

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

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

Grantor

**AMBERS PROPERTY DEVELOPMENTS LIMITED**

Grantee

**AMBERS PROPERTY DEVELOPMENTS 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
Land Covenant		Lot 1 DP 456037	Lot 1 DP 456037
		Lot 2 DP 456037	Lot 2 DP 456037
		Lot 3 DP 456037	Lot 3 DP 456037
		Lot 4 DP 456037	Lot 4 DP 456037
		Lot 5 DP 456037	Lot 5 DP 456037
		Lot 6 DP 456037	Lot 6 DP 456037
		Lot 7 DP 456037	Lot 7 DP 456037
		Lot 8 DP 456037	Lot 8 DP 456037
		Lot 9 DP 456037	Lot 9 DP 456037
		Lot 10 DP 456037	Lot 10 DP 456037
		Lot 11 DP 456037	Lot 11 DP 456037
		Lot 12 DP 456037	Lot 12 DP 456037
		Lot 13 DP 456037	Lot 13 DP 456037
		Lot 14 DP 456037	Lot 14 DP 456037
		Lot 15 DP 456037	Lot 15 DP 456037
		Lot 16 DP 456037	Lot 16 DP 456037
		Lot 17 DP 456037	Lot 17 DP 456037
		Lot 18 DP 456037	Lot 18 DP 456037
		Lot 19 DP 456037	Lot 19 DP 456037
		Lot 20 DP 456037	Lot 20 DP 456037
		Lot 21 DP 456037	Lot 21 DP 456037
		Lot 22 DP 456037	Lot 22 DP 456037
(continued on Page 2 Annexure Schedule)			

Form B - continued

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**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] ~~[negated]~~ ~~[added to]~~ or ~~[substituted]~~ by:

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

[the provisions set out in Annexure Schedule ]

**Covenant provisions**

*Delete phrases in [ ] and insert Memorandum number as require; 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]~~

Annexure Schedule

*Insert instrument type*

Easement Instrument

*Continue in additional Annexure Schedule, if required*

**Creation of Land Covenants**

The Grantor for itself and its successors in title covenants and agrees with the Grantee and its successors in title for the benefit of all of Lots 1 to 36 and 40 (inclusive) on Deposited Plan 456037 (collectively called the "Benefiting Lots") that:

1. The Grantor will at all times observe and perform all the covenants contained in this instrument to the intent that each of the covenants will forever enure for the benefit of and be appurtenant to each and all of the Benefiting Lots and each and all of the registered proprietors of the Benefiting Lots provided that the Grantor will be liable only for breaches of the covenants contained in this instrument which occur whilst the Grantor is the registered proprietor of the Land or any part of the Land;
2. If there should be any breach or non-observance on the Grantor's part of any of the covenants contained in this instrument and without prejudice to any other liability which the Grantor may have to the Grantee and any person or persons having the benefit of those covenants the Grantor will upon written demand being made by the Grantee:
  - (a) Pay to the person making such demand as liquidated damages the sum of \$100.00 per day for any day such breach or non-observance of the covenants contained in this instrument continues after the date upon which written demand has been made; or
  - (b) Remove or cause to be removed from the land any dwelling, building, structure or improvement so erected, repaired or completed in breach of the covenants contained in this instrument; or
  - (c) Replace any building materials used in breach of the covenants contained in this instrument.
3. The Grantor will at all times indemnify and keep the Grantee indemnified from all losses, costs, claims and demands in respect of any breach or non-observance by the Grantor of the covenants contained in this instrument.
4. The Grantee will not call upon the Grantor to pay for or contribute towards the cost of erection or maintenance of any boundary fence between the Land and any adjoining land of the Grantee provided that this covenant will not enure for the benefit of any subsequent registered proprietor of any adjoining land.

*Insert instrument type*

Easement Instrument

*Continue in additional Annexure Schedule, if required*

**ANNEXURE A**

**Terms of Land covenant**

**A. Interpretation**

“Developer” means Ambers Property Developments Limited whose address for service is C/- Saunders & Co, PO Box 18, Christchurch 8140

**B. The Grantor and their successors in title SHALL NOT:**

**1.1 Subdivision**

Further subdivide any of Lots 1 to 36 and 40 whether by way of cross-lease, unit title, subdivision into separate lots or in any other way PROVIDED HOWEVER that this restriction will not apply to a subdivision that has the effect only of adjusting the boundaries between two adjoining lots, or where the Developer is adjusting the layout of lots or boundaries of lots for future stages of the subdivision.

**1.2 Temporary Accommodation**

Permit or suffer the property 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.

