

CONSTITUTION
FUTUNA RESIDENTS' ASSOCIATION INCORPORATED

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NAME

The name of the Association is the Futuna Residents' Association Incorporated.

1. DEFINITIONS

1.1. In this Constitution, unless the context otherwise requires:

“Act” means the Incorporated Societies Act 2022.

“Administrator” means a Manager in terms of the Land Covenant (in particular clause 2.8(d) (page 22) of the Land Covenant).

“Annual General Meeting” means the general meeting held by the Association each year in terms of this Constitution.

“Association” means the Futuna Residents' Association Incorporated.

“Bank” means a bank operating in, and in accordance with, the laws of New Zealand.

“Committee” means the Committee pursuant to this Constitution.

“Common Facilities” means:

1.1.1. Lot 100 on deposited plan 326794, Lot 100 on deposited plan 333540 and Lot 100 and 100A on deposited plan 344591 (refer to Schedule One for a rough guide showing where these areas are located highlighted in yellow);

1.1.2. all walkways, pedestrian areas, seating, visitor car parks, roadways, electrical sub-stations, scenic areas, recreational areas, walls, fences and other facilities for the use of Owners, Occupiers and Invitees situated within Futuna Close; and

1.1.3. such other land owned or under the control of the Association which the Committee has resolved shall be available for use for the purposes in the sub-clause above.

“Constitution” means this Constitution as amended from time to time.

“Contributions” mean all payments due from the Members (or any particular Member) under the Land Covenant, the Easement, this Constitution and the Rules (including as a result of breach of the Land Covenant, the Easement, this Constitution or the Rules).

“Encumbrance” means memorandum of encumbrances 5806253.14, 6184478.10 and 6388529.14 registered against the title to each of the Lots.

"Futuna Close" means the residential subdivision developed on the land commonly known as "62 Friend Street, Karori, Wellington" or as "Futuna Close" being Lots 1-20, 67, 100 and 101 on deposited plan 326794, Lots 21-43, 100 and 102 on deposited plan 333540 and Lots 44-66, 54A-55A, 100 and 100A on deposited plan 344591.

"Invitee" means any person invited by an Owner or Occupier onto Futuna Close or any visitor to an Owner or Occupier within Futuna Close.

"Land Covenant" means the land covenants created by easements 5806253.13, 6184478.9 and 6388529.13 registered against the title to each of the Lots.

"Lot" means Lots 1-20 and 67 on deposited plan 326794, Lots 21-43 on deposited plan 333540 and Lots 44-66 and 54A-55A on deposited plan 344591.

"Member" means any person who holds a membership of the Association. An Owner of a Lot is automatically a Member as dealt with in more detail by clause 4 below.

"Occupier" means any person occupying any Lot under any lease, licence or other occupancy right, whether formal or informal, including members of an Owner's immediate family.

"Owner" means each person registered as a proprietor (whether individually or with others) of a Lot.

"Registrar" means the person who is the Registrar of Incorporated Societies.

"Rules" mean any rules created by the Association under the Land Covenant (in particular, clause 2.7 (c) (page 20) of the Land Covenant) and this Constitution.

"Special General Meeting" means any general meeting of the Association that is not an Annual General Meeting.

"Special Resolution" means a resolution of the Association passed in a general meeting by a majority of not less than 75% of the Members entitled to vote at that general meeting.

2. INTERPRETATION

2.1. In this Constitution, unless the context otherwise requires:

- 2.1.1. words denoting the singular shall include the plural and vice versa;
- 2.1.2. one gender shall include the other genders;
words denoting persons shall include any individual,

company, body corporate or incorporated society and other organisations that are a legal person. For organisations that are not a legal person, such as trusts, the trustees shall be treated as the persons. Obligations of persons shall extend to the executors of that person's estate and any mortgagee in possession of their Lot;

2.1.3. any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;

2.1.4. reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires it;

- 2.1.5. any reference to "month" or "monthly" shall mean, respectively, calendar month or calendar monthly;
- 2.1.6. references to sections are references to sections in this Constitution;
- 2.1.7. the section headings and clause headings have been inserted for convenience and shall not form part of this Constitution or affect its interpretation in any way;
- 2.1.8. reference to any statutes, regulations or by-laws includes statutes, regulations or by-laws amending, consolidating or replacing the same; and
- 2.1.9. references to page numbers in the Land Covenant are references to the page numbers in easement number 6388529.13 and the fact that these references refer to only one easement is for ease of reference only. There are three easements contained in the definition of the Land Covenant and there are a small number of differences in their terms.

3. OBJECTS

- 3.1. The Association is formed to *promote* the following objects for the benefit of Members:
 - 3.1.1. to provide a means whereby Owners, Occupiers and their respective Invitees can use and enjoy the Common Facilities.
 - 3.1.2. to provide for the management and control of the use of the Common Facilities by Owners and Occupiers and their respective Invitees;
 - 3.1.3. to provide for the proper operation, maintenance, repair, and replacement of the Common Facilities when required;
 - 3.1.4. to provide for the enforcement and regulation of the Rules, this Constitution, the Encumbrance and Land Covenant;
 - 3.1.5. to provide for the levying of Members for the purpose of providing funds for the objects of, and meeting the costs and expenses of, the Association;

- 3.1.6. to have as its Members all Owners of the Lots and to ensure that all such Owners comply with all obligations of Members;
 - 3.1.7. to provide Owners with such services, utilities and facilities as the Association may from time to time deem appropriate or desirable and to maintain, repair, replace and renew any of the same;
 - 3.1.8. to perform its functions in relation to the building control committee described in clause 5 (page 27) of the Land Covenant;
 - 3.1.9. to undertake any other activity or work relating to Futuna Close, and ancillary to the above objects, as the Association may by Special Resolution resolve; and
 - 3.1.10. to promote the comfort, health, safety, security and welfare of the Owners and Occupiers and their respective Invitees.
- 3.2. The financial gain of Members is expressly excluded as an object of the Association. No Member shall be entitled to receive any income or funds of the Association except for reimbursement from the Association for expenses incurred on behalf of the Association at rates and prices not exceeding market rates and on other terms and conditions as would be reasonable for dealings with a third party.

4. MEMBERSHIP

- 4.1. Each Owner shall be a Member and only Owners shall be Members.
- 4.2. Owners agree to become a Member through purchasing a Futuna property. They consent to be members when they sign the Sale and Purchase agreement. They are also required to register their contact details with the committee for the Residents' Association. Their membership is terminated when they sell their Futuna property. Non property owners are not eligible for membership.
- 4.3. Where there is more than one Owner of a Lot, all Owners shall be Members but, for the purpose of voting and receiving notices, the person who shall vote and who shall be issued with notices under the Land Covenant, the Encumbrance and this Constitution shall be the first person listed on the certificate of title for the Lot.
- 4.4. When a Member is a company or other organisation, it must resolve in the manner with which it makes decisions to appoint a person to act as its representative to be placed on the register of Members, for receiving notices and for acting on behalf of the organisation at general meetings. That person may act at general meetings in every way as if they were a Member of the Association personally.

- 4.5. When a Member is a trust, the trustees shall be treated as if they are each a Member of the Association personally.
- 4.6. The rights, privileges and obligations of a Member are not assignable.

5. REGISTER OF MEMBERS

- 5.1. The Association shall maintain a register of Members recording:

For each Member:

- 5.1.1. full name;
- 5.1.2. home address;
- 5.1.3. telephone number (at home and at work);
- 5.1.4. the same details for a third party to be contacted in the event of absence or emergency;
- 5.1.5. at each Member's option, they may also give their email address;
- 5.1.6. the date (and this may be only the year) upon which each Member first became a Member and the date on which any Member by virtue of purchase of any additional Lot becomes entitled to a further membership; and
- 5.1.7. current proof of payment of the insurance policy on the improvements on each Member's Lot so that the Association is able to ensure that each Member is complying with its obligations under the Land Covenant (in particular clause 3.1(a) (page 24) of the Land Covenant).

For each Occupier:

- 5.1.8. full name;
 - 5.1.9. home address;
 - 5.1.10. telephone number (at home and at work);
 - 5.1.11. the same details for a third party to be contacted in the event of absence or emergency; and
 - 5.1.12. at each Occupier's option, they may also give their email address.
- 5.2. The Association may use the register of Members to further any of its objects.
 - 5.3. No notice of any trust shall be entered on the register of Members.

Only organisations that constitute a legal person shall be placed on the register of Members (including companies, body corporates and incorporated societies).

- 5.4. The Register of Members must be kept up to date by the Secretary of the Committee of the Association recording the above details for each Member who they purchase a Property and deleting these details immediately upon the sale of Property.

6. MEMBERSHIP OBLIGATIONS AND RIGHTS

6.1. Each Member must:

- 6.1.1. comply with the terms of this Constitution, the Encumbrance, the Land Covenant and the Rules;
- 6.1.2. once they cease to be a Member, remain personally liable for any breaches of this Constitution, the Encumbrance, the Land Covenant and the Rules caused by that Member which occurred while they were a Member;
- 6.1.3. pay all Contributions;
- 6.1.4. upon payment of the annual payment due from that Member to the Association, provide the Association treasurer with their details and with their current proof of payment of the insurance policy on the improvements on their Lot as required to maintain the register of Members;
- 6.1.5. update their details that are required to maintain the register of Members as they become out of date;
- 6.1.6. provide the Association with details of any Occupiers of the Member's Lot (and update those details as they become out of date) as required to maintain the register of Members; and
- 6.1.7. Each Lot is subject to the Encumbrance and the Land Covenant to secure the performance of all obligations of Members.

6.2. Each Member is entitled to:

- 6.2.1. use of the Common Facilities under the terms in the Land Covenant (in particular clause 2.5 (page 18) of the Land Covenant), the Encumbrance, this Constitution and the Rules;
- 6.2.2. receive benefit from the objects of the Association in this Constitution and the duties of the Association in the Land Covenant (in particular clause 2.7 (page 20) of the Land Covenant); and
- 6.2.3. inspect the records of the Association's affairs as allowed in the Land Covenant (in particular clause 2.7(d) (page 20) of the Land Covenant).

7. BREACH OF OBLIGATIONS

- 7.1. A reference to an act or omission by any Member shall include any act or omission by:
 - 7.1.1. any mortgagee in possession of that Member's Lot;

- 7.1.2. any Invitees of the Member;
- 7.1.3. any Occupiers of the Member's Lot; and
- 7.1.4. any Invitees of such Occupier.
- 7.2. The Association may use any of the powers granted to it under the Land Covenant, the Encumbrance, this Constitution and the Rules to remedy any failure by any Member to comply with any of their obligations as a Member including late payment of any Contribution.
- 7.3. No Member will be entitled to vote unless all Contributions are paid in full at the time of the vote in question.
- 7.4. The default interest rate for late payment of any Contributions shall be set by the Association from time to time.

