

## COVENANTS – WHAI AWA RESIDENTIAL DEVELOPMENT

### Background

- A. The Developer is undertaking a residential development of the Land, together with the Servient Tenement and the Dominant Tenement, which development is to be known as Whai Awa. Such development is to be undertaken in stages more particularly being Stage 1, Stage 2 and Stage 3 as defined herein.
- B. The Developer intends that the Land which includes the Servient Tenement and the Dominant Tenement is to be subject to a general guideline applicable to and for the benefit of the Land and each of the Servient Tenement and the Dominant Tenement to ensure that Whai Awa is developed and administered in a coordinated manner to reinforce the unique environment, character, value and amenity values of Whai Awa. ("the Scheme").
- C. The Developer intends that this Instrument shall be and remain registered against the Certificates of Title/Identifiers to the Land and each of the Servient Tenement and the Dominant Tenement to give effect to the Guideline so that:
  - a. Registered Proprietors for the time being of the Servient Tenement shall be bound by the provisions of this Instrument;
  - b. Registered Proprietors for the time being of any of the Dominant Tenements may enforce the observance of the provisions of this Instrument by the Registered Proprietors for the time being of any of the Servient Tenement in equity or otherwise; and
  - c. the obligations and covenants of the Grantor under this Instrument are for the benefit of the Grantee and also for the benefit (severally) of the Developer and Council (in accordance with section 12 of the Contract and Commercial Law Act 2017.

### 1. Interpretation

1.1. In this Instrument unless the context otherwise requires:

**"Address for Service"** means Pro Land Matters Company Limited c/- Dream Planning Ltd, 4 Wood Street, Mangawhai – PO Box 123, Mangawhai, 0505.

**"Allotment"** means:

- a. the Servient Tenement; and
- b. any part of the Servient Tenement for which a separate Certificate of Title/Identifier has issued as a result of the subdivision of the Servient Tenement or otherwise.

**"Building"** means any dwelling (including carports, garage), swimming pools and any structure where such structure exceeds ten square metres in area and one metre in height, erected on the Servient Tenement.

**"Building and Landscape Works"** means any works to be carried out pursuant to the Plans.

**"Defaulting Member"** means a Member in breach of the Covenants.

**"Design Approval Fee"** means the fee payable to the Developer or its appointed agent to approve the plans pursuant to clause 4 of this Instrument, the initial fee being the sum of \$500.00 plus GST or such other fee determined as reasonable from time to time by the Developer.

**"Design Application"** means an application for Developer approval pursuant to clause 4.1.2 of this Instrument.

**"Design Guidelines"** means the Whai Awa Building & Landscaping Design Guidelines as set out in annexure schedule (ADD NUMBER)

**"Design Professional"** means a suitably qualified home designer, architect, draughtsman, landscape architect or such other suitably qualified professional approved by the Developer at its sole discretion in all respects.

**"Council"** means Kaipara District Council or its successor.

**"Covenants"** means the covenants set out in Clauses 3, 4 and 6 of this Instrument.

**"Developer"** means Pro Land Matters Company Limited (Company Number 5740731) together with any agent appointed by it in writing from time to time.

**"Dominant Tenement"** means:

- a. a lot within the Land for which a separate Certificate of Title/Identifier has issued; and
- b. in relation to any Covenant means the land described in Annexure Schedule (ADD NUMBER) as the dominant tenement which has the benefit of that Covenant

**"Front Yard"** means the 5 metre setback along any roadside boundary of an Allotment.

**"Front Yard Landscaping Plan"** means the Registered Proprietor's landscaping plan for the Front Yard of the particular Allotment prepared by a Design Professional.

**"Grantee"** means the Dominant Tenement shown in Annexure Schedule (ADD NUMBER) as being owned initially by Pro Land Matters Company Limited as the Developer and then its successors in title who shall be the registered proprietors of the Dominant Tenement from time to time.

**"Grantor"** means the Servient Tenement shown in Annexure Schedule (ADD NUMBER) as being owned initially by Pro Land Matters Company Limited as the Developer and then its successors in title who are the Registered Proprietors from time to time of the Servient Tenement.

