

**Covenant Instrument to note land covenant**

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

**Covenantor**

93 TOSSWILL ROAD LIMITED PARTNERSHIP

**Covenantee**

93 TOSSWILL ROAD LIMITED PARTNERSHIP

**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**

*Schedule, if required*

*Continue in additional Annexure*

<b>Purpose of covenant</b>	<b>Shown</b>	<b>Burdened Land</b> (Record of Title)	<b>Benefited Land</b> (Record of Title) or in gross
Land covenant		[INSERT] to [INSERT] (inclusive)	[INSERT] to [INSERT] (inclusive)
Land covenant		[INSERT] to [INSERT] (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].

Annexure Schedule

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## ANNEXURE SCHEDULE

### INTERPRETATION

For the purposes of this Land Covenant:

**Covenantee** means the Developer and the registered owner of any Lot.

**Covenantor** means the registered owner of any Lot.

**Design Guidelines** means the Developer's architectural and landscaping guidelines provided to Lot owners as it may be amended by the Developer in writing from time to time.

**Developer** means 93 Tosswill Road Limited Partnership, and any successor party or organisation nominated by them or by any successor party or organisation to deal with applications required for approvals by the Developer under any of these covenants;

**Development** means the Developer's subdivision known as Ururepo Prebbleton, located on Tosswill Road, Prebbleton, being the land, prior to the date of registration of these covenants, contained in Records of Title 905044 and 97763, and shall include:

- (a) all subsequently issued records of title to the above, intended to be a future stage of the Developer's subdivision in the Development; and
- (b) all infrastructure in the Development; and
- (c) any variation to the Development made by the Developer in its sole discretion at any time.

**Double Frontage Lots** means Lots [4, 5, 20, 21, 30, 31, 42, 47, 219] and **Double Frontage Lot** means any one of them.

**Dwelling** means any dwelling, building or other structure situated on a Lot.

**Lots** means lots [INSERT] to [INSERT] (inclusive) comprised in DP [DP INSERT] and **Lot** means any one of them.

**Primary Road Boundary** means in relation to a Double Frontage Lot, the Road Boundary which provides the Covenantor with vehicular access to the Lot via a formed driveway.

**Reserve[s]** means lot [501] on DP [DP INSERT], to be vested in Council and **Reserve** means any one of them.

**Reserve Boundary** means a boundary between a Lot and a Reserve.

**Right of Way** means areas [C, H and K,] on DP [DP INSERT].

**Right of Way Boundary** means a boundary between the Right of Way and Lots 50-55,193-195 (all inclusive).

**Road Boundary** means a boundary between a Lot and any legal road, which does not include a Right of Way Boundary or a Reserve Boundary.

**Secondary Road Boundary** means in relation to a Double Frontage Lot, the Road Boundary which does not provide the Covenantor with vehicular access to the Lot via a formed driveway

**Side Boundary** means a boundary between a Lot and an adjoining Lot that is not a Road Boundary or a Reserve Boundary and **Side Boundaries** means more than one of them.

**Total Length** means the total length of the fence taken in a line parallel to the Secondary Road Boundary.

**Option Two Storey Lots** means Lots [4, 5 and 42].

## COVENANTS

The Covenantor covenants with the Covenantee as follows:

### 1. THE COVENANTOR AND THEIR SUCCESSORS IN TITLE SHALL:

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#### 1.1. Subdivision

Not further subdivide any of the Lots whether by way of cross-lease, unit title, subdivision into separate Lots or in any other way provided that this restriction will not apply to a subdivision which has the effect only of adjusting the boundaries between two adjoining Lots.

#### 1.2. One Dwelling

Not construct or erect more than one Dwelling on a Lot.

#### 1.3. Temporary Accommodation

Not permit or suffer the Lot to be occupied or used as a residence either by the erection of temporary structures or the placing thereon of caravans or other vehicles used for human habitation.

#### 1.4. Use Prior to Completion

Not use the Lot as a residence before a Code Compliance Certificate has been issued by the Selwyn District Council unless section 362V(2) of the Building Act 2004 applies.