**1.3 Use Prior to Completion**

Use the property as a residence before both of the following have been provided to the Grantee by the Grantor

- a) a Code Compliance Certificate issued by the Hurunui District Council unless section 364(2) of the Building Act 2004 applies; and
- b) a Producer Statement from a registered drain layer certifying that all stormwater runoff from the dwelling drains into the Council stormwater network. This provision shall be deemed to have been satisfied six months after the issuing of a Code Compliance Certificate for the first dwelling built on the lot.

*Insert instrument type*

Easement Instrument

*Continue in additional Annexure Schedule, if required*

**1.4 Storage of Vehicles**

Store any vehicles (including boats, trailers, caravans and motor-homes) in any structure such as a gazebo, or temporary lean-to that is not a fully enclosed shed or a carport not visible from the road frontage.

**1.5 Noxious Weeds and Rubbish**

Allow the accumulation or housing of any rubbish, noxious substances, noxious birds or animals 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, including prior to the erection of a dwelling and on the road berm, and if not adhered to the Developer may at its discretion engage a contractor to mow such grass and invoice the Grantor.

**1.6 Animals**

Permit any dog or other pet to be kept in or about the property 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 property 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.

**1.7 Signs**

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 property or dwelling, including any sign indicating that the dwelling is a Show Home, PROVIDED THAT the Developer shall have the discretion to allow a Show Home sign to be erected for such time as the Developer shall decide, AND FURTHER PROVIDED THAT under no circumstances shall any signage be affixed to any of the fences referred to in clause 1.9, or before obtaining the Developer's consent in writing. The terms of this clause 1.7 shall not apply to Lot 1, however the Developer must approve any signage on Lot 1 prior to its erection.

**1.8 Gas**

Allow any portable gas cylinders or bottles to be placed on the Lot which are visible from the road, but this does not apply to gas bottles for use with outdoor barbeques or free-standing outdoor gas heaters.

*Insert instrument type*

Easement Instrument

*Continue in additional Annexure Schedule, if required*

**1.9 Reserve Boundaries and Amberley Beach Road Boundaries and Noise Attenuation Boundaries**

- a) In respect of Lots 1, 7-12, 30-33 and 36:
  - (i) remove or modify (including painting or staining) the decorative post and rail fence on the boundary between the Lot and the adjoining road frontage; and
  - (ii) remove or allow to grow to a height greater than 1.8 metres any plant, hedging or shrub planted by the Developer between the Lot and the adjoining road frontage; and
  - (iii) remove or allow to grow to a height greater than 1.8 metres any plant, hedging or shrub (but excluding Oak Trees) planted inside the Lot by the Developer within 2 metres of the boundary of the Lot adjacent to the Amberley Beach Road frontage; and
  - (iv) build or permit to be built any building or structure within two metres of the boundary between the Lot and the adjoining road frontage. In this context, a building or structure shall not include a swimming pool or any structure the sole purpose of which is for landscaping but shall include any additional fencing, except for side boundary fencing not greater in height than 1.2m
- b) In respect of Lots 19-29 and 33-36:
  - (i) build or permit to be built any fence on the boundary between the Lot and the adjoining reserve other than a pool / warner style decorative metal fence of a height not exceeding 1.2 metres, however on Lots 33 and 36 a fence of 1.8m shall be permitted subject to the Developers approval at their sole discretion; or
  - (ii) build or permit to be built any building or structure within two metres of the boundary between the Lot and the adjoining reserve. In this context, a building or structure shall not include a swimming pool or any structure the sole purpose of which is for landscaping but shall include any additional fencing, except for side boundary fencing not greater in height than 1.2m.
- c) In respect of Lots 12-19:
  - (i) Remove or modify the specifically designed and erected noise attenuation fence on the rear (or western most boundary), nor make any objection or complaint to the commercial activities permitted by the existing zoning of the adjacent parcel of land.

*Insert instrument type*

Easement Instrument

*Continue in additional Annexure Schedule, if required*

d) In of Lots 19-29:

- (i) allow the area between the rear boundary adjoining the reserve shown Lot 38 DP 456037, and the reserve footpath, including the timber wall immediately adjacent to rear boundary to fall into disrepair or suffer or permit such area to be left un-maintained or in want of repair. For the avoidance of doubt the Grantor is not liable for the upkeep of the footpath or furthestmost timber edging

**1.10 Dwelling Height and Minimum Size**

- a) Erect on any Lot, a dwelling greater in height than a single storey. The Developer may, at the Developer's sole discretion, approve plans with living areas situated within the roof cavity of the dwelling provided that there is no windows set into the roofline or gable area and that the only natural light permitted into the roof cavity is from skylights. Any such dwelling shall not be deemed to be in breach of this clause by virtue of its having a living area situated within the roof cavity.
- b) Erect on the land any structure other than one new dwelling house and associated outbuildings with a minimum floor area, including garaging of
- not less than 160m<sup>2</sup> for Lots 800m<sup>2</sup> and over
  - not less than 140m<sup>2</sup> for Lots between 500m<sup>2</sup> and 800m<sup>2</sup>
  - not less than 120m<sup>2</sup> for Lots under 500m<sup>2</sup>.

