

**Easement instrument to grant easement or *profit à prendre*, or create  
land covenant**

(Sections 90A and 90F Land Transfer Act 1952)

**Grantor**

KOTARE PROPERTIES LIMITED

**Grantee**

KOTARE PROPERTIES LIMITED

**Grant of Easement or *Profit à prendre* or Creation of Covenant**

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A grants to the Grantee (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule (s)

**Schedule A**

*(Continue in additional Annexure Schedule, if required)*

Purpose (nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Fencing Covenant and Land Covenant		See annexure schedules	See annexure Schedules

## **Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)**

*Delete phrases in [ ] and insert memorandum number as required; continue in additional Annexure Schedule, if required*

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007.

The implied rights and powers are hereby [~~varied~~] [~~negatived~~] [~~added to~~] or [~~substituted~~] by:

[~~Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952~~]

[~~the provisions set out in the Annexure Schedule~~].

## **Covenant Provisions**

*Delete phrases in [ ] and insert memorandum number as required; continue in additional Annexure Schedule, if required*

The provisions applying to the specified covenants are those set out in:

[~~Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952~~]

[~~the provisions set out in the Annexure Schedule~~].

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**CONTINUATION OF "SCHEDULE A"**

<b>Purpose (nature and extent) of easement, profit, or covenant</b>	<b>Shown (plan reference)</b>	<b>Servient tenement (Identifier/CT)</b>	<b>Dominant tenement (Identifier/CT Or in gross)</b>
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Fencing Covenant and Land Covenant			
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## **CONTINUATION OF COVENANT PROVISIONS**

### **DEFINITIONS:**

"**Developer**" means KOTARE PROPERTIES LIMITED or any other person or persons nominated by KOTARE PROPERTIES LIMITED.

"**Developer's Subdivision**" means the land being developed and/or subdivided by the Developer known as 'Kotare Downs'.

"**Land**" means the Servient Tenement or any part of it.

"**Purchaser**" means the Grantor being the registered proprietor of the Land.

### **FENCING COVENANT:**

1. The Developer will not be liable to pay for or contribute towards the cost of erection or maintenance of any fence between any lot on the Land and any adjoining lot owned by the Developer. This condition shall not endure for the benefit of any subsequent purchaser of adjoining land or any part of the adjoining land.
2. The Purchaser agrees to meet the total cost of construction of any fence to be constructed on the boundary of adjoining land if such land is owned by the Local Authority and the Purchaser of the Land will not seek contribution from the Developer or the Local Authority.

### **LAND & BUILDING COVENANTS:**

The Purchaser acknowledges that the Land is part of Developer's Subdivision and is intended to be established as a modern and well-designed subdivision.

The Purchaser will be bound by these covenants, although the Developer may in writing, at the sole and unfettered discretion of the Developer, waive part, any or all of these covenants, on such terms and conditions as the Developer may require.

#### **1. The Purchaser covenants it will not:**

##### *Dwelling Design, and Completion*

##### **1.1 Build on the Land:**

- (a) Any dwelling that does not include an attached fully enclosed garage, which must be constructed and completed at the same time as the construction and completion of the dwelling and in the same materials as the dwelling; or
- (b) Any standalone garage, ancillary building or other structure. Nothing in this sub-clause will prevent the Purchaser erecting a garden shed allowed under the district plan.

##### **1.2 Allow to be transported onto the Land any existing pre-built or second-hand dwelling or other building.**

##### **1.3 Where a permanent crossing has not been constructed by the Developer, the Purchaser shall complete a permanent residential urban vehicle crossing providing access to the Land. The crossing will be constructed to Waipa District Council standards as set out in the Code of Practice for Land Development and Subdivision. The vehicle crossing must be constructed from the edge of the road to the Land boundary as a single slab and be completed no later**

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than the date of completion of the dwelling.

- 1.4 Permit or allow the erection of any temporary building or structure upon the Land except such as may be used in conjunction with the construction of a dwelling on the Land and which will be removed from the Land upon the completion of the dwelling. The Developer will have the right to require the removal of any temporary building or structure which it considers in its absolute discretion, not to be of a nature or type suitable to the Developer's Subdivision.
- 1.5 Erect or allow to be erected a dwelling on the Land unless the final plans (which include fencing) and specifications have been approved in writing by the Developer prior to the Purchaser making an application for a building consent and/or any works commencing on the Land in accordance with the following:
- (a) In determining whether or not to approve the plans and specifications, the Developer will take into account the appearance of the proposed dwelling and the appearance of other dwellings in the local area to the intent there should be a range of style, design and appearance of dwellings within the subdivision factoring in the following key criteria:
- (i) No dwelling should be constructed as a single rectangle or square;
  - (ii) A dwelling must contain more than 2 hips or 2 gables in the roofline. Flat or raked roofed dwellings are acceptable provided they meet the requirements of the covenants and have more than one level of roofing.
  - (iii) Front door visible from the street and weather protected;
  - (iv) Garage doors facing the street set back so they do not dominate the streetscape;
  - (v) Fences and/or walls on any road frontage boundary are not permitted;
  - (vi) Low and permeable (see-through) fencing adjoining reserves and walkways;
  - (vii) Windows facing road frontage;
  - (viii) Screening of washing lines, service areas, boats, trailers, work vehicles and campervans;
  - (ix) Well sited and carefully considered private outdoor space;
  - (x) Front yard landscaping should complement the adjoining street and public open space landscaping; and
  - (xi) Landscape plans submitted with house plans for approval.
- (b) Written approval by the Developer is to ensure standards are maintained in the Developer's Subdivision only and implies no warranty as to the product, design, quality or suitability of the building on the said Land.
- (c) The Purchaser will construct the said dwelling in accordance with the approved plans, and any modification or variation to the plans or specifications will require further written approval by The Developer prior to such modifications or variations commencing.

