

## **ANNEXURE SCHEDULE 1 – LAND COVENANTS**

The Grantor acknowledges that DDL (as hereafter defined) is undertaking/has undertaken a development of the Land (as hereafter defined) of which the Servient Tenements (as hereafter defined) form part and that such development is intended to be a modern and well-designed development. The Grantor further acknowledges that it is desirable that there be supervision and control in relation to the landscaping and nature and type of construction permitted on the Land for the protection and in the interests of all of the owners of the Servient Tenements.

In furtherance of the above, the Grantor, so as to bind the registered proprietors of the Servient Tenements from time to time, hereby covenants and agrees with the Grantee that each Servient Tenement shall be bound by the covenants set out in this instrument for the benefit of each of the other Dominant Tenements as follows:

### **INTERPRETATION:**

In this Instrument, unless the context otherwise requires:

**“DDL”** means Deighton Developments Limited (company number 3769282) and its successors and assigns

**“Development”** means DDL’s development of the Land

**“Dominant Tenements”** means the dominant tenements referred to in Annexure Schedule 4 hereto, and each of them

**“Grantee”** means the entities referred to in Annexure Schedule 2 hereto, and each of them

**“Grantor”** means the registered proprietors, and each of them, from time to time of the land as comprised in the Computer Registers listed in Annexure Schedule 4 hereto.

**“Restricted Area “A”** means the area so marked “A” on the Scheme Plan (as hereafter defined).

**“Restricted Area “B”** means the area so marked “B” on the Scheme Plan.

**“Restricted Area “C”** means the area so marked “C” on the Scheme Plan

**“Restricted Area “D”** means the area so marked “D” on the Scheme Plan

**“Restricted Area “E”** means the area so marked “E” on the Scheme Plan.

**“Restricted Area “F”** means the area so marked “F” on the Scheme Plan.

**“Restricted Area “G”** means the area so marked “G” on the Scheme Plan.

**“Restricted Area “H”** means the areas so marked “H” on the Scheme Plan.

**“Restricted Area “I”** means the areas so marked “I” on the Scheme Plan.

**“Restricted Area “J”** means the areas so marked “J” on the Scheme Plan.

**“Restricted Area “K”** means the area so marked “K” on the Scheme Plan.

**“Restricted Area “L”** means the area so marked “L” on the Scheme Plan.

**“Restricted Area “M”** means the area so marked “M” on the Scheme Plan

**“Restricted Area N”** means the area so marked “N” on the Scheme Plan.

**“Restricted Area “O”** means the area so marked “O” on the Scheme Plan.

**“Land”** means the land in Computer Freehold Register 639302, Lot 2, DP 471309 .

**“Lane”** means that part of Lot 33 as shown on the Scheme Plan and labelled “Lane”.

**“Scheme Plan”** means the Scheme Plan of Subdivision prepared by Bland & Jackson, Surveyors, and entitled “Proposed Subdivision of Part Puketotara 30B2 and Part Puketotara 31B Block currently Lot 2 DP 471309, CRF 639302”, revision 12 a copy of which may be inspected at the registered office of DDL during usual business hours and upon reasonable prior notice.

**“Servient Tenements”** means the servient tenements referred to in Annexure Schedule 3 hereto, and each of them.

**“Subdivision”** means DDL’s subdivision of the Land as contemplated by the Scheme Plan.

**“Urupa Protection Areas”** means the areas so marked “Q”, “R” and “P” on the Scheme Plan.

**“Works”** means the construction of any dwelling or other improvements on any Servient Tenement.

## **COVENANTS**

### **1. In respect of Restricted Areas A and E**

- (a) No improvements above the existing ground level thereof shall be permitted other than fencing.
- (b) DDL will plant with native plantings. No trees or shrubs planted by DDL, nor any trees or shrubs existing thereon as at the date that DDL transfers the relevant Servient Tenement to the first transferee thereof from DDL (save noxious weeds, self seeded exotic species or pinus radiata), shall be harmed or removed before 31 December 2035 without the prior written approval of DDL.
- (c) DDL shall be responsible for the maintenance thereof until 31 December 2019, which maintenance may include, by way of example only and not by way of limitation, the repair of fencing, replacement of dead or diseased plants, and weed control
- (d) DDL and its agents, invitees and contractors, with or without equipment, machinery and vehicles, shall be entitled to reasonable access to the thereof on 48 hours’ notice to the relevant Grantor (Lot 30 on the Scheme Plan) for the purpose of undertaking any maintenance in accordance with this covenant.

