

MEMORANDUM OF ENCUMBRANCE

CERTIFICATE(S) OF TITLE BEING ENCUMBERED

The whole of the land comprised in Certificate of Title Register Book

Volume**Folio**

ESTATE AND INTEREST

An estate in fee simple

ENCUMBRANCES

Nil

ENCUMBRANCER (Full Name and Address)

ENCUMBRANCEE (Full Name, Address and Mode of Holding)

GEMBUILT PTY LTD (ACN 137 483 811)
of 10/235 Unley Road Malvern SA 5061

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 CENTS \$0.10 (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 as a yearly rent charge for a term of 999 years commencing on 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 the first day of January in each year commencing on the 1st day of January following the date of this Encumbrance AND with the performance and observance of the following covenants

IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE as follows:

The purpose of this encumbrance

1. The encumbrancer on page 1 ("you", "your") grants this encumbrance –
 - 1.1. for the benefit of the encumbrancee on page 1 ("we", "our", "us")
 - 1.2. for the benefit of each present and future owner of the land
 - 1.3. to charge the land on page 1 ("the land") with the payment of the annuity on page 1 ("the rent charge")
 - 1.4. for the purpose of a common building scheme for the development zone ("development zone")
 - 1.5. with the intent that its covenants run with the land and be binding also on anyone who becomes the owner of the land after you.

Interpreting this encumbrance

2. In this encumbrance, unless the contrary intention appears –
 - 2.1. "the land" means all the land and any rights and easements described above
 - 2.2. "development zone" means all of the land delineated in Development No 455/D024/09/001
 - 2.3. "development" means work of any kind, including but not limited to –
 - A. "building works" as defined in the Building Works Contractors Act
 - B. the construction or alteration of any permanent or temporary structure
 - C. earthworks or landscaping of any kind
 - D. repairs, painting or improvements of any kind
 - 2.4. reference to giving access to us includes giving access to our employees agents and contractors
 - 2.5. reference to a party includes the party's successors and transferees (and also the party's personal representatives if the party is a natural person)
 - 2.6. reference to any statute includes statutes which change or replace it, and
 - 2.7. any word indicating the singular includes the plural and vice versa.
3. If there are more than one of you then –
 - 3.1. we only have to give notices to one of you and
 - 3.2. all your obligations in this encumbrance are joint and several.

Restrictions on the use and development of the land

4. You must use the land only for private residential purposes.
5. You must obey any development guidelines we issue from time to time relating to carrying out any development on the land.

Rules governing the use of the land

6. You must obey the following rules in using or owning the land
 - 6.1. You must not subdivide the land or create any additional allotment from the land
 - 6.2. Transportable buildings are not permitted on the land
 - 6.3. You must not use any caravan, tent or other shelter on the land as a place of residence
 - 6.4. You must not make any claim against us for the cost of (or for contribution to the cost of) erecting a fence between the land and any land of ours. You indemnify us against such claim.
7. The provisions of the Law of Property Act and the Real Property Act relating to encumbrances apply to this encumbrance.
8. The provisions referred to in the above Clause 7 include, amongst other rights and obligations –
 - 8.1. an obligation on you to keep all improvements on the land in good repair
 - 8.2. a right of ours to enter upon the land, upon giving the occupier of the dwelling house reasonable notice of our intention to do so, to inspect the state of repair of such improvements
 - 8.3. an obligation on you to pay the rent charge at the time and in the manner set out in this encumbrance
 - 8.4. the right of a subsequent mortgagee or encumbrancee to redeem this encumbrance
 - 8.5. a power of ours, if you default in payment of the rent charge or in observing your obligations expressed or implied in this encumbrance, to enter and take possession of the land or bring an action for recovery of the land, or to distrain the goods of the tenant or occupier of the land
 - 8.6. a right of ours to sell the land if you default in payment of the rent charge or in observing your obligations expressed or implied in this encumbrance.

