

**Form B**

**Easement instrument to grant easement or *profit à prendre*, or create land covenant**

(Sections 90A and 90F Land Transfer Act 1952)

**Grantor**

**QUARTZ DEVELOPMENT GROUP LIMITED**

**Grantee**

**QUARTZ DEVELOPMENT GROUP LIMITED**

**Grant of Easement or *Profit à prendre* or Creation of Covenant**

**The Grantor** being the registered proprietor of the servient tenement(s) set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, **or creates** 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 (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Covenant	Deposited Plan [ ]	Lots [ ] on Deposited Plan [ ]	Lots [ ] on Deposited Plan [ ]

**Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)**

*Delete phrases in [ ] and insert memorandum number as required; continue in additional Annexure Schedule, if required*

**Covenant provisions**

*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 155A of the Land Transfer Act 1952]

[Annexure Schedule B ]

*Insert instrument type*

**Land Covenant**

**1 INTRODUCTION**

- 1.1 The Grantor is the registered proprietor of Certificate of Title [ ].
- 1.2 The Grantor has subdivided the Land in the manner shown on deposited plan [ ] (**Deposited Plan**).
- 1.3 The Grantor intends that all of the land contained in lots [ ] on Deposited Plan [ ] (**Covenant Land**) shall be subject to a general scheme applicable to, and for the benefit of, all of the owners for the time being of any lot comprising part of the Covenant Land to ensure that the Covenant Land is developed in a co-ordinated manner to enhance the character and amenity values of the Covenant Land generally.
- 1.4 The Grantor intends that this instrument shall be and remain registered against the title to the Covenant Land so that :
- a owners or occupiers of the servient land should be bound by the provision of this instrument;
  - b owners and occupiers of the dominant land can enforce the observance of the provisions of this instrument by the owners and occupiers of the servient land; and
  - c the obligations and covenants of the Grantors under this instrument enure for the benefit of QDGL.

**IT IS AGREED**

**2 DEFINITIONS AND INTERPRETATION**

2.1 **Definitions:** in this Instrument, the following words shall have the following meanings:

**“Building”** shall have the same meaning as in the Queenstown Lakes District Council Operative District Plan as at 1 December 2015 and for the avoidance of doubt shall include any structure in excess of 5m<sup>2</sup> and/or 2 metres in height;

**“Council”** means Queenstown Lakes District Council;

**“Covenants”** means any covenant set out in this instrument;

**“Deposited Plan”** means DP [ ] showing Lots [ ];

**“Development”** means the subdivision of the Covenant Land to create Lots 1 – 90 in accordance with the Deposited Plan;

**“District Plan”** means the Council district plan;

**“Dominant Land”** in relation to any Covenant means the land described in Schedule A as Dominant Tenement which has the benefit of the Covenants contained in this document;

**“Dwelling”** has the same meaning as “Residential Units” in the District Plan;

**“Existing Ground Level”** means the surface of the ground as at the date of issue of title to each of the Lot’s to create the lots defined in the Development;

**“Grantee”** means the owner of the Dominant Land and its successors in title from time to time;

**“Grantor”** means the owner of the Servient Land and its successors in title from time to time;

**“Covenant Land”** means Lot 1 - 90;

**“Lot”** means any or all of Lots 1 - 90 DP [            ];

**“QDGL”** means Quartz Development Group Limited or, any other entity or individual nominated by Quartz Development Group Limited to undertake all or any of its functions under this document;

**“Servient Land”** in relation to any covenant means the land described in Schedule A as Servient Tenement which is subject to the covenants contained in this instrument;

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

**2.2 Interpretation:** In this Instrument, unless the context otherwise requires:

- a** any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
- b** reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same;
- c** where consent or approval is required pursuant to any provision of this instrument, such consent or approval shall be required for each separate occasion, despite any prior consent or approval obtained for the like purpose on any prior occasion;
- d** references to the Grantor and the Grantee include their respective executors or administrators and successors in title;
- e** references to Lots includes each and every part of them;

### **3 GENERAL COVENANTS**

#### **3.1** The Grantor covenants and agrees:

- a. to observe and perform all Covenants at all times; and
- b. that the Covenants shall run with and bind the Servient Land for the benefit of the Dominant Land.

