

ENCUMBRANCE

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LAND DESCRIPTION

ESTATE & INTEREST

FEE SIMPLE

ENCUMBRANCER (Full name and address)

ENCUMBRANCEE (Full name, address and mode of holding)
FOOTPRINT MB PTY LTD (ACN 644 979 788) of SUITE 21, 285A CROWN STREET
SURRY HILLS NSW 2010

OPERATIVE CLAUSE

THE ENCUMBRANCER ENCUMBERS THE ESTATE AND INTEREST IN THE LAND DESCRIBED FOR THE BENEFIT OF THE ENCUMBRANCEE 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. (b) TO BE PAID TO THE ENCUMBRANCEE
If for life use the words "during his or her lifetime"
- (c) State the times appointed for payment of the annuity (c) AT THE TIMES AND IN THE MANNER FOLLOWING
or rent charge. Any special covenants may be inserted.

Payable (if demanded by the Encumbrancee) on the 1st day of January in each year (starting on the 1st day of January in the next calendar year immediately following the date of execution of this encumbrance) 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 encumbrance; and
- That the Encumbrancee will not demand payment of the annuity if, and so long as, the Owner complies with all of the covenants.

COVENANTS

The Encumbrancer for itself and its successors in title agrees with the Encumbrancee and all other persons claiming under the Encumbrancee as purchasers of any part or parts of the land in the Development Zone as follows to the intent:

- that the covenants in this encumbrance 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. Permitted use

- 1.1 The land must not be used for any purpose other than residential use except with the Encumbrancee's approval.
- 1.2 The land must not be used or developed except in accordance with:
 - 1.2.1 any laws relating to planning from time to time in force; and
 - 1.2.2 the conditions of any relevant consent or approval given by the relevant planning authority.
- 1.3 The Owner will not place any reliance on the Encumbrancee's approval, whether for the purposes of planning or zoning laws or otherwise.

2. No land division without Encumbrancee's approval

The Owner must not divide the land except with the approval of the Encumbrancee.

3. Building time frames

The Owner must complete:

- 3.1 adequate landscaping between the front of the dwelling on the land and the adjacent road boundary within 6 months after the completion of the dwelling (or the longer period as the Encumbrancee may approve).
- 3.2 the driveway or crossover no later than 3 months after completion of the dwelling.

4. Building Guidelines

The Encumbrancee must not erect, instal or allow, on the land:

- 4.1 any transportable building.
- 4.2 any dwelling other than one where the external walls comprise brick, stone or textured coated or rendered lightweight construction materials.
- 4.3 any outbuilding (including garden sheds, workshops, aviaries) other than in the rear and side garden.
- 4.4 a rainwater tank which exceeds the maximum height of 2.4 metres or which is not connected by pipes to the road stormwater.
- 4.5 any fence:
 - 4.5.1 forward of the building alignment, unless the allotment adjoins a reserve;
 - 4.5.2 which is less than 1800 mm in height; or
 - 4.5.3 not constructed of Colourbond Good Neighbour design in Monument unless approved by the Encumbrancee. In the case of fences adjoining a reserve, a side fence on a corner block, the Encumbrancee may approve fences of tubular steel, masonry, stone or timber slats.
- 4.6 air-conditioning units or solar hot water systems (including solar panels) which protrude significantly above the ridgeline of the dwelling.
- 4.7 solar hot water systems (including solar panels) which do not integrate with and match the roof profile and are visible from the primary street frontage.
- 4.8 any clothesline which can be seen from a public space.
- 4.9 freestanding garages and carports with a roof line that is not similar in style and pitch to that of the dwelling house.

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- 4.10 any garage or outbuilding greater in area than 10m² without first obtaining prior written approval from the City of Mount Barker.
- 4.11 any garden shed finished in materials other than brick or colourbond with colours matching existing colours used in the dwelling.
- 4.12 **Retaining Walls**
Any retaining walls forward of the main building line must be constructed using quality materials including rendered masonry, patterned precast concrete, locally sourced rock or proprietary interlocking pavers to be designed with colours and materials to visually integrate with the main dwelling on site.

Timber sleepers must not be utilised for retaining soil. Plain concrete sleeper retaining walls may be used in cut behind the main building line in areas not visible from the street.

5. Maintenance

The Owner must not allow:

- 5.1 the state of repair of the land any improvement on the land;
- 5.2 any painted surface on the land; or
- 5.3 the general state of tidiness or cleanliness of the land or any improvement on the land,

to fall below a standard that is acceptable to the Encumbrancee. The Encumbrancee must act in good faith in determining the standard acceptable to it for the purposes of this clause.

6. Vehicles

The Owner must not allow:

- 6.1 any recreational or commercial vehicle (including a caravan, boat, campervan, truck, bus, or van) to be parked between the front building line of any dwelling on the land and the road boundary of the land (except on a very irregular and infrequent basis) or to be parked anywhere else on the land so as to be visible from the street or other public place.
- 6.2 any repairs or restorations to any vehicle, boat or trailer to be visible to public view.

