

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

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

Grantor

SPREYDON LODGE LIMITED

Grantee

SPREYDON LODGE 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		Lots 61 and 63 - 66	Lots 61 and 63 - 66

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]~~

ANNEXURE SCHEDULE A

The Grantee when registered proprietor of the land formerly contained in Unique Identifier _____ subdivided the land into lots in the manner shown and defined on Deposited Plan _____ (hereinafter referred to as the "Plan").

WHEREAS it is the Grantee's intention to create a high quality subdivision. To enable this to occur it is the Grantors intention to create for the benefit of the land described in Schedule A as the Dominant Tenement (hereinafter referred to as the "Dominant Lots") the land covenant set out herein over the land described in Schedule A as the Servient Tenement (hereinafter referred to as the "Servient Lots").

AND so as to bind the Servient Lots and for the benefit of the respective Dominant Lots the Grantor **DOTH HEREBY COVENANT AND AGREE** in the manner set out in the Schedule herein so that the covenant runs with the Servient Lots for the benefit of each of the respective Dominant Lots.

"Lot" or "Lots" means any one or more of the respective Servient Lots as the context requires, and includes any lot created as a result of a further subdivision of any of the Servient Lots.

"Subdivision" means the Developer's subdivision known as Halswell Commons, of which the Servient Lots form part.

"Developer" means Danne Mora Holdings Limited or it's duly appointed agent, assignee or associated person or entity.

1. The Grantor shall:

- 1.1. Not erect or place, or permit to be erected or placed, on the Lot any building, dwelling house, garage or other structure unless such building, dwelling house, garage or other structure in all respects:
 - 1.1.1 complies in all respects with the Developer's guidelines as to architectural controls ("Architectural Controls"), and as amended from time to time;
 - 1.1.2 complies with the terms of the Developer's Resource Consent/s ("Resource Consent") for the Subdivision, including any variation of the Resource Consent at the request of the Grantor provided that any such requests must first be approved in writing by the Developer; and
 - 1.1.3 is entirely consistent with plans for the same that have first been submitted to, and approved in writing by, the Developer in its sole discretion.
- 1.2. Not permit any construction on the Lot unless the building site at all times complies with the requirements of the Health and Safety at Work Act 2015 or any legislation in substitution thereof;

- 1.3. Not undertake or permit during the course of construction the storage of building materials other than within the boundaries of the Lot;
 - 1.4. Not carry out any construction unless an adequate rubbish skip is present at all times (and regularly emptied or replaced) nor allow during the course of construction any rubbish outside the boundaries of the Lot;
 - 1.5. Not during the course of construction allow any vehicles to be washed down other than within the boundaries of the Lot;
 - 1.6. Not allow the Lot to become untidy or unsightly and in particular, without limitation, not allow any grass on the Lot grow to a height of more than 150mm and shall, if the Developer requests, immediately comply with any request to mow such grass to ensure that at no times is any grass on any of the Lot more than 150mm in height;
 - 1.7. Not permit any works to be carried out on the Lot (including site preparation) prior to the erection and completion of all side, front and rear boundary fences (which must comply with the Developer's guidelines as to lot landscaping, applicable to the relevant stage ("Landscape Guidelines") and as amended from time to time) or, where permanent fencing is not being erected, temporary fencing shall be installed and removed prior to occupation of the dwelling;
 - 1.8. Not commence construction of a dwelling until such time as vehicle access from the point of legal vehicular access to the Lot has been completed (including berm and kerb crossing) up to and including metalling or sealing;
 - 1.9. Not access the Lot over any area not allocated for vehicle access;
 - 1.10. Not permit the Lot to be occupied or used as a residence either prior to the dwelling being completed and a Code Compliance Certificate issued for the same, or by the erection of temporary structures or by the placing thereon of caravans and/or vehicles for human occupation;
 - 1.11. Not remove or relocate from the Lot any fence, tree or shrub constructed, installed or planted by the Developer without the written consent of the Developer;
 - 1.12. Not permit any dwelling on the Lot to be used as a show home without the written consent of the Developer. The Developer shall retain sole discretion over the number of dwellings to be used for show home purposes;
 - 1.13. Reinstate, replace and be responsible for all costs arising from any damage to landscaping, berms, roading, footpaths, kerbs, concrete or other structures in the subdivision arising directly or indirectly from the use of the Lot by the Grantor or its occupiers, agents or invitees; and
 - 1.14. At the time of completing the landscaping on the Lot re-seed the berm in front of the Lot with a seed of similar variety.
2. Any costs of enforcing compliance and/or remediation of any damage caused by the non-compliance with clause 1 shall be a debt that becomes immediately due and owing by the Grantor to the Developer as liquidated damages.

