

**Easement instrument to grant easement or profit à prendre, or create land covenant**  
Sections 90A and 90F, Land Transfer Act 1952

**EI 7914063.1 Easemen**

Cpy - 01/02, Pgs - 029, 20/08/08, 12:11

Land registration district

OTAGO



Grantor

Surname(s) must be underlined or in CAPITALS.

QUEENSTOWN CARPARKING LIMITED

Grantee

Surname(s) must be underlined or in CAPITALS.

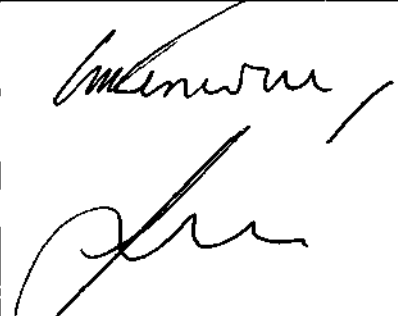
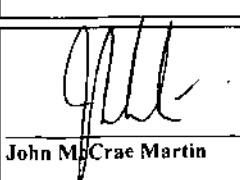
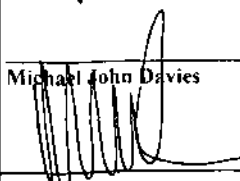
MAN STREET ~~PROPERTIES~~ LIMITED  
PROPERTIES

Grant\* of easement or profit à prendre or creation or 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).

Dated this 17 day of June, 2008

Attestation

|   |   |
|---|---|
| <br>Signature [common seal] of Grantor  | Signed in my presence by the Grantor  |
|   | Signature of witness  |
|   | Witness to complete in BLOCK letters (unless legibly printed)<br>Witness name |
|   | Occupation  |
| <br>John McCrae Martin<br><br><br>Michael John Davies<br>Signature [common seal] of Grantee | Signed in my presence by the Grantee  |
|   | Man Street Properties Limited   |
|   | Signature of witness  |
|   | Witness to complete in BLOCK letters (unless legibly printed)<br>Witness name |
|   | Occupation  |
|   | Address   |

Certified correct for the purposes of the Land Transfer Act 1952.

  
[Solicitor for] the Grantee

\*If the consent of any person is required for the grant, the specified consent form must be used.

**Annexure Schedule 1**

Easement instrument

Dated

14 June 2008

Page

1

of

21

pages

**Schedule A**

(Continue in additional Annexure Schedule if required.)

| Purpose (nature and extent) of easement, profit, or covenant | Shown (plan reference) | Servient tenement (Identifier/CT) | Dominant tenement (Identifier/CT or in gross) |
|--|------------------------|-----------------------------------|---|
| Land Covenant  | Lot 2 on DP399240      | 395927                            | 395926  |

**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 specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007.

The implied rights and powers are [varied] [negatived] [added to] or [substituted] by:

[Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952].

[the provisions set out in Annexure Schedule 2].

**Covenant provisions**

Delete phrases in [ ] and insert memorandum number as required.

Continue in additional Annexure Schedule if required.

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952]~~

[Annexure Schedule 2].

All signing parties and either their witnesses or solicitors must sign or initial in this box

**Annexure Schedule**

Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

17 June 2008

Page

2

of

21

Pages

(Continue in additional Annexure Schedule, if required.)

**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions:** In this Instrument, unless the context otherwise requires:

"Access Request Notice" means a written notice issued by or on behalf of any person for the purposes of exercising a right specified in this Instrument or performing a positive covenant or other obligation under this Instrument and:

- (a) specifying the purpose or purposes for which access is required, and the nature of the activities intended to be undertaken;
- (b) specifying the relevant right intended to be exercised, or the obligation intended to be performed;
- (c) specifying the type and nature of materials and equipment required for the relevant purpose or purposes, and the relevant activities intended to be undertaken;
- (d) specifying the days and times, and the period or periods of time, during which it is intended that the relevant activities be undertaken;
- (e) specifying the names, qualifications and other personal details as are reasonably necessary to identify the persons who it is proposed will be undertaking the relevant activities, and to verify that such persons are responsible, of good repute and suitably qualified to undertake the relevant activities;
- (f) specifying the arrangements proposed to minimise or mitigate known or possible effects of the intended activities, and to compensate for any disruption to quiet enjoyment of the part of the Building in respect of which access is required.

"Building" means the buildings erected on the Land comprising building structures and structural components incorporated into or associated with such buildings as extended, developed, renovated or rebuilt from time to time.

"Building Code" means the building code as prescribed pursuant to the Building Act 2004.

"Building Standard" means sound and accepted architectural and engineering standards, principles and practices prudently applied having regard to:

- (a) the structure, design and building elements incorporated into or associated with the Building including the Building Support Components;
- (b) the relevant building performance functions intended to be achieved by structures and building elements forming part of the Building; and

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**



Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated 17 June 2008

Page 3 of 21 Pages

(Continue in additional Annexure Schedule, if required.)

- (c) all conditions likely to affect the structure, stability, and durability of the Building (including physical conditions of the type referred to in clause B 1.3.3 of the Building Code).

**"Building Support Components"** means all structural support columns and all other structural components of whatsoever nature (including but not limited to beams, walls and floor diaphragms) incorporated into or associated with the Building which provide mutual integrated support for each part of the Building and afford stability and durability for the Building as a whole.

**"Business Hours"** means the period from 8.00 am to 6.00 pm on a Business Day.

**"Business Day"** means any day of the year other than Saturdays, Sundays and public holidays as observed in Queenstown.

**"Comparable Building"** means a building structure (with related building systems and facilities) which is the same or substantially the same (to the extent practically achievable in the circumstances) as the Owners' Interest and which incorporates equivalent materials and techniques of construction current at the time of Reinstatement but allowing for and incorporating such alterations as are necessary to comply with all relevant statutory requirements and regulatory controls.

**"Default Interest Rate"** means 4% above Westpac's overdraft rate applicable during the continuance of the default.

**"Default Notice"** means a notice issued in the circumstances referred to in clause 2.9:

- (a) specifying reasonable details of the relevant default and remedial action required to remedy that default; and
- (b) notifying the covenantor that the covenantee will undertake the relevant remedial action if the covenantor 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.

**"Detrimental Building Performance Effects"** means any effects or potential effects which cause or in any way contribute to (whether directly or indirectly) damage, overstress or structural fatigue to any part of the Building, or impairment of intended building performance functions of any part of the Building (including stability, durability and structural integrity of the Building as a whole).

**"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

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**



Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

**Easement**

Dated 17 June 2008

Page 4 of 21 Pages

*(Continue in additional Annexure Schedule, if required.)*

- (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 2.10.3 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 Instrument"** means easement instrument number 7745242.5.

