Amended by 12A000087.2 11/3/22

Approved by Registrar-General of Land under No. 2002/6055

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

Sections 90A and 90F, Land Transfer Act

EI 7722722.8 Easement

Cpy - 01/01, Pgs - 008, 27/02/08, 15:51

DocID 511822714

Land registration district

SOUTH AUCKLAND

Grantor *Surname(s) must be underlined or in CAPITALS.*

Brian Edward DAVIES and Carole Grace DAVIES

Grantee

Brian Edward DAVIES and Carole Grace DAVIES

Grant* of easement or *profit à prendre* or creation or 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).

Dated this 5th day of February 2008

Attestation

B E DAVIES C G DAVIES **Signature [common seal] of Grantor**	**Signed in my presence by the Grantor** *Signature of witness* *Witness to complete in BLOCK letters (unless legibly printed)* **Witness name** Debra Dorrington **Occupation** Solicitor **Address** Auckland
B E DAVIES C G DAVIES **Signature [common seal] of Grantee**	**Signed in my presence by the Grantee** *Signature of witness* *Witness to complete in BLOCK letters (unless legibly printed)* **Witness name** Debra Dorrington **Occupation** Solicitor **Address** Auckland

Certified correct for the purposes of the Land Transfer Act 1952.

[Solicitor for] the Grantee

*If the consent of any person is required for the grant, the specified consent form must be used.

REF: 7003 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/6055

Annexure Schedule 1

Registrar-General of Land Approval 02/6055EF A.D.L.S.

Easement instrument Dated 5th February 2008 Page 1 of 7 pages

Schedule A *(Continue in additional Annexure Schedule if required.)*

Purpose (nature and extent) of easement, *profit*, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT *or* in gross)
Land Covenant	DP380141	Lots ~~4-18~~ 4 to 8, 15, 17-18 DP380141 CT321300-321307 (inclusive) Lot 100 DP380141 CT	Lots ~~4-18~~ 4 to 8, 15, 17-18 DP380141 CT321300-321307 (inclusive) Lot 100 DP380141 CT

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

Delete phrases in [ ] and insert memorandum number as required.
Continue in additional Annexure Schedule if required.

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Ninth Schedule of the Property Law Act 1952.

The implied rights and powers are ~~[varied]~~ ~~[negatived]~~ ~~[added to]~~ or ~~[substituted]~~ Substituted by:

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

~~[the provisions set out in Annexure Schedule 2]~~.

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 2].

All signing parties and either their witnesses or solicitors must sign or initial in this box

Approved by Registrar-General of Land under No. 2002/5032

Annexure Schedule

Registrar-General of Land Approval 02/5032EF A.D.L.S.

Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

Easement	Dated	5th February 2008	Page	2	of	7	Pages

(Continue in additional Annexure Schedule, if required.)

Continuation of estate or interest or easement to be created

BACKGROUND

A. **THE** Grantor, when registered as proprietor of the land formerly contained in Certificate of Title SA8C/1117 ("the Land"), subdivided the Land in the manner shown and defined on Deposited Plan 380141 to create the lots more particularly described as the Lots to Benefit and the Servient Lots.

B. **IT** is the Grantor's intention in creating a scheme of an integrated subdivision with common amenities available for the use of owners or occupiers in the subdivision that the owners or occupiers for the time being of each of the Lots to Benefit shall be bound by and have the benefit of the land covenants set out in the Second Schedule in perpetuity to the intent that such land covenants shall be observed by the owners and occupiers for the time being of each of the Servient Lots and shall be enforceable against such owners and occupiers by the owners and occupiers of each of the Lots to Benefit.

COVENANTS

PURSUANT to the intentions expressed in this instrument, the Grantor for itself and its successors-in-title **HEREBY COVENANTS AND AGREES** in respect of the Servient Lots with the Grantee and also separately with each and every registered proprietor of the other Lots to Benefit that the Grantor will observe and perform in perpetuity the land covenants set out in the Second Schedule **TO THE INTENT** that each of the land covenants set out in the Second Schedule shall be for the benefit of all the other Lots to Benefit in perpetuity **BUT SO** that the Grantor shall be liable only in respect of breaches of all such covenants which occur while the Grantor is a registered proprietor or occupier of the Servient Lot to which the breach relates.

