

"A"

Covenant Instrument to Note Land Covenant
Sections 116(1)(a) & (b) Land Transfer Act 2017

Covenantor

Surname(s) must be underlined.

GREENSTONE LAND DEVELOPMENTS LIMITED

Covenantee

Surname(s) must be underlined.

GREENSTONE LAND DEVELOPMENTS LIMITED

Grant of Covenant

The Covenantor, being the registered owner of the Burdened Land(s) set out in Schedule A, **grants to the Covenantee** (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 Covenants	Restrictive Covenants set out in the attached Annexure Schedule	Lots 104 to 117 (inclusive) & Lot 171 DP [] RT's [] to [] (inclusive) *	104 to 117 (inclusive) & Lot 171 DP [] RT's [] to [] (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.

the Annexure Schedule attached.

* subject to and to be completed in accordance with final LT Plan

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Land Covenants

1. Definitions and Interpretation

1.1 Definitions

(a) In this Instrument:

"Building Line" means a line parallel to a right of way and/or road frontage boundary at a width of 1.5 metres from such right of way and/or road frontage.

"Instrument" means this Covenant Instrument to Note Land Covenant creating the land covenants.

"Land" means all the land contained in records of title 902384 and 905664.

"Local Authority" means the Hastings District Council or any successor.

"Lot" or "Lots" means a lot or lots described in Schedule A as the Burdened Land and the Benefited Land.

"Plan" means Deposited Plan No [*] (Hawke's Bay Registry).

"Resource Consent" means RMA20190139 or any variation or new resource consent for further stages of the development.

"Side Boundary" means all Lot boundaries not fronting a road, right of way or access Lot.

"Single Storey Residential House" means a residential dwelling (and all accessory buildings) restricted to and consisting of a single storey building(s) of no more than 6.1 metres above the ground level of the Lot at its highest point immediately prior to commencement of preparation for Works.

"Subdivision" means the subdivision and development to be undertaken by the Covenantee on the Land (or any successor titles) and pursuant to the Resource Consent or any variation or new resource consent for further stages of the development.

"Works" means the undertaking of any work on a Lot in relation to any dwelling, ancillary buildings and structures (including the erection and any alteration), all fencing (boundary and internal) and any site works or earthworks (including landscaping) of any nature whatsoever.

1.2 Interpretation

(a) In this Instrument words and expressions denoting the singular will include the plural.

(b) The Covenantor and the Covenantee includes the successors, executors, administrators and permitted assigns (as the case may be) of the Covenantor and the Covenantee.

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2. Introduction

- 2.1 The Covenantee is the registered proprietor of the Land.
- 2.2 The Covenantee is intending to develop the Land into residential sections in a number of stages. Stage 8 of the development is a subdivision in accordance with the Resource Consent for the creation of residential sections and a road and local purpose reserve to vest to the Local Authority.
- 2.3 It is the Covenantor's and Covenantee's intention that the Lots will be subject to a general scheme applicable to and for the benefit of each of the Lots, to the intent that a high standard subdivision will be enjoyed by the registered proprietors of the Lots, and that the owner/occupier for the time being of each of the Lots will be bound by the covenants set out in this Instrument as far as they affect each Lot, and that the owner/occupier for the time being of any Lot will be able to enforce the observance of such covenants by the owners or occupiers for the time being of any of the other Lots and the Covenantor and Covenantee will ensure each of the burdened Lots are subject to like covenants.

