FORM M2 (Version 3)
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LANDS TITLES REGISTRATION OFFICE

SOUTH AUSTRALIA

ENCUMBRANCE

FORM APPROVED BY THE REGISTRAR-GENERAL

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ENCUMBRANCE

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION

The whole of the land comprised in Certificate of Title **VOLUME** **FOLIO**

ESTATE & INTEREST

Estate in fee Simple

ENCUMBRANCER (Full name and address)

ENCUMBRANCEE (Full name, address and mode of holding)

SOUTH AUSTRALIAN HOUSING TRUST (ABN 17 545 435 789) of Riverside Centre, North Terrace, Adelaide SA 5000

OPERATIVE CLAUSE

THE ENCUMBRANCER ENCUMBERS THE ESTATE AND INTEREST IN THE LAND ABOVE DESCRIBED (“THE SAID LAND”) 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 (10c)
(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 ANNUALLY AS YEARLY RENTAL CHARGE FOR 20 YEARS FROM THE DATE HEREOF
(c) State the times appointed for payment of the annuity rent charge. Any special covenants may be inserted.	(c) AT THE TIMES AND IN THE MANNER FOLLOWING ON or THE THIRTIETH DAY OF JUNE IN EACH AND EVERY YEAR THE FIRST OF SUCH PAYMENTS TO BE MADE (IF DEMANDED) ON THE THIRTIETH DAY OF JUNE NEXT OCCURING AFTER THE DATE OF EXECUTION OF THIS INSTRUMENT

COVENANTS

IT IS covenanted by the Encumbrancer 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:

(a) that the covenants in this instrument will run with and bind the said land, and

(b) 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 as follows:

1. USE OF LAND

The Encumbrancer will not use or allow to be used the said land or any part thereof for any purpose other than for residential purposes, except in accordance with any conditions attaching to any relevant consent or approval given by any council or other relevant planning authority.

2. SUBDIVISION

The Encumbrancer will not divide the said land or allow the said land to be divided or deposit a plan of community division under the Community Titles Act 1996 over the said land without the prior written approval of the Encumbrancee.

3. PLANNING AND ZONING LAWS

3.1 The said land must not be used or developed except in accordance with-

3.1.1 any laws relating to planning or zoning from time to time in force; and

3.1.2 the conditions of any relevant consent or approval given by the relevant planning authority in which the land is located ("relevant planning authority").

3.2 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, not that the relevant planning authority will grant its approval. The Encumbrancer 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.

4. ONE DWELLING

Unless a plan of division has been deposited by the Registrar-General over the said land, the Encumbrancer will not erect or allow to be erected more than one dwelling on the said land without the prior written approval of the Encumbrancee.

5. NO DELAY

The Encumbrancer will not allow any undue delay to occur in the commencement or in the completion of any work approved by the Council and will not allow any variation to such approved work unless written approval of the Council is given before such variation is commenced.

6. NO OBSTRUCTION

The Encumbrancer will not obstruct or do anything which would prevent or hinder the Encumbrancee its servants, agents or contractors from entering the said land for the purpose of remedying any breach by the Encumbrancer of its obligations under this Encumbrance and for which breach at least 14 days notice in writing has been given to the Encumbrancer and which breach has not been remedied.

7. PROFESSIONAL ADVICE REQUIRED

The Encumbrancer will not cause or permit any building works to be undertaken on the said land without obtaining professional engineering advice in respect of such building works.

8. RESTRICTION ON EXCAVATION

The Encumbrancer acknowledges that the said land is in an urban renewal area, and as such it is possible that there may be material containing asbestos on or under the said land. The Encumbrancer will not do or permit any excavation or construction work on the said land other than in accordance with the appropriate procedure to deal with material containing asbestos and with the requirements of the Work Health and Safety Act 2012 and unless any person involved in such work is aware of the potential presence of material containing asbestos.

9. LIMITATION ON RE-SALE

9.1 The Encumbrancer will not cause or permit the said land to be resold or advertised for sale unless a residence has been constructed thereon or unless the Encumbrancee has consented in writing to such resale and/or advertising, which consent may be withheld at the sole and complete discretion of the Encumbrancee.

