

**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

## BACKGROUND

- A. The Grantor is the registered proprietor of the Covenantee Lots and the Benefiting Lots.
- B. The Covenantee 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:

**Approved Subdivision** means a subdivision of a Covenantee Lot which has been approved by Cabra pursuant to clause 3.7 of these covenants.

**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 1 -7, 9 – 39, 50 – 55 DP 519607

### 2. Agreement

- 2.1 The Grantor, for itself so as to bind the Covenantee Lots in the First Schedule ("Covenantee Lots" and each one of them a "Covenantee 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 31<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 31<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 Covenantee Lots and his, her or its successors in title, transferees, assigns and occupiers for the time being of the Covenantee 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 Covenanting 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, 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, not 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 Grantor 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 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.
- 3.3 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.
- 3.4 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.
- 3.5 If a Covenanting Lot or any Lot created from an Approved Subdivision of a Covenanting Lot is less than 1000m<sup>2</sup> in area, not erect or place or permit to be erected or placed on such lot anything other than:
- (a) one dwelling house:
    - (i) having closed in habitable living space (exclusive of carport or garage) with a floor area of at least 140m<sup>2</sup>; and
    - (ii) attached, closed in double car garaging or such other garaging that is approved in writing by Cabra at its discretion; and
    - (iii) which does not include any ancillary accommodation in the nature of a granny flat or self-contained flat;
- AND
- (b) one 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.
- 3.6 If a Covenanting Lot or any Lot created from an Approved Subdivision of a Covenanting Lot is more than 1000m<sup>2</sup> in area, not erect or place or permit to be erected or placed on such lot anything other than:



- (a) one dwelling house:
  - (i) having closed in habitable living space (exclusive of carport or garage) with a floor area of at least 180m<sup>2</sup>; and
  - (ii) attached closed in double car garaging or such other garaging that is approved in writing by Cabra at its discretion; and
  - (iii) which may include ancillary accommodation in the nature of a granny flat or self-contained flat if consent is granted by Cabra, which consent may be withheld at Cabra's absolute discretion or which may be granted subject to conditions imposed by Cabra at its absolute discretion;

AND

- (b) one shed which may be greater than 10m<sup>2</sup>, clad in materials approved by Cabra and erected in a location approved by Cabra which approvals may be withheld at Cabra's absolute discretion.
- 3.7 Not subdivide any of Lots 1 – 7, 9 – 39 DP 519607. Lots 50 – 55 DP 519607 may be subdivided after 1 January 2023 provided the Grantor obtains the prior written consent of Cabra which may be withheld at its absolute discretion.
- 3.8 Not allow any livestock onto a Covenanted Lot which is less than 5000m<sup>2</sup> in area. For the purpose of this clause and clause 3.9 Livestock includes but is not limited to cattle, sheep, goats and any other member of the Bovidae family, horses and any other member of the Equidae family, llamas, alpacas, pigs, poultry and any other animal not kept as a pet.
- 3.9 Not allow any Livestock onto a Covenanted Lot which is more than 5000m<sup>2</sup> in area except for cattle, sheep, goats and horses and a maximum of 6 chickens provided that, in respect of chickens, the Grantor obtains the 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 and further provided that any chicken enclosure must be situated at least 50 metres from the road frontage and 10 metres in from any other boundary. No roosters are permitted on any Covenanted Lot.
- 3.10 Not use or permit or suffer to be used on any building on any Covenanted Lot any building material other than brick (subject to clause 3.11), stone, concrete block, insulclad, masonry, stucco, solid plaster, line weatherboard or approved timber weatherboard for any outer wall facing except with the written consent of Cabra which may be withheld at its absolute discretion.
- 3.11 If the Grantor chooses to utilise bricks Cabra may nominate, at its absolute discretion, the amount of brick coverage allowable for the construction of the exterior cladding (excluding windows and doors) which faces the street from which access to the property is obtained. In respect of all other types of cladding, the Grantor shall ensure that no more than 80% of the exterior cladding (excluding windows and doors), which faces the street from which access to the property is obtained, is from one single material unless approved in writing by Cabra.
- 3.12 Not use or permit or suffer to be used any second-hand materials on any building on any Covenanted Lot.
- 3.13 Not use any corrugated iron roofing, corrugated iron or zincalume on the exterior of the building (except for Colorsteel which may be used for roofing provided the colour complies with clause 3.32 of these covenants) unless the Grantor obtains the written consent of Cabra which may be withheld at its absolute discretion.
- 3.14 Not use or place or permit to be erected, transported or placed on any Covenanted Lot any second-hand home of any type or description.
- 3.15 Not pave driveways, carparking spaces, footpaths and patios on a Covenanted 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.

