



Instrument No. 8968743.14
 Status Registered
 Date & Time Lodged 01 Feb 2012 08:40
 Lodged By Flawn, Corinna May
 Instrument Type Easement Instrument



Affected Computer Registers Land District

567741	Otago
567742	Otago
567743	Otago
567744	Otago
567745	Otago
567746	Otago
567747	Otago
567748	Otago
567752	Otago

Annexure Schedule: Contains 21 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 5871423.2 has consented to this transaction and I hold that consent

I certify that the Mortgagee under Mortgage 7871182.3 has consented to this transaction and I hold that consent

I certify that the Mortgagee under Mortgage 7950791.3 has consented to this transaction and I hold that consent

Signature

Signed by Gareth Dean Foley as Grantor Representative on 30/01/2012 03:23 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 Gareth Dean Foley as Grantee Representative on 30/01/2012 03:24 PM

*** End of Report ***

ANNEXURE SCHEDULE - CONSENT FORM¹

Land Transfer Act 1952 section 238(2)

Person giving consent
Surname must be underlined

Capacity and Interest of Person giving consent
(eg. Mortgagee under Mortgage no.)

<u>HEARTLAND BUILDING SOCIETY</u>	Mortgagee under Mortgage No.5871423.2
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Consent


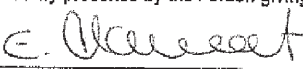
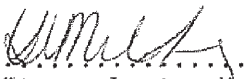
Delete words in {} if inconsistent with the consent
State full details of the matter for which consent is required

[Without prejudice to the rights and powers existing under the interest of the person giving consent,]
the Person giving consent hereby consents to:

The depositing of Digital Title Plan LT443395, including all easements and covenants specified or required in connection herewith, and the vesting of Lot 40 in the Queenstown Lakes District Council for Local Purpose Reserve and Lot 100 in the Queenstown Lakes District Council for the purpose of roading, but without prejudice to the rights of the mortgagee under mortgage 5871423.2.

Dated this 2nd day of November 2011

Attestation

 Matthew Bryan Savage Authorised Signatory	Signed in my presence by the Person giving consent  _____ Signature of Witness
	Witness to complete in BLOCK letters (unless legibly printed): Witness name Occupation Address
 Kirsty Louise McClung Authorised Signatory	Elisabeth Hanelt Christchurch
Signature [Common seal] of Person giving consent	

¹ An Annexure Schedule in this form may be attached to the relevant instrument, where consent is required to enable registration under the Land Transfer Act 1952, or other enactments, under which no form is prescribed.

ANNEXURE SCHEDULE - CONSENT FORM¹

Land Transfer Act 1952 section 238(2)

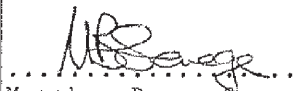
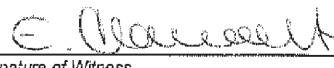

Person giving consent <i>Surname must be underlined</i>	Capacity and Interest of Person giving consent <i>(eg. Mortgagee under Mortgage no.)</i>
<u>HEARTLAND BUILDING SOCIETY</u>	Mortgagee under Mortgage No.7871182.3

Consent
*Delete words in [] if inconsistent with the consent
State full details of the matter for which consent is required*

[Without prejudice to the rights and powers existing under the interest of the person giving consent,]
the Person giving consent hereby consents to:

The depositing of Digital Title Plan LT443395, including all easements and covenants specified or required in connection herewith, and the vesting of Lot 40 in the Queenstown Lakes District Council for Local Purpose Reserve and Lot 100 in the Queenstown Lakes District Council for the purpose of roading, but without prejudice to the rights of the mortgagee under mortgage 7871182.3.

Dated this 2nd day of November 2011

Attestation	
 Matthew Bryan Savage Authorised Signatory	Signed in my presence by the Person giving consent  _____ Signature of Witness Witness to complete in BLOCK letters (unless legibly printed): Witness name Elisabeth Haneit Occupation Christchurch Address
 Kirsty Louise McClung Authorised Signatory	
Signature [Common seal] of Person giving consent	

¹ An Annexure Schedule in this form may be attached to the relevant instrument, where consent is required to enable registration under the Land Transfer Act 1952, or other enactments, under which no form is prescribed.

