



# View Instrument Details



Instrument No. 10924000.16  
 Status Registered  
 Date & Time Lodged 28 Nov 2017 14:14  
 Lodged By Rendall, Stephen Michael  
 Instrument Type Easement Instrument

**Affected Computer Registers**    **Land District**  
 806837                                    North Auckland

**Annexure Schedule:** Contains 15 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 10175778.2 has consented to this transaction and I hold that consent
- I certify that the Mortgagee under Mortgage 10684326.8 has consented to this transaction and I hold that consent
- I certify that the Mortgagee under Mortgage 10684326.5 has consented to this transaction and I hold that consent
- I certify that the Mortgagee under Mortgage 10684326.7 has consented to this transaction and I hold that consent
- I certify that the Encumbrancee under Encumbrance 10175778.3 has consented to this transaction and I hold that consent
- I certify that the Encumbrancee under Encumbrance 10684326.9 has consented to this transaction and I hold that consent

### Signature

Signed by Stephen Michael Rendall as Grantor Representative on 24/11/2017 03:07 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 Stephen Michael Rendall as Grantee Representative on 24/11/2017 03:07 PM

**\*\*\* End of Report \*\*\***

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

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

**Grantor**

GREEN &amp; MCCAHILL HOLDINGS LIMITED

**Grantee**

WEITIBAY RESIDENTS ASSOCIATION INCORPORATED

**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**  
required

Continue in additional Annexure Schedule, if

Purpose (Nature and extent) of easement	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right to Convey Wastewater	B on deposited plan 513840	806837 (Lot 170 on deposited plan 513840)	In Gross
Right to Convey Wastewater	C on deposited plan 513840	806837 (Lot 1 on deposited plan 51255)	In Gross

**Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)**

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 by the provisions set out in the Annexure Schedule.

**Covenant provisions**

The provisions applying to the specified covenants are those set out in the Annexure Schedule.

## Form L

Annexure Schedule

Page of Pages

*Insert instrument type*

Easement

**1. DEFINITIONS AND INTERPRETATION**

1.1 **Definitions:** Unless the context otherwise requires, in this Instrument:

**Arbitration** means the reference of the relevant matter or issue in dispute to arbitration in accordance with and subject to the Arbitration Act 1996.

**Authority** means any statutory or regulatory authority having jurisdiction in respect of the Land.

**Building Code** means the building code as prescribed pursuant to Part V of the Building Act 2004.

**Commencement Date** means the date of registration of this Instrument.

**Contributing Grantee** means each Grantee named in this Instrument together with any New Beneficiary.

**Default Interest** means interest accruing at a rate equivalent to that which is 5% above the Grantor's bank's overdraft rate applicable during the continuance of the default.

**Default Notice** means a notice issued in the circumstances referred to in clause 2.7:

- (a) specifying reasonable details of the relevant default and remedial action required to remedy that default; and
- (b) notifying the defaulting party that the other party will undertake the relevant remedial action if the defaulting party fails to do so within such period as is reasonable in the circumstances having regard to the nature and effects (including potential effects) of the relevant default.

**Developer** means Weiti Development LP and its successors and assigns.

**Dispute Notice** means a notice in writing issued by a person wishing to resolve a dispute or difference concerning rights or obligations under this Instrument or to have any matter or issue concerning rights or obligations under this Instrument determined, resolved or remedied and:

- (a) specifying reasonable details of the nature of the dispute, difference or issue to be resolved;
- (b) designating the person with authority to negotiate and settle the matters specified in the notice given by or on behalf of the issuer of the notice; and
- (c) requiring the recipient of the notice to review the relevant matters specified in the issuer's notice in accordance with the dispute resolution procedures specified in subclause 2.8(c) with a view to resolving the relevant

difference or dispute and for that purpose to appoint a representative with authority to negotiate a resolution of that dispute or difference.