**"Facilities"** means and includes all equipment, machinery, apparatus and systems, and all piping, pipework, conduits, cabling, wiring, ducting and connections (in each case whether original or in addition to or in substitution for, in whole or in part, the original), performing a function in connection with or incidental to a building system, facility or service, or which provides or facilitates or is incidental to the effective operation or performance of a building system, facility or service.

**"Instrument"** means this instrument (including these provisions as they may be varied from time to time).

**"Insurance Policy"** means the building insurance policy or policies from time to time effected and maintained in accordance with clause 3 of this Instrument.

**"Insurable Risks"** means and includes all insurable risks relating to the Owners' Interest in respect of which a prudent owner would effect insurance cover including, but not limited to, fire, explosion, lightning, bursting or overflowing of water tanks, pipes or other water or heating apparatus, flood, explosion, wind, storm, hail, snow, aircraft and other aerial devices dropped therefrom, impact, riot and civil commotion, malicious damage, volcanic activity, seismic activity, tsunami and hydrothermal activity.

**"Insurer"** means the insurance company or companies with which the Insurance Policy is from time to time and for the time being effected and maintained, pursuant to which the Insurable Risks are underwritten on full replacement value terms as contemplated by clause 3.

**"Insured Parties"** means the persons who are for the time being the registered proprietors of all estate and interest in freehold in any part of Lot 1 or Lot 2 and includes (in the event that Lot 1 or Lot 2 are subdivided under the Unit Titles Act 1972) the body corporate created on the deposit of the relevant unit plan and the persons for the time being having an insurable interest pursuant to section 38(3) of the Unit Titles Act 1972 in any part of Lot 1 or Lot 2 (as the case may be) covered by the Insurance Policy.

**"Land"** means the land comprised and described in Certificates of Title 395926 and 395927 (Otago Registry), being Lots 1 and 2 on the Plan.

**"Lot "** and **"Lots"** means Lot 1 and/or Lot 2 (as the case may be) as the context requires.

**"Lot 1"** means Lot 1 as shown on the Plan.

**"Lot 2"** means Lot 2 as shown on the Plan.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**

Insert type of instrument

"Mortgage", "Transfer", "Lease" etc

**Easement**

Dated 17 June 2008

Page 5 of 21 Pages

*(Continue in additional Annexure Schedule, if required.)*

"Lot 1 Owner" means the person or persons who is or are for the time being registered as the proprietor or the proprietors of the freehold estate in Lot 1 or, if Lot 1 is subdivided, any part of Lot 1 or, if Lot 1 is subdivided under the Unit Titles Act 1972, the persons who are for the time being registered as proprietors of stratum estates in freehold in each of the principal units defined by the unit plan subdividing Lot 1 and, in respect of that part of Lot 1 defined as common property on the unit plan deposited under the Unit Titles Act 1972, means the body corporate created on the deposit of such unit plan.

"Lot 2 Owner" means the person or persons who is or are for the time being registered as the proprietor or the proprietors of the freehold estate in Lot 2 or, if Lot 2 is subdivided, any part of Lot 2 or, if Lot 2 is subdivided under the Unit Titles Act 1972, the persons who are for the time being registered as proprietors of stratum estates in freehold in each of the principal units defined by the unit plan subdividing Lot 2 and, in respect of that part of Lot 2 defined as common property on the unit plan deposited under the Unit Titles Act 1972, means the body corporate created on the deposit of such unit plan.

"Occupants" means the persons for the time being having the right to occupy all or any part of Lot 1 or Lot 2 as the Owner thereof or pursuant to a lease granting rights to occupy and use the relevant part or parts of Lot 1 and/or Lot 2 and includes their respective employees and invitees.

"Occupied Area" means any part of the Building which is occupied for day to day use and enjoyment by the owner for the time being of that part of the Building or by that owner's tenant for the time being.

"Owners' Interest" means the Building and the Facilities (but excluding fitting out improvements to the Building for occupational purposes, except to the extent agreed by the Owners).

"Owner" and "Owners" means the Lot 1 Owner and/or the Lot 2 Owner (as the case may be) as the context requires.

"Plan" means Deposited Plan 399240 (Otago Registry) as amended or substituted from time to time.

"Practical Completion" means when, on a reasonable basis:

- (a) The Lot 1 Owner believes it has achieved practical completion of all of the buildings to be built by it on Lot 1; and
- (b) The Lot 2 Owner believes it has achieved practical completion of the four level car park on Lot 2.

"Registered Valuer" means a registered valuer of good repute and having relevant experience in the valuation of developments in the Otago district similar to that comprised in the Building.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**

Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

Easement

Dated

17 June 2008

Page

6

of

21

Pages

(Continue in additional Annexure Schedule, if required.)

"Reinstatement" means:

- (a) if the Owners' Interest is destroyed or damaged by an Insurable Risk to the extent of being incapable of repair and is rendered untenable, the replacement of the Owners' Interest by a Comparable Building; and
- (b) if the Owners' Interest is damaged by an Insurable Risk but not so as to render it permanently untenable, the restoration of the damaged part of the Owners' Interest to a condition substantially the same as the original condition of the Owners' Interest.

"Structural Works" means any building work which in accordance with the Building Act 2004 would require a building consent and which must be undertaken in a manner which complies with the objectives functional requirements and performance criteria relating to structures and durability as specified in the Building Code.

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 person 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 subdividing any part of the Building, and, if the context permits also includes the Lot 1 Owner and the Lot 2 Owner and any person acting as agent for either the Lot 1 Owner or the Lot 2 Owner, or having a lawful right to occupy any part of Lot 1 granted by the Lot 1 Owner or any part of Lot 2 granted by the Lot 2 Owner;
- (vi) references to "covenantor" refer to the person or persons who is or are obliged to perform a positive covenant or to comply with a restrictive covenant or other obligation specified in this Instrument, and "covenantee" refers to the person or persons benefiting or intended to benefit from such positive covenant, restrictive covenant or other

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**

Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page

7

of

21

Pages

(Continue in additional Annexure Schedule, if required.)

obligation, and for the purposes of sections 308-314 of the Property Law Act 2007 includes each "occupier" as defined in section 4 of the Property Law Act 2007.

- (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; and
- (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.

(b) **Obligations:** A covenant specified in this Instrument whereby:

- (i) a covenantor 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) a covenantor 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.

1.3 **Agents:** References in this Instrument to the Lot 1 Owner and the Lot 2 Owner include any person authorised by either the Lot 1 Owner or the Lot 2 Owner to undertake any work or other activity for or on behalf of the Lot 1 Owner or the Lot 2 Owner (as the case may be), and such persons shall be deemed to be acting as the agent of the relevant Owner authorising or undertaking the relevant work or activity.