**"Instrument"** means the Covenants including the Annexure Schedules contained herein.

“**Land**” means the land being Lot 2 Deposited Plan 36582 more particularly comprised and described in Certificate of Title/Identifier NA950/113.

“**Member**” means a member of Whai Awa Residents Society.

“**Plans**” means a Registered Proprietor’s Building and Front Yard Landscape plans prepared by a Design Professional in accordance with the Design Guidelines.

“**Registered Proprietor**” means the registered proprietor for the time being of any Allotment.

“**Resource Consent**” means the Consent Order dated 19 December 2017 having Environment Court reference number ENV-2017-AKL-000116.

“**Scheme**” means the scheme outlined in Clause B of the Background.

“**Servient Tenement**” means:

- a. any part of the Land for which a separate Certificate of Title/Identifier has issued; and
- b. in relation to any Covenant means the land described in Annexure Schedule (ADD NUMBER) as the servient tenements which are subject to that Covenant.

“**Stage 1**” means lots 1 – 14, 39, 40, 100 – in part, 200 and 300.

“**Stage 2**” means lots 15 – 19, 33 – 38, and 100 – in part.

“**Stage 3**” means lots 20 – 32, and 100 – in part.

“**Whai Awa**” means the residential development undertaken by the Developer on the Land.

“**Whai Awa Residents Society**” means all the Registered Proprietors for the time being of any Allotment in Whai Awa who in default of the Registered Proprietors determining otherwise, shall act as an unincorporated society for the purposes of these Covenants.

“**Whai Awa Subdivision**” means the subdivision to be completed pursuant to Consent Order ENV – 2017 – AKL – 000116 together with any approved variation thereof.

## 2. General Covenants

### 21. Covenant

The Grantor covenants and agrees with the intention to bind itself and future proprietors of the Servient Tenements for the benefit of the Grantee and future proprietors of the Dominant Tenements that the Grantor will at all times observe and perform the restrictions contained in the Covenants to the intent that each of the restrictions will be forever appurtenant to the Dominant Tenements.

### 22 Breach of Covenants

The Grantor and the Grantee agree that if the Grantor or Grantee breaches or fails

to observe part of any of the Covenants, and without prejudice to any other liability which the Grantor or Grantee may have to other parties and any person or persons having the benefit of the Covenants, the Grantor or Grantee, upon written demand being made by the other parties or any of the registered proprietors of the Dominant Tenements and the Servient Tenements, will:

- 22.1. remove or cause to be removed from a Servient Tenement any fence, building or structure erected or placed on a Servient Tenement in breach or non-observance of the Covenants;
- 22.2. replace any building materials used in breach or non-observance of the Covenants;
- 22.3. remedy any other breach of the Covenants; and
- 22.4. pay to the person making such demand as liquidated damages the sum of \$350.00 (three hundred and fifty dollars) per day for every day that such breach or non-observance of non-compliance continues for ten (10) days after the date upon which written demand to remedy such breach, non-observance or non-compliance has been made and shall pay the costs of any proceedings necessary to enforce the Covenants. Each Registered Proprietor defaulting in payment of any sum due in respect of these Covenants agrees to grant in favour of all other Registered Proprietors a charge as security for payment of the sum so demanded, such charge to be over the defaulting Registered Proprietor's Allotment.

### **23. Limited Liability**

The Grantor and its successors in title will only be liable for breaches of the Covenants that occur while they are registered as proprietor of the Dominant Tenement and Servient Tenement.

### **24. Resolution of Disputes**

- 24.1. **Disputes:** If any dispute, difference or question arises between the parties about:
- 24.2. **Interpretation:** the interpretation of this instrument;
- 24.3. **Matters Arising:** anything contained in or arising out of this Instrument;
- 24.4. **Rights, Liabilities or Duties:** the rights, liabilities or duties of the Grantor or the Grantee; or
- 24.5. **Other Matters:** anything else relating to the relationship of the Grantor and the Grantee under this Instrument (including claims in tort as well as in contract);

the parties may refer that matter to informal mediation, if all parties agree, having

regard to the nature of the dispute or difference between them and the potential delays and costs which might arise if that matter is referred to arbitration.

