

In gross

Covenant Instrument to note land covenant

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

Covenantor

TAURANGA BAY HOLDINGS LIMITED

Covenantee

TAURANGA BAY HOLDINGS 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 Covenant	DP 	To be inserted once plan available	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].

[Annexure Schedule 1].

Annexure Schedule 1

Page 1 of 5 Pages

Insert instrument type

Land Covenant

Continue in additional Annexure Schedule, if required

The Cape – Stage 1

Interpretation: In these Covenants the following definitions apply:

Allotment means any individual allotment which comprises the Burdened Land;

Benefited Land means the Benefited Land described in Schedule A;

Burdened Land means the Burdened Land described in Schedule A;

Covenantee means the registered owner(s) of any allotment which forms part of the Benefited Land;

Covenantor means the registered owner(s) of any Allotment;

Covenants means the covenants contained in this Annexure Schedule;

Developer means *Tauranga Bay Holdings Limited* (Company Number: 8292145);

Development means the Developer's subdivision and development, known as *The Cape*, of which the Benefited Land and Burdened Land form part;

Structure means any dwelling or ancillary building (other than a swimming pool) for which a Building Consent is required under the *Building Act 2004* or any replacement legislation as required.

The Covenantor shall be bound by the following Covenants:

1. Terms of Covenant and Duration of Covenant
 - 1.1. The rights of the Covenantee to enforce the Covenants contained in this Instrument shall run for a period of fifteen (15) years from the date of registration of this Instrument.
 - 1.2. If, while the Developer is a registered owner of an Allotment, any dispute or difference arises between a Covenantor and Covenantee in respect of the Covenants then the judgement and decision of the Covenantee shall be determinative and binding.
 - 1.3. Where the Covenantor commits a breach of any covenant then the Covenantee may provide written notice to the Covenantor to specify such breach and the Covenantor shall then, within fifteen (15) working days from the date that the written notice has been delivered by the Covenantee, remedy such breach and cease any future continuation of said breach. Where the Covenantor remains in breach of the Covenants following the delivery of notice pursuant to this clause then the Covenantor shall pay all costs, fees and charges incurred by the Covenantee in its enforcement of the breach (including any enforcement costs, fees and charges incurred by third parties), together with a liquidated damages surcharge of \$100.00 per day until such time as the breach has been remedied to the satisfaction of the Covenantee. .
 - 1.4. The Covenantee shall be under no obligation whatsoever to enforce the Covenants either for itself or on behalf of any other owner or person.

- 1.5. The Covenantor shall not be liable in respect of any action that it may take or for any default in taking action in relation to any matter contained in this Covenant Instrument and the registered owners of the Benefited Land shall indemnify and keep indemnified the Covenantor from all costs, claims, suits, demands, actions, liabilities or proceedings arising out of or under or by virtue of the Covenants.

2. Building Design and Approval Process

- 2.1. One (1) dwelling is permitted to be erected on each Allotment which has a minimum floor area of 100sqm (including internal garaging). A second Structure may be placed on the Allotment provided that the floor area of such Structure does not exceed 200sqm.

- 2.2. The Covenantor shall not erect, place or permit to be erected or placed on an Allotment:

- (a) any Structure which is wholly or partly constructed using second hand materials;
- (b) any Structure with exterior colourings (whether as part of the cladding, roofing, guttering or downpipes) which are not coated with recessive or low-reflective colours (black or dark natural colours are acceptable), or have unpainted or exposed zinc coated products (other than solid zinc sheets);
- (c) any Structure constructed of corrugated iron (whether painted or unpainted), but the use of Decramastic and colour steel products (or products of similar construction) which are painted or coated in the manufacturing process shall not be a breach of this covenant; or
- (d) any Structure of an "A-frame" style; or
- (e) any guttering or downpipes which are not pre-finished or painted to match the colour of the Structure or the roof colour.

