Which Lots are Dominant and which Lots are Servient?

The Dominant Tenement is the Lot that has the right to use the easement. The Servient Tenement is the Lot that the easement runs across. In the attached Diagram, Lot 86 is the Dominant Tenement of the easement that runs across Lot 87, and Lot 87 is the Servient Tenement.

In the Foxmoor Plats, it appears almost every lot in Foxmoor is impacted by these use easements. The only Lots that appear to not be subject to a use easement are Lots I. 28. 29. 32 and 52.

While the Foxmoor Plat labels these six foot easements as "Maintenance, Fire Protection and Drainage Easement" (MFDE); it is clear from the Foxmoor Declaration of Covenants, Conditions and Restrictions, Exhibit C, Paragraph 27 (see below), that this easement is also a use easement for the Dominant Tenement. No permanent structure can be placed in the easement area.

Declaration of Covenants, Conditions and Restrictions
of Foxmoor

Exhibit C

27. The lots in Foxmoor, where applicable shall be conveyed with easements over the adjacent lot or, subject to easements for the benefit of the adjacent lot, as more particularly depicted on the Plat. The following rules, in addition to those set forth on the Plat, prescribe the terms, conditions and use of such easements, both by the owner of the easement (the dominate tenement) and the owner of the fee under the easement (the servient tenement):

a. The dominant tenement shall have the right to use the easement for landscaping, fencing and as a general recreational and garden area. The dominant tenement shall have the obligation of maintaining the easement.

b. The dominant tenement shall not use the easement for any other use including permanent installation of any sort (except fencing).

c. The servient tenement shall have the right at all reasonable times to enter the easement area, including crossing over the dominant tenement for such entry, in order to perform work related to the usage of the servient tenement.

d. The servient tenement shall have the right of drainage over, across and upon the easement for water resulting from the normal usage of the servient tenement and the dominant tenement shall maintain the easement area in such manner as will not interfere with such drainage.

e. The owner of the dominant tenement shall not attach any object to a wall or building belonging to the owner of the servient tenement.

f. The dominant tenement, except as otherwise provided in this paragraph, shall have the exclusive use of the 'surface of the easement area subject to the rights of any other easement holders (utilities, sewers, etc.), if any, and subject to minor encroachments, if any, existing at the time of the creation of the easement including overhangs, eaves, etc. over the easement area which are part of the structure located on the servient tenement.

Diagram of Lots

