

2004

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**EAST HILLS (2001) LIMITED**  
*“Covenantor”*

**EAST HILLS (2001) LIMITED**  
*“Covantee”*

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**DEED OF COVENANT**  
**[To Protect Integrity of Subdivision]**  
**Homestead Sections, Villa Sections= residential lots**

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**In the Matter** of the Property Law Act 1952

**And**

**In the Matter** of Land registered under the  
Land Transfer Act 1952

## **PARTIES**

Covenantor: **East Hills (2001) Limited**

Covenantee: **Initially East Hills (2001) Limited – Owners of homestead section**

## **INTERPRETATION**

In this Deed the following terms have the following meanings:

*Accessory Building* free standing garages, workshops, sleep-outs and other buildings excluding garden sheds that are not dwellings and are not greater than 130 metres square in gross floor area.

*Architect* means a person holding current registration under the Architects Act 1963 or its substitute.

*Communal Facilities* means all land, buildings, plant, equipment, facilities and amenities including rights of way, easements and any private roads and walkways within the Estate owned, leased, licensed, or otherwise held or operated by the Society (as the Society may determine) from time to time, being initially that land and those facilities transferred to the Society by the Developer pursuant to a Deed of Transfer a copy of which is attached as Schedule 1 to the Constitution of the Society.

*Covenantee* includes all persons executing this Deed as Covenantee and jointly and severally if more than one and their executors, administrators, assigns and successors in title, the successive owners of the Covenantee's Land and their tenants, licensees and invitees.

*Covenantor* means and includes all persons executing this Deed as Covenantor and jointly and severally if more than one and their executors, administrators, assigns and successors in title, the successive owners of the Covenantor's Land and their tenants, licensees and invitees.

*Design Review Panel* means the body appointed under the Constitution of the Esk Hills Residents Society from time to time to

	consider design approval applications by Members of the Society.
<i>Design Guidelines</i>	means the design guidelines issued by the Design Review Panel constituted under the Esk Hills Residents Society.
<i>Developer</i>	means East Hills (2001) Limited and its transferees and assigns carrying out development at Esk Hills.
<i>District Plan</i>	means the Proposed City of Napier District Plan or its substitute.
<i>Dwelling</i>	means a structure of more than 150 square metres intended for human habitation that includes a kitchen or area intended for use as a kitchen but excludes a carport or garage.
<i>Esk Hills</i>	means the residential and other development of the land comprised in Certificate of Title 140515.
<i>Esk Hills Residents Society</i>	means the Esk Hills Residents Society Incorporated.
<i>Earthworks</i>	means the removal, deposit, or redistribution of any material, rock or soil within a Homestead Section which alters the natural ground level by more than 1.2 metres.
<i>Homestead Envelope</i>	means that area of land within each Homestead Section identified by the Developer as the restricted area for the construction of any dwelling or accessory buildings or structure.
<i>Homestead Section</i>	means a lot within the land comprised in Certificate of Title 140515 which has been developed as a residential lot or which is a bare lot available for such development.
<i>Homestead Section Residual Area</i>	means the area of a homestead section outside the homestead envelope.
<i>Main Dwelling</i>	means the principal home or residence for each homestead section.
<i>Master Plan</i>	means the plan or set of plans prepared by the Developer and identified as the Master Plan and which shows the overall layout of the Esk Hills development including roads, sections and communal facilities and which may from time to time be redefined or amended by the Developer.
<i>Occupier</i>	means any person occupying any Homestead Section or Villa Section under any lease, licence or other

	occupancy right and shall include all members of an owner's family.
<i>Owner</i>	means each person registered as a proprietor (whether individually or with others) of a Homestead or Villa Section.
<i>Owner's Title</i>	means the Certificate of Title issued for an Owner's Homestead Section.
<i>Secondary Dwelling</i>	means a secondary dwelling on certain homestead sections identified in the Master Plan that is no more than 80 metres square in gross floor area.
<i>Society</i>	means the Esk Hills Residents Society Incorporated under the Incorporated Societies Act 1908.
<i>Urban Designer</i>	means a person who has tertiary qualifications in urban and environmental design.
<i>Utility Installations</i>	means water tanks, clotheslines, rubbish storage facilities, re-cycling facilities, gas bottles, swimming pool pumps or filters, water softeners or other above ground mechanical or electrical equipment.
<i>Villa Section</i>	means those lots on the Developer's Master Plan identified as suitable for the construction of a Villa and restricted to having one main building constructed thereon.

