

MEMORANDUM OF ENCUMBRANCE

CERTIFICATE(S) OF TITLE BEING ENCUMBERED

THE WHOLE OF THE LAND IN CERTIFICATE OF TITLE VOLUME ##### FOLIO ###

ESTATE AND INTEREST

IN FEE SIMPLE

ENCUMBRANCES

NIL

ENCUMBRANCER (Full name and address)

###

ENCUMBRANCEE (Full name, address and mode of holding)

MOUNT BARKER DEVELOPMENTS NO 1 PTY LTD ACN 116 543 278 OF GPO BOX 4073 SYDNEY NSW 2001

OPERATIVE CLAUSE

THE ENCUMBRANCER 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 (10C)

(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 ANNUALLY AS A YEARLY RENTAL CHARGE FOR A TERM OF 99 YEARS FROM THE DATE HEREOF

(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: ON THE THIRTIETH DAY OF JUNE IN EACH YEAR AND EVERY YEAR THE FIRST OF SUCH PAYMENTS TO BE MADE (IF DEMANDED) ON THE THIRTIETH DAY OF JUNE NEXT OCCURRING AFTER THE DATE OF EXECUTION OF THIS INSTRUMENT

AND THE OWNER ALSO ENCUMBERS THE ESTATE AND INTEREST IN THE SAID LAND ABOVE DESCRIBED FOR THE BENEFIT OF THE ENCUMBRANCEE WITH THE PERFORMANCE AND OBSERVANCE OF THE COVENANTS BY THE OWNER HEREIN CONTAINED ("THE COVENANTS") (THE BURDEN ON PROVING THE PERFORMANCE AND OBSERVANCE OF WHICH SHALL BE BORNE BY THE OWNER)

PROVIDED THAT THE ENCUMBRANCEE SHALL NOT DEMAND PAYMENT OF THE SAID RENTAL CHARGE IF AND SO LONG AS THE OWNER AND THE OWNER'S SUCCESSORS IN TITLE SHALL DULY PERFORM AND OBSERVE ALL OF THE COVENANTS

AND PROVIDED FURTHER THAT NONE OF THE FOREGOING PROVISIONS FOR OR IN RESPECT OF THE PAYMENT OF THE SAID ANNUITY OR YEARLY RENT CHARGE SHALL IN ANY WAY AFFECT OR PREJUDICE THE RIGHTS OF THE ENCUMBRANCEE OR ANY OTHER PERSON CLAIMING UNDER THE ENCUMBRANCE AS PURCHASER OF ANY PART OR PARTS OF THE WHOLE OF THE LAND COMPRISED IN THE DEVELOPMENT ZONE TO AN INJUNCTION TO PREVENT OR RESTRAIN ANY BREACH OF THE COVENANTS OR TO DAMAGES FOR SUCH BREACH

THE OWNER FOR ITSELF AND ITS SUCCESSORS IN TITLE HEREBY COVENANTS WITH THE ENCUMBRANCEE AS PROPRIETOR OF AND ALL OTHER PERSONS CLAIMING UNDER THE ENCUMBRANCE AS PURCHASERS OF ANY PART OR PARTS OF THE DEVELOPMENT ZONE THAT THE BURDEN OF THE COVENANTS SHALL BE BINDING ON THE SAID LAND AND EACH AND EVERY PART THEREOF AND OF ALL SUCCESSIVE OWNERS, OCCUPIERS, TRANSFEREES AND TENANTS THEREOF TO THE INTENT THAT THE BENEFIT OF THE COVENANTS SHALL BE ANNEXED TO AND DEVOLVE WITH EACH AND EVERY PART OF THE SAID DEVELOPMENT ZONE OTHER THAN THE SAID LAND HEREBY ENCUMBERED.

COVENANTS - IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE AS FOLLOWS:

1. Owner's Covenants

The Owners covenants with the Encumbrancee that:

- 1.1 The Owner will not use or allow to be used the said land or any part thereof for any purpose other than for residential purposes.
- 1.2 The Owner will not erect or allow to be erected more than one dwelling on the said land without the prior written approval of the Encumbrancee.
- 1.3 The Owner will not erect, install, make or carry out, or allow to be erected, installed, made or carried out any:
 - 1.3.1 building or structure (including a fence or wall of any nature whatsoever) in or over the said land or any part thereof except in accordance with plans and a schedule of materials which are sufficient to outline the building or structure and which have received the prior written approval of the Encumbrancee as having complied with the "**Bluestone Mount Barker Residential Design Guidelines**" and the "Allotment Development Plan" provided to the first Owner as an annexure to the original contract for the sale and purchase of the said land, copies of which may be obtained during normal business hours from the Encumbrancee;
 - 1.3.2 site works (including fencing, any excavation, any levelling or filling or any retaining wall or any driveway or any rainwater tank) on or about the said land or any part thereof except in accordance with plans which are sufficient to outline the works which have received the prior written approval of the Encumbrancee.

