

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 2 to 45 (inclusive) DP 538667 RT's 1060229 to 1060272 (inclusive)	Lots 2 to 45 (inclusive) DP 538667 RT's 1060229 to 1060272 (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.

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Land Covenants

1. Definitions and Interpretation

1.1 Definitions

(a) In this Instrument:

"Basement Garage" means an underground garage constructed below a Lot's original finished ground level which must be a double garage as a minimum.

"Building Line" means a line parallel to a right of way and/or road frontage boundary at a width of 3.0 metres from such right of way and/or road frontage.

"Concept Plans and Specifications" means as a minimum:

- (a) a site plan showing the location of the residential dwelling, any other buildings or structures and fencing to be constructed on the Lot;
- (b) building elevations;
- (c) external design specifications of the residential dwelling and any other buildings including cladding, finishing & roofing materials;
- (d) Floor area (m²) of the residential dwelling (including garaging) to be constructed on the Lot; and
- (e) The external colour scheme of the residential dwelling and any other buildings.

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

"Land" means all the land contained in record of title 815156 or its successor title(s).

"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 538667 (Hawke's Bay Registry).

"Resource Consent" means RMA20190372 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.

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"Single Storey Residential Dwelling" means a residential dwelling (and all accessory buildings) designed for and occupied exclusively as one household unit for residential purposes only and restricted to and consisting of a single storey building(s) of no more than 6.4 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.

"Two Storey Residential Dwelling" means a two storied residential dwelling (and all accessory buildings) designed for and occupied exclusively as one household unit for residential purposes only.

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

1.2 Interpretation

- (a) In this Instrument words and expressions denoting the singular will include the plural.
- (b) The Covenantor and the Covenantee includes their successors, executors, administrators and permitted assigns (as the case may be).

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 1 of the development is a subdivision in accordance with the Resource Consent for the creation of residential.
- 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.

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

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the Lots. The covenants set out in this Instrument are subject to the provisions of any consent notices registered over a record of title to a Lot pursuant to s221 of the Resource Management Act 1991.

- 3.2 The Covenantee appoints Greenstone Land Developments Limited ("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). GLDL may at its sole discretion may appoint a successor to 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 Benefited Land.
- 3.3 For the purposes of clause 4 (Design & Consent) the Covenantee appoints 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. GLDL may at its sole discretion may appoint a successor to GLDL.
- 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 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 must provide the Concept Plans and Specifications (which must be prepared by a registered architect or member of Architectural Designers New Zealand (Inc) or the Design Association of New Zealand or other organisation approved by the Covenantee and who must be suitably experienced in the design of the proposed works) to the Covenantee and obtain the Covenantee's written approval to the Concept Plans and Specifications before commissioning any final plans or specifications for any Works, making any application under clause 4.2 in respect of such Works or commencing any such Works provided that such approval will not be unreasonably withheld or delayed provided that Concept Plans and Specifications comply with the requirements of the covenants contained in this Instrument and provided that 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.

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The Covenantor will pay a \$800.00 (including GST) fee for the Covenantee's approval of plans and specifications for the Works and a further fee of \$275.00 (including GST) for any subsequent variation to or further submissions in respect of such plans or specifications.

If the Covenantor requests a specific waiver to the covenants in its application for the Covenantee's approval under this clause, the Covenantee will be under no obligation to grant or consider such a request and the provisions of clause 11 will apply.

- 4.2 The Covenantor must obtain all necessary consents and permits from the Local Authority before undertaking any Works on a Lot.
- 4.3 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.
- 4.4 The Covenantor acknowledges that approval by the Covenantee of the Concept Plans and Specifications under clause 4.1 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;
 - (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 Concept Plans and Specifications is 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 Concept Plans and Specifications approved under clause 4.1 without prior written consent of the Covenantee.
- 4.6 The Covenantor must erect either one new Single Storey Residential House or one new Two Storey Residential House on Lots 12 to 21 but will not erect or permit to remain on any other Lot any building other than one new Single Storey Residential House or other single storey garage or accessory buildings. The Covenantor acknowledges that the Covenantee does not give any warranty that the Covenantor will have the ability to erect a Two Storey Residential House on a Lot and this will be subject to the Local Authority rules and regulations applicable and approvals required at the time of applying for a building consent. Any residential dwelling

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must have a floor area of not less than 185m² (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 \$2,500.00 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 and clause 4.13 also erect a garage 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 residential dwelling, accessory building or other structure shall be built between the Building Line and any road or right of way.

