

ANNEXURE 'A' – ENCUMBRANCE

MCKINLAY RIDGE – HEWETT

INITIALS _____

DATE ____/____/____

MEMORANDUM OF ENCUMBRANCE

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 One main dwelling

The Owner must not erect upon the land more than one detached dwelling house (exclusive of all general domestic outbuildings).

2 Residential dwellings

- 2.1 The Owner must not use or permit the land to be used for any purpose other than for domestic uses in association with a private residential dwelling.
- 2.2 The Owner must commence construction of the dwelling on the allotment within 24 months of purchase of the allotment, unless otherwise approved by the Encumbrancee.

3 Temporary dwellings

The Owner must not erect upon the land any building other than the outbuilding, that is constructed of prefabricated material, nor any transportable dwelling house, nor any caravan or other temporary dwelling as the detached dwelling house.

4 Special dwelling features

4.1 The Owner must not, unless approved by the Encumbrancee, erect a dwelling on the land unless:

4.1.1 the external walls are constructed of masonry brick, stone or texture coated/rendered light weight construction materials;

(i) 4.1.2 and there is provision for accommodation of at least one vehicle either in the form of a carport under the main roof of the building or other suitable freestanding car accommodation having a roof line similar in style and of the same roofing materials as that of the principal dwelling. Freestanding car accommodation must be sited behind, or in line with, the front building line of the dwelling. Car parking shall be at a rate of not less than one plus one additional car parking space for each two bedrooms.

- 4.2 The Owner must not, without the prior consent of the Encumbrancee, erect or permit or suffer to be erected or remain on the land or any part thereof:
- 4.2.1 any building or other structure (excluding the dwelling house) having a height greater than 4.0m, as measured from the natural ground level to the highest point of the roof and a total floor area of no greater than 54 square metres;
 - 4.2.2 any building, excluding outbuildings, with a roof pitch of less than 22.5 degrees excluding any part of the roof which covers verandah areas;
 - 4.2.3 any fence or wall dividing the land from the road frontage or public footway running parallel to such road, PROVIDED THAT this provision shall not apply in respect of any thoroughfare shown as a "walkway" in any plan of division of the land in the Residential (Gawler Belt) Zone;
 - 4.2.4 any fence other than 1800mm high timber, masonry, brick or rivergum green colourbond;
 - 4.2.5 any fence or wall between the land and any contiguous allotments of land which fence or wall lies closer than 4.5 metres to the road frontage of the land;
 - 4.2.6 any garage, tool shed, carport, verandah or any other building or structure whatsoever with other than new wheat, stone, rivergum or merino colour colourbond materials or materials matching the dwelling house;
 - 4.2.7 any rainwater tank forward of the rear alignment of the dwelling house nor any rainwater tank of other than rivergum colour colourbond or other such material coloured to match the dwelling.

5 Parking of Vehicles

The Owner must not cause or allow:

- 5.1 parking of motor vehicles on other than the driveway on the land.
- 5.2 the storage of boats, caravans and/or trailers forward of the front alignment of the dwelling house.
- 5.3 commercial vehicles to be parked or left unattended on the land or otherwise than in a position where the same are not visible for the road frontage to the land. For the purposes of this provision, "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.
- 5.4 any vehicle greater than 3 tonne tare in weight to be parked or left unattended on the land.

6 Landscaping

- 6.1 The Owner must ensure that all garden areas within public view are landscaped to a reasonable standard within twelve (12) months of taking occupation of the dwelling house.
- 6.2 The owner must not plant or grow or cause or permit to be planted or grown or remain planted or growing on the land any noxious or unlawful tree plant or shrub.

7 Subdivision

The Owner must not subdivide the land.

8 No Building without Encumbrancee's approval

- 8.1 The Owner agrees that prior to commencement of any construction on the land, the Owner shall submit plans and specifications to the Encumbrancee or its agents for approval.
- 8.2 The Owner must not submit any plans of building works to the Council for its approval until it has obtained the approval of the Encumbrancee or its agent.

9 Urban Design Guidelines

The Encumbrancee will not act unreasonably in refusing any approval or imposing any condition of approval under clause 8. But a refusal or a condition cannot be deemed unreasonable if -

- 9.1 the proposal submitted is contrary to any provision in the Urban Design Guidelines; or
- 9.2 a corporate member of the Royal Australian Planning Institute certifies that the proposed works would have an adverse effect upon the development, appearance, health or amenity of the locality in which the land is situated or upon any part of the locality.

10 Notice to rectify breach

- 10.1 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, 5, 6, 7, 8 or 9; and
- 10.2 the Owner fails to remedy the breach within one calendar month from the date of service of the notice, then
- 10.3 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
- 10.4 the Encumbrancee may recover from the Owner, in any court of competent jurisdiction, the costs incurred in remedying the breach.

11 Acknowledgment of building scheme

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

11.1 that 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

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

12 Release of Owner upon sale

Once a dwelling has been completed on the land, the following provisions will apply -

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

12.2 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.

13 Sunset clause

13.1 The rights and obligations of the Encumbrancee will cease twenty four (24) months after the Encumbrancee ceases to be the registered proprietor of any of the residential building allotments created in the Development Zone.

13.2 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 13.1.

14 Service of notices

14.1 A notice may be served on the Owner either:

14.1.1 by posting the notice in a prepaid envelope to the last known address of the Owner; or

14.1.2 if a dwelling has been erected on the land, by leaving the notice at or attached to the dwelling.

14.2 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.

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

15 Interpretation

15.1 In this instrument:-

- 15.1.1 a reference to any gender includes all genders;
- 15.1.2 the singular includes the plural and vice versa;
- 15.1.3 a reference to a person includes a body corporate and vice versa;
- 15.1.4 a reference to a party includes the heirs, executors, successors or assigns of that party;
- 15.1.5 "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 several);
- 15.1.6 "the Development Zone" means the Development Zone as designated on the plan annexed hereto and marked "A";
- 15.1.7 "the land" means the land subject to this instrument and includes any part of the land;
- 15.1.8 "the urban design guidelines" means the Urban Design Guidelines for McKinlay Estate published by the Encumbrancee, which may be varied from time to time by the Encumbrancee.

15.2 Nothing in this instrument prejudices:-

- 15.2.1 the entitlement of the Encumbrancee to all the powers, rights and remedies given to Encumbrancees under statute law or common law; or
- 15.2.2 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 a previous Owner).
- 15.2.3 The burden of proving compliance with the covenants in this instrument lies on the Owner.

16 Entry Statements

16.1 If at any time prior or after the date of this Encumbrance, the Encumbrancee has installed, constructed or erected upon the said land any fixture, wall or structure 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 Encumbrancer must not without the prior written approval of the Encumbrancee:-

- 16.1.1 demolish or alter the entry statement in any way (including by changing or removing any colours of or lettering or electrical or water connections (if any) comprised in the entry statement):

16.1.2 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 fourteen (14) days after the Encumbrancer becomes aware of the existence of such graffiti, non-structure damage to or want of repair; or

16.1.3 fail to properly maintain the entry statement including by way of :-

- maintaining any painting, colours and lettering of the entry statements;
- removing or painting over any graffiti; and
- repairing any non-structural damage occurring to the entry statement.