- (e) The relevant Grantor (the registered proprietor of Lot 30 on the Scheme Plan) shall be responsible for maintaining the said areas from 1 January 2020 and thereafter and must ensure that the said areas are kept fenced to a stock proof standard if required for protection of the vegetation thereon and that such fencing is kept in good condition and repair, that all weeds are removed (including removal of any noxious weeds or self-seeded exotic species), and that dead and diseased plants and trees are replaced with appropriate species of native plants.
- (f) The Grantor shall not allow any animals thereon other than domestic animals which, by way of example only and not by way of limitation, shall not include goats, sheep, horses and pigs.
- (g) No motorised vehicles or farm bikes shall be permitted other than for reasonable access to undertake maintenance works thereon.
- (h) No modification of the existing land contours thereof is permitted other than maintenance of the private walking track to be constructed by DDL between the local purpose reserve (Lot 34 on the Scheme Plan) and Lot 30 Scheme Plan.

2. In respect of Restricted Areas B and C.

- (a) No improvements, structures or plantings of trees or shrubs which by natural process may grow higher than 2.0 metres above the ground level of that part of Restricted Area C upon which such trees or shrubs is or are growing, shall be permitted.
- (b) The Grantor shall not allow any animals thereon other than domestic animals which, by way of example only and not by way of limitation, shall not include goats, sheep, horses and pigs.
- (c) No motorised vehicles or farm bikes shall be permitted thereon other than for reasonable access to undertake maintenance works to the Restricted Areas B and C under this clause.

3. In respect of Restricted Area D

No improvements, structures or planting thereon shall exceed the datum height of 82.0 metres, referenced in terms of Taranaki Level Datum 1970. Origin of Heights is NPDC Bench Mark No.60.

4. In respect of Restricted Areas F and K

- (a) No improvements above the existing ground level thereon shall be permitted other than fencing.
- (b) No plantings of trees or shrubs thereon which by natural process may grow higher than 2.0 metres above the ground level upon which such trees or shrubs is or are growing, shall be permitted.
- (c) DDL will plant with native plantings. No trees or shrubs planted by DDL, nor any trees or shrubs existing on thereon as at the date that DDL transfers the relevant Servient Tenement to the first transferee from DDL (save noxious

weeds, self seeded exotic species or pinus radiata), shall be harmed or removed before 31 December 2035 without the prior written approval of DDL.

- (d) DDL shall be responsible for the maintenance thereof until 31 December 2019, which maintenance may include, by way of example only and not by way of limitation, the repair of fencing, replacement of dead or diseased plants, and weed control
- (e) DDL and its agents, invitees and contractors, with or without equipment, machinery and vehicles, shall be entitled to reasonable access thereto on 48 hours' notice to the relevant Grantor (Lot 30 on the Scheme Plan) for the purpose of undertaking any maintenance in accordance with this covenant.
- (f) The relevant Grantor (the registered proprietor of Lot 30 on the Scheme Plan) shall be responsible for maintaining the said areas from 1 January 2020 and thereafter and must ensure that the said areas are kept fenced to a stock proof standard if required for protection of the vegetation thereon and that such fencing is kept in good condition and repair, that all weeds are removed (including removal of any noxious weeds or self-seeded exotic species), and that dead and diseased plants and trees are replaced with appropriate species of native plants.
- (g) The Grantor shall not allow any animals other than domestic animals which, by way of example only and not by way of limitation, shall not include goats, sheep, horses and pigs.
- (h) No motorised vehicles or farm bikes shall be permitted thereon other than for reasonable access to undertake maintenance works to the Restricted Areas F and K under this clause.
- (i) No modification of the existing land contours thereof is permitted.

5. In respect of Restricted Area G

No improvements, structures or planting thereon shall exceed the datum height of 81.0 metres, references in terms of Taranaki Level Datum 1970. Origin of Heights is New Plymouth District Council bench mark no. 60.

