

View Instrument Details



Instrument No 11023253.18
Status Registered
Date & Time Lodged 16 March 2018 12:29
Lodged By Robinson, Janna Louise
Instrument Type Easement Instrument



Affected Computer Registers	Land District
814145	Canterbury
814146	Canterbury
814147	Canterbury
814148	Canterbury
814149	Canterbury
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814184	Canterbury

Affected Computer Registers Land District

814185

Canterbury

Annexure Schedule: Contains 15 Pages.

Grantor Certifications

I certify that I have the authority to act for the Grantor and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

I certify that the Mortgagee under Mortgage 9956287.2 has consented to this transaction and I hold that consent

Signature

Signed by Janna Louise Robinson as Grantor Representative on 16/03/2018 12:10 PM

Grantee Certifications

I certify that I have the authority to act for the Grantee and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Janna Louise Robinson as Grantee Representative on 16/03/2018 12:10 PM

***** End of Report *****

Easement instrument to grant easement or profit à prendre, or create land covenant
(Sections 90A and 90F Land Transfer Act 1952)

Grantor

Lincoln Developments Limited

Grantee

Lincoln Developments Limited

Grant of Easement or Profit à prendre or Creation of Covenant

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A grants to the Grantee (and, if so stated, in gross) the easement(s) or profit(s) a prendre set out in Schedule A, or creates 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 (Nature and extent) of easement; profit or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Restrictive Covenants	Lots 252 – 258, 263 – 273, 298 – 300 & 600 - 619	814145 - 814185	814145 - 814185

Easements or profits à prendre rights and powers (including terms, covenants and conditions)

Delete phrases in [] and insert memorandum number as required

Unless otherwise provided below, the Rights and Powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five to the Property Law Act

The implied rights and powers are hereby [varied] [negatived] [added to] or [substituted] by:
[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]
[and/or the provisions set out in this Annexure Schedule]

Continue in additional Annexure Schedule, if required

Covenant provisions

Delete phrases in [] and insert memorandum number as required

The provisions applying to the specified covenants are those set out in:
[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]
[and/or the provisions set out in this Annexure Schedule]

Continue in additional Annexure Schedule, if required

Annexure Schedule

Restrictive Covenants – Flemington Subdivision – Stage 6

1. Purpose

1.1 The purpose of these Covenants is to protect the market and aesthetic value of the Benefiting Lots, the privacy, peace and security of the occupants of the Benefiting Lots and the quality of the environment touching and concerning the Benefiting Lots.

1.2 These Covenants will expire on the 1st day of December 2038.

1.3 Where there is at any time more than one owner of a Lot, these Covenants will be binding upon each and every owner jointly and severally.

2. Definitions and Interpretation

2.1 Interpretation

2.1.1 Words importing one gender include the other gender.

2.1.2 Words importing the singular or plural include the plural and singular respectively.

2.1.3 Headings are inserted for the sake of convenience and ease of reference only. They do not form part of the text, and will not affect the construction or interpretation of these Covenants.

2.2 Definitions

In these Covenants, unless the context otherwise requires:

“Benefiting Lots” means the Lots which receive the benefit of these Covenants;

“Building” comprises a Building as defined by the Building Act 2004 and includes a Dwelling;

“Covenants” means the Covenants contained within this document;

“Developer” means Lincoln Developments Limited;

“Dwelling” means and includes a residential dwelling, or family residence;

“Lincoln Developments” means Lincoln Developments Limited (company number 4533898) and any successor party or entity nominated by it or by any encompassing party or entity nominated to deal with applications required for approvals by the Lot Owner under any of these Covenants;

“Landscape Feature”	means any visible structure or landscape design or enhancement feature or utility to be provided on any Lot;
“Lot”	means any Lot that is subject to these Covenants;
“Lot Owner”	means the owner of any Lot;
“Medium Density Sections”	means Lots 600 – 619 of Stage 6;
“Property”	means a Lot together with any Dwelling and Buildings situated thereon, and; (a) unless the context otherwise requires, includes any part of such Dwelling which is subject to a party wall easement and all Buildings (if any) situated on such lot; and (b) in relation to any proprietor or occupier means the property owned or occupied by that proprietor or occupier (as the case may be);
“Show Home”	means a Dwelling built on any Lot by a builder or a building company in accordance with these Covenants which is furnished and decorated for the purpose of being available for public inspection;
“Standard Section”	means Lots 252 – 258; 263 – 273, 298 – 300 of Stage 6;
“Territorial Authority”	means a territorial authority within the meaning of the Local Government Act 2002.

