

Covenant Instrument to Note Land Covenant

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

Covenantor

UWC Limited

Covenantee

UWC Limited

Grant of Covenant

The Covenantor being the registered owner of the burdened land 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 covenant	[TBC]	[TBC]	[TBC]

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 Schedule 1]

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Continue in additional Annexure Schedule, if required.

1 Interpretation

In this instrument unless the context requires otherwise,

“Burdened Land” means the Burdened Land(s) set out in Schedule A and being owned by the Covenantor;

“Covenantee” means the registered owner(s) of any of the Benefited Land(s) set out in Schedule A at any time and includes any and all successors in title to any of the Benefited Land(s) set out in Schedule A or any part thereof;

“Covenantor” means the registered owner(s) of any of the Burdened Land(s) set out in Schedule A at any time and includes any and all successors in title to any of the Burdened Land(s) set out in Schedule A or any part thereof;

“Design Guidelines” means the design guidelines issued by the Developer from time to time relating to any of the Burdened Land(s) of which the Covenantor acknowledges receipt;

“Developer” means UWC Limited, a registered company incorporated under company number 1681952 and having its registered office at Wellington, or any other person or entity nominated in writing by UWC Limited;

“Property” means each individual allotment that is noted as being the Burdened Land at Schedule A, as the context so requires.

2 Terms of Covenant

2.1 The Covenantor for itself and its successors in title to the Burdened Land, which the Covenantor is the registered owner of, covenants and agrees with the Covenantee and its successors and assigns that the Covenantor will observe and perform the stipulations and restrictions contained below to the intent that each of the stipulations and restrictions shall inure for the benefit of the Covenantee and its successors and assigns and to the intent that the said Burdened Land and every part thereof shall be subject to each of the stipulations and restrictions.

2.2 Notwithstanding clause 2.1 above, the Covenantor and the Covenantee agree that covenants set out in this instrument shall automatically expire on that date being twenty (20) years from the date this instrument is registered, following which the covenants in this instrument shall be of no further effect.

3 Covenants

Dwelling Design, Size and Completion

3.1 The Covenantor hereby covenants that they shall:

- (a) Not commence construction or undertake any work on the Property without first obtaining and uplifting a building consent and any other required consents from the relevant local or territorial authority.
- (b) Not apply for a building consent or commence construction on the Property unless the Developer has given written approval to the Covenantor's:
 - (i) site plan for the Property showing driveways, fencing, building layout and location, patios and basic landscaping including positions of trees, shrubs, garden beds and lawn areas;
 - (ii) floor plans of the dwelling to be constructed on the Property showing floor areas and locations of windows and doors;

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- (iii) a full set of elevations of the dwelling to be constructed on the Property from all sides; and
- (iv) a list of materials indicating all exterior materials, finishes and colours (walls, roof, window and door frames, gutters and driveways) for the dwelling to be constructed on the Property.

The Developer shall be entitled to withhold its consent if the documents described in this clause and presented by the Covenantor to the Developer for approval do not comply with the Design Guidelines and/or otherwise with the provisions set out in this instrument.

- (c) Construct the dwelling and any associated ancillary building:
 - (i) in accordance with the Building Act 2004 (or any legislation substituted therefor) and the building consent issued by the relevant local or territorial authority;
 - (ii) in accordance with any consent notice or any other instrument registered against the record of title to the Property;
 - (iii) in a good and tradesmen like manner and in accordance with the plans and specifications approved by the Developer;
 - (iv) in accordance with the Design Guidelines in all respects.
- (d) Construct the dwelling and any associated ancillary building (if applicable) on site. No kitset pre-built transportable or relocatable house, caravan, shed or garage may be erected or permitted for permanent or temporary accommodation.
- (e) Not erect or allow to be erected a dwelling of a floor area less than 120 square metres unless otherwise approved in writing by the Developer, with the floor area measurement to be exclusive of any associated ancillary building (such as a garage or carport) decking, breezeways, entry porches, verandas and roof overhang.
- (f) Not bring any second-hand or relocatable buildings onto the Property.
- (g) During construction:
 - (i) prevent any building material or waste from being placed on any allotment adjoining the Property. A refuse skip will be used during construction and emptied regularly;
 - (ii) ensure that the building contractor has full contract insurance and public liability cover for an amount deemed adequate by the Developer. The Covenantor shall upon request being made by the Developer provide a copy of the said insurance cover to the Developer prior to any works on the Property commencing;
 - (iii) allow the Developer to enter on to any building site for the purpose of inspecting the dwelling and associated ancillary building to ensure that the provisions of this instrument and any site maintenance requirements are observed.
- (h) Not occupy the dwelling until a code compliance certificate has issued under the Building Act 2004 or any legislation passed in substitution.
- (i) Not allow contractors or subcontractors to commence work on the Property without first informing them of the restrictions created by these covenants and ensuring their compliance therewith.