3. Operative Clause

- 3.1 The Covenantor for itself so as to bind each of the Lots, covenants and agrees with the Covenantee for the benefit of each of the Lots and each registered proprietor of the Lots from time to time that the Covenantor will always observe and perform all of the covenants set out in this Instrument to the end that each of the covenants will forever enure for the benefit of the Lots.
- 3.2 For the purposes of clause 4 (Design & Consent) the Covenantee appoints and authorises Greenstone Land Developments Limited ("GLDL") or any successor to GLDL to be its agent for the purposes of consultation, examination and consideration for approval the matters specified in clause 4 for the fee referred to in clause 4. The Covenantee at its sole discretion may appoint a successor to GLDL. For the purposes of this clause "Covenantee" means GLDL.
- 3.3 The Covenantee appoints and authorises GLDL or any successor to GLDL to be its agent for granting any consents or approvals, enforcing compliance with these covenants and receiving any consequent payments (including by way of interest or penalty), requiring remedy of any breach of these covenants or waiving any requirements contained in these covenants. In consideration of GLDL accepting the agency it shall be entitled to retain any consequent payments specified in these covenants (including by way of interest or penalty). The Covenantee at its sole discretion may appoint a successor to GLDL or assume GLDL's responsibilities under this clause 3.3 for itself. For the purposes of this clause "Covenantee" means GLDL. If GLDL ceases to exist and has not appointed a successor or is unable or unwilling to act in the matters contemplated by this clause then those rights shall fall to the owners from time to time of the dominant tenements.
- 3.4 In the event of the Covenantee being unable or unwilling to complete the consultation, examination and consideration for approval of the matters specified in clause 4, the Covenantor may submit its plans to the Local Authority or any other body having jurisdiction as part of an application for a building consent. The approval of the Covenantor's plans will

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then be deemed to be the issue of the building consent by the relevant body for construction of the relevant Works in accordance with the plans and otherwise in compliance with these covenants.

4. **Building Covenants**

Design & Consent

- 4.1 The Covenantor will not undertake any Works on a Lot without first obtaining from the Local Authority all necessary consents and permits for such work.
- 4.2 The Covenantor when undertaking any Works will:
- (a) comply with any applicable consents, permits, Local Authority requirements, conditions of the Resource Consent or any variation and any consent notice registered on the title to the Lot pursuant to section 221 of the Resource Management Act 1991;
 - (b) comply with good industry building and engineering standards and with the covenants contained in this Instrument.
- 4.3 The Covenantor must provide concept plans to and consult with the Covenantee before commissioning any final plans or specifications for any Works to be undertaken on the Lot or any part thereof and not commence to do, erect or place or permit to be done, erected or placed on the Lot or any part thereof any Works without first obtaining the Covenantee's approval (such approval not to be unreasonably withheld or delayed):
- (a) to the final plans and/or specifications for the Works and, if in respect to any building, to be prepared by a registered architect or member of Architectural Designers New Zealand (Inc) or the Design Association of New Zealand who must be suitably experienced in the design of the proposed works provided that within the land no two or more residential dwellings will be of the same or significantly similar design (in the reasonable opinion of the Covenantee) for which the Covenantee will be entitled, at its sole discretion, to withhold its approval required in accordance with this clause;
 - (b) to the materials, finishes and exterior colours to be used in the construction of the Works.
- The Covenantor will pay a \$400.00 (including GST) fee for the Covenantee's approval of plans and specifications for the Works and a further fee of \$75.00 (including GST) for any subsequent variation to or further submissions in respect of such plans or specifications.
- 4.4 The Covenantor acknowledges that approval by the Covenantee of the plans and specifications under clause 4.3 does not imply any warranty by the Covenantee that:
- (a) the proposed residential dwelling may utilise existing services;
 - (b) the proposed residential dwelling will comply with Local Authority requirements;

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- (c) the proposed siting of the residential dwelling is not affected by the location of existing services;
- (d) the proposed siting of the residential dwelling complies with the Local Authority's bulk and location requirements;
- (e) the location of the egress on the plans and specifications as in accordance with the Local Authority's requirements as to public roads.

4.5 The Covenantor must not allow or permit any deviation from the plans and specifications approved under clause 4.3 without prior written consent of the Covenantee.

