

**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 Identifiers 730713, NA26A/998, NA70B/389 and NA23B/441 subdivided the land into lots in the manner shown and defined on Deposited Plan 496928 (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>
188	732813	210	732814
211	732815	212	732816
213	732817	214	732818
215	732819	216	732820
217	732821	226	732822
227	732823	228	732824
229	732825	230	732826
231	732827	234	732828
235	732829	236	732830
237	732831	238	732832
239	732833	240	732834
241	732835	242	732836
243	732837	278	732838
279	732839	280	732840
304	732841	305	732842
306	732843	307	732844
308	732845	309	732846
310	732847	311	732848
312	732849	313	732850
314	732851	315	732852
317	732853	318	732854
319	732855	320	732856
321	732857	322	732858
323	732859		

### 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 C to Z and AA to AL 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 C, F, M to Z and AA to AL (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 C, F, M to Z and AA to AL, 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 D and G to J (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 D and G to J, 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
Pozzololith 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>
188	732813	210	732814
211	732815	212	732816
213	732817	214	732818
215	732819	216	732820
217	732821	226	732822
227	732823	228	732824
229	732825	230	732826
231	732827	234	732828
235	732829	236	732830
237	732831	238	732832
239	732833	240	732834
241	732835	242	732836
243	732837	278	732838
279	732839	280	732840
304	732841	305	732842
306	732843	307	732844
308	732845	309	732846
310	732847	311	732848
312	732849	313	732850
314	732851	315	732852
317	732853	318	732854
319	732855	320	732856
321	732857	322	732858
323	732859		

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

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

## Grantor

**WFH Properties Limited**

## Grantee

**Vector Limited**

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

**The Grantor** being the registered proprietor of the servient tenement(s) set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

## Schedule A

*Continue in additional Annexure Schedule, if required*

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
<b>Right to Convey Gas</b>	<b>Marked "A" on DP 496928</b>	<b>Lot 712 DP 496928 Part CFRs 732854 and 732855</b>	<b>In Gross</b>
	<b>Marked "B" on DP 496928</b>	<b>Lot 713 DP 496928 Part CFRs 732826, 732827, 732828 and 732829</b>	

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

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 the provisions set out in Annexure Schedule.

## Covenant provisions

Continued in Annexure Schedule

*Insert instrument type*

**Easement Instrument to grant easement or profit a prendre, or create land covenant**

*(Continue in additional Annexure Schedule, if required)*

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this instrument unless the context otherwise requires:

- (a) "Building" means the building or other improvements (if any) situated on the Land.
- (b) "Code of Conduct" means the Code of Conduct for Complaint Handling issued by the Electricity and Gas Complaints Commissioner Scheme (or replacement) applying to the land based activities of organisations (including the Grantee) involved in the transmission and distribution of electricity and gas, and with respect to which the Grantee has agreed to be bound (or such other code of conduct or dispute resolution mechanism by which the Grantee agrees to be bound as published and publicly notified on the Grantee's official website from time to time).
- (c) "Easement Land" means those parts of the Land specifically marked on the Plan and referred to in Schedule A of this instrument.
- (d) "Emergency Situation" means a situation in which there is a probable danger to life or property or immediate risk to the continuity or safety of supply or distribution of gas.
- (e) "Equipment" includes all pipes, ducting, cables Gas Measurement Systems, Distribution Systems and Fittings (as defined in the Gas Act 1992) and all other equipment (owned by the Grantee) which is situated on, in, over or under the Easement Land or which the Grantee requires to place on, in, over or under the Easement Land to carry out the Permitted Uses.
- (f) "Land" means the servient tenement referred to in Schedule A of this instrument.
- (g) "Permitted Uses" are for the conveyance and supply of Gas (as defined in the Gas Act 1992).
- (h) "Plan" is the deposited plan referred to in Schedule A of this instrument.
- (i) "Rights" are the full, free, uninterrupted and unrestricted ability and licence (as reasonably required by the Grantee) at all times to go on, over and under the Land and have access to and through the Building (if any) to enter the Easement Land with or without vehicles, tools or machinery of any kind to:
  - (i) undertake Works; and
  - (ii) use the Equipment.
- (j) "Working Day" means any day of the week other than:
  - (i) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day and the Provincial Anniversary as observed at the place where the Land is situated; and
  - (ii) A day in the period commencing with 25 December in any year and ending with 5 January in the following year.

