

MEMORANDUM OF ENCUMBRANCE

CERTIFICATE(S) OF TITLE BEING ENCUMBERED

Allotment ### in DN 711/D010/09 being portion of the land comprised in Certificate of Title Register Book Volume ##### Folio ###

ESTATE AND INTEREST	ENCUMBRANCES
Estate in Fee Simple	Nil
ENCUMBRANCER (Full Name and Address) <p>(Note: In this instrument the expression "The Owner" includes the Encumbrancer and each successive registered proprietor of the land comprised in the Certificate of Title being encumbered.)</p>	
ENCUMBRANCEE (Full Name and Address and Mode of Holding) TALLWOOD PTY LTD A.C.N. 078 109 396 of PO Box 897 Morphett Vale SA 5162	

OPERATIVE CLAUSE

THE ENCUMBRANCER ENCUMBERS THE ESTATE AND INTEREST IN THE LAND ABOVE 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
- (b) State the term of the annuity or rent charge. If for life use the words "during his or her lifetime"
- (c) State the times appointed for payment of the annuity or rent charge. Any special covenants may be inserted on page 2

- (a) Ten cents (.10c)
- (b) TO BE PAID TO THE ENCUMBRANCEE for the term of 3,999 years
- (c) AT THE TIMES AND IN THE MANNER FOLLOWING
If demanded by the Encumbrancee on the 30th day of June in and every year commencing on the 30th day of June next occurring for the period of 3,999 years and with the performance of the following.

IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE as follows:

The purpose of this encumbrance

1. The Encumbrancer on page 1 ("The Owner") grants this encumbrance -
 - (a) for the benefit of the Encumbrancee on page 1
 - (b) for the benefit of the land presently comprised in Certificate of Title Register Book Volume ##### Folio ## and its successor title and its owner from time to time
 - (c) for the benefit of each other allotment of land within the Mannum Waters Development Area, and each present and future owner of land within the Mannum Waters Development Area
 - (d) to charge the land on page 1 ("the land") with the payment of the annuity on page 1 ("the rent charge") in order to secure compliance with the covenants contained in this encumbrance
 - (e) for the purpose of a common building scheme for the development of the Mannum Waters Development Area and
 - (f) with the intent that these covenants run with and bind the land and The Owner's successors in title.

Interpreting this encumbrance

2. In this encumbrance, unless the contrary intention appears -
 - (a) "allotment" means any Torrens title allotment in the Mannum Waters Development Area
 - (b) "Building Line" means the line drawn on the allotment plan annexure to this encumbrance
 - (c) "development" means work of any kind, including but not limited to -
 - "building work" as defined in the *Building Work Contractors Act*
 - the construction or alteration of any permanent or temporary structure
 - earthworks or landscaping of any kind
 - repairs, painting or improvements of any kindand "develop" and "undertake development" each has a corresponding meaning and includes causing, suffering or permitting development
 - (d) "Houseboat" has the same meaning as is given to it in the Harbours and Navigation Regulations 1994 Reg 8.
 - (e) "landing" means a mooring including walkways, jetty, boardwalks, piles and pontoons or any other structure constructed as part of the mooring
 - (f) "the land" means the land subject to this instrument and includes any part of the land

