

MEMORANDUM OF ENCUMBRANCE

CERTIFICATE(S) OF TITLE BEING ENCUMBERED

The whole of the land comprised in Certificate of Title VOLUME FOLIO

ESTATE AND INTEREST

Estate in fee simple

ENCUMBRANCES

Nil

ENCUMBRANCER (Full name and address)**ENCUMBRANCEE (Full name, address and mode of holding)**

LANSER COMMUNITIES PTY LTD ACN 090 862 178 of 42 Hurtle Square, Adelaide SA 5000

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) 10 CENTS 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

ANNUALLY AS A YEARLY RENT CHARGE FOR A TERM OF 99 YEARS FROM 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 30 JUNE IMMEDIATELY FOLLOWING THE GRANT OF THIS ENCUMBRANCE AND EACH SUCCEEDING 30 JUNE DURING THE TERM OF THIS ENCUMBRANCE, TOGETHER WITH THE OBSERVANCE OF THE REST OF THE COVENANTS CONTAINED IN THIS ENCUMBRANCE

COVENANTS

IT IS COVENANTED BETWEEN THE OWNER AND THE ENCUMBRANCEE as follows:

1. Owner's Covenants

The Owner covenants with the Encumbrancee that:

1.1 Use of Land

The Owner will not use or allow to be used the Land or any part thereof for any purpose other than for residential purposes, except in accordance with any conditions attaching to any relevant consent or approval given by any council or other relevant planning authority.

1.2 No subdivision

The Owner will not divide the Land or allow the Land to be divided without the prior written approval of the Encumbrancee.

1.3 One dwelling

The Owner will not erect or allow to be erected more than one dwelling on the Land without the prior written approval of the Encumbrancee.

1.4 Development in accordance with the Urban Design Guidelines

The Owner will not erect, install, make or carry out, or allow to be erected, installed, made or carried out any:

- (a) building or structure (including a fence or wall of any nature whatsoever); and
- (b) site works (including fencing, any excavation, any levelling or filling or an retaining wall or any driveway or any rainwater tank),

in or over, on or about the Land or any part thereof except in accordance with plans and a schedule of materials which are sufficient to outline the building, structure or works and which have received the prior written approval of the Encumbrancee as having complied with the Urban Design Guidelines and the Allotment Development Plans.

PROVIDED THAT the Owner must not submit building plans and specifications to the Encumbrancee for approval, unless the plans and specifications are accompanied by sufficient information to satisfy the Encumbrancee that the requirements of clauses 1.4(a) and 1.4(b) will be met and **PROVIDED FURTHER 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 capricious if in the Encumbrancee's reasonable opinion the proposed works do not conform with the Urban Design Guidelines or the Allotment Development Plan 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 Land forms part or any part of it.

1.5 No delay

The Owner will not allow any undue delay to occur in the commencement or in the completion of 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.

1.6 No obstruction

The Owner will not obstruct or do anything which would prevent or hinder the Encumbrancee its servants agents or contractors from entering the Land for the purpose of remedying any breach by the Owner of its obligations under this Encumbrance of which breach at least 14 days notice in writing has been given to the Owner and which breach has not then been remedied.

1.7 Professional advice required

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

1.8 Limitation on re-sale

- (a) The Owner will not cause or permit the Land to be resold or advertised for sale unless a dwelling has been constructed thereon or unless the Encumbrancee has consented in writing to such re-sale and/or advertising, which consent may be withheld at the sole and complete discretion of the Encumbrancee.
- (b) If the Encumbrancee consents to the transfer of vacant 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 (**Transferee**) the execution, stamping and registration of a Memorandum of Encumbrance from the Transferee in favour of the Encumbrancee upon the same terms as this Encumbrance, such instrument to be:
 - (i) prepared by the Encumbrancee or its solicitors;
 - (ii) executed by the Transferee prior to the transfer;
 - (iii) stamped (if so required) prior to the transfer; and
 - (iv) lodged for registration by the Encumbrancee or its solicitors so that it is registered immediately following the Memorandum of Transfer to the Transferee and in priority to all other instruments.

1.9 Building within 18 months

The Owner will not permit the Land to remain vacant for more than 18 calendar 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 Land approved by the Encumbrancee and the Owner must ensure the completion of the construction of such dwelling within 12 calendar months from the date of commencement of constructions (as determined on reasonable grounds by the Encumbrancee).

1.10 Establishment and maintenance of landscaping

The Owner:

- (a) must not permit the establishment and completion of landscaping all garden areas within public view (including but not limited to any verge area between such kerb and the Land) on the Land to be delayed beyond 6 calendar months after the completion of the dwelling;
- (b) must not permit the establishment or variation of landscaping to any garden areas within public view without the prior approval of the Encumbrancee;
- (c) must not allow the maintenance of the landscaping on the Land to fall below a standard that is acceptable to the Encumbrancee and the general standard of landscaping within the Development Zone.