ANNEXURE SCHEDULE - CONSENT FORM¹

Land Transfer Act 1952 section 238(2)

Person giving consent <i>Surname must be underlined</i>	Capacity and Interest of Person giving consent <i>(eg. Mortgagee under Mortgage no.)</i>
<u>HEARTLAND BUILDING SOCIETY</u>	Mortgagee under Mortgage No.7950791.3

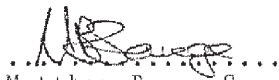

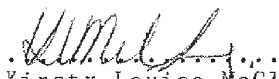
Consent
Delete words in [] if inconsistent with the consent
State full details of the matter for which consent is required

[Without prejudice to the rights and powers existing under the interest of the person giving consent,]
the Person giving consent hereby consents to:

The depositing of Digital Title Plan LT443395, including all easements and covenants specified or required in connection herewith, and the vesting of Lot 40 in the Queenstown Lakes District Council for Local Purpose Reserve and Lot 100 in the Queenstown Lakes District Council for the purpose of roading, but without prejudice to the rights of the mortgagee under mortgage 7950791.3.

Dated this 2nd day of November 2011

Attestation

 Matthew Bryan Savage Authorised Signatory	Signed in my presence by the Person giving consent  Signature of Witness Witness to complete in BLOCK letters (unless legibly printed): Witness name Elisabeth Hanelt Occupation Christchurch Address
 Kirsty Louise McClung Authorised Signatory	
Signature [Common seal] of Person giving consent	

¹ An Annexure Schedule in this form may be attached to the relevant instrument, where consent is required to enable registration under the Land Transfer Act 1952, or other enactments, under which no form is prescribed.

Form B

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

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

Grantor

Crescent Investments Limited

Grantee

Crescent Investments 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 Covenant	Applies to all of the servient tenement	Lot 1 DP 443395 CT 567741	Lot 1 DP 443395 CT 567741
		Lot 2 DP 443395 CT 567742	Lot 2 DP 443395 CT 567742
		Lot 3 DP 443395 CT 567752	Lot 3 DP 443395 CT 567752
		Lot 4 DP 443395 CT 567743	Lot 4 DP 443395 CT 567743
		Lot 5 DP 443395 CT 567752	Lot 5 DP 443395 CT 567752
		Lot 6 DP 443395 CT 567752	Lot 6 DP 443395 CT 567752

Form B - continued

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 Covenant	Applies to all servient tenement	Lot 7 DP 443395 CT 567752	Lot 7 DP 443395 CT 567752
		Lot 8 DP 443395 CT 567752	Lot 8 DP 443395 CT 567752
		Lot 9 DP 443395 CT 567744	Lot 9 DP 443395 CT 567744
		Lot 10 DP 443395 CT 567752	Lot 10 DP 443395 CT 567752
		Lot 11 DP 443395 CT 567752	Lot 11 DP 443395 CT 567752
		Lot 12 DP 443395 CT 567752	Lot 12 DP 443395 CT 567752
		Lot 13 DP 443395 CT 567745	Lot 13 DP 443395 CT 567745
		Lot 14 DP 443395 CT 567752	Lot 14 DP 443395 CT 567752
		Lot 15 DP 443395 CT 567752	Lot 15 DP 443395 CT 567752
		Lot 18 DP 443395 CT 567752	Lot 18 DP 443395 CT 567752
		Lot 19 DP 443395 CT 567752	Lot 19 DP 443395 CT 567752
		Lot 20 DP 443395 CT 567746	Lot 20 DP 443395 CT 567746
		Lot 21 DP 443395 CT 567747	Lot 21 DP 443395 CT 567747
Lot 22 DP 443395 CT 567748	Lot 22 DP 443395 CT 567748		
Lot 38 DP 443395 CT 567752	Lot 38 DP 443395 CT 567752		

Form B - continued

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~~ ~~negated~~ ~~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 _____]

Annexure Schedule

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Continue in additional Annexure Schedule, if required

Background

The Grantor is developing the land comprising the Servient Tenement and the Dominant Tenement as part of Kirimoko Park.

