

# View Instrument Details



**Instrument No** 12755493.1  
**Status** Registered  
**Date & Time Lodged** 09 June 2023 12:02  
**Lodged By** Hunt, William Patrick  
**Instrument Type** Land Covenant under s116(1)(a) or (b) Land Transfer Act 2017



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Affected Records of Title	Land District
1091659	North Auckland
1091660	North Auckland
1103516	North Auckland
1103517	North Auckland
1103518	North Auckland
1103519	North Auckland

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**Annexure Schedule** Contains 8 Pages.

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## Covenantor Certifications

I certify that I have the authority to act for the Covenantor 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 William Patrick Hunt as Covenantor Representative on 09/06/2023 12:01 PM

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## Covenantee Certifications

I certify that I have the authority to act for the Covenantee 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 William Patrick Hunt as Covenantee Representative on 09/06/2023 12:01 PM

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

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**Form 26**

**Covenant Instrument to note land covenant**

(Section 116(1)(a) & (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 required*

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	See First Schedule Annexure A	See First Schedule Annexure A
Common Access Lot Covenants	See Second Schedule Annexure A	See Second Schedule Annexure A	See Second Schedule Annexure A

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**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.

Form L

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Annexure Schedule A

Page 1 of 6 Pages

*Insert instrument type*

Land Covenant

*Continue in additional Annexure Schedule, if required*

**BACKGROUND**

- A. The Covenantor is the registered proprietor of the Burdened Land and the Benefited Land.
- B. The Burdened Land and the Benefited Land 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.

**Lots** means Lots 1-6 DP 582798

**2. Agreement**

- 2.1 The Covenantor, for itself so as to bind the Burdened Land in the First Schedule, covenants and agrees with the Covenantee (for the benefit of the Covenantee and the registered proprietor from time to time of the Benefited Land) 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 2032 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 Benefited Land until the 1<sup>st</sup> of December 2032.
- 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 Burdened Land and his, her or its successors in title, transferees, assigns and occupiers for the time being of the Burdened Land.
- 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 Burdened Land.

- 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 Burdened Land any dwelling house, garage, carport, building or other structure (or any part of it) erected or placed on the Burdened Land 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, landscaping, earthworks or fill on any Burdened Land 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 30 and 45 degrees.
- 3.2 Not erect or place or permit to be erected or placed on any Burdened Land 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 Burdened Land 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 Burdened Land 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 Burdened Land 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 Burdened Land 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 Burdened Land 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 Burdened Land (except during the time of construction of the dwelling house) or on any road, right of way, common access lot, 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, common access lot or any other Burdened Land 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 Covenantor 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 Burdened Land and the dwelling unless screened so as not to be highly visible from Road, right of way, common access lot or any other Burdened Land. No caravan or motorhome shall be placed on any Burdened Land 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 Burdened Land 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 Burdened Land 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 Burdened Land which faces a Road, right of way, common access lot or any other Burdened Land, 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 Burdened Land which faces a Road, right of way, common access lot or any other Burdened Land, 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 Burdened Land without at all times complying with the following conditions and restrictions:
  - (a) To keep the Burdened Land in a tidy orderly and safe condition throughout the construction period.
  - (b) Maintain the Burdened Land 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 Burdened Land, 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, common access lot or public walkway in the vicinity of the Burdened Land.

- (g) To contain on the Burdened Land 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 Burdened Land. The Covenantor 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 Burdened Land 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 Burdened Land any clothes line that is substantially visible from any Road, right of way, common access lot or any other Burdened Land. 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, common access lot or any other Burdened Land.
- 3.21 Ensure that the final colours of the exterior cladding and roof of the dwelling house on the Burdened Land 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 Burdened Land 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 Burdened Land for any purpose other than predominantly residential use nor use the Burdened Land 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 Burdened Land.
- 3.24 Locate any attachments to the dwelling house and buildings on the Burdened Land (including but not necessarily limited to television antenna and satellite dishes) so they are not highly visible from any Road, right of way, common access lot or any other Burdened Land.
- 3.25 The Covenantor shall ensure that in respect of the landscaping on the Burdened Land which has been landscaped or planted by Cabra ("Planted Areas"):
- (a) The Covenantor maintains any existing vegetation; and
  - (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; and
  - (c) The Covenantor shall not remove any vegetation planted within the Planted Areas.
- 3.26 Ensure that any fence erected on Burdened Land 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.
- 3.27 **Bond**  
Upon any transfer of Burdened Land from Cabra to the Covenantor:
- (a) the Covenantor will pay a bond in the sum of five 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 - 3.9, 3.12, 3.14 - 3.21, 3.24 - 3.26 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 Burdened Land 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").