3. Building Covenants

- 3.1 Prior to construction of any Building, structure or improvements the Lot Owner must first obtain the written approval of Lincoln Developments to the final Building plans and specifications (and where appropriate, in the same form as intended to be submitted to the Territorial Authority for a building consent) and such specifications will include full details of all exterior colour schemes and finishes and details of fences, driveways and front yard landscaping.
- 3.2 The consent of Lincoln Developments required under clause 3.1 will not be unreasonably withheld unless the planned Building, structure or improvements are contrary to the terms of this Covenant including clause 1.1.

- 3.3 Lincoln Developments will be entitled to serve an injunction notice on the Lot Owner to cease all work if the Lot Owner commences any construction work without first having obtained the approval of Lincoln Developments in accordance with clause 3.1.
- 3.4 The obligation to obtain the approval of Lincoln Developments pursuant to clause 3.1 will expire five (5) years after the date of registration of the transfer of the Property by Lincoln Developments to the Lot Owner but this will not release the Lot Owner from its obligations to comply with these Covenants.
- 3.5 All Buildings must be constructed on-site from new or high quality recycled materials.
- 3.6 Exterior cladding for all Buildings on any Lot are to be one of the following materials:
 - 3.6.1 brick; or
 - 3.6.2 stone; or
 - 3.6.3 concrete block stucco; or
 - 3.6.4 cement or plaster finish or similar type of finish; or
 - 3.6.5 plastered textured finish; or
 - 3.6.6 stained or painted timber weatherboards or linear boards which have the appearance of timber weatherboards; or
 - 3.6.7 solid plaster or glazing; or
 - 3.6.8 such other materials as may be approved by Lincoln Developments.
- 3.7 All roofing materials on any Building are to be one of the following:
 - 3.7.1 tiles (including clay, ceramic, concrete, decramastic, pre-coated or pressed steel);
or
 - 3.7.2 steel (comprising pre-painted, long-run pressed or rolled steel); or
 - 3.7.3 shingles; or
 - 3.7.4 slate; or
 - 3.7.5 membrane roofing; or
 - 3.7.6 such other roofing material as may be approved by Lincoln Developments.
- 3.8 No reflective or visually obtrusive roof, wall or joinery materials, colours or mirror glass may be used for any Building.

- 3.9 Only one Dwelling may be erected on any Lot.
- 3.10 The Lot Owner will not construct, erect or place or permit to be constructed, erected or placed on the Lot:
- 3.10.1 Any Building which uses concrete or treated wooden piles without providing a solid and durable skirting board or other enclosure around the exterior of the Building(s) from ground height to the underside of the wall cladding.
 - 3.10.2 Any Building which has an installed open fireplace or dry wood or pellet or similar solid fuel burner (except for clean air approved fires or burners complying with relevant and current environmental standards).
 - 3.10.3 Any Building with an air conditioning unit which is set into or protrudes from the Building(s). Any external air conditioning units must be properly screened and noise proofed to ensure they are not a nuisance to neighbours.
 - 3.10.4 Any driveways, driveway crossings and entranceway locations and plans and specifications which have not been approved by Lincoln Developments prior to construction. For the avoidance of doubt, it is the responsibility of the Lot Owner to construct driveways, driveway crossings and entranceways.
 - 3.10.5 Any Building other than those designed for residential use and associated garage(s). The Developer and its designated representative(s) and/or builders, as approved by the Developer, may use residential Buildings as model homes, Show Homes or offices, provided such use is in furtherance of the primary purpose of construction and sale of Lots and Dwellings within the Flemington development.
 - 3.10.6 Any Building that has windows, doors or skylights so placed that the privacy or any neighbouring Dwelling is unreasonably affected.
 - 3.10.7 Any caravan, hut, garage or shed for any kind of permanent or temporary residential use, unless it is:
 - 3.10.7.1 a once prefabricated (but not pre-used) garden shed which is adequately screened from neighbouring properties may be placed on the Property; or
 - 3.10.7.2 a builder's shed(s) or other similar building required during the construction of any Dwelling. The builder's shed or other similar building may be placed on the Property during such construction, but must be removed on completion of such construction.

