Annexure Schedule 1

Insert instrument type

Land Covenant

1. BACKGROUND

1.1 The Developer is proposing to subdivide the Land and sell the Lots.

1.2 Subject to the provisions of this Instrument, it is the Developer's intention but without imposing any obligation to do so, that:

1.2.1 the Lots shall be subject to a general scheme applicable to each of the Lots to the intent that a modern high quality and well-designed residential subdivision shall be enjoyed by the registered owners of the Benefitted Lands;

1.2.2 the owner or occupier for the time being of each of the Lots shall be bound by the covenants set out in this Instrument, and that the Covenantee for the time being may be able to enforce the observance of such covenants by the owners or occupiers for the time being of any Lots in equity or otherwise, and

1.2.3 the Developer shall transfer each of the Lots subject to like covenants.

1.3 The Developer wishes to utilise the provisions of sections 56 and 278 of the Property Law Act 2007 to create the general scheme as it relates to the Burdened Land, and to this end will by this Instrument grant these covenants to itself.

2. GENERAL COVENANTS

2.1 The Covenantee will not be required or obliged to enforce all or any of the covenants, stipulations and restrictions contained in this Instrument, nor be liable to the Covenantor for any breach thereof by any of the registered owners from time to time of the Burdened Land.

2.2 The Covenantor shall not call upon the Covenantee to pay for or contribute towards the costs of erection or maintenance of any boundary fence between a Burdened Land and contiguous land owned by the Covenantee, Pukerua Bay Limited Partnership but this covenant shall not enure for the benefit of any subsequent registered owner of such adjoining land.

2.3 The Covenantor covenants that the Covenantor will at all times save harmless and keep indemnified the Covenantee from all proceedings, costs, claims and demands in respect of breaches by the Covenantor of any of the stipulations, restrictions and covenants that this Instrument assigns to the Covenantor.

2.4 The Covenants created herein shall cease to have any effect on and will be deemed to have been released, surrendered and extinguished from any of the Burdened or Benefitted Land, or part/s thereof, that will vest in a territorial authority or the Crown by virtue of statue, transfer or otherwise as road, reserve or for any other purpose in any subsequent subdivision of the Burdened or Benefitted Land of which the subdivision plan has gained approval of the territorial authority or body having jurisdiction. The person/s or corporation/s benefiting from the land Covenants herein shall not be entitled to any compensation in respect of the exercise of this clause.

3. SPECIFIC COVENANT

The Covenantor for itself so as to bind a Burdened Land, covenants and agrees with the Covenantee for the benefit of the Benefitted Land, and the registered owner of the Benefitted Land from time to time that the Covenantor shall always observe and perform, and will do, or as the case may require, omit to do, all things necessary to ensure that each registered owner from time to time of a Burdened Land shall always observe and perform the covenants set out in this Instrument to the end and intent that these covenants shall enure for the benefit of the Benefitted Land.

4. COVENANT TO BUILD AND APPROVAL OF HOUSE DESIGN PLANS

4.1 THE Covenantor will with all due diligence and in any event not later than one (1) year from the date of settlement and transfer of the Lot from the Developer to the new owner or such extension of that time as may be granted in writing by the Developer in its sole discretion (time to be of the essence) commence to erect on the Lot and complete with all due diligence a dwelling-house and appurtenances in accordance with plans to be approved in writing by the Developer or its appointed representative and in compliance with any restrictive covenant on the Land in terms of the restrictive covenants herein, such written approval to be obtained prior to commencement of any building/construction and prior to submitting any documentation to the local authority for building consent or approval. The plans submitted are to show to the satisfaction of the Developer the floor plan, exterior profile and colour scheme (or building material to be used) and the landscaping of the Lot. The approval of the Developer is for aesthetic purposes only and implies no warranty as to the quality or suitability of the dwelling in any manner whatsoever PROVIDED THAT this clause will cease to apply and be of no further effect from the date that a Code Compliance Certificate is issued by the Relevant Authority for the first Dwellinghouse to be built on the Lot if such Code Compliance Certificate relates to a Dwellinghouse approved of by the Developer in accordance with this clause, AND FURTHER PROVIDED THAT the Covenantor acknowledges that the Developer has no legal responsibility or liability for the enforcement, enforceability or applicability of these covenants, nor does the Developer undertake to enforce or monitor compliance with these covenants on an ongoing basis.