## **BACKGROUND**

- A. The Covenantor is the registered proprietor of that land detailed in Schedule A (the Covenantor's Land).
- B. The Covenantee is the registered proprietor of the properties detailed in Schedule B (the Covenantee's Land).
- C. The Covenantor and the Covenantee have agreed to covenant with each other as follows with the intent that the restrictions and obligations set out in this Deed shall apply to the Covenantor's Land for the benefit of the Covenantee's Land and to the Covenantee's Land for the burden of the Covenantor's Land and shall be enforceable inter se.

## **COVENANTS**

1. The Covenantor covenants and agrees with the Covenantee for the benefit of and to be appurtenant to the Covenantee's Land, that the Covenantor will henceforth and at all times hereafter observe and perform all and singular the stipulations, covenants and restrictions detailed below ("the Covenants") to the end and intent that each of the Covenants shall endure for sixty years (60) for the benefit of the Covenantee's Land and every part of the Covenantee's Land.

2. The Covenantor agrees to hold, convey, lease, rent, use, maintain, occupy and improve all land referred to in Schedule A subject to limitations, restrictions, covenants and conditions contained herein.
3. The Covenantor and its assigns shall become and remain Members of the Esk Hills Residents Society and the Covenantee and its assigns covenant and agree to be bound by all rules pertaining to the Covenantee's land promulgated by the Esk Hills Residents Society.
4. The Covenantor and its assigns covenants as follows:
  - (a) To allow the Developer access to the Covenantor's land for the purpose of proceeding with the development of Esk Hills;
  - (b) To allow the Developer to proceed unhindered with the necessary consents for and the building of Villas on those lots identified by the Developer as Villa Sections;
  - (c) To, and hereby grants, such easements in favour of the Developer, any Member and/or the Society over or under the Covenantor's land as are required for the development to proceed or as may be necessary or desirable for development of Esk Hills;
  - (d) Not to prevent, hinder or obstruct the use by the Developer of the Communal Facilities, the addition, removal or alteration of structures or services forming part of the Communal Facilities by the Developer, or the granting of any interests in the Communal Facilities by the Society to the Developer,
  - (e) Not to oppose, or take part in any opposition to, the development of Esk Hills or do anything inimical in any way whatsoever to any application by the Developer for resource or any other consent relative to the sub-division or development of Esk Hills;
  - (f) To support any resolution to amend the Constitution of the Esk Hills Residents Society where the Society is bound by agreement with the Developer to procure such amendment;
  - (g) Not to bring any proceedings for damages, negligence, nuisance, trespass or interference arising from the use of the lands surrounding Esk Hills that are being used for agricultural, horticultural or viticultural activities; or make or lodge, or be a party to; or finance or contribute to the cost of any application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the continuation or the operations of rural activity on the surrounding land, including without limitation, any action to require the surrounding landowners/occupiers to modify the rural operations carried out on their land.

#### **RESTRICTIONS ON USE OF HOMESTEAD SECTION**

6. The Covenantor's land shall be for the exclusive use and benefit of the Owner subject to all the following limitations and restrictions:
  - (a) Further sub-division of the Covenantor's land is prohibited.

### **Within the Homestead Envelope**

- (b) Any construction or reconstruction of, or the refurbishing or alteration of any part of the exterior of, or any improvement upon any homestead envelope is absolutely prohibited until and unless the Owner of such developed area first obtains approval from the Design Review Panel.
- (c) No application to the Napier City Council or other appropriate territorial authority for resource or building consent shall be made unless the Owner first obtains the written approval of the Design Review Panel.
- (d) All applications for approval by the Design Review Panel must be submitted in accordance with the requirements laid down in the Design Guidelines of the Esk Hills Residents Society.
- (e) All new dwellings and accessory buildings and any subsequent external additions or alterations to the same shall be designed by an Architect.
- (f) The placement of re-located or kitset dwellings on a Homestead Section is prohibited.
- (g) The parking of boats, caravans or motor-homes is restricted to within the Homestead Envelope and the parking must be within an enclosed or screened area located to minimise visibility from the road or other Owner's Homestead Envelopes.
- (h) No homestead section may include more than one Main Dwelling, one Secondary Dwelling and an Accessory Building.
- (i) A fenced service yard shall be provided within each Homestead Envelope which encloses or screens all garbage, recycling or rubbish receptacles, clotheslines and other utility installations.
- (j) Garden sheds or any structure over 2 metres in height or 5 m<sup>2</sup> in area must be approved by the Design Review Panel and must be of similar quality and design to the principal dwelling and each Homestead Envelope is restricted to one garden shed or similar structure.
- (k) Satellite dishes must be under 1 metre in circumference.
- (l) Fences, walls and retaining walls shall be no higher than 2 metres and their construction and appearance must be of comparable quality to the main dwelling but must not be constructed in such a way as to present a fortress façade to the road.
- (m) The light source of external lighting specifically but not limited to spotlights, installed within the Homestead Envelope shall not be visible from a neighbouring dwelling.
- (n) All service utilities e.g. power, telephone, water shall be located below ground.