The Grantor and the Society intend that the Servient Tenement be subject to a general scheme applicable to and for the benefit of the land in Kirimoko Park to ensure that Kirimoko Park is developed and administered in a co-ordinated and harmonious manner and to conserve and enhance the character, value and amenity values of Kirimoko Park ("the Scheme").

The Society has been established to provide for and administer the Scheme for the benefit of Kirimoko Park as implemented through the Society's Rules.

The Grantor and the Society intend that this Instrument shall be and remain registered against the titles to the land in Kirimoko Park and to give effect to the Scheme so that owners or occupiers for the time being of the Servient Tenement shall be bound by the provisions of this Instrument and that owners and occupiers for the time being of any of the Dominant Tenement can enforce the observance of the provisions of this Instrument by the owners or occupiers for the time being of any of the Servient Tenement in equity or otherwise.

The obligations and covenants of the Grantor under this Instrument are for the benefit of the Grantee and also for the benefit of the Society (in accordance with the Contracts Privity Act 1982).

1. Interpretation

1.1. In this Instrument unless the context otherwise requires:

- "Ancillary structures" means sheds, decks, spas, swimming pools, carports, pergolas and suchlike structures (but excluding detached garages and sleepouts) which shall be attached to any dwelling erected on the servient tenement and which are of a height not exceeding 3.5 metres above Ground Level nor exceeding 2.5 metres above Ground Level within 1m of any internal boundary.
- "Building" shall have the same meaning as in Building Act 2004, but shall not include:
 - Fences or walls of 1.2 metres in Height or less above Ground Level;
 - Structures less than 5m² in area and less than 2m in Height above Ground Level.
 - Radio and television aerials (excluding dish antennae for receiving satellite television which are greater than 1.2metres in diameter), less than 2metres in Height above Ground Level.
 - Masts and Poles less than 2metres in Height above Ground Level.

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- "Buildable Area" means the maximum area within a building platform identified on the Plan of Subdivision that can be covered by a Building. For avoidance of doubt this does not include Ancillary Structures erected in accordance with clause 3.1 of this Instrument.
- "Council" means the Queenstown Lakes District Council or its successor.
- "Covenants" means the covenants set out in this Instrument,
- "Ground Level" means the surface of the ground prior to any earthworks on the site, except that where the surface of the ground has been altered through earthworks carried out as part of a subdivision under the Resource Management Act 1991 or Local Government Act 1974 "ground level" means the finished surface of the ground following the completion of works associated with the most recently completed subdivision.
 - "completed subdivision" means a subdivision in respect of which a certificate pursuant to section 224(c) of the Resource Management Act 1991 or a completion certificate under the Local Government Act 1974 has been issued.
 - "earthworks carried out as part of the subdivision" does not include earthworks that are authorised under any land use consent for earthworks, separate from earthworks approved as part of a subdivision consent.
- "Height" means the vertical distance between Ground Level at any point and the highest part of the building immediately above that point. For the purposes of calculating height, account shall not be taken of:
 - (a) aerals and/or antennas, mounting fixtures, mast caps, lightning rods or similar appendages for the purpose of telecommunications but not including dish antennae which are attached to a mast or Building, provided that the maximum Height for any Building is not exceeded by more than 2.5metres; and
 - (b) Chimneys or finials (not exceeding 1.1 metre in any direction (provided that the maximum Height for any Building is not exceeded by more than 1.5metre.
- "Kirimoko Design Code" means the Kirimoko Design Code established and adopted by the Society. The Kirimoko Design Code incorporates The Low Impact Design Stormwater System Maintenance Manual.
- "Kirimoko Park" means the proposed subdivision of the Land
- "Land" means that formerly contained in Lot 1 Deposited Plan 347876 held in computer freehold register 196498, Lot 2 Deposited Plan 301928 computer freehold register 7786 and Lot 12 Deposited Plan 300734 computer freehold register 3657.