PROVIDED THAT the Encumbrancee will not unreasonably or capriciously refuse or withhold any such approval but a refusal shall not be or be deemed unreasonable or capriciously if in the Encumbrancee's reasonable opinion the proposed works do not conform with Bluestone Mount Barker Residential Design Guidelines or the Allotment Development Plans prepared and amended from time to time by the Encumbrancee in respect of lands within the Development Zone or the proposed works are undesirable by reason of the effect that they would have upon the development, appearance, health or amenity of the neighbourhood of which the said land forms part or any part of it.
- 1.4 The Owner will not allow any undue delay to occur in the commencement or in the completion or any work approved by the Encumbrancee and will not allow any variation to such work as approved to occur other than in accordance with the terms of any subsequent written approval of the Encumbrancee given before such variation is commenced.
- 1.5 The Owner will not obstruct or do anything which would prevent or hinder the Encumbrancee its servants agents or contractors from entering the said land for the purpose of remedying any breach by the Owner of its obligations under this Encumbrance of which breach at least fourteen (14) days notice in writing has been given to the Owner and which breach has not then been remedied.
- 1.6 The Owner shall not divide the said land or allow the said land to be divided without the prior written approval of the Encumbrancee.

- 1.7 If the Encumbrancee consents to the transfer of land the Owner will not transfer or otherwise dispose of his estate and interest in the land without first obtaining from the intending purchaser or transferee the execution of an encumbrance that complies in all respects with the terms and conditions contained herein or in the letter of approval by the Encumbrancee to the transfer of the land to be prepared at the cost of the Owner and lodged with the Lands Titles Office after the transfer of the land but before any mortgage.
- 1.8 The Owner will not permit the said land to remain vacant for more than twenty-four (24) months from the date hereof or such other date as the Encumbrancee may advise the Owner by which date the Owner must commence to construct a dwelling on the said land in accordance with plans and specifications approved by the Encumbrancee.
- 1.9 Subject to the terms of this Encumbrance the Encumbrancee shall be entitled to all the powers rights and remedies given to an Encumbrancee by the Real Property Act 1886 as amended from time to time.
- 1.10 The Owner will pay to the Encumbrancee on demand all costs (including legal costs) and expenses incurred by the Encumbrancee its servants agents or contractors in respect of any breach by the Owner of its obligations under this Encumbrance and any action taken to remedy the same. All such costs and expenses may be recovered in any court of competent jurisdiction.
- AND the Owner acknowledges for himself and his successors in title that:
- 1.10.1 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
- 1.10.2 that the Encumbrancee has declared and undertaken that they have required and will require from each purchaser of the lands comprised in the Development Zone as a condition of its sale of those lands a Memorandum of Encumbrance in substantially similar form to this instrument and containing the same or substantially similar covenants and other stipulations.
- 1.11 If at any time prior or after the date of this Encumbrance, the Encumbrancee has installed, constructed or erected upon the said land any fixture, wall or fence of any nature whatsoever ("the entry statement") as an entry statement for any part of the Encumbrancee's scheme of development for the Development Zone, the Owner must not without the prior written approval of the Encumbrancee demolish or alter the entry statement in any way (including by changing or removing any colours of or letter comprised in the entry statement).

2. Waiver of this Encumbrance

The Encumbrancee may from time to time in its absolute discretion modify waive or release any of the Covenants and other stipulations herein contained or implied.

3. Waiver / Discharge of other Encumbrances

The Encumbrancee may from time to time in its absolute discretion:

- 3.1 modify waive or release any of the covenants and other stipulations expressed or implied in any Memorandum of Encumbrance or other instrument whatsoever relating to any other land in the Development Zone and whether the same were entered into or imposed before or at the same time as or after the date hereof and no such modification or waiver or release shall release the Owner from the covenants and other stipulations herein contained and implied; or
- 3.2 discharge one or more of the Memoranda of Encumbrance registered over the land in the Development Zone or transfer one or more of such Memoranda to such body or bodies as it in its absolute discretion deem fit;

AND it is hereby acknowledged and agreed that the Encumbrancee will not be liable for any loss or damage suffered by the Owner for or on account of or in any way whatsoever arising out of or connected with any non-observance of or any failure to enforce any other provisions of this Encumbrance or of any other encumbrance and the Owner will indemnify and keep indemnified the Encumbrancee and their respective agents and servants from and against all claims for any such loss or damage.