9.2 These covenants shall be enforceable against the Encumbrancer and every subsequent owner of the land, by the Encumbrancee and every subsequent owner of any other allotment within the Development Zone. The burden of the convenants shall run with the land for the benefit of every other allotment owner within the applicable stage of the Development Zone.

9.3 While this Encumbrance exists the Encumbrancer shall not transfer the Land or any part of it without obtaining from the transferee an encumbrance containing the same conditions as this Encumbrance and to be registered in favour of the Encumbrancee immediately subsequent to the transfer.

10. BUILDING WITHIN 12 MONTHS

The Encumbrancer will not permit the said land to remain vacant for more than 12 calendar months from the date of settlement of land or such other date as the Encumbrancee may advise the Encumbrancer by which date the Encumbrancer must commence to construct a residence on the said land approved by the Encumbrancee and the Encumbrancer must ensure the completion of the construction of such residence within 12 calendar months from the date of commencement of construction (as determined on reasonable grounds by the Encumbrancee).

11. LANDSCAPING

The Encumbrancer shall ensure that all garden areas (including access driveways) within public view, are landscaped within 3 months upon completion of the construction of a dwelling on the said land and shall be thereafter maintained by the Encumbrancer.

12. FENCES

12.1 The Encumbrancer must not erect any dividing fence on the land unless the fence is a pre-painted metal neighbour friendly type fencing in Colourbond 'MONUMENT GREY' ® colour or similar and not higher than 1.8m. The dividing fence must not project past the adjacent building line facing the street.

12.2 The Encumbrancee shall not at any time hereafter be required by the Encumbrancer to erect or repair or contribute towards the cost of erecting or repairing any dividing fence on any part of the Landand the Encumbrancer hereby indemnifies and agrees to keep indemnified the Encumbrancee against all claims in respect thereof brought or made against the Encumbrancee by any person whatsoever.

13. RAINWATER TANKS

All dwellings within the Development Zone must include a rainwater tank between 1000-4000 Litre retention tank in accordance with the below table;

Allotment Size (m²)	Minimum retention volume (Litres)	Minim detention volume (Litres)
<200	1000	1000
200-400	2000	Site perviousness <30%: 1000 Site perviousness >30%: N/A
>401	4000	Site perviousness <35%: 1000 Site perviousness >30%: N/A

14. NOT TO DAMAGE VERGE AREAS, ETC

14.1 The Encumbrancer:

14.1.1 must not cause or permit any damage to occur to:

(a) the kerb of any roadway in front of or adjacent to the said land;

(b) any part of any verge area between such kerb and the said land, or any footpath, landscaping, trees (if any), irrigation systems, pipes, fittings or public infrastructure including but not limited to services for sewer, water, gas and telephonic located near or adjacent to the said land; or

(c) any driveway or driveway crossover between the said land and the roadway.

14.1.2 must not permit any builder or contractor engaged by the Encumbrancer to cause any damage of the kind described in clause 14.1.1; and

14.1.3 must not permit any damage of the kinds referred to in clauses 14.1.1 and 14.1.2 to remain unrectified for more than 28 days,

and the Encumbrancer acknowledges and agrees that all such rectification will be at the cost and expense of the Encumbrancer, and the Encumbrancer hereby indemnifies and will keep indemnified the Encumbrancee from and against all costs, charges and expenses, including those incurred in connection with advisors, experts and consultants (including legal costs calculated on a solicitor and own client basis) claims, damages, liability, losses, injury (actual or contingent) suffered or incurred by the Encumbrancee as a result of or relating to any failure by the Encumbrancer to observe this clause.

14.2 The Encumbrancee will act in good faith in determining the standard acceptable for the purposes of clause 14.1.

15. BUY BACK PROVISIONS

15.1 If the Encumbrancer makes any default under clause 10;

then the Encumbrancee may give to the Encumbrancer notice in writing to make good such default by commencing the erection of such residence without delay and if the Encumbrancer shall fail for 1 calendar month to comply with such notice then in any such case the Encumbrancee forthwith at any time whilst such default continues and without prejudice to any other power right or remedy may sell in exercise of its power of sale the said land in such manner and for such price and upon such terms and conditions as it may think fit and in addition thereto the Encumbrancee shall at any time whilst any such default continues have the option of repurchasing from the Encumbrancer the said land in respect of which the following provisions will apply to such transfer of the Land to the Encumbrancee (or its nominee):

15.1.1 the purchase price will be the price equal to the total price paid for the said land by the Encumbrancer to the Encumbrancee.

