

Covenant Instrument to note land covenant

(Section 116(1)(a) & (b) Land Transfer Act 2017)

Covenantor

**CABRA RURAL DEVELOPMENTS LIMITED
RAHOPARA FARMS LIMITED**

Covenantee

**CABRA RURAL DEVELOPMENTS LIMITED
RAHOPARA FARMS 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

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 Schedule 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

BACKGROUND

- A. The Covenantor is the registered proprietor of the Burdened Lots and the Benefiting Lots.
- B. The Burdened Lots and the Benefiting Lots are part of a rural residential estate (“the rural estate”)
- 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 rural estate is maintained, preserved and enhanced.

DEFINITIONS AND INTERPRETATION

1.1 Definitions

“Benefiting Lots” means the Lots shown as Benefiting Lots set out in the first Schedule as the case may be.

“Burdened Lots” means the Lots shown as Burdened Lots set out in the first Schedule as the case may be.

“Design Guidelines” means the design guidelines to be provided by the Developer to the Covenantor in respect of the dwellings, buildings, accessory buildings, landscaping and fences as amended from time to time at the Developers sole and unfettered discretion.

“Developer” means Rahopara Farms Limited and Cabra Rural Developments Limited or any person or entity appointed or nominated in writing by them to be the Developer. Where the Developer has been dissolved, wound up, deregistered or otherwise passed out of existence any approval or consent required from the Developer shall mean approval or consent by any party previously appointed and/or nominated in writing by the Developer for this purpose.

“Covenantee” means the Developer

“Covenantor” means the owner for the time being of the Burdened Lot and includes their respective successors transferees and assigns.

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

1.2 Interpretation

- (a) words and expressions denoting the singular shall where the context so requires include the plural and vice versa.
- (b) headings have been inserted for guidance only, and shall not be deemed to form part of the context of this instrument.

COVENANTS

2. Agreement

- 2.1 The Covenantor, for itself so as to bind the Burdened Lots in the First Schedule ("Burdened Lots" and each one of them a "Burdened Lot"), covenants and agrees with the Covenantantee that the Covenantor shall always observe and perform all of the covenants set out in Clause 3.0 of this instrument until the Developer ceases to be registered as proprietor of a Benefiting Lot 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 Benefiting Lots for so long as the Developer is the registered proprietor of a Benefiting Lot.
- 2.2 The covenants in this instrument shall be enforceable by the Covenantantee against the Covenantor as owner of the Burdened Lot and his, her or its successors in title, transferees, assigns and occupiers for the time being of the Burdened Lot.
- 2.3 No delay or failure by the Covenantantee to enforce performance of any covenants set out in this instrument and no indulgence granted to the Covenantor by the Covenantantee shall prejudice the right of the Covenantantee 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 Covenantantee as a result of any default by the Covenantor under this instrument.
- 2.5 The Covenantantee 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 Lot.
- 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) cease any activity in breach or non-observance of the covenants;
 - (b) otherwise remedy any breach or non-observance of the covenants.

3.0 The Covenantor shall:

- 3.1 not commence the construction or erection of improvements on the Burdened Lot whether a dwelling, accessory building, or fence (and this shall also include exterior finishes and excavation of foundations upon the Burdened Lot) unless plans and specifications and all other details of construction and finish as the Developer in its absolute discretion may require have been submitted to the Developer and have received the Developer's written approval. The Developer's approval shall not be unreasonably withheld where the Developer is satisfied that the proposed building in accordance with the Developer's Design Guidelines, is reasonably sited, compliments adjoining properties and does not detract from the standard of buildings in the rural estate and the neighbouring properties and otherwise complies with the Design Guidelines and the Covenants set out in this instrument.
- 3.2 not permit or suffer the use of the Burdened Lot for any purpose other than predominantly residential use nor use the Burdened Lot for commercial farming of any description including but not limited to pig farming, poultry farming or goat farming and no donkey or donkeys may be kept on a Burdened Lot.
- 3.3 not permit or suffer any rubbish to accumulate or to be placed upon the Burdened Lot, and at all times to maintain the house and curtilage on a Burdened Lot in a neat and tidy condition including keeping the grass mowed or grazed so the grass does not exceed 150mm in height.
- 3.4 not permit any immobile/unroadworthy vehicles to be stored on the Burdened Lot unless those vehicles are stored within an enclosed shed or garage.
- 3.5 ensure that pasture areas are regularly grazed or mown.
- 3.6 not construct on the Burdened Lot a dwelling with a floor area less than 180 square metres (excluding garage, carports and decking) or such lesser area as approved in writing by the Developer.

- 3.7 not construct on the Burdened Lot a dwelling or dwellings other than single story dwellings, unless approved in writing by the Developer in its sole discretion.
- 3.8 use its best endeavours to complete the exterior construction of any dwelling, or accessory building on the Burdened Lot within nine months of the date of commencement of construction.
- 3.9 construct no more than two dwellings on the Burdened Lot.
- 3.10 not erect on the Burdened Lot or relocate to the Burdened Lot a dwelling which is "second hand" or is pre constructed.
- 3.11 not subdivide, or permit any subdivision of the Burdened Lot including subdivisions by way of cross-leases and subdivisions under the Unit Titles Act 1972 provided that this covenant shall not apply while the Burdened Lot is owned by the Developer.
- 3.12 not allow any temporary building or structure to be erected on the Burdened Lot except that which may be used in conjunction with the construction of permanent buildings and which will be removed from the Burdened Lot upon completion of the said construction.
- 3.13 not erect a fence on the Burdened Lot constructed of materials other than brick, wood, plastered concrete block, or minimum five-wire post and/or battens and no fence shall exceed 1.83 metres in height above natural ground level, and not allow any advertisement, sign or hoarding of a commercial nature to be erected on any part of the Burdened Lot.
- 3.14 not permit any telecom or electricity services to be provided by "overhead" means to the dwelling (and any other structures/buildings to be erected on the Burdened Lot). All other utilities and services must be by underground means from the road to the dwelling and other structures/buildings to be erected on the Burdened Lot.

4.0 Fencing

- 4.1 The Developer 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 the Developer, but this proviso shall not enure for the benefit of any subsequent registered proprietor of such contiguous land.

5.0 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 Benefiting Lot 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 Benefiting Lot 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 cease any activity in breach of these covenants; and
 - (b) immediately permanently remove or cause to be permanently removed from the Burdened Lot 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 replace any building materials used in breach or non-observance of these covenants; and
 - (c) if the breach or failure is not remedied within 15 working days of the date of written notice of such breach or failure then the Covenantee (together with its agents, employees or contractors) shall be entitled to enter onto the Burdened Lot to arrange for rectification of the Covenantor's breach or failure at the cost of the Covenantor; and

- (d) if the breach or failure is not remedied within 15 working days of the date of written notice of such breach or failure then the Covenantor must pay to the person making such demands as liquidated damages the sum of \$200.00 per day for everyday that such breach or non-observance continues after the date upon which written demand has been made together with any costs and expenses incurred by the Developer to remedy the breach or non-observance.

6.0 General

- 6.1 The covenants set out in clause 3.0 of this Instrument shall run with each Burdened Lot set out in the First Schedule for the benefit of the Benefiting Lots described in the First Schedule TO THE INTENT that the Covenantor and Covenantee shall continue to be bound until the earlier of the date the Developer ceases to be registered proprietor of a Benefiting Lot or the date upon which they cease to hold a fee simple estate in a Burdened 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

Burdened Lots	Benefiting Lots
[x]	[x]