

TERMS AND CONDITIONS OF COVENANT

1. INTRODUCTION

The Terraces, delivered by Rapid Creek Terrace Homes (RCTH), is destined to become a popular and highlight sought after development in Millner.

Positioned on Rapid Creek Road across from the Jingili Water Gardens and surrounded by picturesque views, Rapid Creek Terrace Homes is offering a diverse product range, in the form of 10 two-storey terrace homes.

Offering freehold lifestyle terrace style living, the Terrace represents an innovative new approach to urban renewal, that not only resolves flooding issues to existing properties along Rapid Creek Road, but also it creates unique 'industrial lux' open-plan living.

The Terraces Design Guidelines has been developed to provide buyers, architects and building with clear and concise understanding of the design requirements and consideration for each individual home site.

2. DEFINITIONS AND INTERPRETATION

2.1 In this Covenant:

'Authority' means any government or governmental, semi-government, administrative, fiscal or judicial body, department, commission, authority tribunal, agency, competent authority or entity.

'Benefited Land' means the land described next to the heading 'LAND RECEIVING BENEFIT' on or annexed to Form 58 (Creation of Covenant in Gross).

'Building' includes (without limitation) any of the following whether a fixture or not:

- (a) a house, garage, carport or garden shed;
- (b) a structure or outbuilding;
- (c) a shade cover or pergola;
- (d) a fence or retaining wall;
- (e) a swimming pool, spa, tennis court or other outdoor recreational facility;
- (f) a satellite dish or antenna;
- (g) any poles to support flood lights or spot lights;
- (h) all pathways and hard standing areas, including a driveway;
- (i) earthworks involving a cut or fill in excess of 100mm in depth;

and includes repairs (including painting or changing colours), improvements, alternations or additions.

'Building Certifier' means a person, firm or corporation registered under section 24 of the *Building Act (NT)* in the category of building practitioners known as a building certifier.

'Building Line' means a line drawn parallel to any front boundary along the front face of a building or through the point on a building closet to the front boundary. Where a terrace, landing, porch, balcony or verandah is more than 1.5 meters the adjoining finished ground level or is covered by a roof it is

deemed to be part of the building.

'Business Day' means a day which is not a Saturday, Sunday or public holiday in Darwin in the Northern Territory of Australia.

'Claim' means any cost, claim, demand, obligation, remedy, damage, loss, action, proceeding, claim for compensation, requisition or objection whichever is applicable.

'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.

'Covenant' means this document including all schedules, annexures and attachments to this document and imputed by reference.

'Covenantee' means the registered proprietor or registered proprietors of the Benefited Land from time to time.

'Covenantee's Agents' means the Covenantee's consultants, contractors, employees, builders, tenants, invitees or any of them.

'Covenantor' means the registered proprietor or registered proprietors of a Property from time to time.

'Covenantor's Agents' means the Covenantor's consultants, contractors, employees, builders, tenants, invitees or any of them.

"RCTH" means Rapid Creek Terrace Homes Pty Ltd (ACN 645 878 897), being the owner of the land of the land in the Development at the time that this Covenant was registered.

"RCTH Design Guidelines" means those plans, drawings, specifications and principles forming part of this Covenant as amended on behalf of the Developer from time to time, addressing (but not limited to):

- the nature, size, location and specification of Buildings on any particular lot or on the whole or part of the RCTH Estate;
- the nature of materials to be used in construction of the Buildings;
- the colour of the Buildings;
- visibility of Buildings from the street frontage or public places; and
- the prohibition of particular Buildings.

"RCTH Estate" means the land described on the LTO panel from 59 comprising the first page of these Covenants next to the heading "LAND RECEIVING THE BENEFIT" and includes the land which is added or forms part of the estate development of that land.

'Development' means the proposed development and subdivision of 1257, 1258 and 1259, Town of Nightcliff t.

'Landscaping' means the physical elements of landscaping, including all deep and shallow planting, ancillary and outdoor structures, screen wall, retaining walls and changes of levels to integrated drainage control elements including flood retention and designated soaks and to driveways and pavements on or over the Property.

'Law' includes any requirement of any statute, regulation, proclamation, code, standard, ordinance, or by-law, present or future, whether Territory, Federal or otherwise.

‘Occupier’ means a person, whether or not the Covenantor of the Property, or who occupies the Property, and includes a tenant, or occupier of the Property or any of their guests, servants, employees, agents, children, invitees, and licenses.

‘Practical Completion’ means Construction of the Building and Landscaping on the Property to a stage where (except for any minor defects or omission):

- (a) the Building is complete and can be lawfully used, and all occupancy permits have been issued for the Building; and
- (b) the Landscaping has been completed.

‘Property’ means each lot or portion of land described next to the heading ‘LAND BURDENED’ on or annexed to Form 58 of this Covenant and, where the context permits, means all of those lots or portions of land collectively.

‘Street’ means any road other than footway, alley or right of way.

