

**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 \_\_\_\_\_, 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 732860 subdivided the land into lots in the manner shown and defined on Deposited Plan 499776 (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>
244	742480	245	742481
246	742482	247	742483
248	742484	249	742485
250	742486	251	742487
252	742488	253	742489
254	742490	255	742491
256	742492	257	742493
258	742494	259	742495
260	742496	261	742497
262	742498	263	742499
264	742500	265	742501
266	742502	267	742503
268	742504	269	742505
270	742506	271	742507
272	742508	273	742509
274	742510	275	742511
276	742512	277	742513
281	742514	282	742515
283	742516	284	742517
285	742518	286	742519
287	742520	288	742521
289	742522	290	742523
291	742524	292	742525
293	742526	294	742527
295	742528	296	742529
297	742530	298	742531
299	742532	300	742533
301	742534	302	742535
303	742536	316	742537
324	742538	325	742539
326	742540	327	742541
328	742542	329	742543
330	742544	355	742545
386	742546		

## 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 S to Z and AA to AX 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 V to Z and AA to AE and AO to AX (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 V to Z and AA to AE and AO to AX, 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.

5.11. any damage or alteration of the finished slope or works (including but not limited to the timber retaining wall) in areas S to U and AF to AN (including any works below the ground) 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 S to U and AF to AN, 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>
244	742480	245	742481
246	742482	247	742483
248	742484	249	742485
250	742486	251	742487
252	742488	253	742489
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**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>RIGHT TO MAINTAIN GARDEN</b>	<b>A</b> DP 499776	<b>LOT 258</b> DP 499776 (CT 742494)	<b>LOT 253</b> DP 499776 (CT 742489)
	<b>B</b> DP 499776	<b>LOT 258</b> DP 499776 (CT 742494)	<b>LOT 254</b> DP 499776 (CT 742490)
	<b>C</b> DP 499776	<b>LOT 257</b> DP 499776 (CT 742493)	<b>LOT 254</b> DP 499776 (CT 742490)
	<b>D</b> DP 499776	<b>LOT 257</b> DP 499776 (CT 742493)	<b>LOT 255</b> DP 499776 (CT 742491)
	<b>E</b> DP 499776	<b>LOT 256</b> DP 499776 (CT 742492)	<b>LOT 255</b> DP 499776 (CT 742491)
	<b>F</b> DP 499776	<b>LOT 303</b> DP 499776 (CT 742536)	<b>LOT 286</b> DP 499776 (CT 742519)
	<b>G</b> DP 499776	<b>LOT 302</b> DP 499776 (CT 742535)	<b>LOT 286</b> DP 499776 (CT 742519)
	<b>H</b> DP 499776	<b>LOT 302</b> DP 499776 (CT 742535)	<b>LOT 288</b> DP 499776 (CT 742521)
	<b>I</b> DP 499776	<b>LOT 301</b> DP 499776 (CT 742534)	<b>LOT 288</b> DP 499776 (CT 742521)

**Form L**

**Annexure Schedule A**

*Insert instrument type*

**Easement**

*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>RIGHT TO MAINTAIN GARDEN</b>	<b>J</b> DP 499776	LOT 300 DP 499776 (CT 742533)	LOT 288 DP 499776 (CT 742521)
	<b>K</b> DP 499776	LOT 300 DP 499776 (CT 742533)	LOT 290 DP 499776 (CT 742523)
	<b>L</b> DP 499776	LOT 299 DP 499776 (CT 742532)	LOT 290 DP 499776 (CT 742523)
	<b>M</b> DP 499776	LOT 298 DP 499776 (CT 742531)	LOT 290 DP 499776 (CT 742523)
	<b>N</b> DP 499776	LOT 298 DP 499776 (CT 742531)	LOT 292 DP 499776 (CT 742525)
	<b>O</b> DP 499776	LOT 297 DP 499776 (CT 742530)	LOT 292 DP 499776 (CT 742525)
	<b>P</b> DP 499776	LOT 296 DP 499776 (CT 742529)	LOT 292 DP 499776 (CT 742525)
	<b>Q</b> DP 499776	LOT 296 DP 499776 (CT 742529)	LOT 294 DP 499776 (CT 742527)
	<b>R</b> DP 499776	LOT 295 DP 499776 (CT 742528)	LOT 294 DP 499776 (CT 742527)