*Construction Materials*

- 1.6 Roof any building on the Land in other than factory coloured prefinished products.
- 1.7 Erect or allow to be erected on the Land any building that shall have less than a minimum of 70% of the exterior wall area (excluding glazing) clad in the following materials:
- (a) Textured cladding;
  - (b) Kiln fired or concrete brick or concrete;

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- (c) Paint finished textured stucco on fibrous sheet or polystyrene, concrete block or solid concrete stone;
- (d) Metal laminate on timber;
- (e) Timber weather boarding, linear board or vertical board;
- (f) Stone; or
- (g) Other cladding approved in writing by the Developer.

*Fencing*

- 1.8 Erect any fence on any road frontage boundary on the Land.
- 1.9 Erect any fence on the side or back boundary that:
- (a) For the area extending from the road frontage boundary of the Land to the start of the building line – exceeds 1.2 metres in height above the natural ground level; and
  - (b) For the remainder of the Land – exceeds 1.8 metres in height above the natural ground level.
- 1.10 Erect any fence (except during construction) constructed of shade-cloth, netting, iron or steel of any profile, un-textured wood-fibre cement panels, plywood, fibrolite or post and wire unless prior written approval of Developer is given.
- 1.11 Construct part of any fence above 1.2 metres above natural ground level with more than 40% opacity.

*Road Frontage Hedging*

- 1.12 Allow any road frontage hedging:
- (a) For Lots 1, 18, 19, and 20 bordering on Swayne Road to exceed a height of 1.2 metres above natural ground level. These Lots will be entitled to erect a pedestrian gate in the hedging on the on Swayne Road boundary with the gate being:
    - (i) A maximum of 1 metre wide; and
    - (ii) A maximum of 1.2 metres high.
  - (b) For Lot 1 (bordering Rose Leigh Drive) and Lots 7, 8, 11, 12, 27, 30, 50, 52 and 53 within the Developer's Subdivision to exceed:
    - (i) A height of 1.8 metres above natural ground level for more than 50% of the road frontage; and
    - (ii) For the balance of the road frontage a height of 1.2 metres above natural ground level.
  - (c) For all other Lots within the Developer's Subdivision to exceed a height of 1.2 metres above natural ground level.
- 1.13 Allow any road frontage hedging to be kept as anything other than neat and tidy (and must ensure hedging is trimmed and maintained regularly).

*Completion of Work*

- 1.14 Permit any building or associated works in the course of construction to be left without substantial work being carried out for a period exceeding 3 months or permit completion of such work to extend past 12 months of the laying of foundations for the dwelling to be

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constructed on the Land.

- 1.15 Permit any driveway, fencing and landscaping in the course of construction to be left without substantial work being carried out for a period exceeding 3 months or permit such work to extend past 12 months of the laying of foundations for the dwelling to be constructed on the Land.

*Land Use*

- 1.16 Permit any rubbish to accumulate or be placed on the Land except in proper containers which will be emptied regularly.
- 1.17 Allow excessive growth of grass or vegetation so that the Land becomes unsightly. To ensure this the Purchaser will ensure lawns are mown regularly.
- 1.18 Allow any immobile or broken down vehicles, to be placed or sited on the Land in a position where they are visible from the road.
- 1.19 Allow to remain on the Land any caravan, motor home, boat or trade vehicle unless it is garaged or screened so as to protect the aesthetic qualities of the Developer's Subdivision;
- 1.20 Cross lease the Land, create unit titles or subdivide the Land in any manner.
- 1.21 Site any clothesline in direct sight of the road or right of way access.

**2. Breach of Covenants & Enforcement**

- 2.1 If there is a breach of any of these covenants (and without prejudice to any other liability which the Purchaser may have to any person having the benefit of this covenant) and the Purchaser does not rectify the breach within 15 working days of written notice being made by the Developer then the Purchaser will pay to the Developer:
- (a) Liquidated damages of the sum of \$250.00 per day for every day that the breach or breaches continue after the date of written demand until the breach or breaches are remedied; and
  - (b) Any costs, expenses (including legal costs) incurred by Developer to remedy the breach.
- 2.2 The rights of the Developer to enforce the terms of the rights and benefits conferred by these covenants will remain in place until the earlier of:
- (a) 12 calendar months from the date on which the Developer ceases to be a registered proprietor of any Lot forming part of the Dominant Tenement; or
  - (b) The Developer relinquishing these rights in writing.
- 2.3 From the applicable date set out in clause 2.2 the right to enforce the rights and benefits so conferred will in accordance with normal legal principles vest in the registered proprietors of any Lot forming part of the Dominant Tenement.

**3. Expiry of Covenants**

- 3.1 These covenants will continue in force for the benefit of the Grantees until 31 December 2020 at which time they will expire.

**4. Dispute Resolution**

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- 4.1 If a dispute in relation to any covenant arises between the parties who have a registered interest under these covenants:
- (a) The party/parties initiating the dispute must provide full written particulars of the dispute to the other party/parties;
  - (b) The parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
  - (c) If the dispute is not resolved within 20 working days of the written particulars being given (or any longer period agreed by the parties):
    - (i) The dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
    - (ii) The arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.