4.6 The Covenantor will not erect or permit to remain on the Lot any building other than a new Single Storey Residential House designed for and occupied exclusively as one household unit for residential purposes only with the residential dwelling having a floor area of not less than 155m² (including garaging) but excluding accessory buildings, carport, decking, cloisters or roof overhang, provided however:

- (a) The minimum average cost per square metre (materials and construction) for the residential dwelling, garaging and decking will not be less than \$2,000.00 including GST, provided that this rate will be adjusted over time by reference to the increase in the Consumer Price Index from the date of this Instrument and the date that the plans are submitted for approval.
- (b) The Covenantor may subject to this clause 4.6 also erect garage(s) and other accessory buildings or structures ancillary to the residential dwelling provided that they are designed to be in keeping with the residential dwelling.
- (c) No dwelling, accessory building or other structure shall be built between the Building Line and any road or right of way.

4.7 A Single Storey Residential Dwelling to be constructed on any Lot:

- (a) Will not have less than 75% of the exterior cladding consisting of any of the following materials:
 - (i) Kiln fired brick;
 - (ii) Solid plaster or a textured plaster finish;
 - (iii) Block stone or natural timber;
 - (iv) Pre-primed fibre cement weatherboards with a maximum finished width not more than 180mm; or
 - (v) Any other exterior cladding material for which the Covenantor has first obtained the Covenantee's consent in writing.

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(b) Will not have any metal clad roof that has not been factory pre-painted.

(c) Will not have flat panel fibre cladding or metal cladding on more than 10% of the exterior wall cladding surface area.

4.8 The Covenantor will not relocate onto the Lot any transportable building or structures whether new, used or recycled.

4.9 Builders sheds or such other buildings or structures that are required during the course of the construction and erection of any building may be placed on the Lot but must be removed on completion of construction or relocation.

4.10 The Covenantor will not use any second hand or recycled materials in the construction or exterior finish of any building without the prior written consent of the Covenantee.

4.11 The Covenantor must not:

(a) erect any flats or other dwelling units which may be subject to a cross lease or registration under the Unit Titles Act 1972;

(b) erect any secondary dwelling e.g. granny flat or sleepout.

4.12 The Covenantor must construct a fully enclosed garage that is attached to the dwelling. The garage must be completed at the same time as the dwelling and be in the same of similar type of materials.

4.13 The Covenantor will complete at its cost all service connections (including power supply and telecommunications) required in the Lot from the point of supply to any building. The connections will be laid underground.

4.14 All driveways, paths or hardstand parking areas are to be constructed of dust free permanent materials and placed where shown in accordance with the Covenantor's accepted plans.

4.15 The Covenantor will not erect any boundary fence of quality not less than that equal to a specimen type of fence 1-5 (inclusive) described in the Second Schedule to the Fencing Act 1978 provided that:

(a) Any Side Boundary fence shall not be greater than 1.8 metres in height or within the 1.5 metre building line then 1.0 metres in height.

(b) Subject to (a) above no fence shall be erected within the 1.5 metre building line unless the fence is architecturally designed but in any event such fence shall not be greater in height than 1.0 metre and constructed of similar materials to that of the exterior cladding of the residence shown at the time the purchaser obtains the Covenantee's plan acceptance in terms of sub-clause (a).

(c) All fencing shall have a concrete footing on both sides of the fence that is within the ground and not above the existing natural ground level (as determined by reference to

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the original ground level on the neighbouring Lot adjacent to fencing) as defined by the as built contour data.

- (d) Concrete footings above ground will not be accepted, particularly within the area between the Building Line and any road or right of way.
- (e) If a fence is erected on top of a retaining wall then the height of that retaining wall shall be deemed to be included in the height of the fence for the purposes of the restrictions contained in these covenants.

4.16 All exterior lighting will be designed and erected in order to minimise light spill that affects the night sky and otherwise minimise any interference or a nuisance to the land owners of the other Lots.

