

Continuation of Estate or Interest or Easement to be created

Continuation of Certificate of Title No:

Certificate of Title

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334134	334153
334135	334154
334136	303155
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Continuation of Estate or Interest or Easement to be created

1. Definitions and Interpretations

1.1 Definitions

In this Transfer:

“access lot” means each of Lots 40 and 41 on DP 383698

“the land” means all of the land contained in the above Certificates of Title

“Transferee” means Elan Developments Ltd

“Transferor” means Elan Developments Ltd

“All Lots” where referred to in the Schedules to this Transfer means Lots 1-38 inclusive on Deposited Plan 383698 for general covenants pursuant to clause 3.2 and Lots 31-35 and 19-23 inclusive for access covenants pursuant to clause 5.

1.2 Interpretation

In this Transfer:

- (a) words and expressions denoting the singular shall where the context so requires include the plural and vice versa.
- (b) the Transferor and the Transferee includes the successors and assigns of the Transferor and the Transferee.
- (c) headings have been inserted for guidance only, and shall not be deemed to form part of the context of these presents.

2. Preamble

2.1 The Transferor as registered proprietor of the land formerly contained in Certificate of Title NA91C/725 subdivided that land into Lots all of which, except for Lots 40 to 44, are residential lots for the purposes of the sale in a residential estate (“the Lots”) in the manner shown and defined on Deposited Plan 383698.

2.2 It is the Transferor’s intention that:

- (a) each of the lots shown as covenanting lots in the First Schedule be subject to a general scheme under clause 3.2 hereof applicable to and for the benefit of all those lots; and
- (b) each of the lots shown as covenanting lots in the Second Schedule be subject to access lots covenants under clause 5.
- (c) Each of the lots shown as covenanting lots in the Third Schedule be subject to planting protection covenants under clause 4.

in that the owner or occupier for the time being of each Lot should be bound by the covenants, stipulations and restrictions set out herein and that the respective owners and occupiers for the time being of the other Lots may be able to enforce the observance of such covenants, stipulations and restrictions against the owners or occupiers for the time being of any of the other Lots in equity or otherwise howsoever and the Transferor shall transfer each of the Lots subject to the like covenants as are contained in this Transfer.

2.3 The Transferor, intending pursuant to the provisions of Sections 49 and 66A of the Property Law Act 1952 to create the covenants and restrictions set out in this Transfer, will by this Transfer transfer each of the Lots comprising the land to itself.

3. Building Enhancement and Use Covenants

3.1 The Transferee for itself and its successors in title so as to bind all the Lots described in the First Schedule (“Covenanting Lots”) HEREBY COVENANTS AND AGREES with itself as Transferor for the benefit of all the other Lots set out beside each Covenanting Lot described in the First Schedule (“the Benefiting Lots”) and of each registered proprietor of the Benefiting Lots from time to time that the Transferee shall observe and perform all of the covenants set out in clause 3.2 until the 31st day of December 2050 at which time the covenants set out in clause 3.2 shall cease to apply.

3.2 The Transferee shall not:

(a) commence any construction, development, earthworks or fill on any Covenanting Lot without having first obtained the written approval of the Transferor to the plans and specifications and the exterior design and appearance of the Transferee’s proposed building and any proposed earthworks or fill and once approval is obtained, make any change to the plans and specifications or the exterior design and appearance of the Transferee’s proposed building or proposed earthworks or fill.

(As a guide houses should be designed so as to fit within the existing land contours so that limited earthworks (cutting or filling) is required. This may necessitate part basement structures or house designs with basement garaging and which are sympathetic to and appropriate for the site.)

(b) use, permit or suffer any Covenanting Lot to be used for:

(i) any trading or commercial purpose other than that permitted by the local authority and which has the prior written consent of the Transferor which may be withheld at its absolute discretion or

(ii) display or showhomes except with the prior written consent of the Transferor which may be withheld at its absolute discretion or which may be granted subject to conditions imposed by the Transferor at its absolute discretion.

(c) allow the duration of any building construction works on any Covenanting Lot to extend beyond the period of 12 months from the date of commencement of such works.

(d) erect or place or permit to be erected or placed on any Covenanting Lot anything other than a single dwelling house having closed in habitable living space (exclusive of carport or garage) with a floor area of less than 140m² and which must also have attached, closed in double car garaging

or such other garaging that is approved in writing by the Transferor at its discretion (to the end and intent that the floor area of any dwelling house erected on the lot shall be not less than 140 m² exclusive of carport and garage).

