



View Instrument Details

Instrument No 12849097.2
Status Registered
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Lodged By Hamilton, Bridgette Sarah
Instrument Type Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



Toitū Te Whenua
Land Information
New Zealand

Affected Records of Title	Land District
2417	Otago

Annexure Schedule Contains 7 Pages.

Covenantor Certifications

I certify that I have the authority to act for the Covenantor and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

I certify that the Caveator under Caveat I2802683.1 has consented to this transaction, which is subject to the Caveat, and I hold that consent

Signature

Signed by Timothy Arden Stevens as Covenantor Representative on 08/11/2023 04:29 PM

Covenantee Certifications

I certify that I have the authority to act for the Covenantee and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Michelle Rose Needham as Covenantee Representative on 15/11/2023 01:16 PM

*** End of Report ***

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Form 26

Covenant Instrument to note land covenant

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

Covenantor

QLCHT Property Portfolio Limited

Covenantee

Queenstown Lakes District Council

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 Covenant as set out in Annexure Schedule 1	All the burdened land	Lot 2 Deposited Plan 300390 (RT 2417)	In gross

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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

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Annexure Schedule 1

Interpretation

1. "*Affordable Housing*" means housing only available to an Eligible Person to purchase or rent, where the Eligible Person will spend no more than 35% of their gross income on either (a) rent for the house (if renting under an Approved Affordable Housing Solution); or (b) mortgage (principal and interest) payments (if purchasing an interest in the house under an Approved Affordable Housing Solution) or such other definition as expressly agreed in writing between the Covenantor and Covenantee.
2. "*Approved Affordable Housing Solutions*" means housing solutions to be provided to Eligible Persons by the Covenantor on the Land pursuant to Affordable Housing programs approved by the Covenantee.
3. "*Covenant*" means this land covenant.
4. "*Covenantor*" means the party listed as Covenantor on the first page of this Agreement being QLCHT Property Portfolio Limited.
5. "*Covenantee*" means the party listed as Covenantee on the first page of this Agreement being Queenstown Lakes District Council.
6. "*Eligible Person*" means:
 - 6.1. a household with a total income of no more than the higher of: (a) the income cap set for households by the Inland Revenue Department of New Zealand for registered Community Housing Providers; or (b) 120% of the Queenstown Lakes District's median household income from time to time where the median household income shall be determined by reference to Statistics New Zealand latest data, and as necessary, adjusted annually by the average wage inflation rate;
 - 6.2. a household whose members do not own or have interest in other real estate in New Zealand or any other country;
 - 6.3. a household whose members must not own or be a beneficiary of a business or trust that has adequate income and/or assets that enable the household to enter into home ownership independently;
 - 6.4. a household whose members live in the housing and do not let or sublet the housing to others for more than 4 weeks a year; and
 - 6.5. a household whose members have at least one member who is a New Zealand resident or citizen.
7. "*Encumbrance*" means a mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, other encumbrance or security interest of any kind, or another type of preferential arrangement (including, without limitation, a title transfer and retention arrangement) having similar effect.
8. "*Land*" means the land subject to this land covenant comprised in Record of Title 2417 and any land subsequently subdivided from this land.
9. "*Lending Arrangement*" means any agreement or arrangement which requires the Covenantor to grant an Encumbrance over the Land to any person.
10. "*Option to Purchase*" means the Covenantee's option to purchase the Land under clause 6 on the terms set out in Annexure Schedule 2.
11. "*Working Day(s)*" has the same meaning given to it under the Property Law Act 2007.
12. Capitalised terms used in Annexure Schedule 2 but not otherwise defined shall have the meaning given to them in Annexure Schedule 1.
13. Words importing the singular include the plural and vice versa.

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14. A reference to a statute or regulation includes all amendments to that statute or regulation and any substitute statute or regulation.

Background

1. The Covenantee was the original owner of the Land.
2. The Land is endowment land and (as recorded on the Record of Title) must be held on trust for the purposes of affordable housing.
3. In 2022 the Land was transferred from the Covenantee to the Covenantor expressly on the basis that the Covenantor would only use the Land for the purposes of providing Approved Affordable Housing Solutions.
4. The parties wish to enter into this Covenant to ensure the continued use of the Land by the Covenantor for the purposes of providing Approved Affordable Housing Solutions only, and to grant the Covenantee express remedies in the event of any breach by the Covenantor.