Construction Works Requirements

4.17 Prior to commencing any Works on the Lot the Covenantor will construct:

- (a) An all weather crossing for the purpose of avoiding unsightly mud and rubbish being deposited onto any road. The access crossing will consist of not less than 200 millimetres thick river metal where it crosses the berms (if any) and will be not less than 3.5 metres wide and will be laid from the kerb of the road to the Building Site. Except where the access is not to be used as part of the driveway to the Lot the access crossing will, on completion of the construction of the Residential Dwelling on the Lot, be removed by the Covenantor and the surface of the ground will be restored to its condition immediately prior to the laying of the access crossing.
- (b) A mud free hardstand loading pad for a distance of 5 metres from the boundary of the Lot into the Lot and with a minimum width of 3.5 metres.

In constructing the access crossing and loading pad the Covenantor will ensure that no damage is caused to any existing berms or footpaths.

4.18 During construction the Covenantor (its employees, contractors) shall only occupy the Lot the Covenantor owns and shall not use any adjoining Lot or land for storage, access, car parking, or earthworks. Prior to construction the Covenantor (its employees, contractors) shall erect a temporary orange netting construction fence around the perimeter of the Lot as part of its health & safety plan for the construction.

4.19 When undertaking any Works or subsequent improvements on the Lot, the Covenantor will ensure that all construction materials and where possible all vehicles involved in the Works are contained within the Lot and will use its best endeavours not to impede the enjoyment of any other owner within the Subdivision or the aesthetic quality of the Subdivision.

4.20 The Covenantor must ensure:

- (a) that no concrete truck servicing any construction activities on the Lot dumps concrete slurry on the Land;

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- (b) that concrete slurry from exposed aggregate concrete is to be contained on the Lot and not allowed to enter the stormwater system,

The Covenantor will be responsible for all costs of remediation required as a result of a breach of this covenant.

- 4.21 The Covenantor must complete the construction of the residential dwelling and any accessory buildings (including the exterior and where appropriate paint or stain the exterior) within one year of commencement of laying down the foundations.
- 4.22 The Covenantor shall ensure that all storm water run-off shall be properly channelled in accordance with Local Authority and engineering standards.

5. Landscape Covenants

5.1 The Covenantor will not:

- (a) Plant pinus radiata or macrocarpa trees on the Lot.
- (b) Permit trees to grow on the Lot to a height exceeding 8.5 metres above the highest point of the natural level of the respective Lot. However if such tree unreasonably obstructs the view of any other Lot within the Subdivision then at the request of the affected Lot the Covenantor will trim the tree to a height of five metres.
- (c) Grow a hedge line along any boundary of more than 1.8 metres in height above the ground level or grow a hedge line of more than 0.5 metres in height within the Building Line, road, right of way/access frontage area.
- (d) Allow the road frontage of the Lot to become untidy.

6. Maintenance Covenants

- 6.1 The Covenantor will be responsible for all costs of repairing any damage caused to the landscape, roading, kerbs or other parts of the Subdivision arising from its use of the Lot directly or indirectly including any damage caused by any visitor or invitee of the Covenantor.
- 6.2 The Covenantor shall pay the Covenantee by automatic payment from the date of possession until commencement of construction of the residential dwelling (being a date accepted by the Covenantee) the sum of \$20.00 per week (including GST) contribution for the mowing of the Covenantor's section by servants, agents or contractors employed by the Covenantee. This automatic payment will be set up at settlement and will continue until the plans are approved and building commenced. The parties acknowledge that this weekly payment has been calculated to average out lawn mowing of a Lot that will be required weekly during grass growth periods or fortnightly/monthly during winter months.
- 6.3 At all times from possession date, the Covenantor will keep the Lot and adjacent road or access way frontage in a good tidy order and condition and free from any rubbish or debris, with the residential curtilage maintained and lawns mown. The Covenantor will ensure that

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any trees planted by the Covenantee on the any road or access way frontage are regularly watered by the Covenantor. The Covenantor will also keep any terrace banks on the lot maintained in a good tidy order and condition.