8. OCCUPIERS AND INVITEES

- 8.1. Each Member must take all reasonable steps to ensure that any Occupier and any Invitees act in compliance with the Land Covenant, the Encumbrance, this Constitution and the Rules.
- 8.2. Every lease, tenancy, licence or other document or informal agreement providing occupancy rights of a Lot must contain an obligation not to do anything which is in breach of the Land Covenant, the Encumbrance, this Constitution or the Rules.
- 8.3. If an Occupier fails to observe any part of the Land Covenant, the Encumbrance, this Constitution or the Rules, the Association may demand that the corresponding Owner terminate the Occupier's right to occupy the Lot. The Owner must do so if doing so does not violate the legislative rights of that Occupier or the rights of the Occupier under the agreement providing for those occupancy rights.

9. ASSOCIATION POWERS AND OBLIGATIONS

- 9.1. The Association has the powers and obligations set out in the Land Covenant (in particular clause 2 (page 17) of the Land Covenant).
- 9.2. The Association may make Rules covering all aspects of its functions and all matters concerning Futuna Close as per the Land Covenant (in particular, clause 2.7 (c) (page 20) of the Land Covenant). In particular:
 - 9.2.1. Lot 67 on deposited plan 326794 contains the building known as "Futuna Chapel". The differences in its status from the other Lots is found in particular in clauses 1.3(aa) and (ab) of easements 6184478.9 and 6388529.13 (pages 8 and 9); and

- 9.2.2. the area known as the "Recreational Reserve" in the Land Covenant is steep and often slippery and is therefore not suitable for physical recreation and is in the process of being planted in native bush so that it can be enjoyed in a scenic manner instead and is now known as the "Futuna Bush Reserve" (another area within the Common Facilities known as the "Village Green" has been provided for physical recreation). The Association may make Rules particular to the "Recreational Reserve" (and any other areas which cause concern to the Association) to protect and promote the health and safety of Owners, Occupiers and Invitees.
- 9.3. The Association shall hold the Common Facilities in its own name and shall not mortgage, charge, encumber, transfer or otherwise deal with the Common Facilities, except:
 - 9.3.1. by Special Resolution;
 - 9.3.2. the Committee is empowered to resolve the Association grant similar rights of use of the Common Facilities to third parties as are granted to Members where the Committee considers it is in the interests of the Members as a whole; or
 - 9.3.3. granting easements intended for the benefit of Members, Occupiers and/or the Association.
- 9.4. AU documents including correspondence and written announcements requiring execution on behalf of the Association must be signed by the chairperson or secretary.

10. BANK ACCOUNTS

- 10.1. The Association shall hold all funds with a Bank and shall not invest those funds other than by deposit with a Bank, except by Special Resolution.
- 10.2. The Association shall establish any necessary bank accounts and any drawings on those accounts must require two signatures of the chairperson, secretary or treasurer or, if there is an Administrator, of the Administrator.

11. CONTRIBUTIONS

- 11.1. The Association shall arrange Contributions in terms of the Land Covenant and the Encumbrance (in particular clause 4 (page 25) of the Land Covenant).
- 11.2. After expiration of each financial year, the Association shall provide a report to the Members as to expenses actually incurred and carry

forward the debit for payment shortfall or credit for surplus to the next levy.

- 11.3. The Association may discount a payment amount due from Members as an incentive for Members to pay it by a certain time.

12. COMMITTEE

- 12.1. The Committee may exercise all the powers, authority and discretions of the Association as permitted by this Constitution subject to any limitations that the Association places on the Committee.
- 12.2. The Committee may delegate any of its powers to sub-committees consisting of such member or members of the Committee as they think fit or to any Administrator. Any sub-committee or Administrator must comply with the directions of the Committee in the exercise of its delegated powers.
- 12.3. The Committee shall be elected by the Association at every Annual General Meeting. The number of Committee members shall also be decided by the Association at every Annual General Meeting before the Committee Members are elected.
- 12.4. A Committee member shall hold elected position until the earliest of:
 - 12.4.1. the next Annual General Meeting following election (when the Committee member shall be eligible for re- election);
 - 12.4.2. the date written resignation from such position is received by the Association;
 - 12.4.3. the date of removal from such position by the Association in general meeting;
 - 12.4.4. the date of cessation of membership; or
 - 12.4.5. death, adjudication of insolvency, being certified as mentally incapable under the Protection of Personal and Property Rights Act 1988 or becoming a patient under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- 12.5. In the event of casual vacancy in any position on the Committee for any reason, the remaining Committee members may appoint another Member to fill the vacancy until the position is filled by the Association in general meeting.
- 12.6. The Committee shall comprise the following persons:
 - 12.6.1. a chairperson;

- 12.6.2. a treasurer;
- 12.6.3. a secretary
- 12.6.4. in lieu of 12.6.2 and 12.6.3, a treasurer/secretary;
- 12.6.5. a minimum of five and a maximum of 12 general Committee members (the actual number to be determined by the Association before the election at the Annual General Meeting).

Office holders, including the Chairperson, shall be elected by the members of the Committee at the first meeting of the Committee following the Annual General Meeting, and shall hold that office until

- 12.6.6. they cease to be a Committee member in accordance with this Constitution;
- 12.6.7. they resign as an office holder by notice in writing to the Association; or
- 12.6.8. the other members of the Committee elect a replacement for that office as above.

12.7. The Committee member holding office as secretary shall:

- 12.7.1. convene general meetings and Committee meetings when requested to do so in accordance with this Constitution;
- 12.7.2. attend all general meetings and all meetings of the Committee;
- 12.7.3. give all notices required to be given by this Constitution, the Encumbrance, the Land Covenant or the Rules or as directed by the Association or the Committee.
- 12.7.4. keep minutes at all general meetings and Committee meetings and enter into the minute book (the minute book may be in electronic form);
 - i. the time, date and venue of such meeting; and
 - ii. all business considered and resolutions passed at each meeting; and
 - iii. hold the common seal of the Association in safe custody.

12.8. The Committee member holding office as treasurer shall:

- 12.8.1. receive, and issue receipts for, all Contributions and any other moneys paid to the Association;
- 12.8.2. operate and maintain the bank accounts in the name of

the Association;

- 12.8.3. pay all accounts properly incurred by or on behalf of the Association;
 - 12.8.4. report immediately to the Association any Member who fails to pay Contributions within the prescribed period;
 - 12.8.5. keep all financial records and any security documents in safe custody;
 - 12.8.6. compile all accounting records as required by the Act or by the Committee which give a true, fair and complete account of the financial affairs and transactions of the Association; and
 - 12.8.7. compile the financial statements immediately following each financial year as required by the Act and this Constitution and provide for the reviewing of those records and the distribution of the reviewed financial statements to Members.
- 12.9. A person shall cease to be a member of the Committee if they are no longer an Owner and therefore no longer a Member of the Association, or if they resign from the Committee by notice in writing to the Chairperson, or if they become incapable either mentally or physically of carrying out their duties as a member of the Committee, or if they have or are likely to bring the Committee or the Association into disrepute.
- 12.10. Contact Person:

The Chairperson will be the Contact Person for the Association for the purposes of the Incorporated Societies Act 2022.

13. COMMITTEE MEETINGS

- 13.1. The secretary shall, upon the request of the chairperson or any three Committee members, convene a meeting of the Committee.
- 13.2. A quorum for any Committee meeting shall be the majority of the members of the Committee at that time. No business of the Committee shall be conducted unless a quorum is present (however, presence can include being present by phone or electronic means or by written resolution (as below) at the discretion of the Committee).
- 13.3. Each member of the Committee shall have one vote and resolutions of the Committee shall be passed by a majority of votes.
- 13.4. In the case of a tie in votes, the chairperson may exercise a casting vote.

- 13.5. A resolution in writing signed by such of the Committee members as would constitute a quorum at a Committee meeting shall be as valid as if it had passed at a meeting of the Committee meeting as above.
- 13.6. All acts properly done by any meeting of the Committee or by any person acting as a Committee member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in *office of* any such Committee member, shall be as valid as if every such person had been duly appointed or had duly continued in office as a Committee member.
- 13.7. The Committee shall obtain a common seal for the use of the Association:
 - 13.7.1. The common seal shall not be used except by resolution of the Committee; and
 - 13.7.2. Every instrument to which the common seal is affixed shall be witnessed by any three members of the Committee, one of whom shall be the chairperson, the secretary or the treasurer.
 - 13.7.3. Other than the above, the Committee may regulate its meeting procedures and the conducting of its business as it sees fit.

14. GENERAL MEETINGS

- 14.1. In addition to any other meetings in a year, the Association shall hold an Annual General Meeting each year.
- 14.2. Not more than 18 months shall elapse between the date of one Annual General Meeting and the next. The Committee will determine the time and place of each year's Annual General Meeting.
- 14.3. Any meeting other than an Annual General Meeting shall be a special general meeting ("Special General Meeting"). A Special General Meeting may be called by:
 - 14.3.1. the Committee; or
 - 14.3.2. by a request in writing signed by not less than 20 Members (in which case the chairperson must call a Special General Meeting within 21 days of receiving the above request).
- 14.4. The information to be provided at the Annual General Meeting must include the minutes of the last General Meeting, and the most recent financial reports of the Association.

15. QUORUM

- 15.1. No business of any general meeting shall be conducted unless a quorum is present. A quorum is 25% of the Members eligible to vote at general meetings present in person or by proxy (however, presence can include being present by phone or electronic means or by written resolution (as below) at the discretion of the Association).
- 15.2. If a quorum is not present within half an hour from the time appointed for the holding of a general meeting:
 - 15.2.1. the meeting shall be dissolved;
 - 15.2.2. the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other time and place as the Committee shall determine (that date must not be later than 14 days from the date of the adjourned meeting) ("Adjourned Meeting");
 - 15.2.3. if at the Adjourned Meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum; and
 - 15.2.4. no business, other than that business which might have been transacted at the meeting from which the adjournment took place, shall be transacted at any Adjourned Meeting.

16. RESOLUTIONS

- 16.1. Making resolutions in a general meeting is the way the Association exercises all powers, authorities and discretions of the Association.
- 16.2. A resolution that is not a Special Resolution shall be passed by a majority of not less than 50% of the Members entitled to vote at that general meeting.
- 16.3. A Special Resolution shall be passed by a majority of not less than 75% of the Members entitled to vote at that general meeting.
- 16.4. However, a resolution in writing signed by 75% of the Members entitled to vote at a general meeting shall be considered valid in lieu of a general meeting.

17. NOTICE

- 17.1. Notice of a general meeting must be sent to all Members by the secretary at the home address they have provided for the register of Members not less than 15 working days before that date of that general meeting. The notice must specify the date, time and venue of the general meeting.

- 17.2. For an Annual General Meeting, no information of the business and notices of motions to be considered at the meeting is required in the notice above, but, for a Special General Meeting, this information is required in the notice and no business or notice of motion which was not specified in the notice for that special general meeting shall be considered at that Special General Meeting.
- 17.3. Accidental omission to give the above notice, or the non-receipt of such notice by any Member, shall not invalidate the proceedings at any general meeting.

