

1. PURPOSE

1.1 The Grantor and Grantee acknowledge and agree that the properties comprising the servient tenement, as described in Schedule A (including the buildings and landscaping on those properties):

- (a) are part of:
- (i) the Church College Character Area, as defined in the Hamilton City Council's Operative District Plan (operative 28 July 2012); and
 - (ii) the Temple View Zone, as defined in the Decisions Version of the Hamilton City Council's Proposed District Plan;

(Temple View Zone):

- (b) are intended to create a distinctive gateway appearance on approach to the Hamilton New Zealand Temple of The Church of Jesus Christ of Latter-day Saints and surrounding facilities and land; and
- (c) are intended to be of a character which is consistent with the historic use and character of the Temple View Zone since the mid 1950's and the approved land use and conditions of the Hamilton City Council Land Use Resource Consent *(consent reference to be added)*.

1.2 Accordingly the Grantor and Grantee agree that it is desirable that supervision and control over the properties comprising the servient tenement be exercised as set out in this covenant for the protection of the interests of the Grantee.

2. COVENANTS

2.1 In recognition of the above, the Grantor covenants with the Grantee, so as to bind the servient tenement in favour of the dominant tenement as follows:

2.1.1 New building: The Grantor shall not commence, carry out or permit the construction, placement or erection of any new building, ancillary building or other structure on the servient tenement without having first:

- (a) submitted to the Grantee plans and specifications and all other details of construction and finish as the Grantee may in its absolute discretion require; and
- (b) received the written approval of the Grantee, which may be given or withheld by the Grantee in its sole discretion.

Following receipt of written approval from the Grantee, the Grantor shall ensure that such new building, ancillary building or other structure is constructed in accordance with such approved plans and specifications.

2.1.2 Existing building: Subject to clause 2.1.18, the Grantor shall not replace or otherwise materially alter (whether in whole or in part) the appearance or finish of the exterior

of the dwelling (including the exterior walls, roof, joinery and any other exterior surfaces of the dwelling) or any other permitted ancillary buildings at any time without the prior written consent of the Grantee.

2.1.3 Driveway or pathways: The Grantor shall not replace, remove or otherwise materially alter (whether in whole or in part) the appearance or finish of the driveway or any pathway without the prior written consent of the Grantee.

2.1.4 Fencing and retaining walls: At all times subject to clause 2.1.5 the following provisions shall apply in relation to fences and retaining walls on the servient tenement (or the boundary of the servient tenement):

- (a) The Grantor shall not without the prior written consent of the Grantee, erect, construct or permit or suffer to be erected or constructed any retaining wall or fence on the servient tenement except on and along any boundary of the servient tenement and other land not being Boyack Drive or the Tuhikaramea Road corridor.
- (b) For the avoidance of doubt where the servient tenement adjoins the Pedestrian Link nothing in clause 2.14(a) shall prevent the erection or construction of any retaining wall or fence along the boundary of the servient tenement and the Pedestrian Link.
- (c) Any fence or retaining wall permitted to be erected or constructed pursuant to clauses 2.1.4(a) or (b) above must:
 - (i) be comprised of materials first approved in writing by the Grantee;
 - (ii) be painted or otherwise finished in a single colour selected from the colour palette for fences and retaining walls from time to time approved and/or promulgated by the Grantor; and
 - (iii) in the case of a fence, not be higher than 1.83 metres in height.

2.1.5 Structures adjoining or within the Tuhikaramea Road corridor: The Grantor shall not without the prior written consent of the Grantee replace or otherwise alter (whether in whole or in part and whether above or below the level of the ground) the structure, appearance or finish of any:

- (a) common retaining wall or curtilage wall on or about the boundary between the servient tenement and the Tuhikaramea Road corridor;
- (b) retaining wall supporting the footings of the common retaining wall referred to in 2.1.5(a) above;
- (c) retaining wall supporting all or part of the Pedestrian Link;
- (d) stair or ramp connecting the servient tenement to the Tuhikaramea Road corridor; or

