

Form 26

Covenant Instrument to note land covenant
(Section 116(1)(a) & (b) Land Transfer Act 2017)

Covenantor

CABRA DEVELOPMENTS LIMITED
CABRA PROPERTIES LIMITED

Covenantee

CABRA DEVELOPMENTS LIMITED
CABRA PROPERTIES 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

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		

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 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:

Approved Subdivision means a subdivision of Burdened Land which has been approved by Cabra pursuant to clause 3.5 of these covenants.

Cabra means the Cabra Developments Limited and Cabra Properties Partnership 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.

Lots means Lots 1-11, 13-26 and 86-90 DP [xx]

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 31st 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 31st 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 Benefited 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 Covenantor 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, 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 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 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 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.

3.3 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;

(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; or

3.4 Not allow the duration of any building construction works on any Burdened Land to extend beyond the period of 12 months from the date of commencement of such works.

3.5 On any Burdened Land or any lot created from an Approved Subdivision of Burdened Land, 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 120m²; 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 10m² 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 Not use or permit or suffer to be used on any building on any Burdened Land any building material other than painted brick (subject to clause 3.7), stone, concrete block, insulclad, masonry, stucco, solid plaster, linea 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.

- 3.7 If the Covenantor 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 Covenantor 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.
- 3.8 Not use or permit or suffer to be used any second-hand materials on any building on any Burdened Land.
- 3.9 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 3.30 of these covenants) unless the Covenantor obtains the written consent of Cabra which may be withheld at its absolute discretion.
- 3.10 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.
- 3.11 Not pave driveways, carparking spaces, footpaths and patios on a Burdened Land 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.
- 3.12 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 or common access lot of the Development any temporary building, container, garden shed (except in accordance with clause 3.5 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.
- 3.13 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 Burdened Land 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 Burdened Land to be used for residential use other than for short term occupation of visitors.
- 3.14 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.
- 3.15 Not erect or permit or suffer to be erected or placed upon any Burdened Land any dwelling which has a single square or rectangle footprint.
- 3.16 Not allow any grass or weeds on any Burdened Land or on any road berm adjoining the Burdened Land 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.
- 3.17 Ensure that any fence erected on any Burdened Land 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 Burdened Land;
 - (c) has planting between such fence and the boundary of the Burdened Land spaced at a maximum of 1.2 metre intervals;

unless alternative fencing has been consented to in writing by Cabra which may be withheld at Cabra's absolute discretion.

- 3.18 Ensure that any timber fencing on any Burdened Land is either stained or painted in neutral colours, complimentary to the surrounding landscape.
- 3.19 Not damage or remove any fencing on any Burdened Land constructed by Cabra. The Covenantor 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 Covenantor will replace such fencing with the same or similar fencing at the Covenantor's cost.
- 3.20 Ensure that in respect of any retaining wall on any Burdened Land (at a height of 600mm or more) which faces the road or other Burdened Land, 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.
- 3.21 Ensure that all driveways, paths and fences on any Burdened Land 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 Burdened Land.
- 3.22 Not allow any Burdened Land to remain unlandscaped without lawns and shrubs for a period greater than three calendar months following Practical Completion of a dwelling house on such Burdened Land and the Covenantor will ensure that:
- (a) in respect of any Burdened Land there are at least 40 trees or shrubs planted between the dwelling and the front boundary; and
 - (b) all Burdened Land 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 Burdened Land.
- 3.23 Not damage or remove any plants, shrubs or 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.
- 3.24 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.
- 3.25 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 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 Burdened Land.

- (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 Burdened Land. The Covenantor will be responsible for any damage caused to the trees by themselves or their contractors, employees or any other invitee.
- 3.26 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.
- 3.27 Not erect or place or permit to be erected or placed on any Burdened Land any clothes line in the front yard of that Burdened Land 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 Benefited Land, access lots or public areas.
- 3.28 Ensure that the final colours of the exterior cladding and roof of the dwelling house on the Burdened Land shall be neutral, 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.
- 3.29 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.
- 3.30 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 the road, any common access lot, public walkway or other public area.
- 3.31 **Bond**
Upon any transfer of Burdened Land 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, 3.2, 3.4, 3.5, 3.6 – 3.11, 3.14 – 3.15, 3.17 – 3.18, 3.20 – 3.22, 3.24 – 3.28, 3.30 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").
- 3.32 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 3.31 – 3.33 do not in any way limit the Covenantor's liability in respect of all covenants and pursuant to clauses 6.1 of this instrument.
- 3.33 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 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 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 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 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 Burdened Land 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 3.33 of this Instrument shall run with the 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 31st of December 2032 or the date upon which they respectively cease to hold a fee simple estate in a 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.

FIRST SCHEDULE

Burdened Land	Benefited Land
Lot 1 DP [xx]	All of the Lots other than Lot 1 DP [xx]
Lot 2 DP [xx]	All of the Lots other than Lot 2 DP [xx]
Lot 3 DP [xx]	All of the Lots other than Lot 3 DP [xx]
Lot 4 DP [xx]	All of the Lots other than Lot 4 DP [xx]
Lot 5 DP [xx]	All of the Lots other than Lot 5 DP [xx]
Lot 6 DP [xx]	All of the Lots other than Lot 6 DP [xx]
Lot 7 DP [xx]	All of the Lots other than Lot 7 DP [xx]
Lot 8 DP [xx]	All of the Lots other than Lot 8 DP [xx]
Lot 9 DP [xx]	All of the Lots other than Lot 9 DP [xx]
Lot 10 DP [xx]	All of the Lots other than Lot 10 DP [xx]
Lot 11 DP [xx]	All of the Lots other than Lot 11 DP [xx]
Lot 13 DP [xx]	All of the Lots other than Lot 13 DP [xx]
Lot 14 DP [xx]	All of the Lots other than Lot 14 DP [xx]
Lot 15 DP [xx]	All of the Lots other than Lot 15 DP [xx]
Lot 16 DP [xx]	All of the Lots other than Lot 16 DP [xx]
Lot 17 DP [xx]	All of the Lots other than Lot 17 DP [xx]
Lot 18 DP [xx]	All of the Lots other than Lot 18 DP [xx]
Lot 19 DP [xx]	All of the Lots other than Lot 19 DP [xx]

Lot 20 DP [xx]	All of the Lots other than Lot 19 DP [xx]
Lot 21 DP [xx]	All of the Lots other than Lot 19 DP [xx]
Lot 22 DP [xx]	All of the Lots other than Lot 19 DP [xx]
Lot 23 DP [xx]	All of the Lots other than Lot 19 DP [xx]
Lot 24 DP [xx]	All of the Lots other than Lot 19 DP [xx]
Lot 25 DP [xx]	All of the Lots other than Lot 19 DP [xx]
Lot 26 DP [xx]	All of the Lots other than Lot 19 DP [xx]
Lot 86 DP [xx]	All of the Lots other than Lot 19 DP [xx]
Lot 87 DP [xx]	All of the Lots other than Lot 19 DP [xx]
Lot 88 DP [xx]	All of the Lots other than Lot 19 DP [xx]
Lot 89 DP [xx]	All of the Lots other than Lot 19 DP [xx]
Lot 90 DP [xx]	All of the Lots other than Lot 19 DP [xx]