- (o) Modifications to the ground levels, grading and drainage patterns approved for each Homestead Envelope are not permitted unless specifically approved in writing by the Design Review Panel.
- (p) All site and roof drainage must be either retained on site or directed to reticulated drainage or swales in accordance with the approved subdivision plan.
- (q) The area within the Homestead Envelope not occupied by buildings or paving is to be landscaped with a combination of grass, groundcovers, shrubs and trees and all landscaping work is to be completed within 12 months of the dwelling being occupied.

#### **Outside the Homestead Envelope**

- (r) No paving other than driveways and pathways or parking areas linking the public roadway to the Homestead Envelope may be located outside the Homestead Envelope.
- (s) Except driveways or pathways, underground services and waste water disposal systems any building, construction or landscaping work including the construction of walls and fences outside the Homestead Envelope is prohibited without the specific written approval of the Design Review Panel.
- (t) No earthworks or grading other than the minimum required for driveways or underground services is permitted outside the Homestead Envelope.
- (u) The parking of and storage of vehicles larger than six (6) metres in length is prohibited outside Building Envelopes.
- (v) All areas disturbed during construction of inter alia dwellings, driveways and the laying of services, are to be re-instated to match the surrounding area within three (3) months of the completion of such work.
- (w) Existing native vegetation (e.g. Kanuka) shall be preserved, protected and maintained and shall not be removed without the prior written approval of the Society.
- (x) The planting of trees and shrubs in the Homestead Section Residual Area shall be limited to species which do not exceed five (5) metres in height and which do not unreasonably interfere with the view from a neighbouring Homestead Envelope.

#### **RESTRICTIONS ON THE USE OF VILLA SECTIONS**

7. The Owners of Villa Sections covenant to be bound by the above covenants relating to Homestead Sections mutatis mutandis:  
6(a), 6(b), 6(c), 6(d), 6(e), 6(f), 6(i), 6(k), 6(l), 6(m), 6(n), 6(o), 6(p), 6(q).
8. The owners of Villa Sections further covenant:

- (a) Parking outside dwelling structures on Villa Sections shall be limited to one boat or caravan or motor home or motor vehicle not exceeding five (5) metres in length.
- (b) The planting of trees or shrubs on Villa Sections shall be limited to species which do not unreasonably interfere with views from a neighbouring Villa Section or access to sunlight of a neighbouring Villa Section.

**ENFORCEMENT**

9. The Covenantor grants to the Society the right to:
- (a) Stop any building or development work on the Covenantor’s land which has not been approved by the Design Review Panel, or if approved is not being built or developed in accordance with the plans approved by the Design Review Panel; and
  - (b) To caveat the Covenantor’s land to secure unpaid levies, fines or debits for damage to communal facilities owing to the Society.
  - (c) To enter onto the Covenantor’s land and complete or rectify the work to the satisfaction of the Society at the Covenantor’s expense.

Nothing shall stop the Covenantee from enforcing the covenant rights described herein.

**TIME FRAME**

10. The Covenantor will register this Deed against the Covenantor’s Land to provide notice of the Covenants to any future purchasers or owners of the Covenantor’s Land.
- (a) The Covenants shall endure for a period of sixty (60) years from the date of this Deed for the benefit of the Covenantee’s Land as set out in this Deed and shall be enforceable against the Covenantor’s Land during that period by any one or more of the Covenantee’s at any time.
  - (b) Upon the expiry of that period of sixty (60) years this Deed shall be deemed to have been cancelled by agreement and shall thereafter have no force or effect.

Dated 2004

EXECUTED by the Covenantor )  
**EAST HILLS (2001) LIMITED** )  
 in the presence of: )

EXECUTED by the Covenantee )  
**EAST HILLS (2001) LIMITED** )  
 in the presence of: )

**SCHEDULES:**

**A =All Homestead Sections and Villa Sections including the access lots except that of the Covenantees**

**B =All Homestead Sections, Villa Sections and access lots except those of the Covenantors**