4.2 THE Covenantor will erect the dwellinghouse and its appurtenances to a stage of practical completion within 12 months of the date of commencement of construction. For the purposes of this clause "practical completion" shall be taken to mean that the dwelling-house and its appurtenances shall have roof spouting and down-pipes fitted, exterior cladding fixed and painted or completed (where appropriate), all driveways and pathways laid and non-paved areas sown in grass or presented in garden.

4.3 WHERE the Developer has been dissolved or wound up or removed from the Register of Companies in terms of the Companies Act 1993 or otherwise gone out of existence "approval by the Developer" shall mean approval by any party appointed and/or nominated by the Developer for this purpose.

5. RESTRICTIVE COVENANTS

5.1 The Covenantor will **NOT** in respect of a Burdened Land:

5.1.1 construct any accessory building, carport, decking, breezeway or roof overhang, if constructed, without the same being, architecturally integrated with the design of the dwelling house. Further, and in order to enhance the quality and appearance of buildings in the Subdivision, any attachments to the buildings on a Burdened Land (including, but not necessarily limited to, air conditioning units, television aerials and solar hot water panels) will not be constructed unless they are constructed in such

a way as to be discreetly integrated with the design of such buildings so that they are not highly visible from any road, thoroughfare or adjacent property.

5.1.2 allow the placement of relocatable houses or construct any building with second hand or used exterior cladding and will not allow any building to be constructed without at least 60% of the exterior cladding comprising the following materials:

(a) Kiln fired or concrete brick;

(b) Solid plaster or textured plaster finish;

(c) Stone or timber;

(d) Linea Board or any similar type Branz approved weatherboard system; or

(e) Any other exterior cladding material for which the Covenantor has first obtained the Developer's written consent.

5.1.3 construct any fence including side boundary fences, or boundary rails which exceed 1.8 metres above natural ground level at any point, with the FURTHER PROVISO that no fences shall be constructed forward of the front line of any building unless the written approval of the Developer has first been given. This covenant and/or any approval is deemed to be in addition to and not in substitution for any approval that may be required by the local authority.

5.1.4 in respect of a fence or boundary wall, use materials of wire or wire netting, corrugated iron, plywood sheeting or any untextured flat fibre cement sheeting or any untextured product including but not limited to fibrolite, Hardiflex or Hardiplank or any other similar product.

5.1.5 construct a vehicle crossing to the Burdened Land other than in accordance with the approved crossing design provided by the developer;

5.1.6 commence construction of any building on a Burdened Land unless it is completed within twelve months of laying down the foundations for such building and no building once under construction will be left without substantial work being carried out for a period exceeding three months;

5.1.7 erect any temporary building or structure on the Burdened Land except that which may be used in conjunction with the construction of permanent buildings and which will be removed from the Burdened Land upon completion of the work;

5.1.8 permit a Burdened Land to be in a condition other than in a neat and tidy condition and shall not permit excessive growth of grass so that it becomes longer than 150mm above natural ground level. The Covenantor will not plant or allow to be planted or establish or grow on a Burdened Land, any shrubs or trees to a height greater than 5 metres above natural ground level. The Covenantor will not grow or allow any noxious plants as defined under the Biosecurity Act 1993 to grow on a Burdened Land;

5.1.9 prevent the Covenantee, its officers, employees or agents from entering onto a Burdened Land at all reasonable times for the purposes of ensuring compliance with these covenants and remedying any breaches subject to:

(a) the Covenantee first giving written notice of its intention to enter on to a Burdened Land being not less than 24 hours;

(b) entry will be for the purpose of ensuring compliance with the covenants contained in this Instrument or remedying any breach of the covenants;

(c) in the event of the Covenantee so entering a Burdened Land, the Covenantee shall not be responsible for any damage occasioned to a Burdened Land or anything placed on it, as a result of a reasonable exercise by the Covenantee of its powers;

5.1.10 allow to be erected or permit to be erected more than one Satellite Dish on the Burdened Land and the dish must not exceed 750mm in diameter. A Satellite Dish which exceeds 750mm in diameter may be erected on the property providing the Satellite dish is not visible from the road adjacent to the frontage of the Burdened Land;

5.1.11 permit an application for a Code Compliance Certificate be lodged unless the land between the Road boundary and the front of the dwelling has been landscaped, levelled and sown with grass seed or 'ready lawn' has been laid, and a concrete, asphalt or other approved (by the Developer in writing) driveway has been laid;

5.1.12 allow large commercial vehicles, motor homes, caravans or machinery equipment to be regularly located either on the Road, street, street berm or footpath or on that area within 3 metres of the Road boundary other than for delivery purposes; and

5.1.13 use the Burdened Land or permit the same to be used other than for residential purposes and will not use the Burdened Lands or permit the same to be used for any trading, industrial or commercial purposes but it is acknowledged that the use of a residential dwelling for a home enterprise use if permitted by the District Plan of the Relevant Authority will not be a breach of this covenant.

