

# 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)

[insert purchaser's name] of [insert purchaser's address]

---

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

**KRIEG PARK DEVELOPMENT PTY LTD** ACN 643 947 915 of 19 Coolinga Road Marino SA 5049

---

## OPERATIVE CLAUSE

THE ENCUMBRANCER ENCUMBERS THE ESTATE AND INTEREST IN THE LAND DESCRIBED FOR THE BENEFIT OF THE ENCUMBRANCEE WITH AN ANNUITY OR RENT CHARGE OF

- |   |  |
|---|--|
| (a) Insert the amount of the annuity or rent charge   | (a) 10 CENTS PER ANNUM (IF DEMANDED)   |
| (b) State the term of the annuity or rent charge.<br>If for life use the words "during his or her lifetime"     | (b) TO BE PAID TO THE ENCUMBRANCEE for a term of 99 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 first day of January following the date of this Encumbrance AND with the performance and observance of the following covenants.

---

## COVENANTS

### 1. Interpreting this Encumbrance

#### 1.1. Definitions

In this Encumbrance, unless the contrary intention appears:

- (a) **Authority** includes any government or any governmental, semi-governmental or judicial entity or authority including local government and statutory organisations having jurisdiction over the Land or anything in relation to it;
- (b) **Building Works** means work of any kind in relation to the construction of a residential dwelling on the Land, including:
  - (i) "Building Works" as defined in the Building Works Contractors Act;
  - (ii) the construction or alteration of any permanent or temporary structure, including the garages and fences;
  - (iii) excavation and earthworks or landscaping of any kind; and
  - (iv) repairs, painting or improvements of any kind;
- (c) **Development** means the construction of a master-planned residential development on the Development Area in accordance with the approvals given by the relevant Authority for the Development as required under the *Planning, Development and Infrastructure Act 2016*;
- (d) **Development Area** means the whole of the land comprised in Allotments 1 to 6 (all inclusive) and 501 in Deposited Plan 126700 on the plan attached and marked "Annexure A" and such other land as may be acquired from time to time as part of the Development;
- (e) **Land** means all the Land and any rights and easements described on page 1;
- (f) **Rent Charge** means the annuity described on page 1; and
- (g) **Termination Date** means the date being the earlier of:
  - (i) two years after the practical completion of the last residential dwelling in the Development Area; or
  - (ii) 30 June 2026.

#### 1.2. Interpretations

In this Encumbrance, unless the contrary intention appears a reference to:

- (a) "we", "our" or "us" means the Encumbrancee on page 1;
- (b) "you" or "your" means the Encumbrancer on page 1;
- (c) a reference to us entering your Land includes our employees, agents and contractors entering your Land;
- (d) a party includes the party's heirs, executors, successors, assigns and transferees (and also the party's personal representatives if the party is a natural person);
- (e) any statute includes statutes which change or replace it;
- (f) any gender includes all genders;
- (g) any word indicating the singular includes the plural and vice versa; and
- (h) a party includes a body corporate and vice versa; and
- (i) the word "**including**" and similar expressions are not and must not be treated as words of limitation

#### 1.3. Multiple parties

If there are more than one of you then:

- (a) we only have to give notices to one of you; and

(b) all your obligations in this Encumbrance are joint and several.

## **2. The Purpose of this Encumbrance**

You grant this Encumbrance:

- 2.1. for the benefit of us;
- 2.2. for the benefit of each present and future owner of the Land and the Development Area;
- 2.3. to charge the Land with the payment of the Rent Charge;
- 2.4. with the intent that its covenants run with the Land and be binding on you and anyone who becomes the owner of the Land after you; and
- 2.5. on the basis that we require, and will continue to require, each purchaser of land in the Development Area, as a condition of the sale from us to the purchaser, to execute an instrument in similar form to this instrument and containing similar covenants and other stipulations.

## **3. Restrictions on the use of the Land**

You must not use the Land other than for private residential purposes.