THE Grantor **FURTHER COVENANTS** with the Grantee that the Grantor will at all times save harmless and keep indemnified the Grantee from all proceedings, costs, claims and demands in respect of breaches by the Grantor of the covenants on the Grantor's part contained and implied in this transfer.

Breaches of the Covenant

IF there should be any breach or non-observance of any of the covenants on the Grantor's part contained and implied in this instrument, the Grantor will upon demand being made by the Grantee while they remain proprietor of any of the Land and thereafter by the Company and without prejudice to any other liability which the Grantor may have to any of the owners or occupiers of the Lots to Benefit:

a) pay to the Grantee or the Company (as the case may be) as liquidated damages the sum of $250.00 (two hundred and fifty dollars) per day for every day that such breach or non-observance continues after the date upon which written demand has been made which sum shall be adjusted by reference to the CPI Index (All Groups) or any replacement index;

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

b) do such things as reasonably necessary to remedy any breach or non-observance of the covenants set out in the Second Schedule;

EACH Owner shall keep the Grantee indemnified from all proceedings, costs, claims and demands in respect of breaches by that Owner of the stipulations, restrictions and covenants in the Grantors part contained in this instrument.

THE Grantor shall not be required nor liable to enforce nor answerable to the Grantee for any breach of any land covenants registered against each of the Servient Lots.

SECOND SCHEDULE

1 **DEFINITIONS**

1.1 Unless the context otherwise requires:

"Common Amenities" means

(a) the whole of Lot 19 Deposited Plan 380141 including any facilities, buildings, roads, tracks, fencing, fixtures and fittings, chattels, loading points or other assets located on Lot 19 and available for the communal benefit of the Owners;

(b) the Water Supply System;

(c) the Road;

(d) the Exercise Track;

(e) landscaping on the Land and determined either by the Management Plan or by the Company to be for communal benefit;

(f) any other amenity established for the benefit of Shareholders and determined either by the Management Plan or the Company to be for communal benefit.

and such other amenities which are intended for the use of the occupants of Lots on the Timber Tops Estate and which are maintained and controlled by the Company.

"Company" means the Timber Tops Estate Limited the shareholders of which are the Owners and which company has been incorporated for the purpose of managing the Common Amenities in accordance with these Covenants.

"Covenants" means the rights and duties of the Owners pursuant to this instrument.

"Exercise Track" shall mean the track that circumnavigates the Timber Tops Estate and provides an alternate fire egress route as well as a recreational amenity for the occupants of the Lots the initial location of which is shown in an Appendix to the Management Plan.

"Lots to Benefit" means those lots described in Schedule A as dominant tenements.

"Management Plan" means the management plan adopted by the Company for the management of the Estate pursuant to the constitution of the Company.

"Owners" means the registered proprietors for the time being of the Lots to Benefit and where the context requires means the registered proprietor of the Servient Lots.

"Roads" means any road or track located within Timber Tops Estate and intended for the use of the Owners of two or more Lots but does not include the Exercise Track.

"Water Supply System" means all facilities, (including the bore and pump, electrical supply, water meters, fire hydrants, fixtures and fittings, chattels, back flow preventers, system controls, fencing, reservoirs, and pipelines), systems, buildings, consents, licences and intellectual property required for the purpose of supplying water from the bore located on Lot 19 Deposited Plan 380141 to the Estate for the purpose of providing a Domestic Water Supply and for fire fighting purposes and to others for the purpose of Domestic Water Supply.

2 **INTERPRETATION**

2.1 In this instrument easement:

(a) where the context permits the singular includes the plural and vice versa;

(b) referenced clauses in the schedule are to clauses and schedules in this easement; and

(c) obligations and covenants to be complied with by one than more person should bind those persons jointly and severally.