3. Should any proposed or completed dwelling house, building, structure, fence or landscaping not comply with the Architectural Controls and/or the Landscape Guidelines, the Developer may, in its sole discretion, give written approval where in the sole opinion of the Developer such approval would not detract from the overall quality and appearance of the subdivision. Such approval may be given at any time and is subject to such terms as the Developer in its sole discretion thinks fit.
4. The Grantor shall ensure that:
 - 4.1. The construction of any dwelling (or other permitted building) on the Lot is completed and a Code Compliance Certificate has issued for the same, within nine (9) months of commencement of the construction of such dwelling; and
 - 4.2. All landscaping on the Lot has been completed within six (6) months of completion of the construction of the dwelling. If there is any dispute as to whether or not the landscaping has been completed, it shall be at the Developer's sole discretion (acting reasonably) as to whether or not the landscaping has been completed.
5. The Grantor shall not subdivide the Lot unless strictly in accordance with the Developer's subdivision consent RMA/2016/2904, including any subsequent variation or substitution thereof. Subdivide shall have the meaning "subdivide land" as set out in s218 of the Resource Management Act 1991.
6. The Developer reserves the right at any time to waive or vary any of these covenants and if called upon to do so, the Grantor will sign any documentation required to give effect to this waiver and/or variation.
7. The Developer shall, in respect of any other Lots and subsequent stages of Halswell Commons, have in its absolute discretion the right to impose alternative or additional restrictions or stipulations in any restrictive covenant relating to Lots in subsequent stages or to omit or vary in its absolute discretion any restrictive covenant.
8. The Developer shall not be liable to pay for or contribute towards the expense of construction or maintenance of any fence between the Lot and any contiguous land owned by the Developer but this provision shall not enure for the benefit of any subsequent purchaser or proprietors of the contiguous land.
9. The Grantor shall not oppose, frustrate, object to, nor take any action or encourage others to oppose, frustrate, object or take any action that might, in any way, prevent or hinder the Developer and/or the Local Authority from progressing or completing subdivisions or any other aspect of the Halswell Commons Development, whether residential, commercial or otherwise. For the avoidance of doubt, this covenant extends to (without limitation) development planning, zone changes, resource consents, consent authority or Environment Court applications, building consent matters, any other consents, earthworks, developments and general works. The benefit of this covenant applies to any adjoining or neighbouring properties now or hereafter owned by the Developer.
10. The Grantor upon becoming registered proprietor of the Lot is deemed to have joined the Halswell Commons Residents Society Incorporated ("Society") as a member until such time as it ceases to be registered proprietor of the Lot, will pay all levies imposed by the Society from time to time promptly as they fall due and

will abide by the Society's Rules ("Rules of the Society"), including any amendments from time to time.

11. Upon further subdivision of the Lot, any reference in this instrument to "Lot" shall apply to any new certificate of title resulting from such subdivision, and the covenants contained in this instrument shall apply to the registered proprietor of any new certificate of title created for residential purposes as a result of such subdivision, including for the avoidance of doubt the obligations in clause 10 with regard to the Society.
12. Each separate certificate of title resulting from any further subdivision shall respectively become a "*Developed Property*" as defined by the Rules of the Society.
13. If there be any breach or non-observance of any of these covenants:
 - 13.1. There shall be no obligation on the Developer to take any steps to enforce these covenants;
 - 13.2. If there is more than one Grantor for any Lot the liability of the Grantor for the Lot shall be joint and several;
 - 13.3. The Grantor in breach shall rectify any such breach;
 - 13.4. The Grantor will, upon written demand being made by the Developer, the registered proprietors of any property which is a party to this covenant, or the Society should it make written demand on behalf of such registered proprietors (in which case the Rules of the Society applicable where the Society makes demand on behalf of its members shall apply), pay as liquidated damages to the person making such demand the sum of \$500 per day for every day that such breach or non-observance continues after the date upon which written demand has been made; and
 - 13.5. Replace any building materials used in breach or non-observance of these covenants.
14. The covenants in this instrument will cease to apply to any land that is intended to vest in the Crown or any territorial authority as a road or reserve, upon any survey plan relating to such vesting being approved as to survey and being accepted for deposit by Land Information New Zealand.
15. In the event of any dispute which cannot be resolved by agreement between the Developer, the Grantor and/or the Grantee (or the Society as the case may be) as to any matter relating to these covenants, the same shall be resolved by arbitration under the provisions of the Arbitration Act 1996 or any Act passed in substitution or amendment thereof by single Arbitrator appointed for that purpose by the nominee of the Canterbury Westland Branch of the New Zealand Law Society and/or his/her nominee and the decision of that Arbitrator shall be final and binding on the parties.
16. The covenants contained in clauses 1 to 5 (inclusive) of this instrument shall cease to have effect after 31 December 2030, whereas all other covenants contained in this instrument shall run with the Grantor's land for all time unless otherwise provided by statute.