## 2. GENERAL PROVISIONS

2.1 **Application:** Unless otherwise specified in this Instrument, the provisions of this clause 2 apply to all positive covenants and the performance of all obligations specified in or arising under this Instrument.

2.2 **Effect of Instrument:** This Instrument is intended to be and to have effect as an instrument attaching to the land defined by the Plan and running with title for the purposes of the Land Transfer Act 1952 and the Property Law Act 2007 relating, in particular, to restrictive covenants and to positive covenants, and

If this Annexure Schedule is used as an expansion of an Instrument, all signing parties and either their witnesses or solicitors must sign or Initial in this box.

**Annexure Schedule**

Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 8 of 21 Pages

(Continue in additional Annexure Schedule, if required.)

binding every person who is for the time being an occupier (as defined in section 4 of the Property Law Act 2007).

2.3 **Term:** This Instrument is for a term of 999 years from the date of this Instrument, and all of the rights, covenants and obligations specified in this Instrument shall take effect from such date and apply for such period.

2.4 **Breach of obligations:** No power is implied in this Instrument to determine any rights granted pursuant to this Instrument for a breach of a corresponding obligation attaching to a right, it being the intention that each right granted shall subsist for the term unless it is surrendered.

2.5 **Powers incidental to rights and obligations:** Unless otherwise specified, the rights granted pursuant to this Instrument 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 rights and rights (other than access through an Occupied Area) for the purposes of carrying out appropriate inspections, testing, upkeep, maintenance and repairs of or to the relevant Facilities, but are subject to the relevant provisions of this clause 2 specifying terms, conditions, covenants and restrictions applying generally.

2.6 **Undertaking work:** Where any work (including any building work) is undertaken, such work must be carried out:

- (a) in a proper and competent manner by appropriately experienced, qualified and responsible persons;
- (b) 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 the Queenstown Lakes District Council, the Building Act 2004 and the Building Code);
- (c) with all reasonable speed;
- (d) in such a manner as to minimise disturbance, inconvenience or disruption to any Occupant; and
- (e) if any consents are required in respect of the relevant work, in strict compliance with the conditions attaching to the applicable consents;

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 **Damage:** If damage is caused by any person entering upon or undertaking any inspections, testing, maintenance, repairs or any works in respect of any part of the Building, that person will be liable for all costs and expenses incurred in remedying the relevant damage.

If this Annexure Schedule is used as an expansion of an Instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**



Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

**Easement**

Dated

Page **9** of **21** Pages

*(Continue in additional Annexure Schedule, if required.)*

**2.8 Acts of agents:** Where any work or activity is undertaken on behalf of, or is authorised by the Lot 1 Owner or the Lot 2 Owner, the Lot 1 Owner or the Lot 2 Owner (as the case may be) on whose behalf, or with whose authorisation, the relevant work or activity is undertaken, shall be responsible for the acts and omissions of such persons.

**2.9 Failure to perform obligation:** If a covenantor 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 covenantee may serve a Default Notice on the covenantor. If, following receipt of a Default Notice, the covenantor has not performed the relevant obligation by the date or within the period specified by the covenantee then the covenantee may:

- (a) perform the relevant obligation and undertake any works required to ensure compliance with the relevant obligation;
- (b) recover from the covenantor as a liquidated debt any costs and expenses properly and reasonably incurred by the covenantee arising from or incidental to remedying the relevant default by the covenantor; and
- (c) set-off such costs and expenses against any monies which may otherwise be payable by the covenantee to the covenantor.

The exercise of rights under this clause are without prejudice to and do not derogate from any other rights or remedies available to the covenantee.

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

**2.10.1 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.

**2.10.2 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 2.10.3.

**2.10.3 Dispute resolution procedures:** The following procedures will apply following the giving of a Dispute Notice:

- (a) The recipient of the Dispute Notice shall within 2 Business 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.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**

Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 10 of 21 Pages

*(Continue in additional Annexure Schedule, if required.)*

- (b) The respective representatives ("the 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 Business Days of the date the notice referred to in subclause 2.10.3(a) is received by the issuer of the relevant Dispute Notice.
- (c) If the dispute or difference is not resolved within 5 Business 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).
- (d) If appropriate, the representatives may also agree on:
- (i) the procedures and a timetable for any exchange of documents or other information relating to the dispute;
  - (ii) procedural rules and a timetable for the conduct of the selected mode of proceeding;
  - (iii) a procedure for selection and compensation of any neutral person who may be engaged to assist in the resolution of the dispute; and
  - (iv) whether the parties should obtain the assistance of a recognised dispute resolution organisation.
- (e) Either the recipient or the issuer of the relevant Dispute Notice may, so long as:
- (i) that person has acted in good faith in attempting to resolve the relevant matter in dispute in accordance with the foregoing procedures;
  - (ii) a period of 25 Business 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
  - (iii) 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, or commencement of court proceedings in relation to the matter or issue in dispute, as may be appropriate).

If this Annexure Schedule is used as an expansion of an Instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**



Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 11 of 21 Pages

*(Continue in additional Annexure Schedule, if required.)*

**2.10.4 Confidentiality:** Where the dispute resolution procedures referred to in subclause 2.10.3 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 for any purpose other than an attempt to settle the dispute between those persons.

**2.10.5 Savings:** The procedures specified in subclause 2.10.3 do not apply to court proceedings for:

- (a) 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:
  - (i) exceeds the rights or powers granted under this Instrument; or
  - (ii) is in breach of a term, condition, covenant or restriction attaching to the relevant easement or right; or
  - (iii) is in breach of a positive covenant or other obligation under this Instrument; or
  - (iv) is otherwise unauthorised, inappropriate or unlawful; or
- (b) specific performance requiring a covenantor to perform an obligation specified in this Instrument.

**2.11 Costs of performing obligations under positive covenant:** The following provisions apply where under any provision of this Instrument a covenantor is entitled to require a covenantee to make contributions toward costs incurred by the covenantor in performing the relevant positive covenant.

**2.11.1 Right to contributions:** Subject to any specific provisions in this Instrument and to the following provisions in this clause 2.11, a covenantor shall be entitled to require each covenantee to contribute such amounts as are fair and reasonable in the circumstances towards all costs properly and reasonably incurred by the covenantor in the performance by the covenantor of the relevant obligation.

**2.11.2 Determination of and payment of contributions:** Where a covenantor is entitled to require any covenantee to contribute towards costs properly and reasonably incurred by the covenantor, each covenantee shall promptly pay to the covenantor such amounts as are fair and reasonable in the circumstances having regard to, and determined by reference to, the relative benefits respectively derived by or accruing to the covenantor, the covenantee and Occupants, or which will be derived by or accrue to the covenantor, the covenantee and Occupants.