- 3.28 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 3.27 – 3.29 do not in any way limit the Covenantor's liability in respect of all covenants and pursuant to clauses 7.1 of this instrument.
- 3.29 The Covenantor acknowledges that the Bond Balance (if any) will automatically transfer to the registered proprietor of the Burdened Land upon any transfer of the Burdened Land by the Covenantor.

**4.0 Access Lot**

- 4.1 The Covenantor shall, in respect of the common Access Lot in which the Covenantor owns a share:
- (a) use the common Access Lot only for the purpose of ingress and egress to and from a Covenanting Lot.
  - (b) not place any building or structure on the common Access Lot.
  - (c) not park or leave any vehicle or other thing on any part of the common Access Lot so as to obstruct its use by any other person entitled to use the common Access Lot, and not permit or suffer any servant, agent or visitor of the Covenantor to do so.
  - (d) bear the cost of maintaining the common Access Lot in good order, repair and condition in equal shares in common with the registered proprietors who own an undivided share of the common Access Lot provided that where the need to maintain or repair the common Access Lot arise from any wilful or negligent act of a registered proprietor or authorised person of a registered proprietor then that registered proprietor shall bear the whole cost of such maintenance or repair.
  - (e) allow each of the registered proprietors of the common Access Lot and their respective workers to lay pipes, conduits, wires and cables under the surface of the common Access Lot for the purpose of providing services to a lot adjoining the common Access Lot provided that the proprietor of the lot having the benefit of the services installed shall be responsible for and bear the cost of installation, maintenance and repair of the services and the reinstatement of the common Access Lot to its former condition.
  - (f) not change the contour or levels of the common Access Lot without the prior written consent of the Covenantor which consent may be arbitrarily withheld.

**5.0 Fencing**

- 5.1 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.

**6.0 Indemnity and Consequences of Breach**

- 6.1 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.
- 6.2 The Covenantor acknowledges that the value of the Benefited Land 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 Benefited Land and of each registered proprietor of the Benefited Land 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 of 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 Burdened Land to arrange for rectification of the Covenantor's breach or failure at the cost of the Covenantor.

#### 7.0 General

- 7.1 The covenants set out in clauses 3.1 to 3.26 of this Instrument shall run with each Burdened Land set out in the First Schedule for the benefit of all the Benefited Land 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 2032 or the date upon which they respectively cease to hold a fee simple estate in the Burdened Land as the case may be but without prejudice to any liability for any breach of covenant under this Instrument arising before such date.
- 7.2 The covenants in this instrument will cease to apply to any Burdened Land or Benefited Land 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

Burdened Land	Benefited Land
Lot 1 DP 582798	All of the Lots other than Lot 1 DP 582798
Lot 2 DP 582798	All of the Lots other than Lot 2 DP 582798
Lot 3 DP 582798	All of the Lots other than Lot 3 DP 582798
Lot 4 DP 582798	All of the Lots other than Lot 4 DP 582798
Lot 5 DP 582798	All of the Lots other than Lot 5 DP 582798
Lot 6 DP 582798	All of the Lots other than Lot 6 DP 582798

#### SECOND SCHEDULE

Burdened Land	Access Lot	Benefited Land
Lot 1 DP 582798	Lot 100 DP 582798	All of the Lots other than Lot 1 DP 582798
Lot 2 DP 582798		All of the Lots other than Lot 2 DP 582798
Lot 3 DP 582798		All of the Lots other than Lot 3 DP 582798
Lot 4 DP 582798		All of the Lots other than Lot 4 DP 582798
Lot 5 DP 582798		All of the Lots other than Lot 5 DP 582798
Lot 6 DP 582798		All of the Lots other than Lot 6 DP 582798