**Easement** means the easement recorded by this Instrument.

**Estate** means the development from time to time located on the Land.

**Facility** means the water pipeline installed within the Wastewater Easement Area, together with any dam, pump, pumphouse and any other pipes, conduits, cables, controlling, monitoring and metering devices, equipment, plant and machinery, all appurtenances thereto, and any other improvements intended or designed for the purpose of exercising the rights the subject of the Wastewater Easement, as the same may be repaired, maintained, extended, renovated or rebuilt from time to time.

**Grantee** means WeitiBay Residents Association Incorporated and its successors and assigns.

**Grantee's Authorised Persons** means the agents, servants, workmen, licensees and invitees of the Grantee (as applicable) and all other persons authorised by the Grantee to use the Wastewater Easement Area and, where the context so permits, means any of such persons.

**Grantor** means the registered proprietor for the time being of the Servient Tenement which is subject to the Easement.

**Improvements** means any improvements erected or to be erected on the Land, including (without limitation) any roads, culverts, footpaths, tracks, access routes landscaping, streetscaping, pipes, pumps, dams, infrastructure, building structures and structural components incorporated into or associated with such improvements, as repaired, maintained, extended, renovated or rebuilt from time to time.

**Instrument** means this easement instrument (including these conditions) as it may be varied from time to time.

**Land** means the land comprised and described in Computer Freehold Register 806837.

**New Beneficiary** has the meaning given in clause 3.4.

**Performance Costs** means all costs properly and reasonably incurred by a Contributing Grantee in the performance of every obligation required by this Instrument.

**Services** means energy, including (but not limited to) electricity, electric impulses and gases, and all such other services that may be required by the Grantee for the operation of the Facility.

**Servient Tenement** in relation to the Easement means the land described as such in Schedule A and being the land which is subject to the Easement.

**Wastewater Easement** means the rights set out in clause 3.2.

**Wastewater Easement Area** means that part of the Land described in Schedule A as being subject to a Wastewater Easement.

**WeitiBay Subdivision** means the 150 lot subdivision permitted pursuant to the WeitiBay Subdivision Consent together with common land and infrastructure associated with and/or providing services to the common land and lots.

**WeitiBay Subdivision Consent** means the subdivision resource consent RMA 52447 issued under the Resource Management Act 1991, as varied from time to time.

**Working Day** means a day which is not a Saturday or Sunday or a public holiday in Auckland, New Zealand or a day within the period commencing on 24 December in any year and ending on 5 January in the following year.

1.2 **Interpretation:** Unless the context otherwise requires the following provisions are applicable to the construction and interpretation of this Instrument.

(a) **General**

- (i) words denoting the singular shall include the plural and vice versa;
- (ii) one gender shall include the other gender;
- (iii) references to sections, clauses and schedules are references to sections, clauses and schedules in this Instrument;
- (iv) section headings and clause headings used in this Instrument have been inserted for convenience and a quick guide to the provisions of this Instrument, and are not to be used in interpreting the provisions of this Instrument;
- (v) words denoting persons shall include any individual, company, corporation, firm, corporation sole, trust, partnership, joint venture, syndicate or other entity or association of persons either incorporated or unincorporated being or purporting to be a legal entity and any body corporate coming into existence on the deposit of a unit plan;
- (vi) references to the **Grantee** include its successors and assigns and references to the **Grantor** include its successors in title to the Servient Tenement and references to the Grantor and Grantee include all persons deriving title under each of them respectively;
- (vii) a reference to this Instrument includes all modifications and amendments to this Instrument from time to time;
- (viii) references to enactments, statutes, statutory requirements and regulatory controls include regulations made under any applicable statutes, and also notices under applicable statutes and regulations having an effect in law, and any amendments to such statutes and regulations, and shall be deemed to include and also refer to any statutes and regulations (and any amendments to statutes and regulations) passed in substitution;
- (ix) where pursuant to any provision of this Instrument a written notice or notice in writing (including a Default Notice) is given by one person to another person which is to take effect from a specified date, or which requires any action to be performed by, or any breach, default or failure to be remedied within, a specified period (being, where a minimum period is specified in this Instrument, not shorter than the relevant specified period), such period is to be calculated from but exclusive of the date the notice is given;

- (x) the term "positive covenant" is not limited to the meaning defined in the Property Law Act 2007, but means any positive covenant in this Instrument; and
- (xi) notwithstanding any other provision of this Instrument, neither the Grantor nor the Grantee shall be required or obliged to do anything which may be a breach of any statute, regulation or requirement of any Authority.