6.4 The Covenantor must:

- (a) repair any damage to the Lot within a reasonable timeframe;
- (b) maintain the residential dwelling, accessory buildings and other improvements on the Lot and not allow them to become dilapidated or to fall into disrepair and must undertake maintenance or repairs within a reasonable timeframe.

7. Restrictive Covenants

- 7.1 Once construction of the Single Storey Residential House has been substantially completed, any caravan (including campervan) owned for recreational purposes may be kept on the property provided it is stored at the rear of the dwelling concealed from view from the rest of the Subdivision by a fence or enclosure. Any such caravan will not be used for residential use on the Lot. The Covenantor will not bring onto or allow to remain on the Lot or any internal road of the Subdivision any caravan, vehicle, boat or other equipment or materials or machinery that in the opinion of the Covenantee detrimentally affects the aesthetics or amenities of the Subdivision.
- 7.2 No building or dwelling on the Lot will be occupied until it has been substantially completed, all Local Authority completion certificates obtained, the exterior completed including where appropriate painted or stained and all ancillary work such as fencing, landscaping, lawns sowing, letter box have been completed or installed and all driveways or vehicle access have been completed in a permanent continuous surfacing of concrete, concrete block brick paving or sealing to the reasonable satisfaction of the Covenantee.
- 7.3 No more than one advertising sign will be displayed on the Lot or on the road frontage of the Lot at any time.
- 7.4 The Lot will not be used in any way (other than for residential purposes) which in the opinion of the Covenantee (whose decision will be final) would detrimentally affect the amenities of the Subdivision and neighbourhood.
- 7.5 The Covenantor shall not keep any poultry or farm animals and not breed for commercial purposes any animals or birds on the Lot.
- 7.6 The Covenantor will not allow to remain on any wall, fence, structure or building on the Lot any graffiti or similar disfiguring for more than five working days, from the date that it occurred or was brought to the notice of the Covenantor.
- 7.7 The Covenantor will not further subdivide the Lot without the prior written consent of the Covenantee.

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- 7.8 The Covenantor shall not install a satellite dish on any side of the residence or building fronting a street.
- 7.9 The Covenantor must not allow any nuisance or disturbance to be caused to the owner or occupier of any neighbouring Lots.
- 8. General Covenants**
- 8.1 All entry onto any adjacent land is entirely at the risk of the person entering. All persons accessing adjacent land will comply with all health and safety requirements.
- 8.2 The Covenantor will not require any contribution from the Covenantee nor the Local Authority towards the cost of fencing any common boundary between the Lot and land owned by these parties and every transfer from the Covenantee will include a fencing covenant in accordance with the Fencing Act 1978 in favour of the Covenantee and the Local Authority.
- 9. Breach of Covenants**
- 9.1 Without prejudice to any other legal remedy, the Covenantee may serve written notice to the Covenantor requiring it to remedy a breach of the covenants contained in this Instrument within seven (7) days of receipt of the notice in writing and upon the expiry of seven (7) days a sum of \$1,000.00 per day (including GST) will be payable by the Covenantor until such time as the breach is remedied and the Covenantee or other party serving the notice will in addition be entitled to recover all costs incurred including all professional and legal costs calculated on a solicitor/client basis and to exercise any other remedies available.
- 9.2 The Covenantor will remove or cause to be removed from the Lot any building or structure or cease to carry out the activity that offends the covenants in this Instrument or places the Lot in breach for non-observance of the stipulations and restrictions.
- 9.3 The Covenantor will replace any building materials used in breach of the stipulations and restrictions contained in these covenants in this Instrument so that the building or structure complies with these covenants.
- 9.4 The Covenantee reserves the right to enter onto the Lot upon giving reasonable notice in order to take whatever action it deems necessary to rectify any breach of the covenants in this Instrument. Where the Covenantee or its agent or any other party to these covenants is required to expend money to rectify or make good any damage or loss caused by a breach of these covenants by the Covenantor (or the guests, servants, employees, agents, invitees, tenants or licensee of the Covenantor) the Covenantee or its agent will be entitled to recover the amounts (which will be payable 7 days after the date of Invoice) they expended as a debt in any action in any Court of competent jurisdiction and such sum may include all costs howsoever incurred including the professional and legal costs calculated on a solicitor/client basis and interest on any monies from the date due until paid at an interest rate of 7% per annum plus the 90-day bill rate (current on the due date for payment).

