

**Form 26****Covenant Instrument to note land covenant**

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

**Covenantor****CABRA DEVELOPMENTS LIMITED****Covenantee****CABRA 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**  
*required**Continue in additional Annexure Schedule, if*

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenant	See First Schedule Annexure A		

**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 A].

*Insert instrument type*

**Land Covenant**

*Continue in additional Annexure Schedule, if required*

## BACKGROUND

- A. The Covenantor is the registered proprietor of the Covenanting Lots and the Benefiting Lots.
- B. The Covenanting Lots and the Benefiting Lots are part of a high quality residential development ("Development"). The Development consists of a number of lots to be held in separate titles.
- C. The Covenantor has agreed to create the covenants as set out herein in favour of the Covenantee in order to ensure that the character of the Development as a high quality residential development is maintained, preserved and enhanced.

## COVENANTS

### 1.0 Definitions

In this instrument, the following definitions shall apply, unless the context otherwise requires:

**Cabra** means Cabra Developments Limited but where Cabra has been dissolved, wound up, deregistered or otherwise passed out of existence any approval or consent required from Cabra shall mean approval or consent by any party previously appointed and/or nominated in writing by Cabra for this purpose.

**Practical Completion** means that a dwelling house is substantially complete so that it is capable of being occupied.

**Relevant Authority** means the local or regional authorities with jurisdiction over the Development

**Lots** means Lots [x] on DP [x].

### 2. Agreement

- 2.1 The Covenantor, for itself so as to bind the Covenanting Lots in the First Schedule ("Covenanting Lots" and each one of them a "Covenanting Lot"), covenants and agrees with the Covenantee (for the benefit of the Covenantee and the registered proprietor from time to time of the Benefiting Lots) that the Covenantor shall always observe and perform all of the covenants set out in Clause 3.0 of this instrument until the 1<sup>st</sup> of December 2030 at which time the covenants shall cease to apply to the end and intent that each of the covenants shall enure for the benefit of the registered proprietor from time to time of the Benefiting Lots until the 1<sup>st</sup> of December 2030.
- 2.2 The covenants in this instrument shall be enforceable by the Covenantee (and the Covenantee's assigns, transferees or successors) against the Covenantor as owner of the Covenanting Lots and his, her or its successors in title, transferees, assigns and occupiers for the time being of the Covenanting Lots.
- 2.3 No delay or failure by the Covenantee to enforce performance of any covenants set out in this instrument and no indulgence granted to the Covenantor by the Covenantee shall prejudice the right of the Covenantee to enforce any of the covenants or provisions of this instrument.
- 2.4 The Covenantor shall bear any costs which may be incurred by the Covenantee as a result of any default by the Covenantor under this instrument.
- 2.5 The Covenantee shall not be required to nor obliged to enforce all or any of the covenants and the Covenantor shall be liable only in respect of breaches of the covenants which occur while the Covenantor is registered as proprietor of the Covenanting Lot.
- 2.6 If there is any breach or non observance of the covenants set out in this Instrument then the Covenantor must (without prejudice to any other liability the Covenantor may have to any person having the benefit of the covenants):
  - (a) remove or cause to be removed from the Covenanting Lot any dwelling house, garage, carport, building or other structure (or any part of it) erected or placed on the Covenanting Lot in breach or non observance of the covenants;
  - (b) replace any building materials used in breach or non observance of the covenants;
  - (c) cease any activity in breach or non-observance of the covenants;
  - (d) otherwise remedy any breach or non-observance of the covenants.

**3.0 The Covenantor shall:**

3.1 Not commence any construction, development, earthworks or fill on any Covenanting Lot without having first obtained the written approval of Cabra to the plans and specifications and the exterior design and appearance of the proposed building and any proposed earthworks or fill and once approval is obtained, make any change to the plans and specifications or the exterior design and appearance of the proposed building or proposed earthworks or fill. As a guide, the plans and specifications must generally be in accordance with the design guidelines supplied by Cabra to the Covenantor upon request and must show some individual aesthetic qualities in the sole and unfettered opinion of Cabra, no simple brick and tile dwellings with a hip roof facing the street will be approved.

3.2 Not erect or place or permit to be erected or placed on any Covenanting Lot anything other than one dwelling house having closed in habitable living space (exclusive of carport or garage) with a floor area of at least 100m<sup>2</sup> and which must also have attached, closed in tandem garaging or such other garaging that is approved in writing by Cabra at its discretion.

3.3 Follow the guideline that any dwelling house on any Covenanting Lot should be designed so as to fit with the existing land contours so that limited earthworks (cutting or filling) is required.