25. **Appointment of Mediator:** The parties must try to agree on the mediator, who must be a senior solicitor or barrister. If they cannot agree, the President of the Auckland District Law Society (Incorporated) or his or her nominee will nominate the mediator on any party's application. The mediator's decision will be final and binding on all parties.
26. **Arbitration:** If the parties do not agree to refer the dispute, difference or question to mediation under clause 2.5 within twenty one days of that dispute, the difference or question arising, then it will be referred to the arbitration of a single arbitrator under the Arbitration Act 1996.
27. **Appointment of Arbitrator:** The parties must try to agree on the arbitrator. If the parties cannot agree, the President of the Auckland District Law Society (Incorporated) (or his or her nominee) will appoint the arbitrator on either party's application.
28. **Action at Law:** The parties must go to arbitration under this clause before they can begin any action at law (other than an application for injunctive relief).

## 29. Notices

- 29.1. **Service of Notices:** Any notice of document required or authorised to be given under this instrument may be delivered or sent as follows:
- 29.2. **Property Law Act:** in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
- 29.3. **Registered Post:** by registered post addressed to the last known postal address of the party intended to be served.
- 29.4. **Time of Service:** Any notice or other document will be treated as given or served and received by the other party:
- 29.5. **Delivery:** when delivered by hand to that other party; or
- 29.6. **Registered Post:** three days after being posted by registered post with postage prepaid to the last known postal address of the party intended to be served.
- 29.7. **Email:** by email on the basis that delivery is only effected when receipt of the notice is acknowledged by return email.
- 29.8. **Signature of Notices:** Any notice or document to be served or given may be signed by any attorney, officer, employee or solicitor for the party serving or giving the notice or by any other person authorised by that party.

- 2.9.9. **Addresses for Notices:** For the purposes of this clause, and subject to subsequent amendment by any party by written notice to the other parties, the address for service of notices of each party is the residential address of each of the respective Dominant Tenements.

### 3. Covenants relating to the use of the Servient Tenement

- 3.1. The Grantor covenants and agrees to:
- 3.1.1. Only use or permit the Servient Tenement to be used for residential purposes and not for a Boarding House or any trading, industrial or commercial purposes, but any use of a residential dwelling for a home enterprise use (other than a Boarding House), that is permitted by Council's district plan will not be a breach of the provisions of this covenant;
  - 3.1.2. Not permit any vehicle, equipment, machinery, rubbish or waste material (organic or inorganic) that is unsightly, or likely to become a nuisance to the owners of any Dominant Tenement, to be or remain on the Servient Tenement for more than seven days;
  - 3.1.3. Keep the Servient Tenement, the landscaping on the Servient Tenement in a neat, tidy and well maintained condition free of weeds and rubbish and immediately replace any dead, diseased or damaged landscaping with trees or plants of a similar species;
  - 3.1.4. Not permit the growth of noxious weeds or the excessive growth of grass to the extent that such growth becomes unsightly.
  - 3.1.5. Not erect or place on the Servient Tenement any caravan, mobile home, hut or shed for the purpose of temporary accommodation;
  - 3.1.6. Not permit the parking or placement on the Servient Tenement of any bus, caravan trailer, boat, jetski or similar that is parked on anything other than a hardstand area;
  - 3.1.7. Not permit any buildings in the course of construction to be left without substantial work being carried out on such Buildings for a period of two (2) or more months;
  - 3.1.8. Not permit the removal of soil from the Servient Tenement except as shall be necessary for the construction of the dwelling and ancillary buildings;
  - 3.1.9. Not permit any rubbish or recycling bins to be visible from any road, access lot or reserve;
  - 3.1.10. Use the Servient Tenement in accordance with the Design Guidelines;
  - 3.1.11. Ensure that upon completion of any building or landscaping on the Servient Tenement and prior to the use of any building as a residence or

other permitted activity that any concrete on the footpath, curb, entranceway or driveway is reinstated to the original specifications and design.

- 3.1.12. Not oppose, frustrate, object to, nor take any action or encourage others to oppose, frustrate, object or take any action that might, and anyway, prevent or hinder the Developer and/or the Council from progressing or completing the Whai Awa Subdivision. This covenant extends to and includes (but is not limited to) development planning, zoning 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 thereafter owned by the Developer.
- 3.1.13. Comply with the Resource Consent for the development of the Land.

