
ANNEXURE “D”

Memorandum of Encumbrance

MEMORANDUM OF ENCUMBRANCE

CERTIFICATE(S) OF TITLE BEING ENCUMBERED

ESTATE AND INTEREST
ESTATE IN FEE SIMPLE.

ENCUMBRANCES
NIL

ENCUMBRANCER (Full name and address)

ENCUMBRANCEE (Full name, address and mode of holding)
ACTIUM LAND DEVELOPMENTS PTY LTD (A.C.N. 162 807 007) of 110 - 114 Grange Road Allenby Gardens SA 5009.

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

- | | |
|--|--|
| <p>(a) Insert the amount of the annuity or rent charge</p> | <p>(a) One Dollar (\$1.00) per annum if and when demanded</p> |
| <p>(b) State the term of the annuity or rent charge.
If for life use the words "during his or her lifetime"</p> | <p>(b) TO BE PAID TO THE ENCUMBRANCEE
For a term of one hundred years</p> |
| <p>(c) State the times appointed for payment of the annuity or rent charge. Any special covenants may be inserted on page 2.</p> | <p>(c) AT THE TIMES AND IN THE MANNER FOLLOWING
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 shall hold the said annuity to secure the compliance, performance and observance by the Owner with the covenants, terms and conditions 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 covenants.</p> |

COVENANTS

COVENANTS COMMENCE OF PAGE 3 HEREOF

The Encumbrancer (which expression includes when "the Encumbrancer" is a corporate body its successors and assigns and when "the Encumbrancer" is a person, that person's heirs, executors, administrators and transferees and where there is more than one corporate body and/or person comprised in the expression then all of them jointly and each of them severally and their respective successors, assigns, heirs, executors, administrators and transferees and all of them) encumbers the said land for the benefit of the Encumbrancee (which expression includes their respective successors and assigns) and covenants with the Encumbrancee (in addition to and without prejudice to the covenants on the part of the Encumbrancer and the powers rights remedies of the provisions of the Real Property Act 1886 as amended for the time being in force except insofar as the name are hereby expressed or implied, negated or modified) as follows:-

DURING THE TERM OF THIS ENCUMBRANCE THE ENCUMBRANCER:-

1. **SHALL NOT**, erect or permit to be erected on the said land any dwelling, building or any improvements, the exterior of which is or contains any brightly coloured and/or reflective galvanised iron or reflective material and **SHALL** be constructed of a material and style as follows :
The external walls of dwellings may be constructed from the following range of building materials
 - a) Brick
 - b) Bagged or rendered brick
 - c) Cement rendered concrete or cement rendered block work
 - d) Stone
 - e) Tilt-up concrete slab panels (to be painted, rendered or texture coated)
 - f) Texture coated and or rendered lightweight construction materials.

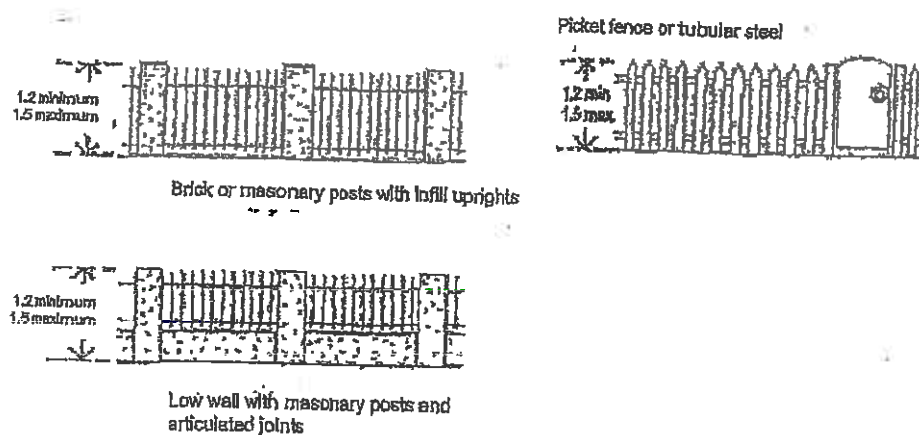
The roof materials should be either

 - a) Colour coated corrugated steel sheeting
 - b) Tiles
 - c) Slate or cement shingles
2. **SHALL NOT**, erect or permit to be erected white coloured roof materials.
(Off-white is acceptable)
3. **SHALL NOT**, erect or suffer to be erected roof pitches of less than 22.5 degrees unless the architectural merits can be demonstrated and subsequently approved by the Encumbrancee or its duly appointed representative. (This is solely at the discretion of the Encumbrancee or its duly appointed representative)
4. **SHALL NOT**, erect or permit to be erected on the said land any outbuilding or any improvements, the exterior of which is or contains any brightly coloured and/or reflective galvanised iron or any other reflective material or use second hand or recycled materials. (Colour coated corrugated steel sheeting to be used)

5. **SHALL NOT**, unless otherwise approved by the Encumbrancee or its duly appointed representative, erect or cause or permit to be erected any dwelling which does not provide accommodation for at least one vehicle either in the form of a garage or carport under the main roof or other suitable free-standing car accommodation which shall have a roof line similar in style and of the same roofing materials as that of the principal dwelling.

6. **SHALL NOT**, unless otherwise approved by the Encumbrancee or its duly appointed representative, erect or permit to be erected on the said land, front fencing forward of a dwelling **UNLESS** it is of a decorative nature incorporating pillars and open rails or pickets.
 Front fences should conform to the following specifications :
 - a) Fencing post and pillars should have a minimum dimensions of 100mm X 100mm and be constructed of timber, brick or concrete.
 - b) Front fences incorporating tubular steel must incorporate a suitable plinth.
 - c) Tubular steel fences must use incorporate decorative caps such as spears etc.
 - d) Picket fences should incorporate a maximum of 20mm separation (gap) between uprights.

