

Covenant Instrument to note land covenant

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

Covenantor

[insert developer name and register in subdivision e-dealing]

Covenantee

[insert developer name and register in subdivision e-dealing]

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
Restrictive Land Covenant			

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 #8 - memorandum number#, registered under section 209 of the Land Transfer Act 2017].~~

Annexure Schedule.

Insert instrument type

Covenant Instrument to note land covenant

BACKGROUND

- A. The Covenantor is the owner of the Burdened Land.
- B. The Covenantor and Covenantee have entered into certain obligations in respect of the Burdened Land.
- C. The Covenantor has agreed to enter into a covenant in favour of the Covenantee upon the terms set out in this covenant.

1. DEFINITIONS

- 1.1 In this instrument unless the context indicates otherwise:

Burdened Land means the land described as such in Schedule A;

Covenantor means the person named as Covenantor on the first page of this instrument and includes the Covenantor's successor's in title as registered owner of the Burdened Land or any part of it, and where appropriate includes the Covenantor's agents, employees, contractors, tenants, licensees and invitees;

Covenantee means the person named as Covenantee on the first page of this instrument and includes the Covenantee's successor's in title as registered owner of the Benefited Land or any part of it, and where appropriate includes the Covenantee's agents, employees, contractors, tenants, licensees and invitees;

Property means any one of the parcels of land identified as Burdened Land in this instrument;

Residence or Residences means residential buildings, each designed for and occupied exclusively as one household unit for residential purposes only; and

Working Day has the meaning given to it in the Property Law Act 2007.

- 1.2 In this instrument, unless the context indicates otherwise:

- a) **Defined Expressions:** expressions defined in the main body of this instrument have the defined meaning throughout this instrument, including the background;
- b) **Headings:** clause and other headings are for ease of reference only and will not affect this instrument's interpretation;
- c) **Parties:** references to any party include that party's executors, administrators, successors and permitted assigns;
- d) **Persons:** references to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- e) **Plural and Singular:** references to the singular include the plural and vice versa;

- f) **Clauses/Schedules/Attachments:** references to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this instrument. Each such schedule and attachment forms part of this instrument;
- g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by law, regulation, order, statutory instrument, determination or subordinate legislation made under it; and
- h) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

2. COVENANTS

The Covenantor for itself and its successors in title to the Burdened Land (or any part of it) hereby covenants and agrees with the Covenantee, that the Covenantor will and at all times observe and perform all the stipulations and restrictions contained in this instrument to the end and intent that each of the stipulations and restrictions will, in the matter and to the extent prescribed, be for the benefit of the Covenantee.

3. FIRST SCHEDULE

The Covenantor further acknowledges and agrees that:

Section Maintenance

- 3.1 The Covenantor must ensure from the date of the Covenantor obtaining possession of the Burdened Land that the Burdened Land is kept in a neat and tidy condition and maintained free from long grass, weeds, rubbish and builder's waste or other substances before, during and after the construction of any Residence.
- 3.2 The use of adjacent or abutting land for access and dumping of rubbish and waste concrete is strictly prohibited provided however that the Covenantor may have access across any other land owned by the Covenantee, upon obtaining written approval from the Covenantee.
- 3.3 The Covenantor is liable for any damage caused to roads, berms, trees or footpaths or to any adjoining land resulting from the construction of any Residence on the Burdened Land, and the Covenantor hereby indemnifies the Covenantee from any ensuing cost or liability suffered by the Covenantee in respect of any such damage.

Occupation of Residence

- 3.4 Any Residence constructed on the Burdened Land must not be occupied until all exterior cladding to the Residence is installed and completed, the driveway has been laid, the grounds around the Residence are levelled and prepared for the development of lawn and gardens and the boundary fences have been erected around the Burdened Land.

Relocatable Structures

- 3.5 The Covenantor must not place on the Burdened Land any relocated or transportable building or structure whether new, used, or recycled (excluding a garden shed or similar structure) provided that builder's sheds or such other buildings that are required during the course of construction and erection of any Residence may be placed on the Burdened Land but must be removed on completion of construction of such Residence unless otherwise approved by the Covenantee.

Disrepair of Buildings

- 3.6 The Covenantor must not allow any buildings or structures on the Burdened Land to become dilapidated, to fall into disrepair or allow any nuisance or disturbance to be caused to any owner or occupier of neighbouring residences.

Temporary Dwellings

- 3.7 No temporary dwelling, caravan or other equipment and materials may be brought onto or allowed to remain on the Burdened Land following completion of the Residence unless they are garaged or screened so as to preserve the neighbourhood amenity values.