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

APPROVED

Grantor

Grantee

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) a 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)

Continue in additional Annexure Schedule, if required

CE-122033-3-17-V2

Easements or *profits a 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 **[substituted]** by:

[Memorandum number _____, register 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 15-5A of the Land Transfer Act 1952]

[Annexure Schedule 2]

ANNEXURE SCHEDULE 2

Continuation of "Estate or Interest or Easement to be created"

- A. The Grantor is the Registered Proprietor of an estate in fee simple more particularly defined in schedule "A" hereto (the "Servient Lot").
- B. The Grantee is the Registered Proprietor of those estates in fee simple more particularly defined in schedule "B" hereto (the "Dominant Lots").
- C. The Servient Lot is to be held as a joint accessway for the purpose of access to the Dominant Lots.
- D. As part of the development of the land (formally contained in Unique Identifier _____) and the creation of all the lots described, the Servient Lot is to be held in five undivided one fifth shares by the Registered Proprietors of each of the Dominant Lots.
- E. The Grantor in respect of its interest in the Servient Lot has agreed to be bound by and to adhere to the provision set out herein to create for the benefit of the Dominant Lots the land covenant set out in Schedule C over the land set out in Schedule A.

TO THE INTENT that the Servient Lot shall be bound by the stipulations and restrictions set out in Schedule C hereto and that the owners and occupiers for the time being of the Dominant Lots may enforce the observance of such stipulations against the owners for the time being of the Servient Lot

AND AS INCIDENTAL to the transfer of the fee simple so as to bind the Servient Lot for the benefit of each of the Dominant Lots the Grantor **DOTH HEREBY COVENANT AND AGREE** in the manner set out in the Schedule C hereto so that the covenants run with the Servient Lot for the benefit of the Dominant Lots.

SCHEDULE A

Lot 62 DP _____

SCHEDULE B

Lot 61 DP _____
 Lot 64 DP _____
 Lot 66 DP _____

Lot 63 DP _____
 Lot 65 DP _____

SCHEDULE C

INTERPRETATION

1. In this document unless the context dictates otherwise:

- 1.1. Definitions:

"Council" means the Christchurch City Council, including its successors in title;

"Developer" means Danne Mora Holdings Limited or its duly appointed agent, assignee or associated person or entity;

- 1.2. **“Lot Owners”** means the owners of the Servient Lot from time to time both jointly and severally, as applicable;
 - 1.3. **“Vehicle”** has the same meaning as defined by motor vehicle in the Motor Vehicle Security Act 1989.
 - 1.4. **Headings:** Clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to effect the interpretation of this document;
 - 1.5. **Plural and singular:** Words importing the singular number will include the plural and vice versa;
 - 1.6. **Schedules:** The schedules to this document and the provisions and conditions contained in the schedules have the same effect as if set out in the body of this document;
 - 1.7. **Parties:** Reference to parties are reference to parties of this document;
 - 1.8. **Sections, clauses and schedules:** Reference to sections, clauses and schedules are references to this document’s sections, clauses and schedules;
 - 1.9. **Persons:** Reference to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
 - 1.10. **Defined Expressions:** Expressions defined in the main body of this document bear the defining meaning in the whole of this document including the background;
 - 1.11. **Negative Obligations:** Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
 - 1.12. **Gender:** words importing one gender shall include the other gender; and
 - 1.13. **Statutes and Regulations:** References to a statute include reference to regulations, orders or notices made under or pursuant to such statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.
2. The Lot Owners shall not:
- 2.1. Erect or permit to be erected on the Servient Lot any building, structure, work or earthworks of any kind (except to the extent that the same are permitted for the purpose of providing services as hereinafter allowed) or grow a tree, hedge, bush or other vegetation thereon, other than any such tree, hedge, bush or other vegetation as has been planted by the Developer or is required by Council.
 - 2.2. Use or permit to be used the Servient Lot for anything other than an access or service area for the purpose of going, passing or re-passing with or without vehicles, machinery and implements of any kind from time to time and at all times by day and night from the road over the formed carriage way and/or the Servient Lot to the Dominant Lots;
 - 2.3. Park any vehicle or vehicles on any part of the Servient Lot or permit visitors or guests of the Lot Owners to park on any part of the Servient Lot.

