

ANNEXURE B

Form M2

MEMORANDUM OF ENCUMBRANCE

CERTIFICATE(S) OF TITLE BEING ENCUMBERED

ESTATE AND INTEREST

Estate in fee simple

ENCUMBRANCES

Nil

ENCUMBRANCER (Full Name and Address)

*** of ***, *** **

(Note: In this instrument the expression "the Owner" includes the Encumbrancer and each successive registered proprietor of the land comprised in the Certificate of Title being encumbered.)

ENCUMBRANCEE (Full Name and Address and Mode of Holding)

OPERATIVE CLAUSE

THE OWNER ENCUMBERS THE ESTATE AND INTEREST IN THE LAND ABOVE DESCRIBED FOR THE BENEFIT OF THE ENCUMBRANCEE SUBJECT TO THE ENCUMBRANCES AND OTHER INTERESTS AS SHOWN HEREON WITH AN ANNUITY OR RENT CHARGE OF

(a) Insert the amount of the annuity or rent charge (a) TEN CENTS (10¢)

(b) State the term of the annuity or rent charge. If for life use the words "during his or her lifetime" (b) TO BE PAID TO THE ENCUMBRANCEE FOR THE TERM OF THREE THOUSAND NINE HUNDRED AND NINETY NINE (3,999) YEARS

(c) State the times appointed for payment of the annuity or rent charge. Any special covenants may be inserted on page 2. (c) AT THE TIMES AND IN THE MANNER FOLLOWING

Payable (if demanded by the Encumbrancee) on the 1st day of January in each year (starting on 1st day of January in the next calendar year immediately following the date of execution of this instrument) to the intent:

- that the Encumbrancee will hold the annuity in fee simple to secure the compliance by the Owner with the covenants contained in this instrument; and
- that the Encumbrancee will not demand payment of the annuity if, and so long as, the Owner complies with all of the covenants.

IT IS COVENANTED by the Owner with the Encumbrancee and with all other persons claiming under the Encumbrancee as purchasers of any land in the Development Zone (as defined on the front page of this instrument) as follows to the intent:

- that the covenants in this instrument will run with and bind the land; and
- that the benefit of each of the covenants will be annexed to, and pass to future owners of, each and every part of the Development Zone.

1. **One Main Dwelling**

- 1.1. The Owner **SHALL NOT**, erect or suffer to be erected thereon more than one main dwelling house (exclusive of all general domestic outbuildings):.
- 1.2. The Owner **SHALL** submit any plans of building works to the Council for its approval.

2. **Residential Purposes**

The Owner **SHALL NOT**, use or permit the said land to be used for any purpose other than the purpose of private residential dwelling.

3. **No Temporary Dwelling**

The Owner **SHALL NOT**, unless otherwise approved by the Encumbrancee, erect or suffer to be erected or to remain thereon, a main dwelling house of prefabricated material, nor any transportable dwelling house, nor any caravan or other temporary dwelling.

4. **Carport / Garage**

The Owner **SHALL NOT**, unless otherwise approved by the Encumbrancee erect or cause or permit to be erected on the said land any building scheme which does not provide accommodation for at least one vehicle either in the form of a carport under the main roof of the building or other suitable free-standing car accommodation having a roof lime similar in style and of the same roofing materials as that of the principle dwelling.

5. **No delay**

The Owner **SHALL NOT**, permit the substantial commencement of the construction of a dwelling on the land to be delayed beyond a time limit of 36 months after the date of this instrument (or such further time as the Encumbrancee in its absolute discretion may agree in writing with the Owner.

6. **External Building Materials**

The Owner **SHALL NOT**, erect or cause to be erected on the said land any dwelling, outbuilding or any improvements the exterior of which is or contains any galvanized iron or brightly coloured reflective material.