A Working Day shall be deemed to commence at 8.00 am and to terminate at 8.00pm.
- (k) "Works" means constructing, laying, equipping, maintaining, inspecting, repairing, altering, renewing, replacing (with or without something substantially similar), upgrading, adding to, removing and operating the Equipment or any other works, including but not limited to excavating trenches in which the Equipment will be placed, required to be undertaken by the Grantee in order that it may use the Easement Land for the Permitted Uses.
- (l) Headings are included for convenience only and do not affect the interpretation of this instrument.
- (m) Words importing the singular shall include the plural, the masculine gender shall include the feminine and persons shall include companies and vice versa.

*Insert instrument type*

**Easement Instrument to grant easement or profit a prendre, or create land covenant**

*(Continue in additional Annexure Schedule, if required)*

- (n) Reference to the Grantee and Grantor is deemed to be a reference also to the Grantee's and Grantor's employees, workmen, engineers and agents unless repugnant to the context and, in the case of the Grantee, to any person nominated by the Grantee in accordance with clause 8.
- (o) Reference to legislation includes reference to all legislation amending or replacing that legislation or to any legislation passed pursuant to that legislation.
- (p) Reference to the parties includes reference to the parties, executors, administrators, successors in title and assigns.

**2. GRANT**

The Grantor grants and the Grantee accepts the grant of this easement in gross to use the Easement Land for the Permitted Uses together with the right to exercise the Rights for all time on the basis that no power is implied for the Grantor to determine this easement in gross for any breach of its provisions (expressed or implied) or for any other cause, the intention being that this easement in gross shall subsist until surrendered.

**3. GRANTEE'S OBLIGATIONS**

3.1 The Grantee shall:

- (a) In undertaking any Works cause as little damage as possible to the Land and Building (if any) and as little inconvenience as possible to the Grantor and/or the Grantor's tenants, licensees and other persons who have the right to use the Land and the Building; and
- (b) Following it undertaking any Works, in a good and workmanlike manner fill in any opening in the surface of the Land as soon as possible after the Works have been completed and restore the surface of the Land as nearly as possible to its former condition (unless otherwise agreed) and make good any damage to the Building caused through the undertaking of the Works.

3.2 The Grantee shall provide the Grantor and/or the occupier for the time being of the Land, at least five (5) Working Days' notice prior to exercising the Rights except:

- (a) in the event of an Emergency Situation; or
- (b) when operating or inspecting the Equipment or carrying out Works of a minor nature (that have come to the attention of the Grantee in the course of such inspection or operation),

in either of which case no notice is required. For the avoidance of doubt, the Grantor acknowledges that it agrees to the Grantee operating, inspecting or carrying out Works of a minor nature (that have come to the attention of the Grantee in the course of such inspection or operation) without the provision of notice.

**4. GRANTOR'S OBLIGATIONS**

4.1 The Grantor shall not (without the prior written consent of the Grantee):

- (a) Place or allow to be placed any further fences, driveways or other erections on the Easement Land other than fences, driveways and erections in place as at the date of this instrument and replacements for those fences, driveways and erections; or
- (b) Allow any further tree or shrub to grow on the Easement Land other than trees and shrubs planted on the Easement Land at the date of this instrument and replacements for those trees and shrubs; or
- (c) Disturb or permit to be disturbed the soil below a depth of 400 millimetres from the surface of the Easement Land or remove any soil from the Easement Land except to the extent reasonably necessary to maintain, install, repair, replace or renew the driveway and other equipment and services sharing the Easement Land; or

*Insert instrument type*

**Easement Instrument to grant easement or profit a prendre, or create land covenant**

*(Continue in additional Annexure Schedule, if required)*

- (d) Permit to be done any act on the Easement Land that interferes with or affects the use of the Easement Land for the Permitted Uses or the exercise by the Grantee of the Rights; or
- (e) Interfere with or allow any interference with the Equipment or cause or allow any damage to be done to the Equipment; or
- (f) Grant any rights over the Easement Land to any party other than the Grantee except the easements referred to in the Memorandum and/or Schedule of Easements submitted to Land Information New Zealand with the Plan.

4.2 Should the Grantor fail to observe or breach any of its obligations contained in this clause 4 the Grantee may remedy any such failure to observe or breach and the Grantor shall reimburse the Grantee (on demand) for the cost of any such remedy.

