Form M2
Guidance Notes available

MEMORANDUM OF ENCUMBRANCE

CERTIFICATE(S) OF TITLE BEING ENCUMBERED

Allotment in DP being portion of the land comprised in Certificate of Title Register Book Volume 5264 Folio 166

ESTATE AND INTEREST

An estate in fee simple

ENCUMBRANCES

AGREEMENT 7891821

ENCUMBRANCER Full name and address

ENCUMBRANCEE Full name and address and mode of holding

SOUTH BAROSSA PROPERTIES PTY LTD (ACN 143 996 267)
of C/- Unit 8, 26 The Parade West Kent Town SA 5067

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 (10) cents

(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 Nine Hundred and Ninety Nine (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) 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 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.

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 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. Not to be use the Land other than as a residential dwelling

The land must not be used for any purpose other than for one (1) residential dwelling except with the prior written approval of the Encumbrancee

2. No Delay

The Owner must not permit any undue delay to occur in the commencement or completion of any dwelling approved in accordance with clause 3. Specifically, the Owner must not permit any delays in excess of the following time limits:

2.1 a time limit for the commencement of construction of a dwelling of twenty-four (24) months after the date of this instrument; and

2.2 a time limit for completion of such dwelling of eighteen (18) months after commencement of construction,

(or such other time limits as the Encumbrancee in its absolute discretion may agree in writing with the Owner)

3. Building Setbacks

The Owner must ensure that:

3.1 any dwelling constructed on the land is set back from the primary frontage and adjoining boundaries of the land to comply with the requirements of Light Regional Council;

3.2 any garage or carport constructed on the land is set back from the primary frontage of the land to comply with the requirements of Light Regional Council;

4. Building Work

4.1 Unless otherwise approved by the Encumbrancee the Owner will not erect or cause or permit to be erected on the said land any building scheme which does not provide car accommodation under the main room of the building or other Suitable free-standing car accommodation having a roof line substantially similar in style and of the same roof materials and colour as that of the principal dwelling.

4.2 The Owner will not, without prior written consent of the Encumbrancee, erect or cause or permit to be erected on the said land any building where the maximum height of any part or portion of the building exceeds five (5.0) meters above the natural ground level of the land.

4.3 Unless otherwise approved by the Encumbrancee the Owner will not build or erect any dwelling on the land which has external walls constructed from building materials other than from the following range:

- Exposed bagged or rendered brick
- Cement rendered concrete
- Cement rendered block work
- Stone
- Rendered fibrous cement board
- Or other approved materials

Infill areas of walls, utilising painted weatherboard, cement sheet and stucco may be accepted subject to design merit.

4.4 Outbuildings including sheds, workshops, aviaries and similar buildings must be erected in the rear yard with due consideration of the amenity of adjoining neighbours. The design, size, finish and colour of the outbuildings should be complementary to the main dwelling and should minimise visual intrusion.
The maximum size of any outbuilding should not exceed 6.0 metres x 6.0 metres in floor area with a wall

height of 2.4 metres. Outbuildings greater than this size may only be considered if they are constructed of materials corresponding with the walls and roof of the main dwelling or of other materials and colours considered to be acceptable at the Encumbrancee's absolute discretion.

4.5 Dwellings of elevated platform constructions should, where the under croft of the platform is exposed to public view, be enclosed between the elevated floor level and the finished ground level. Infill areas utilising a material corresponding with the external walling of the main dwelling, fibrous cement sheet cladding or "Hardilattice", may be approved subject to design merit.

4.6 Roofs of dwellings must not be constructed from any building materials or in any manner other than as follows:

- Colourbond sheeting, tiles, slate or shingles;
- Roof pitch should be not less than 22.5 degrees
- Flat roof elements, including porticos, verandahs etc, may be approved subject to design merit;
- Bright, bold colours including white (but not off-white) are not permitted;
- Zincalume or Galvanised roof covering is not permitted.

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

4.8 The Owner will not cause or permit any building works to be undertaken on the said land without obtaining professional engineering advice and design works in respect of such buildings.

4.9 Dwellings are to be sited and designed so as to minimise overlooking of the private backyards of adjoining dwellings. Upper storey balconies and terraces should be positioned and designed to minimise overlooking of private open areas on adjacent properties.

4.10 Solar water heaters must not be visible from any public street or thoroughfare and should be architecturally integrated with the dwelling.