- (e) Incorporate into the design of the single dwelling house any ancillary accommodation in the nature of a granny flat or a self-contained flat:
 - (i) unless it is permitted by the local authority; and
 - (ii) without the prior written consent of the Transferor which may be withheld at its absolute discretion; and
 - (iii) unless it is confined within the overall roofline of the single dwelling house and does not give the external appearance of comprising a separate unit

and the Transferee shall not subdivide any such ancillary accommodation into a separate title whether fee simple, unit title, crosslease or otherwise.

- (f) use or permit or suffer to be used on any building on any Covenanting Lot any building material other than brick, stone, concrete block, insulclad, masonry, stucco, solid plaster, or approved weatherboard for any outer wall facing except with the written consent of the Transferor which may be withheld at its discretion.
- (g) use or permit or suffer to be used any second-hand materials in any building on the Covenanting Lot nor use any corrugated iron roofing or corrugated iron or zincalume of any description on the exterior of the building without in each case the consent in writing of the Transferor which may be withheld at its discretion.
- (h) use or place or permit to be erected, transported or placed on any Covenanting Lot any second-hand home of any type or description or use or place or permit to be to be incorporated in any dwelling or structure on any covenanting lot any second hand building material of any description.
- (i) erect or permit or suffer to be erected or placed upon any Covenanting Lot any caravan, hut or shed for any kind of permanent or temporary use except relocatable builders sheds but only during the course of construction of a dwelling house provided that the Transferee may erect one garden shed having a maximum floor area of 6m² which is clad in materials approved by the Transferor and erected in a location approved by the Transferor which approvals may be withheld at the Transferor's discretion.
- (j) erect or permit or suffer to be erected or placed upon any Covenanting Lot any building where the basement (including but not limited to basement garage) is not fully enclosed to the reasonable satisfaction of the Transferor.
- (k) erect or place or permit to be erected or placed on any covenanting lot any water tank or tanks without having first obtained the written approval of the Transferor to the construction, design,

placement and screening of the said water tank or tanks to the end and intent that all such tank or tanks shall be adequately screened by vegetation or otherwise from other covenanting lots and from public areas.

- (l) erect or place or permit to be erected or placed on any covenanting lot any clothes line on the front yard of that covenanting lot or that is visible from the road.

As a guide clothes lines or service courts should be adequately screened by sufficient planting and/or fencing to ensure they are not visible from other covenanting lots and public areas.

- (m) allow any grass or weeds on any Covenanting Lot to grow to a height greater than 150mm

- (n) erect, permit or suffer to be erected on any Covenanting Lot any fence or boundary wall higher than 1.2 metres within:

(i) five metres of any road boundary

(ii) the area between the exterior walls of the dwelling which are the closest to the road boundary (if they are less than 5 metres from the road boundary) and any road boundary;
or

except with the prior written consent of the Transferor which may be withheld in its discretion.

- (o) permit any dwelling house on any Covenanting Lot to be occupied for more than six calendar months unless all driveways, paths and fences are completed in permanent materials and all unpaved areas are properly grassed or landscaped

- (p) not allow the property to remain unlandscaped without lawns and shrubs for a period greater than six months following substantial completion or occupation of a dwelling house on the property. The transferee will ensure that a minimum of 25m² of site area is developed with landscaped gardens and that a minimum of 5 trees or shrubs of at least 2m in height are included within the landscaped areas.

- (q) carry out any earthworks (either cutting or filling) in excess of 600mm height or depth within 2 metres of any adjoining lot boundary unless such works have been consented to in writing by the Transferor which consent may be withheld at its absolute discretion

- (r) undertake any construction works on the Covenanting Lot without at all times complying with the following conditions and restrictions:

(i) the transferee shall keep the Covenanting Lot in a tidy orderly and safe condition throughout the construction period.

(ii) The transferee shall maintain the Covenanting Lot at all times during the course of construction free from rubbish and excessive vegetation.

- (iii) the transferee shall not store or dump any construction materials or debris on any adjoining lot or cross any adjoining lot for goods or vehicle access unless consent has been granted by the transferor in writing and the adjoining lot owner.
- (iv) the transferee shall not allow major site works to commence unless a vehicle crossing and access drive for construction vehicles has been formed in metal aggregate or an alternative material as the transferor may approve at their discretion.
- (v) the transferee shall not allow rubbish to be placed or escape onto adjoining or nearby lots or roads.
- (vi) The transferee shall not deposit or allow any dirt gravel clay or other substance to be left on any road in the vicinity of the Covenanting Lot.
- (vii) The transferee shall contain on the lot any silt generated during the construction of the dwelling house.