## **5 MAINTENANCE**

The Grantee shall, at its cost, keep the Equipment in good and substantial repair and shall be liable to the Grantor for any loss, cost or damage caused to or suffered by the Grantor as a result of any failure to repair the Equipment to the extent (but not greater than) specified in the Grantor's energy supply agreement with its retailer (to the extent the terms of such agreement are enforceable against the Grantor by the Grantee).

## **6. OWNERSHIP**

The Grantee retains ownership of the Equipment which does not form part of the Land.

## **7. IMPLIED RIGHTS AND POWERS**

The rights and powers implied in certain easements pursuant to Section 90D of the Land Transfer Act 1952 (and currently set out in Schedule 4 of the Land Transfer Regulations 2002) are, as between the Grantor and Grantee, substituted and replaced by the terms set out in this instrument.

## **8. NOMINATION OF GRANTEE**

The Grantee may, by serving written notice to that effect on the Grantor (and without prejudice to the rights of the Grantee pursuant to Section 291 Property Law Act 2007) nominate any person to exercise (either together with the Grantee or otherwise) any of the rights granted to the Grantee hereunder and may require the Grantor to grant to such person an easement substantially in the form of this instrument in respect of such rights.

## **9. GRANTOR TO NOTIFY OCCUPIER**

The Grantor shall notify every occupier of the Land of the terms of this instrument and shall procure that any such occupier shall comply with the terms of this instrument as necessary for the Grantee to have the full use and benefit thereof.

## **10. DISPUTES**

10.1 If any dispute arises between the Grantor and the Grantee concerning the rights created by this instrument and the parties are unable to resolve that dispute through good faith negotiations and the dispute is not resolved within one (1) month of the date on which the parties began their negotiations:

- (a) to the extent that the dispute falls within the categories of dispute dealt with pursuant to the Code of Conduct, the parties shall comply with the provisions of the Code of Conduct; and
- (b) to the extent that the dispute does not come within the provisions of clause 10.1(a):
  - (i) the dispute shall be referred to a senior manager or executive of each of the Grantor and the Grantee who shall enter into negotiations in good faith to resolve the dispute; or
  - (ii) either party may refer the matter to arbitration pursuant to the Arbitration Act 1996.

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

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

**Grantor**

**WFH Properties Limited**

**Grantee**

**Vector Limited**

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

**The Grantor** being the registered proprietor of the servient tenement(s) set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

**Schedule A**

*Continue in additional Annexure Schedule, if required*

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
<b>Right to Convey Electricity</b>	<b>Marked "A" on DP 496928</b>	<b>Lot 712 DP 496928 Part CFRs 732854 and 732855</b>	<b>In Gross</b>
	<b>Marked "B" on DP 496928</b>	<b>Lot 713 DP 496928 Part CFRs 732826, 732827, 732828 and 732829</b>	

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

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002.

The implied rights and powers are hereby substituted by the provisions set out in Annexure Schedule.

**Covenant provisions**

The provisions are continued in Annexure Schedule

*Insert instrument type*

**Easement Instrument to grant easement or profit a prendre, or create land covenant**

*(Continue in additional Annexure Schedule, if required)*

**1. DEFINITIONS AND INTERPRETATION**

In this instrument unless the context otherwise requires:

- (a) "Accommodation" means that building or other structure (if any) enclosing and/or surrounding the Substation (if any) from time to time including the foundation, floor, walls or enclosure, canopy, ceiling, lighting, plug socket outlets, cable ducts, access doors or other provision for entry and exit of the Substation (if any).
- (b) "Building" means the building or other improvements (if any) situated on the Land.
- (c) "Code of Conduct" means the Code of Conduct for Complaint Handling issued by the Electricity and Gas Complaints Commissioner Scheme (or replacement) applying to the land based activities of organisations (including the Grantee) involved in the transmission and distribution of electricity and gas, and with respect to which the Grantee has agreed to be bound (or such other code of conduct or dispute resolution mechanism by which the Grantee agrees to be bound as published and publicly notified on the Grantee's official website from time to time).
- (d) "Easement Land" means those parts of the Land specifically marked on the Plan and referred to in Schedule A of this instrument.
- (e) "Emergency Situation" means a situation in which there is a probable danger to life or property or immediate risk to the continuity or safety of supply or distribution of electricity or telecommunications and computer media.
- (f) "Equipment" includes the Substation (if any) and all pipes, ducting, cables (including fibre optic cables), meters and load management devices and conducting media, transformers and all other equipment (owned by the Grantee) which is situated on, in, over or under the Easement Land or which the Grantee requires to place on, in, over or under the Easement Land to carry out the Permitted Uses.
- (g) "Land" means the servient tenement referred to in Schedule A of this instrument.
- (h) "Permitted Uses" are for the transmission and conducting of electric current for the benefit of the Land and any other land the conveyance and supply of telecommunications and computer media and for any other purpose reasonably required by the Grantee for the purposes of its business.
- (i) "Plan" is the deposited plan referred to in Schedule A of this instrument.
- (j) "Rights" are the full, free, uninterrupted and unrestricted ability and licence (as reasonably required by the Grantee) at all times to go on, over and under the Land and have access to and through the Building (if any) to enter the Easement Land with or without vehicles, tools or machinery to:
  - (i) undertake Works; and
  - (ii) use the Equipment.
- (k) "Substation" means the distribution substation and/or switching equipment (if any) installed from time to time on the Easement Land.
- (l) "Working Day" means any day of the week other than:
  - (i) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day and the Provincial Anniversary Day as observed at the place where the Land is situated; and
  - (ii) a day in the period commencing with 25 December in any year and ending with 2 January in the following year.