#### 1.5. Storage and Parking of Vehicles

- (a) Not permit any vehicles (including boats, trailers, caravans and motor-homes but excluding a motor car that is used on a regular basis) to be left, parked or stored on the Lot in any structure such as a gazebo, lean-to or carport that is not fully enclosed, nor shall such vehicle be left, parked or stored on the Lot where it is visible from any road or Right of Way.
- (b) Not park any motor vehicle on the Lot which is visible from any road or Right of Way and which is used on a regular basis except on a formed driveway or dedicated parking space approved by the Developer in accordance with clause.
- (c) Not to park any trailer, boat, caravan, motorhome or any other wheeled vehicle on any

road in the development for a period of more than seven (7) consecutive days, nor park and vehicle described in this clause 1.5 on the berm.

**1.6. Noxious Weeds and Rubbish**

- (a) Not allow the accumulation or housing of any rubbish or noxious substances which may be likely to cause nuisance or annoyance to the neighbouring occupiers, or permit grass or weeds to grow to such a height as to become unsightly.
- (b) Not allow the roadside berm to become untidy and unmown. The Covenantor agrees to be responsible for keeping the roadside berm(s) immediately in front of the Lot mown. Grass and/or weeds shall not be allowed to grow to a height exceeding 100mm. Where the Lot is located on a corner, the Covenantor is responsible for mowing and maintaining the berms on both street frontages.

**1.7. Animals**

Not permit any dog or other pet to be kept in or about the Lot which dog or other pet is likely to cause a nuisance or annoyance to other neighbouring occupiers or detract from the subdivision, and in particular, without otherwise limiting this restriction, not to keep on or about the Lot any dog which in whole or part appears to be a Pit Bull Terrier, Rottweiler, Japanese Akita, Japanese Tosa, Dogo Argentino or Brazilian Fila. The keeping of pigeons is expressly prohibited.

**1.8. Signs**

Not permit any advertisement, sign or hoarding of a commercial nature (excluding a professionally made "For Sale" sign) to be erected on any part of the Lot or Dwelling. The Developer shall, at its discretion, be entitled to exempt one or more Lots of its choice, including those which relate to any signage associated with a "show home", for such period as determined by the Developer.

**1.9. Dwelling Heights – Lots 1 -3, 6-9, 20 – 41, 43 – 47, 48 – 56, 188, 192-198, 202, 203, 215 – 221 and 232 (all inclusive)**

- (a) The Covenantor of any Lot other than an Optional Two Storey Lot shall not erect a Dwelling greater in height than a single storey and a maximum total height of eight (8) metres above ground level.
- (b) The Developer may, at the Developer's sole discretion, approve on any Lot which is not an Optional Two Storey Lot, of a Dwelling with the living areas situated within the roof cavity of the Dwelling. This is provided that there are no windows set into the roof line or gable area and that the only natural light permitted into the roof cavity is from skylights set into the roof. Any approved dwelling plans shall not be deemed to be in breach of this clause by virtue of having living areas situated within the roof cavity.

**1.10. New Materials**

Not erect or permit to be erected on the Lot any Dwelling using anything other than new materials provided that second-hand bricks may be allowed for exterior cladding at the Developer's discretion. No pre-lived in or pre-built Dwelling, either in whole or in part, shall be transported on to the Lot.

#### 1.11. **Non-permitted Cladding Materials**

Not construct any Dwelling on the Lot with an external cladding of unrelieved flat sheet fibrolite, hardiflex or similar materials provided that this restriction shall not apply to the cladding of soffits or gable ends.

#### 1.12. **Painting**

Not leave the outside of any Dwelling unfinished, or any exterior walls or doors unpainted or unstained provided that this clause shall not apply where natural timber cladding or decorative brick, stone or concrete are used.

#### 1.13. **Building Materials**

Not use as a roofing material any material other than tiles (clay, ceramic, concrete, decramastic, pre-coated pressed steel) of a single colour or pre-painted long-run pressed steel (the use of zincalume shall not be permitted) or any building materials which are highly reflective (including reflective window coatings). Preferred building materials are detailed in the Design Guidelines.