7. **Fencing**

7.1 Front Fence

The Owner **SHALL** be permitted to construct along those portions of any boundary of the said land from a point which is level with the front of any residence thereon down to the boundary of the roadway and along the roadway boundary ("front fence") on the following terms and conditions;

- 7.1.1 Prior to constructing any fence or wall the Owner shall submit to the Encumbrancee final plans and specifications showing the type, style, colour and any other details the Encumbrancee may require to obtain written consent from the Encumbrancee prior to commencing construction and
- 7.1.2 The front fence shall be of a see through design and nature ideally of a tubular, picket, pillars with see through panels and
- 7.1.3 The Encumbrancee reserves the rights to withhold consent to the Owner in its absolute discretion.

7.2 Side and rear fencing

The Owner **SHALL**, only use to construct along those portions of any boundary of the said land from a point which is level with the front of any residence thereon to the rear of the land and along the rear boundary ("side and rear fence") double sided standard ~~Willo~~ Colorbond steel fencing materials in the construction of any fencing of the side and rear fence.

8. **Landscaping**

The Owner **SHALL NOT**, permit the completion of landscaping to be delayed beyond a time limit of twelve (12) months after the date of occupation of a dwelling on the land. (For this purpose, "landscaping" means the landscaping and planting, to the satisfaction of the Encumbrancee, of the land between the front alignment of the dwelling and the front boundary of the land, together with the area between that boundary and the nearest edge of the road pavement fronting or bordering the land.)

9. **Vehicle Parking**

The Owner **SHALL NOT**, cause, suffer or permit any vehicle of a recreational (e.g. caravan, boat, campervan etc.) or commercial nature (e.g. bus, truck, utility, van etc.) to be parked on a regular basis between the front building line of any dwelling on the land and the boundary of the land with the road reserve, without the prior written approval of the Encumbrancee.

10. **Notice to rectify breach**

- 10.1 The Encumbrancee, or a servant, agent or contractor of the Encumbrancee, may enter the land at any time, (after giving at least 24 hours notice to the Owner), for the purpose of inspecting the land to determine whether any of the Owner's obligations under this instrument has been breached. The Owner must not do (nor cause nor permit the doing of) anything to obstruct or hinder such entry or inspection.
- 10.2 If the Encumbrancee serves a written notice upon the Owner specifying a breach of any of the Owner's obligations under clauses 1, 2, 3, 4, 6, 7, 8 or 9; and
- 10.3 the Owner fails to remedy the breach within one calendar month from the date of service of the notice, then
- 10.4 the Encumbrancee its servants, agents and contractors may enter the land and may take such action as the Encumbrancee deems necessary to remedy the breach; and
- 10.5 the Encumbrancee may recover from the Owner, in any court of competent jurisdiction, the costs incurred in remedying the breach.

11. **Acknowledgment of building scheme**

- 11.1 The Owner acknowledges for the Owner and the Owner's successors in title -
- 11.2 that the foregoing covenants are entered into and undertaken for the purposes of the Encumbrancee's scheme of development for the lands comprised in the Development Zone; and
- 11.3 that the Encumbrancee has warranted that it has required, and will continue to require, each purchaser of land in the Development Zone, as a condition of its sale, to execute an instrument in substantially similar form to this instrument and containing substantially similar covenants and other stipulations.

12. **Release of Owner upon sale**

- 12.1 Once a building has been completed on the land in accordance with the terms of the approval required under clause 1.1, each successive registered proprietor of the land will be released from the payment of the rent charge and from the performance of the covenants immediately upon transferring the fee simple in the land to another person.
- 12.2 But the rights of the Encumbrancee will be preserved against any former registered proprietor, in relation to a breach of this Encumbrance which occurred either before the transfer or by reason of the transfer.

13. Sunset clause

The rights and obligations of the Encumbrancee under clauses 1 to 12 inclusive (but not those of any person claiming under the Encumbrancee as purchasers of any land in the Development Zone) will cease from whichever of the following dates occurs first:-

- 13.1 a date twelve (12) months after the practical completion of an approved dwelling upon the last remaining vacant allotment in the Development Zone (excluding any allotment upon which no dwelling is permitted to be erected); or
- 13.2 the 1st day of January 2015.