A Working Day shall be deemed to commence at 8.00 am and to terminate at 8.00 pm.

*Insert instrument type*

**Easement Instrument to grant easement or profit a prendre, or create land covenant**

*(Continue in additional Annexure Schedule, if required)*

- (m) "Works" means constructing, laying, equipping, maintaining, inspecting, repairing, altering, renewing, replacing (with or without something substantially similar), upgrading, adding to, removing and operating the Equipment or any other works, including but not limited to excavating trenches in which the Equipment will be placed, required to be undertaken by the Grantee in order that it may use the Easement Land for the Permitted Uses.
- (n) Headings are included for convenience only and do not affect the interpretation of this instrument.
- (o) Words importing the singular shall include the plural, the masculine gender shall include the feminine and persons shall include companies and vice versa.
- (p) Reference to the Grantee and Grantor is deemed to be a reference also to the Grantee's and Grantor's employees, workmen, engineers and agents unless repugnant to the context and, in the case of the Grantee, to any person nominated by the Grantee in accordance with clause 8.
- (q) Reference to legislation includes reference to all legislation amending or replacing that legislation or to any legislation passed pursuant to that legislation.
- (r) References to the parties includes reference to the parties, executors, administrators, successors in title and assigns.

## **2. GRANT**

The Grantor grants and the Grantee accepts the grant of this easement in gross to use the Easement Land for the Permitted Uses together with the right to exercise the Rights for all time on the basis that no power is implied for the Grantor to determine this easement in gross for any breach of its provisions (expressed or implied) or for any other cause, the intention being that this easement in gross shall subsist until surrendered.

## **3. GRANTEE'S OBLIGATIONS**

3.1 The Grantee shall:

- (a) In undertaking any Works cause as little damage as possible to the Land and Building (if any) and as little inconvenience as possible to the Grantor and/or the Grantor's tenants, licensees and other persons who have the right to use the Land and the Building; and
- (b) Following its undertaking any Works, in a good and workmanlike manner fill in any opening in the surface of the Land as soon as possible after the Works have been completed and restore the surface of the Land as nearly as possible to its former condition (unless otherwise agreed) and make good any damage to the Building caused through the undertaking of the Works.

3.2 The Grantee shall provide the Grantor and/or the occupier for the time being of the Land, at least five (5) Working Days' notice prior to exercising the Rights except:

- (a) in the event of an Emergency Situation; or
- (b) when operating or inspecting the Equipment or carrying out Works of a minor nature (that have come to the attention of the Grantee in the course of such inspection or operation),

in either of which case no notice is required. For the avoidance of doubt, the Grantor acknowledges that it agrees to the Grantee operating, inspecting or carrying out Works of a minor nature (that have come to the attention of the Grantee in the course of such inspection or operation) without the provision of notice.