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9.5 The Covenantor will at all times indemnify and keep indemnified the Covenantee against all proceedings, costs, claims and damages in respect of any breaches of any of the covenants in this Instrument by the Covenantor.

10. Dispute resolution

10.1 If any dispute arises between the parties in connection with this Instrument the matter will be referred to mediation. Mediation may be initiated by either party giving notice in writing to the other and identifying the dispute whereupon the parties will agree on a mediator. If they cannot agree upon a mediator within 10 working days of such notice, then a mediator will be appointed by the President of the Arbitrators and Mediators Institute of New Zealand to act in accordance with the Mediation Protocol of the Institute;

10.2 Any dispute in respect of matters arising from this Instrument which is not resolved by mediation will be referred to arbitration under the Arbitration Act 1996. The arbitration will be by one arbitrator if the parties can agree upon one but failing agreement, an arbitrator will be appointed by the President of the Arbitrators & Mediators Institute of New Zealand.

11. Waiver of Covenants

11.1 Notwithstanding these covenants the Covenantee will be entitled to waive strict compliance with these covenants provided that if the Covenantee decides in its sole discretion that the proposed amendments are generally in accordance with the aims expressed in clause 2.3 and in accordance with the continued harmony of the property within the Subdivision generally and for avoidance of doubt the decision as to this waiver by the Covenantee will be final and not subject to any review whatsoever. The Covenantor shall be responsible for the Covenantee's reasonable fees in relation to the waiver of any covenants pursuant to this clause or the provision of any other consent.

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GREENSTONE LAND DEVELOPMENTS LIMITED

Covenantee

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GREENSTONE LAND DEVELOPMENTS LIMITED

Grant of Covenant

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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 Covenants	Restrictive Covenants set out in the attached Annexure Schedule	Lots 104 to 117 (inclusive) & Lot 171 DP [] RT's [] to [] (inclusive) *	in gross

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Land Covenants

1. Definitions and Interpretation

1.1 Definitions

(a) In this instrument:

"Instrument" means this Covenant Instrument to Note Land Covenant creating the land covenants.

"Land" means all the land contained in records of title 902384 and 905664.

"Local Authority" means the Hastings District Council or any successor.

"Lot" or "Lots" means a lot or lots described in Schedule A as the Burdened Land and the Benefited Land.

"Resource Consent" means RMA20190139 or any variation or new resource consent for further stages of the development.

"Single Storey Residential House" means a residential dwelling (and all accessory buildings) restricted to and consisting of a single storey building(s) of no more than 6.1 metres above the ground level of the Lot at its highest point immediately prior to commencement of preparation for Works.

"Subdivision" means the subdivision and development to be undertaken by the Covenantee on the Land (or any successor titles) and pursuant to the Resource Consent or any variation or new resource consent for further stages of the development.

"Works" means the undertaking of any work on a Lot in relation to any dwelling, ancillary buildings and structures (including the erection and any alteration), all fencing (boundary and internal) and any site works or earthworks (including landscaping) of any nature whatsoever.

1.2 Interpretation

(a) In this instrument words and expressions denoting the singular will include the plural.

(b) The Covenantor and the Covenantee includes the successors, executors, administrators and permitted assigns (as the case may be) of the Covenantor and the Covenantee.

2. Introduction

2.1 The Covenantee is the registered proprietor of the Land.

2.2 The Covenantee is intending to develop the Land into residential sections in a number of stages. Stage 9 of the development is a subdivision in accordance with the Resource Consent

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for the creation of residential sections and a road and local purpose reserve to vest to the Local Authority.

