

## Form 26

### Covenant Instrument to note land covenant

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

#### Covenantor

**Otago Business Park Limited**

#### Covenantee

**Otago Business Park 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 Covenant	Lots 86 to 124 (inclusive) on DP 552369	Lots 86 to 124 (inclusive) on DP 552369  (Records of Title 956704 - 956742 (inclusive))	Lots 86 to 124 (inclusive) on DP 552369  (Records of Title 956704 - 956742 (inclusive))

#### 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

## Form L

### Annexure Schedule

Page **1** of **2** Pages

*Insert instrument type*

**Covenant Instrument**

*Continue in additional Annexure Schedule, if required*

#### 1. CREATION OF LAND COVENANTS

The Grantor for itself and its successors in title **covenants and agrees** with the Grantee and its successors in title for the benefit of Lots 86 to 124 (inclusive) on DP 552369 (collectively called the "Benefiting Lots") that:

- (a) The Grantor will at all times observe and perform all the covenants contained in this instrument **to the intent** that each of the covenants will forever ensure for the benefit of and be appurtenant to each and all of the Benefiting Lots and each and all of the registered proprietors of the Benefiting Lots **provided that** the Grantor will be liable only for breaches of the covenants contained in this instrument which occur whilst the Grantor is the registered proprietor of the Land or any part of the Land;
- (b) If there should be any breach or non-observance on the Grantor's part of any of the covenants contained in this instrument and without prejudice to any other liability which the Grantor may have to the Grantee and any person or persons having the benefit of those covenants the Grantor will upon written demand being made by the Grantee or the Grantee's nominee:
  - (i) Modify, remove or cause to be modified or removed from the land any fence or other structure so erected, repaired or completed in breach of the covenants contained in this instrument.
  - (ii) Replace any building materials used in breach or non-observance of the covenants contained in the instrument.
  - (iii) Reimburse the developer whilst the developer is the registered Proprietor of any dominant tenement on demand all legal and other costs incurred in dealing with the Grantor's breach.
- (c) The Grantor will at all times indemnify and keep the Grantee indemnified from all losses, costs, claims and demands in respect of any breach or non-observance by the Grantor of the covenants contained in this instrument.
- (d) The Developer may in the Developers sole discretion waive one or more of the covenants set out in these land covenants in respect of one or more of the servient Lots.
- (e) For the purposes of this land covenant, "the Developer" means Otago Business Park Limited and/or its nominee and/or anyone who acquires the development from Otago Business Park Limited for the purposes of completing the development.

#### 2. GENERAL COVENANTS

The Grantor covenants with the Grantee that it, and any successor in title shall:

- (a) Use only new materials for any buildings or other improvements erected on the property; and
- (b) Not use any second-hand or relocated building or any caravan, hut, shed or tent on the property as a dwelling or temporary dwelling on the Lot. The buildings erected on the 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 Lot; and
- (c) Not, and shall not procure or canvas any other person to, object or submit to any relevant authority having jurisdiction, in respect of any application of Otago Business Park Limited or any associated party for a resource consent or District Plan change relating to lots within a 1km radius of the subdivision; and

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- (d) Not allow the erection or placement on the Lot of any dwelling or other building which exceeds 5.5 metres in height above ground level of the Lot at issue, in respect of any of Lots 86, 87, 88, 89, 90, 93, 94, 102, 103, 104, 105, 106, 107, 108, 115, 116, 117, 118, 119, 120, 121, 122 and 123; and
- (e) Not allow any trees, shrubs, and other plants to protrude beyond a graduated plane drawn at 3.0 metres in height from the legal boundaries of the Lot to the ridgeline of the dwelling constructed on the Lot. "Height" is to be measured from the original ground level of the Lot at the issue of title for that Lot.
- (f) Ensure that until construction of a dwelling and landscaping is completed, the Lot will be maintained in a neat and tidy condition and grass and other ground cover does not exceed a height of 150mm; and
- (g) Not place or erect on or within the Land any form of temporary buildings or temporary dwellings other than temporary worker sheds during the construction period, provided that such sheds shall be removed upon practical completion of the dwelling and no caravans, buses or tents shall be located on the Land prior to a dwelling being constructed; and
- (h) Take all reasonable action to prevent any other person doing anything which the Grantor is prohibited from doing pursuant to cl.2 hereof.

### **3. DISPUTE RESOLUTION**

- (a) Except as relates to the exercise of any discretion, opinion, approval or consent requested of the Developer under these covenants, if any dispute arises between the parties concerning the covenants, then the parties shall enter into negotiations in good faith to resolve their dispute.
- (b) If an arbitrator cannot be agreed upon within a further ten days, then an independent arbitrator will be appointed by the President for the time being of the Otago branch of the New Zealand Law Society
- (c) Such arbitration will be determined in accordance with the Arbitration Act 1996 (and its amendments) or any enactment passed in its substitution.