

**Easement instrument to grant easement or *profit a prendre*, or create land covenant**  
(Sections 90A and 90F Land Transfer Act 1952)

200916229EF

APPROVED

Registrar-General of Land

**Grantor**

**WFH PROPERTIES LIMITED**

**Grantee**

**WFH PROPERTIES LIMITED**

**Grant of Easement or *Profit a 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) a 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
<b>Land Covenant</b>	<b>See attached Annexure Schedule</b>	<b>See attached Annexure Schedule</b>	<b>See attached Annexure Schedule</b>

REF: 7203 - AUCKLAND DISTRICT LAW SOCIETY INC.

**Easements or *profits a 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*

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby **[substituted]** by:

~~[Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952]~~

[the provisions set out in Annexure Schedule \_\_\_\_\_ ]

**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 15-5A of the Land Transfer Act 1952]~~

[Annexure Schedule \_\_\_\_\_ ]

REF: 7203 - AUCKLAND DISTRICT LAW SOCIETY INC.

## **ANNEXURE SCHEDULE 2**

The Grantee when registered proprietor of the land formerly contained in Unique Identifier 750366 subdivided the land into lots in the manner shown and defined on Deposited Plan 505169 (hereinafter referred to as the “the Plan”).

**WHEREAS** it is the Grantee’s intention to create a high quality subdivision. To enable this to occur it is the Grantors intention to create for the benefit of the land set out in Schedule 2C (hereinafter referred to as the “Dominant Lots”) the land covenant set out in Schedule 2B over the land set out in Schedule 2A (hereinafter referred to as the “Servient Lots”)

**AND** so as to bind the Servient Lots and for the benefit of the respective Dominant Lots the Grantor **DOTH HEREBY COVENANT AND AGREE** in the manner set out in the Schedule 2B hereto so that the covenant runs with the Servient Lots set out in Schedule 2A for the benefit of each of the respective Dominant Lots as described in Schedule 2C.

### **SCHEDULE “2A”**

<b>Lot No.</b>	<b>Certificate of Title</b>	<b>Lot No</b>	<b>Certificate of Title</b>
120	763226	121	763227
122	763228	123	763229
124	763230	125	763231
126	763232	127	763233
128	763234	129	763235
130	763236	131	763237
132	763238	133	763239
134	763240	135	763241
136	763242	154	763243
155	763244	156	763245
157	763246	158	763247
159	763248	160	763249

### **SCHEDULE “2B”**

1. The Grantor shall not erect on the land:
  - 1.1. any dwelling, building, structure or fence or landscaping:
    - (i) that has not had the sketch plans for same approved by WFH Properties Limited or its appointed agent prior to submission of final plans, specifications and finish.
    - (ii) that has the same plan, building shape and materials as any other dwelling within 250 metres of the land.
    - (iii) unless the final plans, specifications and finish have been approved by WFH Properties Limited or its appointed agent provided approval to such plans and specifications shall be deemed to have been given in respect of any building which has been erected and occupied for a period of five (5) years or more without the Grantee objecting to same.
  - 1.2. anything other than a single private dwelling house (including a double garage) with ancillary buildings/structures having a gross floor area, exclusive of verandahs, patios, and outbuildings, of at least 191 m<sup>2</sup>.

