these Covenants.

6. Dispute Resolution

- 6.1 If any dispute arises between or among the parties concerning the Covenants, then the parties shall enter into negotiations in good faith to resolve their dispute
- 6.2 If the dispute is not resolved within 20 working days from the date on which the parties begin their negotiations, then the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties
- 6.3 If an arbitrator cannot be agreed upon within a further ten days, then an independent arbitrator will be appointed by the President for the time being of the New Zealand Law Society Incorporated.

7. Severability

- 7.1 If any part of these Covenants are 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 these Covenants, which shall remain in full force.