7. Notice to rectify breach

- 7.1 The Encumbrancee, (or a servant, agent or contractor of the Encumbrancee) may enter the land by giving the owner 7 days' notice in writing. The owner must not do (nor cause not permit the doing of) anything to obstruct or hinder such inspection.
- 7.2 If the Encumbrancee serves a written notice upon the Owner specifying a breach of any of the Owner's obligations under any of the foregoing clauses; and the Owner fails to remedy the breach within one calendar month from the date of service of the notice, then 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 the Encumbrancee may recover from the Owner, in any court of competent jurisdiction, the costs incurred in remedying the breach.

8. Acknowledgment of building scheme

The Owner acknowledges for the Owner and the Owner's successors in title:

- 8.1 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
- 8.2 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 encumbrance in substantially similar form to this encumbrance and content to this encumbrance.

9. Waiver

- 9.1 The Encumbrance, in its absolute discretion, may at any time modify, waive or release:

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- 9.1.1 any of the foregoing covenants; or
 - 9.1.2 any covenants or stipulations contained in The Building Requirements or in any other encumbrance relating to the land; or
 - 9.1.3 any of the covenants contained in any similar encumbrance relating to any other land in the said Development Zone (regardless of whether the encumbrance was entered before or after this encumbrance).
- 9.2 A modification, waiver or release under clause 9.1.3 does not release the Owner from any of the covenants or stipulations referred to in clause 9.1.1 or 9.1.2.

10. Release of Owner upon sale

Once a building has been completed on the land in accordance with the terms of the approval required under clause 1.1:

- 10.1 the rent charge and covenants contained in this encumbrance will be binding only upon the registered proprietor for the time being of the land.
- 10.2 subject to clause 10.3, 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.
- 10.3 despite a transfer as referred to in clause 10.2, the rights of the Encumbrancee are 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.

11. Sale is to be subject to encumbrance

The Owner must not enter into any agreement to sell or otherwise dispose of the land, or any interest in it, unless the sale or disposition is subject to this encumbrance so that the purchaser or transferee is bound by the terms of this encumbrance.

12. Sunset clause

The rights and obligations of the Encumbrancee cease from a date ten years after the practical completion of an approved building on the last remaining vacant allotment in the Development Zone (excluding any allotment upon which no building is permitted to be erected).

13. Service of notices

- 13.1 A notice may be served on the Owner either:
 - 13.1.1 by posting the notice in a prepaid envelope to the last known address of the Owner;
 - 13.1.2 if a building has been erected on the land, by leaving the notice at or attached to the dwelling.
- 13.2 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.
- 13.3 A notice served by post is deemed to have been served seven days after posting.

14. General

- 14.1 The construction of a building on the land will not be deemed to have commenced until footings for the building have been completed in accordance with the approval of the relevant authority.
- 14.2 A reference to the completion of a building or similar expression means the stage where the building work is complete except for minor omissions and minor defects:
 - 14.2.1 which do not prevent the building from being reasonably capable of being used for its intended purpose; and
 - 14.2.2 rectification of which will not prejudice the convenient use of the building; andall work on the external facade and other external surfaces of the building is complete.
- 14.3 Nothing in this encumbrance prejudices:

14.3.1 the entitlement of the Encumbrancee to all the powers, rights and remedies given to Encumbrancees under statute law or common law; or

14.3.2 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).

14.4 The Owner has the burden of proving compliance with the covenants in this encumbrance.

14.5 A party's consent or approval must be in writing and given before the event for which it is required and may be given conditionally or unconditionally or withheld in its discretion.

15. Interpretation

In this encumbrance:

Building Requirements mean the guidelines published from time to time by the Encumbrancee in connection with building on the land which may be varied as the need arises by the Encumbrancee in its absolute discretion.

Council means the local government body for the area in which the land is situated.

Development Zone means the whole of the land comprised, or previously comprised, in Stage 2b of The Ridge development.

land means the land subject to this encumbrance and includes any part of the land.

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).

Also, the singular includes the plural and vice versa; reference to any gender includes the other genders; person includes a firm, a corporation, a body corporate, an unincorporated association or an authority; includes or including does not limit the meaning of a word or phrase immediately before it; a reference to any encumbrance includes a reference to that encumbrance as varied from time to time; a reference to a person includes that person's executors, administrators, successors and assigns; where two or more persons are a party a reference to that party is a reference to each of those persons jointly and severally and a reference to any legislation includes all amendments to it and any legislation enacted in substitution for it and all regulations and other statutory encumbrances issued under it and in force.

** Delete the inapplicable*

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.

DATED.....

CERTIFICATION **Delete the inapplicable*

Encumbrancer(s)

*The Certifier has taken reasonable steps to verify the identity of the encumbrancer or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Encumbrance or Document.

*The Certifier has retained the evidence to support this Registry Encumbrance or Document.

*The Certifier has taken reasonable steps to ensure that the Registry Encumbrance or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

<Name of certifying party>
<Capacity of certifying party>

for: <Company name>

on behalf of the Encumbrancer

Encumbrancee(s)

*The Certifier has taken reasonable steps to verify the identity of the encumbrance or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Encumbrance or Document.

*The Certifier has retained the evidence to support this Registry Encumbrance or Document.

*The Certifier has taken reasonable steps to ensure that the Registry Encumbrance or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

<Name of certifying party>
<Capacity of certifying party>

for: <Company name>

on behalf of the Encumbrancee