**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*

The implied rights and powers are hereby added to:

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

~~[by the provisions set out in Annexure Schedule B]~~

**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 \_\_\_\_\_]~~

## **ANNEXURE SCHEDULE "B"**

1. The Grantee shall have the right, liberty and privilege from time to time and at all times to use, occupy and enjoy the Easement Area (as shown as Areas A to R (as appropriate) on DP 499776) on the terms set out herein.
2. Subject to clause 5 herein, the Grantee shall have the sole responsibility for maintenance of the Easement Area in accordance with the terms set out herein.
3. The Grantee shall have the right, liberty and privilege to fence the Easement Area provided that it shall not erect any fence and/or wall on the Easement Area:
  - (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) 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 (an approved fence);
  - (c) 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;
  - (d) with the exception of an approved fence any fence or wall using second hand materials and/or using corrugated or metal products.
  - (e) any fence or wall visible from any road, jointly owned accessway lot or Reserve unless it complies with this Clause 3 in all respects.
4. The Grantee shall not allow any planting or erections on the Easement Area to exceed a height of 1.8m from the original ground level of the Grantee's land unless the Grantor, in its sole discretion shall consent.
5. The Grantor shall have the right to enter onto the Easement Area and the dominant tenement as and when it requires for the purposes of repair, maintenance and upgrade of the timber retaining wall forming part of the Grantor's land provided that:
  - (a) Such repair, maintenance or upgrade has obtained all necessary Council and other consents;
  - (b) The Grantor remains on the Easement Area and the dominant tenement for as short a time as is reasonably possible in order to undertake that repair, maintenance or upgrade;
  - (c) The Grantor reinstates the garden, planting and other permitted erections that the Grantee has installed on the Easement Area by restoring the surface of the land and any planting and other permitted erections as nearly as possible to their former condition;
  - (d) The Grantor must ensure that as little damage or disturbance as possible is caused to the dominant tenement and to the Grantee;
  - (e) The Grantor must ensure that all work is performed in a proper and workmanlike manner;

- (f) The Grantor must compensate the Grantee for all damage caused by the work to any buildings, erections, fences or planting on the dominant tenement.
6. The Grantee shall not be entitled to call upon the Grantor to pay for or contribute towards the expense of construction or maintenance of any fence between the Grantee's land and the Grantor's land that it would otherwise be able to do so in accordance with the Fencing Act 1978 or any Act passed in substitution thereof.
  7. Whilst WFH Properties Limited is either the Grantor or the Grantee, it shall have no obligations to contribute towards any of the costs and/or expenses that may be incurred pursuant to this Right to Maintain Garden.
  8. If the Grantee shall subdivide the dominant tenement at any time, the rights and obligations of the Grantee pursuant to this easement instrument shall be read as if the Grantee shall only mean the registered proprietor(s) of that computer register that is, or those computer registers which are, immediately adjacent to the Easement Area and/or any part of the Easement Area, and the rights and obligations of each Grantee shall only be in respect of the portion of the Easement Area that is immediately adjacent to a respective Grantee's computer register at any given time.
  9. If WFH Properties Limited wishes to surrender this easement in respect of any part of the Easement Area which has become redundant or the benefit is no longer required, then the Grantor and Grantee each appoint WFH Properties Limited as their Attorney or Delegate (as appropriate) for the purpose of completing and registering a surrender of this easement in respect of any part of the dominant tenement for which the registered proprietor is WFH Properties Limited, and for which the easement has either become redundant or the benefit is no longer required by WFH Properties Limited. The Grantor and Grantee acknowledge there is no obligation on WFH Properties Limited to exercise its right pursuant to this clause.
  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.

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

Sections 90A and 90F, Land Transfer Act 1952

**Grantor** *Surname(s) must be underlined.*

**WFH PROPERTIES LIMITED**

**Grantee** *Surname(s) must be underlined.*

**CHORUS NEW ZEALAND 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(s) à prendre</i> , or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
<b>Right to convey telecommunications and computer media</b>	BA on DP 499776	Lot 709 DP 499776 Computer Freehold Registers 742496 742497 742498 742499	<b>Chorus New Zealand Limited (in gross)</b>
	BB on DP 499776	Lot 710 DP 499776 Computer Freehold Registers 742523 742525	
	BC on DP 499776	Lot 711 DP 499776 742519 742521	

**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.*

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

The implied rights and powers are ~~varied/negated/added to~~ or **substituted** by:

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

The provisions set out in the Annexure Schedule.