3 Building Material Supply

- 3.1 The Covenantor after obtaining the Covenantee's consent pursuant to other land covenants registered against the record of title to the Lot, must prior to approaching any other supplier, provide the Covenantee (or its nominee) with the final plans and specifications for any Works to be undertaken on the Lot and grants to the Covenantee (or its nominee) the first option to provide a quote to the Covenantor for the building materials and supplies for such Works and the Covenantee (or its nominee) will have ten working days to provide the Covenantor with the quote. If the Covenantor subsequently obtains a bona fide quote for the building materials and supplies for such Works from another supplier that it wishes to accept, then the Covenantor must provide the Covenantee (or its nominee) a copy of the bona fide quote and the Covenantee (or its nominee) will have an option for ten working days to agree to supply the building materials and supplies at the same price as the competing quote.

4 Top Soil

- 4.1 Background – during the construction of a dwelling on a lot, the creation of the building platform usually requires the excavation and then removal of anywhere between 40 to 100 m² of top soil from the site. The removal and disposal of the top soil is a cost to the Covenantor. The Covenantee may have need of top soil for its further development.
- 4.2 When the Covenantor or its contractor intends to commence the excavation of the building platform on the Lot, the Covenantor will immediately give notice to the Covenantee. The Covenantee will then have the option to take the top soil excavated from the building platform but must exercise this option in a reasonable timeframe by giving notice to the Covenantor.
- 4.3 If the Covenantee does exercise the option in clause 4.2 then the Covenantor shall at its cost excavate the building platform in a manner so that the top soil excavated is clean top soil (being top soil which is reasonably free of other materials and debris including concrete, vegetation, wood, trees, roots etc. The Covenantee will not have any obligation to take top soil that is not clean top soil.
- 4.4 Provided that the top soil is clean top soil, then the Covenantor will arrange to transport the top soil to a location in the Subdivision specified by the Covenantee. The top soil will otherwise be free of charge to the Covenantee.
- 4.5 If the Covenantee does exercise the option in clause 4.2, the Covenantee if required by the Covenantor, after the obligations of clause 4.4 are completed, will supply the Covenantor with top soil if more top soil is required to complete the final landscaping of the Property.
- 4.6 The covenants contained in clauses 4.2 to 4.5 shall expire on 30 January 2022.

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5. Restrictions applying to on sale of a Lot

- 5.1 In order to prevent competition with the Covenantee and speculation by way of the on-sale of the residential sections, the Covenantor covenants in favour of the Covenantee:
- (a) that the Covenantor shall not, within five years of purchasing the Lot, sell, gift, transfer, assign or otherwise part possession of the Covenantor's rights, title and interest as registered proprietor of the Lot prior to there, either being on the Lot or the completed construction on the Lot of, a Single Storey Residential House which has been issued a code of compliance by the Local Authority ("Sale") without the prior written consent of the Covenantee (which the Covenantee shall have the unfettered right to refuse); and
 - (b) that in consideration of the Covenantee giving such consent to the Sale, the Covenantor shall on the completion of the Sale of the Lot (being the settlement date for the Sale) pay to the Covenantee a sum being the higher of the amount equivalent to 10 % of the gross Sale price of the Lot and any other consideration given by the purchaser for the Lot (plus GST) or 10% of the market value of the Lot at the time of the Sale (plus GST) as assessed by a registered valuer appointed by the Covenantee if the Covenantee decides to appoint a valuer.
 - (c) notwithstanding clauses 5.1 (a) & (b), the Covenantee will not unreasonably refuse to provide its written consent under clause 5.1 (a) in the situation where the Sale is made together with an unconditional building contract, between the Covenantor or the Covenantor's related party and the purchaser of the Lot, for the construction of a Single Storey Residential House on the applicable Lot and the building contract is on terms and conditions satisfactory to the Covenantee in all respects) and if the Covenantee provides such written consent pursuant to this clause then the payment specified in clause 5.1 (b) shall not apply.