- (g) "the Land Owner's Charter" means the design guidelines for the estate published by the Encumbrancee, which may be varied from time to time by the Encumbrancee, a current copy of which was attached to the contract for sale of land
- (h) "Mannum Waters" means the Mannum Waters Development Area
- (i) "Marina" means the Community Title area designated for Houseboat and vessel mooring
- (j) "Recreational Vessel" has the same meaning as is given to it in the Harbours and Navigation Act 1993
- (k) "the Mannum Waters Development Area" means the marina and residential development presently known as "Mannum Waters" being the whole of the area south of the Mannum Township bounded by Belvedere Road, the Mannum Golf Course, the unmade public road to the south-western boundary and the River Murray except for Crown Land
- (l) "vessel" means Recreational Vessel and Houseboat
- (m) "Waterfront Allotment" means a Torrens title allotment a portion of which adjoins the Waterway Reserve
- (n) "Waterfront Easement" means that portion of a Waterfront Allotment which adjoins the Waterway Reserve
- (o) "Waterway Reserve" means the portion of the Mannum Waters Waterbody that is a public Waterbody and does not form part of Waterfront Easement
- (p) "Waterbody" means the Waterway Reserve and the water portion of the Waterfront Easement
- (q) "The Owner" includes the registered proprietor for the time being of the land
- (r) reference to giving access to the Encumbrancee includes giving access to the Encumbrancee's employees, agents and contractors
- (s) 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)
- (t) reference to any statute includes statutes which change or replace it and
- (u) any word indicating the singular includes the plural, and vice versa.

3. If there are more than one of The Owner then -

- the Encumbrancee only has to give notices to one of The Owner's and
- all of The Owner's obligations in this encumbrance are joint and several.

One Main Dwelling

4. The Owner shall not erect upon the land more than one detached dwelling house (exclusive of all general domestic outbuildings).

Subdivision

5. The land shall not be subdivided or amalgamated, other than minor boundary alterations due to building encroachments.

Restrictions on the use and development of the land

6. The Owner must use the land only for private residential purposes with the exception of approval being obtained from and in relation to a home activity within the meaning defined by the Development Regulations 1993, as amended.

Temporary Dwellings

7. The Owner shall not erect upon the land any building other than an outbuilding that is constructed of prefabricated material, nor any transportable dwelling house, nor any caravan or other temporary dwelling as the detached dwelling house unless approved in writing by the Encumbrancee.

Development in Accordance with Land Owner's Charter

8. No dwelling or any other building as defined shall be erected; altered or added to or made in or over the said land or any part thereof unless such erection, alteration or addition:
 - (a) Complies to the Encumbrancee's satisfaction with the Land Owner's Charter; and
 - (b) have received the Encumbrancee's prior written approval.
9. The Owner shall not submit any plans of building works to the Council for its approval until The Owner has obtained the Encumbrancee's approval or the Encumbrancee's agent's approval.

The Encumbrancee shall not act unreasonably in refusing any approval or imposing any condition of approval under Clause 8. But a refusal or a condition cannot be deemed unreasonable if:

- (a) The proposal submitted is contrary to any provision in the Land Owner's Charter; or
- (b) if a registered architect certifies that the proposed development -
 - does not conform with the general standards of design and planning for the Mannum Waters Development Area
 - does not conform with any rules for development in this encumbrance, or any of the Encumbrancee's development guidelines or
 - may have an undesirable affect on the development, appearance or amenities of the Mannum Waters Development Area.

Parking of Vehicles

10. The Owner shall not cause or allow:
 - (a) parking of motor vehicles on other than the approved designated parking space on the land;
 - (b) commercial vehicles to be parked or left unattended on the land or otherwise than in a position where the same are not visible from the road frontage to the said land. For the purposes of this provision, "commercial vehicles" includes any vehicle between 1 and 3 tonne tare in weight intended or designed to carry goods, equipment or passengers in commercial quantities;

- (c) any vehicle greater than 3 tonne in weight to be parked or left unattended on the land.