(b) **Obligations**

A covenant specified in this Instrument whereby:

- (i) the Grantee or Grantor undertakes to do something includes obligations to ensure that the relevant obligation is properly performed by suitably qualified, competent and responsible persons with the requisite skills, qualifications and experience necessary and appropriate in the circumstances, and not to suffer, permit or cause a breach of that obligation to occur; and
- (ii) the Grantee or Grantor undertakes not to do something includes obligations not to authorise, permit or suffer a breach of that obligation, and to take all reasonable steps to prevent, restrain and, if necessary, to remedy the consequences of a breach of that obligation.

**2. GENERAL PROVISIONS**

- 2.1 **Application:** Unless otherwise specified in this Instrument, the provisions of this clause 2 apply to all rights and to the performance of all obligations specified in or arising under this Instrument on and from the Commencement Date.
- 2.2 **Instrument an instrument:** This Instrument is intended to be and to have effect as an instrument attaching to the Land and running with title for the purposes of the Land Transfer Act 1952 and the Property Law Act 2007 relating, in particular, to easements taking effect from the date the Easements specified in this Instrument are deemed to be created in accordance with section 90A(6) of the Land Transfer Act 1952, and binding every person who is for the time being bound by the provisions of this Instrument in accordance with the Land Transfer Act 1952 or the Property Law Act 2007 (as applicable in the circumstances) .
- 2.3 **Breach of easements:** No power is implied in this Instrument to determine the Easement for breach of any provision in this Instrument, it being the intention that the Easement shall subsist unless they are surrendered, but without derogating from any other right or remedy available in the event of any such breach.
- 2.4 **Terms implied by statute:** The provisions of this Instrument, including rights, powers, terms, conditions, covenants and restrictions specified in this Instrument are in substitution for those implied by statute including the Land Transfer Act 1952 and the Property Law Act 2007, and unless any statute expressly or by necessary implication prohibits exclusion of provisions implied by statute, no provisions implied by statute will apply to the easements specified in this Instrument.

- 2.5 **Powers incidental to rights and obligations:** Unless otherwise specified, the Easement rights and the obligations to undertake performance of positive covenants and other obligations specified in this Instrument include all rights and powers reasonably required in the circumstances for the reasonable and proper exercise of the relevant Easement rights and performance of the relevant positive covenants and other obligations.
- 2.6 **Exercise of rights and performance of obligations:** The following provisions shall apply on each occasion Easement rights are exercised and also to each covenant or obligation specified in this Instrument:
- (a) **Entry:** Entry upon any part of the Land, including the relevant part of any Servient Tenement, in the exercise of an Easement right or in the performance of a positive covenant or other obligation specified in this Instrument shall be made only for proper purposes in the reasonable and proper exercise of a right or in the performance of an obligation specified in this Instrument.
  - (b) **Protection of Land:** All materials and equipment required for or incidental to undertaking an activity in the exercise of an Easement right or performance of a positive covenant or other obligation under this Instrument must be of such a nature so as to avoid any damage or deterioration to any parts of the Land and Improvements through which or within which such material and/or equipment passes or remains, and all work in relation to the activities must be undertaken in a manner which avoids damage or deterioration to any part of the Land and Improvements (including that part within which the relevant activities are undertaken).
  - (c) **Undertaking work:** Where any work (including any building work) is undertaken, such work must be carried out:
    - (i) in a proper and competent manner by appropriately experienced, qualified and responsible persons;
    - (ii) in accordance with, and in compliance with, applicable statutory requirements and regulatory controls (including the Resource Management Act 1991, the operative and proposed district plans of Auckland Council, the Building Act 2004 and the Building Code);
    - (iii) with all reasonable speed; and
    - (iv) if any consents are required in respect of the relevant work, in compliance with the conditions attaching to the applicable consents,
    - (v) and the person undertaking the relevant work, or on whose behalf the relevant work is undertaken must leave the relevant area clean and tidy, restored to its former state and condition, and with all equipment, excess materials, debris and rubbish removed.