### **4 COVENANTS**

#### **4.1** The Grantor covenants and agrees:

- a. At the time a dwelling is erected on Lots 1 – 90, the owner for the time being shall engage a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 to design a stormwater disposal system, incorporating “Aquacell” infiltration galleries or similar technology, that is to provide stormwater disposal from all impervious areas within the site. The proposed stormwater system shall be subject to the review of Council prior to implementation.
- b. At the time a dwelling is erected on any of Lots 1 – 90 which do not have a vehicle crossing formed at the time of subdivision, the owner for the time being shall construct a vehicle crossing to that Lot in accordance with Council standards.
- c. Lots 83 – 90 shall not have vehicle access directly from Cemetery Road.
- d. **Building and Landscaping Controls:**
  - i. the minimum net allotment size for each residential unit shall be 800m<sup>2</sup>.
  - ii. The maximum building coverage shall be 35%.
  - iii. The minimum setback of any building from road boundaries shall be 4.5m except those Lots that front onto Cemetery Road where the minimum setback of any building therefrom shall be 10m.
  - iv. The minimum setback from internal boundaries shall be 2m.
  - v. Where the aggregate length of buildings measured parallel to any internal boundary exceeds 16m; either
    - a. the entire building(s) shall be set back an additional 0.5m for every 6m of additional length or part thereof from the minimum yard setback continuous façade(s) at the same distances from the boundary; or
    - b. that part of the building(s) which exceeds the maximum building length shall be progressively set back 0.5m for every 6 m of additional length or part thereof from the minimum yard setback

(varied façade(s) with stepped setbacks from the boundary).

- vi. The minimum provision of outdoor living space for each residential unit, contained within the net area of the site, shall be 100m<sup>2</sup> contained in one areas with a minimum dimension of 5m. The outdoor living space shall be readily accessible from a living area. No outdoor living space shall be occupied by any building (other than an outdoor swimming pool or accessory building of less than 8m<sup>2</sup> gross floor area), driveway or parking space.
  - vii. The maximum height of buildings shall not exceed 7m above ground level, measured at any point and the highest part of the building immediately above that point, and in addition no part of any building shall protrude through a recession line inclined towards the site at an angle of 25 degrees and commencing at 2.5m above ground level at any given point on the site boundary. Except gable and hip ends may encroach beyond the recession lines provided they are contained within a calculated area(s) no greater than 6m<sup>2</sup> with the apex no higher than a point 1 metre below the maximum height for the zone and the base of the area(s) at the level of recession line protrusion.
  - viii. The roof colour of any building shall be greys, browns or greens and shall be in corrugated or tray steel or timber shingles.
  - ix. Fencing of all boundaries adjoining and within 6m of roads, right of ways, reserves, walkways shall be in post and wire only, not exceeding 1.2m in height.
  - x. A 6 m wide landscape amenity tree planting area shall be created along the Cemetery Road frontage. This area shall be planted, irrigated, rabbit proof fenced and maintained for a minimum period of 6 years following establishment.
- e. not to occupy any Building until it has achieved practical completion or has received a current code compliance certificate issued by the Council under the Building Act 2004;
  - f. not to erect or place, or permit to be erected or placed, on the Servient Land any caravan, mobile home(s), hut or other temporary accommodation for use as temporary accommodation. The storage of a mobile home, caravan and/or boat is permitted on the Servient Land once a Dwelling has been constructed provided it is screened from the road frontage;
  - g. not to construct or place any pre-used, second-hand and/or relocated Building on the Servient Land;
  - h. not to permit the parking of trucks or large commercial vehicles on or adjoining the Servient Land other than for temporary delivery purposes;
  - i. that any Building must be constructed from new materials;

- j. no Building shall be erected on any Lot using concrete or treated wooden piles without providing a solid and durable skirting board or other enclosure around the exterior of the Building from ground height to the underside of the wall cladding;
- k. the Servient Lots must be maintained in a neat and tidy condition and to a standard that grass and other ground cover shall not exceed a height of 150mm. Until a Dwelling is erected on a Lot QDGL shall be entitled to enter onto the Lot without prior notice and carry out any mowing or grass needed to ensure compliance with this requirement at the Lot owner's expense;
- l. no use may be made of adjacent land, footpaths or recreation areas adjoining any Lot for access, parking or dumping of rubbish;
- m. to reinstate, replace, and be responsible for costs arising from damage to, the landscaping, roads, footpaths, curbing, berms, concrete or other structures arising directly or indirectly from the construction of any Building on a Lot, or the landscaping of a Lot or any Lot owner's use of a Lot;
- n. prior to the commencement of the construction of any Dwelling or Building on any Lot, the Lot owner shall construct a suitable vehicle crossing to the satisfaction of QDGL across the berm and footpath to protect those areas from damage;
- o. once construction of a Dwelling on the Servient Land has commenced the Grantor shall:
  - i. complete construction of the Dwelling over a period of 18 months from the commencement of construction; and
  - ii. complete the landscaping on the Servient Land within 24 months from the commencement of construction of the Dwelling or the next growing season, whichever is sooner;
- p. that the further subdivision of Lots is prohibited except where:
  - i. the subdivision is a boundary adjustment; and
  - ii. the subdivision does not create any additional, separate saleable residential Lots or areas that additional dwellings may be built on;
- q. no plants, shrubs or trees shall be allowed to exceed a height of 1.8m within 2m of the boundary of any Lot, and (except for any trees established by QDGL) no planting shall be allowed to exceed a height of 7.5m in any other place on any Lot;
- r. that diesel, petrol, oil or gas tanks that have a capacity of over 500 litres are prohibited on any Lot or within any Building unless first approved by QDGL;
- s. not to 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 delay development of any land by QDGL or their associated entities within a 1km radius of the Development.