15.1.2 a settlement date being 30 days after the determination of the price and otherwise on the same terms and conditions as the contract of sale made between the Encumbrancee as vendor and the Encumbrancer as purchaser.

16. COST FOR BREACH

16.1 The Encumbrancer will pay to the Encumbrancee on demand all costs (including legal costs) and expenses incurred by the Encumbrancee its servants agents or contractors in respect of any breach by the Encumbrancer of its obligations under the Encumbrance and any action taken to remedy the same. All such costs and expenses may be recovered in any court of competent jurisdiction in addition to all other powers and rights available to the Encumbrancee hereunder.

17. RESTRICTION ON WORKS

17.1 The Encumbrancer must not carry out any development on the said land other than in accordance with the Design Guidelines and the Building Envelope Plan (BEP) if BEP is applicable as approved by the encumbrance manager.

17.2 The Encumbrancer must not do (or cause, suffer or permit to be done) any of the following on the said land except in strict accordance with plans and specifications that have received the prior written approval of the Encumbrancee;

17.2.1 erect a building or structure;

17.2.2 carry out any site works

17.2.3 erect a fence or wall;

17.2.4 erect or display any external sign, hoarding or advertising on the land either freestanding or fixed to any other building or structure.

18. DEVELOPER APPROVAL

18.1 The Encumbrancee will not unreasonably delay its consideration of any plans and specifications submitted by the Encumbrancer for approval, in respect of which:

18.1.1 The Encumbrancee will not act unreasonably in refusing any approval or imposing any condition of approval under clause 18, however, the Encumbrancer acknowledges that any refusal or condition imposed by the Encumbrancee cannot be deemed to be unreasonable if the Encumbrancer's plans and specifications as submitted:

(a) are contrary to any provision of the Design Guidelines, the Building Envelope Plan or this encumbrance; or

(b) do not achieve the streetscape required by the encumbrance in the general locality in which the said 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.

18.2 Without limiting the obligations on the Encumbrancer under clauses 2, 3, 14, and 17 of this encumbrance, the Encumbrancer must not:

18.2.1 permit to be located on the said land any transportable building, caravan, tent or other similar shelter that is visible from the street or any other public place; or

18.2.2 locate any building or structure, driveway and / or crossover except in accordance with the Building Envelope Plan (if applicable) and the Driveway Location & Development Zone Plan.

19. BUILDING SCHEME

19.1 The Encumbrancer acknowledges for the Encumbrancer and the Encumbrancer's successors in title:

19.1.1 that the foregoing covenants are entered into and undertaken for the purposes of the Encumbrancee's scheme of development of the land comprised in the Development Zone; and

19.1.2 that the Encumbrancee has declared and undertaken that it has required and will require from each purchaser from the Encumbrancee of the land comprised in the Development Zone as a condition of its sale of those lands a Memorandum of Encumbrance in substantially similar form to this instrument and containing the same or substantially similar covenants and other stipulations.

20. RIGHT OF ACCESS FOR ADJOINING OWNER AND ENCUMBRANCEE FOR CONSTRUCTION AND OTHER PURPOSES

20.1 In this Encumbrance "Adjoining Owner" means the owner of adjoining land which shares a common boundary with the said land, who is entitled to claim under the Encumbrancee as a purchaser of land in the Development Zone

20.2 The Encumbrancer must not restrict the Encumbrancee and/or an Adjoining Owner including its employees, contractors and agents (together with any plant, equipment and machinery) from accessing the said land in order to complete construction of a dwelling or dwellings and any improvements on the Adjoining Owner's land in accordance with the Design Guidelines provided that:

20.2.1 the Encumbrancee and/or the Adjoining Owner (as the case may be) has made a written request to the Encumbrancer; and

20.2.2 if the Adjoining Owner wishes to have access pursuant to this clause 20, the Adjoining Owner agrees to:

(a) comply with the reasonable directions of the Encumbrancer and cause minimal disturbance to the Encumbrancer when accessing the said land; and

(b) provide a written undertaking in favour of the Encumbrancer to repair and make good (at the Adjoining Owner's sole cost) any damage caused to the said land during such construction provided that the Encumbrancee will be under no obligation whatsoever to enforce such undertaking on the Encumbrancer's behalf and in this regard, the Encumbrancer hereby releases and indemnifies the Encumbrancee from any and all loss suffered or incurred by the Encumbrancer.

