

**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**  
*required*

*Continue in additional Annexure Schedule, if*

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 31 DP 608359, RT 1204440 – Lot 43 DP 608359, RT 1204452  Lot 59 DP 608359, RT 1204453 – Lot 131 DP 608359, RT 1204525  Lot 133 DP 608359, RT 1204526 – Lot 138 DP 608359, RT 1204531	Lot 31 DP 608359, RT 1204440 – Lot 43 DP 608359, RT 1204452  Lot 59 DP 608359, RT 1204453 – Lot 131 DP 608359, RT 1204525  Lot 133 DP 608359, RT 1204526 – Lot 138 DP 608359, RT 1204531  Lot 903 & Lot 904, DP 608359, RT 1204532
Fencing covenant	All of the land contained within the Burdened Land		

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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 Instrument.

#### OPERATIVE PROVISIONS

#### 2. DEFINITIONS AND INTERPRETATIONS

- 2.1 Definitions: In this 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 District Plan means the Queenstown Lakes District Council District Plan.
  - c Dwelling means a residential dwelling house.
  - d Lot means any and all of the Burdened Land described in Schedule A.
  - e 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 Instrument.
- 2.2 Interpretation: In this 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 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;
  - 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:
- that part or provision shall be severed from this Covenant Instrument;
  - 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
  - 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 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

- 4.1 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.

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**Annexure Schedule 2****THE COVENANTOR AGREES:****1. No Relocatables**

- 1.1. No new or second hand relocated/transportable or prefabricated Buildings shall be placed on the Lot. The Buildings erected upon the within Lot shall be built upon the land provided always that prefabricated but previously unassembled Buildings shall for the purposes of this covenant be deemed to be built upon the within Lot provided they are assembled on the Lot.

**2. General Height Restrictions:**

- 2.1. All Buildings on Lots 116 – 125 DP 608359 inclusive shall be single storey and shall not exceed 5.5 metres in height above the existing ground level at the centre of the Lot at the issue of title for the Lot or the height specified in any relevant consent notice registered on the record of title to the Lot, whichever is the lower. For the purposes of this clause the centre of the Lot is defined at the point at which a diagonal line drawn across the Lot from each front corner boundary peg to each rear boundary corner peg meet. Chimneys may project through the maximum building restriction height by up to 0.6 metres provided that the chimney size above the maximum building height restriction measures no more than 1.2 metres in any horizontal direction.
- 2.2. All Buildings on Lots 31 – 43 DP 608359 inclusive and Lots 59 – 115 DP 608359 inclusive and Lots 126 - 137 DP 608359 inclusive, shall be single story and not exceed 5.5 meters in height from the existing ground level at the centre of the Lot at the issue of title for the Lot. For the purposes of this clause the centre of the Lot is defined at the point at which a diagonal line drawn across the Lot from each front corner boundary peg to each rear boundary corner peg meet. Chimneys may project through the maximum building restriction height by up to 0.6 metres provided that the chimney size above the maximum building height restriction measures no more than 1.2 metres in any horizontal direction.

**3. Maximum Height of Plantings**

- 3.1. Trees, shrubs and other plants shall not exceed a maximum height of 5.5 metres. For the purposes of this clause Height" is to be measured from the original ground level of the Lot as the issue of title for that Lot.

**4. Fencing**

- 4.1. Where any Lot shares a boundary with any public roads, public walkways 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 and shall be no less than 50% visually permeable.

**5. Maintenance of Lot**

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

**6. No Further Subdivision**

- 6.1. There shall be no further subdivision of Lots 31 – 43, DP 608359 inclusive and Lots 59 – 131 DP 608359 inclusive and Lots 134 DP 608359 – 138 DP 608359 inclusive.

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**7. Fencing Covenant**

- 7.1** 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.
- 7.2** Clause 7.1 is intended for the benefit of ORHL only and shall not enure for the benefit of any other person or persons.