Examples of the aforesaid fences are as follows :



7. **SHALL NOT**, unless otherwise approved by the Encumbrancee or its duly appointed representative, erect or suffer to be erected on the said land, solid front fences and front fences higher than 1.5 metres

8. Notice to rectify breach

8.1 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 has been breached. The Owner must not do (nor cause nor permit the doing of) anything to obstruct or hinder such entry of inspection.

- 8.2 If the Encumbrancee serves a written notice upon the Owner specifying a breach of any of the Owner's obligations under clause 1; and
- 8.3 the Owner fails to remedy the breach within one calendar month from the date of service of the notice, then
- 8.4 the Encumbrancee it's servants, agents and contractors may enter "the land" and may take such action as the Encumbrancee deems necessary to remedy the breach; and
- 8.5 the Encumbrancee may recover from the Owner, in any court of competent jurisdiction, the costs incurred in remedying the breach.

9. Release of Owner upon sale

- 9.1 The rent charge and covenants contained in the instrument will be binding; only upon the registered proprietor for the time being of "the land".
- 9.2 Subject to clauses 9.3 and 15, each successive registered proprietor of "the land" will be released from the payment of the rent charge and from the performances to the covenants upon transferring the fee simple in "the land" to another person.
- 9.3 Despite a transfer as referred to in clause 10.2, 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.

10. Sunset clause

The rights and obligations of the Encumbrancee (but not those of any person claiming under the Encumbrance as purchasers of any land in the Development Zone) will cease as of three (3 years) after the date of the Encumbrance.

11. Service of notices

- 11.1 A notice may be served on the Owner either:-
 - 11.1.1 by posting the notice in a prepaid envelope to the last known address of the Owner; or
 - 11.1.2 if a dwelling has been erected on "the land", by leaving the notice at or attached to the dwelling.

- 11.2 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.
- 11.3 A notice served by post is deemed to have been served two (2)
business days after posting.

12. Interpretation

- 12.1 a reference to gender includes all genders;
- 12.2 the singular includes the plural and vice versa;
- 12.3 a reference to a person includes a body corporate and vice
versa;
- 12.4 a reference to a party includes the heirs, executors, successors
or assigns of that party;
- 12.5 "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
severable);
- 12.6 "the Development Zone" means the whole of "the land"
comprised in allotment 19 in Filed Plan No. 157354 being
the whole of land comprised in Certificate of Title
Volume 5939 Folio 641
- 12.7 "the land" means the land subject to this instrument and
includes every part of "the land";

13. Nothing in this instrument prejudices:-

- 13.1 the entitlement of the Encumbrancee to all the powers, rights
and remedies given to Encumbrancees under statute law or
common law, or
- 13.2 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. The burden of proving compliance with the covenants in this instrument lies
on the Owner.

15. Notwithstanding anything to the contrary hereinbefore contained, the
Encumbrancer SHALL NOT, transfer any estate or interest in the said land (or any
part thereof) without first causing the party in whose favour such estate or interest is
to be transferred to execute a covenant under seal in favour of the Encumbrancee that
such party will observe and perform all of the terms and conditions in this
Memorandum of Encumbrance contained as if such party had been the original party
to this Memorandum of Encumbrance as the Encumbrancer herein named and for the
purposes hereof a contract of Sale and Purchase entered into by the Encumbrancer
with a third party Purchaser and a subsequently executed and accepted Memorandum

of Transfer with both the Contract and the Transfer subject to the provisions hereof shall be complete satisfaction of the requirements under this covenant.

The Encumbrancer shall pay the costs of and incidental to the preparation, stamping and registration of this Encumbrance.

The Encumbrancer hereby covenants and agrees that notwithstanding anything to the contrary herein contained the Encumbrancee may from time to time in its absolute and unfettered discretion modify waive or release any of the covenants or stipulations expressed or implied in any Memorandum of Encumbrance or other instrument relating to any other land in the Plan of Division which created this allotment and whether the same were entered into or imposed before or at the same time as or after the date hereof and no modification or waiver or release shall release the Encumbrancer or his stipulations herein contained and Further if any covenant or stipulation of this Encumbrance shall for any reason be unlawful, void, invalid or unenforceable THEN such covenant or stipulation shall be severed here from without affecting the validity or the enforceability of the remainder AND IT IS HEREBY EXPRESSLY AGREED between the Encumbrancer and the Encumbrancee that this Encumbrance may be pleaded by the Encumbrancee by way of estoppel to any action claim or demand by the Encumbrancer and or any successors in title for damages, costs or otherwise however arising.

AND it is hereby acknowledged and agreed that the Encumbrancee will not be liable for any loss or damage suffered by the Encumbrancer 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 Encumbrancer will indemnify and keep indemnified the Encumbrancee and their respective agents and servants from and against all claims for any such loss or damage.

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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

.....
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)

.....
Address of Witness

.....
Business Hours Telephone 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**

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>_____ Solicitor / Registered Conveyancer / Encumbrancee</p> <p>AV Pearson -</p>

AGENT CODE

Lodged by:

Correction to:

DUNCAN SANDE & ASSOCIATES DUSA

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	

RevenueSA - Stamp Duty - ABN 19 040 349 865 ©
RevNetID/PRA Bundle No.: _____
Orig/Copy 1 of/with 0copies
Consideration/Value/Security: \$100.00
SA Proportion (if applicable): \$ N/A
SD: \$ EXEMPT LTO Fees: \$ _____
Int: \$ N/A Pen/Add Tax: \$ N/A
Signature: _____ Date: ___/___/___