

COVENANT INSTRUMENT TO NOTE LAND COVENANT

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

**Approval
2018/6263**

Registrar-General of Land

Covenantor

WFH PROPERTIES LIMITED

Covenantee

WFH PROPERTIES 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 covenants(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	See attached Annexure Schedule	See attached Annexure Schedule	See attached Annexure Schedule
Land Covenant	See attached Annexure Schedule	See attached Annexure Schedule	In gross

Covenant rights and powers (including terms, covenants and conditions)

Delete phrases in [] and insert Memorandum number as require; 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 2]

ANNEXURE SCHEDULE 2

The Covenantee when registered owner of the land formerly contained in Record of Title 1132247 subdivided the land into lots in the manner shown and defined on Deposited Plan [_____] (hereinafter referred to as the "the Plan").

WHEREAS it is the Covenantee’s intention to create a high quality subdivision known as Pembroke Heights ("Pembroke Heights"). To enable this to occur it is the Covenantor’s intention to create for the benefit of the land set out in Schedule 2C (hereinafter referred to as the "Benefited Land") and for the benefit of the Covenantee in gross referred to in Schedule A, the land covenant set out in Schedule 2B over the land set out in Schedule 2A (hereinafter referred to as the "Burdened Land"). The Covenantee’s intention is to create a land covenant that is reciprocal that shall not be over and in favour of the Burdened Land and the Benefitted Land at the same time.

AND so as to bind the Burdened Land and for the benefit of the respective Benefited Land and the Covenantee in gross, the Covenantor **DOTH HEREBY COVENANT AND AGREE** in the manner set out in the Schedule 2B hereto so that the covenant runs with the Burdened Land set out in Schedule 2A for the benefit of each of the respective registered owners of the Benefited Land as described in Schedule 2C and for the benefit of the Covenantee in gross.

AND The obligations and covenants of the Covenantee under this Instrument enure for the benefit of the Covenantee (in accordance with Subpart 1 and Part 2 of the Contracts and Commercial Law Act 2017).

SCHEDULE "2A"

Lot No.	Record of Title	Lot No	Record of Title
1		2	
3		4	
5		6	
7		8	
9		10	
11		12	
13		14	
23		24	
25		26	
27		28	
29		30	
31		32	
33		34	
35		36	
37		38	
39		40	
41		51	
397			

SCHEDULE "2B"

1. Defined Terms

1.1. Definitions

Adjoining Land means any land owned now or in the future by WFH Properties Limited which will form part of the Pembroke Heights Development.

Building means any structure (excluding fences and landscaping) on the Burdened Land. For the avoidance of doubt, where the context requires, this includes a Dwelling.

Council means Queenstown Lakes District Council or its successor.

Covenantee means the owner of all or any part or parts of the Benefited Land and their executors, administrators, assignees and successors in title from time to time.

Covenantor means the owner of all or any part or parts of the Burdened Land and their occupiers, invitees, executors, administrators, assignees and successors in title from time to time.

Covenants means the covenants set out in this Instrument.

Design Controls means the design control guidelines issued by the Developer as at the date of registration of this Instrument titled "Pembroke Heights Design Controls" which are available on the Pembroke Heights website <https://pembrokeheights.co.nz/plan-approvals>.

Developer means WFH Properties Limited or its duly appointed agent.

Developer consent means written consent which may or may not be provided by the Developer at its sole discretion and upon such terms and conditions (if any) that the Developer deems necessary.

District Plan means the Queenstown Lakes District Plan.

Duplex Lot means Lots 6 and 35 on the Plan.

Dwelling means a single self-contained household unit and includes accessory buildings.

Ground Level means the natural ground level of the relevant land as at the date of registration of this Instrument.

Instrument means this covenant instrument creating a land covenant.

Improvements mean existing improvements constructed by the Developer on the Burdened Land and adjoining roads or reserves, including (but not limited to) roading, footpaths, kerbs, gutters, swale crossings, landscaping, street lights, open spaces and walkways.

Lodge any Submission means (without limitation) personally or through any agent or servant, directly or indirectly, lodge or support in any way any objection or submission to any Planning Proposal and includes (without limitation) taking part in any planning hearing or, appeal or reference arising in respect of a Planning Proposal whether as a party or otherwise.

Lot/s means each and all of the lots created by a Subdivision of the Burdened Land (and Lot shall have a corresponding meaning) that can have a Dwelling constructed on it.

Planning Proposal includes (without limitation) any resource consent application and/or plan change and/or variation of any nature under the relevant District Plan or proposed District Plan.

Subdivide and **Subdivision** has the meaning ascribed to subdivision of land in Section 218 (1) of the Resource Management Act 1991.