3. **COVENANTED AREAS**

3.1 The Owners shall ensure the Common Amenities are available for the use in common with all Owners, in accordance with the Management Plan and in accordance with all regulatory requirements in accordance also with the constitution of the Company

3.2 The Owners shall enjoy the Common Amenities Lot at their own risk. Neither the Company, its officers, servants or agents nor any other of the Owners will be liable for any accidental injury to or damage to the property of the Owners whether caused by negligence or otherwise howsoever (excluding gross negligence or wilful misconduct) and the Owners shall each keep the Company, its officers, servants or agents and other Owners indemnified against all claims, actions, losses and expenses of any nature which the Company, its officers, servants or agents may suffer or incur or become liable for in respect of any such claims, actions, losses and expenses.

4. **LIABILITY**

4.1 Each Owner is responsible for and indemnifies all other Owners in respect of;

(a) the Owner's acts or omissions relating to the Common Amenities (including the payment of any sum due pursuant to these Covenants or the rules of the Company); and

(b) any works undertaken by or on behalf of such Owner on or in respect of the Common Amenities.

4.2 Each Owner shall be responsible for duly and punctually complying with:

(a) these Covenants; and

(b) any rules implemented by the Company or decisions made for the effective management of the Common Amenities;

(c) its obligations in respect of the Company;

(d) all relevant and primary and delegated legislation including but not limited to laws as to health and safety and employment as they apply to the Common Amenities;

(e) the constitution of the Company and

(f) the Resource Consent issued by Whakatane District Council on 17 March 2006 pursuant to application 24.3.04.97 and any changes thereto which Resource Consent relates to the development of the Land.

4.3 No Owners shall take any action that directly or indirectly results in the objects of the Covenants or the decision making process, decisions or rules of the Company or the Management Plan being frustrated.

4.4 In the event that the Company is wound up or liquidated, or in the event of any default by the Company or the Owners in complying with the obligations set out in clause 4.2 then each Owner shall be jointly and severally liable for complying with the obligations set out in clause 4.2 and the Owners shall be deemed to be an unincorporated society with no limitation as to their joint and several liability

5. **ENFORCEMENT**

5.1 The Owners may by majority decision (or by a decision of the Company made in accordance with the rules of the Company), take such action as is necessary (including requiring the Company to take such enforcement action) to enforce any covenants contained in this instrument.

6. **MANAGEMENT PLAN**

6.1 Each of the Owners is bound by the Management Plan and any such rules and decisions as the Company may properly make in accordance with its constitution.

6.2 The Company has been incorporated for the purpose of managing the Common Amenities, enforcing these covenants and complying with the requirements of the relevant council in respect of the Common Amenities for the benefit of the Owners. Each Owner is deemed to have full knowledge of the rules of the Company as if they had been fully set out in this instrument and agrees to be bound by them. Any breach of the rules of the Company or of the terms of the Management Plan is deemed a breach of this covenant and is subject to the enforcement provisions set out in this covenant.

6.3 No Owner may take any action or any inaction that might directly or indirectly result in the winding-up, liquidation or striking off of the Company.

7 **DISPUTE RESOLUTION**

7.1 In the event of any dispute arising from this easement instrument shall be referred to the Company for resolution in accordance with the terms of the Company's constitution.

7.2 IF the Company has ceased to exist or its constitution does not provide for the resolution of disputes, the remainder of this disputes resolution clause shall apply. The Owner (referred to in this clause as "the first party") claiming that a dispute has arisen between the parties, shall give written notice to the other Owner (referred to in this clause as "the second party") specifying the matter in dispute and designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute. The second party shall, within 10 days after receiving the first party's notice, give written notice to the first party designating as its representative in negotiations relating to the dispute a person with similar authority.

7.3 Each party shall use their reasonable endeavours to procure the designated persons resolve the dispute within 10 days of the last designation and following whatever investigation each such person deems appropriate. If the dispute is not resolved within that time frame (or within such longer period as their respective representatives agrees appropriate) the parties shall, within a further period of 10 days, submit the matter for arbitration.