Development rules

11. The Owner must not undertake any development on the land or allow any development to remain on the land (regardless of when that development was undertaken) except in strict accordance with the following rules.
 - (a) Any development on a Waterfront Allotment must be between the front road reserve boundary and the Building Line as shown on the attached plan Annexure A.
 - (b) For a Waterfront Allotment -
 - no fixed fence may be constructed anywhere within the Waterfront Easement area, and
 - The Owner must not obstruct the Encumbrancee, or any emergency service, from crossing The Owner's allotment in that area (including, if need be, with plant and equipment).
 - (c) Any development on any Waterfront Allotment must not have a floor level below 5.3 metres Australian Height Datum.
 - (d) No development on any Waterfront Allotment may exceed *2 storeys or 9 metres in height* (whichever is lower). The height is to be measured from 5.3 Australian Height Datum.
 - (e) No external walls or cladding may be constructed using sheet or corrugated fibre cement, simulated brick or stone or metal sheeting of any kind (except with the Encumbrancee's prior written consent).
 - (f) All materials used must be new.
 - (g) Every roof must be constructed using materials that are, factory coated, non reflective and pre-coloured.
 - (h) At least two car parking spaces per dwelling must be provided.
 - (i) At least one of them must be under the cover of a garage or carport.
 - (j) No aerial, satellite dish, windmill or other structure may be erected so that any part of it is above the roof ridgeline of a dwelling on the land.
 - (l) No signs may be erected on the land except a sign, which advertises a display home, or vacant or improved land, for sale, or any sign legally required under the *Building Work Contractors Act*. Any sign must be professionally made and written and be 900mm square in size (unless otherwise approved).
 - (m) Development must not be undertaken except in strict accordance with the terms of the Encumbrancee's prior written approval.

How to obtain the Encumbrancee's approval for development

12. If The Owner wishes to undertake any development on the land, The Owner must give the Encumbrancee a written request for approval, pay the Encumbrancee the fee the Encumbrancee

fixes (acting reasonably) from time to time to apply for the Encumbrancee's approval, and gives the Encumbrancee plans for the proposed development showing -

- sufficient details to indicate its architectural theme
 - the construction materials and colours
 - the location of the development in relation to the boundaries of the land and any easements on the land
 - the contours of the land
 - on-site parking provision
 - the stormwater drainage system
 - any proposed access and landscaping and
 - the location and type of any proposed fence, retaining wall or other structure.
13. The plans must also be such as would be suitable for lodging with council for planning or building approval.
14. The Encumbrancee may call for reasonable further information.
15. The Encumbrancee must consider the above documents within a reasonable period after The Owner gives them to the Encumbrancee, and then promptly inform The Owner of the Encumbrancee's decision.
16. No approval is effective unless in writing signed by the Encumbrancee's authorised officer.
17. Approval may be given subject to conditions.
18. The Encumbrancee must not unreasonably refuse approval, or place unreasonable conditions on it.
19. Approval is deemed to be reasonably refused if a registered architect certifies that the proposed development -
- does not conform with the general standards of design and planning for the Mannum Waters Development Area
 - does not conform with any rules for development in this encumbrance, or any of the Encumbrancee's development guidelines or
 - may have an undesirable affect on the development, appearance or amenities of the Mannum Waters Development Area.
20. Once the Encumbrancee has given approval, The Owner must -
- obtain any required Council approvals for the development
 - give a copy of The Owner's approved plans, this encumbrance, and the development guidelines, to The Owner's builder
 - ensure The Owner's builder complies with them and

- carry out the development in accordance with the terms of the Encumbrancee's approval and any statutory approval.

21. An approval lapses if The Owner does not substantially complete the development within two years.

Solar Hot Water

22. If The Owner installs a solar hot water system, The Owner shall only install a split system hot water service, whereby the water storage tank is located at ground level and is not located on the roof adjacent to the solar panels.

Rainwater Tank

23. The Owner shall install a rainwater tank with a minimum capacity of 10,000 litres.

24. The Owner shall not use or permit to be used any toilet flush system for the dwelling that does not incorporate a rainwater tank which captures the main dwelling roof water and then plumbs the rainwater into the toilet flush system.

25. Waterfront allotments must have the rainwater tank located so that entry levels are above 5.3 metres Australian Height Datum.

26. Rainwater tanks must be pre-coloured and located behind a suitable screen.

Fencing

27. No fence shall be erected on the boundary of the land abutting a road reserve or within a distance of 5 metres of such boundary except for where the land is a corner allotment then a fence may be erected on the boundary of the secondary street frontage.

28. No fence shall be erected on a side boundary of land extending beyond the front building line of any dwelling erected upon the land. Front building line to be the boundary abutting the road reserve.