14. Waiver

- 14.1 The Encumbrancee, in its absolute discretion, may at any time modify, waive or release:-
 - 14.1.1 any of the foregoing covenants; or
 - 14.1.2 any covenants or stipulations contained in the Encumbrance Building and Development Requirements or in any other instrument relating to the land; or
 - 14.1.3 any of the covenants contained in any similar instrument relating to any other land in the said Development Zone (regardless of whether the instrument was entered before or after this instrument)
 - 14.1.4 A modification, waiver or release under clause 14.1.3 does not release the Owner from any of the covenants or stipulations referred to in clause 14.1.1 or 14.1.2.

15. Service of notices

- 15.1 A notice may be served on the Owner either:
 - 15.1.1 by posting the notice in a prepaid envelope to the last known address of the Owner; or
 - 15.1.2 if a dwelling has been erected on the land, by posting the notice to the street address of the dwelling or by leaving the notice at or attached to the dwelling.

(Note: For the purposes of this clause it is the obligation of the Owner to notify the Encumbrancee immediately of any change in address. If the Owner fails to do so, the service of a notice to the last known address of the Owner nevertheless constitutes sufficient service for the purposes of this Encumbrance.)

- 15.2 A Notice may be served on the Encumbrancee by being left at or posted in a prepaid envelope addressed to the Encumbrancee at its registered office in South Australia.
- 15.3 A notice served by post is deemed to have been served two (2) business days after posting.

16. Assignment by Encumbrancee:

- 16.1 The Encumbrancee may transfer or assign any of its rights and obligations under this Encumbrance to any person, authority or government agency.
- 16.2 If the Encumbrancee transfers or assigns its rights pursuant to clause 16.1, the Encumbrancee is released from its obligations under this Encumbrance.

17. Interpretation

- 17.1 In this instrument:-
 - 17.1.1 a reference to any gender includes all genders;
 - 17.1.2 the singular includes the plural and vice versa;
 - 17.1.3 a reference to a person includes a body corporate and vice versa;
 - 17.1.4 a reference to a party includes the heirs, executors, successors or assigns of that party;

- 17.1.5 "the Owner" includes the Encumbrancer and each successive registered proprietor of the land (and, if there are two or more Owners at any time, the liability of those persons is joint and several);
- 17.1.6 "the Development Zone" means whole of the land comprised in Certificate of Title Volume 6019 Folio 97 being allotment 50 in Deposited Plan 78351;
- 17.1.7 "the land" means the land subject to this instrument and includes any part of the land;
- 17.1.8 "Council" means the local government body for the area in which the land is situated;
- 17.1.9 the construction of a dwelling on the land will not be deemed to have commenced until footings for the dwelling have been completed in accordance with an approval given by the Encumbrancee under clause 1.1;
- 17.1.10 a reference to the completion of a building or similar expression used in this Encumbrance means the Stage where:-
 - 17.1.11.1 the building work is complete except for minor omissions and minor defects:-
 - 17.1.11.2 which do not prevent the building from being reasonably capable of being used for its intended purposes; and
 - 17.1.11.3 rectification of which will not prejudice the convenient use of the building; and
 - 17.1.11.4 all work on the external facade and other external surfaces of the building is complete and all defects and minor omissions have been rectified.
- 17.2 Nothing in this instrument prejudices:-
 - 17.2.1 the entitlement of the Encumbrancee to all the powers, rights and remedies given to Encumbrancees under statute law or common law; or
 - 17.2.2 the rights of the Encumbrancee (or of any other person) to an injunction or to damages in respect of a breach of any covenant by the Owner (or a previous Owner).
- 17.3 The burden of proving compliance with the covenants in this instrument lies on the Owner.