6. In respect of Restricted Area H,

No improvements, structures or planting thereon shall exceed the datum height of 81.0 metres, references in terms of Taranaki Level Datum 1970. Origin of Heights is New Plymouth District Council bench mark no. 60.

7. In respect of Restricted Area I,

No improvements, structures or planting thereon shall exceed the datum height of 81.8 metres, references in terms of Taranaki Level Datum 1970. Origin of Heights is New Plymouth District Council bench mark no. 60.

8. In respect of Restricted Area J,

No improvements, structures or planting thereon shall exceed the datum height of 81.8 metres, references in terms of Taranaki Level Datum 1970. Origin of Heights is New Plymouth District Council bench mark no. 60.

9. In respect of Restricted Area L

No improvements, structures or planting thereon shall exceed the datum height of 77.4 metres, referenced in terms of Taranaki Level Datum 1970. Origin of Heights is NPDC Bench Mark No.60.

10. In respect of Restricted Areas M, N and O

- (a) No trees or shrubs planted by DDL, nor any trees or shrubs existing thereon as at the date that DDL transfers the relevant Servient Tenement to the first transferee thereof from DDL (save noxious weeds, self seeded exotic species or pinus radiata), shall be harmed or removed before 31 December 2018 without the prior written approval of DDL.
- (b) DDL shall be responsible for the maintenance of Restricted Areas M, N and O until 1 January 2019, which maintenance may include, by way of example only and not by way of limitation, the repair of fencing, replacement of dead or diseased plants, and weed control.
- (c) DDL and its agents, invitees and contractors, with or without equipment, machinery and vehicles, shall be entitled to reasonable access thereto on 48 hours' notice to the relevant Grantors for the purpose of undertaking any maintenance in accordance with this covenant.
- (d) The relevant Grantors (the registered proprietors of Lots 17-19 on the Scheme Plan) shall be responsible for maintaining Restricted Areas M, N and O from 1 January 2019 and thereafter and must ensure that all weeds are removed (including removal of any noxious weeds or self-seeded exotic species) and that dead and diseased plants and trees are replaced with appropriate species of native plants.

11. **IN RESPECT OF THE URUPA PROTECTION AREAS:**

No further excavation (other than topsoil) from the Urupa Protection Areas will be permitted, which shall be within 2 metres of The Urupa Boundary (Lot 35 Scheme Plan).

12. **RUBBISH COLLECTION**

New Plymouth District Council Refuse and Recycling collection for the purposes of Lots 13-18 on the Scheme Plan and Lot 32 on the Scheme Plan shall be adjacent to the footpath at the cul-de-sac of Manarua Crescent. No refuse or recycling collection shall be required of the New Plymouth District Council along the Lane.

The registered proprietors of the Servient Lots shall not object to the Refuse and Recycling collection point and recognise that this is a necessary requirement of the New Plymouth District Council granting consent to the Subdivision generally.

13. **VEHICLE CROSSING**

The first 5 metres (measured from the kerb of the Lane) of any vehicle crossing/driving servicing Lots 32 of the Scheme Plan and Lot 16 of the Scheme Plan

shall be formed to the requirements of Light Industrial Vehicle crossing as specified in the New Plymouth District Council Land Development and Subdivision Infrastructure Code, figure 3.4 a, (a minimum of 150mm thick 20mPa concrete and with HRC 665 reinforcing steel mesh) or its replacement/substitute.

**14. BUILDING RESTRICTIONS.**

No buildings shall be permitted on a Servient Tenement other than one new residential dwelling and associated garaging and other accessory buildings and structures as would normally be appurtenant to a residential dwelling. The value of such dwelling and associated garaging for building consent application purposes shall be not less than \$330,000 plus GST, with such value being adjusted each year on the anniversary of registration of this instrument according to the percentage change in the Consumer Price Index (All Groups) between the date of registration of this instrument and the relevant anniversary of the same. The provisions of this covenant 14 are subject to covenant 15 herein.

