

LANDS TITLES REGISTRATION OFFICE

SOUTH AUSTRALIA

**ENCUMBRANCE**

FORM APPROVED BY THE REGISTRAR-GENERAL

PRIORITY NOTICE ID	
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**AGENT CODE**

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# ENCUMBRANCE

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## LAND DESCRIPTION

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## ESTATE & INTEREST

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**ENCUMBRANCER** (Full name and address)

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

SOUTH AUSTRALIAN HOUSING TRUST of Riverside Centre, North Terrace ADELAIDE SA 5000

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## OPERATIVE CLAUSE

THE ENCUMBRANCER ENCUMBERS THE ESTATE AND INTEREST IN THE LAND 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                      (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.
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## COVENANTS

IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE as follows:

### The purpose of this encumbrance

1. The encumbrancer on page 1 ("Owner"), grants this encumbrance -
  - 1.1 for the benefit of the encumbrancee on page 1 ("Encumbrancee");
  - 1.2 to charge the land identified in the "Certificate(s) of Title Being Encumbered" panel on page 1 ("Land") with the payment of the annuity on page 1 ("Rent Charge");
  - 1.3 for the purpose of a common building scheme for the Development Zone and the Owner acknowledges that the covenants of this encumbrance are for the benefit of both the Encumbrancee and for the benefit of all other persons claiming under the Encumbrancee as purchasers of any allotment within the Development Zone;
  - 1.4 with the intent that its covenants run with the land and be binding also on anyone who becomes the owner of the land after the Owner.

### Interpreting this encumbrance

2. In this encumbrance, unless the contrary intention appears -
  - 2.1 "**Land**" means all the land and any rights and easements described in the "Certificates of Title Being Encumbered" panel on page 1;
  - 2.2 "**Development Zone**" means allotments 103 and 104 in Deposited Plan D137143, and as shown in the Driveway Location & Development Zone Plan in Annexure C.
  - 2.3 "**development**" means work of any kind, including but not limited to -
    - 2.3.1 "building work" as defined in the Building Works Contractors Act 1995 (SA);
    - 2.3.2 the construction or alteration of any permanent or temporary structure;
    - 2.3.3 repairs, painting or improvements of any kind.
  - 2.4 "**Encumbrance Manager**" means such person(s) appointed by the Encumbrancee from time to time during the term of this encumbrance to review the Owner's plans and specifications for the Owner's proposed development of the Land against the requirements of this encumbrance, for the purposes of determining whether to approve the Owner's plans and specifications, which is a requirement of clause 10 of this encumbrance, in respect of which the Encumbrancee has the right to change the nominated person acting as the encumbrance manager, by posting the new details of the encumbrance manager on the Playford Alive website ([www.playfordalive.com.au](http://www.playfordalive.com.au));
  - 2.5 "**Encumbrancee**" means the person described in the panel entitled "Encumbrancee" on page 1 of this encumbrance and its successor and assigns;
  - 2.6 "**Owner**" means the person described in the panel entitled "Encumbrancer" on the front page of this Encumbrance and includes that person's successors, heirs and assigns;
  - 2.7 "**substantial commencement**" means that development of the Land has reached the point where the construction of all foundations and footings necessary to support the dwelling approved pursuant to this encumbrance (and for which the Owner has obtained all required development authorisations), have been completed in accordance with those required approvals;
  - 2.8 reference to giving access to the Encumbrancee includes giving access to the Encumbrancee's employees agents and contractors;
  - 2.9 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);
  - 2.10 reference to any statute includes statutes which change or replace it; and
  - 2.11 any word indicating the singular includes the plural and vice versa.
3. If there is more than one Owner then
  - 3.1 the Encumbrancee only has to give notices to one person; and
  - 3.2 all the obligations on the Owner set out in this encumbrance are joint and several.

## **Rent Charge**

4. Subject to clause 5, the Owner must pay the rent charge to the Encumbrancee:
  - 4.1 during the term of this encumbrance; and
  - 4.2 on 1 January immediately succeeding the grant of this encumbrance and on each succeeding 1 January.
5. The Owner must only pay the rent charge if payment is demanded by the Encumbrancee and the Encumbrancee will not demand payment of the rent charge so long as the Owner duly observes all the covenants in this encumbrance.
6. The provisions of clause 5 do not in any way affect or prejudice the Encumbrancee's rights to:
  - 6.1 an injunction preventing or restraining any breach of the covenants in this encumbrance; or
  - 6.2 damages for any such breach.