**2.11.3 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 covenantee in the circumstances of the intention to undertake the relevant work, the covenantor must in any other case where the covenantor intends or proposes to require any covenantee to make a contribution

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**

Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 12 of 21 Pages

(Continue in additional Annexure Schedule, if required.)

towards costs incurred by the covenantor in performing the relevant obligation, give a notice in terms required by section 309 of the Property Law Act 2007.

**2.12 Owners to perform obligations pursuant to Easement Instrument:** The Owners covenant with each other to pay, perform, observe and comply with their respective obligations under the Easement Instrument and accordingly:

**2.12.1 Covenants of Lot 1 Owner:** The Lot 1 Owner undertakes to pay, perform, observe and comply with the obligations of the Lot 1 Owner specified in the Easement Instrument which in accordance with the provisions of the Easement Instrument are to be paid, performed, observed and complied with by the Lot 1 Owner, and agrees to be bound by the provisions of the Easement Instrument to the same extent and in the same manner as if the provisions of the Easement Instrument were set out in and formed part of this Instrument (with any necessary modifications);

**2.12.2 Covenants of Lot 2 Owner:** The Lot 2 Owner undertakes to pay, perform, observe and comply with the obligations of the Lot 2 Owner specified in the Easement Instrument which in accordance with the provisions of the Easement Instrument are to be paid, performed, observed and complied with by the Lot 2 Owner, and agrees to be bound by the provisions of the Easement Instrument to the same extent and in the same manner as if the provisions of the Easement Instrument were set out in and formed part of this Instrument (with any necessary modifications).

**2.13 Land Covenant paramount:** The Owners agree that in the event of any conflict between the terms of this Land Covenant and the terms of the Easement Instrument, the terms of this Land Covenant shall prevail.

### 3. INSURANCE

**3.1 Owners to Insure:** The Owners each undertake with each other that they will at all times insure the Owners' Interest and keep the Owners' Interest insured in accordance with the provisions of this section.

**3.2 Insurer:** The Owners' Interest shall be insured by a reputable insurance company which has been carrying on the business of the insurance of commercial buildings in New Zealand for at least 10 years, as shall be agreed upon by the Owners from time to time.

**3.3 Terms of Insurance Policy:** The Owners undertake with each other that they will at all times do all things necessary to ensure that the terms of the Insurance Policy:

(a) provide adequate cover for the Insurable Risks;

(b) provide that the Owners' Interest is insured to its full replacement value; and

(c) are similar to an insurance policy effected by a body corporate under the Unit Titles Act 1972.

**3.4 Periodic valuations:** The Owners each agree to consult with each other and the Insurer from time to time

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**

Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 13 of 21 Pages

(Continue in additional Annexure Schedule, if required.)

to obtain a current valuation of the Owners' Interest from the Registered Valuer so as to determine the full replacement value from time to time of the Owners' Interest, such valuation to be obtained no less frequently than once every five years.

- 3.5 **Allocation of insurance premiums:** The Owners each acknowledge that the contribution by each Owner to the total insurance premium payable in respect of the Insurance Policy shall be calculated by applying to such total insurance premium payable the same percentage as the replacement value of each Owner's share in the Owners' Interest bears to the full replacement value of the Owners' Interest.
- 3.6 **Payment of insurance premiums:** The Owners each undertake to each other to pay promptly to the Insurer their share (as determined by clause 3.5) of the insurance premium to ensure that the Owners' Interest is at all times fully insured under the Insurance Policy to full replacement value.
- 3.7 **Failure to pay insurance premium:** The Owners each acknowledge that if any one of them fails to pay their share of the insurance premium in accordance with clause 3.6 the other non-defaulting Owner may pay the outstanding premium and in such case the defaulting Owner undertakes to pay to the non-defaulting Owner the amount so paid together with interest at the Default Interest Rate for the period of continuance of the default and to indemnify and keep indemnified the non-defaulting Owner from and against, and to compensate the non-defaulting Owner for, all losses suffered as a consequence of the Insurance Policy not being effected, or fully effected, as a consequence of a failure to pay the relevant premiums or share of premiums (as the case may be) by the due dates for payment thereof.
- 3.8 **Premium rate:** If during the term of this Instrument either of the Owners intends to do any act which may have the effect of increasing the premium payable in respect of the Insurance Policy the relevant Owner shall first obtain the prior written approval of the Insurer and shall pay on demand such increased extra premium or premiums as the Owners become liable to pay.
- 3.9 **Owners not to render insurance void:** The Owners undertake with each other that they shall not do anything, or permit anything to be done which may render the Insurance Policy voidable and if an activity is carried out by an Owner which does have an effect of voiding or excluding liability (in whole or in part) for payment of insurance proceeds under the Insurance Policy, then the defaulting Owner undertakes to indemnify the non-defaulting Owners and to keep the non-defaulting Owner indemnified from and against any:
- (a) liability which they may suffer or incur or for which they may become liable;
  - (b) loss, damage, cost, expense or charge incurred or sustained at any time by them; and
  - (c) proceeding, action, claim, demand or other process in any jurisdiction against them;
- as a consequence of the Insurance Policy being so voided or liability thereunder being excluded.
- 3.10 **Fit Out:** The Insurance Policy effected pursuant to this section shall be extended to include cover in relation to any building work or fit out work which is from time to time undertaken by the Owners.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**



Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 14 of 21 Pages

(Continue in additional Annexure Schedule, if required.)

Before either of the Owners undertake any building work or fitting out works to any part or parts of the Building the Owner undertaking the relevant building work or fitting out work undertakes:

- (a) to declare to the Insurer the nature and extent of the building work and fitting out works proposed to be undertaken before such works are commenced; and
- (b) to pay to the Insurer the amount or amounts of any extra or additional premiums payable in respect of such building work and fitting out works.

**3.11 Liability for Insurance Policy excess:** If at any time a policy excess is payable under the Insurance Policy or the insurance proceeds payable under the Insurance Policy are subject to deductions such excess or deductions shall be allocated by the Insurer between the Owners based on the proportion that the cost of effecting reinstatement of each Owner's share of the Owner's Interest bears to the total reinstatement cost of the Owners' Interest.

**3.12 Insurance Policy costs:** Each Owner acknowledges and undertakes that all costs associated with and incidental to effecting the Insurance Policy including valuations shall be apportioned between the Owners in the same manner that the insurance premiums are apportioned pursuant to clause 3.5. The Owners undertake to pay their allocation of such costs promptly upon receipt of an invoice.

**4. REINSTATEMENT**

**4.1 Insurance proceeds:** Unless the Owners shall agree otherwise, the insurance proceeds payable under the Insurance Policy in respect of any damage to, or destruction of, the Owners' Interest shall be applied in effecting Reinstatement which may lawfully be effected (including compliance with all relevant statutory requirements and regulatory controls) and be practically achievable in the circumstances.

