

Form B

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		
Height Restriction Covenants	See Second Schedule Annexure A		
Setback Area Covenants	See Third 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]~~ ~~[negatived]~~ ~~[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.

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

Lots means Lots 33 – 38 and 43 – 51 and 301 DP 461619.

Setback Area means that area of Lots 48 – 51 DP 461619 within 7.5 metres of the boundary between each of Lots 48 – 51 DP 461619 and the road.

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 31st of December 2050 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 31st of December 2050.
- 2.2 The Grantor for itself so as to bind the Covenancing Lots in the Second 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 4.0 to the end and intent that each of the covenants shall forever enure for the benefit of the Benefiting Lots.
- 2.3 The Grantor for itself so as to bind the Covenancing Lots in the Third 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 5.0 to

the end and intent that each of the covenants shall forever enure for the benefit of the Benefiting Lots.

- 2.4 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 Covenanting Lots and his, her or its successors in title, transferees, assigns and occupiers for the time being of the Covenanting Lots.
- 2.5 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.
- 2.6 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.
- 2.7 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.
- 2.8 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, make any change to the plans and specifications or the exterior design and appearance of the proposed building or proposed earthworks or fill.
- 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, which may necessitate part basement structures or house designs with basement garaging and which are sympathetic to and appropriate for the site.
- 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 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 150m² and which must also have attached, closed in double car garaging or such other garaging that is approved in writing by Cabra at its discretion.

- 3.6 Not incorporate into the design of any dwelling house any ancillary accommodation in the nature of a granny flat or self contained flat.
- 3.7 Not use or permit or suffer to be used on any building on any Covenanting Lot any building material other than brick, stone, concrete block, insulclad, masonry, stucco, solid plaster, linea weatherboard or approved timber weatherboard for any outer wall facing except with the written consent of Cabra which may be withheld at its discretion.
- 3.8 Not construct more than 80% of the exterior cladding (excluding windows and doors), which faces the street from which access to the property is obtained, 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 Covenanting Lot nor use any corrugated iron roofing or corrugated iron or zincalume of any description on the exterior of the building except with the written consent of Cabra which may be withheld at its discretion.
- 3.9 Not use or place or permit to be erected, transported or placed on any Covenanting Lot any second-hand home of any type or description.
- 3.10 Not pave driveways, footpaths and patios with plain concrete. As a guide the following impervious surfaces will be acceptable:
- (a) exposed aggregate concrete or coloured concrete for the driveway;
 - (b) exposed aggregate concrete, coloured concrete, exposed aggregate pavers or coloured concrete pavers for patios and footpaths.
 - (c) tiled patios.
- 3.11 Not erect or bring on to or allow to remain on any Covenanting Lot (except during the time of construction of the dwelling house) or on any road of the Development any temporary building, container, garden shed, caravan, trade vehicle or other equipment or materials or machinery unless garaged or adequately screened so as not to be highly visible from the road 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 provided however that the Grantor may erect one garden 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.
- 3.12 Not cause or allow any recreational or commercial vehicles to be regularly located either on the street or footpath nor on that area between the front boundary of any Covenanting Lot and the dwelling unless screened so as not to be visible from the road. No caravan or motorhome shall be placed on any Covenanting Lot to be used for residential use other than for short term occupation of visitors.
- 3.13 Not erect or permit or suffer to be erected or placed upon any Covenanting Lot any building where the basement (including but not limited to basement garage) is not fully enclosed to the reasonable satisfaction of Cabra.
- 3.14 Not erect or permit or suffer to be erected or placed upon any Covenanting Lot any dwelling which has a single square or rectangle footprint.
- 3.15 Not allow any grass or weeds on any Covenanting Lot to grow to a height greater than 150mm and if the 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.
- 3.16 Not erect or permit to be erected on any Covenanting Lot any fence higher than 1.2 metres between any dwelling house on any Covenanting Lot and a public road. Fences facing public roads on any Covenanting Lot must be permeable.
- 3.17 Not permit any dwelling house on any Covenanting Lot to be occupied for more than six calendar months unless all driveways, paths and fences are completed in permanent materials and all unpaved areas are properly grassed or landscaped.

