View Instrument Details

Instrument No	10879715.11
Status	Registered
Date & Time Lodged	22 August 2017 15:42
Lodged By	Walker, Samuel Robert
Instrument Type	Easement Instrument

Affected Computer Registers	Land District
780711	South Auckland
780712	South Auckland
780713	South Auckland
780714	South Auckland
780715	South Auckland
780720	South Auckland
780722	South Auckland
780723	South Auckland
780728	South Auckland
780729	South Auckland
780730	South Auckland
780731	South Auckland

Annexure Schedule: Contains 7 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 ☑

I certify that the Mortgagee under Mortgage 10501058.3 has consented to this transaction and I hold that consent ☑

Signature

Signed by Samuel Robert Walker as Grantor Representative on 22/08/2017 01:41 PM

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 Samuel Robert Walker as Grantee Representative on 22/08/2017 01:41 PM

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

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

Sections 90A and 90F, Land Transfer Act 1952

Grantor *Surname must be underlined*

THE RESERVE NO 262 LIMITED

Grantee *Surname must be underlined*

THE RESERVE NO 262 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, *profit*, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT *or* in gross)
Land covenant		CT 780711, 780712, 780713, 780714, 780715, 780720, 780722, 780723, 780728, 780729, 780730, and 780731	CT 780711, 780712, 780713, 780714, 780715, 780720, 780722, 780723, 780728, 780729, 780730, and 780731.

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 Schedule Five of the Property Law Act 2007.~~

~~The implied rights and powers **are [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 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].

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Insert type of instrument "Mortgage", "Transfer", "Lease" etc						
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(Continue in additional annexure schedule, if required.)

INTRODUCTION

1. It is intended that the Land in Certificates of Title 780711 to 780715 (Inclusive), 780720, 780722, 780723 and 780728 to 780731 (Inclusive) ("Lots") shall be subject, to and shall have the benefit of, certain covenants as set out in Schedule 1 to this instrument **TO THE INTENT** that each of the Lots ("the Servient Lots") shall be bound by the conditions and restrictions set out in Schedule 1 for the benefit of each of the other Lots ("the Dominant Lots") and that the registered proprietors and occupiers of any of the Dominant Lots may enforce the observance of such conditions and restrictions against the registered proprietors and occupier of any of the Servient Lots.

2. As supplementary to this Instrument the parties hereby covenant that each of the Servient Lots shall be subject to covenants set out in Schedule One for the benefit of the Dominant Lots and that any of the registered proprietors and occupiers of the Dominant Lots may enforce the observance of such conditions and restrictions against any of the registered proprietors of the Servient Lots **PROVIDED ALWAYS** that the registered proprietors and occupiers of the Servient Lots shall as regards to the conditions and restrictions be liable personally only in respect of breaches of such conditions and restrictions which occur while they are the registered proprietors of the Servient Lots in respect of any such breach occurring or alleging to have occurred.

SCHEDULE ONE

1. Not erect or permit to be erected or place or permit to be placed on the Lot any building other than a single new (and not second-hand) dwellinghouse and any associated secondary buildings;
2. Not to erect or permit to be erected dwellinghouse of a floor area less than 100 m² (such measurement being exclusive of garage, carports, decking, porches, renders, and any roof overhang). All dwellinghouse plans and sitting for construction of any dwellinghouse must be approved in writing by The Reserve No 262 Limited ("Abron") prior to any application for a building consent, commencement of any site work, or preparatory work for such commencement of any work.
3. In determining the approval of such plans and specifications Abron will take into consideration;
    a. the location of the site;
    b. whether it meets Abron's design objectives;
    c. how it complements other properties in the surrounding area 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
    d. that it does not detract from the normal standard of housing in the Subdivision.
4. To construct the dwellinghouse in accordance with approved plans provided that any variations to the plans must require additional written approval by Abron prior to commencement of any variations.
5. To construct the dwellinghouse with a minimum of 60% of the exterior cladding of the

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Insert type of instrument
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dwellinghouse consisting of any of the following materials:

a. glazing;

b. kiln fired or concrete brick;

c. stucco or solid plaster;

d. textured finish stone; timber;

e. pre-primed fibre cement weatherboards having a maximum finished width not exceeding 180mm; or

f. pre-finished metal weatherboard bond to solid timber boards.

6. Weatherboard detailing shall include, as the preferred design, traditional box and scriber treatments to corners and windows in conjunction with appropriate use of colour.

7. Any proposed dwellinghouse 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 unless otherwise approved in writing by Abron .

8. 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 Abron's specifications for exterior cladding.