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- "Member" means a member of the Society and includes Commercial and Residential Members as defined in the Society's Rules.
- "Plan of Subdivision" means the plan intended to be deposited under no. 443395 for part of the land known as Kirimoko Park.
- "Residential Lots" means certain lots within Kirimoko Park shown on a plan intended to be deposited under no.443395 being lots numbered 1 to 15 and 18-22 inclusive.
- "Society" means The Kirimoko Park Residents' Association Incorporated.
- "Society's Rules" mean the rules of the Society.
- "Subdivision" means the meaning given to it under the Resource Management Act 1991

2. **Building platforms and Maximum Buildable Area**

2.1. The Grantor shall not erect on the servient tenement any Building that is not sited entirely within the building platform shown on the Plan of Subdivision except:

- (a) Minor encroachments beyond the building platform which comply with the following:
- (i) The footprint of the Building extends no more than 1m outside of the building platform as shown on the Plan of Subdivision; and
 - (ii) The footprint encroachment does not exceed more than 10% of the building platform area identified for the Residential Lot on the Plan of Subdivision; and
 - (iii) The encroachment is offset elsewhere in the Building design so the Buildable Area for the Residential Lot is not increased; and
 - (iv) Eaves, porches or soffits extend no more than 1 metre outside of the Building Platform shown on the plan of subdivision except where they are attached to a footprint encroachment referred to in (i) above in which case eaves, porches or soffits may extend a maximum of 1.6 metres outside of the Building Platform; and
 - (v) Chimneys extend no more than 600 metres beyond the footprint of any Building for a length of no more than 1.2 metres parallel to the elevation; and
 - (vi) Prior written approval is obtained from all of the adjacent owners of Residential Lots and the Society.

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For the avoidance of doubt, the footprint of any Building shall be the area defined by the external walls of the Building excluding eaves or overhanging parts of the Building.

(b) Ancillary Buildings erected in accordance with clause 3 of this Instrument.

APPLIES to all Residential Lots.

2.2. The Grantor shall ensure that any Building erected on the building platform within the servient tenement complies with the controls specified in Columns 1 and 2 below. The location of each area specified in Columns 1 and 2 shall be in accordance with the building platform identified on the Plan of Subdivision. Notwithstanding the maximum areas specified in Columns 1 and 2 below, the total footprint of any Building erected on the servient tenement shall not exceed the maximum Buildable Area specified below in Column 3:

Lot number	Column 1 Building Platform area within which single storey may be erected (m ²) (letter represents platform marked on DP443395)	Column 2 Building Platform area within which double storey may be erected (m ²)	Column 3 Maximum Buildable Area (m ²)
1	-	190(A)	160
2	96(C)	130(B)	170
3	143(E,F)	785(D)	928
4	46(H,I)	148(G)	190
5	27(J)	149(K)	176
6	27(M)	159(L)	185
7	21(O)	147(N)	168
8	23(Q)	185(P)	208
9	43(R)	144(S)	187
10	52(T)	205(U)	257
11	103(W)	75(X)	178
12	117(Z)	134(Y)	220
13	-	231(AB)	200
14	-	208(AD)	200
15	68(AH)	208(AF)	220
18	83(AK)	142(AI)	190
19	111(AN)	80(AM)	191
20	-	190(AQ)	190
21	-	173(AR)	173
22	-	241(AW)	200

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3. Ancillary Structures

- 3.1. The Grantor shall not erect any Ancillary Structures within setback areas on the servient tenement except in the locations identified on the Plan of Subdivision. The locations identified may be varied to any point along the building platform boundary shown on the Plan of Subdivision with the prior written approval of the Society. This covenant shall apply to the following Residential Lots:

Lot number	Area of within which the erection of ancillary structures is permitted (m ²) (letter in brackets indicates area as marked on DP443395)
10	25(V)
12	14(AA)
13	16(AC)
14	14(AE)
15	18(AG)
18	16(AJ)
19	22(AL)
20	16(AP)
21	16(AS,AU)
22	16(AV,AW)

4. No further subdivision

- 4.1. The Grantor shall not further subdivide the servient tenement, except where:
- The subdivision is for a minor boundary adjustment; and
 - The subdivision does not create any additional, separately saleable residential lots; and
 - Written approval to the subdivision is obtained from the Society.

