

This approved form may be used for lodgement as an electronic instrument under the Land Transfer Act 2017

Form 26

Covenant Instrument to note land covenant

(Section 116(1)(a) & (b) Land Transfer Act 2017)

Covenantor

KENEPURU LP

Covantee

KENEPURU LP

Grant of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covantee** (and, if so stated, in gross) 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 of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land covenant in favour of the Covenantor	Lots1-88 (inclusive) DP 531520	Lots 1-88 DP 531520 Record of Title 872064-872151 (inclusive)	Lots 1-88 DP 531520 Record of Title 872064-872151 (inclusive)

Covenant rights and powers (including terms, covenants and conditions)

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 209 of the Land Transfer Act 2017].

Annexure Schedule 1

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ANNEXURE SCHEDULE 1

BACKGROUND

- A. The Covenantor is registered as proprietor of the estate described in Schedule A as the "Burdened Land".
- B. The Covenantee is registered as proprietor of the estate described in Schedule A as the "Benefited Land".
- C. The Covenantor has agreed with the Covenantee to accept restrictions upon the Burdened Land for the benefit of the Benefited Land.

COVENANTS

The Covenantor for itself and successors in title to the Burdened Land hereby covenants and agrees with the Covenantee and its successors in title to the Benefited Land, that the Covenantor will henceforth and at all times hereafter observe and perform the stipulations and restrictions contained in Schedule One to the end and intent that each of the stipulations and restrictions shall in the matter and to the extent prescribe, enure for the benefit of, and be appurtenant to, the whole of the Benefited Land and every part thereof.

This instrument shall be registered against the estate described in Schedule A as the Burdened Land by the Covenantor and shall run forever in favour of the registered proprietor of the Benefited Land or any part thereof from time to time PROVIDED ALWAYS that the owners of the Burdened Land shall as regards to the stipulations and restrictions be personally liable only in respect to breaches thereto which shall occur while they are registered proprietors of the Burdened Land in respect of which any such breach shall occur (or is alleged to have occurred).

All Covenants set forth in this instrument shall remain in force until 31 December 2040 and are enforceable by Kenepuru LP at their sole discretion.

DEFINITIONS AND INTERPRETATION

1. Definitions:

- 1.1 "**Ancillary Building**" means any garden shed, building or structure associated with the Building on the Lot which requires Local Authority consent including a deck whether such Ancillary Building is separate or attached to the Building.
- 1.2 "**Building**" means any residential dwelling-house or primary building on the Lot.
- 1.3 "**Benefited Land**" means all the land to be contained in Records of Title 872064-872151 (inclusive)
- 1.4 "**Burdened Land**" means all the land to be contained in Records of Title 872064-872151 (inclusive).
- 1.5 "**Controlling Authority**" means Kenepuru LP or any other person/persons or party nominated by Kenepuru LP. If Kenepuru LP has been dissolved or wound up or otherwise gone out of existence, "approval by Kenepuru LP" will mean approval by any party appointed and/or nominated by Kenepuru LP for this purpose.
- 1.6 "**Covenantor**" shall mean registered proprietor of the Burdened Land and vice versa.
- 1.7 "**Fence**" as defined in the Fencing Act 1978 but also includes solid walls, retaining walls and courtyard partitions whether detached from or attached to any Building or Ancillary Building.
- 1.8 "**Garage**" means any garage or carport on the Lot.
- 1.9 "**Kenepuru LP Development**" means the land known as Kenepuru Landing in Porirua.
- 1.10 "**Local Authority**" means Porirua City Council.
- 1.11 "**Local Authority Owned Land**" means any road or reserve owned or controlled by the Local Authority in Kenepuru Landing.

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- 1.12 **"Lot"** means the relevant Lot contained within the Burdened Land or any part of it. For avoidance of doubt, any reference to "Lot" in these covenants includes a reference to a Lot created from further subdivision should it be permitted.
- 1.13 **"Plans and Specifications"** means plans, drawings, specifications and other documents from which the Building, Ancillary Buildings, Garages and Landscaping are to be constructed (including details of materials, location and design).
- 1.14 **"Resource Consent"** means Resource Consent RC7400-SL0047/17 approved by the Local Authority and any variations thereof.
- 1.15 **"Purchaser"** means the Covenantor or being the registered proprietor of the Lot and includes the Purchaser's agents, employees, contractors, subcontractors, tenants, licensees and other invitees.
- 1.16 **"Stage 1 of Kenepuru Landing"** means that part of the land currently contained in Record of Title 864014 ("head title").
2. **Interpretation:** In these Covenants headings are for reference purposes only and words and expressions denoting the singular shall include the plural.