- 3.11 Portable gas cylinders or bottles may be used on any Lot or in any Building for any permanent cooking, water heating or domestic heating purposes provided they are hidden from view from the road and neighbouring properties at all times.
- 3.12 Diesel, petrol, oil or gas tanks which have a capacity of over 100 litres are prohibited on any Lot or within any Building unless approved by the Developer.
- 3.13 All construction works including:
- 3.13.1 the reconstruction of a vehicle crossing required to complete a Dwelling on any Lot; and
 - 3.13.2 any required painting or staining of exterior surfaces
- will be completed within a period of fifteen (15) months from the date of commencement of construction work. Earthworks and landscaping works associated with such development, including lawns, drives, paths and fencing, are to be completed within three (3) months of Building completion.
- 3.14 During construction the Lot Owner will not allow a period of more than three (3) months to lapse without substantial work being carried out once such work has commenced.
- 3.15 No Building on any Lot may be occupied as a residence in any way until:
- 3.15.1 the Code Compliance Certificate(s) has been issued by a building consent authority in accordance with the Building Act 2004;
 - 3.15.2 all Buildings on the Lot have been completed in accordance with all the terms of these Covenants;
 - 3.15.3 all exterior work, and decoration as approved by Lincoln Developments, are completely installed;
 - 3.15.4 all driveways, paths, fences and other Landscape Features are completed in accordance with these Covenants; and
 - 3.15.5 all unpaved areas viewable from the street are properly grassed and/or landscaped according to the approved plans.
- 3.16 No use may be made of adjacent land, footpaths or recreation areas abutting any Lot for access (other than the access approved by the Developer) or for dumping of rubbish. The Lot Owner (and its contractors) will reinstate, replace and be responsible for all costs arising from damage to the landscaping, roads, footpaths, kerbing, berms, concrete or other structures arising directly or indirectly from any access or use. Prior to the commencement of construction of any Building on any Lot the Lot Owner will construct a suitable ramp to

the satisfaction of Lincoln Developments across the berm and footpath to protect these areas from damage by vehicular traffic accessing the Lot during construction works.

- 3.17 The Lot Owner will not reconstruct, alter, add to, renovate or refurbish any Building, structure or other improvement on the Property which results in such Building or structure no longer being of a standard commensurate with the exterior appearance and architectural standard of the properties in the Flemington development; or being in breach of these Covenants;
- 3.18 The Lot Owner, will not construct, erect or place, or permit to be constructed, erected or placed on the Lot any Dwelling which is to be used as a residence that:
- 3.18.1 has a floor area of less than 120 metres square (including garage under one roof) on any Lot between 400 and 450 square metres in area; or
 - 3.18.2 has a floor area of less than 140 metres square (including garage under one roof) on any Lot between 450 and 550 square metres in area; or
 - 3.18.3 has a floor area of less than 170 square metres (including garage under one roof) on any Lot between 550 and 650 square metres in area; or
 - 3.18.4 has a floor area of less than 200 metres square (including garage under one roof) on any Lot over 650 square metres in area,

unless prior written approval of a smaller floor area has been obtained by the Lot Owner from Lincoln Developments in accordance with clause 3.1 of these Covenants and the Property will comply with these Covenants in all other respects.

4. Landscape Features

- 4.1 Construction of any Landscape Features on any Lot is not to commence until the plans and specifications have been approved by the Developer.
- 4.2 No Landscape Feature may exceed a height of 2 metres above the original subdivision ground level of a Lot without the express written approval of the Developer.
- 4.3 Clotheslines and letter boxes must be unobtrusive and of good quality in terms of design and location. The positioning of any clothesline will be located as specified by the Developer with appropriate screening to ensure it will not be highly visible from the street or the reserve. The positioning of any letterbox will be adjacent to but not on any road reserve.
- 4.4 All attachments to any Buildings or structures on any Lot (including television antenna, solar water heating panels, satellite dish, mast, garden statues, fountains or any other ornamental decoration or similar garden or Landscape Feature) must be approved by the Developer in writing.

4.5 The construction of and if approved, the location of swimming pools (including fencing and screening on any Lot) must be approved by the Developer in writing.

4.6 No tree, shrub or other plant of any variety whatsoever is to be grown on any Lot so that it unreasonably interferes with the sunlight to or view from any Lot.