2. General Covenants

- 2.1. The Covenantor shall not erect on the Lots any Building, structure or fence or landscaping unless the Building plans (including site plan, landscape plan, finish and external colour scheme) ("Plans") have received Developer consent in accordance with the Design Controls. Developer consent shall be deemed to have been given to such Plans in respect of any Building which has been erected and occupied for a period of five (5) years or more without the Developer objecting to same.

- 2.2. The Covenantor shall not erect on a Lot any temporary building or structure whether purpose built or previously erected on other land except as may be necessary during the construction of the permanent Building/s provided that all temporary buildings or structures will be removed from the Lot upon completion of the permanent Building/s.
- 2.3. The Covenantor shall not permit or suffer on any Lot:
- a. Any changes to the Plans or external appearance of any Building once consent has been obtained from the Developer.
 - b. Any external additions or alterations to any Building, fencing or landscaping without the prior written consent of the Developer.
 - c. The use or occupation of the Dwelling as a residence prior to the Dwelling being completed (including the construction of the driveway, pathways, the erection of a letterbox, the landscaping and seeding of lawns visible from the road boundary, and the completion of all fences to be constructed by the Covenantor) or by the erection of temporary structures or by the placing thereon of caravans and/or vehicles for human occupation.
 - d. The use or occupation of any Dwelling before a code compliance certificate has been issued by the Council in respect of that Dwelling under the Building Act 2004 (or any subsequent replacement legislation).
 - e. Any Building, structure, fencing or landscaping that does not comply with the Design Controls.
 - f. Any tree, plant or vegetation that will exceed 1.8 metres in height other than European or English beech, oak, elm, birch, maple, plane, ash, walnut, ribbonwood or lacebark tree species.
 - g. The construction or erection of any accessory Building and/or garden shed that exceeds 2.2 metres in height above Ground Level or is situated between the Dwelling on any Lot and any street or reserve boundary of such Lot. Such accessory Building and/or garden shed must also comply with the Design Controls.
 - h. The attachment, protrusion or establishment from the front of the Dwelling, garage or other structure within 6m of the road boundary of the land, of any fixture or allow any storage that is visible from the road and in the Developer's sole discretion is obtrusive including, but not limited to, air-conditioning units, clotheslines, television or radio aerials, satellite dishes (with the exception of standard Sky dishes) and gas bottles.
 - i. Any rubbish, including builder's waste materials to accumulate or to be placed upon any Lot or any adjoining Lot or permit grass or weeds to grow to a height exceeding 100mm or otherwise leave the land in a condition that, in the Developer's sole discretion, may be detrimental to Pembroke Heights. The Developer shall have the right to remove any building materials from the Lot or adjoining Lot or maintain the Lot in a reasonable condition to avoid the Lot being or becoming detrimental to Pembroke Heights, with reasonable costs to be met by the Covenantor and payable on demand.
 - j. The removal or relocation of any fence, tree or shrub constructed, installed or planted by the Developer without Developer consent.
 - k. The keeping or raising of any livestock, poultry, reptiles or animals of any kind or size on the land or in any building other than domesticated household pets and in particular, without otherwise limiting this restriction, shall not keep on or about the land any dog which in whole or part appears to be a Pitbull Terrier, Rottweiler, Japanese Akita, Japanese Toza, Dogo Argentino or Brazilian Fila. The keeping of pigeons is expressly prohibited.
 - l. The erection of any sign on a Lot other than:

- (i) A professionally sign written and installed sign marketing the Dwelling or Lot for sale;
 - (ii) With the Developer consent, signage indicating a business. The Developer shall have the right to remove any sign, which in its sole discretion is unacceptable without prior warning; and
 - (iii) Unless Developer consent is obtained, any sign larger than 900mm by 600mm where such sign is visible from any road or right of way or reserve.
- m. Any damage or alteration of the slope, works or wall within the no construction areas A to O (including any works below the ground) unless that alteration and/or works have first been approved by the relevant authority. Should any damage be caused, the Covenantor shall, promptly at its own expense rectify such damage. Should the Developer grant consent for any works within areas A to O, it shall at no time have any responsibility for the works and or any outcome of the works whether foreseen or unforeseen or requirement to provide either uphill or downhill support, that being the sole responsibility of the Covenantor. [NOTE - there may be changes to provide for maintenance of these works and/or a consent notice imposed].
- 2.4. Other than in accordance with this clause, no Lot or Dwelling is to be used for any commercial, trading or industrial purpose. In all other cases the Lot and Dwelling shall only be used for residential purposes. The use of the Dwelling for a home enterprise use as allowed by the District Plan is permitted (including but not limited to a bed & breakfast). The Developer may, in its sole discretion, allow the Lot and Dwelling to be used for the purposes of a show home or sales office on terms that the Developer thinks fit.
- 2.5. Unpainted sheds or unpainted garages.
- 2.6. Any garden shed that is visible from any road, right of way or reserve.
- 2.7. Any bus, caravan, trailer or similar that is parked on anything other than a hardstand area and/or is used for any form of accommodation and shall only park such bus, caravan, trailer or similar once the Dwelling has been completed.
- 2.8. Any relocatable Dwelling unless Developer consent has been provided in accordance with this Instrument and the Design Controls.
3. Once a code compliance certificate has been obtained by the Covenantor for a Lot:
- 3.1. The Covenantor shall provide reasonable access to the Developer to inspect the Dwelling, fences and landscaping on the Lot to check compliance with the applicable Design Controls and Covenants.
 - 3.2. Should the Developer (acting reasonably) determine that there has been any non-compliance with the applicable Design Controls or Covenants it will advise the Covenantor in writing and the Covenantor must, as soon as practicable and in any event within 60 days, remedy the specified non-compliance at the Covenantor's cost.
 - 3.3. Where the non-compliance matters are not rectified by the Covenantor within 60 days of the receipt of notice from the Developer, then the Covenantor acknowledges that the Developer shall have the right to enter the Burdened Land to remedy such non-compliance in accordance with its rights under this Instrument.
 - 3.4. If the Developer ceases to exist, and has not nominated a current and legal person, association or entity to carry out its rights of approval and consent under this clause, then the Covenantor shall not be required to obtain such approval or consent.
4. The Covenantor shall:

- 4.1. Once construction of a Dwelling on a Lot has commenced ensure no construction shall be left for a period of two or more months without substantial work being completed.
- 4.2. Complete construction of the Dwelling (including all exterior cladding and painting) in accordance with the Plans approved by the Developer within 15 months of the commencement of construction.
- 4.3. Complete the landscaping (in accordance with and as required by the Design Controls or approval under the Design Controls) of the Lot within six months after the date of completion of construction of the Dwelling.
- 4.4. Ensure that all Buildings, fences and landscaped areas are constructed and finished in a good and workmanlike fashion.
- 4.5. Not:
 - a. Subdivide any Lot; or
 - b. erect more than one Dwelling on any Lot;unless it is a designated Duplex Lot which may be subdivided once into two Lots (in which case this Instrument will apply to each Lot once subdivided except that no further subdivision will be permitted).
- 4.6. Keep any substances that are hazardous, noxious or likely to cause nuisance on any of the Lots which are inconsistent with normal household use and are stored in normal household quantities.
- 4.7. Ensure that all services and utilities are located below ground.
- 4.8. Keep the Lots neat and tidy and free of significant noxious weeds and overgrowth, including (but not limited to) keeping all grass and vegetation below 100mm in height.
- 4.9. Not permit any rubbish or waste material to be or remain on any Lot other than within suitable enclosed structures or otherwise appropriately screened from view.
- 4.10. Not permit odours to emit from the Lot so as to render any Lot or any portion of a Lot to be deemed unsanitary, offensive or detrimental to the occupiers of any other Lot.
- 4.11. Not permit the parking of trucks or any large commercial vehicles on or adjoining any Lot or on any thoroughfare or road, other than for temporary delivery purposes.
- 4.12. Not permit the parking of any vehicles which do not have a current warrant of fitness and / or registration, in view of any Dwelling on any neighbouring Lot, or in view of any thoroughfare or road within or adjacent to Pembroke Heights.
- 4.13. Complete the vehicle access from the road to the Lot (including berm and kerb crossing) up to and including metaling (with sealing to completed once construction is completed) or sealing prior to construction of the dwelling in accordance with the plans approved by the Developer.
- 4.14. Reinststate, replace and be responsible for all costs arising from any damage to any Improvements caused directly or indirectly by the Covenantor or its occupiers, agents or invitees prior to the Developer returning the Construction Bond (as per the Design Controls) to the Covenantor.
- 4.15. At the time of completing landscaping on the land, re-seed and water the berm in front of the Lot with a seed of a similar variety.
- 4.16. At all times comply with any plans, conditions, consents or similar imposed on it by any local or regional authority.

5. The Covenantor shall:
 - 5.1. Observe and perform all Covenants at all times;
 - 5.2. Provide parking on each Lot for at least two cars (at least one of which is to be provided for by either a garage or carport).
 - 5.3. Otherwise comply with the Design Controls in force at the date of registration of this Instrument.
6. Notwithstanding these Covenants and the Design Controls, the Covenantor must comply with the Council planning regulations for all buildings erected on the Lot and their use of the Lot.
7. The Developer shall, in respect of any other Lots and subsequent stages, have in its absolute discretion the right to impose additional restrictions or stipulations in any restrictive covenant relating to land in subsequent stages or to omit or vary in its absolute discretion any restrictive covenant.
8. The Developer reserves the right at any time to waive or vary any of these covenants and if called upon to do so the Covenantor will sign any documentation required to give effect to this waiver and/or variation.