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Restrictions on Land Use

3.2 In addition to the covenants set out above, the Covenantor further covenants with the Covenantee that the Covenantor shall not:

- (a) Further subdivide the Property.
- (b) Use the Property for any use other than residential.
- (c) Enter into an agreement to sell the Property prior to such time that all other allotments within the Property's relevant development stage have been sold by the Developer to the intent that the Covenantor is expressly prohibited from competing with the Developer in respect of the development stage to which the Property forms a part. Where the conditions of this clause have not been met, the Covenantor may only enter into an agreement to sell the Property having obtained the prior written consent of the Developer (such consent to be provided by the Developer at its sole discretion in all things).
- (d) Use the Property for any purpose which is illegal.
- (e) Carry out on the Property any construction or reconstruction or alteration, addition or refurbishment to any building which results in the exterior appearance and architectural standards of the building not being in keeping with the Design Guidelines and/or the provisions of this instrument.
- (f) Permit any boats, trailers, caravans, additional cars or trade vehicles to park on the Property, unless appropriately screened, provided that trade vehicles are permitted when building work, repairs or maintenance work is being carried out on the Property.
- (g) Allow unrestricted stormwater run-off and shall provide for all stormwater falling on roofs and buildings to be collected and disposed of.
- (h) Allow any signs on the Property other than:
 - (i) no more than two real estate signs necessary for the sale of the Property; and
 - (ii) a sign indicating the number of the Property and the name of its owner.
- (i) Allow the exterior painting and other exterior surface materials of any building situated on the Property to deteriorate and shall maintain the same to a reasonable standard appropriate to a high quality residential neighbourhood and will not allow any buildings or structures on the Property to become dilapidated or to fall into disrepair or allow any nuisance or disturbance to be caused to any owner or occupier of neighbouring lands.
- (j) Allow or permit the growth of grass and other ground cover on the Property to exceed 100mm in height. Additionally, the Covenantor shall not allow any broom, gorse, thistles, other noxious weeds, undergrowth, dried or rank grass to grow or remain on the Property or any other part of the Burdened Land that is vacant. The Developer may, without notice having first being required, enter the vacant Burdened Land and cut grass and groundcover at the cost of the Covenantor if this requirement is not observed.
- (k) Bring on to raise, breed or keep any animals, reptiles, poultry or livestock on the Property except to keep a maximum of two (2) animals limited to dogs or cats, unless prior written approval is given by the Developer and is in keeping with the local or territorial authority's regulations. Animals shall not be allowed to become a nuisance to others adjoining or near the Property and shall be controlled by the Covenantor so as to prevent them from roaming the Property at will. For the avoidance of doubt, pigeons are expressly prohibited from being kept on the Property at all times.

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4 Future Development

- 4.1 The Covenantor covenants with the Developer that the Covenantor will not oppose, object to, frustrate or take any action or encourage or cause others to oppose, object to, frustrate or take any action that might in any way prevent or hinder the Developer from progressing and completing any development, subdivision and/or zone change, resource consent or approval needed or sought in respect of any land in which the Developer has an interest in.
- 4.2 In the event that the Developer makes any consent application which requires or may require the Covenantor's approval under a District Plan the Covenantor will at the request of the Developer provide its unqualified written approval in respect of any such application and no later than five (5) working days from the date that the Developer has made such request.
- 4.3 Notwithstanding clause 4.2 above, in the event that the Covenantor is unwilling or unable to provide its written approval as an affected party, the registration of this land covenant against the Covenantor's record of title shall constitute the Covenantor's written approval for the purposes of section 104(3) of the Resource Management Act 1991 or any other relevant legislation (whether in substitution or otherwise) and the Developer shall be entitled to provide a copy of this land covenant so registered to the local authority as evidence that written approval is given.¹
- 4.4 In addition to the obligation set out at clause 4.3 above, the Covenantor shall not at any time withdraw its written approval and shall not in any way directly or indirectly object, procure support or encourage any objection from a third party, make any claim or demand, take any action or proceedings to the Developer's consent application.

5 Disputes

- 5.1 If a dispute in relation to this instrument arises between the Covenantor and the Covenantee:
- (a) The party initiating the dispute must provide full written particulars of the dispute to the other party; and
 - (b) The parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
 - (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties):
 - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
 - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

6 Severability

- 6.1 If any term or obligation provided for in this instrument shall be unenforceable for any reason, including uncertainty, the parties agree that the unenforceable term or obligation is severed from this covenant without affecting the enforceability any of the remaining terms or obligations. In the event of any such severance, the parties shall use their best endeavours to negotiate and agree upon a replacement term or

¹ Refer to the ruling of the Environment Court in the decision of *Loneburn Planning Limited v Queenstown Lakes District Council* [2014] NZEnvC267 which held that registration of a land covenant constituted affected party approval under section 104(3) of the Resource Management Act 1991.

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obligation with the intent that, to the greatest extent possible the covenant shall achieve the economic, legal and commercial objectives of the unenforceable term or obligation.