SCHEDULE ONE

FENCING COVENANTS

1. The Controlling Authority shall not be liable to pay for or contribute towards the cost of erection or maintenance of any fence between any Lot in Stage 1 of Kenepuru Landing and any adjoining land owned by Kenepuru LP but this condition shall not benefit any subsequent Purchaser.
2. The registered proprietor agrees to meet the total cost of construction of any fence to be constructed on the boundary of adjoining land if that land is owned by the Local Authority and the Purchaser will not seek contribution from the Controlling Authority or the Local Authority.

LAND & BUILDING COVENANTS

1. The Purchaser acknowledges that the Lot is part of Kenepuru Landing which is intended to be established as a modern and well designed subdivision. In accordance with this intention, the Controlling Authority will exercise supervision and control in relation to the nature and type of construction permitted in Kenepuru Landing and the standard of surroundings being maintained.
2. The Purchaser will be bound by these Covenants, although the Controlling Authority may, in writing, at the sole and unfettered discretion of the Controlling Authority, waive part, any or all of these Covenants, on such terms and conditions as the Controlling Authority may require and shall not be in contradiction to the Resource Consent.
3. In any circumstances where the Controlling Authority approval is required in respect of any covenant, then any approval shall be at the Controlling Authority's sole discretion and in no circumstance shall the Controlling Authority be required to give any reason for its decision.
4. The Purchaser covenants:

Building Requirements

- 4.1 To construct only a new Building, new Ancillary Buildings and new Garages on the Lot as prescribed in the Resource Consent.
- 4.2 To construct any Ancillary Buildings so that:
 - (a) they do not extend beyond the front building alignment of the Building;
 - (b) (except for garden sheds), they are constructed in the same architectural style with the same cladding materials as the Building;
 - (c) they are screened and not highly visible from the street and neighbouring properties.

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- 4.3 To locate any attachments (including but not limited to television antenna) away from the front face of the Building where the main entrance to the Building is located.
- 4.4 The location of any solar systems shall be approved in writing by the Controlling Authority.
- 4.5 To construct in a proper and tradesman like manner a driveway, or vehicle access in the same exposed aggregate concrete as the footpaths in that precinct of Kenepuru Landing.

Plans and Specifications

- 4.6 To have all Specifications for Building, Ancillary Buildings and Garages, and all Plans and Specifications for Landscaping, approved in writing by the Controlling Authority prior to the Purchaser applying for a Building Consent or commencing any works on the Lot (including preparatory work).

In determining whether or not to approve the Plans and Specifications, the Controlling Authority will take into account the appearance of the proposed Building, Ancillary Buildings and Garages and the appearance of other buildings in Kenepuru Landing. The intention is that there should be a range of styles, designs and appearance of buildings within Kenepuru Landing.

Any approval of the Plans and Specifications shall be at the Controlling Authority's sole discretion and in no circumstance shall the Controlling Authority be required to give any reason for its decision for disapproval.

- 4.7 To construct any Building, Ancillary Buildings and Garages as described in the Resource Consent and approved in writing by the Controlling Authority, and undertake all Landscaping as approved in writing by the Controlling Authority.

Any modification or variation to the approved Plans and Specifications will require further written approval by the Controlling Authority (and the Local Authority if required) prior to such work commencing.

- 4.8 Written approval provided by the Controlling Authority is for subdivision standard control purposes only and implies no warranty as to the product, design, quality or suitability of the Building, Ancillary Buildings and/or Garages on the Lot in any manner whatsoever.