APPLIES to all Residential Lots excluding Lot 3 and for the avoidance of doubt Lots 38 and 50 are not subject to this clause.

5. Road Setbacks

- 5.1. In respect of the following Residential Lots the Grantor shall be required to erect a Building on the servient tenement, which is located on the road reserve boundary for a minimum of 25% of the length of the building frontage.

Lot Number
1, 2, 3, 4 (western boundary only), 5, 6

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6. **Height restrictions**

6.1. The Grantor shall not erect any Building on the servient tenement, which exceeds 7 metres in Height above Ground Level.

APPLIES to all Residential Lots. Notwithstanding clause 6.1, the Lots specified in clauses 6.2 to 6.5 below shall have the following additional restrictions.

6.2. In respect of the following Residential Lots the Grantor shall not erect any Building on the servient tenement with a Height that exceeds the specified Datum level (metres above mean sea level (mamsl) (Dunedin Vertical Datum 1958) with OITIV DP 300734 being the point of origin (R.L. = 327.71 metres above mean sea level)) or the specified Height above Ground Level (a OGL) stipulated for each Lot below.

Lot Number	Lot specific Height restriction
4	312 mamsl
5	312.5 mamsl
6	312.5 mamsl
7	313 mamsl
8	314 mamsl
10	313.5 mamsl

6.3. In respect of the following Residential Lots the Grantor shall erect only a single storey Building on that part of servient tenement so marked on the Plan of Subdivision.

Lot number
2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 18, 19

6.4. The Grantor shall not erect any single storey Building on the servient tenement, which exceeds 4.5 metres in Height above Ground Level in areas identified for a single storey Building on the Plan of Subdivision. The 4.5 metre Height restriction may be exceeded in the following circumstances:

- The proposed single storey section does not exceed 5 metres above Ground Level; and
- Written approval is obtained from all adjacent Residential Lot owners and the Society.

APPLIES to all Residential Lots.

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- 6.5. In respect of the following Residential Lots the Grantor shall ensure that any dwelling erected on the servient tenement includes a two-storied component with a minimum height of 6 metres above Ground Level to be erected on the two-storey part of the servient tenement as marked on the Plan of Subdivision.

Lot number

2, 3, 5, 6, 7, 8, 9

- 6.6 The finished floor level of any Residential dwelling and/or level of any surface drain, to be connected to the Low Impact Design Stormwater System, must be a minimum of 150mm higher than the outflow level of the relevant connection (eg. well up chamber) to the Low Impact Design Stormwater System unless a direct flow path is available to a swale or channel or adequate independent onsite soakage is provided.

APPLIES to all Residential Lots and Lot 38.**7. Access**

- 7.1. In respect of the following Residential Lots the Grantor shall construct a singular street access, the location of which is subject to approval of the Society.

Lot number

3 (western access)

- 7.2. In respect of the following Residential Lots the Grantor shall construct a singular street access only in the location identified on the Plan of Subdivision.

Lot Number

1, 2, 3(western access) 4, 5, 6, 10, 13, 14, 15, 18, 19, 20

- 7.3. In respect of the following Residential Lots, which have a shared street access, the Grantor shall construct the street access only on the location identified on the Plan of Subdivision.

Lot Number

3(southern access), 11, 12, 16, 17, 21, 22

- 7.4. In respect of Lots 7, 8 and 9 access shall be obtained only from shared access lot 48. The Grantor shall construct a singular street access from Lot 48 to Lots 7, 8 and 9 only in the location identified on the Plan of Subdivision.

8. Access Width

- 8.1. A singular street access constructed under clauses 7.1, 7.2 and 7.4 above shall not have a width exceeding 4 metres, unless otherwise approved by the Society.

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8.2. A shared street access constructed under clause 7.3 above shall not have a width exceeding 5 metres, unless otherwise approved by the Society.

8.3 For the purposes of clauses 8.1 and 8.2 above the width of the street access shall be measured at the street edge from which point the width of the access may, subject to the approval of the Society, increase to the Lot Boundary.