Graffiti

- 3.8 The Covenantor must not allow to remain on any wall, fence, and structure or building on the Burdened Land any graffiti or similar disfiguring for more than 5 Working Days from the later of the date that such occurred or was brought to the notice of the Covenantor.

Fencing Covenant

- 3.9 The Covenantee is not liable to pay for or contribute towards the expense of erection or maintenance of any fence between the Burdened Land and any contiguous land owned by the Covenantee but this provision will not enure for the benefit of any subsequent purchaser of the contiguous land owned by the Covenantee.

Covenantee's Indemnity

- 3.10 The Covenantor agrees that it will at all times hereafter save harmless and keep indemnified the Covenantee from all proceedings, costs, claims and demands in respect of any breaches by the Covenantor of any of the covenants and restrictions in this instrument on the Covenantor's part contained or implied.

Enforcement of Covenants

- 3.11 The Covenantee will not be required or obliged to enforce all or any of the covenants, stipulations and restrictions contained in this covenant nor liable to the Covenantor for any breach of it by any of the registered proprietors from time to time of the other properties which are subject to the same covenants.

Boundary Adjustment

- 3.12 The Covenantor must not alter the boundaries of the Burdened Land whether by amalgamation, boundary adjustment or in any manner whatsoever without first obtaining the consent in writing of the Covenantee.

Driveways and Landscaping

- 3.13 The Burdened Land is limited to a maximum of one vehicle crossing per Property.

4. BREACH OF COVENANTS

- 4.1 If the Covenantor breaches or fails to observe part of any of the covenants, and that breach or failure is capable of being remedied (without prejudice to any other liability which the relevant party may have to the other party), the Covenantor will, upon written demand being made by the Covenantee, within 10 Working Days of receipt of such notice:

- a) do all things necessary to remedy any breach or non-observance of the covenants; and

b) in respect of any breach of the covenants by the Covenantor pay to the Covenantee as liquidated damages the sum of \$300.00 (three hundred dollars) per day for every day that such breach or non-observance continues after the date upon which such written demand has been made.

4.2 Both parties acknowledge and agree that damages are not an adequate remedy in the event of a breach of the covenants.

5. COVENANTS TO BIND SUCCESSORS

For the avoidance of doubt, the parties covenant and agree that, notwithstanding any rule of law or equity to the contrary:

5.1 The covenants in this instrument will be deemed to have been made by the parties for themselves and their respective successors in title and any person deriving title under them and will have effect as if those successors and other persons were expressed; and

5.2 The parties and their successors and persons deriving title and interest under them will be deemed to include the owners and occupiers for the time being of the Burdened Land.

6. LIMITED LIABILITY

The Covenantor, and its successors in title, will only be liable for breaches of the Covenants that occur while they are registered as owner of the Burdened Land.

7. TERMINATION

7.1 There is no implied power in this instrument for the Covenantor to terminate the covenants and obligations under this instrument due to the Covenantee breaching any term of this instrument or for any other reason, unless the Covenantee releases the Covenantor from the same.

7.2 Despite clause 7.1, the Covenantor will be entitled to a discharge of this covenant on the date 10 years after the date of registration of this instrument (**Expiry Date**) and:

a) this covenant will be revoked and of no further effect from the Expiry Date; and

b) the parties will promptly sign and do all things reasonably necessary to revoke and remove this covenant from the Burdened Land,

provided that expiry will be without prejudice to the rights and obligations of any party in respect of any breach by another party that occurred prior to the Expiry Date.

8. DISPUTE RESOLUTION

8.1 If any dispute arises between the parties concerning the interpretation of this instrument or anything contained in or arising out of the covenants, the parties will try in good faith to settle the matter by negotiation or mediation.

8.2 If the parties are unable to resolve the dispute within 10 Working Days of either party giving notice to the other that the party is invoking this dispute resolution mechanism, then the dispute will be referred to mediation.

8.3 If the parties are unable to resolve the dispute within 20 Working Days of either party giving notice to the other that the party is invoking this dispute resolution mechanism, the dispute will be referred to a sole arbitrator.

- 8.4 The parties must try to agree on the arbitrator. If they cannot agree, the President for the time being of the New Zealand Law Society (or his or her nominee) will, on either party's application, nominate the arbitrator.
- 8.5 The arbitration will be governed by the Arbitration Act 1996 and the arbitral award will be final and binding on the parties.