- 1.3. any dwelling or other building which does not satisfy the construction and material requirements set out in Clause 2;
  - 1.4. on any lot being 450m<sup>2</sup> or greater, any building or structure within 3 metres of any boundary adjoining a road except for a side fence or a retaining wall permitted pursuant to clauses 5.6(a) or 5.6(d)(i);
  - 1.5. any building that does not comply with the District Plan side yard set back rules unless a resource consent permitting the non-compliance with the District Plan side yard set back rules as been granted by Auckland Council.
2. Unless WFH Properties Limited or its appointed agent in its full and unfettered written discretion permits a variation or waiver of this Clause 2, the Grantor shall not erect or place on the land any building, dwelling, carport, garage or other structure:
- 2.1. unless all roofs are sheathed in either pre-coated metal tiles, chip-coated metal tiles, concrete tiles, clay tiles, asphalt shingles or glass fibre shingles, or Colorsteel® long run roofing products, provided that if concrete tiles are used they may not be red or orange in colour;
  - 2.2. unless exterior walls are sheathed in brick or textured plaster or stone or glass or timber weatherboards or Linea Board or any combination of those materials;
  - 2.3. having fibrous cement products used for exterior finish other than for soffit lining or backing for textured plaster finish.
3. The Grantor shall not erect on the land 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 buildings provided that all temporary buildings or structures will be removed from the land upon completion of the permanent buildings.
4. The Grantor shall not subdivide the land. Subdivide shall have the meaning "subdivide land" set out in Section 218 of the Resource Management Act 1991.
5. The Grantor shall not permit or suffer on the land;
- 5.1. unpainted sheds or unpainted garages;
  - 5.2. any garden shed that is visible from any road, jointly owned accessway lot or Reserve;
  - 5.3. any buildings in the course of construction to be left without substantial work being carried out on them for a period of two or more months;
  - 5.4. any rubbish including garden or household waste to accumulate or be placed upon the land or permit any excessive growth of grass so that it exceeds 100 mm in height or otherwise becomes unsightly;
  - 5.5. any removal of soil from the land except as shall be necessary for the construction of the dwelling and ancillary buildings;
  - 5.6. the erection of any fence and/or wall on the land:
    - (a) on or within 5 metres of a road boundary if that wall is a timber retaining wall unless WFH Properties Limited or its appointed agent has, in its sole discretion, approved the erection of a timber retaining wall within 5 metres of a road boundary;

- (b) on any boundary which bounds on a Reserve unless that fence is a black pool fence style MF1013 with fence detail by Auckland Fencing and Auto Gates, such detail as at the date of the registration of this Easement or such other fence which WFH Properties Limited or its appointed agent, in its sole discretion, shall approve ("Approved Fence");
  - (c) in areas A to X unless that fence is an Approved Fence;
  - (d)
    - (i) On or within 3 metres of a road boundary, unless that fence is an Approved Fence of no more than 1 metre high on a side boundary or is a retaining wall that is not made from timber;
    - (ii) On the balance of the land a fence which exceeds 1.8 metres measured from the original ground level of the land.
  - (e) with the exception of an Approved Fence, any fence or wall using second hand materials and/or using corrugated or metal products.
  - (f) any fence or wall visible from any road, jointly owned accessway lot or Reserve unless it complies with this Clause 5.6 in all respects.
- 5.7. any bus, caravan, trailer or similar that is parked on anything other than a hardstand area;
- 5.8. any sign larger than 900mm by 600mm where such sign is visible from any road or jointly owned accessway lot or Reserve unless WFH Properties Limited or its appointed agent, in its sole and unfettered discretion, shall permit a larger sign. Such permission must be in writing and must be obtained before a larger sign is erected;
- 5.9. any satellite dish over 1 metre in diameter that is visible from any road or jointly owned accessway lot or Reserve.
- 5.10. any damage or alteration of the finished slope or works within the reinforced earth batter wall in areas A to X (including any works below the ground of the finished slope) unless that alteration and/or works have first been approved by the relevant local authority. Should any damage be caused the Grantor shall promptly at its own expense rectify such damage. Should WFH Properties Limited grant consent for any works within areas A to X, 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 Grantor.

6. The Grantor shall:

- 6.1. only use any buildings on the land as a residence or other permitted activity authorised under the Auckland Council District Plan after buildings have been substantially completed in accordance with the terms of this covenant and the requirements of the local authority;
- 6.2. complete the landscaping of the land in accordance with plans pre-approved by WFH Properties Limited or its appointed agent prior to using any buildings on the land as a residence or other permitted activity by providing lawns and/or paving, trees, shrubs and flowers;
- 6.3. ensure that upon completion of any building on the land and prior to use of any building as a residence or other permitted activity:

- (a) any concrete on the footpath, kerb or driveway is reinstated to the following specifications (all per cubic metre);

13mm C/Agg Hunua W/Agg	940kg
Pap7 Hunua W/Agg	588kg
Helensville sand – Winstones	375kg
General purpose G/Bay cement	245kg
Water	167 litres
Micro Air 940-MBT	100ml
Pozzoloth 370-MBT	0.74litres
Air Content	5.0%
Density	2297kg/m <sup>3</sup>
Yield	1.008
W/C Ratio	0.68