18. CHAIRPERSON

- 18.1. The chairperson at any general meeting shall be:

- 18.1.1. the chairperson of the Association;
- 18.1.2. if the chairperson is not present or is unwilling to take the chair, then those Committee members who are present may choose one of their number to chair the meeting;
OF"
- 18.1.3. if for any reason no chairperson is selected by the Committee, any Member appointed by a majority of Members present in person or by proxy shall be the chairperson.

19. VOTING

- 19.1. Votes may be made by proxy. A Member can appoint a member of the Committee as their proxy.
- 19.2. At any general meeting:
 - 19.2.1. a resolution may be put to the vote by the chairperson or by any Member present at the meeting and entitled to vote;
 - 19.2.2. Where the meeting is being held in person, resolutions put to the vote shall be decided on voices or a show of hands, unless a poll is demanded on or before declaration of the result of the voices or show of hands by:
 - i. the chairperson of the meeting; or
 - ii. at least six Members present in person or by proxy;
 - 19.2.3. in the case of a resolution put to the vote of the meeting by voices or a show of hands, a declaration by the chairperson or an entry to in the Association's minute book, shall be conclusive evidence of the outcome of the vote, without further proof of the number or proportion of votes recorded in favour of or against that resolution;
 - 19.2.4. resolutions shall be passed by a majority of votes, except where Special Resolution or the unanimous resolution of all Members is required by this Constitution; and
 - 19.2.5. in the case of a tie in votes, the chairperson may exercise a casting vote.
- 19.3. Where a General Meeting is being held by electronic means, voting may be facilitated by an electronic voting system either during the meeting or prior to the meeting with the result of the vote being declared at the meeting.

20. MINUTES OF BOTH COMMITTEE AND ASSOCIATION

- 20.1. The Committee shall keep minutes of the proceedings of all meetings of the Association, including of all General Meetings including Annual General Meetings and of the Committee (and these minutes may be kept in electronic form).
- 20.2. These minutes, once circulated amongst and accepted by the Members at General Meetings or Committee Members at Committee meetings shall be recorded as a correct and accurate account of the business transacted at the meetings without any further proof of the facts contained in the minutes.

COVENANT

EASEMENT NUMBER 6388529.13

CONSTITUTION – FUTUNA RESIDENTS'
ASSOCIATION INCORPORATED, Page 5, 2.1.10

References to page numbers in the Land Covenant are references to the page numbers in easement number 6388529.13 and the fact that these references refer to only one easement is for ease of reference only. There are three easements contained in the definition of the Land Covenant and there are a small number of differences in their terms.

For the full terms of the Covenant to your Lot, you may need to ask your Legal Advisor.

Approved by Registrar-General of Land under No. 2002/6055

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

EI 6388529.13 Easement

Cpy - 01/01, Pgs - 041, 18/04/05, 15:48



DosID: 411280548



Land registration district

WELLINGTON

Grantor

Surname(s) must be underlined or in CAPITALS.

FUTUNA LIMITED

Grantee

Surname(s) must be underlined or in CAPITALS.

FUTUNA LIMITED

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). See page 2 Annexure Schedule.~~

Dated this 17th day of February 2005

Attestation

FUTUNA LIMITED by its attorney
RICHARD WILLIAM PERRY

Signed in my presence by the Grantor

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name **Michael John Switzer**

Occupation **Solicitor
Wellington**

Address

Signature [common seal] of Grantor

FUTUNA LIMITED by its attorney
RICHARD WILLIAM PERRY

Signed in my presence by the Grantee

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name **Michael John Switzer**

Occupation **Solicitor
Wellington**

Address

Signature [common seal] of Grantee

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.

REF: 7003 - AUCKLAND DISTRICT LAW SOCIETY

Annexure Schedule



Insert type of instrument
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AND WHEREAS the Grantor and the Grantee have agreed mutually to covenant as follows for the benefit of the other and their successors in title to each of the lots comprising the Dominant and Servient Lots.

AND WHEREAS it is the Grantor's intention to create for the benefit of the land in the Certificates of Title set out in Schedule A and any further subdivision thereof (hereinafter referred to as the "Dominant Tenements") the Land Covenants set out in Schedule B over the land in Certificates of Title set out in Schedule C and any further subdivision thereof (hereinafter referred to as the "Servient Tenements") **TO THE INTENT** that the Servient Tenements shall be bound by the stipulations and restrictions set out in Schedule B hereof and that the owner and occupier for the time being of the Dominant Tenements may enforce the observance of such stipulations against the owners for the time being of the Servient Tenements.

AND AS INCIDENTAL to the transfer of the fee simple so as to bind the Servient Tenements and for the benefit of the respective Dominant Tenements the Grantee **HEREBY COVENANTS AND AGREE** in the manner set out in the Schedule B hereto so that the covenants run with the Servient Tenements for the benefit of the respective Dominant Tenements described in Schedule A.

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SCHEDULE A

SCHEDULE OF DOMINANT TENEMENTS

1. 215 square metres more or less being Lot 44 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182890.
2. 161 square metres more or less being Lot 45 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182891.
3. 164 square metres more or less being Lot 46 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182892.
4. 164 square metres more or less being Lot 47 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182893.
5. 156 square metres more or less being Lot 48 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182894.
6. 129 square metres more or less being Lot 49 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182895.
7. 178 square metres more or less being Lot 50 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182896.
8. 161 square metres more or less being Lot 51 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182897.
9. 184 square metres more or less being Lot 52 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182898.
10. 235 square metres more or less being Lot 53 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182899.
11. 189 square metres more or less being Lot 54 on Deposited Plan 344591 and being part of the land contained in Certificate of Title 182900.
12. 20 square metres more or less being Lot 54A on Deposited Plan 344591 and being part of the land contained in Certificate of Title 182900.
13. 116 square metres more or less being Lot 55 on Deposited Plan 344591 and being part of the land contained in Certificate of Title 182901.
14. 21 square metres more or less being Lot 55A on Deposited Plan 344591 and being part of the land contained in Certificate of Title 182901.
15. 155 square metres more or less being Lot 56 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182902.
16. 210 square metres more or less being Lot 57 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182903.
17. 152 square metres more or less being Lot 58 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182904.
18. 168 square metres more or less being Lot 59 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182905.
19. 169 square metres more or less being Lot 60 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182906.

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20. 178 square metres more or less being Lot 61 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182907.
21. 190 square metres more or less being Lot 62 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182908.
22. 125 square metres more or less being Lot 63 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182909.
23. 131 square metres more or less being Lot 64 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182910.
24. 159 square metres more or less being Lot 65 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182911.
25. 332 square metres more or less being Lot 66 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182912.

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SCHEDULE B

SCHEDULE OF LAND COVENANTS

BACKGROUND

- A. The Grantor desires to create a high quality residential development and carry out a uniform plan for the development and improvement of all the Lots comprising the Dominant and Servient Tenements the Recreation Reserve and the Common Area being all of the land described in Schedules A, C, D, E and F hereto.
- B. The Grantor having deemed it desirable for the efficient operation and management of the development has created an Association which Association shall maintain the Recreation Reserve, the Common Area and administer and enforce the covenants conditions and restrictions as contained herein, and shall collect and disburse the Contributions and Charges provided for in this instrument.
- C. The Grantor and Grantee have agreed mutually to covenant as follows each for the benefit of the other and their successors in title to each of the Lots comprising the Dominant and Servient Tenements to the end and intent that the same shall comprise a Building or Management Scheme for the benefit of all the Lots therein with the covenants hereafter contained being mutually enforceable inter se by all owners of the said land (including the Association) from time to time to the fullest extent permitted by the law of New Zealand.
- D. The Grantor and Grantee have agreed that the covenants contained herein shall be registered against both the Servient and Dominant Tenements and shall be binding upon all parties having right, title or interest in either the Dominant or Servient Tenements and the Grantor and Grantee agree that they shall make it a condition of any agreement, contract, or deed which may hereafter be executed by the Grantor or the Grantee with regard to the Servient or Dominant Land, that such transfer conveyance or encumbrance affecting the Servient or Dominant Land shall be deemed to have been executed delivered and accepted subject to the following covenants, conditions, and restrictions regardless of whether the same are set out in full or by reference in such agreement contract or deed.

THE LAND COVENANTS

1. Definitions

- 1.1 **Defined Terms.** Unless the context specifies or requires otherwise, the following words and phrases when used in this instrument shall have the meanings hereinafter specified:

"Association" means Futuna Residents' Association Incorporated.

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"*Association Property*" shall mean all real or personal property now or hereafter owned by or leased to the Association.

"*Association Restrictions*" shall mean the covenants, conditions, easements and restrictions as the same may be amended from time to time, together with the Constitution, Architectural Standards, and Association Rules from time to time in effect.

"*Association Rules*" shall mean the rules and regulations adopted by the Committee pursuant to this instrument, as the same may be amended from time to time.

"*Architectural Standards*" shall mean standards and guidelines for the Development to be adopted by the Committee pursuant to this instrument as amended, modified, or restated from time to time and shall at all times be subject to the requirements of the Wellington City Council.

"*Back*" shall mean that part of any Lot or any Improvement erected on any Lot which is furthest from or faces away from the right of way or road to that Lot.

"*Building Control Committee*" shall mean a committee of the Association created pursuant to this instrument to establish design guidelines, to review and approve plans for the construction of Improvements on the Development (other than the original buildings erected by Futuna Limited) and to carry out its duties as set forth in this instrument.

"*Committee*" means the committee for the time being elected to manage the affairs of the Association pursuant to the constitution and this instrument.

"*Common Area*" means the land described in Schedule E hereof and such other land owned or under the control of the Association available for use as road ways or walk ways to Members for the purpose of passing whether by vehicle or foot between their respective residences and between their respective residences and the frontage of Futuna Subdivision to Friend Street or the Recreation Reserve or to be available as carparking for Members and invitees.

"*Common Facilities*" means the Common Area and the Recreation Reserve together with all the public walk ways, pedestrian areas, seating, carpark, walls and other facilities situated thereon.

"*Constitution*" shall mean the Constitution of Futuna Residents' Association Incorporated formed in accordance with the laws of New Zealand, as the same may be amended from time to time.

"*Contribution*" or "*Contributions*" shall mean all contributions levied by the Association under this instrument.

"*Development*" shall mean the land described in the Schedule D hereto and comprising the Dominant Tenement, the Servient Tenement and Common Facilities and all Improvements thereon.

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"Dominant Tenement" shall mean the land described in the Schedule A hereto.

"Encumbrance" or "Memorandum of Encumbrance" shall mean the Memorandum of Encumbrance to be entered into by the Grantee or his successors in Title to secure to the Grantor and Association the payment of the Contributions payable by the Grantee under the terms of this instrument.

"Front" shall mean that part of any Lot or any Improvement erected on any Lot which is nearest to or faces in the direction of the right of way or road to that Lot.

"Grantee" shall mean the registered proprietor of each and every Lot comprised in the Dominant Tenements and shall include his assigns and successors in title in respect of such lot and any subdivided part thereof.