#### **4. Approval of Building & Landscaping Design**

4.1. The Grantor covenants and agrees:

- 4.1.1. Not to erect on the Servient Tenement any dwelling, building or front yard landscaping:
  - 4.1.1.1. That does not comply with the Design Guidelines; and
  - 4.1.1.2. that has not been approved by the Developer in accordance with the Design Guidelines and as set out at clause 4.1.2 of this Instrument.
- 4.1.2. Prior to submitting any application for resource or building consent to Council, Registered Proprietors shall submit their Plans to the Developer for the Developer's consideration and approval. Applications to the Developer for approval of any Plans must be:
  - 4.1.2.1. submitted by the Registered Proprietor or their Design Professional;
  - 4.1.2.2. submitted in writing to the Address For Service;
  - 4.1.2.3. accompanied by (A3 format);
    - A. Floorplans (including site ratio and site coverage ratio);
    - B. Site plans showing location of boundaries, setbacks, building access, car parking;
    - C. The drainage plans;
    - D. The Front Yard Landscaping Plan;

- E. Any building plans (including elevations and cross sections) and specifications;
  - F. The descriptions and samples of exterior materials, colours and external light fittings;
  - G. A construction programme with clearly stated start/completion dates (subject to the application for the grant of resource and/or building consent);
  - H. A statement of professional opinion from the Registered Proprietors Design Professional confirming that in their professional opinion the Plans comply with the Design Guidelines; and
  - I. A cheque or payment confirmation addressed to the Developer in payment of the Design Approval Fee. (Applications will not be processed until the Design Approval Fee is paid).
- 4.1.3. The Developer will give the Registered Proprietor or their Design Professional written notice approving the Design Application (conditionally or unconditionally) or rejecting the Design Application within 15 working days of receipt of the Design Application.
- 4.1.4. In the event the Developer approves a Design Application conditionally, the conditions may include, but are not limited to:
- 4.1.4.1. Submission of any additional plans and specifications or such other information as is required by the Developer;
  - 4.1.4.2. Changes being made to any of the items or information included in the Design Application; and
  - 4.1.4.3. Commencement of the Building and Landscaping Works within a reasonable time determined by the Developer.
- 4.1.5. The Developer's approval expires when any relevant Council approvals expire, or, if there are no other expiry dates 2 years from the date of the Developer's written approval of the Design Application.
- 4.1.6. In the event that a Registered Proprietor has:
- 4.1.6.1. Obtained the Developer's written approval of Plans; and
  - 4.1.6.2. obtained all necessary consents from the Council; and
  - 4.1.6.3. the Plans have changed since the Developer's written approval was obtained because of the requirements of the



Council,

The Registered Proprietor must resubmit to the Developer copies of all necessary plans and correspondence that show the extent of the changes.

- 4.1.7. If the change is not material, information is submitted to the Developer for information purposes only.
- 4.1.8. If the change is a material change, the Registered Proprietor must undergo the Design Application process set out at clause 4.1.2 of this Instrument.
- 4.1.9. In the event of the Developer ceasing to be a Registered Proprietor the role of the Developer under this clause 4 shall be undertaken :
  - 4.1.9.1. in the first instance by a Design Professional to be appointed by the Developer contemporaneously with the Developer ceasing to be a Registered Proprietor. The Developer shall serve notice pursuant to clause 2.9 of this Instrument on all Registered Proprietors notifying the appointment of a Design Professional.
  - 4.1.9.2. in the second instance and only due to the failure of clause 4.1.9.1 of this Instrument by a Design Professional nominated by Council from time to time by the request of a Registered Proprietor.