9. **Equipment Storage**

9.1. The Grantor shall screen, in an appropriate manner from all roads and adjoining Residential Lots on the Plan of Subdivision all vehicles (including boats, caravans and trailers) and equipment stored on the servient tenement. The Grantor shall seek and obtain from the Society consent to the manner in which any equipment is to be stored on the servient tenement.

APPLIES to all Residential Lots.

10. **Landscape and Vegetation**

10.1. The Grantor shall before undertaking any development on the servient tenement and as part of any dwelling approval process prepare a landscape plan and obtain the consent of the Society to such landscape plan.

APPLIES to all Residential Lots.

10.2. The Grantor shall comply in all respects with the provisions of any landscape plan consented to by the Society and shall not alter, amend or abandon the said landscape plan without first seeking and obtaining the consent of the Society. The Grantor shall maintain and suitably irrigate all plantings on the servient tenement.

APPLIES to all Residential Lots.

10.3. In the event that a plant or tree on the servient tenement, which forms part of the structural landscaping carried out as part of Kirimoko Park or a landscape plan approved and implemented under clauses 10.1 and 10.2 above, becomes diseased or dies the Grantor shall forthwith replace it with another plant or tree of that species or an alternative species approved by the Society.

APPLIES to all Residential Lots.

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10.4. The Grantor shall in a good and workmanlike manner and to the satisfaction of the Society repair, restore and replant (as the case may be) any damage done to roads, driveways, vehicle crossings, fencing, structures, Buildings, plantings, vegetation, services, infrastructure or any other asset caused either on the servient tenement or within Kirimoko Park during the construction of any Building on the servient tenement. Any such repairs, restoration or replanting shall occur within the next available Building or planting season (as the case may be).

APPLIES to all Residential Lots.**11. Low Impact Design Stormwater System****11.1. Connections**

- (a) Any connection by the Grantor to the Low Design Impact Stormwater System shall comply with the requirements of the Low Impact Design Stormwater System Maintenance Manual.

APPLIES to all Residential Lots and Lot 38.**11.2. Care and Maintenance**

- (a) The Grantor shall at all times comply with the terms of the Low Impact Design Stormwater System Maintenance Manual.
- (b) The Grantor shall not install or use any roofing, spouting, flashings or any such surface or material which have the potential to result in the contamination of the Low Impact Design Stormwater System. In particular, untreated zinc and/or copper must not be used.

APPLIES to all Residential Lots and Lot 38.**11.3. Boundary Fence**

- (a) Notwithstanding any provisions within the Fencing Act 1978 (or any subsequent replacement legislation) the Grantor shall obtain the written consent of the Society to erect any:
- (i) Continuous boundary fence that does not comply with the Kirimoko Design Code; and/or
- (ii) Any boundary fence or screen that exceeds 1.2 metres above Ground Level.

APPLIES to all residential lots.

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Continue in additional Annexure Schedule, if required

12. Landforms

- 12.1. The Grantor shall, before commencing any earthworks on the servient tenement obtain the consent to such earthworks from the Society. The Society shall, in considering any application for earthworks consent, take into account, without limitation, the following:
- (a) The desirability of restricting the alteration of the terrain of the servient tenement to ensure natural flow of surface water and to protect the low impact stormwater system;
 - (b) The need for specific requirements regarding sediment control during construction on the servient tenement to protect lower lying properties and the function of the stormwater system; and
 - (c) Reinstatement after construction on the servient tenement.
- 12.2. Following construction of any Buildings on the servient tenement no earthworks shall occur that may affect water catchment functioning.

APPLIES to all Residential Lots.**13. Solar equipment**

- 13.1. The Grantor shall include in any dwelling to be erected on the servient tenement a specified location for solar hot water panels and all hot water cylinders shall be solar ready and include ducting so that a connection to the identified location for solar hot water panels can easily be made.
- 13.2. Where instantaneous gas hot water or heat pump hot water is used, provision shall be made for the future installation of a solar hot water cylinder in the form of ducting in the roof space and space within which a solar hot water cylinder could be accommodated.

