

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

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

Grantor

Addison Developments Limited

Grantee

Addison Developments 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
Land Covenants	Not Applicable	Lots 175 – 208 and 258-330 Deposited Plan 504860 (766185-766290 and 766292)	Lots 175 – 208 and 258-330 Deposited Plan 504860 (766185-766290 and 766292)

Form B - continued

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 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~~ **[varied] [negatived] [added to] or [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 required; continue in additional Annexure Schedule, if required

The provisions applying to the specified covenants are those set out in:

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

~~[Annexure Schedule _____]~~

ANNEXURE SCHEDULE*Continue in additional annexure schedule(s), if required*

The Grantor as registered proprietor of the land formerly contained in Certificates of Title 712595 and 94B/274 (North Auckland Land District) has subdivided that land into residential lots in the manner shown and defined on Deposited Plan 504860.

It is the Grantor's intention to create, for the benefit of the Benefiting Lots, the land covenants set out in Schedule A (*Covenants*) over the Covenanting Lots TO THE INTENT that:

- (i) the Covenanting Lots shall be bound by the stipulations and restrictions set out in the Covenants; and
- (ii) the Grantee and the registered proprietors and occupiers for the time being of the Benefiting Lots may enforce the observance of the Covenants against the registered proprietors for the time being of the Covenanting Lots;

So as to bind the Covenanting Lots, and for the benefit of the Grantee and the respective owners of the Benefiting Lots, the Grantor DOES HEREBY COVENANT AND AGREE in the manner set out in Schedule A so that the Covenants run with the Covenanting Lots for the benefit of the Grantee and the respective owners of the Benefiting Lots.

PROVIDED HOWEVER that:

- (a) the Grantee shall not be required or obliged to enforce all or any of the stipulations and restrictions contained in the Covenants; and
- (b) the Grantor will not be liable to the Grantee for any breach of any of the Covenants by any of the other registered proprietors of the Covenanting Lots; and
- (c) the Grantor shall as regards the stipulations and restrictions contained in the Covenants be liable only in respect of breaches which occur while the Grantor is the registered proprietor of any of the Covenanting Lots in respect of which any breach occurs.

SCHEDULE A**DEFINITIONS**

1 In this instrument, unless the context requires otherwise:

Benefiting Lots means lots 175-208 and 258-330 (inclusive) on Deposited Plan 504860 or any of them, and any lots into which those lots are further subdivided;

Covenanting Lots means lots 175-208 and 258-330 (inclusive) on Deposited Plan 504860 or any of them, and any lots into which those lots are further subdivided;

Corner Lot means any Lot which has frontage on more than one road;

Development means all of the land formerly or currently comprised in certificates of title NA85C/335, NA85C/336, NA85C/337, NA85C/338, NA558/2, NA1316/35, NA389/444, NA15C/793, NA94B/658, NA346/248, NA389/245 and NA94B/274 together with all services, roads, footpaths, verges, parks and reserves;

Design Plans means those plans approved in writing by the Developer for any building, driveway, fencing and landscaping to be constructed on a Covenanting Lot in accordance with the Developer's design guidelines during the design approval process;

Developer means Addison Developments Limited and includes its successors and assigns;

Front Yard means;

- (a) where a Lot is bounded on only one side by a road, and on all other sides by a common boundary with one or more residential allotments, and none of the circumstances in (c) apply, then the *Front Yard* of such Lot means an area between the road and a line parallel thereto, extending across the full width of the Lot (from side boundary to side boundary) and back to the elevation of the residential dwelling erected on the Lot which faces the road;
- (b) where a Lot is a Corner Lot and bounded on more than one side by a road, but is bounded on all other sides by a common boundary with one or more residential allotments, and none of the circumstances in (c) apply, then the *Front Yard* of such Lot means the sum total of all areas within the Lot that would be captured by the definition of Front Yard in (a) if each road boundary was considered in isolation (and for the purposes of such individual assessments all other boundaries of the Lot treated as boundaries with residential allotments);
- (c) where a Lot:
 - (i) adjoins a park, reserve, cycleway and/or walkway;
 - (ii) is orientated or laid out such that the residential dwelling is or is likely to be orientated away from the road boundary; and/or
 - (iii) adjoins other areas of non-residential land within the Development which (in the reasonable opinion of the Encumbrancee) means that more than one boundary of the Lot will be consistently visible to the general public,

then the *Front Yard* means that area shown as Front Yard on the plans approved by the Addison Design Review Panel as part of the Building Approval Process for the Lot;

Land means all the land comprised in certificates of title 766185-766292 and 766292 (inclusive);

Lots means lots 175-208 and 258-330 (inclusive) on Deposited Plan 504860 or any of them, and any lots into which those lots are further subdivided;

Rear Yard means the entire area of the Lot excluding the Front Yard or that area of the Lot occupied by a dwelling;

Relevant Authority means any corporation, including any government, local or regional territorial authority, statutory or non-statutory authority or body having jurisdiction over the Lots or the Land or any part thereof; and

Road Reserve means any land in the Development declared to be a road reserve.