Construction Materials, Cladding and Finishing

- 4.9 To construct all Building, Ancillary Buildings and Garages so that:
 - (a) the exterior cladding of any Building consists of any of the following materials: kiln fired or concrete brick, plaster or cement texture finish, stone, linea or timber weatherboard (with a maximum erected width not exceeding 150mm), or any other exterior cladding material for which the Purchaser has first obtained the Controlling Authority's consent in writing;
 - (b) all exterior surfaces (which are not pre-colour coated or finished) are painted, or stained prior to the Building being occupied. Where a Building has a basement, exposed subfloors, framing and/or decks, the exposed areas shall be clad in permanent materials in conformity with the main parts of the residence;
 - (c) the finished permanent colour(s) of exterior cladding shall be as described in the colour pallet supplied by the Controlling Authority;
 - (d) there are no reflective surfaces on any exterior cladding or roofing on the Building and any other buildings. In order not to create a glare offensive to adjoining property owners, not to use any metal clad roofing that has not been factory pre-painted or use any roofing material which exceeds 20% reflectivity as measured on the British Standard Specification Colour Range BS5252 or equivalent;

Construction

- 4.10 To ensure all agents, employees, contractors, sub-contractors, tenants, licensees and other occupiers of the Lot are made aware of, and comply with, the restrictions created by these Covenants.

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- 4.11 Before commencement of construction, the Purchaser will erect a temporary fence around the perimeter of the Lot to define the construction zone. Any temporary fencing erected for the construction phase of the Buildings shall be removed within 8 weeks of construction being completed.
- 4.12 Before the commencement of construction of any Building, Ancillary Buildings and Garages the stockpiling and storage of materials is strictly prohibited on the Lot.
- 4.13 Before, during and after construction, the use of adjacent or abutting land and footpaths for access, is strictly prohibited, provided however, that the Purchaser can only have access across any other site upon obtaining prior written approval from the owner. Stockpiling and dumping of rubbish is strictly prohibited.
- Once construction has commenced, all rubbish shall be contained and disposed of when necessary or if instructed by the Controlling Authority.
- 4.14 The Purchaser will ensure that landscaping, berms, roading, footpaths and kerbs are kept clean and free from debris. The Purchaser shall re-instate, replace and be responsible for all costs arising from damage to the landscaping, berms, roading, footpaths, kerbs, streetlights, fencing, street signs, concrete or any other structures in the subdivision arising from the Purchaser's use of the land directly or indirectly through the Purchaser's actions.
- 4.15 Notwithstanding Clause 4.33 of these Covenants, during the construction period, a temporary building/container can be placed either on the Lot or in the Controlling Authority's designated area to be used in conjunction with the construction of the Building, Ancillary Buildings and Garages but must be removed no later than the Practical Completion of the Building being obtained.

Completion of Works

- 4.16 To commence construction of all Buildings and Garages within 15 months from the issue of Title of the Lot.
- Further, to complete construction of all Buildings and Garages (including the exterior painting and decorating of Buildings and Garages) and the driveway/vehicle access within 9 months of commencement of excavation of the building site.
- 4.17 That within 3 months of the completion of the Buildings and Garages:
- (a) lawn(s) must be laid, landscaping work (encompassing decks and patios, letter boxes, rubbish bin enclosures, fences, paths, retaining walls and sufficient plants, trees and shrubs to enhance the street appeal of the Lot) and reinstatement of the Local Authority Owned Land adjoining the Lot must be completed; and
 - (b) permanent interior window furnishings must be hung.
- 4.18 That except for driveways, not to carry out landscaping on the road frontage of the Local Authority Owned Land.

Fencing

- 4.19 To construct all fences in compliance with the Resource Consent, the approved Landscaping Plans and the Local Authority requirements.
- 4.20 Not to alter or remove any specifically designed acoustic fencing and landscaping constructed on any land by the Controlling Authority.
- 4.21 Any modification or variation to an approved fence will require further written approval by the Controlling Authority (and Local Authority if required) prior to such work commencing on the proposed modifications or variations.

Land Use

- 4.22 Not to site any clotheslines/trampolines or large play equipment on the Lot in such a way as to be highly visible from the road where the main entrance to the Building is located, or placed in the

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laneways.

4.23 Not to permit:

- (a) the Lot to be occupied or used as a residence unless the Buildings and Landscaping has been completed in accordance with the Covenants and the Local Authority Code of Compliance Certificates have been issued for the Buildings;
- (b) Ancillary Buildings or Garages on the Lot are not to be lived in or otherwise used as dwellings.

4.24 Not to permit the Lot, Building, Ancillary Buildings and Garages to be used:

- (a) on a commercial basis; and
- (b) for any holiday accommodation where a fee is charged

unless the prior written approval of the Controlling Authority has been obtained and all Local Authority requirements have been met.