#### 1.14. **Boundary Fencing**

##### (a) **Compliance with District Plan and Fencing Covenants:**

The Covenantor must at all times ensure they comply with, as it relates to fencing of the Lot:

- (i) The rules in the Selwyn District Plan;
- (ii) The provisions contained in this clause 1.14; and
- (iii) Any Consent Notices required by Council to be registered on the titles.

The Covenantee does not warrant that any fence complying with these covenants will also comply with the Selwyn District Plan and as such it is the Covenantor's responsibility to ensure they are at all times compliant with the Selwyn District Plan. For the avoidance of doubt even if the Covenantor applies for and receives a resource consent from the Selwyn District Council in relation to fencing of the Lot, they must still also comply with the provisions contained in this clause 1.14.

##### (b) **Road Boundary fencing – Lots 1 - 4**

The Covenantor shall not permit any fence or other structure (other than a letterbox approved of in accordance with clause 1.15) to be erected in the area between the Road Boundary and a line drawn parallel to the Road Boundary in line with 500mm behind that part of the Dwelling closest to the Road Boundary.

##### (c) **Road Boundary fencing – Lots 6 – 19, 22 – 29, 32 – 41, 43 – 46, 48 – 56, 188, 192, 193, 197, 198, 202, 203, 215, 218, 220, 221**

The Covenantor shall not permit any fence or other structure (other than a letterbox approved of in accordance with clause 1.15) to be erected in the area between the Road Boundary and a line drawn parallel to the Road Boundary in line with that part of the

Dwelling closest to the Road Boundary, and in respect of:

- (a) Lot 7 over such part of the access point of Lot 7 which is in between Lots 6 and 8;
  - (b) Lot 50 over such part of the access point of Lot 50, which is in between Lots 49 and 56; and
  - (c) Lot 216 over such part of the access point of Lot 216 of Lots 217.
- (d) **Right of way fencing – Lots 50-55, 193 – 196 (all inclusive)**

The Covenantor shall not permit any fence or other structure (other than a letterbox approved of in accordance with clause 1.15) to be erected in the area between the Right of Way Boundary and a line drawn parallel to the Right of Way Boundary in line with that part of the Dwelling closest to the Right of Way Boundary.

(e) **Road Boundary fencing for Double Frontage Lots**

- (i) The Covenantor shall not permit any fence or other structure (other than a letterbox approved of in accordance with clause 1.15) to be erected in the area between the Primary Road Boundary and a line drawn parallel to the Primary Road Boundary in line with that part of the Dwelling closest to the Primary Road Boundary.
- (ii) Subject to having received the Developer's written approval pursuant to clause 1.22, the Covenantor shall be permitted to erect a single fence between the Dwelling and the Secondary Road Boundary, provided that the fence shall be set back a minimum of 1.2 meters from the Secondary Road Boundary, and further complies with the requirements set out at clauses 1.14(e)(iv) or 1.14(e)(v) respectively.
- (iii) The proportion of solid Road Boundary fencing as permitted under these covenants shall not be more than 50% of the Total Length of the Road Boundary.
- (iv) Where the fence is set back less than 1.5 metres from the Road Boundary;
  - (a) The fence must be at least 50% visually transparent (for example, pool-style fencing);
  - (b) The fence may be up 1.8 metres high above finished ground level; and
  - (c) The Total Length of the fence does not exceed 50% of the Secondary Road Boundary; and
  - (d) Where a fence complying with clauses 1.14(e)(iv)(a) to 1.14(e)(iv)(c) is erected, the covenantor shall not modify such fence, including (without limitation) the attaching of any form of 'wind break', 'privacy screening' or decorative addition of any kind. Should a covenantor wish to increase their privacy of the Lot it is suggested suitable landscaping and plantings be used inside of any fence which has transparent elements.
- (v) Where the fence is set back more than 1.5 metres from the Road Boundary;
  - (a) The fence shall be constructed using either the same materials as the

external walls of the Dwelling or fencing of a style and materials that matches any Side Boundary fencing supplied and installed by the Developer on a Lot;

- (b) The fence may be up 1.8 metres high above finished ground level; and
- (c) The Total Length of the fence does not exceed 50% of the Secondary Road Boundary.

