

MEMORANDUM OF ENCUMBRANCE

CERTIFICATE(S) OF TITLE BEING ENCUMBERED

The whole of the land comprised in Certificate of Title Register Book Volume ** Folio **

ESTATE AND INTEREST

In fee simple

ENCUMBRANCES

NIL

ENCUMBRANCER (Full Name and Address)

** of **

ENCUMBRANCEE (Full Name and Address and Mode of Holding)

FLAMSTON PTY LTD A.C.N. 621 542 078 of 40 Adelaide Road, Mount Barker SA 5251

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) per annum (if demanded)**

(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 a period of 10 years commencing on the date of this Encumbrance**

(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 1st day of July in each and every year commencing on the 1st day of July following the date hereof and with the performance and observance of the following covenants**

IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In the Interpretation of this Encumbrance the following expressions shall have the following meanings respectively:

Encumbrancer means the person whose name and address appears on page 1 of this Memorandum of Encumbrance as the “Encumbrancer” and shall include the transferee or assigns of the Encumbrancer and shall also include the executors or administrators of every natural person who is an Encumbrancer.

Encumbrancee means the person whose name and address appears on page 1 of this Memorandum of Encumbrance as the “Encumbrancee” and shall include the executors or the administrators of every natural person who is an Encumbrancee.

The Land means the land described on page 1 of this Memorandum of Encumbrance as “Certificate(s) of Title being Encumbered”.

Transportable Dwelling means a dwelling which is pre-built or design and constructed with the intention that it may be moved to another site.

Temporary Accommodation means a caravan, motor-home, hut, tent, shed or outbuilding not constructed or approved for occupancy as a dwelling.

1.2 Unless the contrary intention appears:

1.2.1 a reference to a statute includes:

1.2.1.1 all amendments to that statute for the time being in force;

1.2.1.2 any other statute enacted in substitution for a statute;

1.2.1.3 any regulations or by-laws for the time being under a statute;

1.2.1.4 any notice, demand, order, direction, requirement or obligation under a statute or regulations or by-laws under a statute;

1.2.2 the expressions statute, Act and Act of Parliament means any State or Federal statute or regulations or by-laws for the time being in force under the statute and any notice, demand, order, direction, requirements or obligations issued, made, given or imposed under any statute, regulation or by-law;

1.2.3 words importing the singular include the plural and words importing one gender include the other gender and vice versa;

1.2.4 a reference to a person includes a body corporate and vice versa;

1.2.5 headings are for convenience only and do not affect the interpretation of this Encumbrance.

2. COMMON BUILDING SCHEME

- 2.1 The covenants terms and conditions contained in this Encumbrance are entered into and undertaken for the purpose of the Encumbrancee's scheme of development for the whole of the land comprised in **Deposited Plan No. ****.
- 2.2 Notwithstanding anything to the contrary contained in the Encumbrance, the Encumbrancee has the right in its absolute discretion at any time to modify, waive, release or decline to enforce any covenant term or condition contained in any Encumbrance entered into in relation to the land comprised in **Deposited Plan No. **** whether or not they are the same covenants, terms and conditions as are set out in this Encumbrance.
- 2.3 The Encumbrancee reserves the right to fully discharge the Memorandum of Encumbrance at the request and cost of the Encumbrancee providing all relevant covenants have been complied with.
- 2.4 The Encumbrancer nor their assigns or successors in title shall have no action or claim whatsoever against the Encumbrancee arising out of or in any way connected with the exercise by the Encumbrancer of its right to discharge modify waive or release any of such covenants terms and conditions in any other Encumbrance.

3. BUILDING GUIDELINES

- 3.1 These building guidelines are provided to set a theme for the built environment that is compatible with a high quality residential development. The Encumbrancer must not erect or construct or permit to be erected or constructed upon the land any dwelling or improvements that do not comply with the following guidelines for design, construction and materials:

3.1.1 Building Materials

- 3.1.1.1 The Encumbrancer must not build or cause to be built any dwelling on the land that does not conform to the following construction and form:

External Walls – Publicly visible facades must include 2 of the following. Be it brick, stone, render or approved panels. The use of timber or other material may be approved providing that the dwellings are professionally designed and aesthetically pleasing.

Roofing – Roofs shall be constructed of tiles, slate, shingles and/or colour coated steel approved by the Encumbrancee. Pitched roofs shall not be less than 25 degrees (25°).

Timber – The encumbrancer will not leave any exterior timber on the dwelling house or any outbuilding untreated.

- 3.1.1.2 The Encumbrancer must not build or cause to be built any freestanding shed, carport, garage or outbuilding on the land that does not conform to the following construction and form:

External Walls – must be of Colour Coated or Colorbond Steel including "custom orb" profile, natural colours such as light browns, greys and green to minimise any visual intrusion. The use of timber or other material may be approved provided that the outbuildings are professionally designed and aesthetically pleasing.

Roofing – Roofs shall be constructed of tiles, slate, shingles and/or colour coated steel approved by the Encumbrancee.

Timber – The encumbrancer will not leave any exterior timber on the freestanding shed, carport, garage or outbuilding untreated.

3.1.2 Fences

3.1.2.1 The Encumbrancer shall not erect or cause to be erected any fence on the Allotment other than of a style and colour as follows:

3.1.2.1.1 fences to all road frontages shall be constructed with an open profile and of materials such as timber pickets or wrought iron painted in heritage or natural colours or alternatively framed with rendered masonry but still comprising mainly wrought iron pickets and be a total of no more than 1,500 mm in height and no less than 900mm.