1.11 Fencing

The Owner:

- (a) must not allow the erection of fencing to be delayed beyond three (3) months after the completion of the dwelling;
- (b) must not allow the rear and side boundary of the Land to remain unfenced;
- (c) must not allow the erection of fencing except in accordance with the Urban Design Guidelines.

1.12 Not to damage verge areas, etc

The Owner:

- (a) must not cause or permit any damage to occur to:
 - (i) the kerb of any roadway in front of or adjacent to the Land;
 - (ii) any part of any verge area between such kerb and the Land, or any footpath, landscaping, irrigation systems, pipes, fittings or public infrastructure including but not limited to services for sewer, water, gas and telephonic located near or adjacent to the Land; or
 - (iii) any driveway or driveway crossover between the Land and the roadway.
- (b) must not permit any builder or contractor engaged by the Owner to cause any damage of the kind described in clause 1.12(a); and
- (c) must not permit any damage of the kinds referred to in clauses 1.12(a) and 1.12(b) to remain unrectified for more than 28 days,

and the Owner acknowledges and agrees that all such rectification will be at the cost and expense of the Owner, and the Owner hereby indemnifies and will keep indemnified the Encumbrancee from and against all costs, charges and expenses, including those incurred in connection with advisors, experts and consultants (including legal costs calculated on a solicitor and own client basis) claims, damages, liability, losses, injury (actual or contingent) suffered or incurred by the Encumbrancee as a result of or relating to any failure by the Owner to observe this clause 1.12.

1.13 Option to buy back

If the Owner shall make any default under clause 1.9 or having commenced the erection of such dwelling as aforesaid within the period required by clause 1.9 shall fail to complete the erection of such dwelling within 12 calendar months from the date of commencement of construction as determined by the Encumbrancee then and in such case the Encumbrancee may give to the Owner notice in writing to make good such default by commencing and proceeding with or completing (as the case may require) the erection of such dwelling in accordance with the plans and specifications approved by the Encumbrancee without any delay and if the Owner shall fail for 1 calendar month to comply with such notice then and in any such case the Encumbrancee may forthwith at any time whilst such default continues and without prejudice to any other power right or remedy sell in exercise of its power of sale the Land in such manner and for such price and upon such terms and conditions as it may think fit and in addition thereto the Encumbrancee shall at any time whilst any such default continues have the option of repurchasing from the Owner the Land (and any partly erected building thereon) at a price equal to the total of:

- (a) 90% of the price paid for the Land by the Owner to Evanston; and
- (b) the market value if any (as at the date of the exercise of the option) of any partly or wholly erected building or fixture or improvement thereon and complying in all respects with the approval given under clause 1.4 erected affixed or made at the expense of the Owner such value to be determined by the valuation of a licensed valuer nominated by the President or Acting President for the time being of the Australian Institute of Land Valuers and Economists Incorporated (SA Division) at the request of the Encumbrancee and whose costs shall be borne by the Owner;

with a settlement date being 30 days after the determination of the price and otherwise on the terms and conditions contained in the contract for the sale and purchase of land recommended for use by the Real Estate Institute of South Australia at the time the Encumbrancee exercises its option except that:

- (c) no deposit shall be payable;
- (d) the transfer shall be subject only to this Encumbrance and the Encumbrancee shall be entitled to deduct from the purchase price any amounts which may be required to discharge any mortgage, charge, lien or other interest over the Land; and
- (e) all costs associated with the transfer of the Land (including the Encumbrancee's legal costs) shall be borne by the Owner.

1.14 **Entry statement**

If at any time prior or after the date of this Encumbrance, the Encumbrancee has installed, constructed or erected upon the 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:

- (a) demolish or alter the entry statement in any way (including by changing or removing any colours of or lettering comprised in the entry statement); or
- (b) allow any graffiti on or non-structural damage to or want of repair of the entry statement to remain unremedied for a period of longer than 14 days after the Owner becomes aware of the existence of such graffiti, non-structural damage to or want of repair; or
- (c) fail to properly maintain the entry statement including by way of:
 - (i) maintaining any painting, colours and lettering of the entry statement;
 - (ii) removing any graffiti; and
 - (iii) repairing any non-structural damage occurring to the entry statement.

1.15 **Outbuildings**

The Owner:

- (a) must not allow any outbuilding including but not limited to sheds, workshops, aviaries, gazebos and similar buildings (attached or detached to the dwelling) to be erected on the Land that is not complimentary to the surrounding environment;
- (b) must not erect any outbuilding except in accordance with the Urban Design Guidelines.

