

This approved format may be used for lodgement as an electronic instrument under the Land Transfer Act 2017

Form 26

Covenant instrument to note land covenant

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

Covenantor

ORCHARD ROAD HOLDINGS LIMITED

Covenantee

ORCHARD ROAD HOLDINGS LIMITED

Grant of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (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 covenants	All of the land contained within the Burdened Land	Lot 1 DP 624962 (RT1270102) – Lot 89 DP 624962 (RT 1270190) (inclusive)	Lot 1 DP 624962 (RT1270102) – Lot 89 DP 624962 (RT 1270190) (inclusive)

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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].~~

Annexure Schedules 1 and 2.

Annexure Schedule 1

1. It is the Covenantor's intention that all of the Burdened Land described in Schedule A (the "Lot" or "Lots") shall be subject to a general scheme applicable to and for the benefit of the Covenantee as set out in this Covenant Instrument.

OPERATIVE PROVISIONS

2. DEFINITIONS AND INTERPRETATION

- 2.1 Definitions: In this Covenant Instrument, including this schedule 1 and schedule 2, the following words shall have the following meanings:
 - a 'Building' means any structure on the Burdened Land, excepting boundary fencing.
 - b 'Centre of the Relevant Lot' means the point at which a diagonal line drawn across the referenced Lot from each front corner boundary peg to each rear corner boundary peg meet. Where a Lot includes an accessway the corner boundary pegs shall be those located in the net area of the Lot, excluding the accessway area.
 - c 'District Plan' means the Queenstown Lakes District Council District Plan.
 - d 'Dwelling' means a residential dwelling house.
 - e 'Lot' means any and all of the Burdened Land described in Schedule A.
 - f 'ORHL' means Orchard Road Holdings Limited and any associated entity or any person or entity to whom it delegates its rights and responsibilities under this Covenant Instrument.
 - g 'Relevant Authority' means any corporation, government, local, statutory or non-statutory authority or body having jurisdiction over the Burdened Land or any part thereof.
- 2.2 Interpretation: In this Covenant Instrument, unless the context otherwise requires:
 - a words denoting the singular shall include the plural and vice versa;
 - b one gender shall include other genders;
 - c words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
 - d any covenant or agreement on the part of two or more persons shall bind those persons jointly and separately;
 - e reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same;
 - f where consent or approval is required pursuant to any provision of this Covenant Instrument, such consent or approval shall be required for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on any prior occasion;
 - g reference to the Covenantor and the Covenantee includes their respective executors or administrators and successors in title; and
 - h reference to Lots includes each and every one of them.

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3. NATURE AND EXTENT OF OBLIGATIONS

- 3.1 This Covenant Instrument (including the provisions in Annexure Schedule 2) shall be binding on all transferees, tenants, lessees, mortgagees, chargeholders and their respective successors in title and assigns of any estate or interest in the Burdened Land. Where this Covenant Instrument binds or benefits more than one party, it shall bind or benefit each party jointly and severally.
- 3.2 Where the Covenantor is a company this Covenant Instrument shall bind a receiver, liquidator, statutory manager or statutory receiver. Where the Covenantor is a natural person this Covenant Instrument shall bind the Official Assignee acting in the bankruptcy of the Covenantor. In either case this Covenant Instrument binds a mortgagee in possession.
- 3.3 If at any time any part or provision of this Covenant Instrument is or becomes invalid, void, illegal or unenforceable in any respect whatsoever, then:
- a that part or provision shall be severed from this Covenant Instrument;
 - b such invalidity or severing shall not in any way affect or impair the validity, legality and enforceability of any other part or provision of this Covenant Instrument; and
 - c the parties shall enter into appropriate substitute instrument(s) to give full and proper effect to the agreements and understandings in this Covenant Instrument.
- 3.4 The Covenantor shall not be liable for breaches of the obligations under this Covenant which occur in respect of any land after it has transferred its fee simple interest in such Lots.
- 3.5 If the Covenantor is in breach of its obligations set out in this Covenant Instrument, the Covenantee shall have the right (but not an obligation) to do whatever may be reasonably required to remedy such failure on the part of the Covenantor, and the costs incurred by the Covenantee in remedying the default shall be refunded by the Covenantor to the Covenantee on demand.