## **Subdivision**

7. The Owner must not divide the Land except with the prior written approval of the Encumbrancee.

## **Planning and zoning laws**

8. The Land must not be used or developed except in accordance with-
  - 8.1 any laws relating to planning or zoning from time to time in force; and
  - 8.2 the conditions of any relevant consent or approval given by the relevant planning authority in which the Land is located ("relevant planning authority").
9. Any approval granted by the Encumbrancee does not constitute an agreement or representation as to the adequacy, suitability or fitness of the proposal, plans or specifications so approved, nor that the relevant planning authority will grant its approval. The Owner acknowledges that it will not place any reliance on the approval of the Encumbrancee, whether for the purposes of planning or zoning laws or otherwise.

## **Restrictions on works**

10. The Owner must not carry out any development on the Land other than in accordance with the "Playford Alive Residential Design Code SA Housing Trust" published by the Encumbrancee and attached as Annexure A of this Encumbrance ("Design Code"), the Building Envelope Plan published by the Encumbrancee and attached as Annexure B of this Encumbrance ("Building Envelope Plan"), and the Driveway Location & Development Zone Plan published by the Encumbrancee and attached as Annexure C of this Encumbrance ("Driveway Location & Development Zone Plan").
11. The Owner must not do (or cause, suffer or permit to be done) any of the following on the Land except in strict accordance with plans and specifications that have received the prior written approval of the Encumbrance Manager:
  - 11.1 erect a dwelling;
  - 11.2 carry out any siteworks;
  - 11.3 erect a fence or wall;
  - 11.4 erect any external sign or hoarding, either freestanding or fixed to any other building or structure;
  - 11.5 construct any kerb opening, kerb closing, kerb invert, or crossover, or driveway;
  - 11.6 construct or create a parking area or otherwise set aside any area for the parking of vehicles forward of the dwelling.
12. The Owner must not submit any plans of building works to the relevant planning authority for its approval until it has obtained the approval of the Encumbrance Manager and attaches a copy of the approval issued by the Encumbrance Manager to the development application.

## Certificate of compliance

13. The Encumbrancee will procure the Encumbrance Manager to not unreasonably delay its consideration of any plans and specifications submitted by the Owner for approval, in respect of which:
- 13.1 the Encumbrancee will use all reasonable endeavours to ensure that the Encumbrance Manager does not act unreasonably in refusing any approval or imposing any condition of approval under clauses 10 and/or 11, however, the Owner acknowledges that any refusal or condition imposed by the Encumbrance Manager cannot be deemed to be unreasonable if the Owner's plans and specifications as submitted:
- 13.1.1 are contrary to any provision of the Design Code or this encumbrance; or
- 13.1.2 do not achieve the streetscape required by the Encumbrancee in the general locality in which the Land is situated. An example of this is where the plans and specifications will result in the same or a similar façade treatment to multiple dwellings located in close proximity to one another.
- 13.2 the Encumbrancee will arrange for the Encumbrance Manager to provide the Owner with written notification of its decision in respect of the Owner's submitted plans and specifications promptly after the Encumbrance Manager has made a decision in respect of the Owner's submitted plans and specifications (which notification will incorporate any condition of approval issued by the Encumbrance Manager).
14. Without limiting the obligations on the Owner under clauses 7 - 12 (inclusive) of this encumbrance, the Owner must not:
- 14.1 permit to be located on the Land any transportable building, caravan, tent or other similar shelter that is visible from the street or any other public place;
- 14.2 delay (or permit to be delayed) the preparation of detailed plans and specifications for the development of the Land and lodgement of those plans and specifications with the Encumbrance Manager for approval, and the Owner acknowledges and agrees that it will be deemed to have delayed in complying with this obligation if it has failed to lodge plans and specifications for its development of the Land within 6 months of the date of this encumbrance;
- 14.3 delay (or permit to be delayed) the substantial commencement of the development of the Land beyond the date which is 12 months from the date of this encumbrance;
- 14.4 delay (or permit to be delayed) the completion of development of the Land (in accordance with the plans and specifications and any conditions of approval of the relevant planning authority or Encumbrance Manager) and the Owner acknowledges and agrees that it will be deemed to have delayed in complying with this obligation if construction of the development on the Land in accordance with the approved plans and specifications and development approval has not been completed within 24 months after the date of this encumbrance (for the purposes of this clause 14.4, completion of development means the building work for all the approved building structures is complete except for minor omissions and defects which do not prevent the building structures from being reasonably capable of being used for its intended purposes and rectification of which will not prejudice the convenient use of the building structures and all work on the external facade and external surfaces of the building structures are complete and all defects and minor omissions have been rectified);
- 14.5 permit the Land to be resold or advertised for sale unless a residential dwelling has been constructed on the Land (in accordance with the provisions of this encumbrance) or unless the Encumbrancee has consented in writing to such resale and/or advertising.