- (e) bridge (or similar spanning structure) connecting the servient tenement and/or the residence on the servient tenement to the Tuhikaramea Road corridor;

and the Grantor shall use all reasonable endeavours to protect any such wall, stair, ramp, or bridge from damage or destruction. The Grantor shall comply with the foregoing notwithstanding that:

- (f) the common retaining wall or curtilage wall forms part of the Tuhikaramea Road corridor and is not owned by the Grantor; and
- (g) part of any stair, ramp or bridge is within the Tuhikaramea Road corridor and to that extent may not be wholly owned by the Grantor;

and nothing in this instrument shall be construed as granting to the Grantor any rights in or to the common retaining wall or curtilage wall, or rights in relation to those parts of any stair, ramp or bridge not on or forming part of the servient tenement.

2.1.6 Hedging: The Grantor shall not without the prior written consent of the Grantee plant or permit any hedge to grow (whether along the boundary or otherwise) other than immediately adjacent to the dwelling or immediately adjacent to a permitted fence, provided that such hedge is not permitted to grow higher than the top of such permitted fence.

2.1.7 Colour: The Grantor shall not repaint or otherwise alter the colour of, or refinish in any way, the exterior of the dwelling (including the exterior walls, roof, joinery and any other exterior surfaces of the dwelling) or any other permitted ancillary buildings or any retaining wall, fence, stair, ramp, bridge, or other structure on or forming part of the servient tenement, at any time without the prior written consent of the Grantee.

2.1.8 Windows: The Grantor shall not apply any reflective tint or any frosting or other opaque application to any window (excluding any bathroom or toilet window) without the prior written consent of the Grantee.

2.1.9 Landscaping: The Grantor shall ensure all gardens, trees, hedges and lawns are well maintained and kept in a tidy condition at all times.

2.1.10 Trees: The Grantor shall not remove any mature tree on the property without the prior written consent of the Grantee.

2.1.11 Owner occupier: Unless the Grantor has obtained the prior written consent of the Grantee, the Grantor shall at all times ensure the residence is only occupied on a permanent basis by the Grantor and/or the Grantor's immediate family, provided that:

- (i) where the Grantor is an entity other than natural persons, the occupier shall be natural persons who are the legal owners (directly or indirectly) of that entity and/or their immediate family; and

(ii) where the Grantor is a trustee or are trustees of a trust, the occupier must be beneficiaries of the trust and/or the immediate family of a beneficiary of that trust.

2.1.12 Residence only: The Grantor shall not use the servient tenement or allow the servient tenement to be used for any purpose other than for a residential dwelling, including (without limitation) any commercial activity or home office without the prior written consent of the Grantee. This clause 2.1.12 shall not apply where the purpose of use of the servient tenement is for the construction of the residential dwelling.

2.1.13 No rental: The Grantor shall not collect any rental or other payment or income (in whatever form) from the use of the servient tenement without the prior written consent of the Grantee.

2.1.14 Signage: The Grantor shall not erect any signage or hoardings on the servient tenement without the prior written consent of the Grantee.

2.1.15 Noisome activities: The Grantor shall not permit any noisome activity on the servient tenement without the prior written consent of the Grantee.

2.1.16 Animals: The Grantor shall not keep pigs, chickens, roosters, donkeys, goats, horses, beehives or keep more than two dogs on the property at any one time or use the property for animal boarding kennels without the prior written consent of the Grantee.

2.1.17 Subdivision: The Grantor shall not subdivide the servient tenement ("subdivide" having the meaning given to it by section 218(1) of the Resource Management Act 1991 effective as at the date of this instrument) without the prior written consent of the Grantee.

2.1.18 Reconstruction: Where the dwelling or any ancillary building or structure, driveway or pathway, fence, wall, stair, ramp, bridge or other permitted structure on the servient tenement is damaged or destroyed, the Grantor shall reconstruct and reinstate such dwelling or any ancillary building or structure, driveway or pathway, retaining wall, fence, wall, stair, ramp, bridge or other permitted structure or otherwise ensure the same is reconstructed or reinstated on the servient tenement within a reasonable time from such damage or destruction and to the same design and standard and using the same or substantially similar materials and finish as existed immediately prior to the damage or destruction.