APPLIES to all Residential Lots.**14. Overhead Wires**

- 14.1. The Grantor shall not install any overhead wire or cable on the servient tenement.

APPLIES to all Residential Lots.**15. Residential use only**

- 15.1. The Grantor shall use the servient tenement only for the purposes of a single residential dwelling.

APPLIES to all Residential Lots except Lots 3.

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16. **The Society**
- 16.1. A society has been incorporated under the Incorporated Societies Act 1908 known as the Kirimoko Park Residents' Association Incorporated. The aims and objects of the Society include:
- (a) *Membership of Society*
On becoming the registered proprietor of a Residential Lot or Lot 38 within Kirimoko Park the Grantor shall:
 - (i) Automatically become a Member of the Society;
 - (ii) remain a Member of the Society for so long as the Grantor continues to be the registered proprietor of a Residential Lot or Lot 38; and
 - (iii) fulfill and to continue to fulfill the obligations of a Member as set out in the Society's Rules
 - (b) *Levies*
Without limiting the Grantor's obligations hereunder to pay the Society all levies and any other moneys, which shall be fixed, established and demanded from time to time by the Society in accordance with the Society's Rules
 - (c) *Late Charges*
To pay any late charges demanded by the Society (including, without limitation, default interest and late payment penalties at such a rate as the Society may designate from time to time) in respect of any money owed by the Grantor to the Society, which is in arrears.
 - (d) *Costs*
To pay the Society's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Society's rights, remedies and powers under this Instrument and/or the Society's Rules
 - (e) *Indemnity*
To indemnify the Society against all claims and proceedings arising out of a breach by the Grantor of any of its obligations set out in the Society's Rules, the Kirimoko Design Code and/or this Instrument.
17. **Building covenants**
- 17.1. Without limiting the Grantor's obligations hereunder the Grantor shall:
- (a) *Development Controls*
Comply in all respects with the provisions of the Kirimoko Design Code.
 - (b) *Building Approval*
 - (i) Not commence construction of any Building on the servient tenement nor apply to the Council for consent thereto without first obtaining the consent of the Society to the plans and specifications and exterior design and appearance of the Grantor's proposed Building.

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- (ii) Not to make any changes to the plans and specifications of the exterior design or appearance of any Building on the servient tenement once approval has been obtained from the Society.
- (iii) The Society shall not unreasonably withhold approval where a Building design submitted by the Grantor complies with the Kirimoko Design Code.
- (c) *Future Alterations*
Not to make additions or alterations to any Building on the servient tenement without the prior written consent of the Society.
- (d) *Compliance with the Building Act 2004*
Not to occupy any Building on the Grantor's Residential Lot without a current code compliance certificate issued under the Building Act 2004 (or any subsequent replacement legislation).

APPLIES to all Residential Lots and Lot 38.**18. Building Platform Survey**

- 18.1. The Society shall prior to the pouring of the slab for any Building on the servient tenement engage, at the Grantee's expense, a surveyor to confirm that the boxed slab has been appropriately located so that the Building will be positioned within the Building Platform (subject to the exceptions in clause 2.1 above). Until the Society has advised the Grantor (in writing) that the boxed slab is appropriately positioned the Grantor shall not continue with construction of the Building.

APPLIES to all Residential Lots.**19. Transfer of Residential Lots**

- 19.1. This Instrument binds the Grantor's heirs, executors, administrators, successors and assigns for the benefit of the Grantee and the Grantee's heirs, executors, administrators, successors and assigns.
- 19.2. The Grantor shall first obtain the Society's prior written consent to any transfer of the Grantor's ("Vendor's") interest in a Residential Lot ("the Transfer"). Notwithstanding anything else in this Instrument, the Society must consent to a Transfer if;
- (a) the Vendor has performed its obligations under this clause and as a Member as set out in the Society's Rules; and
 - (b) the purchaser of the relevant Residential Lot has met any requirements set out in the Society's Rules.
- 19.3. Any Transfer will be on the following terms:
- (a) The Vendor shall remain liable for sums owed to the Society by that Vendor.