LAND COVENANTS TO ENURE

- 2 Unless otherwise stated herein, the Grantor for itself and its successors in title covenants and agrees with the Grantee for the benefit of each and all of the Benefiting Lots and also separately with each and all of the registered proprietors of the Benefiting Lots to always observe and perform all of the agreements, stipulations and restrictions set out in the Covenants to the intent that they shall forever enure to benefit the Benefiting Lots.

GRANTOR'S COVENANTS

Fencing

- 3 The Grantor will not construct, erect, extend or permit any new fence or other dividing

structure of any kind provided the Grantor shall be permitted to replace the original fence as shown on the Design Plans.

- 4 Where a fence has been defaced, damaged, destroyed or removed, the Grantor must repair, restore or replace the fence, as the case may be, using the same materials or substantially the same materials as the original fence, painted in the same colour as the original fence and adopted the same or similar design as the original fence. The cost of repairing, restoring or replacing the fence shall be met as follows:
- 4.1 where the fence is erected on the boundary of Covenanting Lots, then the registered proprietors of the affected Covenanting Lots shall contribute to the cost in equal proportions; or
- 4.2 where the fence is erected wholly on a Covenanting Lot (i.e. an internal dividing fence), then the Grantor shall be solely responsible for the cost;
- 5 Provided that where the fence is defaced, damaged, destroyed or removed by the wilful or negligent act of a registered proprietor or occupier of a Covenanting Lot then that registered proprietor shall be solely responsible for the cost of repairing, restoring or replacing the fence.

Exterior Alterations and Painting

- 6 The Grantor shall not materially alter the appearance of the exterior of the dwelling or other building or structure on any of the Covenanting Lots including (but not limited to):
- 6.1 painting or causing to be painted or otherwise coloured or stained the exterior of any dwelling or other building or structure on any of the Covenanting Lots with any colour which materially deviates from the original colour of the dwelling, provided that if the dwelling shares a common wall or walls with another dwelling, the Grantor shall only be entitled to paint the exterior of the dwelling with the exact same colour, with which the dwelling was originally painted; and
- 6.2 replacing the garage doors with any different materials or products, including (but not limited to) replacing two single garage doors with one double garage door; and
- 6.3 adding a loft or other structure to the dwelling or other building or structure.

Landscaping

- 7 The Grantor shall keep the Front and Rear Yard in a neat and tidy condition and shall not permit the excessive growth of grass, weeds or plants. If the Grantor fails to comply with these requirements, the Grantee may enter the Covenanting Lot and at the expense of the Grantor take whatever action it considers necessary to remedy the default.
- 8 The Grantor shall ensure that no further planting is undertaken and that all existing planting is maintained so that the "no planting zone", as shown on the Design Plans, is maintained as a clear area.
- 9 The Grantor shall ensure that no additional impermeable surface, for example but without limitation, concrete, tiles, bricks, blocks, decking, gravel, stone or shell product is permitted to be placed, erected or laid in the Front Yard or Rear Yard unless otherwise shown on the Design Plans or initially done when a code of compliance certificate was issued for the dwelling.
- 10 The Grantor shall ensure that:
- 10.1 any vegetation planted or growing in the Front Yard shall not exceed a maximum height of 1.2 metres except where such vegetation is a tree. For the avoidance of

doubt, a tree is characterised by a single trunk (*Tree*);

- 10.2 any hedge existing on any Lot, at the time that the initial code compliance certificate for the construction of the dwelling is issued, is not removed;
- 10.3 any hedges as shown on the Design Plans is to be pruned and maintained at the height of 1.2 metres;
- 10.4 if a hedge as shown on the Design Plans is damaged, destroyed or removed by any means whatsoever, including through no fault of the Grantor, the hedge is replaced with a hedge which does not materially differ, in species or size, to the damaged, destroyed or removed hedge;
- 10.5 any Tree existing on any Lot, at the time that the initial code compliance certificate for the construction of the dwelling is issued, is not removed;
- 10.6 if a Tree on any Lot is damaged, destroyed or removed by any means whatsoever, including through no fault of the Grantor, the Tree is replaced with a Tree which does not materially differ, in species or size, to the damaged, destroyed or removed Tree;
- 10.7 any Tree less than four metres in height on any Lot is not trimmed; and
- 10.8 any Tree four metres or greater in height on any Lot is not trimmed to a height below four metres.