**4.2 Co-operation and negotiation in good faith:** The Owners undertake to co-operate and negotiate in good faith with each other to the extent reasonably required in the circumstances to promptly and efficiently effect Reinstatement including:

- (a) the application of the proceeds payable under the Insurance Policy in payment of costs of and incidental to Reinstatement;
- (b) the joint appointment of professional consultants necessary or desirable in the circumstances to advise, and to act for and on behalf of, the Owners in connection with all matters relating to Reinstatement;
- (c) the joint engagement of contractors to undertake the building work required in the circumstances; and
- (d) if appropriate, the holding of the insurance proceeds payable under the Building Insurance Policy by an independent stakeholder agreed to by the Owners and the Insurer, and progressive payment thereof to consultants and contractors employed in relation to the Reinstatement.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**

Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 15 of 21 Pages

(Continue in additional Annexure Schedule, if required.)

**4.3 Review of consequences of damage:** If any part of the Owners' Interest is damaged, the Owners undertake to confer with each other as soon as reasonably practicable to review the extent of such damage, the actions required to remedy the relevant damage, the practical implications of undertaking remedial work required in the circumstances, and the insurance covers available to cover the financial implications arising, and to agree on the most appropriate course of action in the circumstances to effect Reinstatement promptly whilst minimising any adverse implications arising to persons affected in the circumstances.

**4.4 Partial damage:** If circumstances arise whereby part of the Building owned by one of the Owners is damaged but the part of the Building owned by the other Owner is undamaged or damage is of a relatively minor nature such that the undamaged part of the Building can continue to be occupied or substantially occupied but access to the undamaged part of the Building is required to effect Reinstatement of the damaged part of the Building, then the following provisions will apply:

**4.4.1 Notice:** To the extent that it is necessary for one of the Owners to pass or re-pass through, or to remain for any period or periods of time on any part of the Building owned by the other Owner for or in connection with building work required to be undertaken to effect Reinstatement, the Owner wishing to enter upon any part of the Building owned by the other Owner or occupied by an Occupant of that Owner may not do so without first serving an Access Request Notice on the other Owner and any Occupant affected, and obtaining the prior written consent of that Owner and that Occupant to do so.

**4.4.2 Consents:** The Owners and any Occupant receiving an Access Request Notice may not unreasonably or arbitrarily refuse consent to allow access to the relevant part of the Building so long as:

- (a) the access requested is reasonably necessary to undertake the relevant building work;
- (b) in the event that the access requested is in respect of a part of the Building which is occupied (or which in all the circumstances is reasonably capable of being occupied for the intended use and enjoyment thereof), arrangements acceptable to that Owner and Occupants are made to:
  - (i) minimise disruption and interference to quiet enjoyment;
  - (ii) provide alternative temporary accommodation if reasonably required; and
  - (iii) compensate that Owner and Occupants for the direct and indirect consequences of the resultant disruption or interference (including the loss of the benefit, in whole or in part of the part of the Building for which access is requested) and any costs of and incidental to temporary relocation to the extent that the proceeds payable under the Insurance Policy do not provide for compensation or adequate compensation;

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**

Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 16 of 21 Pages

*(Continue in additional Annexure Schedule, if required.)*

and must respond promptly within such period as is reasonable in the circumstances following receipt of the relevant Access Request Notice, but shall be entitled to specify such terms, conditions and restrictions, and to require such covenants to be entered into and assurances to be given (including entering into of bonds or payment of money) as are reasonable in the circumstances.

**4.4.3 Relevant considerations:** In reviewing a request for access specified in an Access Request Notice and determining the appropriate conditions (if any) of granting consent, the relevant Owner and Occupants must act properly, responsibly and in good faith but may take into account all relevant considerations including:

- (a) the nature of the activities intended to be undertaken;
- (b) the reasonableness of the intended activities for the purposes proposed;
- (c) the type and nature of materials and equipment proposed to be utilised in connection with the intended activities;
- (d) the period or periods of time during which the intended activities are proposed to be undertaken;
- (e) the likely effects of the intended activities; and
- (f) any special considerations including requirements for security and protection of property.

**4.4.4 Undertaking work:** In addition to any other requirements attaching to a consent granted by the relevant Owner and Occupants, the applicable provisions of clause 2 shall apply to all building work undertaken.

**4.4.5 Protection of building:** All materials and equipment used in any way to undertake the relevant building work must have such characteristics as will ensure the avoidance of any damage or deterioration to any parts of the Owner's Interest 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 such manner as will avoid damage or deterioration to that part of the Owners' Interest owned by the Owner and any Occupants receiving an Access Request Notice.

**5. PROTECTION OF BUILDING**

**5.1 Lot 1 Owner's Responsibilities:** The Lot 1 Owner undertakes at all times:

- (a) to comply with the duties and obligations imposed by the Building Act 2004 on the Lot 1 Owner in its capacity as the owner of Lot 1;

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**

Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 17 of 21 Pages

*(Continue in additional Annexure Schedule, if required.)*

- (b) to ensure that each person who for the time being has status as an owner for the purposes of the Building Act 2004 in respect of any part of Lot 1 complies with the duties and obligations imposed by the Building Act 2004 on such persons in respect of building work carried out or proposed to be carried out to the relevant part of Lot 1;
- (c) if any building work is carried out, or is proposed to be carried out by the Lot 1 Owner or by any Lot 1 Occupant to any part of Lot 1 at any time, to ensure that:
  - (i) no building work is undertaken unless a building consent has first been granted authorising the relevant building work and contract works insurance effected covering all insurable risks arising from or incidental to such building work;
  - (ii) the building work is carried out in strict compliance with and during the currency of the relevant building consent (including conditions imposed);
  - (iii) any rectification notices issued by the relevant authority having jurisdiction in respect of such building work are promptly complied with;
  - (iv) as soon as practicably possible following completion of the relevant building work a code compliance certificate is obtained.

**5.2 Lot 2 Owner's Responsibilities:** The Lot 2 Owner undertakes at all times:

- (a) to comply with the duties and obligations imposed by the Building Act 2004 on the Lot 2 Owner in its capacity as the owner of Lot 2;
- (b) to ensure that each person who for the time being has status as an owner for the purposes of the Building Act 2004 in respect of any part of Lot 2 complies with the duties and obligations imposed by the Building Act 2004 on such persons in respect of building work carried out or proposed to be carried out to the relevant part of Lot 2;
- (c) if any building work is carried out, or is proposed to be carried out by the Lot 2 Owner or by any Lot 2 Occupant to any part of Lot 2 at any time, to ensure that:
  - (i) no building work is undertaken unless a building consent has first been granted authorising the relevant building work and contract works insurance effected covering all insurable risks arising from or incidental to such building work;
  - (ii) the building work is carried out in strict compliance with and during the currency of the relevant building consent (including conditions imposed);
  - (iii) any rectification notices issued by the relevant authority having jurisdiction in respect of such building work are promptly complied with;

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**

Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 18 of 21 Pages

(Continue in additional Annexure Schedule, if required.)