4.0 Planting Protection Covenant

4.1 The Transferee for itself so as to bind all of the Lots described in the Third Schedule (“covenanting Lots”) covenants and agrees with itself as Transferor for the benefit of each of the lots set out beside each covenanting Lot described in the Third Schedule (in this clause called “the Benefiting Lots”) and each registered proprietor of the benefiting lots from time to time that the Transferee shall always observe and perform all of the covenants set out in clause 4.2 to the end and intent that the covenants shall endure for the benefit of the Benefiting lots until the 31st day of December 2050.

- 4.2** (a) The Transferee shall not cut, prune, damage or remove any trees or shrubs planted on the covenant area set out beside each covenanting Lot described in the Third Schedule to a height below 6 meters measured from the ground level without having first obtained the consent in writing of the Transferor.
- (d) The Transferee shall maintain the trees and shrubs planted in the covenant area in good order and condition and shall replace at his/her own cost, any trees or shrubs that have died, so as ensure at all times, that there is adequate screening from the neighbouring land for the benefit of all the benefiting Lots shown in Schedule Three.

5.0 Access Lot

5.1 The Transferee for itself so as to bind all of the Lots described in the Second Schedule (“covenanting Lots”) covenants and agrees with itself as Transferor for the benefit of each of the lots set out beside each covenanting Lot described in the Second Schedule (in this clause called “the Benefiting Lots”) and each registered proprietor of the benefiting lots from time to time that the Transferee shall always observe and perform all of the covenants set out in clause 4.2 to the end and intent of the covenants shall forever endure for the benefit of the Benefiting lots.

5.2 The transferee shall in respect of the access lot set beside each Covenanting Lot in the Second Schedule:

- (a) Use the access lot only as an access lot except for those areas on the access lot being parking bays and marked and identified as visitor carparks which may only be used for casual parking for visitors only and not for parking by any proprietor of a Covenanting Lot or any occupier of a Covenanting Lot.
- (b) Not place any building or structure on the access lot.
- (c) Not park or leave any vehicle or other thing on any part of the access lot so as to obstruct its use by any other person entitled to use the access lot, and shall not permit or suffer any servant, agent or visitor of the transferee to do so.
- (d) Bear the cost of replacement and/or maintaining the access lot in good order, repair and condition in equal shares in common with the registered proprietors who own an undivided share of the access lot provided that where the need to maintain or repair the access lot arise from any wilful or negligent act of a registered proprietor or authorised person being a guest, invitee, employee, agent or contractor of a registered proprietor then that registered proprietor shall bear the whole cost of such maintenance or repair.
- (e) Allow each of the proprietors of the access Lot and their respective workers to lay pipes, conduits, wires and cables under the surface of the access lot for the purpose of providing services or repairing services to a lot adjoining the access lot provided that the proprietor of the lot having the benefit of the services installed or repaired shall be responsible for and bear the cost of installation, maintenance and repair of the services and the reinstatement of the access lot to its former condition.
- (f) Not change the contour or levels of the access lot without the prior written consent of the Transferor which consent may be arbitrarily withheld.

6.0 Fencing

6.1 The Transferor shall not be required nor shall it be called upon to repair or contribute towards the cost of erection or repair of any dividing or boundary fence between any Lot and any contiguous land owned by the Transferor, but this proviso shall not enure for the benefit of any subsequent registered proprietor of such contiguous land.

7.0 Indemnity and Consequences of Breach

7.1 In consideration of ONE DOLLAR (\$1.00) the Transferee covenants with the Transferor that it will at all times save harmless and keep indemnified the Transferor from all proceedings, costs, claims and demands in respect of breaches by the Transferee of the covenants on its part contained or implied herein, and also the enforcement of such covenants by the Transferor.

- 7.2** The Transferee acknowledges that the value of the Lots will be affected by any non-compliance with or breach of any of the covenants contained or implied herein and the Transferee covenants for itself for the benefit of each of the Benefiting Lots and of each registered proprietor of the Benefiting Lots from time to time that should the Transferee fail to comply with, observe, perform or complete any of the covenants contained or implied herein then without prejudice to any other liability the Transferee may have to the Transferor (which includes any other person or body having the benefit of such covenants) the Transferee shall:
- (a) Pay to the Transferor as liquidated damages the sum of \$5,000.00 immediately upon receipt of a written demand for payment from the Transferor; and
 - (b) immediately permanently remove or cause to be permanently removed from the Lot upon which the breach or failure has occurred any offending improvement or structure or other cause of any breach or non-observance of such covenants; and otherwise forthwith remedy the breach or non-observance thereof; and
 - (c) if the breach or failure is not remedied within 60 days of the date of notice of such breach or failure then the Transferor (together with its agents, employees or contractors) shall be entitled to enter onto the Lot to arrange for rectification of the Transferee's breach or failure at the cost of the Transferee.