2.7 **Failure to perform obligation:**

- (a) If either party fails, refuses or neglects to perform an obligation specified in this Instrument or does not perform the relevant obligation in a manner which is prudent, reasonable and responsible in the circumstances, the other party may serve a Default Notice on the defaulting party. If, following receipt of a Default Notice, the defaulting party has not performed the relevant obligation by the date or within the period specified in the Default Notice, then the other party:
- (i) may perform the relevant obligation and undertake any works required to ensure compliance with the relevant obligation; and
  - (ii) may recover from the defaulting party as a liquidated debt:
    - (aa) any costs and expenses properly and reasonably incurred in serving a Default Notice;
    - (bb) any costs and expenses properly and reasonably incurred arising from or incidental to remedying the relevant default; and
    - (cc) the Default Interest on all such costs incurred by it for the period from the date of the Default Notice until the debt is paid in full.
- (b) Notwithstanding that a party has not served a Default Notice in accordance with the procedure in clause 2.7(a), that party may perform the relevant obligation and undertake any works required to ensure compliance with the relevant obligation where such performance is required (at the discretion of the remedying party) as a matter of:
- (i) urgency;
  - (ii) emergency; or
  - (iii) such other matter relating to the unobstructed use of the Easement,
- and the rights under sub-clause 2.7(a)(ii) shall continue to apply.
- (c) The exercise of rights under sub-clauses 2.7(a) and 2.7(b) are without prejudice to, and do not derogate from, any other rights or remedies available to either party.

2.8 **Disputes:** The following provisions shall apply to disputes or differences concerning rights or obligations specified in this Instrument.

- (a) **Notice of dispute:** If any dispute or difference arises between persons concerning rights or obligations under this Instrument, or if any matter or issue arises which a person exercising or affected by rights or obligations under this Instrument wishes to have determined, resolved or remedied, either of such persons or that person may serve a Dispute Notice on the other person.

- (b) **Negotiations:** The issuer and the recipient of a Dispute Notice must use reasonable endeavours to resolve the relevant dispute or difference in good faith by negotiation and, if required, by reference to the dispute resolution procedures referred to in clause 2.8(c).
- (c) **Dispute resolution procedures:** The following procedures will apply following the giving of a Dispute Notice:
- (i) The recipient of the Dispute Notice shall within 2 Working Days of receipt of that Dispute Notice give notice in writing to the issuer of the Dispute Notice of the person having authority on behalf of the recipient of the Dispute Notice to negotiate and settle the matter or issue specified in the relevant Dispute Notice.
  - (ii) The representatives ("**Representatives**") designated respectively by the issuer and the recipient of the applicable Dispute Notice shall, following whatever investigations the Representatives each deems appropriate, seek to resolve the dispute within 5 Working Days of the date the notice referred to in subclause 2.8(c)(i) is received by the issuer of the relevant Dispute Notice.
  - (iii) If the dispute or difference is not resolved within 5 Working Days (or such longer period as the Representatives may agree in writing is appropriate), the Representatives shall seek to agree on a process for resolving the dispute through means other than litigation or Arbitration by such further negotiations, mediation, conciliation or determination by an independent expert or professional mediator (including a person appointed for that purpose by the President for the time being of the New Zealand Law Society) as may be appropriate in the circumstances.
  - (iv) If appropriate, the Representatives may also agree on:
    - (aa) the procedures and a timetable for any exchange of documents or other information relating to the dispute;
    - (bb) procedural rules and a timetable for the conduct of the selected mode of proceeding;
    - (cc) a procedure for selection and compensation of any neutral person who may be engaged to assist in the resolution of the dispute; and
    - (dd) whether the parties should obtain the assistance of a recognised dispute resolution organisation.
  - (v) Either the recipient or the issuer of the relevant Dispute Notice may, so long as:
    - (aa) that person has acted in good faith in attempting to resolve the relevant matter in dispute in accordance with the foregoing procedures;