9. Any metal roof cladding must have a pre-finished factory colour.

10. Any proposed Building shall include either an attached or separate fully enclosed garage not less than 30 m² and such garaging shall be constructed and completed at the same time as the construction and completion of the dwellinghouse and in the same materials and architectural design as the proposed dwellinghouse unless otherwise approved in writing by Abron. For the purpose of these covenants any references to dwellinghouse shall also be deemed to include reference to such garage or secondary buildings.

11. Not subdivide the Lot further or create a unit title or cross lease in respect of any dwellinghouse on the Lot.

12. Not permit the Lot to be occupied or used as a residence unless the dwellinghouse on the Lot has been substantially completed and the dwellinghouse meets the requirements of the Western Bay of Plenty District Council ("Council").

13. leave the exterior of any dwellinghouse on the Lot incomplete longer than a period of twelve months from the laying down of the foundations for the dwellinghouse.

14. Complete construction of the vehicle access to any dwellinghouse in a permanent surface of concrete, concrete block or brick paving or tar-sealing and such surfacing is to be carried out in a proper and tradesman-like manner within twelve months of laying down the foundations of the dwellinghouse.

15. Complete construction of any paths on the Lot in permanent materials with all unpaved areas to be properly grassed and landscaped within twelve months of laying down the foundations of the dwellinghouse.

16. Construct any clothesline and letterbox on the Lot within twelve months of laying down the foundations of the dwellinghouse, with such design, construction and location to be aesthetically sensitive and the clothesline shall not be highly visible from the access lot,

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street or road reserve (as the case may be) providing access to the Lot.

17. Notwithstanding the terms or provisions of the Fencing Act 1978, not to erect any fence or fences on the Lot unless such fence or fences comply in full with the following criteria:
    a. No fence shall be constructed in unframed corrugated iron, post and wire, second hand, shade-cloth, netting, cement panels, plywood or demolition materials unless approved by Abron.
    b. No fence shall exceed a maximum height of 1.83 metres measured vertically from the natural ground level at the relevant point in the Lot where the fence is erected.
    c. Not to erect any fence within five (5) metres of the front boundary adjoining the roadway which exceeds 1.30 metres in height above the finished ground level. No front fence within this 5 metre area shall be of solid paling type construction.
    d. Fences adjoining the front road way and for all corner lots will require specific approval from Abron.

    "Fence" shall include (but is not limited to) any live fence, or any raised ground that serves as a dividing fence.

18. Not call upon Abron or Abron to pay for or contribute towards the expense of erection or maintenance of any fence between the Lot and any adjoining land owned by Abron, but this requirement shall not inure for the benefit of any subsequent purchaser from Abron of any such adjoining land.
19. Reinstate, replace and be responsible for all costs arising from damage to the landscape, roading, footpaths, curbs, concrete or other structures damaged as a result of use the use of the Lot either by the registered proprietor or occupier or any of their agents or invitees
20. Once construction of the dwellinghouse on the Lot has been completed, not bring on to or allow remaining on the Lot any temporary building, caravan, trade vehicle or other equipment and materials unless garaged or screened so as to preserve the amenities of the Lots.
21. Not to permit or erect any advertisement, sign or hoarding of a commercial nature to on any part of the Lot without prior consent in writing from Abron.
22. Ensure that from the date that possession is taken of the Lot, (including any public road frontage lot vested in any Relevant Authority) and while the Lot remains unoccupied, the Lot is kept free of weeds and noxious plants and debris and is mowed and maintained regularly and if the Grantor fails to do so Abron 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 Abron on demand such costs incurred by Abron together with interest calculated at the rate of 20% per annum from such date demand is made by Abron.
23. Not use any land or Lot adjacent to the Lot for access without the written consent of Abron or the registered proprietor of that land or Lot. The Grantor will ensure that during construction no rubbish or waste concrete or slurry is dumped on the Lot or any access ways. Further the Grantor will:
    a. Immediately prior to commencing construction of any dwellinghouse construct an all-weather access crossing and on completion of construction of any dwellinghouse,

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remove that crossing and restore the surface of the ground to its condition at the outset;

b. Before commencing construction of any dwellinghouse 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 4 metres; and

c. Ensure that no damage is caused to any existing berms curb and channel footpaths or roading and the Grantor hereby indemnifies the Abron from any liability in respect of such damage.