8.0 General

- 8.1** The covenants set out in clause 3.2 of this Transfer shall run with each Covenanting Lot set out in the First Schedule for the benefit of all the Benefiting Lots described in the First Schedule TO THE INTENT that the Transferor and Transferee shall continue to be bound until the earlier of the 31st December 2050 or the date upon which they respectively cease to hold a fee simple estate in a Covenanting Lot as the case may be but without prejudice to any liability for any breach of covenant under this Transfer arising before such date.
- 8.2** The covenants set out in Clause 4 of this transfer shall run with each covenanting lot set out in the Second Schedule for the benefit of all the benefiting lots described in the Second Schedule TO THE INTENT that the Transferor and the Transferee shall continue to be bound until they respectively cease to hold a fee simple estate in a covenanting lot but without prejudice to any liability for any breach of covenant under this transfer arising before such date.
- 8.3** The Transferor shall not be required to nor obliged to enforce all or any of the covenants, nor be liable to the Transferee for any breach of the covenants by any of the registered proprietors of the Covenanting Lots and the Transferee shall be liable only in respect of breaches of the covenants which occur while the Transferee is the registered proprietor of any Covenanting Lot.

FIRST SCHEDULE
(all lots on DP 383698)

Covenanting Lots

Benefiting Lots (all inclusive)

Lot 1	Lots 2-38
Lot 2	Lots 1 & 3-38
Lot 3	Lots 1-2 & 4-38
Lot 4	Lots 1-3 & 5-38
Lot 5	Lots 1-4 & 6-38
Lot 6	Lots 1-5 & 7-38
Lot 7	Lots 1-6 & 8-38
Lot 8	Lots 1-7 & 9-38
Lot 9	Lots 1-8 & 10-38
Lot 10	Lots 1-9 & 11-38
Lot 11	Lots 1-10 & 12-38
Lot 12	Lots 1-11 & 13-38
Lot 13	Lots 1-12 & 14-38
Lot 14	Lots 1-13 & 15-38
Lot 15	Lots 1-14 & 16-38
Lot 16	Lots 1-15 & 17-38
Lot 17	Lots 1-16 & 18-38
Lot 18	Lots 1-17 & 19-38
Lot 19	Lots 1-18 & 20-38
Lot 20	Lots 1-19 & 21-38
Lot 21	Lots 1-20 & 22-38
Lot 22	Lots 1-21 & 23-38
Lot 23	Lots 1-22 & 24-38
Lot 24	Lots 1-23 & 25-38
Lot 25	Lots 1-24 & 26-38
Lot 26	Lots 1-25 & 27-38
Lot 27	Lots 1-26 & 28-38
Lot 28	Lots 1-27 & 29-38
Lot 29	Lots 1-28 & 30-38
Lot 30	Lots 1-29 & 31-38
Lot 31	Lots 1-30 & 32-38
Lot 32	Lots 1-31 & 33-38
Lot 33	Lots 1-32 & 34-38
Lot 34	Lots 1-33 & 35-38
Lot 35	Lots 1-34 & 36-38
Lot 36	Lots 1-35 & 37-38
Lot 37	Lots 1-36 & 38
Lot 38	Lots 1-37

SECOND SCHEDULE
(all lots on DP 383698)

Covenantee Lots	Benefiting Lots	Access Lot
Lot 31	Lots 32-35	Lot 40
Lot 32	Lots 31 & 33-35	Lot 40
Lot 33	Lots 31-32 & 34-35	Lot 40
Lot 34	Lots 31-33 & 35	Lot 40
Lot 35	Lots 31-34	Lot 40
Lot 19	Lots 20-23	Lot 41
Lot 20	Lots 19 & 21-23	Lot 41
Lot 21	Lots 19-20 & 22-23	Lot 41
Lot 22	Lots 19-21 & 23	Lot 41
Lot 23	Lots 19-22	Lot 41

THIRD SCHEDULE
(all lots on DP 383698)

Covenantee Lots	Benefiting Lots	Covenant Area
Lot 32	Lots 1 - 31, 33 - 38, 40 - 44	C
Lot 33	Lots 1 - 32, 34 - 38, 40 - 44	D
Lot 34	Lots 1 - 33, 35 - 38, 40 - 44	E
Lot 35	Lots 1 - 34, 36 - 38, 40 - 44	F
Lot 36	Lots 1 - 35, 37 - 38, 40 - 44	G
Lot 37	Lots 1 - 36, 38, 40 - 44	H
Lot 38	Lots 1 - 37, - 40-44	I