## **4. GRANTOR'S OBLIGATIONS**

4.1 The Grantor shall not (without the prior written consent of the Grantee):

- (a) Place or allow to be placed any further fences, driveways or other erections on the Easement Land other than fences, driveways and erections in place as at the date of this instrument and replacements for those fences, driveways and erections; or

*Insert instrument type*

**Easement Instrument to grant easement or profit a prendre, or create land covenant**

*(Continue in additional Annexure Schedule, if required)*

- (b) Allow any further tree or shrub to grow on the Easement Land other than trees and shrubs planted on the Easement Land as at the date of this instrument and replacements for those trees and shrubs; or
- (c) Permit to be done any act on the Land that interferes with or affects the Permitted Uses or the exercise by the Grantee of the Rights. In particular and without limiting the generality of this clause 4.1(c), the Grantor shall, at its cost, at all times keep an access route over the Land to the Easement Land clear and in good condition including the prompt undertaking of any necessary reinstatement works; or
- (d) Interfere with or allow any interference with the Equipment or cause or allow any damage to be done to the Equipment; or
- (e) Grant any rights over the Easement Land to any party other than the Grantee except the easements referred to in the Memorandum and/or Schedule of Easements submitted to Land Information New Zealand with the Plan; or
- (f) Permit to be done any act on the Land that interferes with the Grantee's:
  - (i) Access to the Substation (if any);
  - (ii) Ventilation of the Accommodation (if any);
  - (iii) Fire-rating of the Accommodation (if any).

4.2 Should the Grantor fail to observe or breach any of its obligations contained in this clause 4 the Grantee may remedy any such failure to observe or breach and the Grantor shall reimburse the Grantee (on demand) for the cost of any such remedy.

## **5. MAINTENANCE**

The Grantee shall, at its cost, keep the Equipment in good and substantial repair and shall be liable to the Grantor for any loss, cost or damage caused to or suffered by the Grantor as a result of any failure to repair the Equipment to the extent (but not greater than) specified in:

- (a) the Grantee's then standard terms and conditions of electricity supply as published and publicly notified on the Grantee's official website from time to time (if applicable); or
- (b) the Grantor's energy supply agreement with its retailer (to the extent the terms of such agreement are enforceable against the Grantor by the Grantee).

## **6. OWNERSHIP**

The Grantee retains ownership of the Equipment which does not form part of the Land.

## **7. IMPLIED RIGHTS AND POWERS**

The rights and powers implied in certain easements pursuant to section 90D of the Land Transfer Act 1952 (and currently set out in Schedule 4 of the Land Transfer Regulations 2002) are, as between the Grantor and Grantee, substituted and replaced by the terms set out in this instrument.

## **8. NOMINATION OF GRANTEE**

The Grantee may, by serving written notice to that effect on the Grantor (and without prejudice to the rights of the Grantee pursuant to section 291 Property Law Act 2007) nominate any person to exercise (either together with the Grantee or otherwise) any of the rights granted to the Grantee hereunder and may require the Grantor to grant to such person an easement substantially in the form of this instrument in respect of such rights.

*Insert instrument type*

**Easement Instrument to grant easement or profit a prendre, or create land covenant**

*(Continue in additional Annexure Schedule, if required)*

**9. GRANTOR TO NOTIFY OCCUPIER**

The Grantor shall notify every occupier of the Land of the terms of this instrument and shall procure that any such occupier shall comply with the terms of this instrument as necessary for the Grantee to have the full use and benefit thereof.

**10. DISPUTES**

10.1 If any dispute arises between the Grantor and the Grantee concerning the rights created by this instrument and the parties are unable to resolve that dispute through good faith negotiations and the dispute is not resolved within one (1) month of the date on which the parties began their negotiations:

- (a) to the extent that the dispute falls within the categories of dispute dealt with pursuant to the Code of Conduct, the parties shall comply with the provisions of the Code of Conduct; and
- (b) to the extent that the dispute does not come within the provisions of clause 10.1(a):
  - (i) the dispute shall be referred to a senior manager or executive of each of the Grantor and the Grantee who shall enter into negotiations in good faith to resolve the dispute; or
  - (ii) either party may refer the matter to arbitration pursuant to the Arbitration Act 1996.