5. Maintenance

5.1 The Lot Owner will not:

5.1.1 Allow any Building or structure on the Property to become dilapidated or to fall into disrepair or to cause any damage or harm to any other neighbouring properties.

5.1.2 Allow any nuisance or unreasonable disturbance to be caused to any Lot Owner or occupier of neighbouring properties.

5.1.3 Move, damage or remove any survey pegs or markers on the Property and in the event of any breach of this restriction, the Lot Owner will, at their own cost, have such pegs or markers replaced by a registered surveyor.

5.1.4 Allow the Property to become littered, overgrown or unsightly to the intent that the Property is to be maintained in a neat and tidy condition, nor allow any noxious weeds (including gorse, blackberry or ragwort) to grow on the Property.

5.1.5 Except when construction works are in progress, allow any trade vehicle, trade equipment or materials, debris, rubbish or any vehicle of any unsightly nature to be brought onto or remain on the Property unless the same is adequately garaged or screened so as not to be visible to or to cause any offence to neighbouring properties and to preserve the amenity of the Flemington development.

6. Activity/Use of Property:

6.1 Subject to Clause 3.10.5, the Lot Owner must not use the Property for any primary purpose other than for residential occupation. Ancillary purposes are governed by the planning provisions under any regulatory land use controls applicable from time to time.

6.2 In the event Lincoln Developments authorises a dwelling on a Lot to be built and utilised as a Show Home by a builder in accordance with clause 3.10.5, then the following will apply:

6.2.1 Clause 6.1 above will not apply for the duration of the time the Property is so used as a Show Home;

- 6.2.2 If the Lot Owner has approval from the Developer in accordance with clauses 3.10.5 and 6.2 of these Covenants then:
- 6.2.2.1 the Lot Owner may use the Property solely for the purposes of a Show Home;
 - 6.2.2.2 residential occupation of the Property will not be permitted; and
 - 6.2.2.3 the Lot Owner will not be entitled to sell the Property as a vacant Lot.
- 6.2.3 Notwithstanding clauses 3.13 of these Covenants, the Lot Owner will:
- 6.2.3.1 Commence construction of the Show Home within one (1) month of receiving possession of the Property; and
 - 6.2.3.2 Complete construction of the Show Home including landscaping and fencing, within nine (9) months of commencing construction.
- 6.2.4 The Lot Owner will ensure that at least one sales representative of the Lot Owner's building company will be on site during the time the Property is available for inspection in accordance with clause 6.2.6 below.
- 6.2.5 The Show Home will remain unoccupied and be maintained, landscaped and furnished to the highest standard by the Lot Owner, in accordance with these Land Covenants, and to the reasonable satisfaction of Lincoln Developments.
- 6.2.6 The Lot Owner will not make the Show Home available for inspection:
- 6.2.6.1 Mondays to Sundays before midday and after 5pm;
 - 6.2.6.2 Christmas Day, Boxing Day, Good Friday and Easter Sunday; and
 - 6.2.6.3 On settlement date of the neighbouring properties.
- 6.2.7 The Property may be utilised as a Show Home for a minimum period of eighteen (18) months from the date the Show Home is completed in accordance with clause 6.2.3.2 of these Covenants ("Eighteen Month Timeframe").
- 6.2.8 On the expiry of the Eighteen Month Timeframe the Lot Owner will cease to use the Property as a Show Home and may sell it to a third party for residential use.
- 6.2.9 Notwithstanding clause 6.2.8, on the expiry of the Eighteen Month Timeframe the Lot Owner may apply for a three (3) month extension to continue to use the Property as a Show Home in accordance with the terms of these Covenants ("Three Month Extension"). If the Three Month Extension is granted by Lincoln Developments, the Lot Owner may continue to apply for further Three Month

Extensions until such time as Lincoln Developments refuses to grant another Three Month Extension.