(bb) a period of 25 Working Days (or such longer period as the Representatives may have agreed is appropriate for the dispute resolution process agreed between them) has elapsed since the service of the relevant Dispute Notice; and

(cc) written notice terminating the dispute resolution process has been served on the other person,

exercise any rights available at law or reserved by this Instrument (including reference of the relevant matter or issue in dispute to Arbitration (where the recipient and issuer have agreed to refer the dispute or difference to Arbitration), or commencement of court proceedings in relation to the matter or issue in dispute, as may be appropriate).

(d) **Confidentiality:** Where the dispute resolution procedures referred to in subclause 2.8(c) apply, the persons in dispute may not use any information (whether oral, in writing or produced or stored by electronic means or otherwise) or documents obtained in connection with the dispute resolution for any purpose other than an attempt to settle the dispute between those persons.

(e) **Savings:** The procedures specified in subclause 2.8(c) do not apply to court proceedings for:

(i) an injunction to restrain any action taken or threatened which the person seeking to restrain the relevant action believes in good faith and on proper, justifiable grounds:

(aa) exceeds the rights or powers granted under this Instrument; or

(bb) is in breach of a term, condition, covenant or restriction attaching to the relevant easement or right; or

(cc) is in breach of a positive covenant or other obligation under this Instrument; or

(dd) is otherwise unauthorised, inappropriate or unlawful; or

(ii) specific performance requiring a Grantee to perform an obligation specified in this Instrument.

2.9 **Contribution to Performance Costs:** Subject to clause 2.10 each Contributing Grantee is entitled to require every other Contributing Grantee to make contributions toward Performance Costs in accordance with this clause 2.9.

(a) **Right to contributions:**

Subject to any specific provisions in this Instrument and to the following provisions in this clause 2.10, each Contributing Grantee (**Recovering Grantee**) shall be entitled to require every other Contributing Grantee (each a **Paying Grantee**) to make a fair and reasonable pro rata reimbursement payment towards Performance Costs incurred by the Recovering Grantee acting prudently, properly and reasonably, with such pro rata share to be the proportion of the Performance Costs

that the total number of residential lots directly or indirectly using or benefitting from, or capable of using or benefitting from, the Facility through the Paying Grantee bears to the total number of residential lots directly or indirectly using or benefitting from, or capable of using or benefitting from, the Facility through all Contributing Grantees.

(b) **Determination of and payment of contributions:**

Where a Recovering Grantee is entitled to require any Paying Grantee to contribute towards Performance Costs, each Paying Grantee shall promptly pay to the Recovering Grantee such amounts.

(c) **Notice of intended works:**

Except for costs incurred in undertaking work required as a matter of urgency or in order to restore the operation of the relevant Facility and related equipment which has failed where it is not practical to give prior written notice to each Paying Grantee in the circumstances of the intention to undertake the relevant work, the Recovering Grantee must in any other case where the Recovering Grantee intends or proposes to require any Paying Grantee to make a contribution towards costs incurred by the Recovering Grantee in performing the relevant obligation, give a notice (as defined by section 308 of the Property Law Act 2007) in terms required by section 309 of the Property Law Act 2007.