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

24. The Grantor may develop a day care centre, play school, or retail shops or such similar use on proposed lots 14,16 & 17 provided that the prior written consent is obtained by Abron and a Resource Consent is granted by Council. The owner of the adjacent lots being lots 18,19,15,13 & 12 must not object to the operation of a day care centre

25. If there is any breach or non-observance by the Grantor of any of these covenants then without prejudice to the liability which the grantor may have to the Grantees or any other person having benefit of the covenants, the Grantor will, upon written demand being made by any Grantee:

    a. Pay to the Grantee or any subsequent owner of any Lot as liquidated damages the sum of $500 per day for every day that such breach or non-observance or non-compliance continues, calculated from the date that is five working days from the date that such written notice was served on the Grantor (to the intent that no liquidated damages shall be payable if the breach or non-observance or non-compliance is remedied within five working days of the demand being served). The amount of $500 shall be increased annually by reference to the Consumer Price Index (All Groups) or an equivalent replacement index;

    b. Obtain from the Council any building consents required under the Building Act 2004 (or any legislation in replacement of that Act) for the removal of the non-complying Building, structure or materials (as the case may be);

    c. Remove or cause to be removed from the Lot any dwellinghouse, structure or materials used in the construction of the dwellinghouse or structure that is in breach or non-observance of the covenants; and

    d. Obtain from the Council all building consents required under the Building Act 2004 (or any legislation in replacement of that Act) for the re-instatement and/or replacement of a complying Building, structure or materials;

    e. Reinstate and/or replace the non-complying dwellinghouse structure and/or materials in accordance with the building consent and so that the dwellinghouse and structures constructed on the Lot comply fully with these covenants; and

    f. Allow the person making such demand the right to register a caveat against the Lot in breach to protect the sum of any unpaid debt owing by the Grantor on the basis that any unpaid debt shall be deemed to constitute a contractual charge over the Lot owing to the Grantees until such time that any debt is fully discharged or otherwise satisfied.

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g. if the Grantor fails to remedy any such breach within a reasonable time following receipt of such notice, the Grantee may take whatever action they consider necessary to remedy the breach (including entering the Lot).

26. All expenses and costs incurred in enforcing the covenants will constitute a debt due that shall be a charge against the Lot in breach and shall be recoverable as liquidated damages.

27. These covenants shall bind the Grantor and the successors in title of the Lots until 1 January 2040 at which time these covenants shall expire and any obligations shall cease.

28. The Grantor will be liable only in respect of breaches or non-observance of these Covenants which occur while the Grantor is the registered proprietor of the particular Lot. The Grantor indemnifies the Grantees from all proceedings, losses, claims, liabilities, costs and demands in respect of any breach or non-observance of these covenants by the Grantor.

29. Neither the Grantees nor Abron will be required to enforce these covenants against any Grantor and neither the Grantees nor Abron will be liable for any breach of these Covenants by the registered proprietor of any Lot which the Grantees or Abron (as applicable) are not the registered proprietor.

30. Without limiting the express terms of these covenants, should any proposed dwellinghouse, structure, fencing or landscaping on a Lot not comply with these Covenants, Abron may in its entire discretion give written approval to the work contemplated where in the sole opinion of Abron such approval would not detract from the overall quality and appearance of the subdivision. Such approval may be given subject to such terms as Abron in its sole and absolute discretion thinks fit.

31. 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.

32. The parties shall meet and discuss in good faith any dispute between them arising out of this instrument. If the discussions fail to resolve the relevant dispute, any party may (by written notice to the other parties) require that the dispute be submitted for mediation by a single mediator nominated by the President for the time being of the New Zealand Law Society. In the event of any such submission to mediation:

    a. The mediator shall be deemed to be not acting as an expert or as an arbitrator;

    b. The mediator shall determine the procedure and timetable for the mediation; and

    c. the cost of the mediation shall be shared equally between the parties.

33. If any of the covenants contained in this instrument 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.

34. Abron has the benefit of these covenants: The covenants are intended to be for the benefit, and enforceable at the suit, of Abron (together with the Grantees) in terms of section 4 of the Contract (Privity) Act 1982.

35. If at any time any part of a Lot is to vest in Western Bay of Plenty District Council or any other Relevant Authority these covenants shall be deemed to have been surrendered on the date of

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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 Lot (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.

36. Abron may in its sole and absolute discretion, grant written approval upon request, to allow a waiver, dispensation, variation or amendment to any of the above covenants, after considering all information and relevant factors and on such terms and conditions as Abron may determine. Any waiver shall be at the sole discretion of Abron and in no circumstance shall Abron be required to give any reason for its decision

37. In any circumstance where Abron's approval is required in respect of any covenant, any approval shall be at Abron's sole discretion and in no circumstances shall Abron be required to give any reason for its decision.

38. Where Abron has been dissolved, wound up or otherwise gone out of existence, "approval by Abron" shall mean approval by any party appointed and/or nominated by Abron for this purpose.

39. This Easement Instrument is governed by and shall be construed in accordance with the laws of New Zealand, and the parties submit.