- 6.2.10 On the expiry of the Eighteen Month Timeframe, or the Three Month Extension, whichever is the later, the Lot Owner may not remove the Show Home from the Property, unless the Lot Owner has obtained the prior written approval of Lincoln Developments to do so.
- 6.2.11 The Lot Owner may erect one large sign on the Property on the following terms:
- 6.2.11.1 It must be for the sole purpose of identifying it as the Lot Owner's Show Home;
 - 6.2.11.2 The Lot Owner must have obtained the prior written approval of Lincoln Developments as to its size, shape and design;
 - 6.2.11.3 It will be as unobtrusive as possible; and
 - 6.2.11.4 It will be removed from any areas where it is visible from the street outside of the viewing times in clause 6.2.6.
- 6.3 No Lot is to be used for any form of temporary residential purposes either by construction of temporary Buildings or by the placement of caravans, modular homes, motor homes, house trailers, buses, tractors, huts, tents and/or vehicles able to be used for human habitation.
- 6.4 The Lot Owner must not store, or allow to be stored, any caravan, motor home, trailer, recreational vehicle, trade vehicle or other equipment or machinery in front of the Dwelling or within five (5) metres of the Property boundary or any road, unless the same is garaged or adequately screened so as to preserve the amenities and standard of the Flemington development. Short-term parking by its visitors and trade people of vehicles in daily use will not be in breach of this clause.
- 6.5 The Lot Owner must not allow any livestock, animals or beehives to be brought onto or kept on the Property other than normal household domestic pets (and the term 'household domestic pets' does not include livestock such as pigs, goats, horses, sheep, chickens, roosters, pigeons, peacocks or any animal which may cause a nuisance to owners or occupiers of other properties in the Flemington development) and in particular, the Lot Owner will not keep or allow be kept on the Property any dog which is generally recognised as being an aggressive breed and which may cause a risk to owners or occupiers of other properties in the Flemington development (e.g. Pit-Bull Terrier, Japanese Tosa, Dogo Argentino, Rottweiler and Doberman Pincher).

- 6.6 The Lot Owner must not carry out nor permit to be carried out on the Property any activity which does not comply with the Selwyn District Council permitted activities in a Residential Zone.
- 6.7 The Lot Owner must not use or permit the use of the Property for institutional residential purposes or as a hostel, lodge, boarding house or brothel. For the purposes of this clause "institutional residential purposes" includes but is not limited to the use of the Property for housing purposes by central or local government agencies or public or private health centre agencies, public or private care providers or public or private educational provider.
- 6.8 No Lot is to be sold, leased, transferred, assigned or otherwise disposed of to any Governmental agency or Territorial Authority for the purposes of public or institutional housing without the prior written approval of the Developer.
- 6.9 No inflammable, explosive or noxious materials are to be stored or used on any Lot or in any Building. The Lot Owner must not allow any offensive activity to be conducted or permitted to exist upon any Lot, or in any Building, nor will anything be done or permitted to exist on any Lot, or in any Building that may be or may become an annoyance or private or public nuisance. An annoyance or private or public nuisance includes loud sounds or noises or offensive smells.
- 6.10 No Lot may be further subdivided nor will any further easements be agreed to, granted or registered on any Lot, including rights of way.
- 7. Fencing**
- 7.1 The Lot Owner will be bound by a fencing covenant within the meaning of section 2 of the Fencing Act 1978 in that neither the Developer nor the Selwyn District Council is liable to erect or maintain to pay for or contribute towards the costs of any dividing fence or boundary fence or part thereof between the Property and any adjoining land owned by the Developer or the Selwyn District Council.
- 7.2 Any front boundary fence situated within five (5) metres of a legal road boundary will be limited to a maximum height of one (1) metre.
- 7.3 Notwithstanding clause 7.2, where any Lot has two adjoining road boundaries, the Lot Owner will construct a landscaped fence along one of those boundaries to a maximum height of 1.8 metres provided the adjoining road boundary fence complies with clause 7.2 above.
- 7.4 The height of any fence which is situated more than five (5) metres from the boundary of a legal road will be a landscaped fence and at a height and style to be determined following consultation between the Developer and Lot Owner but subject always to the Developer's right of approval.