1.16 **Parking of vehicles**

The Owner must not cause or permit:

- (a) parking of motor vehicles on the Land other than on the driveway on the Land; storage of boats, caravans or trailers on any part of the Land or any part of any verge area between such kerb and the Land or any footpath and landscaping near or adjacent to the Land;
- (b) commercial vehicles to be parked or left unattended on the Land or otherwise than in a position where the same are not visible from the road frontage to the Land;
- (c) any vehicle greater than 3 tonnes in weight to be parked or left unattended on the Land.

In this clause, 'commercial vehicle' means a vehicle between 1 and 3 tonnes in tare weight intended or designed to carry goods, equipment or passengers in commercial quantities.

2. **Costs for breach**

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 or deducted from the price paid for the Land in accordance with clause 1.13 in addition to all other powers and rights available to the Encumbrancee hereunder.

3. **Transfer of Land**

Without detracting in any way from this Encumbrance being binding on the successors of the Owner, the Owner must not Dispose of the Land to any person (**Transferee**) unless the Owner has first procured the grant by that person of an encumbrance:

- (a) in the same form as this Encumbrance;
- (b) to the same effect as this Encumbrance;
- (c) which binds that person;
- (d) is for the benefit of the Encumbrancee; and
- (e) which is registered on the certificate of title of the Land immediately following the Memorandum of Transfer to the Transferee and in priority to all other instruments.

4. **Waiver of this Encumbrance**

The Encumbrancee may from time to time in its absolute discretion modify waive or release:

- (a) any of the Covenants and other stipulations herein contained or implied; and
- (b) in any other instrument relating to the Land.

5. **Waiver/Discharge of other Encumbrances**

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

- (a) 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
- (b) 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.

6. **Notices**

- 6.1 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 any 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 of 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.
- 6.2 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.
- 6.3 Any notice posted as aforesaid shall be deemed to have been received 48 hours after the time of posting.

7. Definitions and Interpretation

7.1 Definitions

In this Encumbrance:

Allotment Development Plan means the allotment development plan provided to the first Owner as an annexure to the original contract for the sale and purchase of the Land, copies of which may be obtained during normal business hours from the Encumbrancee.

Development Zone means all or any part of the land comprised in Certificates of Title Volume 5354 Folio 262, Volume 5490 Folio 605, Volume 5505 Folio 797, Volume 5629 Folio 165, Volume 5629 Folio 251, Volume 5859 Folio 681 and Volume 6041 Folio 181.

Dispose means assign, transfer, otherwise dispose of or grant or permit or suffer the grant of any legal or equitable interest (either in whole or in part) whether by sale, lease, declaration or creation of a trust or otherwise;

Evanston means Evanston South Pty Ltd ACN 126 994 330;

Land means the land described in the panel entitled 'Certificate(s) of Title Being Encumbered' on the front page of this Encumbrance;

Owner means the Encumbrancer described in the panel entitled 'Encumbrancer' on the front page of this Encumbrance and includes its successors in title, permitted assigns and the registered proprietor of the time being of the Land;

Urban Design Guidelines means the design guidelines published by or on behalf of the Encumbrancee, which relate to the building scheme which has been or will be adopted in the Development Zone (which may be varied from time to time by the Encumbrancee).

7.2 Interpretation

In this Encumbrance, unless it is state to the contrary:

- (a) A reference to a party includes the heirs, executors, successors or assignors of that party;
- (b) 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;
- (c) 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;
- (d) 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).

8. 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.

9. Sunset Clause

9.1 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 the earlier of:

- (a) 2 years after the practical completion of the final stage of development within the Development Zone (excluding any allotment upon which no dwelling is permitted to be erected); and
- (b) 30 June 2028.

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

Signed by presence of _____ in the _____

Signature of witness _____ ←

_____ ←

Name of witness (print) _____

Address of witness _____

Phone number of witness _____

Signed by presence of _____ in the _____

Signature of witness _____ ←

_____ ←

Name of witness (print) _____

Address of witness _____

Phone number of witness _____

Executed by ACN pursuant to section 127 of the Corporations Act 2001

Signature of director _____ ←

Signature of director/company secretary (Please delete as applicable) _____ ←

Name of director (print) _____

Name of director/company secretary (print) _____

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

CERTIFIED CORRECT FOR THE PURPOSES
OF THE REAL PROPERTY ACT 1886

Solicitor/Registered Conveyancer/Encumbrancee

Lodged by:

AGENT CODE

Correction to: Minter Ellison

MIEL

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	