**1.11 New Materials**

Erect or permit to be erected on the Lot any building 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 dwelling shall be transported on to the Lot. Certain pre-built dwelling can be approved by the Developer at its sole discretion provided they will comply with the standard of development envisaged.

**1.12 Non-permitted Cladding Materials**

Construct any building on the Lot with an external cladding of unrelieved flat sheet fibrolite, hardiflex, galvanised steel or similar materials PROVIDED THAT this restriction shall not apply to the cladding of soffits or gable ends.

*Insert instrument type*

Easement Instrument

*Continue in additional Annexure Schedule, if required*

**1.13 Painting**

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.

**1.14 Building Materials**

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 shall not be permitted), nor exterior cladding of material other than clay brick, weather-board, linea board, concrete block, masonry, stucco, solid plaster or glazing or a combination of the above. Preferred building materials are detailed in the Developer's Design Guidelines.

**1.15 Fencing Materials**

Erect or permit to be erected on the land any fence or boundary wall of any material containing cement board sheets or panels or corrugated iron.

**1.16 Boundary Fencing – Road Frontage Setbacks**

a) Interpretation

“Maximum Length” means 30% of the length of the Road Boundary

“Road Boundary” means a boundary between a Lot and any legal road

“Side Boundary” means a boundary between a lot and an adjoining lot that is not a Road Boundary

“Total Length” means the total length of the fence taken in a line parallel to the road

b) **Road Boundary Fencing – Lots 2-6, 15-17, 20-28, 31-34**

The Grantor shall not permit any fence or other structure (other than a letterbox, and any decorative metal fence referred to in clause 1.9(b)(i)) to be erected in the area between the Road Boundary and a line drawn parallel to the Road Boundary, with the distance between such line and the Road Boundary being determined by those parts of the dwelling closest to the Road Boundary. Lots 2-6 shall be permitted a road boundary fence given their access is from a right of way driveway, but such road boundary fence shall be restricted to a pool / warner style decorative metal fence of a height not exceeding 1.2 metres



*Insert instrument type*

Easement Instrument

*Continue in additional Annexure Schedule, if required*

**c) Road Boundary Fencing – Lots 29, 30,35 and 40**

The Grantor shall not permit any fence or other structure (other than a letterbox) to be erected in the area between the Road Boundary and a line drawn parallel to the Road Boundary, with the distance between such line and the Road Boundary being determined by those parts of the dwelling closest to the Road Boundary PROVIDED HOWEVER, that in recognition of the larger Road Boundary length of these lots and the desirability of allowing privacy, the Grantor shall be entitled to erect a fence closer to the Road Boundary than provided above so long as the fence is erected at least 1 metre from the Road Boundary and complies with the following requirements:

- (i) The fence is constructed using materials approved by the Developer
- (ii) The fence is no higher than 1.8 metres above finished ground level
- (iii) The Total Length of the fence does not exceed the Maximum Length. By way of illustration only, the Grantee acknowledges that a curved fence, or a fence which is parallel to the boundary but which has a return, will comply with this restriction notwithstanding that in overall length such fences may exceed the Maximum Length.

**d) Road Boundary Fencing – Lot 1**

The Grantor shall not permit any fence or structure to be erected prior to submitting plans to the Developer and receiving the Developer's consent to such plans in writing, such consent being at the Developer's sole discretion, but not to be unreasonably withheld.

**1.17 Side Boundary Fences**

- a) Permit any fence to be erected on the common Side Boundaries between any of Lots 7-36 and 40 within 1 metre of the point where the Side Boundary meets the Road Boundary, and that the fence is raked at an angle of 30 degrees until it attains its maximum height of 1.8 metres above finished ground level. Lots 2-6 and 40 are subject to this provision, but are permitted a side fence up to the road boundary. These provisions do not apply to the side boundary between Lots 1 and 40.
- b) Permit any fence erected on the Lot or any boundary to exceed 1.8 metres generally above finished ground level.

*Insert instrument type*

Easement Instrument

*Continue in additional Annexure Schedule, if required*

**1.18 Limitation on Road Access, and No-Build Areas**

- a) In respect of Lots 1, 7-12, 30-33 and 36 obtain vehicular access to and from Amberley Beach Road. In respect of Lots 2-6 obtain vehicular access to and from proposed road reserve shown as Lot 39 (Retallick Way).

