

**SCHEDULE B**

**Form B**

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**Easement instrument to grant easement or *profit à prendre*, or create land covenant**

(Sections 90A and 90F Land Transfer Act 1952)

**Grantor**

**CABRA DEVELOPMENTS LIMITED**

**Grantee**

**CABRA 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) à 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; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Land Covenant	See First Schedule Annexure A		

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

*Delete phrases in [ ] and insert memorandum number as required; continue in additional Annexure Schedule, if 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 of the Property Law Act 2007~~

The implied rights and powers are hereby ~~[varied] [negated] [added to] or [substituted]~~ by:

~~[Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952]~~

~~[the provisions set out in Annexure Schedule ]~~

**Covenant provisions**

*Delete phrases in [ ] and insert Memorandum number as require; continue in additional Annexure Schedule, if 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]~~

~~[Annexure Schedule A ]~~

*Insert instrument type*

Land Covenant

*Continue in additional Annexure Schedule, if required*

## BACKGROUND

- A. The Grantor is the registered proprietor of the Covenancing Lots and the Benefiting Lots.
- B. The Covenancing 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 Grantor has agreed to create the covenants as set out herein in favour of the Grantee 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.

**Lots** means Lots 1-7 DP TBA

### 2. Agreement

- 2.1 The Grantor, for itself so as to bind the Covenancing Lots in the First Schedule ("Covenancing Lots" and each one of them a "Covenancing Lot"), covenants and agrees with the Grantee (for the benefit of the Grantee and the registered proprietor from time to time of the Benefiting Lots) that the Grantor 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 2028 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 2028.
- 2.2 The covenants in this instrument shall be enforceable by the Grantee (and the Grantee's assigns, transferees or successors) against the Grantor as owner of the Covenancing Lots and his, her or its successors in title, transferees, assigns and occupiers for the time being of the Covenancing Lots.
- 2.3 No delay or failure by the Grantee to enforce performance of any covenants set out in this instrument and no indulgence granted to the Grantor by the Grantee shall prejudice the right of the Grantee to enforce any of the covenants or provisions of this instrument.
- 2.4 The Grantor shall bear any costs which may be incurred by the Grantee as a result of any default by the Grantor under this instrument.
- 2.5 The Grantee shall not be required to nor obliged to enforce all or any of the covenants and the Grantor shall be liable only in respect of breaches of the covenants which occur while the Grantor is registered as proprietor of the Covenancing Lot.

- 2.6 If there is any breach or non-observance of the covenants set out in this Instrument then the Grantor must (without prejudice to any other liability the Grantor 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 Grantor shall:**

- 3.1 Not commence any construction, development, landscaping, 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 landscaping, 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, landscaping or proposed earthworks or fill. As a guide, the plans and specifications must generally be architecturally attractive and appropriate in the sole and unfettered opinion of Cabra. As a guide gable or mono pitch rooves are preferred. A gable roof pitch should be between 25 and 45 degrees.
- 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 200m<sup>2</sup> and which must also have closed in double car garaging or such other garaging that is approved in writing by Cabra at its discretion. For the purposes of this clause, 'one dwelling house' includes one principal dwelling and one minor dwelling, which may be a separate structure to the principal dwelling.
- 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 18 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 minor dwelling without the prior approval 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 painted / bagged brick, stone, concrete block, masonry, 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 use or place or permit to be erected, transported or placed on any Covenanting Lot any second-hand home of any type or description.
- 3.9 Drive ways can be paved in concrete, hot mix or alternatives approved by Cabra.
- 3.10 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, right of way, reserve or public walkway 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 any Road, Right of Way or any other Covenanting Lot so as to preserve the amenities of the development

and also to prevent noise likely to cause offence to residents in the Development provided however that the Grantor may erect one shed 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.