4. NOTICES

Any notice required to be given in terms of this Covenant Instrument shall be sufficiently given if made in writing and served as provided in section 353(1) of the Property Law Act 2007 and shall be sufficiently given if actually received by the party to whom it is addressed or that party's solicitor.

5. DISPUTE RESOLUTION

- 5.1 Any dispute which arises between the Covenantor and the Covenantee in any way relating to this Covenant Instrument may be resolved by referring the dispute to an agreed third party for decision or by arbitration by a single arbitrator under the provisions of the Arbitration Act 1996.
- 5.2 Nothing in clause 5.1 limits or excludes the Covenantee applying to the Court for interlocutory and/or injunctive relief or a declaration.

6. VESTING

- 6.1 The Covenantee (including its successors in title) consents to the deposit of any survey plan by the Covenantor or any successors in title which has the effect of vesting or dedicating any of the Burdened Land as road or reserve.
- 6.2 The Covenantee acknowledges and agrees that the Covenants shall cease to apply and shall automatically surrender in respect of the land to be vested or dedicated as road or reserve with effect on and from the date of deposit of the relevant survey plan.
- 6.3 The Covenantee covenants that this clause shall be deemed to be the written consent of the Covenantee to the deposit of any survey plan for the purposes of section 224(b)(i) of the Resource Management Act 1991.

Annexure Schedule 2

THE COVENANTOR AGREES:

1. No Objection

The Lot owner shall not, and shall not procure or canvas any other person to, object or submit to any Relevant Authority, in respect of any application of ORHL or any related party for a resource consent or District Plan change relating to the Burdened Land or any land within a 3 km radius of the Burdened Land.

2. Fencing

Where any Lot shares a boundary with any public road, public walkway and/or public reserve, any fencing/screening and hedging on those boundaries shall not exceed 1.2 metres in height above natural ground level at the issue of title for the Lot. All boundary fences along or adjoining any public walkway or public reserve shall be no less than 50% visually permeable.

3. Maintenance of Lot

Until construction of a Dwelling and landscaping is completed, the Lot and road verge must be maintained in a neat and tidy condition and grass and other ground cover must not exceed a height of 150 mm.

4. Piles to be Concealed

Where a Building (including decks) on the Lot has been constructed and/or relocated with a pile or pole foundation (or similar construction where the floor level of the Building is elevated from the ground level), the area between ground level and the floor level of the Building shall be concealed by either a solid wall or screening with spacing no larger than 100mm. For the avoidance of doubt, screening by way of planting will not be sufficient to satisfy this covenant.

5. No Further Subdivision

There shall be no further subdivision of Lots 1 – 89 DP 624962 (inclusive).

6. No Second Hand / Previously Used Buildings

No second hand or previously used relocatable, prefabricated or transportable Buildings shall be placed on the Lot. Any relocatable, prefabricated or transportable Buildings placed on the Lot shall be new and must also comply with the operative provisions in the Queenstown Lakes District Plan (or such other document in place at the relevant time).

7. Building Height Restrictions

All Buildings on each of Lots 1-6, 9-11, 40-44, 48, 49, 53-61, 65, 66, 70-77, 81, 82 and 86-89, all on DP 624962 (inclusive), shall not exceed 5.5 metres in height above the existing ground level at the Centre of the Relevant Lot at the issue of title for the Lot. Notwithstanding the height restriction contained in this clause, chimneys may extend beyond the permitted height provided such encroachment does not exceed the permitted encroachments set out in the operative provisions in the Queenstown Lakes District Plan (or such other document in place at the time of construction) and are no larger than 1200mm in any horizontal direction and no higher than 1000mm above the maximum building height (including any top chimney frame/grating/cage/cowling).

8. Maximum Height of Plantings

Trees, shrubs and other plants shall not protrude beyond a graduated plane drawn at 1.9 metres in height from the legal boundaries of the relevant Lot to the highest ridge line of any Building on the relevant Lot. No trees, shrubs or other plants shall exceed the maximum permitted build height on the relevant Lot.

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9. Fencing Covenant

- 9.1 The Covenantor shall be bound by a Fencing Covenant within the meaning of section 2 of the Fencing Act 1978 in that ORHL shall not be liable to contribute to the cost of or assist in the erection or maintenance of any boundary or dividing fence on any Lot or on any other land owned or occupied owned by ORHL that adjoins any Lot.
- 9.2 Clause 9.1 is intended for the benefit of ORHL only and shall not enure for the benefit of any other person or persons.