(d) **Cross notices and disputes:**

Where a notice is served on one or more Paying Grantees requiring a contribution towards costs in respect of the relevant works specified in that notice, the applicable provisions of section 310, 311, 312, 313 and 314 of the Property Law Act 2007 will apply, but with the following additional provisions:

- (i) **Verification of estimated costs:** The Paying Grantee issuing a cross notice may require the cost of the relevant work to be certified as reasonable by a registered quantity surveyor, and either the Recovering Grantee or the Paying Grantee may obtain a certificate from a registered quantity surveyor as to the reasonableness of the estimated costs of the relevant work.
- (ii) **Unreasonable expenditure:** A Paying Grantee shall not be liable to make a contribution towards any costs, or to any additional costs, incurred to the extent that such costs would not have been incurred, or are greater than costs which would reasonably have been incurred, had the Recovering Grantee acted prudently, properly and reasonably in performing the relevant obligation.
- (iii) **Disputes:** The Recovering Grantee and any Paying Grantee issuing a cross notice must in good faith attempt to resolve the relevant dispute by agreement between them, including the use of alternative dispute resolution procedures referred to in clause 2.8(c).
- (iv) **Verification of costs incurred:** In addition to the details to be included in a notice as required by section 309 of the Property Law Act, and also when work has been undertaken, the

Recovering Grantee must, if so requested by any Paying Grantee, provide copies of all relevant reports, invoices and other information reasonably necessary to comprehend the reasons for undertaking the relevant work, and to verify the costs and the reasonableness of the costs incurred in undertaking the relevant work.

- (e) **Recoveries from third parties:** The rights of the Recovering Grantee under subclause 2.10 to require contributions to costs do not apply where:
- (i) **Negligence:** the relevant work is required as a consequence of any damage or deterioration arising from any negligent act or omission of any person and the costs incurred in undertaking relevant remedial works are recoverable from that person; or
  - (ii) **Insurances:** the costs incurred are recoverable under insurance covers which apply to the relevant works.
- 2.10 **Undertaking works or fixing costs by agreement:** Notwithstanding any other provision in this Instrument, obligations may be performed and works undertaken of such nature, in such manner, and on such terms as to cost allocation as may from time to time be agreed between the Recovering Grantee and relevant Paying Grantee or persons that are entitled to reach agreement on behalf of the Recovering Grantee or Paying Grantee (as the case may be) for the purposes of this Instrument, and contributions to costs may be fixed on a basis agreed between the Recovering Grantee and the relevant Paying Grantee (in which case the parties will be bound by the agreed arrangements to the extent the agreement made has application to the matters agreed).
- 2.11 **Insurance:** The Grantee must ensure that reasonable insurance cover is at all times effected and remains current for all reasonably foreseeable risks and potential claims by any other person where property may be damaged or who may suffer losses as a consequence of any failure or any event connected with the operation of any Facility or any part thereof. Without prejudice to the generality of the foregoing, such insurances shall include:
- (a) public liability cover with an appropriate limit of liability in respect of all persons using the Facility; and
  - (b) replacement and reinstatement cover at a level determined by the Grantees (acting reasonably) in respect of the Facility.
- 2.12 **Benefit of Covenants:** The covenants of the Grantee in clause 4 and clause 6 of this Instrument are, for the purposes of the Contract and Commercial Law Act 2017, also for the benefit of Watercare Services Limited and the Developer. The covenants of the Grantee in clause 7 this Instrument are, for the purposes of the Contract and Commercial Law Act 2017, also for the benefit of Auckland Council and Auckland Transport.
- 2.13 **Waiver:** The Grantor may from time to time elect to waive by written notice to the Grantee and with immediate effect any rights arising in favour of the Grantor and/or any of the Grantee's obligations under this Instrument. The parties shall, on request by the Grantor or the Grantee, attend upon the registration of any such instrument (including by way of variation to this Instrument) as may be required to record any such waiver.