- 3.18 Not allow any Covenanting Lot to remain unlandscaped without lawns and shrubs for a period greater than six calendar months following substantial completion or occupation of a dwelling house on such Covenanting Lot. The Grantor will ensure that a minimum of 5% of the net site area of such Covenanting Lot is developed with landscaped gardens and that a minimum of 5 trees or shrubs of at least 2 metres in height are included within such landscaping. The net site area is that area exclusive of any building, paving and areas on the covenanting lot that have already been planted and/or landscaped by Cabra.
- 3.19 Ensure that; any Covenanting Lot that has been landscaped or planted by Cabra and in respect of trees or shrubs situated on the berms adjacent to the Covenanting Lot (“planted areas”):
- (a) The grantor maintains any existing vegetation on the planted areas;
 - (b) If any trees or shrubs forming part of the planted areas are damaged or die, the Grantor will replace the same with similar species;
 - (c) any planted areas can only be removed or replaced with alternative planting if Cabra’s written approval has been obtained.
- 3.20 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.
- 3.21 Not undertake any construction works on the Covenanting Lot without at all times complying with the following conditions and restrictions:
- (a) To keep the Covenanting Lot in a tidy orderly and safe condition throughout the construction period.
 - (b) Maintain the Covenanting Lot at all times during the course of construction free from rubbish and excessive vegetation.
 - (c) Not store or dump any construction materials or debris on any adjoining lot or cross any adjoining lot for goods or vehicle access unless consent has been granted by Cabra in writing and by the adjoining lot owner.
 - (d) Not allow major site works to commence unless a vehicle crossing and access drive for construction vehicles has been formed in metal aggregate or an alternative material as Cabra may approve at their discretion.
 - (e) Not allow rubbish to be placed or escape onto adjoining or nearby lots 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.
- 3.22 Not construct erect or place or permit to be constructed, erected or placed any water storage tank on the Covenanting Lot unless it is either:
- (a) buried; or
 - (b) screened by fencing and/or planting to the satisfaction of Cabra in its sole and unfettered discretion.
- 3.23 Not erect or place or permit to be erected or placed on any Covenanting Lot any clothes line in the front yard of that Covenanting Lot that is substantially visible from the road. 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.
- 3.24 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.

3.25 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.

3.26 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 or any common access lot.

4.0 Height Restriction Covenants

4.1 The Grantor shall not build or erect nor allow nor cause nor permit to be built or erected any building or other structure on a Covenanting Lot which is of a height which exceeds the height of and protrudes or extends above a level horizontal plane measured at the reduced level set out beside each Covenanting Lot in the Second Schedule in terms of the Lands and Survey datum 1946 so that in all cases the upper limit of height for each Covenanting Lot shall not exceed that reduced level PROVIDED THAT the Grantor may erect one chimney or flue which forms part of the dwelling on the Covenanting Lot and one television aerial which exceed the upper limit of height for that Covenanting Lot by no more than two metres.

4.2 The Grantor shall not build or erect nor cause or permit to be built or erected any building or structure on any Covenanting Lot without first submitting to Cabra plans which include elevations showing proposed heights in terms of the Lands and Survey datum referred to in clause 4.1 and in the event any proposed building or structure on those plans is within 0.60 metres of the maximum allowable height for that Covenanting Lot a surveyor's report must be provided to the Grantee upon completion of the final roof line for the dwelling certifying that the highest point of the dwelling does not exceed the height restriction level in respect of the Covenanting Lot.

4.3 The Grantor shall not allow any vegetation on any Covenanting Lot to exceed the height of a level horizontal plane measured at the reduced level set out beside each Covenanting Lot in the Second Schedule in terms of the Lands and Survey datum 1946 so that in all cases the upper limit of height for vegetation for each Covenanting Lot shall not exceed that reduced level.

5.0 Setback Areas:

5.1 In respect of a Setback Area the Grantor shall not erect or permit or suffer to be erected or placed upon any setback area any dwelling, garden shed, garage or other building or any part of any dwelling, garden shed, garage or other building.

6.0 Fencing

6.1 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.

7. Indemnity and Consequences of Breach

7.1 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.

7.2 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.

