

SCHEDULE B

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

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

Grantor

EXCITING HABITATS LIMITED

Grantee

EXCITING HABITATS 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 Covenant	See Annexure Schedule A First Schedule	See Annexure Schedule A First Schedule	See Annexure Schedule A First Schedule

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 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 155A of the Land Transfer Act 1952]~~

~~[Annexure Schedule A]~~

Insert instrument type

Land Covenant

Continue in additional Annexure Schedule, if required

BACKGROUND

- A. The Grantor is the registered proprietor of the Covenanting Lots and the Benefiting Lots.
- B. The Covenanting Lots and the Benefiting Lots are part of a high quality residential development ("Development"). The Development consists of a number of lots to be held in separate titles.
- C. The Grantor has agreed to create the covenants as set out herein in favour of the Grantee in order to ensure that the character of the Development as a high quality residential development is maintained, preserved and enhanced.

COVENANTS

1.0 Definitions

In this instrument, the following definitions shall apply, unless the context otherwise requires:

Access Way means any land in the Development which is currently or subsequently defined as a legal access way on any registered instrument

Benefitting Lots means any one of the lots (inclusive) on Deposited Plan or any of them, and any lots into which those lots are further subdivided;

Boarding house means a dwelling in which board or lodging is provided for reward or payment for three or more boarders or lodgers;

Covenanting Lots means any one of lots (inclusive) on Deposited Plan or any of them, and any lots into which those lots are further subdivided;

Developer means Exciting Habitats Limited (8224852) but where Exciting Habitats Limited has been dissolved, wound up, deregistered or otherwise passed out of existence any approval or consent required from Exciting Habitats Limited shall mean approval or consent by any party previously appointed and/or nominated in writing by Exciting Habitats Limited for this purpose.

Development means the development on the land formerly comprised in RT NA 46D/810 and includes the Land

Erect means place, build, erect, install, attach, situate or construct or permit to be placed, built, erected, installed, attached, situated or constructed

Grantee means the registered proprietor from time to time of the Benefiting Lots

Grantor means the registered proprietor of the Covenanting Lots and includes the agents, employees, contractors, tenants, licensees and other invitees of the grantor.

Lots means lots on Deposited Plan

Practical Completion means that a dwelling house is substantially complete so that it is capable of being occupied.

Relevant Authority means the local or regional authorities with jurisdiction over the Development

Satellite dishes means any satellite dish or other communication dish, device, antenna or aerial

2. Agreement

- 2.1 The Grantor, for itself so as to bind the Covenantee Lots in the First Schedule ("Covenantee Lots" and each one of them a "Covenantee Lot"), covenants and agrees with the Grantee (for the benefit of the Grantee and the registered proprietor from time to time of the Benefiting Lots) that the Grantor shall always observe and perform all of the covenants set out in Clause 3.0 of this instrument until the 31 March 2050 at which time the covenants shall cease to apply to the end and intent that each of the covenants shall enure for the benefit of the registered proprietor from time to time of the Benefiting Lots until the 31 March 2050.
- 2.2 The covenants in this instrument shall be enforceable by the Grantee (and the Grantee's assigns, transferees or successors) against the Grantor as owner of the Covenantee Lots and his, her or its successors in title, transferees, assigns and occupiers for the time being of the Covenantee Lots.
- 2.3 No delay or failure by the Grantee to enforce performance of any covenants set out in this instrument and no indulgence granted to the Grantor by the Grantee shall prejudice the right of the Grantee to enforce any of the covenants or provisions of this instrument.
- 2.4 The Grantor shall bear any costs (including solicitor client costs) which may be incurred by the Grantee as a result of any default by the Grantor under this instrument.
- 2.5 The Grantee shall not be required to nor obliged to enforce all or any of the covenants and the Grantor shall be liable only in respect of breaches of the covenants which occur while the Grantor is registered as proprietor of the Covenantee Lot.
- 2.6 If there is any breach or non-observance of the covenants set out in this Instrument then the Grantor must (without prejudice to any other liability the Grantor may have to any person having the benefit of the covenants immediately upon receipt of written notice by the Grantee):
- (a) remove or cause to be removed from the Covenantee Lot any dwelling house, garage, carport, building or other structure (or any part of it) erected or placed on the Covenantee Lot in breach or non-observance of the covenants;
 - (b) replace any building materials used in breach or non-observance of the covenants;
 - (c) cease any activity in breach or non-observance of the covenants;
 - (d) otherwise remedy any breach or non-observance of the covenants.