Signage

11 The Grantor will not:

- (a) permit any sign or hoarding (for advertising, political purposes or otherwise) to be erected on any Lot except temporary signage related to the marketing of the Lot at the time of sale of it; nor
- (b) display any "*For Rent*" sign; nor
- (c) display more than one "*For Sale*" sign, which sign shall not exceed 1200 mm x 800mm,

Immobile vehicles

12 The Grantor will not:

- 12.1 bring on or allow to remain on the Front Yard or Rear Yard any vehicle, equipment, machinery or rubbish (inorganic or organic) which is unsightly; nor
- 12.2 place or leave any immobile or broken down vehicles on any Road Reserve, Front Yard or Rear Yard.

Carparking

13 The Grantor shall not park or permit guests, residents, invitees or contractors to park any vehicle on the Road Reserve or on the Front Yard or Rear Yard apart from on a properly constructed driveway or parking bay.

Additional buildings and extensions

14 The Grantor shall not erect, install, construct or place or permit to be erected, installed, constructed or placed on the Front and Rear Yard any building, garage, carport, caravan, hut, shed, tent or other structure or appliance of any kind including any air-conditioning unit or similar climate control appliance, house extension, sunroom or conservatory.

- External alarm systems**
- 15 The Grantor may install an internal alarm system or device which may be monitored by an independent company or organisation provided that the internal alarm system or device has no speakers, noise or nuisance creating devices attached to the exterior of the dwelling erected on the Covenanting Lot.
- Appurtenant external appliances**
- 16 The Grantor will not install, erect or attach, or permit to be installed, erected or attached, on any of the Covenanting Lots or any dwelling erected thereon, any air-conditioning unit or other similar appliance used to monitor or control the temperature, humidity or climate within a dwelling, that would be visible from any Lot, road or pathway.
- Access to dwellings**
- 17 Where a dwelling is constructed so that it abuts the boundary of any Covenanting Lot, the Grantor must, on reasonable notice being given, allow the registered proprietor of the neighbouring lot on which the dwelling is erected, and their workers and consultants reasonable access to the Covenanting Lot for the purpose of maintaining or repairing the exterior wall of the dwelling, and other parts of the dwelling, if access from the Covenanting Lot is reasonably required to perform those works.
- 18 The Grantor acknowledges that, where a dwelling is constructed so that it abuts the boundary of any Covenanting Lot the eaves or spouting of that dwelling may overhang the boundary of the Grantor's Lot. The Grantor shall not bring any proceeding, action or claim against the registered proprietor or occupier of the neighbouring dwelling for removal of, or compensation for, such overhanging eaves or spouting.
- Access for construction**
- 19 Where a dwelling is to be constructed so that it abuts the boundary of any other Lot, the Grantor must, on reasonable notice being given, allow the registered proprietor or occupier of that neighbouring Lot on which the dwelling is to be erected, together with their workmen and consultants, reasonable access to the Lot for the purpose of constructing the dwelling PROVIDED THAT this right of access shall only exist for the first residential dwelling to be constructed on each Lot. The Grantor shall take all reasonable steps to ensure that any person authorised to access the Lot pursuant to this clause complies with the Covenants and that any damage to the Grantor's Lot is remedied within a reasonable time.
- Attachments to exterior wall**
- 20 Where a dwelling is constructed on the boundary of any Covenanting Lot so that the dwelling abuts a neighbouring Lot, the registered proprietor or occupier of the neighbouring Lot must not attach or erect or permit the attachment or erection of anything to the exterior wall of that dwelling constructed on the boundary.
- Sensor lights**
- 21 The Grantor shall ensure that any exterior bulk head sensor light remains operable at all times.
- Television aerials**
- 22 The Grantor shall ensure that any television aerials, antenna and/or satellite dishes (of any type, including those for Sky TV or pay television) are installed at the rear of the dwelling constructed on the Lot, below the apex of the roof, so that no part of the aerial, antenna or satellite is visible from any road.
- Window treatments**
- 23 The Grantor shall, within one calendar month of being the registered proprietor of any Lot, ensure that either blinds or curtains (of a reasonable standard and quality) are installed on all windows of the dwelling.

