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View Instrument Details

Instrument No. 10687195.19
Status Registered
Date & Time Lodged 06 Apr 2017 12:12
Lodged By Kemps, Michael Peter
Instrument Type Easement Instrument



Affected Computer Registers	Land District
767733	South Auckland
767734	South Auckland
767735	South Auckland
767736	South Auckland
767737	South Auckland
767738	South Auckland
767739	South Auckland
767740	South Auckland
767741	South Auckland
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767743	South Auckland
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767746	South Auckland
767747	South Auckland
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767750	South Auckland
767751	South Auckland
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767771	South Auckland
767772	South Auckland
767773	South Auckland

Affected Computer Registers Land District

767774	South Auckland
767775	South Auckland
767776	South Auckland
767777	South Auckland
767778	South Auckland
767779	South Auckland
767780	South Auckland
767781	South Auckland
767782	South Auckland
767783	South Auckland
767784	South Auckland

Annexure Schedule: Contains 13 Pages.

Grantor Certifications

I certify that I have the authority to act for the Grantor and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Michael Peter Kemps as Grantor Representative on 06/04/2017 11:22 AM

Grantee Certifications

I certify that I have the authority to act for the Grantee and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Michael Peter Kemps as Grantee Representative on 06/04/2017 11:22 AM

***** End of Report *****

Form B

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

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

Grantor

Armadale Holdings Limited

Grantee

Armadale Holdings 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
required

Continue in additional Annexure Schedule, if

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	DP 500516	Lots 1-52 (both inclusive) DP 500516 (767733-767784 (both inclusive))	Lots 1-52 (both inclusive) DP 500516 (767733-767784 (both inclusive))

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] [negated] [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 _____]~~

Form L

Annexure Schedule

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Easement Instrument

1. Definitions and Interpretation

1.1 **Definitions:** In this instrument, unless the context otherwise requires:

Building means any building or structure on the Lot where the erection or alteration of that building or structure would require a resource management or building consent from the Relevant Authority.

Code Compliance Certificate means a code compliance certificate or consent completion certificate (as the case may be) issued under section 95 of the Building Act 2004.

Developer means Armadale Holdings Limited, or its nominee.

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

Fence means a fence of any type and includes (but is not limited to) any hedge or other live fence, or any raised ground that serves as a dividing fence.

Grantees means the registered proprietors, from time to time, of the Dominant Tenements described in Schedule A; and **Grantee** means one of the Grantees.

Grantors means the registered proprietors, from time to time, of the Servient Tenements described in Schedule A; and **Grantor** means one of the Grantors.

Laws means any Act of Parliament and includes without limitation any regulation, bylaw, or order from any Relevant Authority.

Lots means the Servient Tenements described in Schedule A; and **Lot** means one of the Lots.

Plans means the plans, drawings and specifications for the proposed Building on the Lot including, but not limited to, full details of all exterior colour schemes, finishes, materials, fencing and landscaping.

Relevant Authority means any corporation, government, local, statutory or non-statutory authority or body having jurisdiction over the Lot or any part of the Subdivision.

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Subdivide has the meaning given to the term **Subdivide Land** in section 218 of the Resource Management Act 1991.

Subdivision means the development comprising the Lots.

Working Day has the meaning given to that term in section 4 of the Property Law Act 2007.

1.2 **Interpretation:** In this instrument:

- (a) Where the context permits, the singular includes the plural and vice versa.
- (b) References to any **party** means a party to this instrument and includes their successors, executors, administrators and permitted assignees.
- (c) All references to legislation are (unless stated otherwise) references to New Zealand legislation and include all subordinate legislation, and re-enactment of, or amendment to, that legislation and all substitute legislation.
- (d) Where the context permits, references to a **person** include an individual, firm, company, corporation or unincorporated body of persons, any public, territorial or regional authority, any government, and any agency of any government or of any such authority.
- (e) Any obligation not to do any thing will be deemed to include an obligation not to suffer, permit or cause that thing to be done.

2. **Agreement to Covenant**

To ensure the architectural quality of the Buildings in the Subdivision, and protect the investment of the Grantees, the Grantor (so as to bind itself and all future registered proprietors of the Servient Tenements described in Schedule A) hereby covenants and agrees with the Grantees (for the benefit of the Grantees and all future registered proprietors of the Dominant Tenements described in Schedule A) that it will at all times observe, and comply with, the covenants, terms and conditions contained in this instrument (**Covenants**) to the end and intent that each of the Covenants shall be appurtenant to the Dominant Tenements described in Schedule A until their expiry in accordance with clause 6.