‘Substantially Commenced’ means the completion of footings and ground slab for the Building on the Property.

2.2 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, two (2) or more persons bind or benefits them jointly and severally;
- (d) ‘person’ includes an individual, the estate of an individual, a corporation, an authority, any association or a joint venture (whether incorporated or unincorporated), a partnership and a trust; a reference to a party includes that party’s executors, administrators, 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;
- (e) a reference to a statute includes its delegated legislation and a reference to a status or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a reference to a document (including this Covenant) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) 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
- (i) ‘includes’ in any form is not a word of limitation.

3. COVENANTOR’S SACKNOWLEDGMENT

3.1 The Covenantor acknowledges that the Property is part of the Development and is a residential subdivision.

3.2 The Covenantor covenants that it is desirable and in the interests of the Development that:

- (a) the Property and other lots in the Development

are properly maintained before any Building or Landscaping is Constructed;

- (b) the quality of design and construction in the Development is maintained; and
- (c) all Covenantors agree to a level of standard in relation to the use of their respective properties and any Buildings erected thereon.

3.3 The Covenantor acknowledges that further construction and development works may be carried out in the Development. The Covenantor agrees not to raise any objection, nor seek to delay completion/settlement, nor seek to make a Claim in respect of any future constructions or associated development or other works in connection with the Development.

3.4 The Covenantor consents to and agrees not to raise any objection or lodge any submissions in respect of any application to an Authority by the Developer in respect of the Development or in relation to any adjoining or nearby land owned by the Developer.

3.5 The Covenantor consents to and agrees not to raise any objection, make any Claim, refuse to settle or lodge any submissions in respect of:

- (a) any development application, town planning or building application or amendments to any development permit in respect of the Development or any of the Developer’s adjoining or nearby land; or
- (b) the carrying out of any ongoing development, construction or earthworks at the Development or any of the Developer’s adjoining or nearby land including but not limited to any Claim for dust, noise, nuisance, inconvenience, vibration, loss of amenity or traffic interference.

4. COVENANTOR SEPARATELY COVENANTS

4.1 The Covenantor covenants and agrees, as a separate covenant with each and every Covenantant and each and every person claiming under or through the Covenantant, to perform and observe the obligations and stipulations specified in this Covenant, to the extent that:

- (a) the burden of this Covenant runs with and binds the Property; and
- (b) the benefit of this Covenant attaches to and runs with the Benefited Land.

4.2 The Covenantor must not transfer, sell, lease or otherwise dispose of its interest in their Property until the Covenantor has satisfied all of its obligations with respect to the construction of a building and landscaping on the Property in accordance with this Covenant

4.3 From the date that a person ceases to be the registered proprietor of a lot forming part of the Property, that person is released from all future obligations under this Covenant but is not released from and remains liable for any breach or default of this Covenant which occurred whilst the person was still the registered proprietor of the lot.

5. RESIDENTIAL PURPOSES

5.1 The Covenantor may not use the Property for any purpose other than for private residential purposes.

5.2 The Covenantor must not Construct, permit to be Constructed or allow to remain, any Building on the

Property:

- (a) which is for any purpose other than a residential dwelling or a purpose reasonably associated with a residential dwelling; or
- (b) which does not comply with the RCTH Design Guidelines or the terms of this Covenant.

5.3 Nothing in this clause shall prevent the Covenantor from operating a home based business from the Property, if permitted or authorised under the relevant Law and provided the Covenantor complies with the requirements of all Authorities.

6. CONSTRUCTION OF THE PROPERTY

6.1 The Covenantor must not allow or permit any Building or Landscaping to be Constructed or remain Constructed on the Property unless the Building or Landscaping that is Constructed is in accordance with:

- (a) the RCTH Design Guidelines
- (b) the terms of this Covenant; and
- (c) the requirements of any relevant Authority.

6.2 The Covenantor acknowledges that as part of the Landscaping estate walls may be installed by the Developer, for the purpose of enhancing the value of the Lot and also the RCTH Estate generally, the Covenantor will not be permitted to remove, change, damage or alter any estate walls.

6.3 The Covenantor agrees to indemnify and keep harmless the Developer/Covenantee and any other affected person (e.g. adjoining land owners) for any breach of this Covenant.

7. EASEMENTS

7.1 The Convenator must not construct any Building over a registered easement on the Property:

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

8. APPROVAL BY BUILDING CERTIFIER

8.1 The Covenantor must not construct, commence to Construct, or under the *Building Act (NT)* and/or *Planning Act (NT)* construct any Building in, on or over the Property without first obtaining the prior written approval of a Building Certifier and/or an Architect that such Construction shall comply with this Covenant.

8.2 Any approval received from a Building Certifier and/or an Architect in accordance with this clause will not exclude the Covenantor from liability in accordance with this Covenant or be a waiver of any default or breach of this Covenant where such approval has been given incorrectly.