**11. ACCOMMODATION OWNED BY GRANTOR**

- (a) Where this instrument states that there exists Accommodation owned by the Grantor, the following provisions of this clause 11 shall apply but such provisions shall not otherwise be binding on the parties.
- (b) The Grantor shall not enter that part of the Easement Land on which the Accommodation is situated except for the purposes of carrying out inspection of and maintenance on the Accommodation pursuant to clause 11(c) and in accordance with clause 11(d).
- (c) The Grantor shall at its cost keep the Accommodation in good and substantial repair. The Grantor may enter and inspect the Accommodation from time to time in accordance with clause 11(d) to determine the condition of the Accommodation and to carry out necessary repairs in terms of this clause 11(c). Without prejudice to the foregoing, the Grantor shall at all times ensure that:
  - (i) The ventilation both within and from the Accommodation is no way restricted; and
  - (ii) The fire resistance rating and fire protection measures of the Accommodation at the date of this instrument are maintained.
- (d) The Grantor acknowledges that the Accommodation containing the Equipment is locked at all times by the Grantee. If the Grantor reasonably suspects that the Accommodation requires repair, upon receiving notification from the Grantor the Grantee agrees to, on reasonable notice (except in an Emergency Situation), accompany the Grantor to enter the Accommodation for the purpose of inspecting the Accommodation or carrying out repair, provided that the Grantor shall have the right to inspect the Accommodation without charge by the Grantee no more than twice a year (other than in an Emergency Situation).
- (e) If the Grantee becomes actually aware of any want of repair or maintenance in respect of the Accommodation, the Grantee shall notify the Grantor in writing of any such want of repair or maintenance provided always that the Grantee is not required to carry out inspections of the Accommodation when it enters the Accommodation or otherwise, and the Grantee shall not be imputed with constructive awareness of any want of maintenance or repair.
- (f) Should the Grantor fail to observe its obligations contained in clause 11(c) the Grantee may remedy any such failure to observe and the Grantor shall reimburse the Grantee (on demand) for the cost of any such remedy.

*Insert instrument type*

**Easement Instrument to grant easement or profit a prendre, or create land covenant**

*(Continue in additional Annexure Schedule, if required)*

**12. ACCOMMODATION OWNED BY GRANTEE**

- (a) Where this instrument states that there exists Accommodation owned by the Grantee the following provisions of this clause 12 shall apply but such provisions shall not otherwise be binding on the parties.
- (b) The Grantor shall not enter that part of the Easement Land on which the Accommodation is situated.
- (c) The Grantee shall at its cost keep the Accommodation in good and substantial repair although it shall not be liable for any loss, cost or damage caused to or suffered by the Grantor as a result of any failure to repair the Accommodation.
- (d) The Grantee retains ownership of the Accommodation which does not form part of the Land.

**13. PRESENCE OF ACCOMMODATION**

There is no Accommodation.

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

Sections 90A and 90F, Land Transfer Act 1952

<b>Grantor</b> <span style="float:right"><i>Surname(s) must be <u>underlined</u>.</i></span>			
<b>WFH PROPERTIES LIMITED</b>			
<b>Grantee</b> <span style="float:right"><i>Surname(s) must be <u>underlined</u>.</i></span>			
<b>CHORUS NEW ZEALAND LIMITED</b>			
<b>Grant of easement or <i>profit à prendre</i> or creation of covenant</b>			
<b>The Grantor</b> , being the registered proprietor of the servient tenement(s) set out in Schedule A, <b>grants to the Grantee</b> (and, if so stated, in gross) the easement(s) or <i>profit(s) à prendre</i> set out in Schedule A, <b>or creates</b> the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).			
<b>Schedule A</b> <span style="float:right"><i>Continue in additional Annexure Schedule if required.</i></span>			
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>	A on DP 496928	Lot 712 DP 496928 Computer Freehold Registers 732854 732855	<b>Chorus New Zealand Limited (in gross)</b>
	B on DP 496928	Lot 713 DP 496928 Computer Freehold Registers 732826 732827 732828 732829	
<b>Easements or <i>profits à prendre</i> rights and powers (including terms, covenants, and conditions)</b> <span style="float:right"><i>Delete phrases in [ ] and insert memorandum number as required. Continue in additional Annexure Schedule if required.</i></span>			
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 <del>varied/negated/added to</del> or <del>substituted</del> by:			
Memorandum number _____, registered under section 155A of the Land Transfer Act 1952.			
The provisions set out in the Annexure Schedule.			
<b>Covenant provisions</b> <span style="float:right"><i>Delete phrases in [ ] and insert memorandum number as required. Continue in additional Annexure Schedule if required.</i></span>			
The provisions applying to the specified covenants are those set out in:			
Memorandum number _____, registered under section 155A of the Land Transfer Act 1952.			
Annexure Schedule 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 Identifiers 730713, NA26A/998, NA70B/389 and NA23B/441) 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 **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 712 DP 496928

**SCHEDULE B**

Lot 318 DP 496928

Lot 319 DP 496928

**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 Identifiers 730713, NA26A/998, NA70B/389 and NA23B/441) 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 713 DP 496928

**SCHEDULE B**

Lot 230 DP 496928  
Lot 234 DP 496928

Lot 231 DP 496928  
Lot 235 DP 496928

**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.