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)

JOE'S GOLDEN GASOLINE CLASSIC IMPORTS PTY LTD ACN 065 311 462 of 692-696 Port Wakefield Road, Parafield Gardens SA 5107

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. 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) **allotment** means land registered under the *Real Property Act 1886* that comprises an allotment defined by Part 19AB of that Act;

(b) **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;

(c) **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;

(d) **Deposited Plan** means Deposited Plan 127649 registered at Land Services SA, an extract of which is attached and marked "Annexure A";

(e) **Development** means the construction of a master-planned staged residential development on the Development Land in accordance with the approvals given by the relevant Authority for the Development as required under the *Planning, Development and Infrastructure Act 2016* (SA);

(f) **Development Guidelines** means the plans and guidelines published by us in relation to carrying out Building Works in the Development Land, which may be issued or varied from time to time by us;

(g) **Development Land** means the whole of the land in the Deposited Plan and illustrated in the master plan attached and marked "Annexure B", and such other land as may be acquired from time to time as part of the Development;

(h) **Land** means all the Land and any rights and easements described on page 1;

(i) **Rent Charge** means the annuity described on page 1; and

(j) **Termination Date** means the date being the earlier of:

(i) two years after the practical completion of the last residential dwelling on the Development Land; or

(ii) 31 December 2030.

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 Land;

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 Land, 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 unless otherwise approved by us.

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 dwelling of which any part is of a portable or transportable nature;

5.3. use used or second-hand materials in the construction of the dwelling or the domestic outbuildings unless the prior written approval of the Vendor is obtained;

5.4. erect or permit to be erected or exist any external air-conditioners and solar hot water systems unless they are located towards the rear of the dwelling or otherwise located to minimise visual impact from public view;

5.5. 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;

5.6. 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

5.7. 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

7.1. During the continuance of this Encumbrance, you must not:

(a) 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:

(i) boundary fencing between adjoining allotments must not be no 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;

(ii) boundary fencing forward of the main street front building line should integrate with any street front fencing in terms of height, colour and materials;

(iii) 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 not more than 1.5 metres in height and of an open appearance; and

(iv) 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

(b) erect any retaining walls facing roads or reserves along any allotment boundary abutting roads or reserves or forward of a dwelling unless any such retaining wall is constructed in materials of a coloured and textured finish (e.g. Kensington Stack Stone or equivalent).

7.2. If you are the registered proprietor of an allotment which abuts Port Wakefield Rd, Old Port Wakefield Rd or any reserve any reserve areas on the perimeter of the Development Land, then:

(a) you acknowledge that as a condition of the approval given by the relevant Authority in relation to the Development, your Land may be required to maintain either an open or solid style fence to the rear and, where applicable, side boundary of the Land and maintain access to the public footpath (**Fence Access**);

(b) we will construct and install the Fence Access and associated works, including retaining walls in respect of the Land in accordance with the Vendor's design requirements and the Development Guidelines; and

(c) you must at all times not fail to:

(i) maintain access from the Land to the public footpath at the rear boundary of the Land in accordance with the requirements of this clause and the approvals given by the relevant Authority; and

(ii) maintain and keep the Fence Access, as a minimum, in the same condition as the Fence Access

was in as at the time it was installed by us (except for fair wear and tear).

8. Approvals

8.1. We may require that you must not:

(a) do (or cause, suffer or permit to be done) any Building Works on the Land, including works under clauses 5 to 7, without first submitting drawings and plans of the proposed dwelling and details of external materials and finishes for our prior written approval; and

(b) submit any plans of Building Works, including for works under clauses 5 to 7 where necessary, to the relevant Authority for its approval until it has obtained our prior written approval.

8.2. We will not act unreasonably in refusing any approval or imposing any condition under clause 8.1. But a refusal or a condition cannot be deemed unreasonable if:

(a) the proposal as submitted is contrary to any provision in the Development Guidelines or this Encumbrance; or

(b) a corporate member of the Planning Institute of Australia appointed by us 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 that locality.

9. Development Guidelines

9.1. You must not construct or cause to be constructed on the Land any dwelling that does not comply with any Development Guidelines.

9.2. We will ensure that any Development Guidelines, if required, will be provided to you prior to the commencement of this Encumbrance.

10. Planning and Zoning Laws

10.1. 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.

10.2. 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.

11. Construction and Completion of Building Works

You must not:

11.1. permit any undue delay to occur in the commencement of the Building Works such that construction of the dwelling:

(a) has not commenced (as evidenced by completion of all site works and the laying of the concrete slab and footings) within 18 calendar months from the date of this Encumbrance, or such further time as we may agree to; or

(b) has not completed and, where applicable, a permit or certificate certifying that the dwelling is suitable for occupation has not been obtained from the relevant Authority, within 12 calendar months of commencing construction, or such further time as we may agree to;

11.2. permit any undue delay to occur such that the driveway is not completed within three months of the completion of a dwelling on the Land; and

11.3. fail to ensure that the footpath, driveway, curb, nature strip landscaping and other relevant Authority assets adjacent to any allotment developed within the Development Land 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.

12. Landscaping

12.1. You must not fail to within six months of the completion of a dwelling on the Land:

(a) landscape the area between the front alignment of the dwelling and the kerb alignment or pedestrian walkway fronting or bounding the Land; and

(b) in the case of a corner allotment, landscape the area between the side alignment of the dwelling and the kerb alignment or pedestrian walkway.

12.2. 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.