15. Notwithstanding covenant 14 above, additional buildings may be permitted on a Servient Tenement that has a land area of 1200 square metres or more, where such buildings are for recreational purposes (including farming and horticulture, but excluding commercial activities) and the same have been approved in writing by DDL in accordance with covenants 16, 17 and 18 below. The provisions of this covenant 15 are subject to covenant 36 herein.
16. All dwellings on Servient Tenements must be of an individual design and compatible with the appearance of other dwellings on the Land (to the intent that there should be a range of styles, design and appearances of dwellings on the Land). All garaging on Servient Tenements must be of a similar architectural style and be finished with the same cladding materials as the dwelling on the relevant Servient Tenement and all fences on Servient Tenements shall be of durable materials of a type, appearance and quality comparable to the dwelling and garaging on the relevant Servient Tenement and in accordance with covenants 20 and 22 below (as applicable).
17. No Works shall be commenced without first having submitted a full set of Plans to DDL for DDL's approval, and such approval having been obtained.
18. DDL shall not unreasonably withhold or delay its approval of the Plans, but if the Plans do not comply with the covenants herein (including the following Construction Guidelines), any withholding or delaying of approval by DDL shall not be unreasonable.

**Construction Guidelines:**

- (a) materials shall be high quality and permanent;
- (b) no less than 80% of the external cladding on a dwelling shall be constructed of any one or number of:
  - (i) kiln fired bricks or concrete blocks;
  - (ii) stucco textured finished;
  - (iii) stone;

- (iv) timber or solid weatherboard at least 16 mm thick with a maximum finished width not exceeding 180 mm;
  - (v) prefinished metal weatherboard bonded to solid timber (e.g. Lockwood type construction);
  - (vi) tilt slab concrete panel construction;
  - (vii) any other exterior cladding material approved in writing by DDL;
- (c) any dwelling with an exterior finish in the form of flat cladding, concrete block, poured concrete (other than tilt slab construction) or similar shall have the surface textured at the time of construction in such manner as to completely cover the base materials.
- (d) where a dwelling has a basement (including but not limited to a basement garage), exposed subfloors, exposed areas, framing or decks, the same shall be covered in permanent materials in conformity with the main parts of the residence – exemption to this requirement will be considered appropriate where the views and enjoyment of other Servient Tenements will not be adversely affected in the sole discretion of DDL.
- (e) exterior light fixtures shall have covers or reflectors to prevent glare and light pollution affecting other Servient Tenements;
- (f) TV and other antennae, solar panels and clotheslines shall be sited so as not to be visible from other Servient Tenements or the road, so far as is practicable;
- (g) all accessory buildings shall be designed and constructed to a quality similar to the principal dwelling;
- (h) all utilities and services shall be located underground and no above-ground wiring will be permitted.
19. On obtaining the written approval of DDL in respect of the Plans, if the Works are carried out they shall be completed in accordance with the Plans and shall include the construction of a driveway (or a vehicle access in permanent continuous surfacing of concrete, concrete block, brick paving or sealing) all of which shall be completed in a proper and tradesmanlike manner within 18 months of commencement of the Works or driveway/vehicle access (whichever is first commenced). In carrying out and completing the Works and driveway/vehicle access, due allowance must be made for current and future drainage of storm water. No Servient Tenement shall be used or occupied as a residence unless the buildings thereon have been substantially completed in accordance with the covenants herein and the relevant local authority Building Consent.
20. The construction of fences on Servient Tenements shall not be commenced without first having submitted a fencing plan (including specifications) to DDL, and such plan has been approved by DDL in writing. DDL shall not unreasonably withhold or delay such approval provided that the following guidelines are met:
- (a) the fence or fences are consistent with the style, design, quality and appearance of the dwelling on the relevant Servient Tenement and the permitted purposes for which the land is to be used; and

- (b) for all fences on Servient Tenements having a land area less than 900 square metres, and for fences within 30 metres of a road boundary or a right of way boundary on Servient Tenements having a land area of 900 square metres or more such fences must, in addition to complying with clause 16 herein:
- (i) be painted or prefinished (if not brick or dressed timber, if the dressed timber design is approved by DDL); and
  - (ii) not be made of corrugated iron, rough sawn timber, post and wire or second hand materials (other than brick); and
  - (iii) not exceed 1.8 metres in height above the relevant finished ground level of the Servient Tenement; and
  - (iv) in respect of lots 12 – 18 inclusive and lot 32 (as shown on the Scheme Plan), the fence or fences along the boundaries of each lot with are common to the lane (as shown on the Scheme Plan) shall not exceed 1.2 metres in height above the relevant finished ground level of that lot.

provided that DDL may approve a fence or fences not meeting the above guidelines (except for iv) if in the sole discretion of DDL the intent of subclause 7(a) has been met.