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3. Covenants by Grantor

The Grantor must:

- 3.1 **Compliance:** Comply with, and satisfy, all requirements of the Relevant Authority in relation to the Lot.
- 3.2 **Consents:** Not Erect any Building on the Lot without first obtaining all consents and permits required under any relevant Laws for such Building from the Relevant Authority. The Grantor must comply with, and satisfy, the terms and conditions in any such consents and permits.
- 3.3 **Dwelling:** Not Erect on the Lot any dwelling other than a single new (and not second-hand) dwelling house with a covered floor area (excluding garaging) of not less than 140 square metres.
- 3.4 **Garage:** Ensure that:
- (a) The dwelling includes either an attached or separate fully enclosed garage of not less than 36 square metres; and
 - (b) Such garage is constructed and completed at the same time as the construction and completion of the dwelling and in the same materials and architectural design as the dwelling.
- 3.5 **No Subdivision:** Not Subdivide the Lot without the prior written consent of the Developer.
- 3.6 **Plans / Specifications:** Not commence the construction of any Building on the Lot until the Grantor has:
- (a) First provided to the Developer a full copy of the Plans for the proposed Building; and
 - (b) Obtained from the Developer written approval of those Plans (such approval must be obtained prior to the Grantor submitting those Plans to any Relevant Authority for any resource management, building or other consent). The Developer will not withhold its approval of the Plans if the Grantor has complied with (and the Plans comply with) these Covenants, and the proposed Building (in the Developer's opinion):

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- (i) Is reasonably sited;
- (ii) Meets the Developer's design concepts;
- (iii) Complements the other properties in the Subdivision and is in keeping with the surrounding environment (taking into account the location, elevation, fencing, layout, landscaping, materials, colour and visual impact of the proposed Building); and
- (iv) Does not detract from the standard of the Subdivision.

3.7 **No Deviation:** Not deviate from the Plans approved by the Developer without the prior written approval of the Developer.

3.8 **Materials / Specifications:** Satisfy the following criteria (unless otherwise agreed in writing by the Developer):

- (a) A minimum of 85% of the exterior cladding of the dwelling must consist of any of the following materials:
 - (i) Glazing;
 - (ii) Kiln fired or concrete brick;
 - (iii) Honed concrete block;
 - (iv) Stucco or solid plaster;
 - (v) Textured finish stone;
 - (vi) Timber;
 - (vii) Pre-primed fibre cement weatherboards having a maximum finished width not exceeding 180mm; or
 - (viii) Such other materials approved in writing by the Developer.
- (b) Weatherboard detailing shall include, as the preferred design, traditional box and scribe treatments to corners and windows in conjunction with appropriate use of colour.

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- (c) Any proposed Building with an exterior finish in the form of flat cladding, concrete block, poured concrete or similar shall have the surface of such materials textured in such a manner as to fully cover the base material.
 - (d) Any proposed Building to be constructed with a basement or sub-floor space shall have the basement or sub-floor area sheathed with cladding complying with the requirements for exterior cladding.
 - (e) Any metal roof cladding must have a pre-finished factory colour.
- 3.9 **Completion of Works Before Occupation:** Not occupy, or use the Lot as a residence, unless:
- (a) There is a dwelling on the Lot which is practically complete; and
 - (b) All completion certificates have been issued by the Relevant Authority in respect to that dwelling including, but not limited to, the requisite Code Compliance Certificate.
- 3.10 **Completion of Exterior:** Not leave the exterior of any Building on the Lot incomplete longer than twelve months from the laying of the foundations for the Building.
- 3.11 **Vehicle Access:** Fully construct the vehicle access to any dwelling in a permanent surface of concrete, concrete block or brick paving or tarsealing and such surfacing is to be carried out and completed in a proper and tradesman-like manner within twelve months of laying the foundations of the dwelling.
- 3.12 **Paths:** Fully construct any paths on the Lot in permanent materials with all unpaved areas to be properly grassed and landscaped within twelve months of laying the foundations of the dwelling.
- 3.13 **Clothesline / Letterbox:** Construct any clothesline and letterbox on the Lot within twelve months of laying the foundations of the dwelling, such design, construction and location to be aesthetically sensitive and the clothesline shall not be easily visible from the access lot or road reserve (as the case may be) serving the Lot.
- 3.14 **Fencing:** Notwithstanding the provisions of the Fencing Act 1978, not erect any Fence on the Lot unless such Fence complies with the following criteria:

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- (a) No Fence shall be constructed in unframed corrugated iron, post and wire, second hand or demolition materials;
- (b) No Fence shall exceed a height of 1.83 metres measured vertically from the natural ground level at the relevant point in the Lot where the Fence is situated.
- 3.15 **No Contributions Required:** Not call upon the Developer to pay for, or contribute towards, the expense of erection or maintenance of any Fence between the Lot and any adjoining land owned by the Developer but this covenant shall not enure for the benefit of any subsequent purchaser from the Developer of that adjoining land.
- 3.16 **Reinstatement for Damage:** Reinststate, replace and be responsible for all costs arising from damage to the landscape, roading, footpaths, curbs, concrete or other structures in the Subdivision arising from the use of, or work carried out in relation to, the Lot by the Grantor, its employees, contractors, agents or invitees.
- 3.17 **Construction Buildings / Vehicles:** Once construction of the dwelling on the Lot has been completed, not bring on to or allow to remain on the Lot any temporary Building, caravan, trade vehicle or other equipment or materials unless garaged or screened so as to preserve the amenities of the Subdivision.
- 3.18 **Advertising:** Not permit or suffer any advertisement, sign or hoarding of a commercial nature to be erected on any part of the Lot without prior consent in writing from the Developer.
- 3.19 **Lot To Be Kept Tidy:** Ensure that the Lot (including any road reserve and public road frontage lot vested in any Relevant Authority) is kept free of weeds and noxious plants and debris and is mowed regularly. If the Grantor fails to do so the Developer shall have the right at any time, and from time to time, to arrange for the Lot to be cleared of weeds and noxious plants and debris and mowed in which event the Grantor shall pay the Developer on demand the costs incurred by the Developer together with interest calculated at the rate of 20% per annum on such costs from the date they arise.
- 3.20 **Access and Construction Requirements:** Not use the land adjacent to the Lot for access without written consent of the owner of that land. The Grantor will ensure that during construction no rubbish or waste concrete or slurry is dumped on the land adjacent to the Lot or access ways. In particular, the Grantor will:

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- (a) Immediately prior to commencing construction of any Building, construct an all weather access crossing and on completion of construction of any Building, remove that crossing and restore the surface of the ground to its condition at the outset;
- (b) Before commencing construction of any Building, construct a mud free hard stand loading pad for a distance of 5 metres from the boundary of the Lot with a minimum width of 3.5 metres; and
- (c) Ensure that no damage is caused to any existing berms, curb and channel, footpaths or roading and the Grantor indemnifies the Developer from any liability in respect of such damage.

The Grantor shall notify any contractor, subcontractor or employee working on the Lot of the requirements of this clause 3.20.

4. Default

4.1 Requirements on Default: If the Grantor (*Defaulting Party*) breaches any of the Covenants then (without prejudice to the other rights and remedies of the Grantees), any Grantee may give written notice of the breach to the Defaulting Party (*Default Notice*) and the Defaulting Party must:

- (a) Pay to the Grantees, as liquidated damages, the sum of \$500 per day for every day that such breach continues (calculated from the date that is 5 Working Days from the date of the Default Notice, to the effect that no liquidated damages shall be payable by the Defaulting Party if the breach is remedied within 5 Working Days of the date of the Default Notice). The amount of \$500, referred to in this clause, shall be increased on each anniversary of the date that this instrument is registered by reference to the Consumer Price Index (All Groups) or an equivalent replacement index;
- (b) Obtain from the Relevant Authority all consents and permits required under any relevant Laws for the removal, alteration and/or replacement (as required) of the non-complying Building, structure or materials (as applicable) and comply with, and satisfy, the terms and conditions in any such consents and permits;

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- (c) Remove from the Lot any Building, structure or materials in breach of the Covenants in accordance with the consents and permits referred to in clause 4.1(b) and the requirements of the Relevant Authority; and
- (d) Alter and/or replace (as required) the non-complying Building, structure and/or materials (as applicable) in accordance with these Covenants, the consents and permits referred to in clause 4.1(b) and the requirements of the Relevant Authority.

4.2 **Remedy by Grantees:** If the Defaulting Party fails to remedy the breach within a reasonable time of the date of the Default Notice, the Grantees may take whatever action they consider necessary to remedy the breach (including entering the Defaulting Party's Lot).

4.3 **Expenses:** The Defaulting Party will, immediately on demand by any Grantee, pay to the Grantees the amount of all expenses (including legal fees on a solicitor and own client basis) incurred in connection with the exercise and enforcement, or attempted exercise and enforcement, of any rights of the Grantees under this instrument, or suing for or recovering any amount payable by the Defaulting Party under this instrument.

4.4 **Caveat:** The Defaulting Party agrees that the Grantees shall be permitted to lodge a caveat against the Defaulting Party's Lot to protect the sum of any unpaid debt owing by the Defaulting Party on the basis that any unpaid debt shall be deemed to constitute a contractual charge over the Defaulting Party's Lot owing to the Grantees (until such time that any debt is fully discharged or otherwise satisfied).