Dwelling

9. During the continuance of this Encumbrance, you SHALL NOT:
 - 9.1. erect or cause to be erected any building or structure other than one main dwelling house together with the usual domestic outbuildings ancillary to the use of such dwelling house.
 - 9.2. erect or cause to be erected, a roof on the said dwelling house with a pitch of less than twenty five (25) degrees unless otherwise approved by us
 - 9.3. unless approved by us, erect or cause or permit to be erected any residential dwelling house, unless the minimum living area (excluding carports, garages, verandahs, porticos, pergolas, balconies and outbuildings) shall be one hundred and ninety (190) square meters
 - 9.4. place any advertising or business signage on the land or in the front window or on the walls of any residential dwelling house except real estate signage associated with the sale of an established dwelling house on the land

- 9.5. erect or cause to be erected any dwelling house other than a dwelling house of permanent structure and of at least sixty per cent (60%) masonry construction or such other materials as shall be approved by us, the exterior of the dwelling house being constructed of new, non-reflective materials and the interior of the dwelling house being constructed of new materials. Neither the interior nor the exterior of the dwelling house are to be constructed of materials such as asbestos cement, fibreglass, plastic or rubber or any material of a like nature. In this clause, the term "permanent structure" shall mean a dwelling house which is permanently affixed to the land and shall not include a dwelling house of which any part is of a portable or transportable nature
- 9.6. use used or second-hand materials in the construction of the dwelling house or the domestic outbuildings
- 9.7. use the land other than solely for residential purposes unless you shall obtain our prior written consent and also the prior written consent of the relevant council
- 9.8. erect or permit to be erected any structure or structures which are ancillary to the use of the dwelling house as outbuildings or any improvements unless such ancillary structure shall be made of new, non-reflective, non-bright coloured materials
- 9.9. delay or permit to be delayed the completion of the construction of the dwelling house after construction of the same has commenced
- 9.10. erect any dwelling house, domestic outbuilding, garage or shed that is not connected to a storm water disposal system (including a rain water tank) which is approved by us.

Carport/Sheds

- 9.11. erect or cause to be erected unless otherwise approved by us on the land any dwelling house which does not provide accommodation for at least one vehicle either in the form of one carport under the main roof or the dwelling house or other suitable free standing vehicle accommodation having a roof line similar in style and of the same roofing materials as that of the dwelling house
- 9.12. erect or cause to be erected any shed, garden shed or outbuilding which shall be other than a maximum height of 2.4 m with a ridge height of 3.0m
- 9.13. erect or cause to be erected any shed or outbuilding closer than 1.0 m from any boundary
- 9.14. erect or cause to be erected any shed or outbuilding closer than 10 m of any road or reserve without an elevation made of similar non-reflective material to the dwelling and will use either roller or lift type doors
- 9.15. erect or cause to be erected any shed or outbuilding except that the same shall be constructed with "Willow" coloured material and be of powder coated cladding. The said buildings shall not be painted
- 9.16. erect or cause to be erected any shed or outbuilding greater in area than 10 m² without first obtaining prior written approval from both the relevant council and us

Fencing

- 9.17. erect or cause to be erected any fence forward of the building alignment or on the front alignment of the land (unless the land is a corner allotment and has two front alignments in which case you may erect a fence along one of the front alignments for the purpose of enclosing a ground at the rear of the land provided that such fence does not extend within 8m of the front alignment provided that with our prior written consent, you may erect a decorative fence of not more than 0.9 m in height (made of new, non-reflective materials) at such place or places and of such design as we may from time to time determine
- 9.18. erect or cause to be erected any fence on the land to be less than 1800 mm in height and all fencing shall be good neighbour modular style and shall be the colour "Willow" on both sides.

