

# Easement instrument to grant easement or *profit à prendre*

(Section 109 Land Transfer Act 2017)

## Grantor

WALLACE DEVELOPMENT COMPANY LIMITED

## Grantee

THE MANAWATU GOLF CLUB (INCORPORATED)

## Grant of Easement or *Profit à prendre*

The Grantor being the registered owner of the burdened land 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, with the rights and powers or provisions set out in the Annexure Schedule(s)

## Schedule A

Continue in additional Annexure Schedule, if required

Purpose of Easement, or <i>profit</i>	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land covenant (as set out in the attached Annexure Schedule)	Section 5, Survey Office Plan 496714	760877	WNE3/701

## ~~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 2018 and/or Schedule 5 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 209 of the Land Transfer Act 2017]~~

~~[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 2.

## **ANNEXURE SCHEDULE:**

### **Background**

- A. The Grantor intends to bind the Burdened Land to the covenants set out herein for the benefit of the Benefitted Land.
- B. It is envisaged that the Burdened Land will be subdivided into Lots for residential purposes.
- C. It is intended that the Burdened Land and each of the Lots will be subject to a scheme for the benefit of the Benefitted Land so that the owner and occupier for the time being of the Burdened Land and each of the Lots will be bound by the covenants set out in Schedule One and that the owner and occupier for the time being of the Benefitted Land will be able to enforce such covenants against the owners or occupiers for the time being of the Burdened Land and of each of the Lots.

### **Covenants**

#### **1. Definitions and interpretation**

- 1.1 **"Grantee"** means the registered proprietor for the time being of the Benefitted Land and includes the agents, employees, contractors, tenants, licensees, and other invitees of the grantee.
- 1.2 **"Grantor"** means the registered proprietor for the time being of the Burdened Land (including the registered proprietor of any Lot) and includes the agents, employees, contractors, tenants, licensees, and other invitees of the grantor.
- 1.3 **"Golf Course"** means the golf course at Hokowhitu, Palmerston North owned and operated by the Manawatu Golf Club (Incorporated) and located on the Benefitted Land.
- 1.4 **"Lots"** means the lots into which the Burdened Land is (or will be) subdivided and "Lot" has a corresponding meaning.
- 1.5 **"Player"** means any person playing or practising golf on the Golf Course.

#### **2. Covenants, terms and conditions**

- 2.1 The Grantor for itself so as to bind the Burdened Land and each Lot individually, covenants and agrees with the Grantee for the benefit of the Benefitted Land that the Grantor will at all times observe, perform and keep each covenant contained in Schedule One to the end and intent that those covenants shall enure for the benefit of the Benefitted Land.
- 2.2 The Grantor covenants that the Grantor will at all times hereafter save harmless and keep indemnified the Grantee from all proceedings, costs, claims and demands in respect of any breach by the Grantor of the covenants on the Grantor's part contained or implied in this instrument provided that a party will only be liable in respect of breaches which occur while that party is the registered proprietor of the land in respect of which any such breach occurs.
- 2.3 The Grantee will not be required or obliged to enforce all or any of the covenants contained in this instrument.

### **Schedule One**

#### **Land Covenants**

- 1. The Grantor will not object to or seek removal of any trees, shrubs, foliage or plants now or hereafter on the Benefitted Land alongside or close to the common boundary between the Burdened Land and Benefitted Land. This clause excludes trees which straddle the boundary, overhang the boundary or are potentially dangerous (as assessed by a qualified arborist) and trees that have been agreed to be removed by both parties. Nothing in this clause shall diminish either party's rights under the Property Law Act.

2. The Grantor will not make any claim whether in damages or otherwise against the grantee or any player playing or practising golf on the Golf Course in respect of the intrusion of golf balls from the Golf Course or in respect of any damage, loss or injury occasioned by the intrusion of any golf balls from the Golf Course.
3. The Grantor will not seek any injunction or any other remedy against the Grantee or any Player in respect or any of the matters referred to in the preceding clause 2.
4. The Grantor will not require or seek to require the Grantee to erect or plant any screening device to prevent or reduce the intrusion of golf balls from the Golf Course and shall not require or seek to require the Grantee to retain any trees now or hereafter growing on the Golf Course adjacent or close to the boundary between the Burdened Land and Benefited Land.
5. The Grantor will not:
  - (a) bring any proceedings, including proceedings for damages, negligence, nuisance or interference arising from the activities of the Grantee in operating the Golf Course, including without limitation any action relating to any noise, disruption or other effects arising from competitions, regular course maintenance including mowing and spraying, course development and the playing of golf; nor
  - (b) be party to (or finance or contribute to the cost of) any application, proceedings or appeal designed or intended to limit, prohibit or restrict the continuation of the operations or activities of the Grantee.
  - (c) the Grantor will not object to any future development of the Golf Club land.