4.7 The Covenantor will ensure that any Single Storey Residential Dwelling or Two 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) Timber board & batten (flat panel or timber effect fibre cement products are not permitted)
 - (v) Pre-primed fibre cement weatherboards with a maximum finished width not more than 180mm; or
 - (vi) Any other exterior cladding material for which the Covenantor has first obtained the Covenantee's consent in writing.
- (b) Will have roofs that are constructed using inert roofing materials such as Colourcote or Coloursteel, or using different roofing material or roof treatment (e.g. painting with non-metal based paints) that will achieve an equivalent performance standard in terms of release of metal contaminants.
- (c) Will not have flat panel fibre cladding or metal cladding on more than 10% of the exterior wall cladding surface area.

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- 4.8 The Covenantor must at the same time as constructing a residential dwelling on the Lot:
- (a) construct an underground wastewater step tank (wastewater treatment and pump components, including its electronic control system) on the Lot with the following minimum requirements:
 - (i) a minimum 5,100 litre tank split into 2 chambers of a minimum 1,800 litres for the filtered effluent chamber and 3,300 litres for the septic tank chamber;
 - (ii) the step tank must be installed with a progressive gravity grinder pump with maximum head of 73m;
 - (iii) 3 x off, on float switches being Pump off, Pump on and high level alarm;
 - (iv) Universal Pump Controller with Audible and Visual Controller Alarms (6) including a) high level, b) max Run time, c) low voltage (brown out), d) no current, e) high current & f) pump fault.
- The Covenantor must at all times hold a manual for the system with a detailed description of its operation and maintenance.
- (b) install on the Lot a solar power system with as a minimum a 6kW Inverter, 15 x 400W solar panels on residential dwelling's roof or similar, and 10 kWh battery storage within the residential dwelling and/or garage. The solar panels used must be all black to maintain a consistent aesthetic scheme. All of the specified equipment must be from a tier 1 manufacturer as rated by Bloomberg.
- 4.9 The Covenantor will not relocate onto the Lot any transportable building or structures whether new, used or recycled.
- 4.10 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.
- 4.11 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.
- 4.12 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.
- 4.13 The Covenantor must construct either a fully enclosed garage that is attached to the residential dwelling or a basement garage constructed below a Lot's original finished ground level. The garage must be a double garage as a minimum and must be completed at the

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same time as the construction of the residential dwelling and be in the same or similar type of materials.

- 4.14 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.
- 4.15 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.
- 4.16 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 (subject to any consent notices registered against a Lot pursuant to section 221 of the Resource Management Act 1991):
- (a) Any Side Boundary fence must not exceed 0.5 metres in height within the Building Line but otherwise must not exceed 1.8 metres in height.
 - (b) Subject to (a) above no fence shall be erected within the 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 clause 4.3
 - (c) Notwithstanding any other provision, lots 36 – 39 will be permitted to construct fencing or have vegetation at a height of no greater than 1.8 metres within the area that is between 0.5 metres to 1.5 metres from the boundary in common with a right of way. No fencing or vegetation (other than grass and small shrubs or less than 0.5 metre in height) will be permitted within 0.5 metres a right of way boundary.
 - (d) 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 the original ground level on the neighbouring Lot adjacent to fencing) as defined by the as built contour data.
 - (e) Concrete footings above ground will not be accepted, particularly within the area between the Building Line and any road or right of way.
 - (f) 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.
 - (g) Fencing of Lots on boundaries with an open space zone need to comply with the following: if the fence is built on or with the 5 metres of the boundary of the open space zone it shall be either a 1.2 metre high picket fence, in accordance with figure 8.1 NZS4404:2004, or a 1.2 metre – 1.8 metre high open style steel pool fence, galvanised and powder coated, or an alternative design agreed to by the Environmental Consents Manager, Hastings District Council.