### 3. WASTEWATER EASEMENT

- 3.1 **Grant:** The Grantor grants to the Grantee and the Grantee's Authorised Persons the Wastewater Easement with effect from the Commencement Date.
- 3.2 **Wastewater Easement:** The Wastewater Easement shall include the right of the Grantee and Grantee's Authorised Persons to have the full, free, uninterrupted and unrestricted right, liberty and privilege (in common with the Grantor and any New Beneficiary):
- (a) from time to time and at all times to take, convey, and lead water, wastewater, sewage and other waste material and fluid in a free and unimpeded flow (except when the flow is halted for any reasonable period necessary for essential repairs) and in any quantity, consistent with the rights of other persons having the same or similar rights, from the source of supply or point of entry, as the case may be, and through the Facility over and along the Wastewater Easement Area;
  - (b) to lead, convey, and/or transport any Services for the operation of the Facility that may be required by the Grantee in, under, through and along the Wastewater Easement Area in a free and unimpeded flow without interruption or impediment, in any quantity and by any means; and
  - (c) to enter and remain upon the Wastewater Easement Area and (to the extent reasonably required) any adjoining land which forms part of the Servient Tenement, with any tools, implements, machinery, vehicles, or equipment of whatsoever nature necessary for the purpose of laying, inspecting, cleansing, repairing, maintaining and renewing the Facility or any part thereof and to open up the soil of the Wastewater Easement Area to such extent as may be necessary and reasonable in that regard, subject to the condition that as little disturbance as possible is caused to the surface of the Wastewater Easement Area and that the surface is restored as nearly as possible to its original condition and any other damage done by reason of the aforesaid operations is repaired.
- 3.3 **Maintenance:** From the Commencement Date, the Grantee shall:
- (a) own the Facility, together with any other Contributing Grantee;
  - (b) subject to clause 2.9, at its own cost keep, operate and maintain the Facility in a good operating order, repair and condition, in accordance with any applicable requirements at law or imposed by any Authority, and including reinstating the same in the event of damage or destruction, fair wear and tear excepted;
  - (c) in undertaking any work authorised pursuant to this Wastewater Easement, cause as little damage as practicable to the surface of the Land and at the conclusion of any work, so far as reasonably practicable, restore the surface of the Land and any improvements affected by the work to the condition which they were in immediately prior to the commencement of such work; and
  - (d) cause as little inconvenience to the Grantor or occupier of the Land as is reasonably practicable when exercising all or any of the rights granted to the Grantee pursuant to this Instrument.

3.4 **Contributing Grantees:** The Grantor reserves to itself the right to grant to any other person ("**New Beneficiary**"), by way of easement, materially similar rights in the Wastewater Easement Area to those granted to the Grantee as set out in this Instrument provided that such grant does not materially derogate from the operation of the Facility for the benefit of the Grantee and that the New Beneficiary covenants in favour of the Grantor and the Grantee and any present or future New Beneficiaries to be bound by materially similar obligations to those that bind the Grantee as set out in this Instrument (including as Contributing Grantee). The Grantor shall provide the Grantee with notice of such further grant(s) from time to time, and such New Beneficiaries shall from the date specified in the relevant notice be deemed to jointly own the Facility, in conjunction with the Grantee and any other Contributing Grantee, and be deemed to be a Contributing Grantee for the purpose of this Instrument. The covenants of the Grantee in this Instrument that are given in favour of, and the terms and conditions that record an agreement for the benefit of, any New Beneficiary are given for the benefit of, and are enforceable in terms of the Contract and Commercial Law Act 2017 by, each such New Beneficiary.

#### 4. WATERCARE ARRANGEMENTS

4.1 **Consumption Charges:** The Grantee covenants to pay to Watercare Services Limited all such amounts as Watercare Services Limited shall charge for the provision of wastewater services through the Facility, as measured by Watercare Services Limited.