"Grantor" shall mean the registered proprietor of each and every Lot comprised in the Servient Tenements and shall include his assigns and successors in title in respect of such lot and any subdivided part thereof.

"Improvements" shall mean every structure and all appurtenances of every type, whether temporary or permanent, including but not limited to buildings, outbuildings, sheds, patios, tennis courts, swimming pools, garages, driveways, storage buildings, footpaths, gazebos, signs, fences, gates, screening walls, retaining walls, stairs, decks, pools, fountains, poles, letter boxes, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, playground equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers, and other facilities used in connection with water, sewage, gas electric, telephone, regular or cable television, other utilities, or otherwise.

"Lot(s)" shall mean all or any of Lots 44 to 66 (all inclusive) on Deposited Plan 344591.

"Member" or "Members" shall mean any person or persons or entity holding membership in the Association, including the Grantor and the Grantee, pursuant to the terms of this instrument.

"Mortgage" or "Mortgages" shall mean any mortgage, deed, or other security document securing indebtedness and covering the Lot given to secure the payment of a debt or other obligation.

"Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage.

"Owner" or "Owners" shall mean the person(s), entity or entities, including the Grantor and the Grantee, owning all of or any portion of any Lot, but shall not include the Mortgagee under a Mortgage prior to acquisition of its interest in such Lot pursuant to foreclosure of such Mortgage.

"Property Management Activities" shall mean the repair, maintenance, keeping good or upgrading of the Common Facilities and all lands, improvements, security devices and other Association Property, including without limitation paths, roads, gates, fences, drains, pipes,

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cables and shall also include the planting of such trees, shrubs and other vegetation as the Association deems suitable for the enhancement of the Common Facilities together with the right to carry out those activities referred to in clause 7.1 hereof.

"Recreation Reserve" means the land described in Schedule F hereof owned by the Association and held for the recreational use and enjoyment of the Grantee and other owners of Lots within the Development.

"Register of Members" shall mean the book or register held by the Association to record the names and addresses of the current members of the Association.

"Services" means any services serving any of the lots or the Common Area or Recreation Reserve including but not restricted to pipelines conduits and wires along and under the surface of the land of any each such lots, Common Area or Recreation Reserve conveying water supply, gas, electricity, telecommunications, waste water, sewage or other utilities.

"Servient Tenement" shall mean the land described in the Schedule C hereto.

BUILDING COVENANTS AND RESTRICTIONS

1.2 The Grantor, its successors in title and assigns and the successive owners of each and every Lot comprised in the Servient Tenement and the Grantee, its executors, administrators, and assigns and successive owners from time to time of the Dominant Tenement shall hold, own, lease, encumber, use and occupy the Servient and Dominant Tenements strictly in accordance with the following limitations and restrictions.

1.3 Limitations and Restrictions

(a) **No more than one Lot or dwelling.** The Lots shall be used solely for private residential purposes (subject to subclause (aa)) and there shall not be constructed on any Lot or maintained thereon more than one dwelling unit and accessory buildings.

(aa) The Chapel on Lot 67 DP326794 ("Lot 67") may ~~also~~ be used for the following purposes, subject to compliance with the conditions in (ab) below.

- (i) To maintain the existing chapel as a historic building, open to view for members of the public during daylight hours.
- (ii) To hold musical and artistic performances in keeping with the nature of the building.
- (iii) To conduct lectures and exhibitions.
- (iv) To conduct religious services.

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(v) To conduct such other events and activities as the Committee of the Association may from time to time permit in writing, on such conditions as the Associates determine.

(ab) A use or activity permitted under clause (aa) is only permitted to the extent that:

(vi) It does not infringe any provision of the District Plan or any other covenant in these presents;

(vii) It does not cause an unreasonable nuisance or annoyance to the owners or occupiers of other Lots within the Development; and

(viii) It does not cause parking of motor vehicles by non-residents or impediments to traffic flow or traffic safety dangers within the Development.

AND the following conditions are observed:

(ix) The Lot 67 proprietor shall whenever the Chapel is open for use provide on site a representative of the Proprietor authorised and responsible to maintain good order and prevent breaches of subclause (ab) by the invitees of the Proprietor and other attendees at events at the Chapel promoted by the Proprietor.

(x) The Lot 67 Proprietor shall use all reasonable endeavours to ensure that its invitees and event attendees park any motor vehicle used by them outside the Development. Such endeavours shall include parking directions on publicity materials, notices, and supervision guidance and oral direction by the Lot 67 proprietor's representative where reasonably necessary.

(b) **Compliance with Wellington City Council requirements.** Construction of such dwelling and accessory buildings shall be strictly in accordance with the conditions of the Resource Consent granted by the Wellington City Council or any subsequent amendment made to the resource consent by the Wellington City Council or any variation thereto and any further resource consent granted by the said Council in respect of any of the land comprised the development.

(c) **No Business Activity.** No professional business or commercial activity shall be conducted on any Lot other than a business or commercial activity which:

(i) Is only incidental to the principal use of the Lot as a private residence;

(ii) Does not involve the manufacture, assembly, repair, repainting or storage of any goods or chattels on the Lot, or the distribution of goods or chattels therefrom;

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(iii) Is not offensive, immoral, a cause of traffic or parking congestion or excessive foot traffic, or a cause of unreasonable noise, or a nuisance to neighbours; and

(iv) Does not offend the provisions of any district plan, statute, regulation, or by law, or any other provision of this document.

An Owner on whose Lot a business or commercial activity is conducted shall comply with the directions of the Committee for the cessation or restriction of any such business or activity on that Lot, which the Committee on reasonable grounds considers does not fall within the above exceptions to the prohibition on business or commercial activity in this clause. The onus of establishing that such business or activity is within the exceptions shall rest with the owner of the Lot from which such business or activity is conducted.

(d) **Limitation on Renting.** No improvements on the Lots shall be used as an apartment house, lodging house, hotel, bed and breakfast lodge, or any similar purpose, but the Lots may be leased for private residential purposes; provided that any lease agreement must be in writing and must be made specifically subject to these covenants.

(e) **Antennae and Solar Systems.** Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, nor any solar energy system, shall be erected, maintained or placed on the Lots without the prior written approval of the Committee, which approval shall not unreasonably be withheld. Any antennae or solar system, if approved, shall be entirely screened from view from adjacent Lots and roadways.

(f) **Insurance Rates.** Nothing shall be done or kept on the Lots that would increase the rate of public liability insurance or cause the cancellation of any such insurance on the Common Area, the Recreation Reserve, or the Improvements located thereon, without the prior written approval of the Association.

(g) **Subdividing and Easements.** The Lots shall not be further divided or subdivided, (and "subdivide" shall have the meaning ascribed to a subdivision of land in Section 218(1) of the Resource Management Act 1991).

(h) **Signs.** No sign of any kind, including, without limitation, signs advertising the Lots for sale or lease, shall be displayed to the public view without the express prior written approval of the Committee. The Committee may permit or prohibit signs of any type advertising the Lots for sale or lease, as it elects, in its absolute sole discretion. If the Committee elects to permit signs, it may set standards for such signs including, without limitation, maximum dimensions, style, colour, type, size, and location as it deems appropriate PROVIDED THAT such signs must comply with the requirements of the Wellington City Council.

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- (i) **Rubbish and Debris.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Lots and no odours shall be permitted to arise therefrom so as to render the Lots or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other Lots or to the occupants thereof. Refuse, garbage, and rubbish shall be kept at all times in covered containers, and such containers shall be kept within enclosed structures or otherwise appropriately screened from view. No rubbish or debris permitted to be maintained on the Lots shall be burned on the Lots.
- (j) **Noise.** No exterior speakers, horns, whistles, bells, or other devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on the Lots. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Lots so as to be offensive or detrimental to any other Lot within the development or to its occupants, including without limitation, unmuffled vehicles, motorcycles and motor scooters. Without limiting the generality of the foregoing, if any noise or nuisance emanates from the Lots, the Association may (but shall not be obliged to) enter any such Lots and take such reasonable actions as are necessary to terminate such noise or nuisance (including silencing any burglar or break-in alarm).
- (k) **Construction of Improvements.** Except as provided herein no Improvements of any kind shall hereafter be placed, maintained, erected or constructed upon the Lots without the prior written approval of the Building Control Committee and any such approval shall only be given where the Improvement shall comply with the requirements of the Wellington City Council.
- (l) **Repair of Buildings.** All Improvements on the Lots shall at all times be kept in good condition and repair and adequately maintained. The opinion of the Building Control Committee as to condition and repair shall be final.
- (m) **Alteration or Removal of Improvements.** Any alteration, remodelling, construction or reconstruction that in any way alters or modifies the exterior appearance of any Improvements on the Lots, or the removal of any Improvements within the Lots, shall be performed only with the prior written approval of the Building Control Committee (and where necessary the consent of the Wellington City Council).
- (n) **Drainage.** There shall be no interference with the established drainage patterns on the Lots unless adequate provision is made for proper drainage and approved in writing by the Building Control Committee.
- (o) **Hazardous Activities.** No activities may be conducted on the Lots and no Improvements constructed on the Lots that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Lots, no hazardous materials shall be disposed of thereon, and no

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open fires shall be lighted or permitted except in contained cooking units which are attended while in use for cooking purposes only.

- (p) **Temporary Structures.** No tent, shed, or other temporary building, or structure shall be placed upon the Lots without the written approval of the Building Control Committee.
- (q) **Unightly Articles:** No article deemed to be unsightly by the Committee shall be permitted to remain on the Lots so as to be visible from adjoining property Lots or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, trucks larger than a one ton utility, boats, tractors, semi-trailers, campers, wagons, buses, motorcycles, motor scooters, rubbish bins, machinery, garden maintenance equipment and inoperable vehicles shall be kept at all times, except when in actual use, in enclosed structures, screened from view, and no repair or maintenance work shall be done on any of the foregoing or on any motor vehicle (other than minor emergency repairs) except in enclosed garages or other structures. Service areas, storage areas, compost heaps, and facilities for hanging, drying, or airing clothing or household fabrics (including, without limitation, clothes lines) shall be screened from view. No timber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scraps, refuse, or rubbish of any kind shall be kept, stored, or allowed to accumulate on any portion of the Lots, except within enclosed structures or appropriately screened from view.
- (r) **Animals.** No animals shall be kept on the Lots, except a reasonable number of ordinary household pets such as dogs, cats and birds. The question of what constitutes a reasonable number of pets for any lot shall be a matter for determination of the Committee. The owner of the Lot shall observe the written direction of the Committee as to the control of any animal based on that owner's lot or as to the removal of any such animals determined as exceeding a reasonable number **PROVIDED HOWEVER** that no breeding, raising, or boarding of such pets for commercial purposes is permitted on the Lots. All pets shall be kept on the Lots and shall not be allowed to roam loose.
- (s) **Camper Vans and Recreation Vehicles.** No camper vans or recreational vehicles shall be parked on any access roads, paths or tracks within the Development.
- (t) **Laundry.** No washing machines or dryers shall be placed on front porches or at the front of the Lots. Clotheslines or other structures intended for drying laundry shall be located so as to be screened from view from any adjoining property lot or public or private thoroughfares and no laundry shall be draped over plants, trees or fences anywhere on the Lots.
- (u) **Banners, Streamers and Flags.** Banners and streamers shall not be displayed on the Lots for any period in excess of forty-eight (48) hours. Only one (1) flag may be displayed on the Lots at any given time.