- (b) ensure that any kerb entrance crossing shall be reinstated to the original saw cuts and kerb detail as per Auckland Council specifications;

- 6.4. at all times comply with any plans, conditions, consents or similar imposed on it by any local or regional authority.
7. WFH Properties Limited or its appointed agent reserves the right at any time to waive or vary any of these covenants and if called upon to do so the Grantor will sign any documentation required to give effect to this waiver and/or variation.
8. The Grantor 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 WFH Properties Limited and/or the Local Authority from progressing or completing the Millwater subdivision. This covenant extends to and includes (but is not limited to) 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 applies to any adjoining or neighbouring properties now or hereafter owned by WFH Properties Limited.
9. WFH Properties Limited shall not be liable to pay for or contribute towards the expense of construction or maintenance of any fence between the land and any contiguous land of WFH Properties Limited but this provision shall not enure for the benefit of any subsequent purchaser or proprietor of the contiguous land.
10. If there be any breach or non-observance of any of these covenants:
- (a) there shall be no obligation on WFH Properties Limited to take any steps to enforce these covenants.
- (b) if there is more than one Grantor for any Servient Lot the liability of the Grantors for the Servient Lot shall be joint and several.
- (c) the Grantor in breach shall rectify any breach.
11. In the event of any dispute which cannot be resolved by agreement between the Grantor and the Grantee 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.
12. 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"**

<b>Lot No.</b>	<b>Certificate of Title</b>	<b>Lot No</b>	<b>Certificate of Title</b>
120	763226	121	763227
122	763228	123	763229
124	763230	125	763231
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155	763244	156	763245
157	763246	158	763247
159	763248	160	763249
202	763250	203	763251
204	763252		

**Easement instrument to grant easement or *profit a prendre*, or create land covenant**  
(Sections 90A and 90F Land Transfer Act 1952)

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**Grant of Easement or *Profit a 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) a 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
<b>Land Covenant</b>	<b>See attached Annexure Schedule</b>	<b>See attached Annexure Schedule</b>	<b>See attached Annexure Schedule</b>

REF: 7203 - AUCKLAND DISTRICT LAW SOCIETY INC.



**Easements or profits a 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

~~Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007~~

The implied rights and powers are hereby **[substituted]** \_\_\_\_\_ by:

[Memorandum number \_\_\_\_\_, register under section 155A of the Land Transfer Act 1952]

[the provisions set out in Annexure Schedule \_\_\_\_\_]

**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 15-5A of the Land Transfer Act 1952]

[Annexure Schedule 2]

REF: 7203 - A UCKLAND DISTRICT LAW SOCIETY INC.

## ANNEXURE SCHEDULE 2

The Grantee when registered proprietor of the land formerly contained in Unique Identifier 750366 subdivided the land into lots in the manner shown and defined on Deposited Plan 505169 (hereinafter referred to as the “the Plan”).

**WHEREAS** it is the Grantee’s intention to create a high quality subdivision. To enable this to occur it is the Grantors intention to create for the benefit of the land set out in Schedule 2C (hereinafter referred to as the “Dominant Lots”) the land covenant set out in Schedule 2B over the land set out in Schedule 2A (hereinafter referred to as the “Servient Lots”)

**AND** so as to bind the Servient Lots and for the benefit of the respective Dominant Lots the Grantor **DOTH HEREBY COVENANT AND AGREE** in the manner set out in the Schedule 2B hereto so that the covenant runs with the Servient Lots set out in Schedule 2A for the benefit of each of the respective Dominant Lots as described in Schedule 2C.