4.2 **Future Development:** The Grantee acknowledges and agrees that the Grantor or the Developer may elect to:

- (a) construct or procure the construction of new wastewater infrastructure for the purposes of serving the broader Weiti area; and
- (b) decommission some or all of the Facility the subject of this Instrument, and cause this Instrument to be surrendered partially or wholly to the extent of such decommissioning,

(together, an "**Upgrade Action**") in order to enable a greater number of subdivided lots and facilities than those the subject of the WeitiBay Subdivision to be provided with wastewater services provided that:

- (c) such new improvements are vested in Watercare Services Limited or, to the extent such new improvements are not vested in Watercare Services Limited, they are made the subject of a new easement in favour of the Grantee on terms consistent with the terms of this Instrument in all material respects;
- (d) the Grantee is not required to make any contribution to the costs of such works; and
- (e) the Grantee suffers no material interruption in the supply of wastewater services in the quantity provided by the Facility; and
- (f) the Grantee is not otherwise materially prejudiced by the Upgrade Action.

4.3 **Further Assurances:** The Grantee shall, as and when required by the Grantor or the Developer from time to time, sign any written documents and do such other

things as may be required by the Grantor to record and give effect to the covenants and provisions in clauses 4.1 and 4.2 above.

## 5. HEALTH AND SAFETY

- 5.1 **Health and Safety at Work Act 2015:** The parties acknowledge that the granting of rights under this Instrument means that both the Grantor and the Grantee may have obligations to members of the public using the Wastewater Easement under the Health and Safety at Work Act 2015.
- 5.2 **Grantee Compliance:** The Grantee agrees to:
- (a) identify all actions required of either it or the Grantor to comply with their respective obligations under the Health and Safety at Work Act 2015 in relation to the Wastewater Easement Area;
  - (b) ensure that all actions required of either it or the Grantor under the Health and Safety at Work Act 2015 are performed by it or its agents; and
  - (c) identify and then eliminate, isolate or minimise all hazards identified in relation to the Wastewater Easement Area.

## 6. ONGOING DEVELOPMENT OF WEITIBAY SUBDIVISION

- 6.1 The Grantee acknowledges that, as at the date of registration of this Instrument, the WeitiBay Subdivision is being progressed and will be completed in stages. The Grantee acknowledges and agrees that it shall, promptly on request by the Grantor or the Developer on behalf of the Grantor, sign all such documents, consents and authorisations (including, without limitation, so as to vary or surrender this Instrument, in whole or in part, or so as to provide consent to the vesting or transfer of any interest in land or improvements) and obtain any written consents and authorisations required from any mortgagee or encumbrancee of the Grantee, as may reasonably be required by the Grantor or the Developer in order to complete the WeitiBay Subdivision, the settlement of the sale and purchase of lots within the WeitiBay Subdivision, and/or the surrender, transfer or grant of interests in land associated with those purposes.

## 7. COUNCIL CARPARK ARRANGEMENTS

- 7.1 The Grantee acknowledges and agrees that:
- (a) part of the Wastewater Easement Area and Facility is located within land ("**Carpark Land**") that is adjacent to and/or located within the Weiti Bay access road vested in Auckland Council (through Auckland Transport) and that is intended under the terms of the WeitiBay Subdivision Consent to be used for public carparking purposes; and
  - (b) notwithstanding any other provision of this Instrument, it shall comply with any requirements or restrictions of the Auckland Council and/or Auckland Transport (together, "**Council Carpark Requirements**") in relation to the Carpark Land or adjacent land or use thereof, including in respect of the access to, or the undertaking of works within, the Carpark Land or

adjacent land, following receipt of a written notice from the Grantor or the Developer on behalf of the Grantor requiring such compliance.

- 7.2 The Grantee acknowledges and agrees that it shall, promptly on request by the Grantor or the Developer on behalf of the Grantor, sign all such documents, consents and authorisations (including, without limitation, so as to vary or surrender this Instrument, in whole or in part, or so as to provide consent to the vesting or transfer of any interest in land or improvements) and obtain any written consents and authorisations required from any third party, as may be required by the Grantor or the Developer in order to comply with or give effect to any Council Carpark Requirements.