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- (v) **Owner's Responsibility for Maintenance.** The Owner of the Improvements shall maintain and keep in a good state of repair the interior and exterior of all Improvements of any kind or nature that are located upon the Lots and when exercising the right and responsibility of repair, maintenance, replacement or remodelling, as herein defined, shall never alter in any manner whatsoever the colour and exterior appearance of the Improvements located on the Lots, except by written consent of the Committee. The owner of the Improvements shall, however, have the exclusive right to maintain, paint, plaster, panel, tile, wax, paper, or otherwise refurnish and decorate the interior surface of walls, ceilings, floors, windows and doors within the Improvements located on the Lots. Should the exterior of any Improvements not be maintained as provided herein in a manner that the Committee deems necessary to preserve the appearance and value of the Lots, the Committee may notify the owner of the Improvements of the work required and request that it be done within ninety (90) days from the giving of such notice. In the event that such work or maintenance is not completed within such period, or any extended period which may be agreed by the Committee the Committee may (but shall not be obligated to) cause such work to be done and the owner of the Improvements shall be personally liable for the cost of such work. If the owner of the Improvements fails to pay such costs upon demand, such costs (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of two percent (2%) per month) shall be added to the Contribution chargeable to that owner's Lot and shall be deemed to be a Capital Contribution hereunder. Any such amounts added to the Contribution chargeable against any Lot shall be (subject to any maximum sum specified) secured by the Memorandum of Encumbrance referred to herein for Contributions and may be collected by any means provided herein for the collection of Contributions, including, but not limited to, enforcement of such Encumbrance against the Lots or such other remedies as are applicable to an Encumbrancee under the Land Transfer Act 1952 and the Property Law Act 1952.
- (w) **Use of Common Area and Recreation Reserve.** The Common Area shall be used for providing access and services to the Lots, and kerb side parking (but only in such spaces designated and marked for that purpose from time to time by the Committee). The Recreation Reserve shall be used by the Lot Owners for walking exercise and other reasonable recreational purposes, such use being exercised in a manner which does not unreasonably interfere with the like use by other Lot Owners and does not annoy, be a nuisance to, endanger, injure or damage other Lot Owners or their property. No buildings or improvements shall be erected on the Common Facilities other than those allowed by the Association and approved in writing by the Committee. The only commercial activity allowed on the Common Facilities shall be an activity as may be determined by the members of the Association by special resolution.
- (x) **Restrictions on Common Area.** Neither the Grantor nor the Association shall erect or place or permit to be erected or placed any buildings on any part of the Common Area, nor park vehicles or trailers thereon except in places and in compliance with conditions

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from time to time designated by the Committee; nor leave or store any object material or rubbish on any part of the Common Area, except as permitted above.

- (y) **Liability for Damage to Common Area and Recreation Reserve.** No Grantee shall in any way alter, modify, add to, or otherwise perform any work whatsoever upon the Common Area, or the Recreation Reserve apart from normal Property Management Activities, sanctioned by Building Control Committee. A Grantee shall be liable to the Lot Owners or where applicable the Association for all damages to:

- (i) The Common Area and Recreation Reserve or any Improvements constructed thereon; or
- (ii) To any Improvements constructed upon any Lots, the maintenance of which has been assumed by the Association;

which damage is caused by the neglect, misuse or negligence of that Grantee or of any tenant or other occupant of the Lot of which such Grantee is the registered proprietor, or of their respective guests or invitees. The full cost of all repairs of such damage shall be a Contribution chargeable to that Lot, secured by the Encumbrance against that Lot and collectable in the same manner as provided hereinafter for Contributions hereunder, including by way of enforcement of the Encumbrance against that Lot.

- (z) **Compliance with Association Restrictions.** The Grantor and the Grantee shall comply strictly with the provisions of the Association Rules as the same are implemented and as may be amended from time to time. Failure to comply with any of the Association Rules shall constitute a breach of this instrument and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Association. Without limiting any rights or powers of the Association set out in this instrument, the Association may (but shall not be obligated to) remedy or attempt to remedy any breach of any of the provisions of this instrument, and the Grantor or the Grantee shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If the Grantor or the Grantee fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of two percent (2%) per month) shall be added to the Contribution chargeable to the Lots and shall be deemed to be a Capital Contribution hereunder. Any such amounts added to the Contributions chargeable against the Lots shall be (subject to any maximum sum specified) secured by the Encumbrance reserved herein for Contributions and may be collected by any means provided herein for the collection of Contributions, including, but not limited to, enforcement of such Encumbrances against the Lots. The Grantor or the Grantee shall indemnify and hold harmless the Association, their respective officers, members, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may

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arise by reason of the Association's acts or activities under this clause (including any cost, loss, damage expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or wilful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

- (bb) **Butane and Fuel Tanks.** No butane or fuel tank or other structure or facility for the storage of combustible fuel (other than a gas cylinder certified for use in connection with a gas barbecue, heater or light) shall be placed or maintained on the Lots unless approved in writing by the Committee. Any such approval shall be subject to the requirements of the Wellington City Council.
- (cc) **Swimming Pools.** Any swimming pool constructed on the Lots must be enclosed with a fence or other enclosure device completely surrounding the swimming pool which, at a minimum, satisfies the criteria established by the Committee (if any). Nothing in this section is intended or shall be construed to limit or affect the Grantee's obligation to comply with any applicable governmental regulations concerning swimming pool enclosure requirements particularly the Fencing of Swimming Pools Act 1987.
- (dd) No airconditioning units or window fans shall be installed in the front wall or window of the Improvements without the Committee's prior written consent. The front wall shall be that wall of the Improvements which faces the right of way or road to the Lot.

1.4 The Grantor its successors in title and assigns and the successive owners of each and every Lot comprised in the Servient Tenement and the Grantee its executors administrators and assigns and successive owners from time to time of the Dominant Tenement shall:

- (a) Not erect on any Lot any relocated building (the term "relocated building" shall include any building transported onto any lot in substantially built up form).
- (b) Not erect or allow to be incorporated into the exterior of the building of any Lot:
 - (i) Reflective roofing materials or exposed steel unless the approval in writing by the Committee has first been obtained to the painting or coating of such material or steel, and such work is carried out within the terms of such approval.
 - (ii) Multi colour or tapestry bricks.
 - (iii) Primary colours.
 - (iv) Colour other than muted colours.

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(c) Not allow live hedges to grow to a height exceeding two metres.

(d) Not allow trees of the following species to be planted:

- (i) Pinus Radiata
- (ii) Pinus Muncata
- (iii) Pinus Ponderosa
- (iv) Pinus Contorta
- (v) Douglas Fir (Oregon)
- (vi) Pinus Nigra
- (vii) Pinus Sylvestris

This provision shall not give rise to an obligation to remove any such species already growing on a Lot at the time that this instrument is executed.

(e) Not erect, permit or suffer to be erected or constructed on any Lot any glass-house exceeding 15m² in area.

(f) Not:

(i) Commence erection or construction or permit or suffer to be erected or constructed any fence on a Lot without having first obtained the written approval of the Building Control Committee to the design and appearance of the proposed fence and following such approval will not make any changes to the design and appearance of such fence without obtaining a further approval from the Building Control Committee.

(ii) Without the consent of the Building Control Committee erect, construct or permit or suffer to be erected or constructed any fence whether a boundary fence or otherwise higher than:

1.2 metres above ground level on that part of the Lot being the area bound on one side by any dwelling unit, the side boundaries of the Lot and the area boundary;
and

1.7 metres above ground level elsewhere on the Lot.

(iii) Erect, construct or permit or suffer to be erected or constructed any boundary or perimeter or other fence visible from any common area or road or access incorporating shade-cloth, netting, iron or steel on any profile, unpainted fibrolite, unpainted timber other than hardwoods or tanalised timber.

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- (g) Not in respect of any Lot in the Development erect any Improvement which exceeds 8 metres above the natural ground level as at 1st April 2003.
- (h) Not object or permit or suffer any agent or servant or any other representative howsoever to object nor support any objection to:
 - (i) Any present or future application made by the Grantor or the Committee (or on its behalf or supported in part or in full by the Grantor or the Committee) for resource consent to subdivide any part of the Development of which the Lots forms part and/or any adjoining land of the Grantor or the Committee.
 - (ii) Any change to the District Plan introduced by the Territorial Authority having jurisdiction or at the request of the Grantor or the Committee or any other person allowing their proposals to subdivide the Development into residential sections to be implemented without need for the granting of a resource consent.
 - (iii) Not to withhold consent any dispensation or consent required in connection with any application for a resource consent or approval made by the Grantor or the Committee or on their behalf in connection with their proposal to further subdivide any part of the Development into residential sections.
- (i) Notwithstanding the provisions of clauses 1.4(f) and the general provisions hereof, the Building Control Committee shall have the right to decline any application for the construction or erection of a fence when in the opinion of the Building Control Committee, the erection or construction of such fence would have a detrimental impact on the visual amenities of the Development.

2. THE ASSOCIATION

2.1 Incorporation

Futuna Residents' Association Incorporated has been incorporated for the purpose of managing the Common Facilities and for complying with the conditions of the Resource Consents relating to the development granted by the Wellington City Council.

2.2 Membership

The members of the Association shall comprise persons nominated by Futuna Limited, and the registered proprietors for the time being of the lots.

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2.3 Delegation of Authority

The Association shall be vested with the powers prescribed by the law of New Zealand or set out in its Constitution or in this instrument, and the Grantor shall have the right to assign at any time and from time to time to the Association, any or all of its rights and obligations under this instrument.

2.4 Membership

- (a) Membership of the Association shall be appurtenant to and shall run with the ownership of the Lots. Membership in the Association may not be severed from the ownership of the Lots or in any way transferred, pledged, mortgaged or alienated except together with the title to the Lots.
- (b) The Grantee shall be bound by the Constitution of the Association and shall when conveying title to the Lots concurrently resign from the Association and procure accession to membership of the Association by any immediate Grantee. The Grantee must notify any immediate Grantee of the Lot of such Grantee's obligation to take such membership in the Association and be bound by the Constitution of the Association.