4.25 Following construction of the Buildings, not to display more than one advertisement, sign or hoarding of a commercial nature on the Lot. Any advertisement, sign or hoarding must not measure in excess of 500mm x 500mm and must be kept in good condition at all times. Such sign or advertisement shall not to be direct fixed to any boundary fence.

4.26 Not to allow on any of the Lot any buildings, structures, driveways, landscaping, signs or fencing to fall into disrepair.

4.27 Not to allow any graffiti (or similar disfiguring) on the Building, Ancillary Buildings, Garages, fences, retaining structures or any other structure on the Lot to remain in place for more than 5 working days from the date the Purchaser became aware of the graffiti or disfiguring.

4.28 Not to construct any road on any part of the Lot to provide access to any adjoining Lot.

4.29 Not to park in Lane Ways.

4.30 To, at all times, keep mown and maintained in a neat and tidy condition (and prevent from becoming unsightly) the Lot and adjoining Local Authority Owned Land.

4.31 Apart from being placed on the kerbside on collection day only, at all times, ensure that rubbish bins are stored in the designated areas prescribed in the Resource Consent or screened from the road where no designated area is prescribed.

4.32 Not to bring on to the Lot any more than 2 animals limited to domestic pets. Where possible, all animals on the Lot must be controlled:

- (a) so not to become a nuisance to others within Kenepuru Landing; and
- (b) to prevent them from roaming Kenepuru Landing at will.

4.33 Not to bring on to, or to allow to remain on the Lot or Local Authority Owned Land, anything set out in the applicable categories in this clause, unless they are garaged. The applicable categories are:

- (a) vehicles with a gross laden weight exceeding 3,500kgs (including recreational and trade vehicles);
- (b) more than one sign written vehicle;
- (c) temporary buildings (including sheds and containers);
- (d) buses, caravans, motorhomes, pleasure-craft/boats;
- (e) trailers or any other equipment, materials or machinery.

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- 4.34 Repairs to vehicles, or anything set out in the applicable categories of Clauses 4.33(a)-4.33(e) shall be undertaken in the confinement of the garage only.
- 4.35 To ensure due allowance is made for adequate current and future drainage of all stormwater from the Lot, such stormwater drainage not to be detrimental to the water quality of the stormwater network. The Purchaser will also ensure that no discharge from the Lot whether of a soluble or insoluble nature shall occur. The Purchaser is responsible for all costs, claims or demands for any remedial action undertaken for any breach thereof.
- 4.36 That it will at all times save harmless and keep indemnified the Controlling Authority from all proceedings, costs, claims and demands in respect of breaches by the Purchaser of these Covenants.

5. Amendment to Covenants

- 5.1 The Controlling Authority has the right to review, waive or update any of these proposed Covenants provided that the Controlling Authority decides in its sole discretion that the amendments or additions are generally in accordance with the aims of Kenepuru Landing. This includes, but is not limited to the Controlling Authority creating a Residents Association and registering supporting documents against the Lot including an encumbrance that requires each Lot owner to become a member of the said Residents Association.

6. No Complaints

- 6.1 The Purchaser will not object to any construction, noise, dust or activity on the balance of the subdivision land owned by the Controlling Authority.

7. Breach of Covenants & Enforcement

- 7.1 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 10 working days of written notification of such breach, then the Purchaser will pay to the party Notifying them of such breach ("Notifying Party"):
 - (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/or
 - (b) any costs and expenses (including legal costs) incurred by the Notifying Party to remedy the breach or the Controlling Party if applicable.
- 7.2 The rights of the Controlling Authority to enforce the terms of the rights and benefits conferred by these covenants will remain in place until the earlier of 2040 or
 - (a) 12 calendar months from the date on which the Controlling Authority ceases to be a registered proprietor of any Lot forming part of Kenepuru Landing; or
 - (b) the Controlling Authority relinquishing these rights in writing to the successor in title.
- 7.3 From the applicable date set out in clause 7.2 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 Benefited Land.
- 7.4 In the event that one or more provisions of these Covenants are at any time found to be invalid or otherwise rendered unenforceable, such provision or provisions will be severable from these Covenants, so that the validity or enforceability of the remaining provisions of these Covenants are not affected.

8. Expiry of Covenants

- 8.1 These covenants will continue in force for the benefit of the registered proprietors of any Lot forming part of the Burdened Land until 31 December 2040 at which time they will expire.

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9. Dispute Resolution

9.1 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.