Covenants

5. The Covenantor covenants with the Covenantee as follows:
 - 5.1. The Covenantor shall only use the Land for the purposes of providing Approved Affordable Housing Solutions.
 - 5.2. The Covenantor shall obtain the written consent of any person who is party to a Lending Arrangement to the terms of this Covenant and shall ensure that such party agrees that the timeframe for the purposes of Section 120(1)(c) of the Property Law Act 2007 is amended to 60 Working Days.
 - 5.3. The Covenantor shall not agree to encumber the Land to secure lending to the Covenantor where that lending is not directly related to the Covenantor's development, use and ownership of the Land.
 - 5.4. The Covenantor shall give written notice to the Covenantee immediately upon being notified that it is in default of any terms of a Lending Arrangement.
6. The Covenantor and Covenantee agree that the Covenantee shall be entitled to exercise the Option to Purchase if:
 - 6.1. the Covenantor breaches any of the above covenants (and the Covenantor failing to remedy the breach within 20 Working Days from written notice of the breach being given by the Covenantee); or
 - 6.2. The attempted enforcement of any Lending Arrangement by the issue of a notice under Section 119 of the Property Law Act 2007 (**Notice**). In this circumstance the Covenantor shall advise the Covenantee immediately of the attempted enforcement and shall immediately provide the Covenantee with a copy of the Notice. If a Notice has been issued and the Covenantee elects to exercise its Option to Purchase, it shall do so within 60 Working Days from the date of the Notice.

For clarification, this Covenant, and the right to exercise the Option to Purchase, is intended to bind the Land and all future owners of the Land in perpetuity, such that the Option to Purchase may be exercised more than once by the Covenantee provided that if the Covenantee decides not to exercise its Option to Purchase in accordance with clause 6.2 above then the mortgagee of the Land shall be free to proceed with a mortgagee sale of the Land without further reference to, or interference from, the Covenantee.

General

7. This instrument will be binding on all transferees, lessees, mortgagees, chargeholders, encumbrancees and their respective successors in title and assigns of any estate or interest in the Land. Where this Covenant binds or benefits more than one party, it shall bind or benefit each party jointly and severally.

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8. Where the Covenantor is a company this Covenant shall bind a receiver, liquidator, statutory manager or statutory receiver. Where the Covenantor is a natural person this Covenant shall bind the Official Assignee acting in the bankruptcy of the Covenantor. In either case this Covenant binds a mortgagee in possession.
9. The Covenantor acknowledges that damages are not a sufficient remedy for the Covenantee for breach of this Covenant by the Covenantor and the Covenantee is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies available to it at law or in equity.
10. The Covenantee shall be entitled to request from the Covenantor any information reasonably required by the Covenantee to demonstrate the Covenantor's compliance with the terms of this Covenant. The Covenantor shall provide any such information requested as soon as possible following receipt of a written request from the Covenantee.
11. If at any time any part or provision of this Covenant is or becomes invalid, void, illegal or unenforceable in any respect whatsoever, then:
 - 11.1. that part or provision shall be severed from this Covenant;
 - 11.2. 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; and
 - 11.3. the parties shall enter into appropriate substitute instrument(s) to give full and proper effect to the agreements and understandings in this Covenant.
12. The Covenantor covenants with the Covenantee that it will:
 - 12.1. not, without the prior written consent of the Covenantee, seek to discharge, surrender, lapse, vary, amend, withdraw or remove in any manner whatsoever this Covenant; and
 - 12.2. always act in good faith and do all acts and things and enter into and execute any replacement instrument whenever reasonably required by the Covenantee and otherwise obtain any necessary consents all of which may be reasonably necessary and appropriate to give effect to the express provisions of this Covenant as set out in the words of this Covenant.
13. Any dispute which arises between the Covenantor and Covenantee in any way relating to this Covenant 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. Nothing limits or excludes the Covenantee applying to the Court for interlocutory and/or injunctive relief or a declaration.