## **5 FENCING COVENANTS**

- 5.1** For so long as any Lot forming part of the Development is owned by QDGL, QDGL shall not be liable to contribute to the cost of, or assist in the erection or maintenance of any boundary or dividing fence between any such Lot owned by QDGL and any Lot that is not owned by QDGL.
- 5.2** All boundary fencing on Lots 1 - 90 (inclusive) shall use live hedges, and/or open style fencing. No solid fencing shall be used on boundaries with roads or reserves.
- 5.3** All fencing on Lots 1 – 90 (inclusive) unless otherwise approved by QDGL shall not:
- a. exceed 1.8m in height; and
  - b. be sited within 4.5 metres of the boundary to any road frontage unless live hedging is used (in which case this restriction shall not apply).

## **6 ENFORCEMENT**

- 6.1** The Grantors obligations and covenants under this instrument are for the benefit of QDGL in accordance with the Contracts (Privity) Act 1982.
- 6.2** The Grantee irrevocably appoints QDGL or its nominee as its attorney for the purpose of facilitating observance of this instrument by the Grantor. In that capacity QDGL or its nominee can act in the Grantee's name and at the Grantee's expense to take all steps it considers necessary to enforce or attempt to enforce the Grantee's rights or powers under this instrument.
- 6.3** Without limiting the appointment made in clause 6.2, that appointment may specifically extend to QDGL or its nominee issuing proceedings in the name of the Grantee.
- 6.4** The Grantor acknowledges that the Grantee and QDGL shall not be liable to the Grantor or any future registered provider of any part of the servient tenement for any loss, damage, claim or expense (including where such loss, damage, claim or expense arises from any approval given by QDGL, or refusal to give an approval, or any failure to meet any timeframe stated, or performing any other function under and in relation to this instrument).
- 6.5** If the Grantor fails to observe or perform the obligations set out in this instrument, the Grantee shall have the right (but not an obligation) to do whatever may be reasonably required to remedy such failure on the part of the Grantor, and the costs incurred by the Grantee in remedying the default shall be refunded by the Grantor to the Grantee on demand.
- 6.6** QDGL shall have the power to waive any requirement set out in this instrument as it affects any part of the servient tenement, and QDGL shall not be liable to any other Grantee or any other party if it give such a waiver, or if it does not enforce any covenant or breach of a covenant against the Grantor.
- 6.7** All notices relating to this instrument are to be served in writing. The address for service of any notice to the Grantee is either:
- a. the rating address that relates to the applicable Lot provided the Lots Dwelling has

- obtained code compliance certificates; otherwise
- b. the address of the solicitor who undertook the conveyance of the first Grantee following ownership by QDGL.

## **7 DISPUTE RESOLUTION**

**7.1** If either party believes that a dispute between them has arisen regarding the Covenants, rights or obligations under this instrument or compliance with such rights or obligations such party may give written notice to the other party of the existence of such dispute and the particulars of it and the following procedures shall apply:

- a. The parties shall meet in good faith and seek to resolve the dispute and if it is not resolved within 14 days of notice to the other party of the existence of the dispute, the parties shall seek to agree on a process resolving the dispute through means other than litigation or arbitration, such as conciliation or independent expert evaluation or termination or mediation.
- b. If the parties cannot reach agreement on
  - i. the dispute resolution process and procedures to be adopted for resolving the dispute;
  - ii. the timetable for all steps and their process; and
  - iii. the selection and compensation of the independent person required for such technique; thenthey shall refer the dispute to mediation and for that purpose they shall use the assistance of a dispute resolution person organisation mutually agreed to or failing agreement, nominated by the president of the Otago Branch of the New Zealand Law Society.
- c. The parties shall not use any information or documents obtained through this alternative dispute resolution process for any purpose other than an attempt to settle the dispute by the process detailed in this clause.
- d. No party to the dispute may refer a dispute to arbitration or commence proceedings in any Court unless the dispute has been referred to a dispute resolution person or organisation in accordance with this clause and a dispute has not been resolved.

**7.2** If after completing the procedures to resolve a dispute between the parties in this clause, the dispute has not been resolved, then the dispute shall be referred to arbitration in accordance with the Arbitration Act 1996 or any enactment in substitution of the Act.

**7.3** If the dispute is referred to arbitration under clause 7.2, the arbitrator shall determine the matter in dispute in a manner which is fair and reasonable to all parties to the arbitration.