(f) **Side Boundary Fences**

The Covenantor shall not remove or modify such fence on a Side Boundary installed by the Developer.

(g) **Reserve Boundary – Lots 43 – 55, 193 - 196**

Where the Developer has, as part of the development of the Lot, installed a transparent metal fence on a Reserve Boundary, the Covenantor shall not remove or modify such fence, including (without limitation) the attaching of any form of 'wind break', 'privacy screening' or decorative addition of any kind. Should a covenantor wish to increase their privacy of the Lot it is suggested suitable landscaping and plantings be used inside of any fence which has transparent elements.

(h) **Fence staining or painting**

The Covenantor shall not paint or stain any boundary fence any colour other than black.

1.15. **Letterbox**

Not erect a Dwelling without contemporaneously erecting a new letterbox of a design, colour and cladding consistent with the Dwelling, or as approved by the Developer in accordance with clause 1.22.

1.16. **Front Yard**

The Covenantor of any Lot shall ensure the front yard is an equal combination of grass and landscaping, with such plans to be approved by the Developer in accordance with clause 1.22. Preferred landscaping plants and shrubs for this area are detailed in the Design Guidelines.

1.17. **Setbacks**

The Covenantors of the Road Fronting Lots shall comply with any road setback boundary rules set out in the Selwyn District Plan.

1.18. **Completion of Landscaping, Driveways and Paths**

Not permit the Dwelling to be occupied unless all driveways and paths are completed in permanent materials, all wooden boundary fences are stained or painted, and all unpaved areas are properly grassed or landscaped in accordance with the plans approved by the Developer in accordance with clause 1.22.

1.19. **Satellite Dishes**

Not place or allow to be placed on the Lot or Dwelling any aerals or satellite dishes unless the same comply with the following requirements:

- (a) Have a maximum diameter of one metre; and
- (b) Are situated at least four metres from the front façade of the Dwelling; and
- (c) Are mounted below the ridgeline of the roof of the Dwelling.

#### 1.20. **Entrance Features**

The Covenantors of Lot [4] shall respectively:

- (a) Maintain the [metal, stone and/or wooden] entrance feature and retaining wall that is constructed as part of the entrance situated in the areas shown as [ENTRANCE FEATURE DP REF 1 INSERT] and on DP [DP INSERT] in a clean and tidy condition;
- (b) Not place, erect or permit to be placed or erected any structure or any plant to grow upon the Lot which will obscure the visibility of the entrance feature or retaining wall;
- (c) Not disconnect or otherwise interfere with any power supplied to any lighting or other illumination of the entrance feature or retaining wall; and
- (d) Notwithstanding the forgoing, agrees to allow the Covenantee the right at any time and at all times to inspect, maintain, repair, remove and replace the entrance feature or retaining wall.

#### 1.21. **Garden Sheds, Garden Ornamentation, Gas Bottles, Rubbish Bins and Clothes**

Not place or allow to be placed on the Lot or Dwelling any garden shed (or similar minor ancillary structure to the Dwelling), brightly painted or decorated ornaments or fixtures, gas bottles, rubbish and/or recycling bins which are reasonably visible by any person standing on the footpath of any legal road or Right of Way, or allow any washing or other articles to be hung for drying or any other purpose (either inside or outside of the upstairs part of any two storey Dwelling), where it is visible from outside the boundaries of the Lot.

#### 1.22. **Developer to Approve Plans**

- (a) Not commence any work on the Lot:
  - (i) without submitting to the Developer and receiving its approval for all building plans, including site plans, specifications, fencing and landscaping plans (which shall be prepared by a qualified landscape designer and builder) (**Plans**). Sole discretion lies with the Developer in approving Plans including specifications, fencing and landscaping plans, which shall comply with the Design Guidelines provided by the Developer to the Developer's satisfaction; and
  - (ii) which does not conform to the plans approved by the Developer. Any variation to or deviation from the approved Plans will be a breach of this clause and subject to the provisions of clause 3,

provided that this clause 1.22 will cease to apply and be of no further effect from the date

that a Code Compliance Certificate is issued for the first Dwelling to be built on the Lot if such Code Compliance Certificate relates to a Dwelling approved of by the Developer in accordance with this clause 1.22. Provided further, the Covenantor acknowledges that the Developer has no legal responsibility or liability for the enforcement, enforceability or applicability of these covenants, nor does the Developer undertake to enforce or monitor compliance with these covenants on an ongoing basis.