3. Construction

- 3.1. Prior to, during, and after construction of the dwelling, all landscaping areas must be maintained in a clean and tidy manner, all grass mowed and any weeds kept below 150mm in height. Any dirt piles should be sprayed regularly to avoid weeds growing and becoming unsightly. If any grass and/or weeds exceed 150mm in height then the Developer (or its nominated contractor) may at its sole discretion access the Allotment for the purposes of correcting any breach of this Covenant 3.1 and the Covenantor shall be entitled to charge the Covenantor for any costs incurred at the invoiced rate plus 50%.
- 3.2. The Covenantor will be responsible for the maintenance and upkeep of the road berm which adjoins any right of way or legal road to a neat and tidy standard (including all plantings).
- 3.3. Any damage to the infrastructure of the Development (including but not limited to landscaping, roads, footpaths, kerbs and/or berms) which is caused by the Covenantor or its agents, must be immediately repaired and reinstated by the Covenantor.

4. General Standards

- 4.1. Any gas bottles, gas metering equipment or air conditioning units are to be placed on an Allotment so that they are not visible from the road or right of way (if relevant) unless they are adequately screened from view.
- 4.2. Any antenna or satellite dish shall be placed such that it is neither visible from the roadway nor gives a reflection or glare which creates a nuisance to other property owners in the Development.
- 4.3. Any clothesline, garden shed and/or rubbish bin(s) shall be screened from both adjoining Allotments and the road or right of way (if relevant).
- 4.4. Any letterbox placed on the Allotment shall be aesthetically sensitive to the Structure(s) erected on the Allotment and shall use recessive colours.
- 4.5. The Covenantor shall not keep or raise on an Allotment any more than three (3) cats and/or three (3) dogs. Any of the following breeds of dog or dogs which resemble any of the following breeds shall not be permitted to be kept or raised on the Allotment: *Fila Brasileiro, Dogo Argentino, Japanese Tosa, Perro de Presa Canario, American Pit Bull Terrier, Dobermann Pinscher*, or any other breed of dog that the local authority does not permit in its plan.
- 4.6. The Covenantor may keep no more than six (6) livestock animals (including horses) on an Allotment, but provided always that such animals are appropriately housed and fenced.
- 4.7. The Covenantor shall complete construction of all Structures within eighteen (18) months of commencement. All landscaping which sits within 20m of any Structure and which is visible from the legal road or right of way shall be completed within one (1) year from the date upon which the first Structure erected on the Allotment receives a Code Compliance Certificate.
- 4.8. The Covenantor shall not temporarily or permanently occupy an Allotment by means of a caravan, motorhome or any other form of temporary accommodation (whether mobile or not) prior to the obtaining of a Code Compliance Certificate for the first dwelling constructed on the Allotment. Following the obtaining of a Code Compliance Certificate for the first dwelling constructed on the Allotment, the Covenantor may permit a caravan, motorhome or any other form of temporary accommodation on the Allotment for a period of no greater than six (6) weeks in any calendar year.
- 4.9. Storage containers may be placed on the Allotment during the course of construction of the first dwelling for the purposes of material and equipment storage associated with the construction. Such storage containers must be removed from the Allotment within three (3) months of the Code Compliance Certificate issuing for that first dwelling.
- 4.10. All driveways of an Allotment shall be laid or constructed in gravel or solid materials and to the full width (no "car tracks" are permitted).