2.1.19 No objection: The Grantor shall not at any time:

- (i) make or lodge; or
- (ii) be a party to or otherwise support; or
- (iii) finance or contribute to the cost of;

any submission, application, proceeding or appeal (whether pursuant to the Resource Management Act 1991 or any other legislation) which has the effect of restricting or preventing the Grantee from undertaking any development of the

dominant tenement or any other land owned by the Grantee within the Temple View area.

2.1.20 No complaints: The Grantor shall not at any time make any complaint, objection, claim or demand or take any action or proceedings or be a party to or otherwise support in any way or allow or permit any action or proceedings for damages for negligence, nuisance, trespass or interference of any nature (including damage or nuisance arising out of negligence of the Grantee or any of its employees) directly or indirectly in any way arising out of the activities or any other use of the dominant tenement or any other land owned by the Grantee within the Temple View area that is in accordance with the local authority's operative district plan, or any resource consent obtained by the Grantee under the Resource Management Act 1991 (or any statutory amendment or replacement thereof).

2.2 For the purposes of this clause 2 the following terms will, unless the context otherwise admits or requires, have (with or without the definite article) the following meanings:

- (a) **Boyack Drive** means the corridor of road reserve, and land used in connection with that road reserve, currently known as Boyack Drive.
- (b) **Pedestrian Link** means the road reserve comprising a pedestrian access way running between Tuhikaramea Road and Boyack Drive.
- (c) **Tuhikaramea Road** means the corridor of road reserve, and land used in connection with that road reserve, currently known as Tuhikaramea Road.
- (d) **Tuhikaramea Road corridor** means:
 - (i) Tuhikaramea Road; and
 - (ii) that part of the corridor of road reserve, and land used in connection with that road reserve, currently known as Foster Road which is adjacent to the servient tenement.

3. CONSENT

3.1 Where in this instrument the prior written consent of the Grantee is required for any matter, the Grantee may:

- (a) act in its sole discretion in determining whether or not to provide such consent;
- (b) impose conditions on the Grantor in providing any consent; and/or
- (c) waive or vary any requirement of any covenant in this instrument.

4. NOTIFICATION TO COUNCIL

4.1 The Grantor shall immediately notify the Hamilton City Council in writing in the event that:

- (a) the Grantee provides to the Grantor any consent to waive or vary the requirements of the covenants contained in clauses 2.1.1 to 2.1.10 (inclusive), 2.1.17 and 2.1.18; or

BREACH OF COVENANTS

- 1 If there is a breach on the part of the Grantor in respect of the covenants contained in clause 2.1, the Grantor shall:
 - (a) on written demand being made by the Grantee pay to the Grantee liquidated damages in respect of each breach the sum of \$50,000.00 adjusted annually by the movement in the Consumer Price Index (all groups) (or successor index published by the Department of Statistics or other subsequent governmental agency) for the preceding year on 1 January in each year with the first such adjustment to be 1 January in the year immediately following registration of this instrument; and
 - (b) permanently remove or cause to be permanently removed from the servient tenement any improvement or structure so erected or repaired or other cause of any breach or non-observance of the covenants contained in clause 2.1. It is further agreed and acknowledged that in any instance of a breach or non-observance on the part of the Grantor in respect of the covenants contained in clause 2.1, the remedying of such default within one month of notice in writing from the Grantee requiring the removal by the Grantor of such cause of default and the payment by the Grantor of all reasonable legal costs and other expenses incurred by the Grantee in enforcing the said covenants shall avoid the payment of the sum prescribed by clause 5.1(a). This waiver shall not apply in respect of any subsequent default of a similar nature.

NO WAIVER

- 1 No delay or failure by the Grantee to enforce performance of any of the covenants set out herein and no indulgence granted to the Grantor by the Grantee shall be a waiver, or in any way prejudice any right of the Grantee to enforce any of the covenants or provisions of this instrument.