29. No fence, other than a pool safety fence meeting Australian Standard 1926 (AS:1926), shall be erected on a side boundary of a Waterfront Allotment within 5 metres of the Waterfront Easement. The fence must not be constructed of solid panels or corrugated sheeting.

30. Where the land abuts a recreation reserve no fence shall be erected on boundary of the land with such recreation reserve or within a distance of 5 metres of such a boundary unless such fence is constructed in a style and of a height and of materials which are approved in writing by the Encumbrancee.

31. Where the Encumbrancee has erected any fence on the land The Owner shall not fail to repair and maintain the same in good and proper repair and any repair and maintenance of such fence shall be effected with the same materials from which such fence is constructed and in the event that such fence shall be replaced by The Owner any such replacement fence shall be either the same construction and constructed of the same material as the existing fence or of some similar construction and material approved by the Encumbrancee in writing.

32. Any approval obtained pursuant to Clause 30 hereof shall, unless extended by the Encumbrancee, lapse at the expiration of a period of two (2) years commencing on the date of the approval in writing if the works to which it refers are not in the Encumbrancee's opinion substantially commenced within that period.

33. Unless the law otherwise requires, fences or similar structures must not exceed 1.8 metres in height. Fences must be constructed using materials that are, non reflective and coloured. Uncoloured galvanised or zincalume iron sheeting is not permitted to be used in any fence or screen.

Rules governing The Owner's use of the Allotment

34. The Owner must ensure that –

- (a) Home grown produce is grown within a nominated 'garden area' or in raised planter box within a growing medium that meets the Auditor's ecological investigation levels attached to the Audit Statement and defined in Section 7.1.5 of the Site Contamination Audit Report dated 3 March 2010.
- (b) Poultry must be kept within a nominated 'poultry area', with a minimum 300 mm thickness of growing medium that meets the Auditor's ecological investigation levels attached to the Audit Statement and defined in Section 7.1.5 of the Site Contamination Audit Report dated 3 March 2010.

Rules governing The Owner's use of the Waterfront Allotment

35. The Owner must not breach any of the following rules in using or owning the Waterfront Allotment.

- (a) The Owner must not use any vessel moored to the land as a place of residence.
- (b) The Owner must not allow any vessel to be permanently slipped on the land without the Encumbrancee's prior written approval.
- (c) The Owner must not make any claim against the Encumbrancee for the cost of (or for contribution to the cost of) erecting a fence between the land and any land of the Encumbrancee's.
 - The Owner indemnifies the Encumbrancee against any such claim.
- (d) The Owner must not allow any damaging objects, noxious or toxic material, or any bilge or wastewater (other than stormwater directly from a roof) to be put into, or to drain into, any Waterbody.
- (e) The Owner must not draw water from the Waterbody or the River Murray.
- (f) The Owner must not use fertilisers on lawns or gardens or plant or permit to be planted deciduous plants.
- (g) The Owner must maintain the Riparian buffer zones to the standards specified by the Mid Murray Council as determined from time to time.

Rules relating to landings

- 36. The Owner shall not build or construct any landing on any portion of a Waterfront Allotment without first obtaining the approval of the Mid Murray Council and/or other Government Agency as may apply from time to time.
- 37. The Owner shall not construct a landing or pontoon so as to allow any portion of the same or moored craft to intrude into the Waterway Reserve from a Waterfront Allotment. No moored vessel is allowed to be outside of the title area.
- 38. The Owner shall ensure that all landings constructed are maintained in good order and condition and not allowed to become unsightly.
- 39. The Owner shall not allow any spot light or bright light on any landing.
- 40. Types of vessels that may be moored –

- The Owner shall not allow to be moored on the Waterfront Allotment any vessel that is not a Recreational Vessel.
 - Houseboats must not be moored on the Waterfront Allotment.
41. The Owner shall not allow to be moored on the Waterfront Allotment any vessel that is not a Recreational Vessel.
42. Houseboats must not be moored on the Waterfront Allotment.
43. All vessels are to be secured at all times when not in use
44. The Owner shall not moor any vessel on the Waterfront Allotment unless it is secured to a landing or pontoon.
45. The Owner shall not construct any mooring for vessels on any part of the Waterfront Allotment other than a landing or pontoon.
46. The Owner must promptly remove damaged or sunken vessels.