- (iv) as soon as practicably possible following completion of the relevant building work a code compliance certificate is obtained.

**5.4 Obligation of the Owners:** The Owners each undertake with each other:

- (a) not to remove or replace any Building Support Components without first complying with the requirements and restrictions specified in clause 5.5;
- (b) not to bring any object into any part of the Building nor install any object within any part of the Building, of such a nature, size or weight which applying the Building Standard will or may cause or result in Detrimental Building Performance Effects, or which exceeds the maximum allowable floor loading applicable to the relevant part of the Building;
- (c) not to undertake any Structural Works, nor permit any Structural Works to be undertaken, to any part of the Building without first complying with the requirements and restrictions specified in clause 5.5;
- (d) in the event that any Structural Works are undertaken to any part of the Building by an Owner:
  - (i) to perform, comply with and be bound by, the terms, conditions, covenants and restrictions specified in clause 2 of the Easement Instrument;
  - (ii) to ensure that the relevant Structural Works are designed in accordance with and carried out and completed in a manner which comply with the Building Standard and which applying the Building Standard will not cause or result in Detrimental Building Performance Effects;
  - (iii) to effect insurance cover with a reputable insurer for all risks (including physical loss or damage to the Building and public liability) and for such value as may be reasonably required by the other Owner, and to provide proof to the reasonable satisfaction of the other Owner that such insurance covers have been effected and will remain current for the period that the relevant Structural Works are undertaken;
  - (iv) to promptly make good any damage caused to the other Owners' property in the Building by the relevant Structural Works or by any activities incidental to undertaking the relevant Structural Works; and
- (e) to indemnify and compensate the other Owners for all costs incurred and losses suffered by the other Owners as a consequence of:
  - (i) a breach by the Owner undertaking the Structural Works of the obligations specified in this clause 5; or

If this Annexure Schedule is used as an expansion of an Instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**

Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 19 of 21 Pages

*(Continue in additional Annexure Schedule, if required.)*

- (ii) in the event that any Structural Works undertaken to any part of the Building result in Detrimental Building Performance Effects to the other Owners' property in the Building, in remedying the consequences of such Detrimental Building Performance Effects.

**5.5 Structural Works:** The Owners each undertake with each other in connection with carrying out Structural Works to:

- (a) notify the other Owner in writing pursuant to clause 2.8 of the Easement Instrument before any Structural Works are undertaken;
- (b) supply to the other Owner prior to commencing any Structural Works all relevant information in connection with the Structural Works as may be reasonably required to satisfy the other Owner that the Structural Works will not result in Detrimental Building Performance Effects or affect the structural integrity of the Building; and
- (c) not commence any Structural Works without the consent of the other Owner (such consent not to be unreasonably or arbitrarily withheld) and in providing such consent the other Owner may if it is reasonable in the circumstances impose such condition as they consider reasonably necessary.

**5.6 Boundary Penetrations:** Notwithstanding anything to the contrary in this Instrument the Owners each acknowledge and agree that they shall be entitled to make minor penetrations from their respective Lots into the other adjoining Lot or Lots.

**5.7 Limitation on Penetration:** For the purpose of clause 5.6 minor penetrations shall be limited to those penetrations necessary for the proper attachment of fixtures and fittings, including cabling and wiring incidental to such fixtures and fittings as may be reasonably necessary for the effective operation of any services provided to the Building, but shall not include any penetrations which may in any way adversely affect the soundness or building performance functions of the relevant Lot being penetrated or the Building as a whole, or which may interfere in any way with the effective functioning of the Facilities.

**5.8 Development:** Where either of the Owners wishes to extend or develop the part of the Building erected on that Owner's Lot, the following provisions will apply:

**5.8.1 Notice:** To the extent that it is necessary for one of the Owners to pass or re-pass through, or to remain for any period or periods of time on any part of the Building owned by the other Owner for or in connection with the building work to be undertaken, the Owner wishing to enter upon any part of the Building owned by the other Owner or occupied by an Occupant of that Owner may not do so without first serving an Access Request Notice on the other Owner and any Occupant affected, and obtaining the prior written consent of that Owner and that Occupant to do so.

**5.8.2 Consents:** The Owners and any Occupant receiving an Access Request Notice may not unreasonably or arbitrarily refuse consent to allow access to the relevant part of the Building so long as:

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**



Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Easement

Dated

Page 20 of 21 Pages

(Continue in additional Annexure Schedule, if required.)

- (a) the access requested is reasonably necessary to undertake the relevant building work;
- (b) in the event that the access requested is in respect of a part of the Building which is occupied (or which in all the circumstances is reasonably capable of being occupied for the intended use and enjoyment thereof), arrangements acceptable to that Owner and Occupants are made to:
  - (i) minimise disruption and interference to quiet enjoyment;
  - (ii) provide alternative temporary accommodation if reasonably required; and
  - (iii) compensate that Owner and Occupants for the direct and indirect consequences of the resultant disruption or interference (including the loss of the benefit, in whole or in part of the part of the Building for which access is requested) and any costs of and incidental to temporary relocation;

and must respond promptly within such period as is reasonable in the circumstances following receipt of the relevant Access Request Notice, but shall be entitled to specify such terms, conditions and restrictions, and to require such covenants to be entered into and assurances to be given (including entering into of bonds or payment of money) as are reasonable in the circumstances.

**5.8.3 Relevant considerations:** In reviewing a request for access specified in an Access Request Notice and determining the appropriate conditions (if any) of granting consent, the relevant Owner and Occupants must act properly, responsibly and in good faith but may take into account all relevant considerations including:

- (a) the nature of the activities intended to be undertaken;
- (b) the reasonableness of the intended activities for the purposes proposed;
- (c) the type and nature of materials and equipment proposed to be utilised in connection with the intended activities;
- (d) the period or periods of time during which the intended activities are proposed to be undertaken;
- (e) the likely effects of the intended activities; and
- (f) any special considerations including requirements for security and protection of property.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule**

Insert type of instrument

"Mortgage", "Transfer", "Lease" etc



Easement

Dated

Page 21 of 21 Pages

(Continue in additional Annexure Schedule, if required.)

