

## APPENDIX 2

### DEED OF LAND COVENANT

between

[       ]

and

[       ]

**THIS DEED** dated the \_\_\_\_\_ day of \_\_\_\_\_ [ ]

**BETWEEN** [ ] (**Covenantor**)

**AND** [ ] (**Beneficiary**)

## **BACKGROUND**

- A. The Covenantor is registered as proprietor of an estate in [ ] in the land more particular described in the First Schedule (**First Land**).
- B. The Beneficiary is registered as proprietor of, or is entitled to occupy and use the land more particularly described in the Second Schedule (**Second Land**).
- C. The Beneficiary carries out Aircraft Operations from the Second Land, which results or is likely to result in adverse effects being experienced by people in the vicinity of the Second Land. These adverse effects may be generated by noise, vibration, and other usual incidences of Aircraft Operations, which may have consequences beyond the boundaries of the Second Land, including on the First Land.
- D. The current zoning of the Second Land provides for Aircraft Operations.
- E. Residential activity is provided for on the First Land pursuant to the current zoning of the First Land. The development of residential activity on the First Land in a manner that provides an acceptable level of amenity to the residents may require the adoption of special management techniques, operational features or design elements in order to mitigate adverse effects from the Beneficiary's Aircraft Operations activities carried out on the Second Land.
- F. The Covenantor has agreed with the Beneficiary:
  - (a) to accept for itself and its successors in title to the First Land and any party of or interest in the First Land a restriction (in accordance with the terms of this deed) on any ability to object to any Aircraft Operations activities carried out on the Second Land.
  - (b) to enter into this deed on the terms and covenants contained herein; and
  - (c) to register this deed against the computer freehold register(s) and computer interest register(s) to the First Land.

## **IT IS AGREED:**

### **1. INTERPRETATION**

In this deed the context indicates otherwise:

#### **1.1 Definitions:**

*Aircraft Operations: Includes:*

- **landing and take-off of any aircraft;**
- **aircraft taxiing;**
- **aircraft flying along any flight path identified in the district plan or the Civil Aviation Authority of New Zealand ;**

**activities ancillary to any of the above**

- 1.2 Defined Expressions: expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background;**
- 1.3 Gender: words indicating one gender include the other genders;**
- 1.4 Headings: section, clause and other headings are for ease of reference only and will not affect this deed's interpretation;**
- 1.5 Negative Obligations: an obligation not to do anything includes an obligation not to allow that thing to be done;**
- 1.6 Parties: references to parties are references to parties to this deed;**
- 1.7 Persons: references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trust, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;**
- 1.8 Plural and Singular: words indicating the singular number include the plural and vice versa;**
- 1.9 Schedules: the schedules to this deed and the provisions and conditions contained in the schedules have the same effect as if set out in the body of this deed;**
- 1.10 No Limitation: references to anything of a particular nature either before or after a general statement do not limit the general statement unless the context requires;**
- 1.11 Sections, Clauses and Schedules: references to sections, clauses and schedules are references to this deed's sections, clauses and schedules.**