- 21. Covenants 16, 17, 18, 19 and 20 above shall not apply after 31 December 2025 and shall not apply before that date in respect of proposed alterations or additions to the interior of any existing Works completed in accordance with covenants 16, 17, 18, 19 and 20 herein, but shall apply mutatis mutandis in respect of any proposed alterations or additions to the exterior of any improvements on or about any Servient Tenement.
- 22. The Grantor will not call on DDL to pay or contribute towards the cost of erection or maintenance of any boundary fence between any Servient Tenement and any adjoining land owned by DDL but this covenant will not enure for the benefit of any subsequent purchaser of that adjoining land.
- 23. Vehicle crossings for Servient Tenements between the curb and footpath and any repair or replacement of damaged footpaths shall be of a material and completed with a surface texture finish consistent with the existing surrounding footpaths.
- 24. No Servient Tenement or improvements thereon shall be used or constructed for trading or commercial purposes or for or by a government agency, community group, charitable organisation, service group, church or organisation of a similar nature.
- 25. No improvements shall be erected or utilised and nor shall any tree or other vegetation be permitted to grow on any Servient Tenement that has an adverse effect on any other Servient Tenement, as determined by DDL in its absolute discretion. This covenant shall expire on 31 December 2025 (but without prejudice to any right or remedy in respect of any prior breach hereof).
- 26. No relocated or transportable building or structure, whether new, used or recycled shall be permitted on any Servient Tenement, provided that builder's sheds or such other buildings that are required during the construction of any dwelling on a Servient Tenement may be located on a Servient Tenement during the course of such construction.
- 27. No lake or water feature existing on a Servient Tenement as at the date that DDL transferred the relevant Servient Tenement to the first transferee from DDL shall be



drained, filled or substantially altered prior to 31 December 2035 without the prior written approval of DDL.

28. All lawns on Servient Tenements shall be laid and landscaped immediately following completion of a dwelling house on the relevant Servient Tenement (taking into account the time of year and weather conditions) and all significant landscaping (including significant earthworks and plantings of trees) must first be approved in writing by DDL, which approval shall not be unreasonably withheld or delayed, but where any such landscaping is not reasonably consistent with the amenity of the Subdivision or in the opinion of DDL would unreasonably interfere with the view and/or amenity of any other Servient Tenement, DDL may withhold its consent in respect of such landscaping.
29. The Grantor shall not bring onto or allow to remain on any of the Land any temporary building, garden shed, caravan, trade vehicle, or other equipment, materials or machinery, unless garaged or screened from the road and all other Servient Tenements so as to preserve the amenity of the Development and also to prevent noise likely to cause offence to the Grantee.
30. No recreational or commercial vehicles or trailers are to be regularly parked on the road or footpath nor on that area between the front boundary of a Servient Tenement and any dwelling thereon.
31. The Grantor shall not carry out any maintenance or repair work on any motor vehicle, boat, vehicle or apparatus on land within the Subdivision owned by the local authority.
32. The Grantor shall not display any advertisement, sign or hoarding of a commercial, political or religious nature on any part of a Servient Tenement other than with the prior written approval of DDL (to be given or withheld by DDL at its absolute discretion) which approval shall in no case enure for more than 2 years from the date of approval.
33. The Grantor shall not allow any animals on a Servient Tenement other than domestic animals which, by way of example only and not by way of limitation, shall not include poultry, goats, sheep, cows, llamas, alpacas, horses, pigs and bees, provided that poultry, sheep, cows, llamas, alpacas and horses and other normal farm animals (excluding pigs) shall be permitted on Servient Tenements having a land area of 1200 square metres or more, subject to:
  - (a) stock proof fences being erected and maintained at all times on such Servient Tenements;
  - (b) such farm animals not becoming a nuisance to any Grantee; and
  - (c) such farm animals not being used for commercial purposes.
34. The Grantor shall keep and maintain all Servient Tenements and relevant road frontages in a neat and tidy condition and prevent the same from becoming unsightly. Such land shall be kept free of weeds and noxious plants and shall be mowed regularly.
35. The Grantor shall ensure that there is no discharge from the Servient Tenement of a soluble nature detrimental to the water quality in the storm water network.
36. The Grantor shall reinstate, replace or be responsible for all costs arising from damage to the landscape, roading, footpaths, kerbs, concrete or other structures in

the Subdivision arising from the Grantor's actions, inactions and use of the Servient Tenement, including where such damage is directly or indirectly due to the actions of or inactions of the Grantor or directly or indirectly due to the actions or inactions of the Grantor's agents or invitees.