### SCHEDULE “2A”

Lot No.	Certificate of Title	Lot No	Certificate of Title
202	763250	203	763251
204	763252		

### SCHEDULE “2B”

1. The Grantor shall not erect on the land:
  - 1.1. any dwelling, building, structure or fence or landscaping:
    - (i) that has not had the sketch plans for same approved by WFH Properties Limited or its appointed agent prior to submission of final plans, specifications and finish.
    - (ii) unless the final plans, specifications and finish have been approved by WFH Properties Limited or its appointed agent provided approval to such plans and specifications shall be deemed to have been given in respect of any building which has been erected and occupied for a period of five (5) years or more without the Grantee objecting to same.
  - 1.2. any building that does not comply with the District Plan side yard set back rules unless a resource consent permitting the non-compliance with the District Plan side yard set back rules as been granted by Auckland Council.
2. The Grantor shall not erect on the land 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 buildings provided that all temporary buildings or structures will be removed from the land upon completion of the permanent buildings.
3. The Grantor shall not permit or suffer on the land;
  - 3.1. unpainted sheds or unpainted garages;
  - 3.2. any garden shed that is visible from any road, jointly owned accessway lot or Reserve;

- 3.3. any buildings in the course of construction to be left without substantial work being carried out on them for a period of two or more months;
  - 3.4. any rubbish including garden or household waste to accumulate or be placed upon the land or permit any excessive growth of grass so that it exceeds 100 mm in height or otherwise becomes unsightly;
  - 3.5. any removal of soil from the land except as shall be necessary for the construction of the dwelling and ancillary buildings;
  - 3.6. any bus, caravan, trailer or similar that is parked on anything other than a hardstand area;
  - 3.7. any sign larger than 900mm by 600mm where such sign is visible from any road or jointly owned accessway lot or Reserve unless WFH Properties Limited or its appointed agent, in its sole and unfettered discretion, shall permit a larger sign. Such permission must be in writing and must be obtained before a larger sign is erected;
  - 3.8. any satellite dish over 1 metre in diameter that is visible from any road or jointly owned accessway lot or Reserve.
4. The Grantor shall:
- 4.1. only use any buildings on the land as a residence or other permitted activity authorised under the Auckland Council District Plan after buildings have been substantially completed in accordance with the terms of this covenant and the requirements of the local authority;
  - 4.2. complete the landscaping of the land in accordance with plans pre-approved by WFH Properties Limited or its appointed agent prior to using any buildings on the land as a residence or other permitted activity by providing lawns and/or paving, trees, shrubs and flowers;
  - 4.3. ensure that all retaining walls are Honed Block walls;
  - 4.4. ensure that upon completion of any building on the land and prior to use of any building as a residence or other permitted activity:
    - (a) any concrete on the footpath, kerb or driveway is reinstated to the following specifications (all per cubic metre);
 

13mm C/Agg Hunua W/Agg	940kg
Pap7 Hunua W/Agg	588kg
Helensville sand – Winstones	375kg
General purpose G/Bay cement	245kg
Water	167 litres
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Yield	1.008
W/C Ratio	0.68
    - (b) ensure that any kerb entrance crossing shall be reinstated to the original saw cuts and kerb detail as per Auckland Council specifications;
  - 4.5. at all times comply with any plans, conditions, consents or similar imposed on it by any local or regional authority.

5. WFH Properties Limited or its appointed agent reserves the right at any time to waive or vary any of these covenants and if called upon to do so the Grantor will sign any documentation required to give effect to this waiver and/or variation.
6. The Grantor 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 WFH Properties Limited and/or the Local Authority from progressing or completing the Millwater subdivision. This covenant extends to and includes (but is not limited to) 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 applies to any adjoining or neighbouring properties now or hereafter owned by WFH Properties Limited.
7. WFH Properties Limited shall not be liable to pay for or contribute towards the expense of construction or maintenance of any fence between the land and any contiguous land of WFH Properties Limited but this provision shall not enure for the benefit of any subsequent purchaser or proprietor of the contiguous land.
8. If there be any breach or non-observance of any of these covenants:
  - (a) there shall be no obligation on WFH Properties Limited to take any steps to enforce these covenants.
  - (b) if there is more than one Grantor for any Servient Lot the liability of the Grantors for the Servient Lot shall be joint and several.
  - (c) the Grantor in breach shall rectify any breach.
9. In the event of any dispute which cannot be resolved by agreement between the Grantor and the Grantee 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.
10. 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"**

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**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
<b>Land Covenant</b>	<b>See attached Annexure Schedule</b>	<b>See attached Annexure Schedule</b>	<b>See attached Annexure Schedule</b>

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The implied rights and powers are hereby **[substituted]** \_\_\_\_\_ by:

~~[Memorandum number \_\_\_\_\_, register under section 155A of the Land Transfer Act 1952]~~

~~[the provisions set out in Annexure Schedule \_\_\_\_\_]~~

**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 15-5A of the Land Transfer Act 1952]~~

~~[Annexure Schedule 2 ]~~

**ANNEXURE SCHEDULE 2**

**Continuation of "Estate or Interest or Easement to be created"**

- A. The Grantor is the Registered Proprietor of an estate in fee simple more particularly defined in schedule "A" hereto (the "Servient Lot").
- B. The Grantee is the Registered Proprietor of those estates in fee simple more particularly defined in schedule "B" hereto (the "Dominant Lots").
- C. The Servient Lot is to be held as a joint accessway for the purpose of access to the Dominant Lots.
- D. As part of the development of the land (formally contained in Unique Identifier 750366) and the creation of all the lots described, the Servient Lot is to be held as follows by the Registered Proprietors of each of the Dominant Lots:
- Seven undivided one twenty second shares by Lot 202;
  - Eight undivided one twenty second shares by Lot 203; and
  - Seven undivided one twenty second shares by Lot 204.
- E. The Grantor in respect of its interest in the Servient Lot has agreed to be bound by and to adhere to the provision set out herein to create for the benefit of the Dominant Lots the land covenant set out in Schedule C over the land set out in Schedule A.

**TO THE INTENT** that the Servient Lot shall be bound by the stipulations and restrictions set out in Schedule C hereto and that the owners and occupiers for the time being of the Dominant Lots may enforce the observance of such stipulations against the owners for the time being of the Servient Lot

**AND AS INCIDENTAL** to the transfer of the fee simple so as to bind the Servient Lot for the benefit of each of the Dominant Lots the Grantor **DOTH HEREBY COVENANT AND AGREE** in the manner set out in the Schedule C hereto so that the covenants run with the Servient Lot for the benefit of the Dominant Lots.

**SCHEDULE A**

Lot 605 DP 505169

**SCHEDULE B**

Lot 202 DP 505169  
Lot 204 DP 505169

Lot 203 DP 505169

**SCHEDULE C**

**INTERPRETATION**

1. In this document unless the context dictates otherwise:

- 1.1. Definitions:

"Council" means the Auckland Council incorporated under the Local Government (Auckland Council) Act 2009 including its successors in title;

- 1.2. **“Lot Owners”** means the owners of the Servient Lots from time to time both jointly and severally, as applicable;
  - 1.3. **“Vehicle”** has the same meaning as defined by motor vehicle in the Motor Vehicle Security Act 1989.
  - 1.4. **Headings:** Clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to effect the interpretation of this document;
  - 1.5. **Plural and singular:** Words importing the singular number will include the plural and vice versa;
  - 1.6. **Schedules:** The schedules to this document and the provisions and conditions contained in the schedules have the same effect as if set out in the body of this document;
  - 1.7. **Parties:** Reference to parties are reference to parties of this document;
  - 1.8. **Sections, clauses and schedules:** Reference to sections, clauses and schedules are references to this document’s sections, clauses and schedules;
  - 1.9. **Persons:** Reference to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
  - 1.10. **Defined Expressions:** Expressions defined in the main body of this document bear the defining meaning in the whole of this document including the background;
  - 1.11. **Negative Obligations:** Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
  - 1.12. **Gender:** words importing one gender shall include the other gender; and
  - 1.13. **Statutes and Regulations:** References to a statute include reference to regulations, orders or notices made under or pursuant to such statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.
2. The Lot Owners shall not:
- 2.1. Erect or permit to be erected on the Servient Lot any building, structure, work or earthworks of any kind (except to the extent that the same are permitted for the purpose of providing services as hereinafter allowed) or grow a tree, hedge, bush or other vegetation thereon.
  - 2.2. Use or permit to be used the Servient Lot for anything other than an access or service area for the purpose of going, passing or re-passing with or without vehicles, machinery and implements of any kind from time to time and at all times by day and night from the road over the formed carriage way and/or the Servient Lot to the Dominant Lots;
  - 2.3. Park any vehicle or vehicles on any part of the Servient Lot or permit visitors or guests of the Lot Owners to park on any part of the Servient Lot.