## **4. Rules governing the use of the Land**

- 4.1. You must not;
  - (a) subdivide the Land (by way of a land division or community division) or create any additional allotment or community lot from the Land except with our prior written consent;
  - (b) permit any transportable building to be placed or constructed on the Land;
  - (c) use any caravan, tent or other shelter on the Land as a place of permanent residence; and
  - (d) 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.
- 4.2. The provisions of the *Law of Property Act 1936* and the *Real Property Act 1886* relating to encumbrances apply to this Encumbrance.
- 4.3. The provisions referred to in the above clause 4.2 include, amongst other rights and obligations, an obligation on you to keep all improvements on the Land in good repair.

## **5. Dwelling**

During the continuance of this Encumbrance, you must not:

- 5.1. erect or cause to be erected any building or structure other than one main dwelling together with the usual domestic outbuildings ancillary to the use of such dwelling;
- 5.2. erect or cause to be erected, a roof on the said dwelling with a pitch of less than 25 degrees or ceiling less than 2.7 metres high, unless otherwise approved by us;
- 5.3. erect or cause to be erected a dwelling:
  - (a) other than a dwelling which is permanently affixed to the Land constructed of new, non- reflective materials and with external walls which are predominately of rendered board, timber, brick or such other materials approved by us; and
  - (b) of which any part is of a portable or transportable nature;
- 5.4. use used or second-hand materials in the construction of the dwelling or the domestic outbuildings;
- 5.5. erect or permit to be erected or exist any external air-conditioners and solar hot water systems unless they are:
  - (a) in low profile appearance; and
  - (b) located towards the rear of the dwelling or otherwise located to minimise visual impact from public view;

- 5.6. install any external rainwater tanks unless:
  - (a) they are in a Colorbond® finish or similar coated finish or painted in a colour so as to match or complement the main dwelling walls or boundary fencing; and
  - (b) they are located at the rear of the dwelling or otherwise screened from public view so as to minimise visual impact;
- 5.7. erect or permit to be erected any structure or structures which are ancillary to the use of the dwelling as outbuildings or any improvements unless such ancillary structure is made of new, non- reflective, non-bright coloured materials; or
- 5.8. delay or permit to be delayed the completion of construction of the dwelling after construction of the same has commenced.

## **6. Carport/Sheds**

During the continuance of this Encumbrance, unless otherwise approved by us, you must not erect or cause to be erected on the Land a dwelling which does not provide accommodation for at least one vehicle either in the form of one carport under the main roof of the dwelling 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, with such vehicle accommodation to be located parallel to or behind the main building line of the dwelling.

## **7. Fencing**

During the continuance of this Encumbrance, you must not:

- 7.1. erect or cause to be erected or permit to remain upon the Land or any boundary of the Land any fence that does not comply as follows:
  - (a) boundary fencing between adjoining allotments must not be less than 1.8 metres in height and constructed from feature face brick, masonry render, feature timber, or Colorbond® style fencing in 'Woodland Grey' or comparable colour. Boundary fencing of this nature should finish parallel with the main street front building line;
  - (b) boundary fencing forward of the main street front building line should integrate with any street front fencing in terms of height, colour and materials;
  - (c) front fencing along a street front boundary should be constructed from materials such as feature brick/rendered masonry or similar, feature/post and rail timber picket or similar and generally not more than 1.5 metres in height and of an open appearance; and
  - (d) allotments facing onto any reserve (public open space) should have boundary fencing forward of the reserve building line that suitably integrates with any reserve front fencing; or
- 7.2. erect any retaining walls facing roads or reserves along any allotment boundary abutting roads or reserves unless any such retaining wall is constructed in materials that are decorative in appearance and coloured in a suitable finish (i.e. no plain grey concrete sleepers).