8.0 General

- 8.1 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 31st of December 2050 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.
- 8.2 The covenants set out in Clause 4.1 to 4.3 of this Instrument shall run with each Covenanting Lot set out in the Second Schedule for the benefit of all the Benefiting Lots described in the Second Schedule TO THE INTENT that the Grantor and the Grantee shall continue to be bound until they respectively cease to hold a fee simple estate in a covenanting lot but without prejudice to any liability for any breach of covenant under this Instrument arising before such date.
- 8.3 The covenants set out in Clause 5.1 of this Instrument shall run with each Covenanting Lot set out in the Third Schedule for the benefit of all the Benefiting Lots described in the Third Schedule TO THE INTENT that the Grantor and the Grantee shall continue to be bound until they respectively cease to hold a fee simple estate in a covenanting lot 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 33 DP 461619	All of the Lots other than Lot 33 DP 461619
Lot 34 DP 461619	All of the Lots other than Lot 34 DP 461619
Lot 35 DP 461619	All of the Lots other than Lot 35 DP 461619
Lot 36 DP 461619	All of the Lots other than Lot 36 DP 461619
Lot 37 DP 461619	All of the Lots other than Lot 37 DP 461619
Lot 38 DP 461619	All of the Lots other than Lot 38 DP 461619
Lot 43 DP 461619	All of the Lots other than Lot 43 DP 461619
Lot 44 DP 461619	All of the Lots other than Lot 44 DP 461619
Lot 45 DP 461619	All of the Lots other than Lot 45 DP 461619
Lot 46 DP 461619	All of the Lots other than Lot 46 DP 461619
Lot 47 DP 461619	All of the Lots other than Lot 47 DP 461619
Lot 48 DP 461619	All of the Lots other than Lot 48 DP 461619
Lot 49 DP 461619	All of the Lots other than Lot 49 DP 461619
Lot 50 DP 461619	All of the Lots other than Lot 50 DP 461619
Lot 51 DP 461619	All of the Lots other than Lot 51 DP 461619

SECOND SCHEDULE

Covenantee Lots	Reduced Level	Benefiting Lots
Lot 33 DP 461619	53.0m	All of the Lots other than Lot 33 DP 461619
Lot 34 DP 461619	55.3m	All of the Lots other than Lot 34 DP 461619
Lot 35 DP 461619	56.8m	All of the Lots other than Lot 35 DP 461619
Lot 36 DP 461619	58.5m	All of the Lots other than Lot 36 DP 461619
Lot 37 DP 461619	60.0m	All of the Lots other than Lot 37 DP 461619
Lot 38 DP 461619	61.9m	All of the Lots other than Lot 38 DP 461619
Lot 43 DP 461619	65.0m	All of the Lots other than Lot 43 DP 461619
Lot 44 DP 461619	63.3m	All of the Lots other than Lot 44 DP 461619
Lot 45 DP 461619	61.6m	All of the Lots other than Lot 45 DP 461619
Lot 46 DP 461619	59.9m	All of the Lots other than Lot 46 DP 461619
Lot 47 DP 461619	58.9m	All of the Lots other than Lot 47 DP 461619
Lot 48 DP 461619	For that area of the lot within 12m from the boundary between the lot and the road – RL 56.9m For the balance of the lot – RL 59.5m	All of the Lots other than Lot 48 DP 461619
Lot 49 DP 461619	For that area of the lot within 12m from the boundary between the lot and the road – RL 54.8m For the balance of the lot – RL 57.3m	All of the Lots other than Lot 49 DP 461619
Lot 50 DP 461619	For that area of the lot within 12m from the boundary between the lot and the road – RL 52.7m For the balance of the lot – RL 55.3m	All of the Lots other than Lot 50 DP 461619
Lot 51 DP 461619	For that area of the lot within 12m from the boundary between the lot and the road – RL 50.7m For the balance of the lot – RL 53.2m	All of the Lots other than Lot 51 DP 461619

THIRD SCHEDULE

Covenantee Lots	Benefiting Lots
Lot 48 DP 461619	All of the Lots other than Lot 48 DP 461619
Lot 49 DP 461619	All of the Lots other than Lot 49 DP 461619
Lot 50 DP 461619	All of the Lots other than Lot 50 DP 461619
Lot 51 DP 461619	All of the Lots other than Lot 51 DP 461619