- 4.11. No excavation material or builders materials are to be deposited on any adjacent Allotment. Rubbish and/or builders waste shall be placed in trade waste containers, skips or other suitable receptacles on the Allotment.
- 4.12. No *pinus radiata* or *cedus macrocarpa* shall be grown within the Allotment.
- 4.13. A commercial business shall not be operated from an Allotment, but the Covenantor shall be permitted to use a dwelling on an Allotment for temporary self-catering holiday home accommodation (such as *AirBnB*).
- 4.14. No signage for a business or commercial activity is permitted on an Allotment (except for the placement of a single builder's sign and a health and safety sign during the construction of the dwelling on the Allotment).
5. Fencing
- 5.1. Neither the Developer nor the local authority shall be required to contribute to the cost of any landscaping or fencing which may border any reserve or road reserve or any property owned by the Developer or the local authority, or the cost of any boundary fence.
6. Landscaping and Plantings
- 6.1. The Covenantor shall replace any plants that die, have serious disease problems or are in poor or unsightly condition within the Allotment or within the road berm with suitable replacement plants of the same or similar species.
- [Drafting Note: "poor or unsightly condition" is rather subjective – consider removal]
7. Water Storage Tanks
- 7.1. The Covenantor shall not allow to be placed on the Allotment any water storage tank which exceeds 2.5m above the finished ground level of the Allotment. The Covenantor shall ensure that such water storage tank (including any inspection hatch or vent) is appropriately screened and/or landscaped from the view of the right of way or legal road so as to be unobtrusive.
8. Further Subdivision
- 8.1. The Covenantor will not make application to the local authority or take steps to further subdivide the Allotment. For the purposes of this Covenant 8, a further subdivision of the Allotment shall include any subdivision of land as described in section 218 of the *Resource Management Act 1991* or any replacement legislation, with the exception that a subdivision by way of boundary adjustment which results in a net increase or a net reduction of less than 10% to the size of the affected Allotments, shall not constitute a subdivision for the purposes of this Covenant.
9. No Objection
- 9.1. The Covenantor covenants with the Covenantee (in the context of it being the Developer) that it will not oppose, object to, frustrate or take any action, or encourage or cause others to oppose, object to, frustrate

or take any action, that might in any way prevent or hinder the Covenantee from progressing and completing the Development and/or effecting any zone change, subdivision or land use consents which may be required by the Covenantee to give effect to the Development (or the future development of any property owned by the Covenantee at Cape Foulwind).

10. Bond

- 10.1. A remediation bond of \$2,500.00 (*Bond*) will be payable to the Covenantee at the time of settlement of the Covenantor's purchase of the Allotment, such Bond to be held and applied in accordance with this Covenant 10.
- 10.2. Upon the Covenantor becoming the registered owner of the Allotment, the Covenantor shall pay the Bond to the Covenantee which the Covenantee shall be entitled to apply towards the repair or reinstatement of any damage caused to the infrastructure of the Development or to any neighbouring allotments during the course of the Covenantor's construction of any Structure on the Allotment.
- 10.3. Upon completion of the construction of all Structures on the Allotment, and the issue of a Code Compliance Certificate by the local authority, the Covenantor shall be entitled to make application to the Covenantee for the refund of the Bond. Such application must be made in writing and must be accompanied by a copy of the Code Compliance Certificate for the completed Structure.
- 10.4. As soon as practicable after the receipt of the Covenantor's application for a refund of the Bond, a representative of the Covenantee will inspect the Allotment and its adjacent area to determine if there has been any damage caused to the infrastructure of the Development (including roads, footpaths, berms, kerbs, fences and trees) or adjoining allotments.
- 10.5. If, in the opinion of the Covenantee, there has been damage caused, the Covenantee shall notify the Covenantor in writing of the particulars of the damage and/or specify a reasonable period of time within which repairs or reinstatement of the damaged parts must be completed by the Covenantor.
- 10.6. If, after the expiration of the period of time referred to in paragraph 10.5 above (or such extended period as the Covenantee may agree in writing), the Covenantor has not repaired or reinstated the damage, the Covenantee will be entitled to apply the Bond in meeting the cost of the repair or reinstatement. Any balance of the Bond remaining after the repair or reinstatement shall be refunded to the Covenantor.
- 10.7. If, after carrying out the inspection in paragraph 10.4, the Covenantee is satisfied that there has been no damage caused, the Covenantee shall promptly refund the Bond to the Covenantor. The Developer is not obliged to hold the Bond in a separate account, nor account to the Covenantor for any interest earned on the Bond.
- 10.8. If the Covenantor does not apply in writing for the refund of the Bond within six (6) months of the issue of a Code Compliance Certificate for the dwelling on the Allotment, the Bond shall be forfeited.
- 10.9. In the event that the Covenantor sells the Allotment without undertaking construction of any Structure, the Developer shall continue to hold the Bond on the terms set out above, and will make any refund of the Bond to any subsequent registered owner of the Allotment who makes application under paragraph 10.3 above.