Activities on Waterfront Allotments and small craft landings

47. The Owner shall not create any noise or unnecessary disturbance within Mannum Waters so as to annoy other residents of Mannum Waters who are entitled to consideration and in particular shall not:
- use outboard motors or pump motors without approved and effective mufflers, or
 - operate engines unnecessarily within Mannum Waters whilst stationary, or;
 - The Owner shall not use floodlights except when under way or maneuvering vessels (which floodlights shall be turned off as soon as practicable after berthing) or for short periods of time during night time hours.
 - At all times noise levels must be within normally accepted limits as prescribed by the Environment Protection Authority (SA).
48. Disposal and dumping of refuse or waste
- The Owner shall not pump or dump or otherwise dispose of in the water of the marina facility or onto a Waterfront Allotment any pollutants, oil, detergents, inflammable liquid, toxic substances, bilge water, fish-tank water, swimming pool water, contaminated water.
 - No refuse or other materials are to be dumped or otherwise disposed of.
 - The Owner shall at all times comply with the relevant legislation in respect to the discharge of grey water and black water discharge from any vessel.
49. Refuelling
- The Owner shall not refuel or discharge fuel from vessels while moored on Waterfront Allotment.

50. Spills

- The Owner shall immediately report all spills of fuel or oil to the Officer responsible for the Waterbody.
- Where required by law The Owner must also immediately report where reporting is mandated by legislation.

Notice to rectify breach

51. The Encumbrancee can enter the land at any time 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 anything to obstruct or hinder the Encumbrancee's entry or inspection.
52. If the Encumbrancee is of the opinion that there has been a breach of any of The Owner's obligations under this encumbrance (whether by The Owner or by someone else), the Encumbrancee may, by written notice to The Owner, require The Owner to remedy the breach.
53. The notice must specify the nature of the work required to remedy the breach.
54. The Owner must remedy the breach within one calendar month from the date of service of the notice.
55. Or such lesser period specified in the notice, if work is required as a matter of urgency.
56. If The Owner does not remedy the breach in accordance with the notice in a satisfactory manner within the time required above, then the Encumbrancee may carry it out.
57. The Owner must give the Encumbrancee access onto the land to carry out the required work.
58. The cost to the Encumbrancee of carrying it out is payable by The Owner to the Encumbrancee on demand.

Marina works and noises

59. The Owner acknowledges that the land forms part of a large marina and residential development, which is currently under construction.
 - (a) In carrying out further construction within the Mannum Waters Development Area, the Encumbrancee or its contractors, servants or agents will make reasonable efforts to minimise dust, noise, road diversions and other inconveniences to The Owner.

However, the Encumbrancee is not liable to The Owner for any such inconvenience, or for any loss or damage caused to The Owner by any such construction.

60. The Owner acknowledges that certain noises emanate from moored houseboats. The Encumbrancee has no liability to The Owner in relation to that.
61. The Owner acknowledges the existing use and rights of the neighbouring properties for rural production and industry. It is further acknowledged that these businesses and activities may affect the amenity of the development area. The Owner accepts these existing uses and rights and agrees that they cannot require a landowner, tenant, share farmer, Council or Government agency to regularise or enforce any restrictions on legal activity. The Encumbrancee has no liability to The Owner in relation to these activities.

Statutory provisions also apply

62. The provisions of the *Law of Property Act* and the *Real Property Act* relating to encumbrances apply to this encumbrance.