3.0 The Grantor shall:

- 3.1 Not commence any construction, development, earthworks or fill on any Covenantee Lot without having first obtained the written approval of the Developer to the plans and specifications and the exterior design and appearance of the proposed building and any proposed earthworks or fill and once approval is obtained, not make any change to the plans and specifications or the exterior design and appearance of the proposed building or proposed earthworks or fill. *Note that this clause shall only apply to Lots 25 to 33 and 39 of the Development.*

- 3.2 Not use or permit any Covenanting Lot to be used for any trading or commercial purposes except for the display of the land and buildings for resale purposes or show home display.
- 3.3 The Grantor must not use any part of the Covenanting Lots or permit the same to be used as a Boarding house.
- 3.4 Not Erect or place or permit to be Erected or placed on any Covenanting Lot anything other than one dwelling house having closed in habitable living space (exclusive of carport or garage) with a floor area of at least 150m² and in all cases which must also have attached, closed in double car garaging or such other garaging or ancillary building that is approved in writing by the Developer at its discretion provided that The Developer, in its absolute discretion, may waive the minimum floor area requirement for a dwelling house as it deems necessary or desirable provided that the dwelling house will not detract from the overall nature of the Development and that the dwelling house is otherwise in accordance with the other land covenants. *Note that this clause shall only apply to Lots 25 to 33 and 39 of the Development.*
- 3.5 Not allow the duration of any building construction works on any Covenanting Lot to extend beyond the period of 18 months from the date of commencement of such works.
- 3.6 Be entirely responsible to obtain their own resource and building consents in respect of the dwelling house to comply with any such consents in all respects as required.
- 3.7 A Grantor must not allow to be kept on the Covenanting Lot:
- (a) Any animals likely to cause a nuisance or disturbance to the Grantees including but not limited to beehives and poultry;
 - (b) More than two dogs and two cats of a greater age than three months; and
 - (c) Will adequately fence the Covenanting Lot so as to not allow any animals to wander outside of the Covenanting Lot onto any Benefitting Lot.
- 3.8 Not use or permit or suffer to be used on any building on any Covenanting Lot any building material other than brick, stone, concrete block, insulclad, masonry, stucco, solid plaster, linea weatherboard or approved timber weatherboard for any outer wall facing except with the written consent of the Developer which may be withheld at its discretion. *Note that this clause shall only apply to Lots 25 to 33 and 39 of the Development.*
- 3.9 Not to use or permit or suffer to be used on any building on any Covenanting Lot with an external wall any cladding (except for soffits and/or in association with Textured finishes) of unrelieved flat sheet fibrolite, Hardiflex, galvanised steel, plywood sheeting, Hardiplank or similar materials. *Note that this clause shall only apply to Lots 25 to 33 and 39 of the Development.*
- 3.10 Not use or permit or suffer to be used any second-hand materials on any building on any Covenanting Lot nor use any corrugated iron roofing or corrugated iron or zincalume of any description on the exterior of the building except with the written consent of the Developer which may be withheld at its discretion.
- 3.11 Not use or place or permit to be erected, transported or placed on any Covenanting Lot any second-hand home of any type or description.
- 3.12 Not erect or bring on to or allow to remain on any Covenanting Lot (except during the time of construction of the dwelling house) or on any road of the Development any temporary building, container, garden shed, caravan, trade vehicle or other equipment or materials or machinery unless garaged or adequately screened so as not to be highly visible from the road and neighbouring properties so as to preserve the amenities of the development and also to prevent noise likely to cause offence to residents in the subdivision provided however that the Grantor may erect one garden shed having a maximum floor area of 10m² which is clad in materials approved by the Developer and erected in a location approved by the Developer which approvals may be withheld at the Developer's absolute discretion.