6. No Complaints Covenants

- 6.1 The Covenantor acknowledges that the Covenantee, is intending to develop the balance of the Land once stage 8 of the development described in clause 2.2 is completed ("Balance of the Land") and other land that the Covenantee owns or will own within 5 kilometres of the Lot ("Other Land"), into residential sections and houses in a number of stages and that the Balance of the Land (or successor title(s)) and Other Land will be the subject of the further stages of the development into residential sections and houses (the "Further Development"). The Covenantor will where required by the Covenantee provide its written support and written consent (including any signed "Affected Party Consent Form" that may be required by the Covenantee or the Local Authority) to support any application for the Further Development and provide a reasonable degree of cooperation and support to the Covenantee for the Further Development.
- 6.2 The Covenantor covenants in favour of the Covenantee that it will not take any action under the Resource Management Act 1991 or any other legislation or regulations to oppose or otherwise hinder the Further Development and nor will the Covenantor procure any such action by any third party (including any local authority or governmental body). Without limiting the above, the Covenantor will not:

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- (a) Lodge a submission opposing any resource consent application for the Further Development by the Covenantee;
- (b) Request or procure any plan change or variation in respect of the Land (or any part of it);
- (c) Lodge any submission or any further submission on any district or regional plan which may affect the Further Development;
- (d) take or initiate any enforcement action pursuant to the Resource Management Act 1991 against any acts or omissions of the Covenantee; or
- (e) take any other steps which would or may hinder or interfere with the Further Development.

6.3 The Covenantor covenants with the Covenantee not to direct, allow or permit any person to do anything which would amount to a breach of clauses 6.2 if undertaken by the Covenantor.

6.4 The Covenantor covenants in favour of the Covenantee that it shall not object to any construction, noise, dust or activity required to complete the Further Development.

6.5 The Covenantor acknowledges that without prejudice to any other remedies of the Covenantee, the provisions contained in clause 7.1 of this Instrument will apply in respect of any breach of the covenants by the Covenantor under this clause 6.

7. Breach of Covenants

7.1 Without prejudice to any other legal remedy, the Covenantee may serve written notice to the Covenantor requiring it to remedy a breach of the covenants contained in this Instrument within seven (7) days of receipt of the notice in writing and upon the expiry of seven (7) days a sum of \$1,000.00 per day (including GST) will be payable by the Covenantor until such time as the breach is remedied and the Covenantee or other party serving the notice will in addition be entitled to recover all costs incurred including all professional and legal costs calculated on a solicitor/client basis and to exercise any other remedies available.

7.2 The Covenantor will at all times indemnify and keep indemnified the Covenantee against all proceedings, costs, claims and damages in respect of any breaches of any of the covenants in this Instrument by the Covenantor.

8. Dispute resolution

8.1 If any dispute arises between the parties in connection with this Instrument the matter will be referred to mediation. Mediation may be initiated by either party giving notice in writing to the other and identifying the dispute whereupon the parties will agree on a mediator. If they cannot agree upon a mediator within 10 working days of such notice, then a mediator will be appointed by the President of the Arbitrators and Mediators Institute of New Zealand to act in accordance with the Mediation Protocol of the Institute;

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8.2 Any dispute in respect of matters arising from this Instrument which is not resolved by mediation will be referred to arbitration under the Arbitration Act 1996. The arbitration will be by one arbitrator if the parties can agree upon one but failing agreement, an arbitrator will be appointed by the President of the Arbitrators & Mediators Institute of New Zealand.

9. Waiver of Covenants

9.1 Notwithstanding these covenants the Covenantee will be entitled to waive strict compliance with these covenants and for avoidance of doubt the decision as to this waiver by the Covenantee will be final and not subject to any review whatsoever. The Covenantor shall be responsible for the Covenantee's reasonable fees in relation to the waiver of any covenants pursuant to this clause or the provision of any other consent.