**Covenant provisions** *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:~~

## Annexure Schedule

Insert type of instrument

Easement

Dated

Page

2

of

4

Pages

*Continue in additional Annexure Schedule, if required.*

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

~~Annexure Schedule 2.~~

## Annexure Schedule

### Insert type of instrument

Easement Dated  Page  of  Pages

*Continue in additional Annexure Schedule, if required.*

### Continuation of "Easement rights and powers":

1 The rights and powers in this easement are in addition to those rights and powers contained in Schedule 4 to the Land Transfer Regulations 2002 ("the Fourth Schedule") and where the terms of this easement are in conflict with either the Fourth Schedule or any of the statutory rights and authorities which the Grantee may have in respect of the Servient Tenement, the terms of this easement shall prevail.

### 2 Grant of Easement

2.1 In addition to the above rights and powers the Grantor grants to the Grantee as an easement in gross the following rights and powers at all times and in any quantity:

- (a) to lay, install (including construct), locate, upgrade, add to, inspect, maintain, replace, repair, renew, enlarge, alter, retain, remove any Lines and Works on, in, over and under the Easement Land;
- (b) subject to clauses 4.1 and 4.2, to enter with all necessary equipment and remain upon the Servient Tenement for the purposes of laying, installing (including constructing), locating, upgrading, adding to, inspecting, maintaining, replacing, repairing, renewing, enlarging, altering, retaining or removing Lines or Works and make any accessways, cuttings, fillings, grades, batters and to re-open the same and generally to do and perform such acts or things upon the Servient Tenement as may be necessary or desirable (or incidental thereto) to enable the Grantee to receive, enjoy and give effect to the full free use and enjoyment of the rights and powers granted under this easement; and
- (c) to use and operate Lines and Works (such use and operation may include the granting of such use to third party telecommunications service providers) for the purpose of conveying telecommunications and computer media without interruption or impediment,

provided however that nothing shall compel the Grantee to exercise the above rights at any time or in a particular way.

### 3 Grantee's Covenants

3.1 The Grantee shall be responsible for:

- (a) the installation of and maintenance of the Lines and Works located on the Easement Land; and
- (b) using its best endeavors to prevent the Lines and Works located on the Easement Land becoming a danger to any user or occupier of the Servient Tenement.

3.2 The Grantee will, in exercising the rights granted to the Grantee under this easement cause as little damage as reasonably possible to the Servient Tenement and to any building or building improvement (including, without limitation, any interior fitout) located on the Servient Tenement.

3.3 The Grantee will at the Grantee's own cost repair and make good any damage to the Servient Tenement (including without limitation any damage to any building(s), fences or other improvements) caused by the Grantee in exercising the Grantee's rights and powers under this



## Annexure Schedule

### Insert type of instrument

Easement Dated  Page  of  Pages

*Continue in additional Annexure Schedule, if required.*

easement as reasonably close as possible to the original condition of the Servient Tenement prior to such damage and to the reasonable satisfaction of the Grantor.

#### 4 Access

- 4.1 The Grantee may, at any time (but subject to clause 4.2) from time to time enter the Servient Tenement (including, for the avoidance of doubt, any areas of Common Property on the Servient Tenement) using such routes as prescribed by the Grantor (acting reasonably) and with or without its employees, contractors and agents and with or without vehicles, machinery and implements of any kind for purposes associated with the creation and exercise of its rights and powers under this easement. If relevant, the Grantor shall invoke its rights pursuant to section 80 of the Unit Titles Act 2010 (or procure that such rights are invoked) as may be necessary to allow the Grantee access to its Lines and Works as agent of the body corporate.
- 4.2 In exercising the rights granted to the Grantee under this easement, the Grantee shall use reasonable efforts to give the Grantor prior notice that the Grantee intends to enter upon the Servient Tenement (except in the case of an Emergency, when notice will not be required). Without limitation to the preceding provisions, the Grantor shall not at any time restrict or impede access to the Easement Land (including by way of subdivision of the Land) by the Grantee and, upon request by Grantee, will provide the Grantee with all necessary keys and / or access cards required from time to time to gain access to the Servient Tenement and the Easement Land.