- 3.13 Not cause or allow any recreational or commercial vehicles with a gross vehicle mass of more than 3,500 kilogrammes to be regularly located either on the street or footpath nor on that area between the front boundary of any Covenanting Lot and the dwelling unless screened so as not to be highly visible from the road or any access lot. No caravan or motorhome shall be placed on any Covenanting Lot to be used for residential use other than for short term occupation of visitors.
- 3.14 Not allow any grass or weeds on any Covenanting Lot to grow to a height greater than 150mm and if the Grantor defaults in so doing, The Developer may take whatever action it considers necessary to remedy the default at the expense of the Grantor and if the Grantor fails to pay The Developer upon demand for all costs (including solicitor client costs) so incurred the Developer may recover the cost thereof from the Grantor as liquidated damages in any Court of competent jurisdiction.
- 3.15 Ensure that all driveways, paths and fences on a Covenanting Lot are completed in permanent materials and all unpaved areas are properly grassed or landscaped within three calendar months following practical completion of a dwelling house on such Covenanting Lot.
- 3.16 Not to construct a vehicle crossing and driveway unless they are completed to the Territorial Authority's Standard and specifications prior to occupation of the residence and unless they are in sympathy with the Development. *Note that this clause shall only apply to Lots 25 to 33 and 39 of the Development.*
- 3.17 Not allow any Covenanting Lot to remain unlandscaped without lawns and shrubs for a period greater than three calendar months following practical completion of a dwelling house on such Covenanting Lot.
- 3.18 Not undertake any construction works on the Covenanting Lot without at all times complying with the following conditions and restrictions:
- (a) To keep the Covenanting Lot in a tidy orderly and safe condition throughout the construction period.
 - (b) Maintain the Covenanting Lot at all times during the course of construction free from rubbish and excessive vegetation.
 - (c) Not store or dump any construction materials or debris on any adjoining lot or cross any adjoining lot for goods or vehicle access unless consent has been granted by the Developer in writing and by the adjoining lot owner in writing.
 - (d) Not allow major site works to commence unless a vehicle crossing and access drive for construction vehicles has been formed in metal aggregate or an alternative material as the Developer may approve at its discretion.
 - (e) Not allow rubbish to be placed or escape onto adjoining or nearby lots or roads.
 - (f) Not deposit or allow any dirt, gravel, clay, silt or other substance to be left on any road in the vicinity of the Covenanting Lot or to enter the rain gardens.
 - (g) To contain on the lot any silt generated during the construction of the dwelling house.
 - (h) Not to damage or remove any street trees planted by the Developer on or adjacent to the Covenanting Lot. The Grantor will be responsible for any damage caused to the trees by themselves or their contractors, employees or any other invitee.
- 3.19 Not cause by itself or by its guests, residents, invitees or contractors any damage to improvements within the Development outside of the Covenanting Lot including but not limited to footpaths, roads, streetlamps or the rain gardens and any such damage must be rectified immediately by the Grantor at its expense in all things.