4.11 Rainwater tanks are compulsory and must be installed on the land by the Owner. The rainwater tanks must be made of coloured colourbond or similar material. Unpainted galvanised iron rainwater tanks will not be permitted. The maximum height of any rainwater tank is 2.4 metres above ground level and they must be appropriately screened from the view of adjoining properties.

4.12 Owners of land which abut land which is at a lower level than the lowest point of their land shall ensure that nothing is done to increase the volume of stormwater generated from the site onto any adjacent allotment beyond the levels which would have been generated by the land in its natural state.

4.13 Owners of land which abut land which is at a higher level than any point of their site shall ensure that all necessary steps are taken to ensure that stormwater generated as a result of natural flow from their site or any adjacent site is properly diverted so as not to cause inundation to any building on their land.

4.14 The Owner agrees that any encumbrance in similar form to this encumbrance may at the option of the said Encumbrancee be temporarily withdrawn from registration or discharged in respect of any of the allotments in the Development Zone where such temporary withdrawal or discharge is required to enable registration of any mortgage or other document provided that such encumbrance is subsequently registered or a fresh encumbrance in the same form is subsequently registered.

5. <u>Fencing</u>

5.1 The Owner must not cause, suffer or permit to be erected or to remain on the land any fencing which:

5.1..1 does not comprise or contain colour bonded or colour coated steel:

- not exceeding 1.8 metres in height; and
- coloured beige or such other colour as is approved in writing by the Encumbrancee;

5.1..2 is forward of the front building line of any dwelling erected on the land other than "see through" in design and appearance and made of new, "non-reflective" materials.

5.2 If the Encumbrancee has erected any fence on the land, the Owner –

5.2..1 Must not permit the fence to fall into a state of disrepair;

5.2..2 Must not permit maintenance of the fence to be carried out with materials different from the materials

from which the fence was constructed; and

5.2..3 Must not permit the fence to be replaced except with a fence of the same construction and materials as the existing fence (or some similar construction and material approved by the Encumbrancee in writing).

6. Landscaping

The Owner –

6.1 must not permit the completion of landscaping to be delayed beyond a time limit of six (6) 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 and the nearest edge of the road pavement or footpath whichever the case may be fronting or bordering the land); and

6.2 must not allow the maintenance of the completed landscaping to fall below the general standard of landscaping of allotments in the Development Zone to the satisfaction of the Encumbrancee.

7. Vehicle Parking

The Owner –

7.1 must 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 of the 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; and

7.2 must not cause, suffer or permit any vehicle of three (3) tonnes or more to be parked on any residential allotment.

8. Signs and Hoardings

The Owner must not cause, suffer or permit any sign or hoarding to be erected or displayed on the land or on any building on the land.

9. External Equipment etc

The Owner must not cause, suffer or permit any antennae to be fixed to any external surfaces of the building unless it is demonstrated that reception is otherwise adversely affected. If antennae or other attachments (e.g. satellite dishes) are located outside of the roof space, they shall be located so as not to be visible from the street. Satellite dishes must be painted or pre-coated to match the colour of the roof or be of a subdued colour at the absolute discretion of the Encumbrancee.

10. Planning and Zoning Laws

Any approval granted by the Encumbrancee does not constitute an agreement or representation as to adequacy, suitability or fitness of any proposal, plan or specification so approved, nor that the Council will grant its approval. The Owner acknowledges that the Owner will not place any reliance on the Encumbrancee's approval, whether for the purpose of planning or zoning laws or otherwise.

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 (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 have been breached. The Owner must not do (nor cause or 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 any of the clauses contained in this Encumbrance; 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 (after giving 24 hours notice to the Owner) 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 including all legal and other consultant (e.g. architects, planners) costs.

12. Acknowledgement of Building Scheme

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

12.1 that the foregoing covenants are entered into and undertaken for the purposes of the Encumbrancee's scheme of development for the land comprised in the Development Zone; and

12.2 the Encumbrancee has warranted that it has required, and will continue to require, each purchaser of the 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.

13. Waiver

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

13.1..1 Any of the foregoing covenants; or

13.1..2 Any covenants or stipulations contained in the Encumbrance Building and Development Requirements or in any other instrument relating to the land; or

13.1..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)

13.2 A modification, waiver or release under clause 13.1.3 does not release the Owner from any of the covenants or stipulations referred to in clause 13.1.1 or 13.1.2.