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- (b) Without limitation, the Vendor shall continue to be liable as a primary and principal debtor for all indebtedness of the said purchaser to the Society until such time as:
 - (i) the Transfer to the said purchaser is registered at Land Information New Zealand;
 - (ii) the Vendor has performed its obligations under this clause and as a Member as set out in the Society's Rules; and
 - (iii) the said purchaser has met any requirements set out in the Society's Rules.
- (c) The said purchaser shall be liable jointly and severally with the Vendor for all indebtedness of the Vendor to the Society in respect of that Residential Lot purchased and a statement of indebtedness issued by the Society shall (in the absence of manifest error) be conclusive as to the sum of such indebtedness.

20. **General Covenants**

20.1. The Grantor and the Grantee agree that:

- (a) The Grantor's obligations and covenants under this Instrument are for the benefit of the Grantee and also for the benefit of the Society (in accordance with the Contracts Privity Act 1982).
- (b) The Society may facilitate the observance of this Instrument by the Grantor by taking all necessary steps to enforce its observance on behalf of the Grantee. The Grantee irrevocably appoints the Society to be its attorney and in its name and at its expense to do any thing, which the Society considers necessary or desirable to enforce or attempt to enforce the Grantee's, rights or powers under this Instrument.
- (c) Without limiting the appointment made in clause 20.1(b) that appointment may specifically extend to the Society issuing proceedings in the name of the Grantee, provided that in doing so the Society indemnifies the Grantee against all costs arising from or incidental to those proceedings.

20.2. A Covenant in this Instrument requiring a party not to do a certain act shall include a covenant not to permit another person to do such an act.

20.3. A Covenant in this Instrument making a party responsible for that party's omission, neglect or default extends to the omission, neglect or default of any person for whom that party is responsible.

20.4. Words importing the singular number only include the plural and vice versa.

20.5. The obligations upon the Grantor to comply with the Kirimoko Design Code is a continuing obligation and the Grantor shall ensure that it complies with the Code at all times.

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21. Disputes

21.1. If either party believes that a dispute between them has arisen regarding the covenants, rights or obligations under this instrument or compliance with such rights or obligations, such party may give written notice to the other party of the existence of such dispute and the particulars of it and the following procedures shall apply:

- (a) The parties shall then meet in good faith and seek to resolve the dispute and if it is not resolved within fourteen (14) days of the notice to the other party of the existence of the dispute, the parties shall seek to agree on a process for resolving the dispute through means other than litigation or arbitration, such as conciliation, or independent expert evaluation or determination, or mediation.
- (b) If the parties cannot reach agreement on:
 - (i) the dispute resolution process and procedures to be adopted for resolving the dispute;
 - (ii) the timetable for all steps in that process; and
 - (iii) the selection and compensation of the independent person required for such technique;

They shall refer the dispute to mediation and for that purpose they shall use the assistance of a dispute resolution person or organization (mutually agreed to) and failing agreement nominated by the president of the New Zealand Law Society.

- (c) The parties shall not use any information or documents obtained through this alternative dispute resolution process for any purpose other than in an attempt to settle the dispute by the processes detailed in this clause.
- (d) No party to the dispute may refer a dispute to arbitration or commence proceedings in any Court unless the dispute has been referred to a dispute resolution person or organisation in accordance with this clause and the dispute has not been resolved.

21.2. If following the procedures to resolve any dispute between the parties contained in herein the dispute has not been resolved, the dispute shall be referred to arbitration in accordance with the Arbitration Act 1996 or any enactment in substitution of that Act.

- (a) If the dispute is referred to arbitration under this clause then:
 - (i) The arbitrator shall determine the matter in dispute in a manner, which is fair and reasonable to all parties to the arbitration and gives due weight and consideration to the underlying principles behind Kirimoko Park.

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(b) The cost of the arbitration and the award shall be fixed by the arbitrator who may direct that any party is to pay all or part of the costs and may make an order for costs in favour of any party.

22. **Notice**

22.1 Any notice required to be served on any party or any consent required to be given by the Society shall be in writing and, (if required) shall be served in accordance with the society's rules or otherwise in accordance with the provisions of the Property Law Act 2007.