63. They include, amongst other rights and obligations -

- (a) an obligation on The Owner to keep all improvements on the land in good repair
- (b) a right of the Encumbrancee's at all convenient times to enter the land to inspect the state of repair of such improvements
- (c) an obligation on The Owner to pay the rent charge at the time and in the manner set out in this encumbrance
- (d) the right of a subsequent mortgagee or encumbrancee to redeem this encumbrance
- (e) a right of the Encumbrancee's to sell the land if The Owner defaults in observing The Owner's obligations expressed or implied in this encumbrance
- (f) a power of the Encumbrancee's, to enter and take possession of the land or bring an action for recovery of the land, or to distain the goods of the tenant or occupier of the land.

Acknowledgment of Building Scheme

64. The Owner acknowledges for the Owner and the Owner's successors in title:

- (a) that the foregoing covenants are entered into and undertaken for the purposes of the Encumbrancee's scheme of development for the lands comprised in the Mannum Waters Development Area; and
- (b) that the Encumbrancee has warranted that it has required, and will continue to require, each purchaser from the Encumbrancee of land in the Mannum Waters Development Area, as a condition of its sale, to execute an instrument in substantially similar form to this instrument and containing substantially similar covenants and other stipulations

Release of Owner upon transferring the land

65. Once a dwelling has been completed on the land, the rent charge and covenants contained in this instrument will be binding only upon the registered proprietor for the time being of the land.

66. Subject to clause 67, 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.

67. The covenants in this encumbrance only bind the registered proprietor of the land for the time being.

But the Encumbrancee's rights are preserved against any former registered proprietor in relation to -

- (a) any breach of this encumbrance which occurred while that person was the registered proprietor and
- (b) any breach of that person's obligations on transferring the land.

Waiver

68. The Encumbrancee may, in the Encumbrancee's absolute discretion, waive compliance with any development guidelines, or with any of the requirements of this encumbrance.

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

- (a) The Encumbrancee may also modify, waive or release any of the covenants in any encumbrance relating to any other land in the Mannum Waters Development Area.
 - (b) Such modifications, waiver or release do not release The Owner from any covenants in this encumbrance.
 - (c) No warranty is given that any encumbrance relating to any other land in the Marina is in the same terms or has the same effect as this encumbrance.
70. A party's action, or lack of it, on any disobedience of this encumbrance by the other does not affect the party's rights if the other -
- repeats or continues the disobedience or
 - disobeys this encumbrance in another way.

71. No waiver is effective unless in writing, signed by the Encumbrancee's authorised officer.

Assignment by the Encumbrancee

72. The Encumbrancee may transfer or assign the Encumbrancee's rights under this encumbrance.

Severance of invalid clauses

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

Costs

76. The costs incidental to the preparation of this encumbrance, and the stamp duty and registration fee on it, must be paid by The Owner.
77. The Owner must also pay to the Encumbrancee any costs the Encumbrancee incurs as a result of any breach of this encumbrance by The Owner or The Owner's employees, agents, contractors or invitees.
78. Unless otherwise expressly stated, any GST payable in respect of any fees, costs or expenses payable, or goods or services provided, under this encumbrance or in respect of the land, must be paid by The Owner.

Sunset Clause

79. Subject to the provisions of clause 80, the Encumbrancee's rights and obligations will cease twenty four (24) months after the Encumbrancee ceases to be the registered proprietor of the last of the residential allotments created in the Mannum Waters Development Area..
80. For the avoidance of doubt it is expressly agreed that The Owner's rights and obligations with respect to any land in the Mannum Waters Development Area arising under the Land Owner's Charter created by this Encumbrance will continue despite the provisions of Clause 79.

How notices may be given

81. All notices (which includes approvals or demands) must be in writing.

82. All notices must be given to the other party.
83. Notices can be given in person.
84. Notices can also be left at the other party's address on page 1, or at the other party's last known address.
85. Notices can also be sent there by registered post, but they must be correctly addressed and posted.
86. Notices can also be given to The Owner by being left at, or sent by registered post to, the land.
87. If posted, a notice is treated as given the next business day after posting.
88. Any notice may be signed by a party, or any person that party authorised to sign it.