Commencement of construction of a dwelling

10. You must substantially commence construction of a dwelling house on the land within thirty six (36) months of the date of this Encumbrance unless we have, by written notice, allowed an extension of time in which to substantially commence construction of a dwelling house.
11. If you do not substantially commence construction of a dwelling house within the time allowed for in clause 10 above, then you must sell the land and clauses 16, 17 and 18 of this Encumbrance will apply.
12. In this clause, "substantially commence" means the pouring of a concrete footing or foundation for the construction of a dwelling house on the land.

Landscaping

- 15 You shall within six (6) months of the completion of a dwelling house on the land, landscape 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. You shall at all times thereafter maintain, keep tidy and care for the said landscaping.

Parking of Vehicles

16. You must not cause or allow;
 - 16.1 parking of motor vehicles on other than the driveway on the land
 - 16.2 the storage of boats, caravans and/or trailers forward of the front alignment of the dwelling house
 - 16.3 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. For the purposes of this clause, "commercial vehicles" includes any vehicle between 1 and 3 tonne tare in weight intended or designed to carry goods, equipment or passengers in commercial quantities
 - 16.4 any vehicle greater than 3 tonne tare weight to be parked or left unattended on the land.

Power of sale of the land

17. Notwithstanding s.136 of the Real Property Act, you agree that we may, if we exercise our power of sale, require the purchaser of the land to accept the sale of the land subject to an encumbrance in the same terms as this encumbrance.

Your obligations on transferring the land

18. You must not sell or transfer the land except subject to this encumbrance.
19. If we require it, you must cause the prospective purchaser to execute in our favour an encumbrance substantially in the same form as this encumbrance. You must also cause that encumbrance to be registered immediately after the transfer of the land to the purchaser, and before any other interest in the land is created.
20. If you cease to be a registered proprietor of the land, you must tell us the name and address of any new proprietor. Once you do so, you will no longer be liable to pay us the rent charge. The covenants in this encumbrance only bind the registered proprietor of the land for the time being.

Waiver and assignment

21. We may, in our absolute discretion, waive compliance with any development guidelines, or with any of the requirements of this encumbrance.
22. We may modify waive or release any of the covenants in this encumbrance. A party's action, or lack of it, on any disobedience of this encumbrance by the other does not:
 - 22.1 affect the party's rights if the other repeats or continues the disobedience; or
 - 22.2 disobeys this encumbrance in another way.
23. No waiver is effective unless in writing signed by our authorised officer.

Assignment by us

24. We may transfer or assign our rights under this encumbrance.

Severance of invalid clauses

25. If any clause of this encumbrance is void or unenforceable then it must be read down so that it is not void or unenforceable.
26. If it cannot be read down, it must be severed (that is, treated as if cut out).
27. The rest if this encumbrance is not affected if any clauses are read down or severed.

Payment of costs

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

You must also pay us any costs we incur as a result of any breach of this encumbrance by you or your employees, agents contractors or invitees.

How notices may be given

29 All notices (including approvals or demands)

29.1 must be in writing

29.2 must be given to the other party

29.3 can be given in person

29.4 can be left at the other party's address on page 1, or at the other party's last known address

29.5 can be sent there by post, but they must be correctly addressed and posted

29.6 can be given to you by being left at, or sent by post to, the land

29.7 are, if posted, treated as given the next business day after posting

29.8 may, if the party has a facsimile number, be sent by facsimile transmission to that facsimile number. In that case, the notice is treated as having been given when the sender's facsimile machine confirms that the transmission has been successfully completed

29.9 may be signed by a party, or any person that party authorises to sign it.

Sunset Clause

30. Our rights and obligations will cease one (1) year after we cease to be the registered proprietor of any allotment created in the Development Zone.

31. For the avoidance of doubt it is expressly stated that the rights and obligations of the owners of any land in the Development Zone arising under the building scheme created by this encumbrance will continue despite the provisions of clause 30.

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DATED

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

.....
Address of Witness

.....
Business Hours Telephone Number.....

Prefix
E
Series No.

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

Lodged by: AGENT CODE

Correction to: Optima Conveyancing OPTA62

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	

R-G 250505