4. Notices

- 4.1 Any notice or demand to be given to or made upon the Owner hereunder may be given or made by posting or delivering the same in writing signed by an officer of or solicitor or agent for and on behalf of the Encumbrancee to or at the address of the Owner appearing on the front page of this Encumbrance or the last known place or abode or business of the Owner or by posting the same at any Post Office in an envelope directed to the Owner at any address aforesaid.
- 4.2 Any notice to be given to or served upon the Encumbrancee may be given or served by delivering the same at or sending the same through the Post Office addressed to the Encumbrancee at its principal office for the time being in Adelaide.
- 4.3 Any notice posted as aforesaid shall be deemed to have been received forty-eight (48) hours after the time of posting.

5. Definitions and Interpretation

In this Encumbrance:

- 5.1 **Development Zone** means the land comprised in Pieces marks "A", "B" and "C" in GP 43 of 2010;
- 5.2 **The Owner** includes the Encumbrancer and the registered owner for the time being, and each successive registered proprietor of the land;
- 5.3 A reference to a party includes the heirs, executors, successors or assignors of that party;
- 5.4 If there shall be more than one person responsible hereunder as the Owner or as a successor in title to the Owner, the liability of each of such person or persons shall be both joint and several;
- 5.5 Unless repugnant to the context words importing any particular gender shall include all other genders and words importing the singular number shall include the plural and vice versa;
- 5.6 Headings are used for convenience of reference only and shall not affect the interpretation or construction of this Encumbrance.

AND subject as aforesaid the Encumbrancee shall be entitled to all the powers rights and remedies given to encumbrances by the Real Property Act 1886 (as amended).

6. Severance

Each word, phrase, sentence and clause (a "provision") of this Encumbrance is severable and if a court determines that a provision is unenforceable, illegal or void the court may sever that provision and such severance will not affect the other provisions of this Encumbrance.

7. Sunset Clause

The rights and obligations of the Encumbrancee (but not the Owner or any person claiming under the Owner as purchasers of any land in the Development Zone) will cease on 1 January 2017.

IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE in accordance with the terms and conditions expressed *herein / in Memorandum No. _____ subject to such exclusions and amendments specified herein.

* Delete the inapplicable

DATED

.....
Signature of the ENCUMBRANCER

###

.....
Signature of the ENCUMBRANCER

###

.....
Signature of WITNESS – Signed in my presence by the ENCUMBRANCER who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$2,000 or 6 months imprisonment applies for improper witnessing.

.....
Print Full name of Witness (BLOCK LETTERS)

.....
Address of Witness

.....
Business Hours Telephone Number

EXECUTED by # INSERT COMPANY NAME HERE in accordance with the Corporations Act by: */* THE COMMON SEAL of #INSERT COMPANY NAME HERE was affixed with the authority of the Board of Directors and in the presence of:-

.....
DIRECTOR SIGN

.....
DIRECTOR / SECRETARY SIGN

.....
DIRECTOR PRINT NAME

.....
DIRECTOR / SECRETARY PRINT NAME

and if only one person has signed, that person states that he/she has signed this document as sole director and sole company secretary of the company.

(*Note: please affix common seal if required by the Company's Constitution)

LANDS TITLES REGISTRATION
OFFICE
SOUTH AUSTRALIA

**MEMORANDUM OF
ENCUMBRANCE**

FORM APPROVED BY THE REGISTRAR-GENERAL

**BELOW THIS LINE FOR OFFICE &
STAMP DUTY PURPOSES ONLY**

Prefix
E
Series No.

BELOW THIS LINE FOR AGENT USE ONLY

<p>CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886</p> <p>_____</p> <p>Solicitor / Registered Conveyancer / Encumbrancee</p> <p>JAMES BIDSTRUP / JENI BRANOLT</p>
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AGENT CODE

Lodged by:

Correction to:
GROPE HAMILTON LAWYERS **GRHA266**
 [##### - ALLOT #]

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH
INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1.
2.
3.
4.

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

1.
2.
3.
4.

DELIVERY INSTRUCTIONS (Agent to complete)
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE
UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE

CORRECTION	PASSED
REGISTERED REGISTRAR-GENERAL	