37. Subject to clause 12, the Grantor shall not use or permit to be used land adjacent to or abutting a Servient Tenement or footpaths in the Subdivision for access, stockpiling and storage of materials or dumping of rubbish.
38. No Servient Tenement shall be subdivided or subject to a crosslease prior to 31 December 2035 without the prior written approval of DDL

## **FENCING COVENANTS**

39. In respect of Lot 10 on the Scheme Plan, the Registered Proprietor (s) from time to time of the said Lot 10, shall not call on the New Plymouth District Council to pay or contribute towards the cost of erection or maintenance of any boundary fence between the said Lot 10 and Lot 35 on the Scheme Plan (the Urupa site)
40. In respect of Lot 11 on the Scheme Plan, the Registered Proprietor (s) from time to time of the said Lot 11, shall not call on the New Plymouth District Council to pay or contribute towards the cost of erection or maintenance of any boundary fence between the said Lot 11 and Lot 35 on the Scheme Plan (the Urupa Site).
41. In respect of Lot 14 on the Scheme Plan, the Registered Proprietor (s) from time to time of the said Lot 14, shall not call on the Registered Proprietor (s) from time to time of Lot 36 on the Scheme Plan to pay or contribute towards the cost of erection or maintenance of any boundary fence between the said Lot 14 and Lot 36 on the Scheme Plan.
42. In respect of Lot 15 on the Scheme Plan, the Registered Proprietor (s) from time to time of the said Lot 15, shall not call on the Registered Proprietor (s) of Lot 36 on the Scheme Plan from time to time to pay or contribute towards the cost of erection or maintenance of any boundary fence between the said Lot 15 and Lot 36 on the Scheme Plan.
43. In respect of Lot 30 on the Scheme Plan, the Registered Proprietor (s) from time to time of the said Lot 30, shall not call on the New Plymouth District Council or the Registered Proprietors of Lot 36 on the Scheme Plan from time to time to pay or contribute towards the cost of erection or maintenance of any boundary fence between the said Lot 30 and Lot 34 on the Scheme Plan. (Esplanade Reserve).
44. In respect of Lot 31 on the Scheme Plan, the Registered Proprietor (s) from time to time of the said Lot 31, shall not call on the New Plymouth District Council to pay or contribute towards the cost of erection or maintenance of any boundary fence between the said Lot 31 and Lot 35 on the Scheme Plan (the Urupa site).

## **ENFORCEMENT**

45. (a) If the above covenants are not complied with, any Grantee (in this clause referred to as "Complainant") may give written notice to the relevant Grantor ("Recipient") specifying those covenants not complied with ("Breach") and requiring the Recipient to remedy the Breach within no less than 21 days from receipt of the Complainant's notice ("Notice Period"). A copy of such notice shall be contemporaneously served on DDL. If the Recipient does not remedy

the Breach within the Notice Period, the Complainant may exercise all or any of the following remedies, in any order:

- (i) apply to a court for an order requiring the Breach be remedied or for an order of injunction to prevent the Breach being continued or extended.
    - (ii) take all reasonable steps to remedy the Breach.
  - (b) Upon receipt of a copy of a Complainant's notice as aforesaid, DDL may, but shall have no obligation to,
    - (i) apply to a court for an order requiring the Breach be remedied or for an order of injunction to prevent the Breach being continued or extended.
    - (ii) take all reasonable steps to remedy the Breach;
    - (iii) require the Recipient to pay to DDL or to the Complainant (if so directed by DDL) the sum of \$50.00 per day for each day that the Breach subsists following the expiry of the Notice Period, with such money to be apportioned firstly towards DDL's reasonable costs (if any), secondly towards the Complainant's reasonable costs (if any) and thirdly in proportionate shares to any relevant Grantees (including the Complainant) on the basis of any diminution of amenity of the relevant Dominant Lots due to the Breach, or such other reasonable basis.
  - (c) If the Complainant or DDL wishes to take any steps pursuant to subclause (a)(ii) or (b)(ii) above (as applicable), the Recipient shall grant reasonable access on reasonable notice over the Recipient's Servient Tenement for such purpose and irrevocably agrees that any remedial works undertaken thereto will be undertaken as an agent for the Recipient at the Recipient's cost, and that DDL will have no liability in respect of any such remedial works, but the Complainant, if applicable, shall be liable in respect of any unreasonable or defective remedial works that it undertakes.
46. Subject to clause 52 DDL shall have no responsibility or liability whatsoever in respect of any matter recorded in this instrument and the Grantor will at all times indemnify DDL from all proceedings, costs, claims and demands in respect of any non-compliance of the Grantor of any matter recorded in this instrument.
47. The provisions hereof bind an owner of a Servient Tenement for so long as that owner is registered proprietor thereof, but (save in respect of breaches of the provisions hereof by such owner prior to such owner ceasing to be registered proprietor of the relevant Servient Tenement) shall not bind such owner after such owner ceases to be registered proprietor of such Servient Tenement.
48. While DDL remains the registered proprietor of any of the lots, DDL reserves the right to itself (with the intent that this right does not enure to its successors in title) to waive or modify any of the above restrictive covenants but will only do so if in the opinion of DDL such action does not impinge on the integrity of the subdivision in its entirety.
49. Where DDL has been dissolved or wound up or otherwise passed out of existence, "approval by DDL" shall mean approval by any party appointed and/or nominated by DDL for this purpose.

50. This instrument will expire on 1 January 2055 and shall thereafter have no effect.
51. The covenants created herein shall cease to have any effect on any of the Servient Tenements or Dominant Tenements, or part/s thereof, that will vest in a territorial authority or the Crown by virtue of statute, transfer or otherwise as road or reserve in any subsequent subdivision of the Servient Tenements or Dominant Tenements of which the subdivision plan has gained the full approval of the territorial authority or body having jurisdiction. The person/s or corporation/s benefiting from the land covenants herein shall not be entitled to any compensation in respect of the exercise of this clause.
52. Covenant 4 herein shall cease to apply to any of the Servient Tenements or part/s thereof, which are further subdivided by DDL pursuant to a subdivision plan which has gained the full approval of the territorial authority or body having jurisdiction, and the person/s or corporation/s benefiting from the land covenants herein shall not be entitled to any compensation in respect of the exercise of this clause **PROVIDED HOWEVER** DDL covenants with the Grantee that, prior to DDL ceasing to be registered proprietor thereof, DDL will register covenants for the benefit inter alia of the registered proprietors for the time being of those Dominant Tenements which are not vested in any territorial authority or the Crown as road or reserve (such registered proprietors being persons intended to be benefitted, as contemplated by section 4 of the Contracts (Privity) Act 1982) materially the same as the covenants in this Instrument against each lot of any such subdivision (not being a lot which vests in a territorial authority or the Crown as road or a reserve), any such covenants to cease to apply to any such lot or part thereof which is further subdivided by DDL in the same manner as aforesaid but subject to the same provisos as in this covenant **AND PROVIDED FURTHER** no person or entity intended to be benefitted by this covenant shall lodge any caveat against any of the Land and shall be wholly liable for all loss costs claims or expenses suffered by DDL arising directly or indirectly from any breach of the prohibition in this proviso..

#### **ANNEXURE SCHEDULE 2 - GRANTEE**

1. The registered proprietors of the Dominant Tenements from time to time; and
2. DDL; and
3. If DDL is struck off the Companies Office register, any party appointed by DDL prior to being struck off, or if no such party is appointed then the directors of that company immediately before such striking off.

#### **ANNEXURE SCHEDULE 3 – SERVIENT TENEMENTS**

Lots 9,10,11,12,13,14,15,16,17,18,19,20,21,30,31 and 32 BUT EXCLUDING each of those Computer Registers of which DDL is registered proprietor, for so long as DDL is the registered proprietor of the relevant Computer Register.

#### **ANNEXURE SCHEDULE 4 – DOMINANT TENEMENTS**

Lots 9,10,11,12,13,14,15,16,17,18,19,20,21,30,31 and 32.