- 5.8.4 **Undertaking work:** In addition to any other requirements attaching to a consent granted by the relevant Owner and Occupants, the applicable provisions of clause 2 shall apply to all building work undertaken.
- 5.8.5 **Protection of building:** All materials and equipment used in any way to undertake the relevant building work must have such characteristics as will ensure the avoidance of any damage or deterioration to any parts of the Owner's Interest 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 such manner as will avoid damage or deterioration to that part of the Owners' Interest owned by the Owner and any Occupants receiving an Access Request Notice.
- 5.8.6 **Lift access:** Notwithstanding any other provision of this clause 5.8, the Owners acknowledge that any extension or development of an Owner's Lot is likely to require access to and use of the lifts by that Owner's contractors which may cause some disruption to lift access within the Building. Each of the Owners agrees to allow such access by the other Owner's contractors and agrees to accept the resulting disruption to lift access provided that such disruption is kept within reasonable bounds and does not prevent reasonable use of the lifts by an Owner or an Owner's agents, employees, contractors, tenants, licensees or invitees.
- 5.8.7 **Easement areas:** The Owners acknowledge that any extension or development of an Owner's Lot may require amendment of the easement areas set out in the Easement Instrument, and each of the Owners agrees to cooperate in the registration of any variations to the existing easement areas reasonably required for the purposes of the other Owner's extension or development.
- 5.8.8 **Pedestrian right of way easements:** The Lot 1 Owner shall comply with condition (e) of the consent notice placed on the title for Lot 1, being Consent Notice 7745242.3.

- 5.9 **Initial development period:** There shall be a period from the date of issue of the initial titles for Lots 1 and 2 on the Plan until Practical Completion has occurred ("Initial Development Period"). During the Initial Development Period the provisions of clause 5.8 shall apply, except that clause 5.8.2(b)(ii) shall be deleted and the wording in clause 5.8.2(b)(iii) shall be replaced with the following wording: "compensate that Owner and Occupants for any direct revenue loss resulting from the exercise of the access right".

**6. CONSENTS / RESTRICTIONS ON USE**

- 6.1 **Lot 2 Owner to consent:** Subject to clause 6.2, the Lot 2 Owner undertakes not to object and if required to provide written consent under the Resource Management Act 1991 to any subdivision or land use consent application by the Lot 1 Owner for any commercial or residential activity on Lot 1.
- 6.2 **No carpark:** While the part of the Building erected on Lot 2 is used wholly or principally as a carparking building the Lot 1 Owner shall not use Lot 1 as a carpark or construct a carparking building on Lot 1, and the provisions of clause 6.1 shall not apply to any proposal by the Lot 1 Owner to use Lot 1 as a carpark or to construct a carparking building on Lot 1.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**Annexure Schedule - Consent Form**

Land Transfer Act 1952 section 238(2)



Insert type of instrument  
"Caveat", "Mortgage" etc

**Easement Instrument**

Page **1** of **1** pages

**Consentor**

Surname must be underlined or in CAPITALS

**Man Street Properties Limited**

**Capacity and Interest of Consentor**

(eg. Caveator under Caveat no./Mortgagee under Mortgage no.)

**Encumbrancer under Encumbrance  
7795201.1**

**Consent**

Delete Land Transfer Act 1952, if inapplicable, and insert name and date of application Act.

Delete words in [ ] if inconsistent with the consent.

State full details of the matter for which consent is required.

Pursuant to [section 238(2) of the Land Transfer Act 1952]

[section] of the [Act]

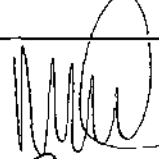

[Without prejudice to the rights and powers existing under the interest of the Consentor]

the Consentor hereby consents to:

**the registration of the attached Easement Instrument affecting Certificate of Title 395927 of which the Consentor is the registered Encumbrancer**

Dated this **8** day of **August 2008**

**Attestation**

|  |   |
|--|---|
| <br><b>Michael John Davies</b><br>- Director. | <p>Signed in my presence by the Consentor</p> <p>Signature of Witness</p> <p>Witness to complete in BLOCK letters (unless legibly printed)</p> <p>Witness name</p> <p>Occupation</p> <p>Address</p> |
| <br><b>John McCree Martin</b><br>- Director.  | <p>Signature of Consentor</p>   |

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 Form**

Land Transfer Act 1952 section 238(2)



Insert type of instrument  
"Caveat", "Mortgage" etc

**Easement**

Page **1** of **1** pages

**Consentor**

Surname must be underlined or in CAPITALS

**Capacity and Interest of Consentor**

(eg. Caveator under Caveat no./Mortgagee under Mortgage no.)

**WESTPAC NEW ZEALAND LIMITED**

**Mortgagee under Mortgage No. 7771152.5**

**Consent**

Delete Land Transfer Act 1952, if inapplicable, and insert name and date of application Act.

Delete words in [ ] if inconsistent with the consent.

State full details of the matter for which consent is required.

Pursuant to ~~section 238(2) of the Land Transfer Act 1952~~

~~[section of the Act]~~

~~[Without prejudice to the rights and powers existing under the interest of the Consentor]~~

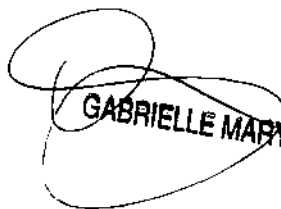
the Consentor hereby consents to:

**registration of the attached Easement Instrument.**

Dated this

12<sup>th</sup> day of August 2008

**Attestation**

  
**GABRIELLE MARY MASON**

Signed in my presence by the Consentor

Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

WINSOR WING SHEUNG SCHAUER  
BANK OFFICER  
WESTPAC NEW ZEALAND LIMITED  
LEGAL SERVICES UNIT  
AUCKLAND

Address

Signature of Consentor

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.

**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**


**I, GABRIELLE MARY MASON, of Auckland in New Zealand, Bank Officer**

**HEREBY CERTIFY -**

1. **THAT** by Deed dated 6 September 2006, a copy of which is deposited with Land Information New Zealand and numbered 7032934.1, **WESTPAC NEW ZEALAND LIMITED**, incorporated in New Zealand and having its principal place of business at 188 Quay Street, Auckland appointed me its attorney on the terms and subject to the conditions set out in that Deed.
2. **THAT** at the date of this certificate I am a Tier One Attorney for Westpac New Zealand Limited.
3. **THAT** at the date of this certificate I have not received any notice or information of the revocation of that appointment by the winding up or dissolution of **Westpac New Zealand Limited** or otherwise

**SIGNED at Auckland**

On this 12<sup>th</sup> day of August 2008



**Gabrielle Mary Mason**

**Annexure Schedule - Consent Form**

Land Transfer Act 1952 section 238(2)

Insert type of instrument  
"Caveat", "Mortgage" etc**Easement Instrument**Page **1** of **1** pages**Consentor**Surname must be underlined or in CAPITALS**Capacity and Interest of Consentor**

(eg. Caveator under Caveat no./Mortgagee under Mortgage no.)