- 3.16 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 (except in accordance with clause 3.5 or 3.6 of these covenants), 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 common access lot, any public walkway or public area and neighbouring properties so as to preserve the amenities of the development and also to prevent noise likely to cause offence to residents in the subdivision.
- 3.17 Not cause or allow any recreational or commercial vehicles to be regularly located either on the road or footpath nor on 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, public walkway or any 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.
- 3.18 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.
- 3.19 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.
- 3.20 Not allow any grass or weeds on any Covenanting Lot or on any road berm adjoining the Covenanting Lot to grow to a height greater than 150mm and if the Grantor defaults in so doing, Cabra may take whatever action it considers necessary to remedy the default at the expense of the Grantor and if the Grantor fails to pay Cabra upon demand for all costs so incurred Cabra may recover the cost thereof from the Grantor as liquidated damages in any Court of competent jurisdiction.
- 3.21 Ensure that any fence erected on a Covenanting Lot between the dwelling house and a public road, public walkway or other public area:
- (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 Covenanting Lot;
  - (c) has planting between such fence and the boundary of the Covenanting Lot spaced at a maximum of 1.2 metre intervals;
  - (d) is either pool type fencing or post and rail type fencing and is at a minimum 50% visually permeable if the Covenanting Lot is more than 1500m<sup>2</sup> in area;
- unless alternative fencing has been consented to in writing by Cabra which may be withheld at Cabra's absolute discretion.
- 3.22 Ensure that any timber fencing on the Covenanting Lot is either stained or painted in neutral colours, complimentary to the surrounding landscape.
- 3.23 Not damage or remove any fencing on the Covenanting Lot constructed by Cabra. The Grantor will be responsible for any damage caused to such fencing by themselves or their contractors, employees or any other invitee. If such fencing requires replacement the Grantor will replace such fencing with the same or similar fencing at the Grantor's cost.
- 3.24 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 in front of the retaining wall; and
  - (b) Any visually non-permeable fence constructed between the retaining wall and the dwelling is set back at least 500mm from the top of the retaining wall and such fence is no higher than 1.2 metres; and
  - (c) If a fence is constructed between the retaining wall and the dwelling then shrubs are planted at 1.2 metre intervals between the retaining wall and the fence.
  - (d) Visually permeable fences first approved by Cabra in writing may be attached to a retaining wall.

- 3.25 Ensure that all driveways, paths and fences on a Covenanting Lot are completed in permanent materials and all unpaved areas are properly grassed or landscaped within three calendar months following practical completion of a dwelling house on such Covenanting Lot.
- 3.26 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 and the Grantor will ensure that:
- (a) in respect of any Covenanting Lot which is greater than 1000m<sup>2</sup> in area there are at least 60 trees or shrubs planted between the dwelling and the front boundary;
  - (b) in respect of any Covenanting Lot which is less than 1000m<sup>2</sup> in area there are at least 40 trees or shrubs planted between the dwelling and the front boundary; and
  - (c) all Covenanting Lots shall have a minimum of 5 trees or shrubs which are at least 2 metres in height included within the total site landscaping on the Covenanting Lot.
- 3.27 Not damage or remove any plants, shrubs or 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.
- 3.28 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.
- 3.29 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 or roads.
  - (f) Not deposit or allow any dirt, gravel, clay or other substance to be left on any road 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 grantor will be responsible for any damage caused to the trees by themselves or their contractors, employees or any other invitee.
- 3.30 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.
- 3.31 Not erect or place or permit to be erected or placed on any Covenanting Lot any clothes line in the front yard of that Covenanting Lot that is substantially visible from the road, any common access lot, public walkway or other public area. 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 other Covenanting Lots, access lots or public areas.