3.4 Not use or permit any Covenanting Lot to be used for:

- (a) any trading or commercial purpose other than that permitted by the local authority and which has the prior written consent of Cabra which may be withheld at its absolute discretion; or
- (b) display or showhomes except with the prior written consent of Cabra which may be withheld at its absolute discretion or which may be granted subject to conditions imposed by Cabra at its absolute discretion.

3.5 Not allow the duration of any building construction works on any Covenanting Lot to extend beyond the period of 12 months from the date of commencement of such works.

3.6 Not incorporate into the design of any dwelling house any ancillary accommodation in the nature of a granny flat or self-contained flat unless approved in writing by Cabra at its discretion.

3.7 Not use or permit or suffer to be used on any building on any Covenanting Lot any building material other than brick, stone, concrete block, insulclad, masonry, stucco, solid plaster, linea weatherboard or approved timber weatherboard (subject to clause 3.8 below) for any outer wall facing except with the written consent of Cabra which may be withheld at its discretion.

3.8 Not commence the construction of the exterior cladding of the dwelling on the Covenanting Lot until the Covenantor has received written approval from Cabra as to the amount of coverage of any single type of exterior cladding allowable on that part of the said dwelling which faces the street from which access to the property is obtained. As a guide, if the Covenantor chooses to utilise bricks for the construction of the exterior cladding which faces the street from which access to the property is obtained it is unlikely that approval for 100% coverage (excluding windows and doors) will be granted by Cabra, however in respect of all other types of exterior cladding Cabra may in its sole and unfettered discretion approve 100% coverage (excluding windows and doors).

3.9 Not use or place or permit to be erected, transported or placed on any Covenanting Lot any second-hand home of any type or description.

3.10 Not pave driveways, carparking spaces, footpaths and patios on a Covenanting Lot with plain concrete. As a guide the following impervious surfaces will be acceptable:

- (a) exposed aggregate concrete or coloured concrete utilising a minimum of 6kg of black oxide per cubic metre of concrete, for the driveway and any carparking spaces;
- (b) exposed aggregate concrete, coloured concrete utilising a minimum of 6kg of black oxide per cubic metre of concrete, exposed aggregate pavers or coloured concrete pavers, for patios and footpaths.
- (c) tiled patios.

3.11 Not erect or bring on to or allow to remain on any Covenanting Lot (except during the time of construction of the dwelling house) or on any road or common access lot of the Development any temporary building, container, garden shed, caravan, trade vehicle or other equipment or materials or machinery unless garaged or adequately screened so as not to be highly visible from the road, any other Covenanting Lot and any common access lot so as to preserve the amenities of the development and also to prevent noise likely to cause offence to residents in the subdivision provided however that the Covenantor may erect one garden shed having a maximum floor area of 10m<sup>2</sup> which is clad in materials approved by Cabra and erected in a location approved by Cabra which approvals may be withheld at Cabra's absolute discretion.

3.12 Not cause or allow any recreational or commercial vehicles or boats to be regularly located either on the street or footpath nor on a common access lot nor that area between the front boundary of any Covenanting Lot and the dwelling unless screened so as not to be highly visible from the road, any other Covenanting Lot and any common access lot. No caravan or motorhome shall be placed on any Covenanting Lot to be used for residential use other than for short term occupation of visitors.

3.13 Not erect or permit or suffer to be erected or placed upon any Covenanting Lot any building where the basement (including but not limited to basement garage) is not fully enclosed to the reasonable satisfaction of Cabra.

3.14 Not erect or permit or suffer to be erected or placed upon any Covenanting Lot any dwelling which has a single square or rectangle footprint.

3.15 Not allow any grass or weeds on any Covenanting Lot to grow to a height greater than 150mm and if the Covenantor defaults in so doing, Cabra may take whatever action it considers necessary to remedy the default at the expense of the Covenantor and if the Covenantor fails to pay Cabra upon demand for all costs so incurred Cabra may recover the cost thereof from the Covenantor as liquidated damages in any Court of competent jurisdiction.

3.16 Not permit any dwelling house on any Covenanting Lot to be occupied for more than three calendar months unless all driveways, paths and fences are completed in permanent materials and all unpaved areas are properly grassed or landscaped.

3.17 Not allow any Covenanting Lot to remain unlandscaped without lawns and shrubs for a period greater than three calendar months following practical completion of a dwelling house on such Covenanting Lot. The Covenantor will ensure that there are at least 40 trees or shrubs planted between the dwelling and the front boundary and that a minimum of 5 trees or shrubs of at least 2 metres in height are included within the total site landscaping on the Covenanting Lot, unless an alternative landscaping plan is approved by Cabra in writing which approval may be withheld at Cabra's absolute discretion.