## **8. Planning and Zoning Laws**

- 8.1. The Land must not be used or developed except in accordance with:
  - (a) any laws relating to planning or zoning from time to time in force; and
  - (b) the conditions of any relevant consent or approval given by us and any Authority in relation to the Land.
- 8.2. Any approval granted by us does not constitute an agreement or representation as to adequacy, suitability or fitness of the proposal, plans or specifications so approved, nor that the Authority will grant its approval. You acknowledge that you will not place any reliance on our approval, whether for the purposes of planning or zoning laws or otherwise.

## **9. Construction and Completion of Building Works**

You must not fail to:

- 9.1. complete the construction of and obtain a permit or certificate from the relevant Authority certifying that the dwelling forming part of the Building Works is suitable for occupation within 18 calendar months of commencing construction and in any event with due promptness and diligence; and
- 9.2. ensure that the footpath, driveway, curb, nature strip landscaping and other relevant Authority assets adjacent to any allotment developed within the Development Area is not damaged by your Building Works. In the event that damage occurs, you must immediately rectify and make good that damage at your cost and to our satisfaction.

## **10. Landscaping**

- 10.1. You must not fail within 12 months of the completion of a dwelling on the Land to landscape the area between the front alignment of the dwelling and the kerb alignment or pedestrian walkway fronting or bounding the Land. In the case of a corner allotment, you must also landscape the area between the side alignment of the dwelling and the kerb alignment or pedestrian walkway.
- 10.2. You 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 plant.
- 10.3. You must at all times maintain, keep tidy and care for the landscaping.

## **11. State of the Land**

You agree that you:

11.1. must not fail to:

- (a) keep the Land neat and tidy;
- (b) promptly remove rubbish and debris from the Land; and
- (c) regularly cut the grass on the Land; and

11.2. must not:

- (a) dump or permit to be dumped any rubbish, debris or fill from the Land on any other public or private land in the Development Area; or
- (b) allow the Land to be left in a condition which in our reasonable opinion is unsightly.

## **12. Your obligations on transferring the Land**

- 12.1. You must not sell or transfer the Land except subject to this Encumbrance.
- 12.2. You must not fail to cause the 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.

## **13. Sunset clause**

- 13.1. Your and our rights and obligations under this Encumbrance will cease on the Termination Date.
- 13.2. For the avoidance of doubt, it is expressly stated that any rights and obligations of the owners of any land in the Development Area arising under this Encumbrance will cease from the Termination Date.

## **14. Notice to rectify breach**

If:

- 14.1. we serve a written notice upon you specifying a breach of any of your obligations under this Encumbrance; and
- 14.2. you fail to remedy the breach within one calendar month from the service of the notice,

then we may:

- 14.3. enter the Land and may take such action as we deem necessary to remedy the breach; and
- 14.4. recover from you, in any court of competent jurisdiction, the costs incurred in remedying the breach.

**15. Waiver**

- 15.1. We may, in our absolute discretion, waive compliance with any of the requirements of this Encumbrance.
- 15.2. We may modify waive or release any of the covenants in this Encumbrance.
- 15.3. Our failure to exercise our rights or our delay in exercising our rights arising from any breach of this Encumbrance by you is not a waiver of that breach or of or any of our rights, actions or remedies.
- 15.4. No waiver is effective unless in writing signed by our authorised officer.

**16. Successors in Title**

Each person claiming an estate or interest:

- 16.1. in fee simple in the Land or any part of it will, by virtue of accepting the instrument of transfer under the *Real Property Act 1886*, be deemed to have covenanted with us to perform and observe all the covenants contained in this Encumbrance to be performed and observed by you; and
- 16.2. as mortgagee or encumbrancer in the Land or any part of it will, by virtue of becoming registered as such, be deemed to have covenanted with us that they will not:
  - (a) exercise a power of sale without obtaining from the proposed transferee and delivering to us a memorandum of encumbrance as detailed in clause 12.2; and
  - (b) exercise a power of foreclosure (in the case of a mortgage) without exercising and delivering to us a covenant by such person to perform and observe all the covenants contained in this Encumbrance to be performed and observed by you.