2.5 Common Facilities

- (a) All owners of the Lots for the time being shall enjoy the use of the Recreation Reserve equally subject to the terms of the Constitution of the Association, and every easement affecting the common area the provisions of this instrument and the future resolutions and decisions of the Committee and Members of the Association.
- (b) Subject to the terms of any easement affecting the common area the Grantee shall have a right of passage and re passage in the Common Area and a right of enjoyment of the Recreation Reserve which shall be appurtenant to and shall pass with the title to the Lots, subject to the following restrictions and reservations:
 - (i) the right of the Association to suspend the Grantee's voting right for any period during which any Contribution against the Lots remains overdue, and for any period during which the Grantee is in violation of the Association Restrictions;
 - (ii) the right of the Association to dedicate or transfer all or any part of the Common Facilities to any public agency, authority, or utility on such conditions as may be agreed to by the Members;
 - (iii) the right of the Association to borrow money for the purpose of improving or maintaining the Common Facilities;

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- (iv) the right of the Association to make rules and regulations regarding the use of the Common Facilities and any facilities located thereon by the Members and other persons entitled to such use; and
- (v) the right of the Association to contract for services with third parties on such terms as the Association determine to be in the best interest of the Association and or Owners.
- (vi) the Grantee and members of their family, invitees, and licensees shall have the use of the Common Facilities at their own risk. Neither the Grantor, the Association, the Committee, its servants or agents, nor the Owners will be liable for any accidental injury to or damage to the property of the Grantee, members of his family, invitees and licensees whether caused by negligence or otherwise howsoever, excluding gross negligence or wilful misconduct, and the Grantee shall keep the Grantor, the Association, the Committee, its servants or agents and the Owners indemnified against all claims, actions, losses and expenses of any nature which the Grantor, the Association, the Committee, its servants or agents or the Owners may suffer or incur or become liable for in respect of any such claims, actions, losses, and expenses.

2.6 Voting Rights

The right to cast votes and the number of votes which may be cast for election of Committee and on all other matters to be voted on by the Members shall be calculated as follows:

- (a) The Owner of each Lot shall have one (1) vote for each lot so owned. In no event, shall any Lot be entitled to more than one (1) vote.
- (b) When more than one person or entity owns any Lot, all such persons or entities shall be Members. The vote of the Senior who tenders a vote shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand on the Certificate of Title of the lot in respect of which any person claims the right to vote, and in no event shall the vote for such Lot exceed the total share vote to which such Lot is entitled under this section.
- (c) The right of any Member to vote shall be suspended by the Association for any period during which any Contribution against a Member's Lot(s) remains overdue, and for any period during which the Member or such Member's Lot is in breach of the Association Restrictions.

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2.7 Duties of the Association

Subject to and in accordance with this instrument, and its constitution the Association shall have and perform each of the following duties:

(a) Association Property

- (i) **Ownership and Control.** To accept and operate as access ways, maintain and where applicable or manage all Association Property including the Common Facilities, together with all improvements of whatever kind and for whatever purpose that may be located on the Common Area or the Recreation Reserve, and all footpaths and private roads located in the Development and the services.
- (ii) **Repair and Maintenance.** To maintain in good repair and condition the Common Facilities, Improvements, security devices, and other Association property owned by or leased to the Association, including without limitation, all paths, private roads, security access gates (if any), on such roads, and fences located within the Common Facilities and Association Property and the services.
- (iii) **Rates.** To pay all rates and other taxes and charges levied upon or with respect to the Association Property, to the extent that such taxes and charges are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and charges.

(b) **Insurance.** To obtain and maintain in effect policies of insurance that, in the opinion of the Association, are reasonably necessary or appropriate to carry out the Association's functions.

(c) **Rules and Bylaws.** To make, establish, and promulgate and in its discretion, to amend or repeal and re-enact the Constitution and such Association Rules not in conflict with this instrument, as it deems proper, covering any and all aspects of its functions, including the use and occupancy of Association Property.

(d) **Records.** To keep books and records of the Association's affairs (including a Register of Members) and to make such books and records, together with current copies of Association Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(e) **Other.** To carry out and enforce all duties of the Association set forth in the Constitution and this instrument.

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2.8 Powers and Authority of the Association

The Association shall have the powers of a natural person subject only to such limitations upon the exercise of such power as are expressly set forth in this instrument or the Constitution or the Incorporated Society Act 1908. It shall further have the power to do and perform any and all acts that may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of New Zealand or by this instrument without in any way limiting the generality of the two preceding sentences, the Association shall have the power and authority at all times as follows:

- (a) **Contribution.** To levy Contributions as provided herein.
- (b) **Right of Entry and Enforcement.** To enter at any time in an emergency without notice, or in a non-emergency after twenty-four (24) hours written notice, without being liable to the Grantee or any other person or entity, upon the Lots or any Improvement thereon, or to enter at any time without notice onto any Common Facilities, for the purpose of enforcing the Association Restrictions or for the purpose of maintaining or repairing any area, Improvement, the services or other facility or enforce the Association Restrictions and any rights of the Association. The expense incurred by the Association in connection with the entry upon the Lots and the maintenance and repair work and under any easement conducted thereon shall be a personal obligation of the Grantee and shall be deemed a Capital Contribution against the property, be secured by the Encumbrance (subject to any maximum sum specified) against the Lots entered upon, and Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in clause 4 hereof for Contributions and Capital Contributions. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of the Grantee who consents thereto, to commence and maintain legal action, or to restrain and enjoin any breach or threatened breach of the Association Restrictions. The Association is also authorised to settle claims, enforce the Encumbrance, and take all such action as it may deem necessary or expedient to enforce the Association Restrictions. Notwithstanding any provision herein to the contrary, the Association may not alter or demolish any Improvements on the Lots other than Common Facilities or Association property in enforcing the Association Restrictions before legal proceedings are instituted by the Association or the written consent of the Grantee has been obtained. Each such Owner shall indemnify and hold harmless the Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under the clause (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or wilful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of gross negligence.

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- (c) **Transfers.** To grant and transfer to any person or entity any real property and/or other interest, including title, leasehold estates, easements, rights-of-way, or Mortgages, out of, in on, over, or under any Association Property for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder:

- (i) Roads, streets, rights of way, footpaths, street lights, driveways, parking areas, tracks, paths and fences;
- (ii) Lines, cables, wires, conduits, pipelines, or other devices for the creation of services;
- (iii) Sewers, water systems, storm water drainage systems, sprinkler systems, and pipelines; or
- (iv) Any similar improvements of facilities.

Nothing set forth above, however, shall be construed to permit the use or occupancy of any improvements or other facility in any way that would violate the applicable use and occupancy restrictions imposed thereon by the Association Restrictions, or by any governmental authority.

- (d) **Manager, Residential Property Manager.** To retain and pay for the services of a Manager to manage and operate the Association, including the Association Property to the extent deemed advisable by the Committee. Additional personnel may be employed directly by the Association or may be furnished by the Manager. The Association may also employ a Manager to manage the Common Area and the Recreation Reserve on behalf of the Association. To the extent permitted by law, the Association and the Committee may delegate any duties, powers, and functions to the Manager. The Members of the Association hereby release the Association and the members of the Committee from liability for any omission or improper exercise by the Manager of any such duty, power, or functions so delegated.
- (e) **Legal and Accounting Services.** To retain and pay for legal and accounting services necessary or proper in the operation of the Association.
- (f) **Association Property Services.** To pay for water, sewage, rubbish removal, landscaping, gardening, and all other utilities or services to, and all maintenance of, the Association Property, including, but not limited to, any Recreation Reserve; to maintain and repair any Recreation Reserve, easements, roads, accessways, rights-of-ways, parking areas, median strips, footpaths, paths, tracks, fences, ponds, lakes located within or upon the Common Area and to maintain and repair other portions of the Common Area.
- (g) **Other Services and Properties.** To obtain and pay for any other property and services and to pay any other taxes or assessments that the Association or the Committee is

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required or permitted to secure or to pay for pursuant to applicable law or under the terms of the Association Restrictions.

- (h) **Construction on Association Property.** To construct new Improvements on or additions to Association Property including the approval of the Committee, and strictly in accordance with any necessary Resource Consent of the Wellington City Council.
- (i) **Contracts; Property Ownership.** To enter into contracts with the Grantor and with other persons or entities on such terms and provisions as the constitution allows, and to acquire, own, and dispose of all manner of real and personal property, whether by grant, lease, gift, or otherwise.
- (j) **Security Services.** To provide for and construct and maintain facilities for the provision of security regarding the Development.

2.9 Indemnification

To the fullest extent permitted by applicable law, but without duplication of (and subject to) any rights or benefits arising under the Constitution, the Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, or legal proceedings, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was an officer, committee member, employee, servant, agent of the Association, against expenses (including legal fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, or proceedings if it is found and determined by the Committee or a court that such person:

- (a) Acted in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interest of the Association; or
- (b) With respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful.

The termination of any action, or legal proceedings by settlement, shall not of itself create a presumption that the person did not act in good faith or in a manner reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful. The Committee may purchase and maintain insurance on behalf of any person who is or was an officer, committee member, employee, servant, or agent of the Association, against any liability asserted against such person or incurred by such person in any such capacity, or arising out of the status of such person as such, whether or not the Association would have the power to indemnify such person against such liability hereunder or otherwise.

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3. INSURANCE

3.1 Insurance

- (a) The Grantee shall be required to maintain insurance on the Improvements located upon the Lot against fire and all risks cover and all other coverage in the kinds and amounts commonly required by lending institutions for Improvements similar in construction, location and use. Such insurance policies shall be for the full replacement insurable value of the Improvements constructed upon the Lot against all risks and payment of the premium for such insurance policy shall be the responsibility of the Grantee.
- (b) The Association shall be required to maintain insurance on the Improvements constructed upon the Common Facilities and the Association Property and other insurances, including but not limited to such policies of liability and property damage insurance as the Committee in its discretion may deem necessary. Insurance premiums for such policies shall be a common expense to be included in the Contributions levied by the Association.

3.2 Restoration

In the event of any fire or other casualty, the Grantee shall promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement shall be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed except as agreed otherwise by the Committee. To the extent that the Grantee fails to commence such repair, restoration or replacement of substantial or total damage or destruction within ninety (90) days after the occurrence of such damage or destruction, or if the Grantee does not clean up any debris resulting from any damage within ninety (90) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and the Grantee shall be personally liable to the Association for the costs of such work; provided, however, that if the Grantee is prohibited or delayed by law, regulation, or administrative or public body or tribunal or by its insurers in refusing to meet any claim from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this clause shall not arise until the expiration of ninety (90) days after such prohibition or delay is removed. If the Grantee fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the default interest rate specified in the Constitution of the Association) shall be added to the Contribution chargeable to the Lot and shall be deemed to be a Capital Contribution hereunder. Any such amounts added to the Contributions chargeable against the Lot shall be (subject to any maximum sum specified) secured by the Encumbrance referred to herein for Contributions and may be collected by any means provided herein for the collection of Contributions. The Grantee shall indemnify and hold harmless the Association, its officers, Members, the Committee, its employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the

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Association's acts or activities under this clause 3.2, except for such cost, loss, damage, expense, liability claim or cost of action arising by reason of the Association's gross negligence or wilful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

4. A COVENANT FOR CONTRIBUTION LEVIES

4.1 Contributions

The Grantee by entering into this instrument shall be deemed to covenant to pay to the Association such amounts as the Association may determine from time to time (called "Contributions"). All such Contributions shall be fixed established and collected from time to time as set out in clause 4.2 to 4.7 hereof.