3.1.2.1.2 side boundary to the rear of the street front building alignment shall be colour coated in Colorbond Steel or equivalent including “custom orb” profile 1,800 mm high. Colours approved for the use in the main body of the fence are to be natural colours such as light browns, greys and green. The Encumbrancee shall not erect a fence using any other colour or material without having first received written approval from the Encumbrancee.

3.1.2.1.3 all side fences erected forward of the building line(s) in front of the street side boundary alignment shall, if solid, be tapered down from 1,800 mm at the front of the building line to 1,200 mm at the front boundary using a continuous and regular taper.

3.1.3 No Transportables

The Encumbrancer shall not construct or permit to be constructed or installed on the land any transportable dwelling.

3.1.4 Rainwater Tanks

The Encumbrancer will not erect or permit to be erected upon the Allotment any rain water tank that is of a colour that does not compliment the colour of the dwelling house.

4. TEMPORARY ACCOMMODATION

4.1 The Encumbrancer will not live in any temporary accommodation upon the land nor consent, permit or license any other person to do so.

5. LAND NOT TO BE SUBDIVDED

- 5.1 Excepting Allotment **1002** the Encumbrancer must not subdivide the land or permit to be erected or constructed upon the land any unit or cluster housing complex or Community Title Scheme pursuant to the Community Titles Act 1996 or any amendment thereof.
- 5.2 Excepting Allotments **1001 & 1002**, the Encumbrancer must not construct or permit to be constructed more than one dwelling on the land.

6. ENCUMBRANCER'S OBLIGATIONS UPON SALE OF THE LAND

- 6.1 The Encumbrancer will not enter into any contract and will not otherwise dispose of his/her/its estate or interest in the land without first having given to the intending purchaser or transferee notice in writing in the following form:

6.1.1 The land is subject to a registered Encumbrance, a copy of which is attached hereto. The encumbrance (amongst other things) contains restrictions concerning the erection, size, position and nature (including materials) of any dwelling house, retaining wall, fence, garage, carport, shed, or other outbuildings upon the land.

6.1.2 Such notice may be given by handing the same to the intending purchaser or transferee or by posting it by Registered Post to the intending purchaser or transferee provided that:

6.1.2.1 If more than one person or corporation constitutes the intending purchaser or transferee, such notice may be given or posted to one of such persons or corporations.

6.1.2.2 If the intending purchaser or transferee nominates a nominee or nominees to accept a Transfer in lieu of the intending purchaser or transferee then the Encumbrancer shall not be obliged to give any such notice to such nominee or nominees.

6.1.2.3 Such notice may be given in the same document as the Vendor's Statement pursuant to Section 7 of the Land and Business (Sale and Conveyancing) Act 1994 or any amendment thereof.

6.2 Deed of Covenant Required

The Encumbrancer will not transfer nor otherwise dispose of his/her/its estate and interest in an Allotment without first obtaining or causing to be obtained from the intending purchaser or transferee a Deed of Covenant in a form to be approved by the Encumbrancee and the cost of obtaining such approval shall be borne by the Encumbrancer wherein the intending purchaser or transferee covenants and agrees to comply in all respects with the conditions therein.

7. COSTS

- 7.1 The Encumbrancer shall bear all costs of and incidental to the preparation of this Encumbrance and all stamp duty and registration costs in connection therewith.

8. APPROVALS

- 8.1 Any approval required to be given by the Encumbrancee may be given by the Encumbrancee or by an Architect appointed for that purpose by the Encumbrancee and whose costs shall be borne by the Encumbrancee.
- 8.2 Once the Encumbrancee has given his approval the same shall be effective for a period of one (1) year during which time the Encumbrance shall not revoke or otherwise vary same.
- 8.3 Any approval required to be given by the Encumbrancee shall not be unreasonably or capriciously withheld provided always however that a refusal by the Encumbrancee to so approve shall not be or be deemed unreasonable if an architect member of the Royal Australian Institute of Architects or a corporate member of the Royal Australian Planning Institute Incorporated (as appropriate) nominated by the Encumbrancee shall have certified that the said works or any part thereof do not conform with the provisions hereof or with the general standards of design and planning of the development of other Allotments in the said **Deposited Plan No. **** or that the said works or any part thereof are undesirable by reason of the effect they would have upon the subdivision, appearance, health or amenity of the neighbourhood or any part of it.

9. SERVICE OF NOTICES

- 9.1 Any notice or demand to be given or made upon the Encumbrancer hereunder may be given or made by posting or delivering the same in writing by the Solicitor or Agent for and on behalf of the Encumbrancee (as the case may require) to or at (in case of any Encumbrancer for the time being hereinafter is a corporation) the registered office for the time being of the Encumbrancer or (in case any Encumbrancer for the time being is not a corporation) by posting or delivering the same so signed to or at the Encumbrancer's last known place of business or abode in South Australia and any notice posted under this encumbrance shall be deemed to have been received in due course of post.

10. Provided always and it is hereby agree and declared between the Encumbrancee and the Encumbrancer, that if the Encumbrancer performs and observes all the covenants agreements and obligations on his/her/its part as required, then Section 130 of the Real Property Act 1886 as amended shall not apply to this encumbrance and that the said Encumbrancer and the successive transferees of the Allotment from the said Encumbrancer shall respectively be released and discharged from the payment of the said rent charge and from the performance and observance of the covenants herein contained or hereby implied forthwith upon the said Encumbrancer and the successive transferees of the Allotment respectively ceasing to be registered as proprietors thereof.

11. SUBJECT as aforesaid the Encumbrancee shall be entitled to all powers and remedies given to an Encumbrancee by the Real Property Act 1886 as amended from time to time.