5. Disputes

5.1 **Dispute Notice:** If any dispute arises between any of the parties in respect of these Covenants (**Dispute**), any party to the dispute may give written notice of the Dispute to the other parties to the dispute (**Dispute Notice**). The Dispute Notice must:

- (a) Specify the details of the Dispute; and
- (b) State that it is given under this clause.

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5.2 **Meeting:** Within 10 Working Days from the date the Dispute Notice is given, the parties to the dispute agree to meet in an endeavour to achieve a prompt resolution of the Dispute.

5.3 **Expert Determination:** If the Dispute has not been resolved within 40 Working Days after the date the Dispute Notice is given:

- (a) Any party to the dispute may refer the Dispute to expert determination (by giving notice to the other parties to the dispute) in which case the Dispute shall be determined by a single person who is suitably qualified and experienced to determine the Dispute (**Expert**).
- (b) The Expert shall be agreed by the parties to the dispute but, if the parties to the dispute have not agreed on an Expert within 10 Working Days after the Dispute is referred to expert determination, any party to the dispute may request the President for the time being of the New Zealand Law Society (or the nominee of the President) to nominate an Expert and the parties to the dispute agree to accept the person nominated as the Expert.
- (c) In resolving the Dispute:
 - (i) The Expert shall be deemed to be acting as an expert, not as a mediator or an arbitrator.
 - (ii) Nothing in this clause shall constitute a submission to arbitration pursuant to the Arbitration Act 1996.
 - (iii) Each party to the dispute shall provide to the Expert such information and assistance as the Expert may reasonably require in order to expedite the resolution of the Dispute.
- (d) The decision of the Expert will, in the absence of manifest error or fraud, be final and binding on the parties to the dispute and the costs of the Expert shall (subject to any determination by the Expert) be borne equally by the parties to the dispute.

6. Expiry

6.1 These Covenants shall bind the Grantor and the successors in title of the Lots until 1 January 2036 at which time these Covenants shall expire, except that:

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- (a) Clauses 3.6 and 3.7 shall expire on 1 January 2021 or such other date (not being later than 1 January 2036) elected by the Developer in its absolute discretion; and
- (b) Clause 3.15 shall not expire but shall enure for the benefit of the Developer forever.

7. Miscellaneous

- 7.1 **Liability of Grantor:** The Grantor will be liable only in respect of breaches of these Covenants which occur while the Grantor is the registered proprietor of the particular Lot.
- 7.2 **Indemnity:** The Grantor indemnifies the Grantees from all proceedings, losses, claims, liabilities, costs and demands in respect of any breach of these Covenants by the Grantor.
- 7.3 **No Requirement to Enforce:** Neither the Grantees nor the Developer will be required to enforce these Covenants against any Grantor and neither the Grantees nor the Developer will be liable for any breach of these Covenants by the registered proprietor of any Lot which the Grantees or the Developer (as applicable) are not the registered proprietor.
- 7.4 **Developer has Discretion:** Without limiting the terms of these Covenants, should any proposed Building, structure, fencing or landscaping on a Lot not comply with these Covenants, the Developer may (in its absolute discretion) give written approval to the Plans where in the opinion of the Developer such approval would not detract from the standard of the Subdivision. Such approval may be given subject to such terms as the Developer (in its absolute discretion) thinks fit.
- 7.5 **No Waiver:** No waiver of any breach or failure to enforce any provision of these Covenants at any time shall in any way limit or waive the right of the Grantees to subsequently require strict compliance with these Covenants.
- 7.6 **Partial Invalidity:** If any Covenant is or becomes invalid or unenforceable, that Covenant shall be deemed deleted from this instrument and such invalidity or unenforceability shall not affect the other provisions of this instrument, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.

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- 7.7 **Developer has the Benefit of Covenants:** The Covenants are intended to be for the benefit, and enforceable at the suit, of the Developer (together with the Grantees) in terms of section 4 of the Contract (Privity) Act 1982.
- 7.8 **Surrender:** If at any time any part of a Servient Tenement or the Dominant Tenement described in Schedule A is to vest in any Relevant Authority these Covenants shall be deemed to have been surrendered on the date of the deposit of the plan identifying the land that is to so vest (or such replacement process as is required to enable registration of the vesting of the land) in respect of that part of the Servient Tenement or Dominant Tenement (as the case may be) that is to vest. No further consents of either the Grantor or the Grantee shall be required in order to effect the surrender and any such consents that would otherwise have been required shall be deemed to have been given.
- 7.9 **New Zealand Law:** This instrument is governed by and shall be construed in accordance with the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.