#### 5 Grantor's Covenants

- 5.1 The Grantor will not without the written permission of the Grantee (not to be unreasonably withheld or delayed):
- (a) grow or permit to be grown any natural or cultivated vegetation (including trees and shrubs) on or in the near vicinity, or encroaching on the Easement Land. The Grantee may at all times at the Grantor's cost remove any natural or cultivated vegetation or improvement on the Easement Land which may interfere with the rights granted by this easement; or
  - (b) erect or permit to be erected any improvement (including but not limited to buildings, sheds, fences, roads, walls or driveways) on the Easement Land; or
  - (c) do anything on the Easement Land that may damage or endanger the Grantee's Lines or Works; or
  - (d) do any act which will interfere with the rights granted by this easement and will not at any time do permit or suffer any act whereby the full and free use and enjoyment by the Grantee of the rights and privileges granted by this are interfered with.

#### 6 Removal

- 6.1 The Lines and Works are and shall remain the sole property of the Grantee and the Grantee shall not be required to remove the Lines and/or Works at any time. No person shall have any interest in such Lines and Works by reason only of having an interest or estate in the Servient Tenement.

## Annexure Schedule

### Insert type of instrument

Easement Dated  Page  of  Pages

*Continue in additional Annexure Schedule, if required.*

6.2 No power is implied for the Grantor to determine this easement for any breach of covenant or for any other cause whatsoever. The parties intend this easement to subsist forever or until it is duly surrendered or extinguished at the election of the Grantee.

### 7 Further Assurances

7.1 Each party shall make all applications, including executing and delivering any documents, and doing all acts and things, as may reasonably be required by the other party to obtain the full benefit of this easement according to its true intent.

### 8 Telecommunications Act 2001 and End User Terms

8.1 Notwithstanding anything to the contrary in this easement, the terms contained in this easement shall be without prejudice to, and do not reduce or limit, the rights and powers of the Grantee under the Telecommunications Act 2001 or any other document or arrangement conferring rights or powers on the Grantee in relation to Lines and Works at the Servient Tenement, and the Grantee may, in its discretion, rely on or exercise any of its rights and powers, whether in addition to or instead of the rights and powers granted by this easement.

### 9 Definitions and interpretation

9.1 In this easement:

- (a) "**Common Property**" has the same meaning ascribed to that term under the Unit Titles Act 2010.
- (b) "**Easement Land**" means that part of the Servient Tenement identified in Schedule A in this easement as Easement Land and those other parts of the Servient Tenement (including buildings) on which the Grantee has installed and located its Lines and Works.
- (c) "**Emergency**" means a situation in which there is a probable danger to life or property or immediate risk to the continuity or safety of supply of telecommunications.
- (d) "**Grantee**" means Chorus New Zealand Limited and includes all its subsidiaries (within the meaning of Sections 5 and 6 of the Companies Act 1993) and its successors, assigns, personal representatives, employees, contractors, agents, licensees and invitees.
- (e) "**Grantor**" includes the successors in title, assigns, tenants, transferees and personal representatives of the Grantor.
- (f) "**Line**" and "**Works**" shall have the meanings ascribed to those terms under the Telecommunications Act 2001;

**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>

**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 ]~~

**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 732860) and the creation of all the lots described, the Servient Lot is to be held in four undivided one quarter shares by the Registered Proprietors of each of the Dominant Lots.
- 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 709 DP 499776

**SCHEDULE B**

Lot 260 DP 499776

Lot 262 DP 499776

Lot 261 DP 499776

Lot 263 DP 499776

**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.



**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>

**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 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 732860) and the creation of all the lots described, the Servient Lot is to be held in two undivided one half shares by the Registered Proprietors of each of the Dominant Lots.
- 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 **DOETH 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 710 DP 499776

**SCHEDULE B**

Lot 290 DP 499776

Lot 292 DP 499776

**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.

**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>

**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 ]



**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 732860) and the creation of all the lots described, the Servient Lot is to be held in two undivided one half shares by the Registered Proprietors of each of the Dominant Lots.
- 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 **DOETH 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 711 DP 499776

**SCHEDULE B**

Lot 286 DP 499776

Lot 288 DP 499776

**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.