- 3.20 Not construct erect or place or permit to be constructed, erected or placed any water storage tank on the Covenanting Lot unless it is either:
- (a) buried; or
 - (b) screened by fencing and/or planting to the satisfaction of the Developer in its sole and unfettered discretion.
- 3.21 Not erect or place or permit to be erected or placed on any Covenanting Lot any clothes line in the front yard of that Covenanting Lot that is substantially visible from the road. As a guide clothes lines or service courts should be adequately screened by sufficient planting and/or fencing to ensure they are not entirely visible from other Covenanting Lots, access lots or public areas.
- 3.22 Ensure that the final colours of the exterior cladding and roof of the dwelling house on the Covenanting Lot shall be neutral, earthy or muted tones sympathetic with the surrounding environment. Very vibrant colours including but not limited to yellow, orange or bright blue will not generally be approved. *Note that this clause shall only apply to Lots 25 to 33 and 39 of the Development.*
- 3.23 Not allow to remain on any walls, fence, structure or building on the Covenanting Lot any graffiti or similar disfiguring for more than five working days from the date that such graffiti or disfiguring occurred.
- 3.24 Locate any attachments to the dwelling house and buildings on the Covenanting Lot (including but not necessarily limited to television antenna and satellite dishes) so they are not highly visible from the road or any common access lot.
- 3.25 Not to use or occupy any building as a residence until such time as construction has been completed and all the exterior sheeting and finishing including exterior painting has been completed.
- 3.26 Not to allow rubbish, junk, car bodies, litter or other similar unsightly items to accumulate or be placed upon the Covenanting Lot or otherwise allow the Covenanting Lot to become unsightly.
- 3.27 The Grantor may not subdivide the Covenanting Lot without the prior written consent of the Developer which will be granted entirely at the sole discretion of the Developer who shall not be obliged to give any reasons for refusing to grant consent. Further the Purchaser will require a resource consent to be granted by the Auckland Council at the cost of the Purchaser; and the development must comply in all respects with the general terms of the building enhancement covenant but entirely at the sole discretion of the Developer.
- 3.28 The Grantor must not park or permit guests, residents, invitees or contractors to park any vehicle on any road reserve, access way or front courtyard within the Development apart from on a properly constructed driveway or parking bay.
- 30.29. In the development of any Covenanting Lot and in the construction of any dwelling house or building thereon, undertake such development and construction in accordance with the architectural plans by Walker Residential Architects Limited and with the landscaping plans by Landscape Architects Simon Ferrick Limited, subject to clause 30.30 below (note that this clause shall not apply to Lots 25 to 33 and 39 of the Development).
- 30.30 In the event of the Grantor seeking to apply for a variation to the Developer's resource consent or for a new resource consent for the development of a Covenanting Lot, apply for any such variation or new resource consent:
- (a) in accordance with the architectural plans by Walker Residential Architects Limited and with the landscaping plans by Landscape Architects Simon Ferrick Limited (note that this sub clause 30.30(a) shall not apply to Lots 25 to 33 and 39 of the Development); and

- (b) in any case, always subject to the written approval of the Developer in all things and at the Developer's sole discretion such written approval to be obtained prior to the Grantor applying for the variation to, or the new, resource consent.

4.0 Fencing

- 4.1 The Developer shall not be required nor shall it be called upon to repair or contribute towards the cost of erection or repair of any dividing or boundary fence between any of the Lots and any contiguous land owned by the Developer, but this proviso shall not enure for the benefit of any subsequent registered proprietor of such contiguous land.

5.0 Developer's Rights

- 5.1 The Developer may in its absolute discretion grant to any person a dispensation in respect of any of these covenants. For clarity, a Grantor will not be liable for any breach of these covenants where the Grantor has obtained written dispensation from the Developer pursuant to this clause. For the avoidance of doubt, dispensation granted by the Developer for a particular act relates solely to that act at the time and not to any future acts where the Developer's approval is required.
- 5.2 The Developer may assign or delegate its rights, powers and discretions set out in these covenants.
- 5.3 The Developer's right to grant or decline any request for approval under these covenants is an unfettered right and does not allow any person to challenge for any reason the giving or the declining of any such approval. For the avoidance of doubt, no person will have any claim against the Developer in respect of any decision that the Developer makes in respect of any approval sought.
- 5.4 The Developer is under no obligation or liability to enforce these covenants.