12.3. You must at all times maintain, keep tidy and care for the landscaping.

13. Signage

During the continuance of this Encumbrance, unless otherwise approved by us, you must not erect or allow any third party to erect commercial signage which is visible outside of the Land except for one sign at a time, and such sign is of dimensions no greater than 1800mm by 1800mm and relates to the Building Works or the sale of the Land only.

14. State of the Land

You agree that you must not

14.1. 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;

14.2. dump or permit to be dumped any rubbish, debris or fill from the Land on any other public or private land in the Development Land; and

14.3. allow the Land to be left in a condition which in our reasonable opinion is unsightly.

15. Your obligations on transferring the Land

15.1. You must not sell or transfer the Land prior to completion of the construction of a dwelling in accordance with this Encumbrance.

15.2. This clause does not prevent a transfer of Land, on your death, to a person entitled to the Land under your will or intestacy.

15.3. This clause does not prevent a transfer of Land by a mortgagee who has a registered estate or interest in fee simple in the Land and has become registered as mortgagee in possession of the Land in accordance with the *Real Property Act 1886*.

16. Lift and Replace

Without limiting clause 15, you must not transfer Land to any person including by will or under any intestacy law or as part of a winding up (**Transferee**) unless you:

16.1. notify us at least 21 days before the transfer and provide us with the necessary Transferee details for the purpose of completing the matters in clause 16.4;

16.2. pay us our reasonable costs of attending to the matters in clause 16.4 plus any registration fees and stamp duty;

16.3. remedy all breaches and defaults and pay all monies payable under this Encumbrance by you prior to the transfer; and

16.4. procure at your cost the execution, stamping and registration of a memorandum of encumbrance from the Transferee in favour of us on substantially the same terms as this Encumbrance, such instrument to be:

(a) prepared by us or our lawyers;

(b) executed by the Transferee and us, if necessary, prior to the transfer;

(c) stamped prior to the transfer, if necessary; and

(d) lodged for registration by us or our lawyers so that it is registered immediately after the transfer of the Land to the Transferee, and before any other interest in the Land is created.

17. Successors in Title

Notwithstanding clause 16, each person claiming an estate or interest:

17.1. 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

17.2. as mortgagee or encumbrance 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 16.4; and

(b) exercise a power of foreclosure (n 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.

18. Release on Sale

Once a dwelling has been completed on the Land in accordance with the approvals required under this Encumbrance, the following applies:

18.1. the Rent Charge and covenants contained in this Encumbrance will be binding only upon the registered proprietor for the time being of the Land;

18.2. subject to clause 18.3, 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; and

18.3. despite a transfer under clause 18.2, our rights will be preserved against any former registered proprietor in relation to a breach of this Encumbrance which occurred either before the transfer or by reason of the transfer.

19. Sunset Clause

19.1. Your and our rights and obligations under this Encumbrance will cease on the Termination Date.

19.2. For the avoidance of doubt, it is expressly stated that any rights and obligations of the owners of any land in the Development Land arising under this Encumbrance will cease from the Termination Date.

20. Notice to rectify breach

If:

20.1. we serve a written notice upon you specifying a breach of any of your obligations under this Encumbrance; and

20.2. you fail to remedy the breach within one calendar month from the service of the notice,

then we may:

20.3. enter the Land and may take such action as we deem necessary to remedy the breach; and

20.4. recover from you, in any court of competent jurisdiction, the costs incurred in remedying the breach.

21. Waiver

21.1. We may, in our absolute discretion, waive compliance with any of the requirements of this Encumbrance, including the Development Guidelines.

21.2. We may modify waive or release any of the covenants in this Encumbrance.

21.3. 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.

21.4. No waiver is effective unless in writing signed by our authorised officer.

22. Assignment by us

We may transfer or assign our rights under this Encumbrance.

23. Severance of invalid clauses

23.1. If any clause of this Encumbrance is void or unenforceable then it must be read down so that it is not void or unenforceable.

23.2. If it cannot be read down, it must be severed (that is, treated as if cut out).

23.3. The rest of this Encumbrance is not affected if any clauses are read down or severed.

24. How notices may be given

24.1. 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.

24.2. 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.

24.3. 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.

25. 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:

25.1. 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;

25.2. your breach or default of the terms and conditions of this Encumbrance; and

25.3. the exercise or enforcement of the attempted or purported exercise or enforcement of any of our powers, rights, remedies or discretions under this Encumbrance.

26. Miscellaneous

26.1. 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).

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

ANNEXURE A

DEPOSITED PLAN

ANNEXURE B

MASTER PLAN

** 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: *Eckermann Lawyers Pty Ltd*

on behalf of the Encumbrancer

Encumbrancee(s)

*The Certifier has taken reasonable steps to verify the identity of the encumbrance 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: *Eckermann Lawyers Pty Ltd*

on behalf of the Encumbrancee

FORM M2 (Version 3)
GUIDANCE NOTES AVAILABLE

LANDS TITLES REGISTRATION OFFICE

SOUTH AUSTRALIA

ENCUMBRANCE

FORM APPROVED BY THE REGISTRAR-GENERAL

PRIORITY NOTICE ID	

BELOW THIS LINE FOR OFFICE &
STAMP DUTY PURPOSES ONLY

SERIES NO	PREFIX
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AGENT CODE

LODGED BY:

CORRECTION TO:

SUPPORTING DOCUMENTATION LODGED WITH INSTRUMENT (COPIES ONLY)

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CORRECTION	PASSED
REGISTERED	
	REGISTRAR-GENERAL