**17. Assignment by us**

We may transfer or assign our rights under this Encumbrance.

**18. Severance of invalid clauses**

- 18.1. If any clause of this Encumbrance is void or unenforceable then it must be read down so that it is not void or unenforceable.
- 18.2. If it cannot be read down, it must be severed (that is, treated as if cut out).
- 18.3. The rest of this Encumbrance is not affected if any clauses are read down or severed.

**19. How notices may be given**

- 19.1. A notice (including approvals or demands) may be served on you either:
  - (a) by serving it on you personally;
  - (b) by posting a notice in a prepaid envelope to your last known address; or
  - (c) if a dwelling has been erected on the Land, by leaving the notice at or attached to the dwelling.
- 19.2. A notice may be served on us by being left at or posted in a prepaid envelope addressed to us at our address on page 1 and, if applicable, our registered office in South Australia.
- 19.3. A notice:
  - (a) must be in writing;
  - (b) served by post is deemed to have been served two business day after posting; and
  - (c) served by us may be signed by any person authorised by us to sign it.

**20. Costs**

You must pay on demand all costs, expenses, charges and outgoings whatsoever, including legal costs, which we may sustain or incur in consequence of or in relation to:

- 20.1. the preparation and execution of this Encumbrance and all of the costs associated with stamping and registration and any discharge thereof, including the stamp duty and registration fee payable from time to time;
- 20.2. your breach or default of the terms and conditions of this Encumbrance; and
- 20.3. the exercise or enforcement of the attempted or purported exercise or enforcement of any of our powers, rights, remedies or discretions under this Encumbrance.

**21. Miscellaneous**

21.1. Nothing in this instrument prejudices:

- (a) our entitlement to all the powers, rights and remedies given to encumbrancees under statute law or common law; or
- (b) our rights (or of any other person) to an injunction or to damages in respect of a breach of any covenant by you (or a previous owner).

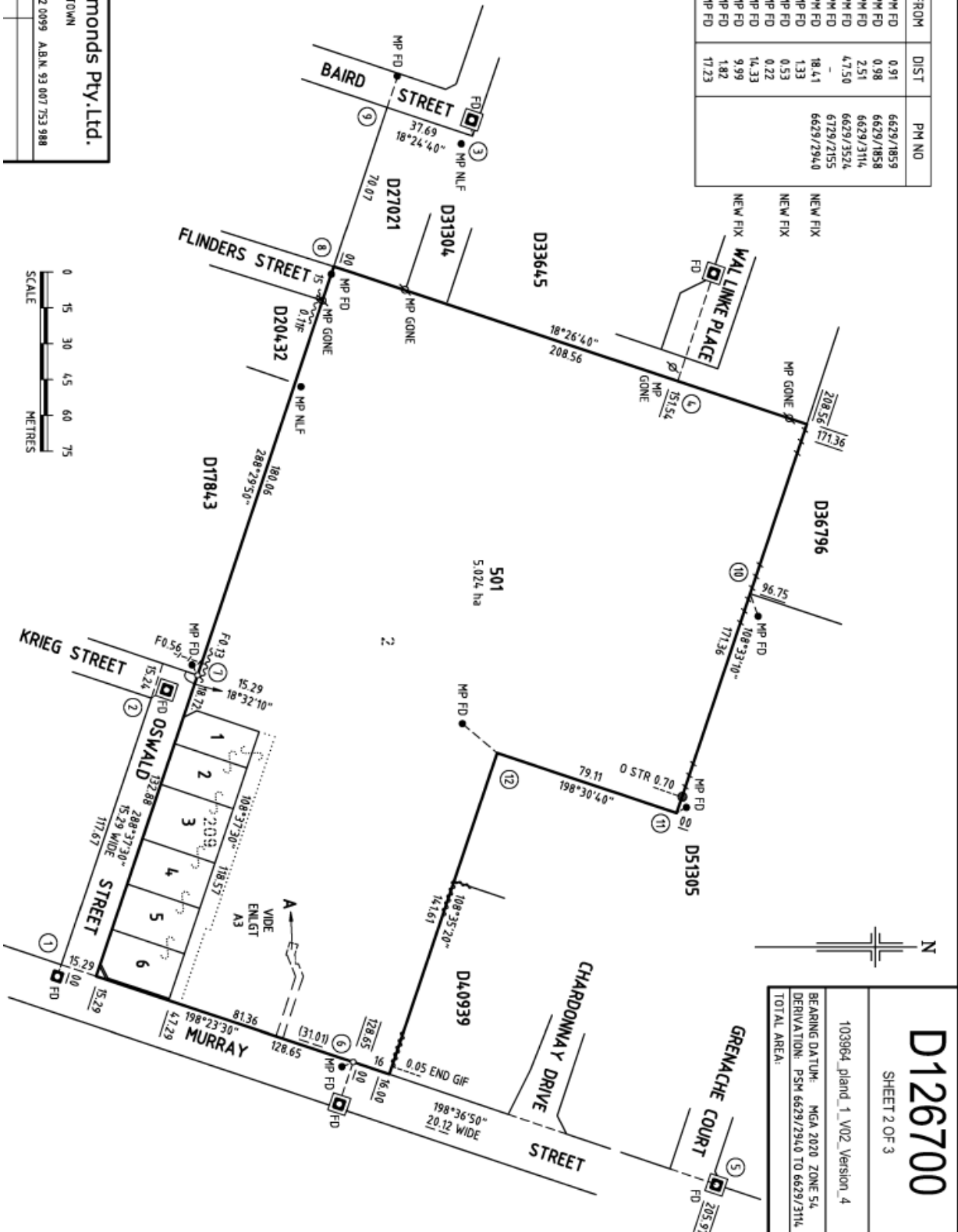
21.2. The burden of proving compliance with the covenants in this instrument lies on you.