- 2.4. Do anything or commit any act or omission or default whereby the use of the Servient Lot is in any way impeded or obstructed
 - 2.5. Do anything or commit any act omission or default whereby any permitted improvements erected within the Servient Lot will be or may be damaged or destroyed; or
 - 2.6. Do anything or commit any act omission or default whereby any electricity supply lines, cables and conducts, water supply pipelines, storm water drains and foul water drains (together called 'Utility Services') installed on or under the surface of the Servient Lot will or may be damaged or destroyed, or their proper function interfered with.
3. Maintenance and Repair of Access Way
- 3.1. The Lot Owners shall at all times keep the access way formed on the Servient Lot and the Utility Services in good order and repair and condition and, in particular, maintain good access and services as required by the Council under its Resource Consent to the Subdivision, the effect of which has lead to the creation of the Servient Lot.
 - 3.2. A decision that the Lot Owners are required to carry out works on the Servient Lot to meet the standards imposed under clause 3.1 shall be binding if half or more of the Lot Owners serves notice in writing on the other Lot Owner/s.
 - 3.3. Subject to clause 4.1 the costs of meeting the obligations of the Lot Owners as set out in clauses 3.1 and 3.2 shall be borne by the Lot Owners in the same shares as their interest in the Servient Lot provided however, that where the need for maintenance and/or reinstatement is attributable to the act, neglect or default of one of the Lot Owners, the cost attributable to those acts, neglect or defaults shall, in such cases, be borne by the Lot Owner responsible.
4. Maintenance of Utility Services
- 4.1. The cost of maintaining any Utility Services installed on and under the Servient Lot shall be borne equally by the Lot Owner/s who benefit from those Utility Services.
 - 4.2. Where the need for maintenance or reinstatement of Utility Services has been necessary by the act, neglect or default of one or more of the Lot Owner/s then the costs of maintenance and reinstatement shall be borne by the Lot Owner/s responsible for the act, neglect or default.
5. Default
- 5.1. If a Lot Owner/s neglects or refuses to carry out or pay for or neglects to join with the other Lot Owner/s in carrying out or paying for any work required in respect of any foregoing work provided for herein then the Lot Owner/s willing to proceed may serve on the other Lot Owner/s a notice in writing:
 - (a) requiring the Lot Owner/s to join in, carry out and/or pay for that work; and
 - (b) stating the cost to be met by each Lot Owner/s;
 - (c) stating that after the expiry of 14 days from the date of service of the notice that the party/ies willing to proceed may carry out or pay for the work itself.

5.2. If, at the expiry of such notice, the Lot Owner/s in default still neglects or refuses to carry out or pay for the work, then the Lot Owner/s willing to proceed may carry out or pay for the work and for that purpose may enter into and upon the Servient Lot and carry out the necessary work and the Lot Owner/s in default shall be immediately liable to pay to the Lot Owner/s who carries out or pay for the work:

- (a) the Lot Owner/s appropriate proportion of the costs of carrying out or paying for the work; and
- (b) the cost of the notice;

and the same may be recoverable by action at law or as a liquidated debt

5.3. Any notice that may be given by the Lot Owner/s willing to proceed pursuant to clauses 5.1 and 5.2 may instead be given by the Halswell Commons Residents Society Incorporated ("Society") in which case the Rules of the Society applicable where the Society makes demand on behalf of its members shall apply.

5.4. Any notice required to be given by a party hereunder shall be in writing and shall be deemed to be duly given if given or served in accordance with Section 354 of the Property Law Act 2007.

6. Statutory Provision

The powers, rights and duties of Lot Owner/s that are implied in vehicular rights of way under the provisions of Section 298 of the Property Law Act 2007 and Schedule 5 of that Act shall apply except to the extent that the provisions of this instrument vary the same.

7. Dispute Resolution

In the event of any dispute as to the interpretation or application of this instrument, the need for maintenance or reinstatement and/or the apportionment of costs between Lot Owners or otherwise howsoever, then any Lot Owner may give to the other Lot Owner/s 14 days written notice requiring the matter in dispute to be referred to the Society for adjudication in accordance with the rules of the Society, and in such instance the decision/determination of the Society shall be final, and binding on the parties. Such written notice shall state the subject matter and details of the dispute to be referred to the Society for adjudication.

8. Land to Vest

The covenants in this instrument will cease to apply to any land that is intended to vest in the Crown or any territorial authority as a road or reserve, upon any survey plan relating to such vesting being approved as to survey and being accepted for deposit by Land Information New Zealand.