

## **MEMORANDUM OF ENCUMBRANCE – Annexure B**

IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE as follows:

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 and administrators and transferees and all of them) encumbers the said land as part of a common building scheme 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 and remedies of the Encumbrancee expressed or implied herein under and by virtue of the provisions of the Real Property Act 1886 as amended for the time being in force except insofar as the same are hereby expressed or implied, negated or modified) as follows:-

### **DURING THE TERM OF THIS ENCUMBRANCE THE ENCUMBRANCER**

- 1 SHALL NOT, unless approved otherwise by the Encumbrancee, erect or suffer to be erected thereon more than one main dwelling house (exclusive of all general domestic outbuildings).
- 2 SHALL NOT, unless approved otherwise by the Encumbrancee, sub-divide any allotment.
- 3 SHALL NOT, use or permit the said land to be used for any purpose other than the purpose of a private residential dwelling.
- 4 SHALL NOT, erect or suffer to be erected or to remain thereon a main dwelling house of any temporary nature or type, nor any transportable dwelling house, nor any caravan or other temporary dwelling.
- 5 SHALL NOT, unless approved otherwise by the Encumbrancee, erect or cause or permit to be erected on the said land any residential dwelling, unless the total area of the floor plan incorporated under the main roof including garage or carport, equals or exceeds 120 square metres.
- 6 SHALL only use brick, cement rendered concrete, stone or rendered fibre cement sheets for the construction of External walls. Infill (secondary) areas of walls utilizing painted weatherboard, stucco, Colorbond or timber paneling as may be approved by the Council.
- 7 SHALL NOT, unless otherwise approved by the Encumbrancee erect or cause or permit to be erected on the said land any building scheme which does not provide accommodation for 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 roof line similar in style and of the same roofing materials as that of the principal dwelling.
- 8 SHALL NOT, erect or permit to be erected on the said land any dwelling, outbuilding (such as sheds, workshops, aviaries, pergolas and similar buildings), fences or any improvements the exterior of which is or contains any galvanised iron or brightly coloured reflective materials.
- 9 SHALL NOT, without the prior approval in writing of the Encumbrancee, construct any fence or wall along those portions of any boundary of the said land from a point which is level with the front of any residence thereon down to the boundary with the roadway and where the said land abuts more than one roadway, THEN, it shall be permissible for the land whose rear boundary is also the side boundary of any adjoining land to be fenced along the full length of its rear boundary and further, it shall be permissible but not obligatory for the said land to have two side fences in accordance with the provisions herein set out PROVIDED always that such said land shall always require a separate approval from the Encumbrancee as to the type of fencing materials used.

10 SHALL only use brick, stone, timber or double-sided Grey Ridge / Woodland Grey Colourbond steel fencing materials in the construction of any fencing. No brightly coloured or reflective materials, including galvanized iron, are to be used for any fencing.

11 SHALL, within a period of 12 calendar months after the practical completion, or occupation of a dwelling house (whichever occurs first) upon the said land, prepare and develop the said land in the form of landscaping between the front alignment of the said dwelling house and the kerb alignment or pedestrian walkway fronting or bordering the said land and thereafter maintain said landscaping in good order and condition.

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 favor such estate or interest is to be transferred to execute and subsequently register a substitute Encumbrance upon substantially similar terms and conditions as are herein expressed or implied including this covenant for renewal or replacement in favor of the Encumbrancee that such party will observe and perform all of the terms and conditions in that Memorandum of Encumbrance contained as if such party had been the original party to this Memorandum of Encumbrance as the Encumbrancer herein named.

In the event the Encumbrancer as the registered proprietor is successful in an Application to divide the land which is the subject of this Encumbrance THEN it is expressly agreed and accepted that two new and separate Encumbrances will be prepared and registered when the new lots or allotments are created by the Land Division.

The Encumbrancer shall pay the costs of and incidental to the preparation, stamping and registration of this Encumbrance and its subsequent discharge and any subsequent Transferee Purchaser shall pay the replacement costs thereof as and when required.

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 the said land 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 successors in title from the covenants and other 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 therefrom 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 howsoever arising.