4.2 Use of Contributions

Contributions levied by the Association shall be used exclusively for the purposes of ensuring appropriate funding for any business duties or activities of the Association (as defined by the Constitution of the Association), promoting the comfort, health, safety, security and welfare of the Owners and the maintenance and improvements of the Development including without limitation any Association property and Common Area and Recreation Reserve and for carrying out the purposes of the Association as stated herein or as otherwise provided in the Constitution.

4.3 Establishing the Contributions

Each financial year, the Association shall estimate the expenses to be incurred by the Association during each year in performing its functions, including without limitation a reasonable provision for contingencies and appropriate replacement reserves less any expected income and any surplus from the prior year's fund, capital costs in defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of any improvement located upon the Common Facilities or any Association property or the repair or replacement of the services. Contributions sufficient to pay such costs shall then be levied as herein provided, and as between the Lots within the Development the amount of the Contributions levied against each Lot shall generally be equal and uniform and the level of Contributions set by the Association shall be final and binding PROVIDED THAT: -

- (a) If the sums collected prove inadequate for any reason, including non payment of any individual Contributions, the Association may at any time, and from time to time, levy for further Contributions in the same manner as aforesaid;
- (b) The Building Control Committee shall be entitled to make such special levy or demand against any Lot and the owner thereof as the Committee considers reasonable to remedy any disruption, blockages, damage or destruction of any of the Services where the same

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has been in the opinion of the Committee been caused or contributed to by that owner or the resident invitee or occupier of that Owner's Lot and whether or not such act amounts to negligence or an illegal or unlawful act or omission, or breach of covenant by that owner or such resident invitee or occupier.

All such regular Contributions shall be due and payable by the Owner to the Association during the financial year in equal monthly, quarterly, semi-annual, annual, or other periodic instalments, as the Committee determines in its sole discretion, on or before the first day of the applicable period;

4.4 Due Date of Contribution

The first Contribution shall become due and payable in accordance with the periodic payment schedule established by the Committee in accordance with clause 4.3. Payments shall be considered in arrears if not paid within 90 days after their due date.

4.5 Late Charges

If any Contribution is in arrears the Owner may be required by the Association to pay interest at the default interest rate (as defined in the Constitution of the Association) from the due date until the date of payment in full and the interest shall be a charge upon the Lot to which the Contribution relates, collectable in the same manner as herein provided for collection of Contributions.

4.6 Personal Obligation for Payment of Contributions

The Contributions and late charges provided for herein shall be the personal and individual debt of the owner. No diminution or abatement of Contributions shall be allowed for inconvenience arising from the making of repairs or improvements to the Common Facilities or any Lot, and the owner may not exempt himself or herself from liability for such Contributions and charges through non-use of the Lot or otherwise.

4.7 Encumbrances to Secure Contributions

All sums assessed or charged in the manner provided in this clause 4 but unpaid, together with all costs and expenses of collection, including reasonable legal fees, shall be, secured by the Memorandum of Encumbrance For Securing Contributions and shall constitute a charge on or against the Lot covered by such Contribution or charge, which shall bind such Lot in the hands of the Grantee, and the Grantee's executors, successors or assigns. The obligation to pay Contributions hereunder is part of the purchase price of the Lot when sold. The Grantee of a Lot and the Grantor whilst it remains an Owner shall execute the Memorandum of Encumbrance at the same time as he executes this instrument. Such Encumbrance shall be in favour of the Association to secure the payment of Contributions and Capital Contributions and shall be

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superior to all other liens and charges against the Lot, except only for sums secured by a Mortgage securing sums borrowed for the purchase of or improvements on the Lot. The Association shall have the power to subordinate the aforesaid Encumbrance to any other lien encumbrance or charge. Such power shall be entirely discretionary and such subordination must be signed by an officer of the Association.

5. BUILDING CONTROL COMMITTEE

5.1 Construction of Improvements

Notwithstanding anything herein or elsewhere to the contrary, no Improvements may be erected, placed, constructed, painted, altered, modified or remodelled on the Lots, and the Lots may not be resubdivided or consolidated with other Lots, by anyone without the prior written approval of the Building Control Committee and if necessary the Wellington City Council.

5.2 Building Control Committee

- (a) **Composition.** The Building Control Committee shall comprise three (3) Lot Owners appointed by the Board, together with an Architect appointed by the Committee. The Committee shall have the right to appoint and remove all members of the Building Control Committee.

The architects fees charged in respect to his or her sitting on the Building Control Committee in respect to any application made by a Lot Owner for the approval of the Building Control Committee of the construction of improvements on any Lot shall be paid for by the Lot Owner.

- (b) **Submission and Approval of Plans and Specifications.** Construction plans and building specifications and all other submittal requirements, as described in the Architectural Standards, including, but not limited to, exterior elevations, exterior construction materials and specifications; a drainage plan; a site plan showing the location of all Improvements; conceptual landscape and drainage plans; and any and all other information or documents that may be required by the Building Control Committee (collectively the "Control Materials"), shall be delivered, together with any review fee which is imposed by the Building Control Committee in accordance with clause 5.2(c), to the Building Control Committee as set out and more fully described in the Architectural Standards. No resubdivision or consolidation shall be made, nor any structure or Improvement placed or altered on the Lots, until the plans and specifications therefor and the builder which the Lot Owner intends to use to construct the proposed structure or Improvements have been approved in writing by a majority of the members of the Building Control Committee. The Building Control Committee may, in reviewing the Control Materials, consider any information which it deems proper, including, without limitation, any permits, environmental reports or percolation tests which may be required

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Annexure Schedule

Insert type of instrument

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



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by the Building Control Committee or any other entity; information relating to the question of whether any proposed Improvement would unreasonably obstruct the view from neighbouring Lots; and harmony of external design, height, mass, and location in relation to surrounding structures, topography, vegetation and elevation. The Building Control Committee may postpone its review of the Control Materials submitted for approval pending receipt of any information or material which the Building Control Committee, in its sole discretion, may require. A copy of the Control Materials, if approved, shall remain in the possession of the Building Control Committee until the approval of the Building Control Committee is given full effect to. The Control Materials must be approved by the Building Control Committee prior to the clearing of any Lot or the construction of any improvements thereon. The Building Control Committee may refuse to approve the Control Materials for proposed Improvements on any grounds which, in the sole and absolute discretion of the Building Control Committee, are deemed sufficient, including, but not limited to, purely aesthetic grounds. The Building Control Committee shall not grant any approvals whatsoever unless prior written approval is also given by the appropriate department of the Wellington City Council if required.

- (c) **Adoption of Architectural Standards.** The Building Control Committee shall have the authority to adopt Architectural Standards, which shall comprise procedural and substantive rules and construction materials and design guidelines not in conflict with this instrument as the Building Control Committee may deem necessary or appropriate for the performance of its duties hereunder, including without limitation, design criteria, construction material requirements and specifications, rules and guidelines establishing and describing its review procedures, the principles and criteria used in its review, and any requirements relating to the issuance of certificates of compliance or completion. The Building Control Committee may amend, modify, supplement or restate the Architectural Standards from time to time as it deems advisable. **PROVIDED THAT** the Building Control Committee shall not adopt any Architectural Standards which do not meet any requirements of the appropriate department of the Wellington City Council.

In addition, the Building Control Committee shall have the power and authority to impose such reasonable charges for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this instrument. Such charges shall be held by the Building Control Committee and used to defray the administrative expenses incurred by the Building Control Committee in performing its duties hereunder; provided, however, that any excess funds held by the Building Control Committee shall be distributed to the Association at the end of each calendar year.

- (d) **Actions of the Committee.** The Building Control Committee may, by unanimous resolution, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for an on behalf of the Building Control Committee, except the granting of dispensations as hereinafter provided. In the absence of such

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designation, the vote of a majority of all of the members of the Building Control Committee taken without a meeting shall constitute an act of the Building Control Committee.

- (e) **Failure to Act.** In the event that any plans and specifications are submitted to the Building Control Committee as provided herein, (the consent of Wellington City Council having already been obtained) and the Building Control Committee shall fail either to approve or reject the Control Materials for a period of twenty-one (21) days following such submission, no approval by the Building Control Committee shall be required, and approval of such Control Materials shall be presumed; provided, however, that such twenty-one (21) day period shall not begin to run until all information required to be submitted by the Building Control Committee to assist in its review of the Control Materials has been received by the Building Control Committee. Any failure of the Building Control Committee to act upon a request for a dispensation hereunder shall not be deemed a consent to such dispensation, and the Building Control Committee's written approval of all requests for dispensations shall be expressly required.

- (f) **Dispensations.** The Building Control Committee may grant dispensations from compliance with any of the provisions of this instrument, including, but not limited to, restrictions upon height, size, shape, floor areas, land areas, placement of structures, setbacks, building envelopes, colours, materials, or land use, when, in the opinion of the Building Control Committee, in its sole and absolute discretion, such dispensation will not be adverse to the overall uniform plan for the development, and such dispensation is justified due to visual or aesthetic considerations or unusual circumstances. **PROVIDED THAT** no dispensation shall be granted by the Building Control Committee where to do so will contravene the requirements of the Wellington City Council.

All dispensations must be evidenced in writing and must be signed by at least a majority of the members of the Building Control Committee. If a dispensation is granted, no breach of the covenants, conditions, and restrictions contained in this instrument shall be deemed to have occurred with respect to the matter for which the dispensation was granted. The granting of such dispensation shall not operate to waive or amend any of the provisions of this instrument for any purpose except as to the Lot and in the particular instance covered by the dispensation, and such dispensation shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions hereof.

- (g) **Duration of Approval.** The approval or consent of the Building Control Committee of any Control Materials, whether by action or inaction, any dispensations granted by the Building Control Committee shall be valid for a period of two (2) years only. In the event that construction in accordance with such Control Materials or dispensation is not commenced on the Lot within such two (2) year period AND diligently progressed to completion thereafter, the Grantee shall be required to resubmit such plans and

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specifications or request for a dispensation to the Building Control Committee, and the Building Control Committee shall have the authority to re-evaluate such Control Materials in accordance with this clause 5 and may, in addition, consider any changes in circumstances which may have occurred since the time of the original approval thereof.

- (h) **No Waiver of Future Approvals.** The approval or consent of the Building Control Committee to any Control Materials for any work done or proposed in connection with any other matter requiring the approval or consent of the Building Control Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications, or other matter whatever, subsequently or additionally submitted for approval by the same or a different person, nor shall such approval or consent be deemed to establish a precedent for future approvals by the Building Control Committee.
- (i) **Non-liability of Building Control Committee Members.** Neither the Building Control Committee, nor any member thereof, shall be liable to the Lot Owner or to any other person for any loss, damage or injury arising out of the performance of the Building Control Committee's duties under this instrument, unless such loss, damage or injury is due to the wilful misconduct or bad faith of the Building Control Committee or its members, as the case may be.

