

MEMORANDUM OF ENCUMBRANCE

CERTIFICATE(S) OF TITLE BEING ENCUMBERED

The whole of Allotment ** in Deposited Plan No. ** being portion of the land comprised in Certificates of Title Register Books **VOLUME 6100 FOLIOS 330 and 331**

ESTATE AND INTEREST

Estate in Fee Simple

ENCUMBRANCES

Subject to LMA No. 10639674, 10639515 & 11910047

ENCUMBRANCER (Full name and address)

**
of ** **(the Encumbrancer)**

ENCUMBRANCEE (Full name, address and mode of holding)

WRYXON PTY LTD A.C.N. 060 701 000 and CROWNCO PTY LTD A.C.N. 008 159 591 both of Suite 4, 154 Fullarton Road Rose Park SA 5067 as Tenants in Common **(the Encumbrancee)**

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 (\$0.10) |
| (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 a term of 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 1 st day in January each year (starting on the 1 st day of January in the next calendar year immediately following the date of execution of this instrument) to the intent: <ul style="list-style-type: none"> • that the Encumbrancee will hold the annuity for the term 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 buildings).
- 1.2 The Encumbrancer must not submit any plans of building works to the Council for its approval until it has obtained the approval of the Encumbrancee.

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 residence 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, not 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 line similar in style and of the same roofing materials as that of the principle dwelling.

5. No Delay

The Owner shall not, delay or permit to be delayed the completion of construction of the dwelling beyond a time limit of 18 months once construction of the same has commenced.

6. External Building Materials

The Owner shall not, erect or cause to be erected on the said land any dwelling, outbuilding or any improvements (including rainwater tanks), the exterior of which is or contains any galvanised iron or brightly coloured reflective material.

7. Fences

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

- 7.1.2 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
- 7.1.3 the front fence shall be of an "open profile" nature, ideally of a tubular, picket, pillars with see through panels, and
- 7.1.4 the Encumbrancee reserves the right 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") "Grey Ridge", "Bluestone" or "Hedge" Colorbond Steel 1.8 m in height.

8. Gas Supply

In the event that a dwelling is constructed on the subject land, the Purchaser **(together with its assigns and or transferees)** agrees to:

- Connect to the reticulated LP gas service (if available).
- Install gas water heating or a solar powered water heating system backed up with gas supply and a gas cook top.

9. Landscaping

The owner shall within six (6 months) of the completion of a dwelling house on the land, landscape to the satisfaction of the Encumbrancee the area between the front alignment of the dwelling house and the kerb alignment or pedestrian walkway fronting or bounding the land, and in the case of a corner Allotment shall also landscape the area between the side alignment of the dwelling house and the kerb alignment or pedestrian walkway. The owner at all times thereafter maintain, keep tidy and care for the said landscaping.

10. Parking of Vehicles

The Owner shall not, cause, suffer or permit any vehicle of a recreational nature (i.e. caravan, boat, campervan etc.) or a commercial nature (i.e. truck, bus, 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.

11. Notice to Rectify Breach

- 11.1 The Encumbrancee, or a servant, agent or contractor of the Encumbrancee, may enter the land at any time (either 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 have been breached. The Owner must not do (nor cause, nor permit the doing of) anything to obstruct or hinder such entry or inspection).
- 11.2 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
- 11.3 the Owner fails to remedy the breach within one calendar month from the date of service of the notice, then
- 11.4 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
- 11.5 the Encumbrancee may recover from the Owner, in any court of competent jurisdiction, the costs incurred in remedying the breach.

12. Acknowledgement of Building Scheme

The Owner acknowledges for himself and his successors in title that:

- 12.1 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
- 12.2 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.

13. Release of Owner Upon Sale

- 13.1 The Owner will not transfer an estate in fee simple in the said land without first obtaining from the intending purchaser or transferee the execution of an Encumbrance that complies in all aspects with the terms and conditions contained herein, and such replacement Encumbrance must be registered on the title immediately after the Transfer of the land from the Owner to the new Purchaser and before any other interest in the Land is registered.
- 13.2 The Encumbrancer and its successors in title shall be successively released and discharged from the payment of the Rent Charge and from the observance of the covenants and other stipulations contained and implied in this Encumbrance upon ceasing to be registered as the proprietor of the Land to the intent that the Rent Charge and covenants and other stipulations will be binding only upon the registered proprietor for the time being of the land.
- 13.3 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.

14. Waiver of this Encumbrance

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

15. Waiver / Discharge of other Encumbrances

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

- 15.1 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 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
- 15.2 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 by the Owner 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.

16. Sunset Clause

The rights and obligations of the Encumbrancee (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:

- 16.1 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 now dwelling is permitted to be erected); or
- 16.2 the 30th June 2015.

17. Service of Notices

17.1 Any notice to be given to or made upon the Owner hereunder may be given or made either:

- 17.1.1 by posting the notice in a prepaid envelope to the last known address of the Owner; or.
- 17.1.2 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.

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 notice to the last known address of the Owner nevertheless constitutes sufficient service for the purposes of this Encumbrance.

- 17.2 Any notice to be given to or served upon the Encumbrancee may be given or served by delivering or by sending by prepaid post addressed to the Encumbrancee at its principal office for the time being in Adelaide.
- 17.3 Any notice posted as aforesaid shall be deemed to have been received two (2) business days after the time of posting.

18. Assignment By Encumbrancee:

- 18.1 The Encumbrancee may transfer or assign any of its rights and obligations under this Encumbrance to any person, authority or government agency.

18.2 If the Encumbrancee transfers or assigns the rights pursuant to clause 17.1, the Encumbrancee is released from its obligations under this Encumbrance.

19. 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 the Encumbrance.

20. Costs

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

21. Definitions and Interpretation

In this Encumbrance:

- a) a reference to any gender includes all genders;
- b) the singular includes the plural and vice versa;
- c) a reference to a person includes a body corporate and vice versa;
- d) a reference to a party includes the heirs, executors, successors or assigns of that party;
- e) **Development Zone** means the whole of the land comprised in Certificates of Title Register Book VOLUME 6100 FOLIOS 330 and 331 being Allotments 50 and 52 and comprised in Deposited Plan No. ** together with any and all Certificates of Title issuing from land divisions of these Certificates of Title;
- f) **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)
- g) **The land** means the land subject to this instrument and includes any part of the land.
- h) **Council** means the local government body for the area in which the land is situated;
- i) 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;
- j) a reference to the completion of a building or similar expression is used in this Encumbrance means the stage where the Builder / Supervisor Statement (Certificate of Compliance) has been lodged with Council.
- k) headings are used for convenience of reference only and shall not affect the interpretation or construction of this Encumbrance.

Nothing in this Encumbrance prejudices:

- a) the entitlement of the Encumbrancee to all the powers, rights and remedies given to Encumbrancees under Statute or Common Law; or
- b) the rights of the Encumbrancee (or any other person) to an injunction or to damages in respect of a breach of any covenant by the Owner (or a previous Owner).

The burden of proving compliance with the covenants in this Encumbrance lies on the Owner.

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 THEDAY OF20

EXECUTION

.....
Signature of ENCUMBRANCER

.....
Signature of 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.*

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

.....
Address of Witness

Business Hours Telephone No:

*NB: A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing

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 style="text-align: center;">**</p>
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AGENT CODE

Lodged by:

Correction to: **

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
<p>REGISTERED</p> <p>REGISTRAR-GENERAL</p>	