3.18 Not carry out any earthworks (either cutting or filling) in excess of 1 metre height or depth within 1 metre of any adjoining lot boundary unless such works have been consented to in writing by Cabra which may be withheld at its absolute discretion.

3.19 Ensure that in respect of any retaining wall on a Covenanting Lot (at a height of 600mm or more) which faces the road or another Covenanting Lot, the following landscaping and fencing requirements are undertaken:

- (a) Shrubs are planted at a maximum of 1.2 metre intervals along the front of the retaining wall; and
- (b) Fences first approved in writing by Cabra may be attached to the top of the retaining wall.
- (c) Any fence constructed between the retaining wall and the dwelling is set back at least 0.5metre from the top of the retaining wall, is no higher than 1.2 metres and is 50% visually permeable; and
- (d) If a fence is constructed between the retaining wall and the dwelling then shrubs are planted at a maximum of 1.2 metre intervals along the fence boundary between the fence and the retaining wall.

3.20 Not permit or suffer any retaining wall on any Covenanting Lot which faces the road or another Covenanting Lot, to be constructed in materials other than plastered concrete, concrete block, stone or flat faced keystone concrete masonry except with the written consent of Cabra which may be withheld at its discretion.

3.21 Not undertake any construction works on the Covenanting Lot without at all times complying with the following conditions and restrictions:

- (a) To keep the Covenanting Lot in a tidy orderly and safe condition throughout the construction period.
- (b) Maintain the Covenanting Lot at all times during the course of construction free from rubbish and excessive vegetation.
- (c) Not store or dump any construction materials or debris on any adjoining lot or cross any adjoining lot for goods or vehicle access unless consent has been granted by Cabra in writing and by the adjoining lot owner.
- (d) Not allow major site works to commence unless a vehicle crossing and access drive for construction vehicles has been formed in metal aggregate or an alternative material as Cabra may approve at their discretion.
- (e) Not allow rubbish to be placed or escape onto adjoining or nearby lots, any common access lot or roads.
- (f) Not deposit or allow any dirt, gravel, clay or other substance to be left on any road or common access lot in the vicinity of the Covenanting Lot.
- (g) To contain on the lot any silt generated during the construction of the dwelling house.
- (h) Not to damage or remove any street trees planted by Cabra on or adjacent to the Covenanting Lot. The Covenantor will be responsible for any damage caused to the trees by themselves or their contractors, employees or any other invitee.

3.22 Not construct erect or place or permit to be constructed, erected or placed any water storage tank on the Covenanting Lot unless it is either:

- (a) buried; or
- (b) screened by fencing and/or planting to the satisfaction of Cabra in its sole and unfettered discretion.

3.23 Not erect or place or permit to be erected or placed on any Covenanted Lot any clothes line in the front yard of that Covenanted Lot that is substantially visible from the road or any common access lot. As a guide clothes lines or service courts should be adequately screened by sufficient planting and/or fencing to ensure they are not entirely visible from the road, any other Covenanted Lot, common access lot and public areas.

3.24 Ensure that the final colours of the exterior cladding and roof of the dwelling house on the Covenanted Lot shall be neutral or muted tones sympathetic with the surrounding environment. Very vibrant colours including but not limited to yellow, orange or bright blue will not generally be approved.

3.25 Not allow to remain on any walls, fence, structure or building on the Covenanted Lot any graffiti or similar disfiguring for more than five working days from the date that such graffiti or disfiguring occurred.

3.26 Locate any attachments to the dwelling house and buildings on the Covenanted Lot (including but not necessarily limited to television antenna and satellite dishes) so they are not highly visible from the road, any other Covenanted Lot or any common access lot.

3.27 Ensure that; any Covenanted Lot that has been landscaped or planted by Cabra and in respect of trees or shrubs situated on the berms adjacent to the Covenanted Lot ("planted areas"):

- (a) The Covenantor maintains any existing vegetation on the planted areas;
- (b) If any trees or shrubs forming part of the planted areas are damaged or die, the Covenantor will replace the same with similar species;
- (c) any planted areas can only be removed or replaced with alternative planting if Cabra's written approval has been obtained.