9. No-Objection Covenants

- 9.1. The Covenantor shall not oppose, frustrate, object to, nor take any action or encourage others to oppose, frustrate, object or take any action that might, in any way, prevent or hinder the Developer and/or the Council from progressing or completing the Pembroke Heights subdivision. This covenant extends to and includes (but is not limited to) a Planning Proposal, development planning, zone changes, resource consents, Consent Authority or Environment Court Applications, Building Consent matters, any other consents, earthworks, developments and general works. The benefit of this covenant also applies to any Adjoining Land.
- 9.2. The Covenantor shall sign all documents and do all things required by the Developer to meet the Covenantor's obligation under this clause 9.

10. Enforcement

- 10.1. All notices relating to this Instrument are to be served in writing. The address for service of any notice to the Developer is the address registered at the Companies Office as at the date of service for such purpose. When the Covenantee is not the Developer, the address for service to a Covenantee is the street address of the Benefited Land and the address for service of any notice to a Covenantor is the street address of the Burdened Land.
- 10.2. If there be any breach or non-observance of any of these covenants:
 - a. there shall be no obligation on the Developer to take any steps to enforce these covenants.
 - b. if there is more than one Covenantor for any Burdened Land the liability of the Covenantors for the Burdened Land shall be joint and several.
 - c. the Covenantor in breach shall rectify any breach.
- 10.3. If there should be any breach or any non observance of any of the foregoing Covenants and without prejudice to any other liability which the Covenantor may have to any person having the benefit of this covenant, the Covenantor will upon written demand being made by the Developer or any of the registered proprietors of the Lots having the benefit of the Covenants:

- a. Remove or cause to be removed from the Burdened Land any Dwelling, garage, building, fence or other structure erected or placed on the Burdened Land in breach or non-observance of the foregoing Covenants.
- b. Replace any building materials used in breach or non-observance of the foregoing Covenants so as to comply with these Covenants.

11. Liability

- 11.1. Without prejudice to the Covenantors and Covenantees other rights, this Instrument binds the Covenantor's successors in title so that contemporaneously with the acquisition of any interest in the Burdened Land all such successors in title become bound to comply with this Instrument. However, the liability of any Covenantor under this Instrument is limited to obligations and liabilities that accrue during that Covenantor's time as registered owner of the Burdened Land and only in respect of that part of the Burdened Land owned by that Covenantor. A Covenantor will not be liable for any breach of this Instrument which occurs during any period prior to or after its term as registered owner of the Burdened Land (however, for the avoidance of doubt, any Covenantor shall remain liable for any such antecedent breach following the transfer of its interest in the Burdened Land).
- 11.2. Should the Developer at any time be the Covenantor it shall have no obligation as Covenantor pursuant to this Instrument.

12. Costs

The Covenantor will pay all costs directly or indirectly attributable to the enforcement and discharge of this Instrument.

13. Implied terms

No covenants by the Covenantor or by the Covenantor's successors in title are implied in this Instrument other than the covenants for further assurance implied by section 208 of the Land Transfer Act 2017.

14. Severability & Miscellaneous

- 14.1. If any provision or part of this Instrument is illegal, unenforceable or invalid, then such provision or part is deemed to be removed from and not form part of this Instrument, but the rest of this Instrument will not be affected and will continue in full force and effect.
15. The Covenantor and their successors in title shall indemnify the Developer from any liability whatsoever from any party breaching any of these Covenants.
16. Should any proposed or completed Dwelling, building, structure, fence or landscaping not comply with these covenants, the Developer may, in its sole discretion, give written approval where in the sole opinion of the Developer such approval would not detract from the overall quality and appearance of Pembroke Heights. Such approval may be given at any time and is subject to such terms as the Developer in its sole discretion thinks fit.
17. In the event of any dispute which cannot be resolved by agreement between any of the Developer, the Covenantor and the Covenantee as to any matter relating to the abovementioned restrictive covenants, the same shall be resolved by arbitration under the provisions of the Arbitration Act 1996 or any Act passed in substitution or amendment thereof by a single arbitrator appointed for that purpose by the nominee of the President of the New Zealand Law Society and the decision of that arbitrator shall be final and binding on the Parties.
18. The covenants in this instrument will cease to apply to any land that is intended to vest in the Crown or any territorial authority as a road or reserve, upon any survey plan relating to such vesting being approved as to survey and being accepted for deposit by Land Information New Zealand.

SCHEDULE "2C"

Lot No.	Record of Title	Lot No	Record of Title
1		2	
3		4	
5		6	
7		8	
9		10	
11		12	
13		14	
23		24	
25		26	
27		28	
29		30	
31		32	
33		34	
35		36	
37		38	
39		40	
41		51	
397			