**ANZ National Bank Limited****Mortgagee under mortgages 6257879.3,  
6295366.5 and 6306298.2****Consent**

Delete Land Transfer Act 1952, if inapplicable, and insert name and date of application Act.

Delete words in [ ] if inconsistent with the consent.

State full details of the matter for which consent is required.


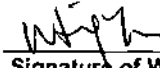
Pursuant to [section 238(2) of the Land Transfer Act 1952]

[section] of the Act

[Without prejudice to the rights and powers existing under the interest of the Consentor]

the Consentor hereby consents to:

**registration of the attached Easement Instrument affecting Certificate of Title 395927 of which  
the consentor is the registered mortgagee**Dated this **15<sup>th</sup>** day of **July** **2008** -**Attestation**

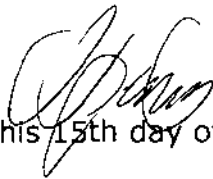
|   |  |
|---|--|
| <br><b>EVANGELINE JENITA SPENCER</b><br><b>MANAGER - CORPORATE SECURITY SERVICES</b> | <b>Signed in my presence by the Consentor</b><br><br><b>Signature of Witness</b><br>Witness to complete in BLOCK letters (unless legibly printed)<br><b>Witness name</b><br><b>Occupation</b><br><b>Address</b> |
|   | <b>WEI JING TAN</b><br><b>BANK OFFICER</b><br><b>AUCKLAND</b>  |
| <b>Signature of Consentor</b>   |  |

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.

**CERTIFICATE OF NON-REVOCATION OF POWER OF  
ATTORNEY**

I, Evangeline Jenita Spencer of Auckland, New Zealand, Manager  
Corporate Securities Services of ANZ National Bank Limited, certify –

1. That by deed dated 15<sup>th</sup> June 2005, ANZ National Bank  
Limited of Wellington, New Zealand appointed me its attorney.
2. That I have not received notice of any event revoking the  
power of attorney.



Signed at Auckland this 15<sup>th</sup> day of July 2008.

**Annexure Schedule - Consent Form**

Land Transfer Act 1952 section 238(2)

Insert type of instrument  
"Caveat", "Mortgage" etc**Easement Instrument**Page **1** of **1** pages**Consentor**Surname must be underlined or in CAPITALS**Capacity and Interest of Consentor**

(eg. Caveator under Caveat no./Mortgagee under Mortgage no.)

**SEA Holdings New Zealand Limited****Mortgagee under mortgage 7777507.1****Consent**

Delete Land Transfer Act 1952, if inapplicable, and insert name and date of application Act.

Delete words in [ ] if inconsistent with the consent.

State full details of the matter for which consent is required.


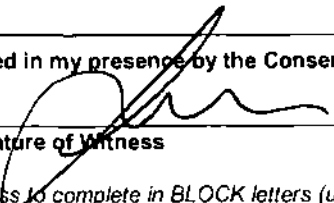
Pursuant to [section 238(2) of the Land Transfer Act 1952]

[section \_\_\_\_\_ of the \_\_\_\_\_ Act \_\_\_\_\_]

[Without prejudice to the rights and powers existing under the interest of the Consentor]

the Consentor hereby consents to:

**the registration of the attached Easement Instrument affecting Certificate of Title 395926 of which the Consentor is registered as a mortgagee**Dated this 14<sup>th</sup> day of July 2008**Attestation**

|   |   |
|---|---|
|  | Signed in my presence by the Consentor  |
|   | <br>Signature of Witness<br>Witness to complete in BLOCK letters (unless legibly printed)<br>Witness name <u>LOUISE MILLER</u><br>Occupation <u>CHARTERED ACCOUNTANT</u><br>Address <u>AUCKLAND</u> |
| Signature of Consentor  |   |

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.

Landonline User ID BrownSAU

LODGING FIRM Brown & Sargent

Address PO Box 1496

Shortland Street

Auckland

Uplifting Box Number: \_\_\_\_\_

ASSOCIATED FIRM: \_\_\_\_\_

Client Code / Ref: \_\_\_\_\_

TP0000353

HEREWITH

Survey Plan (#) \_\_\_\_\_

Title Plan (#) \_\_\_\_\_

Traverse Sheets (#) \_\_\_\_\_

Field Notes (#) \_\_\_\_\_

Calc Sheets (#) \_\_\_\_\_

Survey Report \_\_\_\_\_

Dealing / SUD Number:  
(LINZ Use only)

Priority Barcode/Title Status  
(LINZ Use only)

**EI 7914063.1 Easemen**  
Cpy - 02/02, Pgs - 029, 20/08/08, 12:11

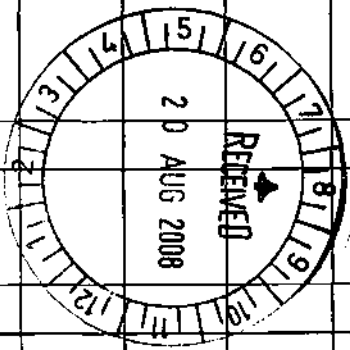
**Copies**  
(Inc. Original)  
DocID 717245467

Plan Number Pre-Allocated or  
to be Deposited: \_\_\_\_\_

Rejected Dealing Number: \_\_\_\_\_

Other (State)

| Priority Order | CT Ref           | Type of Instrument | Names of Parties  | DOCUMENT OR SURVEY FEES | REGISTRATION | NOTICES | ADVERTISING | NEW TITLES | OTHER | PRIORITY CAPTURE | FEES - GST INCLUSIVE |
|----------------|------------------|--------------------|---|-------------------------|--------------|---------|-------------|------------|-------|------------------|----------------------|
| 1              | 395927<br>395936 | EI                 | Queensdown<br>Carparking Ltd - Man<br>Street Properties Ltd | <del>60.00</del>        | (231)        |         |             |            |       |                  | <del>\$60.00</del>   |
| 2              |                  |                    |   |                         |              |         |             |            |       |                  |                      |
| 3              |                  |                    |   |                         |              |         |             |            |       |                  |                      |
| 4              |                  |                    |   |                         |              |         |             |            |       |                  |                      |
| 5              |                  |                    |   |                         |              |         |             |            |       |                  |                      |
| 6              |                  |                    |   |                         |              |         |             |            |       |                  |                      |



**CREDIT**

(231)

Land Information New Zealand Lodgement Form

Annotations (LINZ use only)

Fees Receipt and Tax Invoice

GST Registered Number 17-022-895

LINZ Form P005

LINZ Form P005 - PDF

*Leeds. SUD*  
Original Signatures? \_\_\_\_\_

Less Fees paid on Dealing # \_\_\_\_\_

Subtotal (for this page) **\$60.00**

Total for this dealing **\$60.90**

Debit my Account for \_\_\_\_\_

**(231.00)**  
~~\$60.90~~