20.3 For the avoidance of doubt, the right of access contemplated by this clause 20:

20.3.1 will only apply to the initial construction of a dwelling or dwellings and any improvements on the Adjoining Owner's land (such that the Adjoining Owner's land is no longer vacant land) and will not extend to undertaking any renovations or maintenance of the same; and

20.3.2 will be temporary such that it will expire when access for construction is no longer required 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.

20.4 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 landscaping and earthworks. The right of access contemplated by this clause 20.4 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.

21. WAIVER OF THIS ENCUMBRANCE

21.1 The Encumbrancee from time to time in its absolute discretion may modify waive or release:

21.1.1 any of the covenants and other stipulations herein contained or implied; and

21.1.2 in any other instrument relating to the said land.

22. WAIVER/DISCHARGE OF OTHER ENCUMBRANCES

22.1 The Encumbrancee may from time to time in its absolute discretion:

22.1.1 modify waive or release any of the Covenants and other stipulations expressed or implied in any Memorandum of Encumbrance or other instrument whatsoever relating to any other land in the Development Zone and whether the same were entered into or imposed before or at the same time as or after the date hereof (irrespective of clause 15) and no such modification or waiver or release shall release the Encumbrancer or the Encumbrancer's successor in title from the Covenants and other stipulations herein contained and implied; or

22.1.2 discharge one or more of the Memoranda of Encumbrance registered over any land in the Development Zone or transfer one or more of such Memoranda to such body or bodies as it in its absolute discretion deems fits

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 its agents and servants from and against all claims for any such loss or damage.

23. SUNSET CLAUSE

23.1 The rights and obligations of the Encumbrancee (but not those of any person claiming under the Encumbrancee as a purchaser of any land in the Development Zone) will cease on the 30th day of June 2031.

24. NOTICES

24.1 Any notice or demand to be given to or made upon the Encumbrancer hereunder may be given or made by posting or delivering the same in writing signed by an officer or solicitor or agent for and on behalf of the Encumbrancee to or at the address of the Encumbrancer appearing on the front page of this Encumbrance or the last known place of abode of building of the Encumbrancer or by posting the same at any Post Office in an envelope directed to the Encumbrancer at any address aforesaid or, if a dwelling has been erected on the land by leaving the notice at or attached to the dwelling:

24.1.1 any notice to be given to or served upon the Encumbrancee may be given or served by delivering the same at or sending the same through the Post Office addressed to the Encumbrancee at its principal office for the time being in Adelaide; and

24.1.2 any notice posted as aforesaid shall be deemed to have been received 48 hours after the time of posting.

25. INTERPRETATION

25.1 In this Encumbrance:

25.1.1 unless repugnant to the context works importing any particular gender shall include all other genders and words importing the singular number shall include the plural and vice versa;

25.1.2 the expression the “Building Envelope Plan means the building envelope plan annexed as Appendix C;

25.1.3 the expression the “Design Guidelines” means the Blair Athol Urban Renewal Development Residential Design Guidelines annexed as Appendix B;

25.1.4 the expression the “Development Zone” means all or any part of the said land delineated as the development zone in the plan annexed as Appendix A;

25.1.5 the expression the “Encumbrancer” includes the registered proprietor for the time being of the said land;

25.1.6 the expression "Council" means City of Port Adelaide of Enfield;

25.1.7 if there shall be more than one person responsible hereunder as the Encumbrancer or as a successor in title to the Encumbrancer, the liability of each of such persons shall be both joint and several; and

25.1.8 headings are used for convenience of reference only and shall not affect the interpretation of construction of this Encumbrance

AND subject as aforesaid the Encumbrancee shall be entitled to all the powers rights and remedies given to the encumbrances by the Real Property Act 1886 (as amended).

26. SEVERANCE

Each work, phrase, sentence and clause (a “provision”) of this Encumbrance is severable and if a court determines that a provision is unenforceable, illegal or void the court may sever that provision and such severance will not affect the other provisions of this Encumbrance.