**1.19 Letterbox**

Erect a dwelling without contemporaneously erecting a new letterbox of a design, colour and cladding consistent with the dwelling or fences, or as approved by the Developer in accordance with clause 1.23. Letterboxes shall be provided to Lots 2-19 at a pre-determined location by the Developer in order to accommodate the postal delivery agent. Such letterbox shall be of a style and design approved and chosen by the Developer, and the Registered Proprietor of each respective lot shall reimburse the Developer a sum of \$75.00.

**1.20 Completion of Landscaping, Driveways and Paths**

Permit the dwelling to be occupied unless all driveways and paths are completed in permanent materials, and all road frontage areas (between the dwelling and road boundary) are properly grassed or landscaped.

**1.21 Satellite Dishes / Air Conditioning Units**

- a) Place or allow to be placed on the land or buildings any aerials or satellite dishes unless the same comply with the following requirements:
- (i) have a maximum diameter of one metre; and
  - (ii) are situated at least four metres from the front façade of the dwelling; and
  - (iii) are mounted below the ridgeline of the roof.
- b) Place or allow to be placed on the land or any part of the buildings any external air conditioning unit visible from the road frontage of the Lot.
- c) Place or allow to be placed on the land or any part of the buildings any overhead power or communication lines.

**1.22 Garden Ornamentation**

Place or allow to be placed on the land or buildings any brightly painted ornaments that are reasonably visible by any other person standing on the footpath of any legal road.

*Insert instrument type*

Easement Instrument

*Continue in additional Annexure Schedule, if required*

**1.23 Grantee to Approve Plans**

Commence any work on the property:

- a) Without submitting to the Developer (for the purposes of this clause 1.23 meaning Ambers Property Developments Ltd C/- Saunders & Co, PO Box 18, Christchurch) for its approval all building plans, including site plans (showing the position of the vehicle crossing, unless already fixed by the Grantee) specifications, fencing, landscaping plans (which shall preferably be prepared by a qualified landscape designer) and builder. Sole discretion lies with the Developer in approving building and site plans, specifications, fencing and landscaping plans, which shall comply with the Design Guidelines provided by the Developer, to the Developer's satisfaction.
  
- b) Which does not conform to the plans approved by the Grantee. Any variation to or deviation from the approved plans and Design Guidelines not approved by the Developer will be a breach of this clause and subject to the provisions of clause 3.

PROVIDED THAT this clause 1.23 will cease to apply and be of no further effect from the date that a Code Compliance Certificate is issued for the first dwelling to be built on the Lot.  
AND FURTHER PROVIDED THAT the Grantor 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.

**1.24 Construction Fencing**

Commence construction until temporary fencing has been erected on the entire length of all unfenced boundaries. The temporary fence must comprise removable wire or shade cloth (or other see-through material) and must provide only one vehicle access to the lot from the road or right-of-way.

**1.25 Construction Zone Areas**

Commence construction until a vehicle crossing of no more than four metres width has been installed in a position approved by the Developer (unless already formed by the Developer), the kerb cut down at the crossing and the driveway from the road to the Lot formed and suitably based. The Grantor shall not make any use of the adjoining lots (whether occupied or not) any berms (except at designated crossings) or footpaths for construction work or for access by vehicles.

*Insert instrument type*

Easement Instrument

*Continue in additional Annexure Schedule, if required*

**1.26 Health and Safety Requirements**

Permit any construction unless the building site complies with the requirements of the Health and Safety in Employment Act 1992 (or any Act passed in substitution).

**1.27 Delivery of Materials**

Undertake or permit during the course of construction the loading, unloading, delivery, or storage of building materials other than within the boundaries of the property.

**1.28 Building Rubbish**

Carry out any construction unless an adequate rubbish skip is present within the boundaries of the Lot at all times (and regularly emptied or replaced), nor allow during the course of construction any rubbish to blow outside the boundaries of the Lot.

**1.29 Washing of Vehicles**

During the course of construction allow any vehicles in particular concrete trucks, to be washed down other than within the boundaries of the Lot.

**1.30 Portable Toilet Facility**

Permit the Grantor's construction workers or contractors to use the property or any other area on the Plan for toileting purposes. Prior to construction commencing, the Grantor shall provide a suitable portable toilet facility within the boundaries of the Lot for use by the Grantor's construction workers and contractors.

**C Dispute Resolution**

Except as relates to the exercise of any discretion, opinion, approval or consent requested of the Grantee 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.

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.

*Insert instrument type*

Easement Instrument

*Continue in additional Annexure Schedule, if required*

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 Canterbury Branch of the New Zealand Law Society.

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