5.1.14 Further subdivide any of Lots 1-13 inclusive or Lots 25-28 inclusive or Lot 125 DP 627880, whether by way of cross-lease, unit title, subdivision into separate lots or in any other way.

5.1.15 Permit or suffer the Burdened Land to be occupied or used as a residence either by the erection of temporary structures or the placing thereon of caravans or other vehicles used for human habitation.

5.1.16 Permit any vehicles (including boats, trailers, caravans, motor-homes or campervans but excluding a motor car that is used on a regular basis) to be left, parked or stored on the Burdened Land where it is visible from any Road or Right or Way except on a formed driveway or dedicated parking space approved by the Developer in accordance with clauses 4.1 and 4.2 herein.

5.1.17 Allow the accumulation or housing of any rubbish or noxious substances which may be likely to cause nuisance or annoyance to the neighbouring occupiers, or permit grass or weeds to grow to such a height as to become unsightly.

5.1.18 Permit any dog or other pet to be kept in or about a Burdened Land which dog or other pet is likely to cause a nuisance or annoyance to other neighbouring occupiers or detract from the subdivision, and in particular, without otherwise limiting this restriction, not to keep on or about the Lot any dog which in whole or part appears to be a Pit Bull Terrier, Rottweiler, Japanese Akita, Japanese Tosa, Dogo Argentino or Brazilian Fila. The keeping of pigeons is expressly prohibited.

5.1.19 Permit any advertisement, sign or hoarding of a commercial nature (excluding a professionally made "For Sale" sign) to be erected on any part of the Burdened Land or Dwelling.

5.1.20 Erect or permit to be erected on the Burdened Land any building or dwelling other than a new residential home and ancillary buildings associated with a residential dwelling using anything other than new materials PROVIDED THAT second-hand bricks may be allowed for exterior cladding at the Developer's discretion. No pre-lived in or pre-built Dwelling, either in whole or in part, shall be transported on to the Burdened Land.

5.1.21 Construct any Dwelling on the Burdened Land with an external cladding of unrelieved flat sheet fibrolite, hardiflex or similar materials PROVIDED THAT this restriction shall not apply to the cladding of soffits or gable ends.

5.1.22 Leave the outside of any Dwelling unfinished, or any exterior walls or doors unpainted or unstained PROVIDED THAT this clause shall not apply where natural timber cladding or decorative brick, stone or concrete are used.

5.1.23 Use as a roofing material any material other than tiles (clay, ceramic, concrete, decramastic, pre-coated pressed steel) of a single colour or pre-painted long-run pressed steel (the use of zincalume and copper materials shall not be permitted) or any building materials which are highly reflective (including reflective window coatings).

5.1.24 Erect a Dwelling without contemporaneously erecting a new letterbox of a design, colour and cladding consistent with the Dwelling, or as approved by the Developer in accordance with clauses 4.1 and 4.2.

5.1.25 Erect any garage, outbuilding, fence or wall at any time except in permanent materials of wood, brick or stone or other similar permanent materials (the use of unpainted galvanised iron or zincalume are not permitted).

5.1.26 Erect more than one dwelling house (per lot) on the Burdened Land.

5.1.27 Call on the Developer or the Local Authority to pay or contribute towards the cost of erection or maintenance or repair of any fence constructed on the boundary of any adjoining land owned by the Developer or owned or to be vested in the Local Authority and not to seek contribution from the Developer or the Local Authority for such construction or maintenance cost.

5.1.28 In the event that a rain water tank is installed on the Burdened Land, situate it in the front yard of the (Lot) Burdened Land. It must be hidden, screened or fenced in a neutral colour tone to the intent that it cannot be viewed from the street frontage of the Burdened Land.

5.1.29 Place any clotheslines or wheelie bins in the front yard of the Burdened Land or anywhere on the Burdened Land unless hidden from view from both the road and any right of way, without Developer approval.