**ANNEXURE A**  
**DEVELOPMENT AREA**

REFERENCE MARKS

CNR	BEARING	FROM	DIST	PM NO
1	288°38'	PM FD	0.91	6629/1859
2	115°41'	PM FD	0.98	6629/1858
3	102°48'	PM FD	2.51	6629/3114
4	108°26'4.0"	PM FD	4.750	6629/3524
5	-	PM FD	-	6129/2155
6	288°11'20"	PM FD	18.41	6629/2940
7	293°52'	MP FD	1.33	
8	21°23'	MP FD	0.53	
9	108°29'50"	MP FD	0.22	
10	250°25'	MP FD	14.33	
11	148°28'	MP FD	9.99	
12	40°02'	MP FD	1.82	
			17.23	

**Alexander & Symonds Pty. Ltd.**  
 11 KING WILLIAM STREET, KENT TOWN  
 P.O. BOX 1000 KENT TOWN 5071  
 Tel (08) 8130 9666 Fax (08) 8362 0099 A.B.N. 93 007 753 988  
 REFERENCE: 20A07811 (GAI)  
 HW 19/04/2021





---

*\* Delete the inapplicable*

IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE in accordance with the terms and conditions expressed \*herein / \*in Memorandum No. \_\_\_\_\_ 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:  
Solicitor*

for:

on behalf of the Encumbrancer

---

**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:  
Solicitor*

for:

on behalf of the Encumbrancee

**ENCUMBRANCE**

FORM APPROVED BY THE REGISTRAR-GENERAL

PRIORITY NOTICE ID	
--------------------	--

**BELOW THIS LINE FOR OFFICE & STAMP DUTY PURPOSES ONLY**

SERIES NO	PREFIX
	E

**AGENT CODE**

LODGED BY:

CORRECTION TO:

SUPPORTING DOCUMENTATION LODGED WITH INSTRUMENT (COPIES ONLY)

1

2

3

4

5

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	