6. MORTGAGE PROTECTION

- 6.1 **Notice to Association.** If any Lot Owner mortgages his Lot and any Improvements thereon, the Lot Owner shall notify the Committee, giving the name and address of the owner's Mortgagee. The Committee may, at its election, maintain such information in a book entitled "Mortgagees of Owners".
- 6.2 **Examination of Books.** The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours upon one business day's notice (not less than 24 hours).

7. GENERAL PROVISIONS

- 7.1 **Roadway, Utility and General Fence Easements.** The Association reserves the right to locate, relocate, construct, erect, renew and maintain services in and on any common area or areas conveyed to the Association or Common Facilities upon or over the surface of the ground, and fences of the development with the right of access to the same at any time for the purposes of repair, renewal replacement or maintenance and the Association shall have the right of access in exercising its powers herein.
- 7.2 The owner of each Lot shall not and shall ensure that occupiers of and invitees to the Lots do not, in any way disturb, damage, destroy or disrupt any Services under or along the surface of that

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Lot and serving any other Lot or the Common Facilities nor prevent or interfere with any person authorised by the Committee entering or remaining on that owner's Lot for the purpose of unblocking, maintaining or repairing or replacing any such Services.

7.3 **Notices.** Any notice permitted or required to be given by this instrument shall be in writing and may be delivered either personally or by post. If delivery is made by post, it shall be deemed to have been delivered on the third (3rd) day (other than a Saturday, Sunday or legal holiday) after a copy of the same has been deposited in the post, postage prepaid, addressed to the person at the address given by such person in writing to the Secretary of the Association for the purpose of service of notices, or to the residence located on the Lot owned by the Grantee if no address has been given to the Secretary of the Association. Such address may be changed from time to time by notice in writing given by such person to the Secretary of the Association.

7.4 **Interpretation.** The provisions of this instrument shall be liberally construed to effectuate the purpose of creating a uniform plan for the Development and operation of, the Lots and the Development, provided, however, that the provisions of this instrument shall not be held to impose any restriction, condition or covenant whatsoever on any land owned by the Grantor other than the Servient Tenement. This instrument shall be construed and governed under the laws of New Zealand.

7.5 **Construction Activities.** This instrument shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of improvements upon the Lots, so long as such construction is pursuant to the written approval of the Building Control Committee, and the appropriate consents of the Wellington City Council.

7.6 **Gender.** Whenever the context shall so require, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

8. **COMPLIANCE**

Notwithstanding that the Grantor may no longer have any interest in any of the Lots which are subject to or have the benefit of these covenants, the Grantor will at all times in the future have the ability to seek compliance with, and enforce the provisions of this instrument.

9. **LIABILITY**

The Grantor shall not be liable for any breaches of the covenants conditions or restrictions set out herein in respect of any Lot after it shall have sold and transferred title to such Lot other than where such breaches have occurred prior to or at the time of the Grantor selling or transferring title to such Lot.

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10. ARBITRATION

Except where otherwise expressly provided hereunder if at any time any dispute, doubt or question shall arise between the parties hereto touching upon the construction meaning and effect of this instrument or the rights and liabilities of any Owner or Member then every such dispute or question shall be referred to the arbitration of a single arbitrator if one can be agreed upon or failing agreement to the arbitration of an arbitrator nominated by the President for the time being of the Wellington District Law Society and every arbitration pursuant to this clause shall be in accordance with the provisions of the Arbitration Act 1996 or any statutory modifications or re-enactment thereof.

11. NO RESTRICTION ON ORIGINAL DEVELOPER

11.1 Notwithstanding anything in this land covenant, no provision of this document shall operate to restrict or prevent Futuna Limited, its contractors, employees and agents from doing such acts and operations as Futuna Limited in its unfettered discretion considers appropriate for the carrying out and completion of its residential subdivision including any subsequent stage of such subdivision on the Development, nor from constructing, altering or removing any building or part thereof, or other improvements without the necessity for seeking or securing the consent of the Committee or complying with any other restrictions on the construction of buildings or improvements on any Lot (other than as required by any relevant local authority), in such manner as Futuna Limited considers fit.

11.2 Without limiting the generality of the foregoing, Futuna Limited:

- (a) May use any building on any lot as a show home, engage in any activity to promote subdivisinal sales, erect any advertising signs, hoardings or banners and operate its subdivisinal management and sales offices from any of the Lots.
- (b) May subdivide a Lot and create any easement or encumbrance over the Common Area, the Recreation Reserve or any Lot while it remains proprietor of the same.
- (c) May allow the accumulation of rubbish and debris for reasonable periods on any lot or area which is being developed or on which a building is being constructed.
- (d) While using such endeavours as considers fit to ameliorate the consequences thereof it shall not be subject to claim or restriction on account of any rubbish, noise, vibration or dust emanating from its subdivisinal development or construction activities.
- (e) Shall not (subject to any requirement of legislation or regulation) be restricted or prevented from any activity which might be considered unsafe or hazardous.

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(f) Shall be permitted to erect temporary buildings and shelters in connection with its development activities.

(g) Shall be permitted to have any vehicle connected with its subdivisional development or construction activities remain on any lot owned by it or on the Common Area or Recreation Reserve notwithstanding that such vehicle or equipment may be of a commercial or industrial nature or unsightly in any way.

11.3 The provisions of this clause shall expire when Futuna Limited has sold each lot of every stage on the Development and completed the building of all its construction commitments in respect of the Development.

11.4 The provisions of this clause 11 shall be read and construed as paramount to all other provisions of this instrument.

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SCHEDULE C

SCHEDULE OF SERVIENT TENEMENTS

1. 215m² more or less being Lot 44 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182890.
2. 161m² more or less being Lot 45 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182891.
3. 164m² more or less being Lot 46 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182892.
4. 164m² more or less being Lot 47 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182893.
5. 156m² more or less being Lot 48 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182894.
6. 129m² more or less being Lot 49 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182895.
7. 178m² more or less being Lot 50 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182896.
8. 161m² more or less being Lot 51 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182897.
9. 184m² more or less being Lot 52 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182898.
10. 235m² more or less being Lot 53 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182899.
11. 189m² more or less being Lot 54 on Deposited Plan 344591 and being part of the land contained in Certificate of Title 182900.
12. 20m² more or less being Lot 54A on Deposited Plan 344591 and being part of the land contained in Certificate of Title 182900.
13. 116m² more or less being Lot 55 on Deposited Plan 344591 and being part of the land contained in Certificate of Title 182901.
14. 21m² more or less being Lot 55A on Deposited Plan 344591 and being part of the land contained in Certificate of Title 182901.
15. 155m² more or less being Lot 56 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182902.
16. 210m² more or less being Lot 57 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182903.
17. 152m² more or less being Lot 58 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182904.
18. 168m² more or less being Lot 59 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182905.
19. 169m² more or less being Lot 60 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182906.

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20. 178m² more or less being Lot 61 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182907.
21. 190m² more or less being Lot 62 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182908.
22. 125m² more or less being Lot 63 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182909.
23. 131m² more or less being Lot 64 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182910.
24. 159m² more or less being Lot 65 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182911.
25. 332m² more or less being Lot 66 on Deposited Plan 344591 and being all of the land contained in Certificate of Title 182912.

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Annexure Schedule



Insert type of instrument
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SCHEDULE D

The Development:

All that land comprised in Certificates of Title 182890 to 182912 (inclusive) and 108736 (Wellington Registry).

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Annexure Schedule



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SCHEDULE E

The Common Area:

The area mared "C2" on Lot 100 on Deposited Plan 326794, Lot 100 on Deposited Plan 333540 and Lots 100 and 100A on Deposited Plan 344591.

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.

Approved by Registrar-General of Land under No. 2002/5032

Annexure Schedule



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

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SCHEDULE F

The Recreation Reserve:

The area marked "C1" on Lot 100 on Deposited Plan 326794.

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Approved by Registrar-General of Land under No. 2003/6150
Annexure Schedule - Consent Form
Land Transfer Act 1952 section 238(2)



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

Land Covenant

Page **39** of **41** pages

Consentor

Surname must be underlined or in CAPITALS

Capacity and Interest of Consentor

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

SEFTA TRUSTEES LIMITED

**The Mortgagee under Mortgage No.
B826863.2**

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:

The within covenants

Dated this **17th** day of **February** 2005

Attestation

SEFTA TRUSTEES LIMITED by its attorney
RICHARD WILLIAM PERRY

Signed in my presence by the Consentor

Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

Michael John Switzer
Solicitor
Wellington

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.

Annexure Schedule



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

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CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, RICHARD WILLIAM PERRY of Wellington, Solicitor, HEREBY CERTIFY:

1. **THAT** by deed dated 21 December 2000 SEFTA TRUSTEES LIMITED, being the Trustee of INTERNATIONAL MORTGAGE INVESTMENTS TRUSTS a Trust resident and constituted in the United Kingdom of Great Britain appointed me its attorney on the terms and subject to the conditions set out in the said Deed.
2. **THAT** the said Deed was deposited in the Wellington Land Registry under No. B819999.1.
3. **THAT** at the date hereof I have not received any notice or information of the revocation of that appointment by any circumstance or means whatsoever.

SIGNED at Wellington this

17th

day of

February

2005

Richard William Perry

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Approved by Registrar-General of Land under No. 2003/8150
Annexure Schedule - Consent Form
Land Transfer Act 1952 section 238(2)



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

Land Covenant

Page 41 of 41 pages

Consentor

Surname must be underlined or in CAPITALS

Capacity and Interest of Consentor

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

**FUTUNA RESIDENTS' ASSOCIATION
INCORPORATED**

**The Encumbrancee under Encumbrance
Nos. 5806253.14 and 6184478.10**

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 within easements

Dated this 2nd day of March 2005

Attestation

The Common Seal of the Consentor the **FUTUNA
RESIDENTS' ASSOCIATION
INCORPORATED** was affixed in the presence of
of the Development Member

Common
Seal
of
Director
Futuna Limited

Signature of Consentor

Signed in my presence by the Consentor

Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

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.

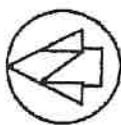
REF: 7029 - AUCKLAND DISTRICT LAW SOCIETY

MEMORANDUM OF EASEMENTS		IN GROSS
PURPOSE	SHOWN	SERVIENT
WATER SUPPLY	LOTS 44-06 LOTS 34A & 56A LOTS 100 & 100A	WELLINGTON CITY COUNCIL
ELECTRICITY SUPPLY	LOTS 100 & 100A	VECTRA LIMITED

AMALGAMATION CONDITION
THAT LOTS 54 AND 55A HEREON BE HELD IN THE SAME CERTIFICATE OF TITLE, AND THAT LOTS 55 AND 55A HEREON BE HELD IN THE SAME CERTIFICATE OF TITLE

RGL REQUEST No.212420

APPROVED AS TO ADDITION OF
EASEMENTS M, B, C, D
APPROVING SURVEYOR: *[Signature]*
7/3/2005



LT 344591 (Tile Plan)