5.2 Where there is an existing boundary fence between the Burdened Land and any Council Reserve or the Developer's Land forming part of a further Staged Development (**Existing Fence**) alter the Existing Fence including but not limited to increasing the height of such fence or changing the fence paling orientation and spacing.

5.3 In the event that any Existing Fence requires maintenance or repair, allow any such maintenance or repairs to be carried out in a manner which is not in keeping with the form and construction of the Existing Fence.

6. DISPUTE RESOLUTION

6.1 Except as it relates to the exercise of any discretion, opinion, approval or consent requested of the Developer under these covenants, if any dispute arises between the parties concerning the covenants, then the parties shall enter into negotiations in good faith to resolve their dispute.

6.2 If the dispute is not resolved within twenty working days of the date on which the parties began their negotiations, then the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties agree, that person appointed may act as an expert and not an arbitrator.

6.3 If an arbitrator cannot be agreed upon within a further ten days, then an independent arbitrator will be appointed by the President for the time being of the Wellington branch of the New Zealand Law Society.

6.4 Such arbitration will be determined in accordance with the Arbitration Act 1996 (and its amendments) or any enactment passed in its substitution.

7. DEFAULT PROVISIONS

7.1 If there should be any breach or non-observance of any of these covenants and without prejudice to any other liability which the Covenantor may have to any person having the benefit of this covenant, the Covenantor will upon written demand being made by the Developer or any Covenantee:

(a) Pay to the person making such demand as liquidated damages the sum of $100.00 (One Hundred Dollars) per day for every day that such breach or non-observance continues after the date upon which written demand has been made.

(b) Remove or cause to be removed from the Lot any Dwelling, vehicle, garage, building, fence or other structure erected or placed on the Lot in breach or non-observance of the above covenants.

(c) Replace any building materials used in breach or non-observance of the above covenants.

(d) Reimburse the costs the Developer and/or any Covenantee directly incurs on a dollar for dollar basis as a result of a breach or non-observance, including (but not limited to), those associated with correcting such breach or non-observance.

7.2 Any demand made by a Covenantee will be deemed to have been served to the Covenantor if sent to the Covenantor's postal address of the Lot, or where the Lot is a vacant section, the demand will be deemed to have been properly served if sent to the email address of the lawyer or law firm that signed and certified the transfer of the Lot to the Covenantor.

8. DEFINITIONS AND INTERPRETATION

Definitions

8.1 In this Instrument:

8.1.1 **"Lot or Lots"** means each and all of the lots comprised or to comprise the lots created by subdivision of the Land including the Burdened Lands but excluding any lot which vests as a reserve or road in the Relevant Authority or in the Covenantee's discretion is not to form part of the general scheme;

8.1.2 **"Burdened Land"** means the lots recorded as Burdened Land in Schedule A.

8.1.3 **"Land"** means an estate in fee simple being Lot 1 DP 608433;

8.1.4 **"Relevant Authority"** means Porirua City Council and any other authority having jurisdiction over the Land;

8.1.5 **"Subdivision"** means the subdivision of the Land into predominantly residential sections;

8.1.6 **"Road"** means the frontage from which a dwelling on a Burdened Land has its main access including, a public or private street, road, right of way, park or reserve;

8.1.7 **"Building"** means any residential dwelling house or primary building on the (Lot) Burdened Land; and

8.1.8 "**Developer**" means Pukerua Bay Limited Partnership or its agent or any person(s) or party nominated by Pukerua Bay Limited Partnership .

Interpretation

8.2 In this Instrument words and expressions denoting the singular shall include the plural.

8.3 The Covenantor and Covenantee includes the successors and assigns of the Covenantor and Covenantee.

8.4 A reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

9. EXPIRY OF COVENANTS

9.1 These covenants will continue in force for the benefit of the registered owners of any lot forming part of the Benefitted Land (the Covenantee) until 31 March 2050 at which time they will expire.

10. AUTOMATIC CANCELLATION

10.1 The covenants in this instrument will immediately cease to apply to any Lot (or part thereof) which is intended to vest in the Crown or any territorial authority as a road or reserve, or which is created as a utility lot, upon any survey plan relating to such vesting being approved as to survey and being accepted for deposit by Land Information New Zealand. The Covenantors and Covenantees covenant that this clause will be deemed to be the consent of each Covenantee to the depositing of the land transfer plan of subdivision under section 224(b)(i) of the Resource Management Act.