- (b) In addition to the requirements set out at 1.22(a) above, the Covenantor shall ensure their Plans include the position of the vehicle crossing, streetlamps, street trees and any services that are located in front of or to the side of the Lot. Any costs incurred by the Developer for any alteration, amendment or relocation of such items as a result of the Plans, shall be at the Covenantor's sole cost. The Developer may, as a condition of granting its approval for the Plans, require a deposit or bond to be paid by the Covenantor to facilitate payment of the cost of the associated work(s). The Developer shall have sole discretion as to all trades and contractors to be engaged to facilitate any amendment and/or relocation of any such items.

#### 1.23. **Commencement and Construction Timeframes**

- (a) Commence construction of the Dwelling on the Lot, no later than one year from the date at which the Covenantor becomes registered proprietor of the Lot.
- (b) Obtain a code compliance certificate for the Dwelling no later than one year after the date that the Covenantor commenced construction on the Lot, provided the Developer may extend, at its discretion, this timeframe in the event the Covenantor can demonstrate, to the Developer's satisfaction, that delays associated with the supply of materials have caused the delay in the obtaining of the code compliance certificate.

#### 1.24. **Construction Fencing**

Not commence construction on the Lot until temporary fencing has been erected on the entire length of all unfenced boundaries. The temporary fence must comprise removable wire or shade cloth (or other see-through material), be a minimum of 1.2 metres in height and have a rigid frame and in all circumstances be acceptable to the Developer at their sole discretion, and provide only one vehicle access to the Lot from the road or Right of Way.

#### 1.25. **Construction Zone Areas**

Not commence construction on the Lot until a vehicle crossing of no more than four metres in width has been installed in a position approved by the Developer, the kerb cut down at the crossing and the driveway from the road or Right of Way to the Lot formed and suitably based. The Covenantor shall not make any use of the adjoining Lots (whether occupied or not) any berms (except at designated crossings) or footpaths for construction work or for access by vehicles.

#### 1.26. **Health and Safety Requirements**

Not permit any construction unless the building site complies at all times with the requirements of the Health and Safety at Work Act 2015 (and its amendments) or any enactment passed in its substitution.

#### 1.27. **Delivery of Materials**

Not undertake or permit during the course of construction the loading, unloading, delivery or storage of building materials other than within the boundaries of the Lot.

**1.28. Building Rubbish**

Not carry out any construction unless an adequate rubbish skip is present at all times (and regularly emptied or replaced) nor allow during the course of construction any rubbish to blow outside the boundaries of the Lot.

**1.29. Washing of Vehicles**

Not during the course of construction allow any vehicles to be washed down other than within the boundaries of the Lot, provided such washing does not contravene any rules, requirements or standards of the Selwyn District Council and/or Environment Canterbury.

**1.30. Portable Toilet Facility**

Not permit the Covenantor's construction workers or contractors to use the Lot or any other area on within the development for toileting purposes. Prior to construction commencing, the Covenantor shall provide a suitable portable toilet facility for use by the Covenantor's construction workers and contractors.

**1.31. No Objection**

Not object to, nor make any claim or complaint regarding, any noise, vibration, disruption, dust, or inconvenience caused by the Covenantor and its agents or contractors with respect to the subdivision and development of the Development.

**1.32. No Complaints**

(a) The Covenantor covenants with the Covenantor that it will not (and will ensure that no person or entity associated with it do not):

- (i) make or lodge;
- (ii) be party to; or
- (iii) 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 Development.

(b) The Covenantor shall not (and shall ensure that no person or entity associated with it do not) either directly or indirectly bring any proceedings for damages, negligence, nuisance, trespass, interference or any other matter arising from the activities being undertaken at the Development.