- 3.32 Ensure that the final colours of the exterior cladding and roof of the dwelling house on the Covenanting Lot shall be neutral, earthy 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.
- 3.33 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.
- 3.34 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 the road, any common access lot, public walkway or other public area.
- 3.35 **Bond**  
Upon any transfer of a Covenanting Lot from Cabra to the Grantor:
- (a) the Grantor 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 – 3.2, 3.4 – 3.6, 3.10 – 3.15, 3.18 – 3.19, 3.21 – 3.22, 3.24 – 3.26, 3.28 – 3.32, 3.34 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 Covenanting 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").
- 3.36 The Bond Balance will be returned to the Grantor 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 3.35 – 3.36 do not in any way limit the Grantor's liability in respect of all covenants and pursuant to clauses 5.1 – 5.2 of this instrument.
- 3.37 The Grantor acknowledges that the Bond Balance (if any) will automatically transfer to the registered proprietor of the Covenanting Lot upon any transfer of the Covenanting Lot by the Grantor.

#### **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 enure for the benefit of any subsequent registered proprietor of such contiguous land.

#### **5. 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 or 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 3.37 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 31<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.

### FIRST SCHEDULE

Covenanting Lots	Benefiting Lots
Lot 1 DP 519607	All of the Lots other than Lot 1 DP 519607
Lot 2 DP 519607	All of the Lots other than Lot 2 DP 519607
Lot 3 DP 519607	All of the Lots other than Lot 3 DP 519607
Lot 4 DP 519607	All of the Lots other than Lot 4 DP 519607
Lot 5 DP 519607	All of the Lots other than Lot 5 DP 519607
Lot 6 DP 519607	All of the Lots other than Lot 6 DP 519607
Lot 7 DP 519607	All of the Lots other than Lot 7 DP 519607
Lot 9 DP 519607	All of the Lots other than Lot 9 DP 519607
Lot 10 DP 519607	All of the Lots other than Lot 10 DP 519607
Lot 11 DP 519607	All of the Lots other than Lot 11 DP 519607
Lot 12 DP 519607	All of the Lots other than Lot 12 DP 519607
Lot 13 DP 519607	All of the Lots other than Lot 13 DP 519607
Lot 14 DP 519607	All of the Lots other than Lot 14 DP 519607
Lot 15 DP 519607	All of the Lots other than Lot 15 DP 519607
Lot 16 DP 519607	All of the Lots other than Lot 16 DP 519607
Lot 17 DP 519607	All of the Lots other than Lot 17 DP 519607
Lot 18 DP 519607	All of the Lots other than Lot 18 DP 519607
Lot 19 DP 519607	All of the Lots other than Lot 19 DP 519607
Lot 20 DP 519607	All of the Lots other than Lot 20 DP 519607
Lot 21 DP 519607	All of the Lots other than Lot 21 DP 519607
Lot 22 DP 519607	All of the Lots other than Lot 22 DP 519607
Lot 23 DP 519607	All of the Lots other than Lot 23 DP 519607
Lot 24 DP 519607	All of the Lots other than Lot 24 DP 519607
Lot 25 DP 519607	All of the Lots other than Lot 25 DP 519607
Lot 26 DP 519607	All of the Lots other than Lot 26 DP 519607
Lot 27 DP 519607	All of the Lots other than Lot 27 DP 519607
Lot 28 DP 519607	All of the Lots other than Lot 28 DP 519607
Lot 29 DP 519607	All of the Lots other than Lot 29 DP 519607
Lot 30 DP 519607	All of the Lots other than Lot 30 DP 519607
Lot 31 DP 519607	All of the Lots other than Lot 31 DP 519607

Lot 32 DP 519607	All of the Lots other than Lot 32 DP 519607
Lot 33 DP 519607	All of the Lots other than Lot 33 DP 519607
Lot 34 DP 519607	All of the Lots other than Lot 34 DP 519607
Lot 35 DP 519607	All of the Lots other than Lot 35 DP 519607
Lot 36 DP 519607	All of the Lots other than Lot 36 DP 519607
Lot 37 DP 519607	All of the Lots other than Lot 37 DP 519607
Lot 38 DP 519607	All of the Lots other than Lot 38 DP 519607
Lot 39 DP 519607	All of the Lots other than Lot 39 DP 519607
Lot 50 DP 519607	All of the Lots other than Lot 50 DP 519607
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