9. COVENANTOR'S COVENANTS

9.1 The Covenantor must not

- (a) allow any part of the Property to become overgrown or untidy;
- (b) allow the accumulation or dumping of any rubbish, debris, spoil, unsightly material or refuse on the Property, any adjoining property

or any footpath or verge bordering the Property;

- (c) 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);
- (d) allow any Building or any part of the Property to be in any condition other than in good order and repair and in a clean and tidy condition;
- (e) allow any Building or any part of the Property to fall into disrepair or become dilapidated or unaesthetically pleasing;
- (f) remove any existing trees, shrubs or other plants situated on the Property without prior written approval of the RCTH;
- (g) allow any painted part of the Building or the Property to fall into disrepair or become unaesthetically pleasing;
- (h) allow any party of the Building or Property to be painted other than in a proper and workmanlike manner with good quality paint and consistent with the current colour;
- (i) 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;
- (j) allow any clotheslines to be located on the Property where is visible from the Street;
- (k) do anything on the Property which is a nuisance to the Benefited Land;
- (l) erect or display a sign, bill board or other form of advertisement of kind on the Property without the approval of the Covenantee;
- (m) keep any rubbish bins or similar containers on the Property or land adjoining the Property
- (n) here visable from any adjoining Street unless properly screened;
- (o) erect external blinds or awnings;
- (p) erect any outside wireless, television aerial, sky dish receiver, satellite receiver units or condensers or things of a like nature without prior written approval of the [NAME];
- (q) allow the Covenantor's Agents to do anything on the Property other than in accordance with this Covenant.

9.2 The Covenantor must not:

- (a) reside on or allow any person to reside on the Property other than in a house 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 by Law.

9.3 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 causing to be Constructed an approved Building.

- 9.4 The Covenantor shall not carry out or permit any of the following:
- (a) a subdivision of the Property;
 - (b) the Construction, use or existence of more than one dwelling on the Property;
 - (c) the division of the Land or any Building into parts for, or available for, separate occupation;
 - (d) the provision of more than one electricity and water service to the Land; and

except without the prior written consent from the Seller the Development Consent Authority shall not approve the Lot to be subdivided.

- 9.5 Where a lot forming part of the Property is zoned LMR, subdivision for the purpose of creation of unit titles is permitted if allowed by Law, but it is prohibited, and the Covenantor shall not carry out or permit any of the following:

- (a) any other subdivision of the Property;
- (b) the Construction, use of existence of more than one free standing dwelling on the Property; and any other division of the Land or any Building into parts for, or available for, separate occupation.

- 9.6 If at the time of completion/settlement the Property has a fence constructed by the Developer on a boundary, the Covenantor must maintain that fence.

- 9.7 The Covenantor must not replace any fence on the Property unless:

- (a) the materials are of the same standard and quality as the fence which is being replaced; and
- (b) the replacement fence is constructed in the same location as the fence which is being replaced.

- 9.8 The Covenantor must not alter the finished levels of the Property by any amount greater than 300mm (over or above the finished levels) without the Developer's prior approval.

- 9.9 The Convenator shall:

- (a) maintain Building or any part of the Property in good order and repair and in a clean and tidy condition; and
- (b) rectify any damage (including to any landscaping) to any other part of the RCTH Estate (including nature strips, kerbing and trees) cause by the Convenator, any person engaged by the Covenantor or working on Construction on the Land

10. VEHICLE ACCESS

- 10.1 Garages to the lots are to be accessed via a single width driveway.
- 10.2 Driveways and driveway crossovers that have been installed by the Developer may not be altered in any way by the Covenantee or any person/entity engaged by or for the Covenantee.
- 10.3 Ongoing maintenance of these areas will be the responsibility of the Convenator.

11. WAIVER, RELEASE OR MODIFY

- 11.1 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 in accordance with 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.

- 11.2 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.

- 11.3 No waiver of a breach or 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.

- 11.4 Notwithstanding any other covenant herein, the Covenantee may waive in writing any covenant in its sole and unfettered discretion.

12. BREACH OR DEFAULT

- 12.1 If the Covenantor (including any predecessor in title) breaches or defaults or permits a breach or default

- 12.2 A right under this clause 10 includes the right to have removed all or part of any Building or Landscaping that has been Constructed on the Property.

- 12.3 All money paid or liabilities incurred by the Covenantee in accordance with this clause 10 are recoverable by the Covenantee from the Covenantor.

- 12.4 A notice can be given in respect of more than one breach or default or a breach or default of more than one covenant.

- 12.5 This Covenant may be pleaded and produced by way of estoppel and defense to any action application or demand by the Covenantor for damages, costs or other relief or any action or prosecution by any person.

13. GENERAL

- 13.1 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.

- 13.2 This Covenant is governed and construed by the laws of the Northern Territory of Australia.

- 13.3 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.

- 13.4 This Covenant shall cease to be in effect from 7 June 2031.