- 7.5 Unless the Developer approves or requires otherwise, any fence other than those in clauses 7.2 to 7.4 above, will be constructed to a height of 1.8 metres and be made of posts, rails and timber palings stained in wood colours or such other colour or colours and alternative materials as may be approved by the Developer.
- 7.6 All fences constructed will comply with the following:
- 7.6.1 The palings side of fences are to face towards to the north side of properties.
- 7.6.2 The railings side of fences will face towards the south side of properties.
- 7.7 Subject to Consent Notice, any fence erected within five (5) metres of any reserve and parallel or generally parallel to that boundary will not exceed one (1) metre in height except where a fence or other screening structure is over one (1) metre in height, then the whole of that structure will be at least 50% visually transparent. No such fence or screening structure will exceed a height of 1.8 metres. Note that for the purposes of this condition a fence or other screening structure is not the exterior wall of a building or accessory building. [Note this may change depending on the terms of the Resource Consent].
- 7.8 Any Lot which has the use of a right of way over another Lot will be required to contribute towards the cost of a boundary fence along the right of way in equal shares with other Lot Owners who share the right of way (if any) and any Lot Owners who owns the Lot over which the right of way lies.
8. **Medium Density Sections**
- 8.1 This Clause 8 will only apply to Medium Density Sections.
- 8.2 The Lot Owner will not construct, erect or place or permit to be constructed, erected or placed on any Medium Density Sections, any Dwelling, Building or other structure that exceeds one (1) storey, and 5.5 metres in height.
9. **General**
- 9.1 No Grantor will oppose, object to, frustrate, or take any action, or encourage or cause others to oppose, object to, frustrate or take action that might in any way prevent or hinder the Developer from progressing or completing the Flemington development or the adjoining stages. Such Covenant extends to and includes (without limitation) development planning, zone changes, resource consents for land uses and subdivisions, Consent Authority or Environment Court applications, Territorial Authority Building Consent matters, or any other necessary consent process involving the Developer.

- 9.2 Any difference or dispute between any parties regarding the interpretation of these Covenants or as conferred by such Covenants will be referred at the request of either party to the arbitration of a single arbitrator on the following terms:
- 9.2.1 The arbitrator is to be jointly agreed upon the by the parties.
- 9.2.2 If the parties fail to agree upon an arbitrator within seven (7) days of notice from one party to the other, then the arbitrator shall be appointed by the President of the Canterbury-Westland branch of the New Zealand Law Society for the time being and such nomination will bind the parties.
- 9.2.3 The reference to a single arbitration is the same reference under the Arbitration Act 1996.
- 9.2.4 The arbitrator's decision will be final and binding on both parties and may include an order for costs, an order for enforcement and interest on moneys payable.
- 9.2.5 The parties will not resort to litigation except for the purposes of enforcing this clause.
- 9.3 The Developer will not be liable because of any action it takes or fails to take or for any default in any Building, structure or improvement erected on any of the properties in the Flemington development or for any breach of these Covenants or otherwise and the Lot Owners will indemnify and keep indemnified the Developer and its legal successors (other than successors in title after registration of a transfer from the Developer to a subsequent owner) from any costs, claims, suits, demands or liabilities arising out of or under these Covenants including non-observance of these Covenants.
- 9.4 If any of the restrictions contained in these Covenants are deemed to be unenforceable or void for any reason, then that particular provision will be deemed to be deleted from the terms of these Covenants to the intent that the balance of the Covenants will remain unaffected and enforceable.
- 9.5 The Lot Owner acknowledges that different stages of the Flemington development by the Developer may include Covenants which differ from these Covenants.
- 10. Creation of Land Covenant**
- 10.1 The Lot Owner for itself and its successors in title covenant and agree with the Developer for the Benefiting Lots that the Lot Owner will at all times observe and perform all these Covenants to the intent that each of the Covenants will enure for the benefit of and be appurtenant to each and all of the Benefiting Lots and each and all of the Lot Owners provided that the Lot Owner will be liable only for breaches of these Covenants which occur whilst the Lot Owner is the registered proprietor of the Property or any part of the Property.

- 10.2 If there should be any breach or non-observance on the Lot Owner's part of any of these Covenants and without prejudice to any other liability which the Lot Owner may have to the Developer and any person or persons having the benefit of those Covenants, the Lot Owner will, upon written demand be made by the Developer or any of the Lot Owners:
- 10.2.1 pay to the person making such demand as liquidated damages the sum of \$100.00 per day for any such breach or non-observance of these Covenants contained in this Instrument continues after the date upon which written demand has been made; or
 - 10.2.2 repaint any Dwelling, Building, structure or improvement repaired or completed in breach of these Covenants; or
 - 10.2.3 remove or cause to be removed from the Property any Dwelling, garage, Building, fence or other structure erected or placed on the Property in breach for non-observance of the above Covenants; or
 - 10.2.4 replace any building materials used in breach of these Covenants.