**2. DISPUTE RESOLUTION**

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2.1. Except as it relates to the exercise of any discretion, opinion, approval or consent requested of the Developer under these covenants, if any dispute arises between the parties concerning the covenants, then the parties shall enter into negotiations in good faith to resolve their dispute.

- 2.2. If the dispute is not resolved within twenty working days of the date on which the parties began their negotiations, then the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties agree, that person appointed may act as an expert and not an arbitrator.
- 2.3. If an arbitrator cannot be agreed upon within a further ten days, then an independent arbitrator will be appointed by the President for the time being of the Canterbury branch of the New Zealand Law Society.
- 2.4. Such arbitration will be determined in accordance with the Arbitration Act 1996 (and its amendments) or any enactment passed in its substitution.

### **3. DEFAULT PROVISIONS**

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- 3.1. If there should be any breach or non-observance of any of these covenants and without prejudice to any other liability which the Covenantor may have to any person having the benefit of this covenant, the Covenantor will upon written demand being made by the Developer or any Covenantee:
  - (c) Pay to the person making such demand as liquidated damages the sum of \$100.00 (One Hundred Dollars) per day for every day that such breach or non-observance continues after the date upon which written demand has been made.
  - (d) Remove or cause to be removed from the Lot any Dwelling, vehicle, garage, building, fence or other structure erected or placed on the Lot in breach or non-observance of the above covenants.
  - (e) Replace any building materials used in breach or non-observance of the above covenants.
  - (f) Reimburse the costs the Developer and/or any Covenantee directly incurs on a dollar for dollar basis as a result of a breach or non-observance, including (but not limited to), those associated with correcting such breach or non-observance.
- 3.2. Any demand made by a Covenantee will be deemed to have been served to the Covenantor if sent to the Covenantor's postal address of the Lot, or where the Lot is a vacant section, the demand will be deemed to have been properly served if sent to the email address of the lawyer or law firm that signed and certified the transfer of the Lot to the Covenantor.

### **4. AUTOMATIC CANCELLATION**

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- 4.1. The covenants in this instrument will immediately cease to apply to any Lot (or part thereof) which is:
  - (a) Intended to vest in the Crown or any territorial authority as a road or reserve;
  - (b) Created as a utility lot; or
  - (c) Created as a future access lot which is shared as tenants in common with other lots,which is created in any land transfer plan of subdivision, upon any survey plan relating to such vesting and/or creation of a utility or access lot being approved as to survey and being accepted for deposit by Land Information New Zealand.
- 4.2. The Covenantors and Covenantees covenant that this clause 4.1 will be deemed the consent of each Covenantee to the depositing of the land transfer plan of subdivision under section 224(b)(i)

of the Resource Management Act 1991.

- 4.3. If the Developer determines that any additional written consent is required from any Covenantee then the Covenantees, and each of them separately, irrevocably appoint the Developer as their attorney for the purpose only of signing any consent necessary in the form required by the Developer. This shall include a Client Authority and Instruction Form, any necessary deed, or other document. The power of attorney in this clause 4.3 may be used for the depositing of any land transfer plan of subdivision. to remove and/or revoke this Covenant Instrument from any land to be vested as road or reserve, or to be created as a utility lot access lot.
- 4.4. The power of attorney in this clause 4.3 may be utilised by the Developer either at the time of depositing of any land transfer plan, or if necessary, subsequent to that. This power of attorney is given for valuable consideration and is irrevocable.

## **5. WAIVER OF COVENANTS**

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- 5.1. The Developer may in the Developer's sole and unfettered discretion, from time to time temporarily or permanently waive one or more of the covenants set out in these covenants in respect of one or more of the Covenantors, in which case the waived covenant(s) will not apply to the relevant Covenantor to the extent set out in the written waiver.
- 5.2. The Developer shall not be obliged to grant any such waiver and need not have regard to whether any waiver has been or will be granted in other cases.
- 5.3. Neither the Covenantor nor the Covenantee has any right, claim or remedy whether against the Developer, the Covenantor or the Covenantee in respect of any such waiver or decision not to grant such waiver.