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Annexure Schedule 2

1. The Covenantor shall have the right to exercise the Option to Purchase on the following terms:
 - 1.1. **Vendor:** The Covenantor and any successors in title.
 - 1.2. **Purchaser:** The Covenantor and any successors in title.
 - 1.3. **Land:** The land comprised in Record of Title 2417 and any land subsequently subdivided from this land.
 - 1.4. **Option Periods:** The option periods are as follows:
 - (a) for a breach occurring under clause 6.1 of Annexure Schedule 1, the expiry date of the Option to Purchase is the date that is 5 years from the date that the Covenantor is entitled to exercise the Option to Purchase in accordance with clause 6.1 of Annexure Schedule 1; and
 - (b) for a breach occurring under clause 6.2 of Annexure Schedule 1, the expiry date of the Option to Purchase is the date that is 60 Working Days from the date of the Notice (as that term is defined in clause 6.2 of Annexure Schedule 1).
 - 1.5. **Purchase Price:** The purchase price for the Option to Purchase shall be the market value of the Land and any improvements situated thereon (but subject to all registered interests against the same) as at the date the Purchaser exercises the Option to Purchase PROVIDED THAT if QLCHT Property Portfolio Limited is the registered proprietor of the Land at the time of exercise of the Option to Purchase then the purchase price payable by the Purchaser shall be an amount equal to the amount borrowed (being all principal sums plus any accrued interest, costs and fees owing) by QLCHT Property Portfolio Limited from its financiers for the purpose of its development, ownership and/or use of the Land as at the date the Purchaser exercises its Option to Purchase.
 - 1.6. **Market Value:** If the parties cannot agree the market value of the Land within 10 Working Days of the need to do so it shall be determined as follows:
 - (a) the current market value of the Land shall be assessed by a single registered valuer where the parties can agree upon a single appointment and in such circumstances, the costs of the valuer shall be shared equally;
 - (a) where the parties are not able to agree on the appointment of a single registered valuer, each party shall be entitled to appoint a registered valuer who shall, before commencing their assessments, appoint a third registered valuer to act as an umpire in the event that the parties' valuers should fail to agree. The determination of the umpire shall be final and binding on the parties. Each party shall be responsible for the costs of its own valuer and the costs of the umpire shall be shared equally;
 - (b) the appointment of valuers shall be made by both parties as soon as possible and in any event no later than 10 Working Days following failure to agree the market value; and
 - (c) for the purposes of this clause 1.6, where the Option to Purchase is occurring by virtue of a breach occurring under clause 6.2 of Annexure 1 then the "parties" shall mean the Covenantor and the relevant financier of the Covenantor who issued the Notice under clause 6.2 of Annexure 1.
 - 1.7. **Accruals:** For the purposes of the financial arrangement rules in the Income Tax Act 2007, the parties agree that:
 - (a) the Purchase Price is the lowest price they would have agreed for the Land, on the date that the Option to Purchase is exercised, if payment would have been required in full at the time the first right in the contracted property (being the Land) was transferred; and
 - (b) the Purchase Price is the value of the Land.

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- 1.8. **Settlement Date:** 20 Working Days following execution of the sale and purchase agreement by the Purchaser.
- 1.9. **Exercise of Option to Purchase:** The Purchaser shall be entitled to exercise the Option to Purchase as follows:
- (a) the Purchaser may give written notice of its intention to exercise the Option to Purchase to the Vendor at any time during the Option Period. Upon issue of this notice the Purchase Price shall be determined in accordance with clause 1.5. If the determination of the Purchase Price requires the market value of the Land to be agreed and such agreement cannot be reached within 10 Working Days then it shall be determined as set out in clause 1.6 above.
 - (b) upon determination of the Purchase Price, the Purchaser may exercise the Option to Purchase by:
 - (i) Having its solicitor prepare a sale and purchase agreement on the current Auckland District Law Society Form amended to reflect the above terms; and
 - (ii) Signing the sale and purchase agreement and delivering it to the Vendor.
- 1.10. **Contract:** Upon completion of the requirements in clause 1.9(b) the Vendor and Purchaser are immediately bound to respectively sell and purchase the Land.
- 1.11. **Non-exercise:** If the Option to Purchase is not exercised by the Purchaser during the Option Period in the manner provided in clause 1.9(b) then the Covenantee will be deemed to have not exercised the Option to Purchase and it shall be deemed to be terminated.
- 1.12. **Vendor warranties:** The Vendor must not without the written consent of the Purchaser:
- (a) create or allow to be created any claim or interest in respect of the Land; or
 - (b) otherwise deal with the Land,
- in a manner which is inconsistent with the Vendor's obligations or the Purchaser's rights under this Covenant.
- 1.13. **Caveat:** The parties acknowledge that the Purchaser has a caveatable interest in the Land by virtue of this Option to Purchase and the Purchaser is entitled to register and maintain a caveat against the title to the Land to protect its interests under this Option to Purchase.