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(h) Fences of front boundaries of Lots are limited to 0.5 metre in height within 3 metres of the front boundary. Fences can have a maximum height of up to 1.5 metre where they are located between 3 metres – 5 metres from the front boundary. The maximum height of any fence located more than 5 metres from the front boundary is 1.8 metres.

4.17 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.

4.18 Where garage doors face the street frontage, the garage must not extend forward of the front facade of the residential dwelling. A garage door facing a street frontage must be no greater than 45 per cent of the width of the front facade of the residential dwelling. The Covenantee will provide a reasonable waiver to this covenant for any Lots with narrow frontage.

4.19 vehicle crossings onto a Lot shall not exceed 2.8 metres in width (excluding the entrance splay), must generally follow the swale profile, and must be recessive in colour (, asphalt, exposed – aggregate or dark colour concrete).

Construction Works Requirements

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

(a) either a temporary orange netting construction fence or temporary metal netting fence around the perimeter of the Lot as part of its health & safety plan for the construction and notify GLDL and no Works must be undertaken on the Lot until GLDL has inspected and approved the fence;

(b) 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.

(c) 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.

4.21 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 (including storage of rubbish), access, car parking or earthworks.

4.22 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

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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.

4.23 The Covenantor must ensure:

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

4.24 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.

4.25 The Covenantor shall ensure that all storm water run-off shall be properly channelled in accordance with Local Authority and engineering standards.

4.26 The Covenantee must not allow any builder to commence any Works on the Lot without first ensuring that the builder is familiar with the requirements of the covenants contained in this clause 4 and all other covenants relating to the construction of either a Single Storey Residential Dwelling or a Two Storey Residential Dwelling. The Covenantor shall be responsible for ensuring that the covenants contained in this clause 4 are complied with.

4.27 In order to ensure the performance of the construction works requirements specified under clauses 4.20 to 4.26 in respect of the Works to be undertaken on the Lot (the "Construction Works Requirements"), at the same time as the Covenantor submits its Concept Plans and Specifications to GLDL pursuant to clause 4.1, the Covenantor must pay GLDL a performance bond of \$2,000 (the "Bond"). The Bond may be retained by GLDL until it has given its final approval pursuant to subclause (c) below, on the following terms and conditions:

- (a) without prejudice to any other rights or remedies, GLDL may at any time and from time to time enter onto the Lot to undertake any inspections that it deems necessary and/or to take all steps and do all things as it deems necessary in order to ensure the compliance with the Construction Works Requirements including, but not limited to, giving any notices to either the Covenantor or its builder/contractors to rectify any breach, ordering the cessation of any activity or Works, undertaking any works required to rectify any breach without the Covenantee or GLDL being liable to the Covenantor in any respect;
- (b) all or any expenses incurred by GLDL under this clause will constitute a debt due to GLDL by the Covenantor and may be recovered by GLDL by deduction from the money deposited with GLDL under this Bond.

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- (c) any balance of the money paid by the Covenantor under this Bond and remaining in the hands of GLDL after all expenses incurred by GLDL under this clause have been met are to be paid by GLDL to the Covenantor after GLDL's final inspection of the finished construction of the residential dwelling and other Works on the Lot and GLDL being satisfied, in its sole determination, that the Construction Work Requirements have been complied with.

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 6.5 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 the Covenantor or any of its employees, contractors, visitors or invitees.
- 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 \$30.00 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 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.

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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 residential 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 residential 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.
- 7.10 Each Lot will have only one vehicle crossing.
- 7.11 Despite any other covenant in this Instrument, up until the commencement of the construction of a residential dwelling on the Lot, during the period between 15 December and 1 February, the Covenantor and invitees (to a maximum of 10 people at any one time) may camp on the Lot provided that the Covenantor and its invitees otherwise comply with covenants contained in this instrument (in particular clauses 6.3 & 7.9). All vehicles, structures and camping equipment must be removed from the Lot by the end of the period specified above. The Covenantor will be responsible for any acts or omissions of its invitees.
- 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 contained or implied by the covenants in this Instrument.
- 9.3 The Covenantor will replace any building materials used in breach of the stipulations and restrictions contained in the 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

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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, contractors, 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 displayed at or about 10.45 am on the due date for payment on the New Zealand Financial Markets Association page BKBM, or its successor or equivalent page .