## Breach

15. If the Owner is in default in complying with its obligations under any of clauses 7 - 12 (inclusive) or 14, and the Encumbrancee serves a written notice on the Owner requiring the Owner to remedy that default within the period specified in the written notice (which rectification period will be not less than thirty (30) days from the date of the notice), and the Owner fails to remedy that default within the period specified in the notice, the Encumbrancee will have the right to repurchase the Land from the Owner (including any development that has been undertaken on the Land as at that time), and the Owner must transfer its interest in the Land to the Encumbrancee (or its nominee) if the Encumbrancee gives a written notice exercising this repurchase right at any time within twelve (12) months of the Encumbrancee becoming entitled to exercise its repurchase right (and at the time of the Encumbrancee giving written notice exercising this repurchase right the Owner has not fully remedied the default specified in the Encumbrancee's initial default notice to the Owner), in respect of which the following provisions will apply to such transfer of the Land to the Encumbrancee (or to its nominee):

15.1 The purchase price will be the aggregate of:

15.1.1 the price paid for the Land by the Owner to the Encumbrancee (as expressed on the Memorandum of Transfer under which the Owner purchased the Land from the Encumbrancee);

15.1.2 the market value of the improvements existing on the Land as at the date that the Encumbrancee exercises its repurchase right, which is to be determined by a valuer appointed by the Encumbrancee, which valuer:

(a) is an expert and not an arbitrator;

(b) must take into account, in determining the market value of the improvements the cost to complete any additional or required works which are required by the Encumbrancee in order for the works to comply with the approvals and development authorisations applicable to the Owner's development;

(c) costs will be payable by the Owner and which the Encumbrancee is entitled to set off against the purchase price payable by the Encumbrancee for the purchase of the Land and the improvements;

(d) determination is final and binding upon both parties;

15.2 the transfer will be subject only to this encumbrance;

15.3 settlement of the transfer will take place within thirty (30) days after the determination of the purchase price, in exchange for a proper registrable transfer of the Land (subject only to this encumbrance) and delivery of the duplicate certificate of title;

15.4 the Encumbrancee must pay the entire purchase price on settlement of the transfer of the Land;

15.5 the Owner must pay all of the Encumbrancee's costs incurred in relation to its default and the exercise of the Encumbrancee's repurchase right (which the Encumbrancee is entitled to set off against the purchase price for the Land and the improvements);

15.6 despite clause 15.5 the Encumbrancee will pay the stamp duty and Lands Titles Registration Office registration fees associated with this transfer;

15.7 the transfer will otherwise be on the terms and conditions contained in the then current Real Estate Institute Contract for Sale and Purchase of land.

16. The Encumbrancee (or its employees, agents or contractors) has the right to enter the Land at any time (after giving at least 48 hours notice to the Owner), for the purpose of inspecting the Land to determine whether any of the Owner's obligations under this encumbrance have been breached. The Owner must not do (nor cause nor permit the doing of) anything to obstruct or hinder such entry or inspection.

#### **Owner's obligations on transferring the Land**

17. The Owner must not sell or transfer or otherwise dispose (or grant any legal or equitable interest in) the Land except subject to this encumbrance and procuring a replacement encumbrance from the incoming purchaser to the Encumbrancee, which is to be on the same terms as this encumbrance, which replacement encumbrance must be registered on the title for the Land immediately after the transfer of the Land from the Owner to the incoming purchaser, and before any other interest in the Land is created.