14. New Encumbrance upon Sale

The Owner must not enter into any agreement to sell or otherwise dispose of the land (or any interest in the land or any part of the land) without first obtaining from the purchaser or transferee a binding agreement –

14.1 to execute a Memorandum of Encumbrance in substantially similar form as the Memorandum of Encumbrance and containing substantially similar covenants (including this covenant in favour of the Encumbrancee); and

14.2 to lodge such Memorandum of Encumbrance at the Lands Titles Office for registration in respect of the land immediately after the lodgement of the Memorandum of Transfer and in priority to any other instrument or interest.

15. Release of Owner upon sale

Once a dwelling has been completed on the land in accordance with the terms of the approval required under clause 3, the following provisions will apply –

15.1 The rent charge and covenants contained in this instrument will be binding only upon the registered proprietor for the time being of the land.

15.2 Subject to clause 15.3 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.

15.3 Despite a transfer as referred to in clause 15.2, 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.

16. Sunset Clause

16.1 The rights and obligations of the Encumbrancee will cease from a date four (4) years after the sale by the

Encumbrancee of the last remaining allotment owned by the Encumbrancee in the Development Zone

16.2 The Encumbrancee may then discharge this instrument. For that purpose the Owner consents to the discharge being registered without the production of the duplicate Certificate of Title to the land.

17. Service of Notices

17.1 A notice may be served on the Owner 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 leaving the notice at or attached to the dwelling.

17.2 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.

17.3 A Notice served by post is deemed to have been served two (2) business days after posting.

18. Interpretation

18.1 In this instrument:-

18.1.1 a reference to any gender includes all genders;

18.1.2 the singular includes the plural and vice versa;

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

18.1.4 a reference to any party includes the heirs, executors, administrators, successors or assigns of that party

18.1.5 "primary frontage" means the common boundary of the allotment and the road;

18.1.6 "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);

18.1.7 "the Development Zone" means allotments numbered 1 – 33 inclusive in the plan deposited in the Lands Titles Office numbered DP *******

18.1.8 "the land" means the land subject to this instrument and includes any part of the land;

18.1.9 "Council" means the local government body for the area in which the land is situated;

18.1.10 "building" where used as a noun means any building, structure, outbuilding, shelter, carport, rainwater tank, or any kind of construction whatsoever;

18.1.11 "dwelling" means any human habitation;

18.1.12 "allotment development plan' means a plan or plans incorporating, at the discretion of the Encumbrancee, any or all of the following:
(a) Sketch plans of the proposed building sufficient to describe the character of the proposed building and its relationship to the land including a site plan and building plans showing the elevations, cross-sections and floor plans.
(b) a Schedule of specifications, materials, external finishes and colours of the proposed building.
(c) a plan of any proposed earthworks, grading or cut and fill.
(d) a plan of the proposed access drive and onsite parking provision.
(e) a plan of site works and operations proposed to be erected, made or carried out on or about the said land including arrangements for vehicular ingress and egress during construction and arrangements for retaining, stockpiling and replacing topsoil and removing building debris.

18.2 Nothing in this instrument prejudices:-

18.2.1 the entitlement of the Encumbrancee to all powers, rights and remedies given to Encumbrancee's under statute, law or common law; or

18.2.2 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 previous owner).

18.3 The burden of providing compliance with the covenants in this instruments lies on the Owner at all times.

19. Payment of Costs

The costs incidental to the preparation of this encumbrance, and the stamp duty and registration fee on it, must be paid the Encumbrancer.

The Owner must also pay the Encumbrancee any costs incurred as a result of any breach of this encumbrance by the owner or their employees, agents contractors or invitees.

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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 THE DAY OF 2011

.....
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. A penalty of up to $2000 or 6 months imprisonment applies for improper witnessing

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

.....
Print Address of Witness

.....

Business Hours Telephone Number.....

Prefix
E
Series No.

LANDS TITLES REGISTRATION OFFICE
SOUTH AUSTRALIA

MEMORANDUM OF ENCUMBRANCE

FORM APPROVED BY THE REGISTRAR-GENERAL

BELOW THIS LINE FOR OFFICE & STAMP DUTY PURPOSES ONLY

BELOW THIS LINE FOR AGENT USE ONLY

CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886

_____
Registered Conveyancer
BR MCDONALD / DJ FENTON / AD SNAPE

AGENT CODE

Lodged by:

Correction to: **FENTONS CONVEYANCING** **BJF1**

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

R-G 010709

CORRECTION	PASSED
REGISTERED REGISTRAR-GENERAL	