Washing lines

- 24 Where no washing line has been erected, installed, attached or placed on a Covenanting Lot as at the date of Code Compliance for the dwelling, the Grantor will not erect, install, attach, place or permit to be erected, installed, attached or placed any permanent clothes or washing line or lines that would be visible from any road or pathway.
- 25 Where a washing line has been erected, installed, attached or placed on a Covenanting Lot as at the date of Code Compliance for the dwelling (*Original Washing Line*) and that washing line was visible from any road or pathway as at the date of Code Compliance, then the Grantor may erect, install, attach or place a replacement washing line provided that any replacement washing line shall be no more visible than the Original Washing Line from any road or pathway.
- 26 The Grantor shall not place in the Front Yard, driveway or pathway any temporary clothes dryer, clothes airer or clothes horse of any type.

Outdoor furniture

- 27 The Grantor shall only place outdoor furniture (which includes, but is not limited to, tables, chairs, umbrellas, benches, hammocks, sun-lounges and BBQs) of a reasonable standard in the Front Yard.

Mailboxes

- 28 Where any mailbox constructed on a Covenanting Lot as at the date of the Code Compliance for the dwelling (*Original Mailbox*), has been defaced, damaged, destroyed or removed, the Grantor shall, within 15 working days, arrange for the Original Mailbox to be repaired, restored or replaced, as the case may be, using the same or equivalent materials so that the repaired, restored or replaced mailbox is substantially the same in appearance as the Original Mailbox.

Graffiti

- 29 If any graffiti is carried out on any dwelling or other building or structure on any of the Covenanting Lots, the Grantor shall remove the graffiti, and rectify any damage caused by the graffiti, within 48 hours of the graffiti being carried out.

House maintenance

- 30 The Grantor shall ensure that at all times the roof and exterior (including any cladding) of any dwelling constructed on a Covenanting Lot together with any paved or sealed areas are kept in a clean and tidy condition, which may include (without limitation) chemical treatment, waterblasting, repainting, staining or otherwise re-treating all surfaces as previously treated, as and when required to maintain the high standard of the appearance of the Development.

Obligation to Rebuild

- 31 If any dwelling or other building or structure on any of the Covenanting Lots or any part thereof is destroyed or damaged by any cause whatsoever, the registered proprietor of that Covenanting Lot shall rebuild the dwelling or other building or structure:
- 31.1 to substantially the same specifications; and
 - 31.2 using materials which do not materially differ from the original materials used; and
 - 31.3 so that the dwelling or other building or structure has an appearance which does not materially differ from the initial appearance of the relevant dwelling or other building or structure.
 - 31.4 The Grantor shall obtain all necessary consents and carry out such building work in a good and workmanlike manner and in accordance with all territorial authority

requirements and consents.

BREACH OF COVENANTS

- 32 If there should be any breach or non-observance on the Grantor's part of any of the Covenants and without prejudice to any other liability which the Grantor may have to the Grantee and any person or persons having the benefit of the Covenants the Grantor will upon written demand being made by the Grantee:
- 32.1 pay to the Grantee as liquidated damages the sum of \$100 for each day that the breach continues as the Grantor's and Grantee's estimate of actual damages suffered as a consequence of such breach with the actual damages to be resolved by agreement, arbitration or litigation and appropriate adjustments paid; and/or
- 32.2 upon receiving reasonable notice from the Grantee remedy any breach if capable of remedy on terms and conditions imposed by the Grantee which may involve being required to remove any structure or building material which breaches the terms of the Covenants; and/or
- 32.3 allow the Grantee the right to lodge a caveat against the Covenanting Lot in breach to protect the sum of any unpaid debt owing to the Grantee on the basis that any unpaid debt shall be deemed to constitute a contractual charge over the Covenanting Lots owing to the Grantee until such time that any debt is fully discharged or otherwise satisfied. The Grantor shall if called upon by the Grantee give the Grantee a registrable mortgage in the standard Auckland District Law Society 'All Obligations' mortgage form over the Covenanting Lot to secure those moneys.
- 33 All expenses and costs incurred in enforcing the Covenants, shall constitute a debt due that shall be a charge against the Covenanting Lot and shall be recoverable as liquidated damages.

INDEMNITY

- 34 The Grantor will at all times indemnify and keep the Grantee and the registered proprietors of the Benefiting Lots indemnified from all losses, costs, claims and demands including from any fines or penalties involved as a result of any statutory breach by the Grantor in respect of any breach or non-observance by the Grantor of the Covenants.

NO CONTRIBUTION TO FENCING

- 35 So long as Addison Developments Limited (*Addison*) or an associated entity of Addison is the registered proprietor of the Land, the Grantor will not call upon Addison to pay for or contribute towards the cost of erection or maintenance of any boundary fence between the Land and any Covenanting Lot provided that this covenant will not enure for the benefit of any subsequent registered proprietor of the Land.