#### **Right of access for Encumbrancee for construction and other purposes**

18. The Encumbrancer must not restrict the Encumbrancee including its employees, contractors, agents and invitees (together with any plant, equipment and machinery) from accessing the said land, from time to time, in order to complete construction and installation of civil works and civil services (whether located on the said land or not), including sewer and water infrastructure, electricity infrastructure, gas infrastructure, telecommunications infrastructure, stormwater infrastructure, fire services, footpaths, roads, street lighting, street landscaping and earthworks. The right of access contemplated by this clause 18 will be temporary such that it will expire when access for construction and installation of civil works and civil services is no longer required by the Encumbrancee and includes (but is not limited to) accessing the roof of any dwelling on the said land in cases where such dwelling is positioned on a common boundary

#### **Waiver**

19. The Encumbrancee may, in its absolute discretion, waive compliance with any of the requirements in the Design Code.

20. The Encumbrancee may modify, waive or release any of the covenants in this encumbrance.

21. A party's action or lack of it, on any breach of this encumbrance by the other does not affect the party's rights if the other repeats or continues the breach.

22. No waiver by the Encumbrancee is effective unless it is in writing and is signed by the Encumbrancee.
23. The Encumbrancee may, from time to time, in its absolute discretion, lessen, waive or release any of the covenants and other obligations expressed or implied in any encumbrance document relating to other land within the Development Zone, whether such encumbrance was entered into before, at the same time or after the date of this encumbrance, and any such waiver on our part does not release the Owner (or its successors in title) from the obligations expressed or implied in this encumbrance.

#### **Severance of invalid clauses**

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

#### **Payment of costs**

27. The costs incidental to the preparation of this encumbrance, and the stamp duty and registration fee on it, must be paid by the Owner
28. The Owner must also pay the Encumbrancee any costs it incurs as a result of any breach of this encumbrance by the Owner or its 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 the Owner 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; and
  - 29.9 may be signed by a party, or any person that party authorises to sign it.

#### **Release on transfer**

30. The Owner and its successors in title will be successively released and discharged from the payment of the Rent Charge and from the observance of the covenants and other stipulations contained and implied in this encumbrance upon ceasing to be registered owner of the Land to the intent that the Rent Charge and covenants and other stipulations will be binding only upon the registered proprietor for the time being of the Land.

#### **Sunset Clause**

31. The Encumbrancee's rights and obligations will cease five (5) years after the Encumbrancee ceases to be the registered proprietor of any land created in the Development Zone.
32. 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 32.
33. The Owner acknowledges that the Encumbrancee may in its absolute discretion, at any time after completion of an approved building on the last remaining vacant allotment in the Development Zone (excluding any allotment on which no dwelling is permitted to be constructed), discharge all encumbrances throughout the Development Zone, without the Encumbrancee having to give any notice to the Owner.

**Other Remedies**

34. In addition to all the rights and powers as set out in this encumbrance, the Encumbrancee is entitled to all the powers, rights and remedies given to encumbrancees by the Real Property Act 1886.

# ANNEXURE A

## Design Code

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# ANNEXURE B

## Building Envelope Plan

[The Building Envelope Plan is not applicable.]

[No Building Envelope Plan (BEP) is attached.]

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# ANNEXURE C

## Driveway Location & Development Zone Plan

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IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE in accordance with the terms and conditions expressed herein subject to such exclusions and amendments specified herein.

DATED.....

**CERTIFICATION** *\*Delete the inapplicable*

**Encumbrancer(s)**

\*The Certifier has taken reasonable steps to verify the identity of the encumbrancer or his, her or its administrator or attorney.

\*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

\*The Certifier has retained the evidence to support this Registry Instrument or Document.

\*The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

<Name of certifying party>  
<Capacity of certifying party>

for: <Company name>

on behalf of the Encumbrancer

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**Encumbrancee(s)**

\*The Certifier has taken reasonable steps to verify the identity of the encumbrancee or his, her or its administrator or attorney.

\*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

\*The Certifier has retained the evidence to support this Registry Instrument or Document.

\*The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

<Name of certifying party>  
<Capacity of certifying party>

for: <Company name>

on behalf of the Encumbrancee