3.28 Ensure that any fence erected on a Covenanted Lot between the dwelling house and a public road:

- (a) does not exceed a height of 1.2 metres unless otherwise approved in writing by Cabra at its sole discretion;
- (b) is erected at least 0.5metre inside the front boundary of the Covenanted Lot unless otherwise approved in writing by Cabra at its sole discretion;
- (c) has planting between such fence and the boundary of the Covenanted Lot spaced at a maximum of 1.2 metre intervals unless otherwise approved in writing by Cabra at its sole discretion;
- (d) is at a minimum 50% visually permeable unless otherwise approved in writing by Cabra at its sole discretion;

3.29 Ensure that any timber fencing on the Covenanted Lot is either stained or painted in neutral colours, complimentary to the surrounding landscape.

3.30 **Bond**  
Upon any transfer of a Covenanted Lot from Cabra to the Covenantor:

- (a) the Covenantor will pay a bond in the sum of two thousand dollars ("the Bond") to Cabra to secure performance of the Construction and Landscaping Covenants set out at clauses 3.1-3.3, 3.5-3.10, 3.13, 3.14, 3.16–3.24, 3.26, 3.28, 3.29 of this instrument ("the Construction and Landscaping Covenants"); and
- (b) a base fee in the sum of five hundred dollars (inclusive of GST) will be immediately deducted from the Bond and is payable to Cabra as a compliance monitoring fee; and
- (c) the balance of the Bond, after deduction of the compliance monitoring fee ("the Bond Balance") will be held by Cabra until the date being three months after Practical Completion of the Dwelling on the Covenanted Lot or the date that the Construction and Landscaping Covenants have been complied with to the satisfaction of Cabra, whichever is the earlier ("the Bond Expiry Date").

3.31 The Bond Balance will be returned to the Covenantor as at the Bond Expiry Date provided however if there has been any non-compliance of any of the Covenants in this instrument, Cabra may deduct from the Bond Balance an amount which in Cabra's unfettered opinion compensates Cabra for costs incurred including Cabra's own time in dealing with such non-compliance. Clauses 3.30 – 3.31 do not in any way limit the Covenantor's liability pursuant to clauses 5.1 – 5.2 of this instrument.

3.32 The Covenantor acknowledges that the Bond Balance (if any) will automatically transfer to the registered proprietor of the Covenanted Lot upon any transfer of the Covenanted Lot by the Covenantor.

**4.0 Fencing**

4.1 Cabra shall not be required nor shall it be called upon to repair or contribute towards the cost of erection or repair of any dividing or boundary fence between any of the Lots and any contiguous land owned by Cabra, but this proviso shall not ensure for the benefit of any subsequent registered proprietor of such contiguous land.

## 5.0 Indemnity and Consequences of Breach

5.1 The Covenantor covenants with the Covenantee that it will at all times save harmless and keep indemnified the Covenantee from all proceedings, costs, claims and demands in respect of breaches by the Covenantor of the covenants on its part contained or implied herein, and also the enforcement of such covenants by the Covenantee.

5.2 The Covenantor acknowledges that the value of the Benefiting Lot will be affected by any non-compliance with or breach of any of the covenants contained or implied herein and the Covenantor covenants for the benefit of the Benefiting Lot and of each registered proprietor of the Benefiting Lot from time to time that should the Covenantor fail to comply with, observe, perform or complete any of the covenants contained or implied herein then without prejudice to any other liability the Covenantor may have to the Covenantee (which includes any other person or body having the benefit of such covenants) the Covenantor shall:

- (a) immediately permanently remove or cause to be permanently removed from the Lot upon which the breach or failure has occurred any offending improvements or structure or other cause of any breach or non-observance of such covenants; and otherwise forthwith remedy the breach or non-observance thereof; and
- (b) if the breach or failure is not remedied within 60 days of the date of notice of such breach or failure then the Covenantee (together with its agents, employees or contractors) shall be entitled to enter onto the Covenanting Lot to arrange for rectification of the Covenantor's breach or failure at the cost of the Covenantor.

## 6.0 General

6.1 The covenants set out in clauses 3.1 to 3.32 of this Instrument shall run with each Covenanting Lot set out in the First Schedule for the benefit of all the Benefiting Lots described in the First Schedule TO THE INTENT that the Covenantor and Covenantee shall continue to be bound until the earlier of the 1<sup>st</sup> of December 2030 or the date upon which they respectively cease to hold a fee simple estate in a Covenanting Lot as the case may be but without prejudice to any liability for any breach of covenant under this Instrument arising before such date.

### FIRST SCHEDULE

Covenanting Lots	Benefiting Lots
Lot [x] DP [x]	All of the Lots other than Lot [x] DP [x]
Lot [x] DP [x]	All of the Lots other than Lot [x] DP [x]