- 3.11 Not cause or allow any recreational or commercial vehicles or boats to be regularly located either on any road or footpath in the Development nor that area between the front boundary of any Covenanting Lot and the dwelling unless screened so as not to be highly visible from Road, Right of Way or any other Covenanting 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.
- 3.12 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.
- 3.13 Ensure pasture areas are regularly grazed or mowed.
- 3.14 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.
- 3.15 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.
- 3.16 Ensure that in respect of any retaining wall on a Covenanting Lot which faces a Road, Right of Way or any other Covenanting Lot, the following landscaping and fencing requirements are undertaken:
  - (a) Fences first approved in writing by Cabra may be attached to the top of the retaining wall. Only fences that are timber post and rail, painted or stained in neutral colours complimentary to the surrounding landscape and at least 50% visually permeable will be approved.
  - (b) 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 unless alternative planting has been approved in writing by Cabra at its sole discretion.
- 3.17 Not permit or suffer any retaining wall on any Covenanting Lot which faces a Road, Right of Way or any other 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.
- 3.18 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 Covenanting Lots, any road, reserve or public walkway.
  - (f) Not deposit or allow any dirt, gravel, clay or other substance to be left on any road reserve or public walkway in the vicinity of the Covenanting Lot.
  - (g) To contain on the Covenanting 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 grantor will be responsible for any damage caused to the trees by themselves or their contractors, employees or any other invitee.
- 3.19 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.
- 3.20 Not erect or place or permit to be erected or placed on any Covenanting Lot any clothes line that is substantially visible from any Road, Right of Way or any other Covenanting 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 any Road, Right of Way or any other Covenanting Lot.
- 3.21 Ensure that the final colours of the exterior cladding and roof of the dwelling house on the Covenanting Lot shall be neutral or muted tones sympathetic with the surrounding environment, provided however vibrant colours including but not limited to yellow, orange or bright blue may be approved at Cabra's sole discretion.
- 3.22 Not allow to remain on any walls, fence, structure or building on the Covenanting Lot any graffiti or similar disfiguring for more than five working days from the date that such graffiti or disfiguring occurred.
- 3.23 Not permit or suffer the use of the Covenanting Lot for any purpose other than predominantly residential use nor use the Covenanting Lot for commercial farming of any description including but not limited to pig farming, poultry farming, catteries, kennels, roosters or goat farming and no donkey or donkeys may be kept on a Covenanting Lot.
- 3.24 Locate any attachments to the dwelling house and buildings on the Covenanting Lot (including but not necessarily limited to television antenna and satellite dishes) so they are not highly visible from any Road, Right of Way or any other Covenanting Lot.
- 3.25 The Grantor shall ensure that in respect of the landscaping on the Covenanting Lot which has been landscaped or planted by Cabra ("Planted Areas"):
- (a) The grantor maintains any existing vegetation; and
  - (b) If any trees or shrubs forming part of the Planted Areas are damaged or die, the Grantor will replace the same with similar species; and
  - (c) The grantor shall not remove any vegetation planted within the Planted Areas.
- 3.26 Ensure that any fence erected on a Covenanting Lot is timber post and rail, seven wire, post and batten or an alternative approved by Cabra. As a guide no close board timber fences will be approved.

#### **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 Grantor covenants with the Grantee that it will at all times save harmless and keep indemnified the Grantee from all proceedings, costs, claims and demands in respect of breaches by the Grantor of the covenants on its part contained or implied herein, and also the enforcement of such covenants by the Grantee.
- 5.2 The Grantor 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 Grantor covenants for the benefit of the Benefiting Lot and of each registered proprietor of the Benefiting Lot from time to time that should the Grantor fail to comply with, observe, perform or complete any of the covenants contained or implied herein then without prejudice to any other liability the Grantor may have to the Grantee (which includes any other person or body having the benefit of such covenants) the Grantor 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 of failure is not remedied within 60 days of the date of notice of such breach or failure then the Grantee (together with its agents, employees or contractors) shall be entitled to enter onto the Covenanting Lot to arrange for rectification of the Grantor's breach or failure at the cost of the Grantor.

**6.0 General**

- 6.1 The covenants set out in clauses 3.1 to 3.26 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 Grantor and Grantee shall continue to be bound until the earlier of the 1<sup>st</sup> of December 2028 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.
- 6.2 The covenants in this instrument will cease to apply to any Covenanting Lot or Benefiting Lot that is intended to vest in the Crown or any Territorial Authority as a road or reserve upon any survey plan relating to such vesting being approved as to survey and being accepted for deposit by Land Information New Zealand.

**FIRST SCHEDULE**

<b>Covenanting Lots</b>	<b>Benefiting Lots</b>
Lot 1 DP TBA	All of the Lots other than Lot 1 DP TBA
Lot 2 DP TBA	All of the Lots other than Lot 2 DP TBA
Lot 3 DP TBA	All of the Lots other than Lot 3 DP TBA
Lot 4 DP TBA	All of the Lots other than Lot 4 DP TBA
Lot 5 DP TBA	All of the Lots other than Lot 5 DP TBA
Lot 6 DP TBA	All of the Lots other than Lot 6 DP TBA
Lot 7 DP TBA	All of the Lots other than Lot 7 DP TBA