- 2.4. Do anything or commit any act or omission or default whereby the use of the Servient Lot is in any way impeded or obstructed
  - 2.5. Do anything or commit any act omission or default whereby any permitted improvements erected within the Servient Lot will be or may be damaged or destroyed; or
  - 2.6. Do anything or commit any act omission or default whereby any electricity supply lines, cables and conducts, water supply pipelines, storm water drains and foul water drains (together called 'Utility Services') installed on or under the surface of the Servient Lot will or may be damaged or destroyed, or their proper function interfered with.
3. Maintenance and Repair of Access Way
- 3.1. The Lot Owners shall at all times keep the access way formed on the Servient Lot and the Utility Services in good order and repair and condition and, in particular, maintain good access and services as required by the Council under its Resource Consent to the Subdivision, the effect of which has lead to the creation of the Servient Lot.
  - 3.2. A decision that the Lot Owners are required to carry out works on the Servient Lot to meet the standards imposed under clause 3.1 shall be binding if half or more of the Lot Owners serves notice in writing on the other Lot Owner/s.
  - 3.3. Subject to clause 4.1 the costs of meeting the obligations of the Lot Owners as set out in clauses 3.1 and 3.2 shall be borne by the Lot Owners in the same shares as their interest in the Servient Lot provided however, that where the need for maintenance and/or reinstatement is attributable to the act, neglect or default of one of the Lot Owners, the cost attributable to those acts, neglect or defaults shall, in such cases, be borne by the Lot Owner responsible.
4. Maintenance of Utility Services
- 4.1. The cost of maintaining any Utility Services installed on and under the Servient Lot shall be borne equally by the Lot Owner/s who benefit from those Utility Services.
  - 4.2. Where the need for maintenance or reinstatement of Utility Services has been necessary by the act, neglect or default of one or more of the Lot Owner/s then the costs of maintenance and reinstatement shall be borne by the Lot Owner/s responsible for the act, neglect or default.
5. Default
- 5.1. If a Lot Owner/s neglects or refuses to carry out or pay for or neglects to join with the other Lot Owner/s in carrying out or paying for any work required in respect of any foregoing work provided for herein then the Lot Owner/s willing to proceed may serve on the other Lot Owner/s a notice in writing:
    - (a) requiring the Lot Owner/s to join in, carry out and/or pay for that work; and
    - (b) stating the cost to be met by each Lot Owner/s;
    - (c) stating that after the expiry of 14 days from the date of service of the notice that the party/ies willing to proceed may carry out or pay for the work itself.

5.2. If, at the expiry of such notice, the Lot Owner/s in default still neglects or refuses to carry out or pay for the work, then the Lot Owner/s willing to proceed may carry out or pay for the work and for that purpose may enter into and upon the Servient Lot and carry out the necessary work and the Lot Owner/s in default shall be immediately liable to pay to the Lot Owner/s who carries out or pay for the work:

- (a) the Lot Owner/s appropriate proportion of the costs of carrying out or paying for the work; and
- (b) the cost of the notice;

and the same may be recoverable by action at law or as a liquidated debt

5.3. Any notice required to be given by a party hereunder shall be in writing and shall be deemed to be duly given if given or served in accordance with Section 354 of the Property Law Act 2007.

## 6. Statutory Provision

The powers, rights and duties of Lot Owner/s that are implied in vehicular rights of way under the provisions of Section 298 of the Property Law Act 2007 and Schedule 5 of that Act shall apply except to the extent that the provisions of this instrument vary the same.

## 7. Dispute Resolution

In the event of any dispute as to the interpretation or application of this instrument, the need for maintenance or reinstatement and/or the apportionment of costs between Lot Owners or otherwise howsoever, then any Lot Owner may give to the other Lot Owner/s 14 days written notice requiring the matter in dispute to be referred to arbitration. Such written notice shall state the subject matter and details of the dispute to be referred to arbitration. Failing agreement within the said 14 day period for the appointment of an arbitrator, the arbitrator shall be appointed at the request of a Lot Owner by the nominee of the President of the New Zealand Law Society. In all other respects the provisions of the Arbitration Act 1996 shall thereafter be applicable.

## 8. Land to Vest

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.