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.

9.6 Neither the Covenantee or GLDL shall be required or obliged to enforce all or any of the covenants (including the requirement to follow the covenants), stipulations and restrictions contained herein nor will they be liable to the Covenantor for any breach thereof by any of the registered proprietors from time to time of the other Lots which are subject to the covenants contained in this Instrument.

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 (except for the covenants restricting construction to that of a Single Storey Residential House) 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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- 11.2 If the Covenantee does consider granting a waiver of these covenants pursuant to clause 4.3 or 11.1, it shall have no obligation to act reasonably or in accordance with previous decisions when making its decision. If a waiver to these covenants is granted by the Covenantee then that particular Lot owner and the Lot shall not be in breach of these covenants only for the reason that it does not comply with the relevant covenant in respect of which the waiver has been granted. Any waiver granted under this clause 11 shall not set a precedent and the Covenantee will not be obliged to grant or consider similar waivers in respect of any other Lots or for the benefit of any other Covenantors'.
- 11.3 No Covenantor may make any claim against the Covenantee or GLDL in respect of either granting or not granting any waiver of these covenants nor in respect of any effect or consequences of any such decision to either grant or not to grant any such waiver. This clause shall survive the expiry of these covenants.

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 2 to 45 (inclusive) DP 538667 RT's 1060229 to 1060272 (inclusive)	in gross

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.

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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 record of title 815156.

"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 RMA20190372 or any variation or new resource consent for further stages of the development.

"Single Storey Residential Dwelling" means a residential dwelling (and all accessory buildings) designed for and occupied exclusively as one household unit for residential purposes only and restricted to and consisting of a single storey building(s) of no more than 6.4 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.

"Two Storey Residential Dwelling" means a two storied residential dwelling (and all accessory buildings) designed for and occupied exclusively as one household unit for residential purposes only.

"Works" means the undertaking of any work on a Lot in relation to the residential 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 1 of the development is a subdivision in accordance with the Resource Consent for the creation of residential sections.

3. Top Soil

- 3.1 Background – during the construction of a residential 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 in Hawke's Bay.
- 3.2 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.
- 3.3 If the Covenantee does exercise the option in clause 3.2 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.
- 3.4 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.
- 3.5 If the Covenantee does exercise the option in clause 3.2, the Covenantee if required by the Covenantor, after the obligations of clause 3.4 are completed, will supply the Covenantor with top soil if more top soil is required to complete the final landscaping of the Property.
- 3.6 The covenants contained in clauses 3.2 to 3.5 shall expire on 30 January 2025.

4. Restrictions applying to on sale of a Lot

- 4.1 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:

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- (a) that the Covenantor shall not, within six 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 either a Single Storey Residential Dwelling or a Two Storey Residential Dwelling 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 4.1 (a) & (b), the Covenantee will not unreasonably refuse to provide its written consent under clause 4.1 (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 either a Single Storey Residential Dwelling or a Two Storey Residential Dwelling 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 4.1 (b) shall not apply.

5. No Complaints Covenants

- 5.1 The Covenantor acknowledges that the Covenantee, is intending to develop the balance of the Land once stage 1 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 25 kilometres of the Lot ("Other Land"), into residential sections and dwellings 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 dwellings (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.
- 5.2 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 or in any other manner 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:
 - (a) Lodge a submission opposing any resource consent application for the Further Development by the Covenantee;

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- (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.

- 5.3 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 5.2 if undertaken by the Covenantor.
- 5.4 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.
- 5.5 The Covenantor acknowledges that without prejudice to any other remedies of the Covenantee, the provisions contained in clause 6.1 of this Instrument will apply in respect of any breach of the covenants by the Covenantor under this clause 5.

6. Breach of Covenants

- 6.1 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.
- 6.2 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.

7. Dispute resolution

- 7.1 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;
- 7.2 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

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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.

8. **Waiver of Covenants**

- 8.1 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.