6. Indemnity and Consequences of Breach

- 6.1 The Grantor covenants with the Grantee that it will at all times save harmless and keep indemnified the Grantee from all proceedings, costs (including solicitor client costs), claims and demands in respect of breaches by the Grantor of the covenants on its part contained or implied herein, and also the enforcement of such covenants by the Grantee.
- 6.2 The Grantor acknowledges that the value of the Benefiting Lot will be affected by any non-compliance with or breach of any of the covenants contained or implied herein and the Grantor covenants for the benefit of the Benefiting Lot and of each registered proprietor of the Benefiting Lot from time to time that should the Grantor fail to comply with, observe, perform or complete any of the covenants contained or implied herein then without prejudice to any other liability the Grantor may have to the Grantee (which includes any other person or body having the benefit of such covenants) the Grantor shall:
 - (a) immediately permanently remove or cause to be permanently removed from the Lot upon which the breach or failure has occurred any offending improvements or structure or other cause of any breach or non-observance of such covenants; and otherwise forthwith remedy the breach or non-observance thereof; and
 - (b) if the breach or failure is not remedied within 60 days of the date of notice of such breach or failure then the Grantee (together with its agents, employees or contractors) shall be entitled to enter onto the Covenanting Lot to arrange for rectification of the Grantor's breach or failure at the cost of the Grantor.
 - (c) If the breach or failure is not remedied within 60 days from the date of notice of such breach or failure then the Grantor shall:

- (i) immediately upon receipt of a written demand for payment from the Grantee or the Grantee's solicitors pay to the Grantee as liquidated damages the sum of one thousand dollars (\$1,000.00) per day for each day the default continues unremedied, such liquidated damages to be limited to a maximum value of \$250,000.00;
- (ii) pay on demand the Grantee's costs incurred in respect of the default and any enforcement or attempted enforcement of the Grantee's rights such costs to include but not be limited to legal costs on a solicitor client basis; and
- (iii) pay interest at the rate of 15% on any money which may be demanded and not paid, such interest to accrue from the date of the demand until the date it is finally received by the Grantee; provided that
 - (a) except for those defaults notified to the Owner when it is a registered proprietor, the Owner shall only be liable while the Owner is a registered proprietor of the Property;
 - (b) if a default is completely and finally remedied within 60 days' notice in writing requiring the removal or remedy of such cause of default and the payment by the defaulting party of all reasonable legal costs and other expenses incurred by the party enforcing the said covenants (time being of the essence) the sum payable under clause 6.2(c)(i) shall abate to \$1.00 per day provided that this abatement shall not apply in respect of any subsequent default of a similar nature.

7.0 Disputes

In the event of a dispute arising between the Covenanting Lot and the Benefitting Lot in relation to the operation of this covenant:

- (a)
 - (i) Any owner of a Covenanting Lot or Benefitting Lot may give written notice to the other parties to the dispute of its intention to refer the dispute to mediation.
 - (ii) Upon receipt of notice in accordance with clause (i) above the parties shall endeavour to agree on a mediator and will submit the matter in dispute to the mediator who shall be responsible for establishing any procedure they see fit to resolve the dispute.
 - (iii) In the absence of an alternative agreement, the parties will bear their own costs in the mediation and shall each pay half the costs of the mediator.
- (b) Where:
 - (i) The parties have been unable to agree upon a mediator within seven (7) days of a referral to mediation; or
 - (ii) No agreement has been reached in mediation within two months of the service of the notice of mediation, or within any further time as the parties may agree,

then the matter in dispute may be referred to arbitration upon the service of a notice of intention to commence arbitration and the arbitration will be governed by the Arbitration Act 1996 except to the extent modified by this Instrument.

The arbitration will be by a single arbitrator. If the parties cannot agree upon an arbitrator within seven days of the notice of intention to commence arbitration, either party may request the President of the Arbitrators' and Mediators' Institute of New Zealand Incorporated to appoint a sole arbitrator.

8.0 General

- 8.1 The covenants set out in clauses 3.1 to 3.30 of this Instrument shall run with each Covenanting Lot set out in the First Schedule for the benefit of all the Benefiting Lots described in the First Schedule TO THE INTENT that the Grantor and Grantee shall continue to be bound until the earlier of the 31 March 2050 or the date upon which they respectively cease to hold a fee simple estate in a Covenanting Lot as the case may be but without prejudice to any liability for any breach of covenant under this Instrument arising before such date.