## **5. Breach of Covenants - Whai Awa Residents Society**

- 5.1. As an additional remedy and without limiting the remedies available to an individual Registered Proprietor pursuant to Clause 2.2 of this Instrument, in the event of any breach of the Covenants contained in this Instrument which adversely affects more than one Registered Proprietor or which a Registered Proprietor considers may set an adverse precedent within Whai Awa, a Registered Proprietor may pursuant to clause 5.2 of this Instrument serve notice requesting a meeting of the Whai Awa Residents Society.
- 5.2. A meeting of the Whai Awa Residents Society must be called for by written notice. Such written notice to be given to the Members pursuant to this clause shall:
  - 5.2.1. Be signed by a minimum of 10% of the Members;
  - 5.2.2. Set out the alleged breach in sufficient detail to the extent that the Members are able to clearly understand the breach to be considered and voted on; and
  - 5.2.3. Specify a meeting date no less than 30 days following the date of the notice.

53. Any such notice is to be given pursuant to clause 2.9 of this Instrument.
54. All Members may attend and vote at meetings;
55. No meeting may be held unless at least 75% of eligible Members or a Member's authorised proxy pursuant to clause 5.8 of this Instrument attend. (This will constitute a quorum.)
56. All meetings shall be chaired by the Developer provided that the Developer is at the time of such meeting a Registered Proprietor. If the Developer is no longer a Registered Proprietor, the Whai Awa Residents Society shall as the first item of business elect another Member to Chair that meeting.
57. On any given motion at a meeting, the Chairperson shall in good faith determine whether to vote by:
  - 57.1. Show of hands; or
  - 57.2. Secret ballot.

However, if any Member demands a secret ballot before a vote by show of hands has begun, voting must be by secret ballot. If a secret ballot is held, the Chairperson will have a casting, that is, second vote.

58. A Member may exercise the right to vote either by being present or by proxy. The Proxy for a Member is entitled to attend, to be heard and vote at a meeting of the Whai Awa Residents Society as if the proxy were the Member. A proxy must be a Member and must be appointed by notice in writing signed by the Member specifying the appointment for that particular meeting. No proxy shall be effective in relation to a meeting unless a signed copy of the notice of appointment is delivered to the Chairperson at the commencement of a meeting.
59. The business of a meeting shall be:
  - 59.1. Election of a Chairperson in absence of the Developer;
  - 59.2. Motion or motions to be considered; and
  - 59.3. Voting on motion to be considered.
- 5.10. Dissolution of Meetings: If within half an hour after the time appointed for a meeting a quorum is not present, the meeting shall be dissolved.
- 5.11. The Chairperson or his nominee may adjourn the meeting if necessary.
- 5.12. Resolution to Enforce: a motion proposing the enforcement of the Covenants by Whai Awa Residents Society must be passed by a majority of 75% of the all the Members of Whai Awa Residents Society voting in favour of the motion. In the event that such resolution is passed at a meeting resolving that the Whai Awa Residents Society will act in the enforcement of the Covenants on behalf of the Members it is agreed that;

- 5.12.1. A notice shall be served upon the Defaulting Member requiring that the Defaulting Member remedy the non-compliance within a reasonable period set out in the notice.
- 5.12.2. In the event the Defaulting Member does not remedy the non-compliance in the period set out in the notice, the Whai Awa Residents Society may take such further action or proceedings as necessary to enforce compliance in accordance with the Covenants;
- 5.13. The Members (excluding the Defaulting Member) are to share equally in the cost of any enforcement action or proceeding against the Defaulting Member, notwithstanding that the Whai Awa Residents Society may seek to recover costs pursuant to Clause 2.2 of this Instrument.
- 5.14. Failed Resolution to enforce: in the event the motion proposing the enforcement of Covenants does not pass by 75% majority vote, then an individual Registered Proprietor or minority group of Registered Proprietors shall be free to enforce the Covenants by taking an action or proceeding against an in breach Registered Proprietor in their own right pursuant to clause 2.2 of this Instrument.
- 5.15. Notwithstanding the provisions of this section five of these Covenants the Registered Proprietors may determine from time to time in the manner of making decisions and taking action, whether direct or indirect, to ensure compliance with these Covenants.
- 5.16. Decisions of the Members shall be complied with by all Members.

## **6. Land to vest in Council**

- 6.1. The covenants in this Instrument will cease to apply to any land that is intended to vest in the Crown or Council 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.

## **7. Covenants not to be varied**

- 7.1. Except with the written consent of the Council the Registered Proprietors shall not revoke or amend all or any of the provisions of these Covenants.