**1.12 Statutes and Regulations: references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it; and**

**1.13 District Plans: references to any District Plan include any instrument that amends or replaces it.**

2. **Acknowledgement of effects:** The Covenantor acknowledges that the First Land is in close proximity to the Second Land on which the Beneficiary undertakes Aircraft Operations. The Covenantor also acknowledges that the carrying on of the Aircraft Operations during times authorised by the district plan or a resource consent and may involve noise, vibration and light spill, which may generate adverse environmental effects, which residents of the First Land may find disturbing and inconvenient.
3. **Entitlement to carry out activity:** The Covenantor acknowledges that the Beneficiary is entitled to carry out Aircraft Operations on the Second Land.
4. **Noise levels:** The Covenantor acknowledges that the Beneficiary's Aircraft Operations operate and may continue to operate at night creating very loud noise, significantly above L<sup>dn</sup>65dBA.
5. The Covenantor for itself and its successors in title to the First Land (or any part of it) hereby covenants, acknowledges and agrees with the Beneficiary and its successors in the title to the Second Land or any part of it as a positive covenant for the benefit of the registered proprietors and users from time to time of the Second Land, that the Covenantor will henceforth and at all times hereafter observe and perform all the stipulations and restrictions contained in the Third Schedule and this deed to the end and intent that each of the stipulations and restrictions shall, in the manner and to the extent prescribed, forever enure for the benefit of, and be appurtenant to, the whole of the Second Land and every part thereof.
6. The Covenantor acknowledges that the terms and covenants contained in this deed shall bind and run with the First Land and the Covenantor shall do all things necessary to effect registration of this deed against the computer freehold register(s) and computer interest register(s) to the First Land.
7. **Separate interests:** Where the Covenantor is the registered proprietor or proprietor of an estate in leasehold which is of a separate and definable interest in the First Land in respect of which a separate instrument of title has issued (separate interest), the obligations of the Covenantor set out in this deed will relate only to the Covenantor's separate interest and not a separate interest of any other registered proprietor of the First Land or any part of or interest in the First Land.
8. **Indemnity:** The Covenantor agrees that it will at all times indemnify the Beneficiary from all proceedings, costs, claims and demands in respect of breaches by the Covenantor of the terms and covenants contained herein and implied on behalf of the Covenantor which occurred while the Covenantor was the registered proprietor of the First Land.

**9. Conduct of Aircraft Operatons:** The Beneficiary must conduct its Aircraft Operations in accordance with the provisions of any relevant plan and/or resource consent granted to it, and/or any existing use rights, in relation to Aircraft Operations.

Executed as a deed.

**SIGNED** by [ ] as Covenantor:

\_\_\_\_\_  
Full name of directors/authorised signatory signatory

\_\_\_\_\_  
Signature of director/authorised

\_\_\_\_\_  
Full name of directors/authorised signatory signatory

\_\_\_\_\_  
Signature of director/authorised

Witness:  
*(if other than two directors sign)*

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Address of witness

**SIGNED** by [ ] as the Beneficiary:

\_\_\_\_\_  
Full name of directors/authorised signatory signatory

\_\_\_\_\_  
Signature of director/authorised

\_\_\_\_\_  
Full name of directors/authorised signatory signatory

\_\_\_\_\_  
Signature of director/authorised

Witness:  
*(if other than two directors sign)*

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Signature of witness

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Full name of witness

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Occupation of witness

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Address of witness

**FIRST SCHEDULE**

**(Land)**

The [ ] interest(s) in computer freehold register/computer interest register [ ] being [ ]  
].

**SECOND SCHEDULE**  
**(Second Land)**

*Describe the Second Land*



## THIRD SCHEDULE

### (Covenants)

The Covenantor agrees that it shall not lodge or permit to be lodged with the Environment Court, the High Court, Auckland Council or any other authority having jurisdiction, any objection to the Beneficiary carrying out its Aircraft Operations from the Second Land. In that regard the Covenantor agrees it shall not:

1. Lodge, permit to be lodged or encourage any other party to lodge with the Auckland Council, the other authority having jurisdiction any submission in opposition to any application by or on behalf of the Beneficiary for resource consent to carry out Aircraft Operations on or in connection with the Second Land or for a change to the terms and conditions of any such resource consent.
2. Lodge, permit to be lodged or support or encourage any other party to lodge or support any complaint with the Auckland Council or other authority having jurisdiction regarding the carrying out by the Beneficiary, its servants or its invitees of Aircraft Operations on or in connection with the Second Land.
3. Make, support, permit to be made or encourage any other party to make or support any application to the Environment Court for a declaration or enforcement order regarding the carrying out by the Beneficiary, its servants or its invitees of Aircraft Operations on or in connection with the Second Land.
4. Make, support, permit to be made or encourage any other party to make or support any application to the High Court or any other judicial body for an injunction, declaration or other order concerning the carrying out by the Beneficiary, its servants or its invitees of Aircraft Operations on or in connection with the Second Land.