

IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE as follows:—

The Encumbrancer hereby encumbers the estate and interest herein specified in the land above described for the benefit of himself his assigns and successors in title and the Encumbrancee and his assigns and successors in title subject however to the encumbrances as shown hereon within an annuity of \$0.10 (ten cents) per annum to be paid to the Encumbrancee (if demanded) on the 1st day of July in each and every year at times and in the manner following commencing on the 1st day of July 1993 to the intent that the Encumbrancee shall hold the said annuity in fee simple AND with the performance and observation of the covenants terms and conditions by the Encumbrancer hereinafter implied herein under and by virtue of the provisions of the Real Property Act 1886 (as amended) except insofar as the same are hereby expressly or implied varied negated or modified. It is covenanted between the Encumbrancer and the Encumbrancee as follows:

1. (a) for the benefit of each of the registered proprietors of the land comprised in all of the allotments in Deposited Plan Number _____ at the Lands Titles Registration Office at Adelaide (in this Memorandum of Encumbrance called the "Meadow Glen Estate");

AND

- (b) for the benefit of all of the successors in title of the registered proprietors of the land in the Meadow Glen Estate;

AND

- (c) for the purpose of the common building scheme of development of Meadow Glen Estate;

AND

- (d) for the benefit of the encumbrancee with the payment of the yearly rent charge.

2. INTERPRETATION

- 2.1 In this Encumbrance unless the contrary intention is indicated by the context:

- (a) "Agreement" or "this Agreement" or "Water Supply Agreement" or "Agreement for Supply of Water" means the terms and conditions agreed between the Water Company and the Encumbrancee which are contained in this Encumbrance and relate to the supply of water by the Water Company to or upon the encumbered land;
- (b) "Authorised Officer" means any director secretary manager (whether a general executive or otherwise) or solicitor or accountant of the Water Company and any person for the time being acting in one or more of these capacities;
- (c) "the Basic Rate" means the rate specified in Item 3 of the Schedule;

- (d) "Business Day" means a day on which trading banks as defined in the Banking Act 1959 (Cth) are open for business in the State;
- (e) "the Connection Fee" means the fee specified in Item 4 of the Schedule;
- (f) "the Encumbrancer" means the Encumbrancer described in this Encumbrance and his assigns and successors in title and when two or more persons are so described includes each of them severally and any two or more of them jointly;
- (g) "Excess Water" means the quantity of water supplied to the Land in excess of the Water Allocation;
- (h) "the Excess Water Charge" means the charge specified in Item 5 of the Schedule;
- (i) "the Fee" means and includes any monies payable by the Encumbrancee to the Water Company pursuant to this Agreement and includes but is not limited to the costings and charges referred to in clause 7 hereof;
- (j) "the Land" or "the said Land" or "the Encumbered Land" means the Land registered in the name of the Encumbrancer to which these Terms and Conditions apply;
- (k) "Month" means calendar month;
- (l) "Schedule" means any Schedule which forms part of this Encumbrance;
- (m) "State" means the State of South Australia;
- (n) "the Water Company" means Meadow Glen Water Co Pty Ltd ACN 057 062 870 and includes any subsidiary related or associated corporation of the Water Company its successors and assigns;
- (o) "Water Allocation" means the quantity of water specified in Item 6 of the Schedule in respect of which the Basic Rate is payable.

2.2 In the interpretation of this Encumbrance unless the context otherwise requires:

- (a) a reference to a person shall if such person is a natural person include such person's executors administrators and assigns and where such person is a body corporate include the successors and permitted assigns of such person;
- (b) reference to any bodies authorities or institution shall include bodies authorities or institutions replacing them;

- (c) reference to a statute or code shall mean that statute or code and shall include any ordinance regulation rule or by-law made under or pursuant to such statute or code and shall include all amendments or consolidations of or substitutions for any such statute or code from time to time;
- (d) reference to any enactment shall unless the context otherwise requires be a reference to that enactment of the Parliament of South Australia of that name in force at the date hereof and shall include any statutes modifying amending or re-enacting the same;
- (e) reference to clauses are to clauses of this Encumbrance;
- (f) any term which is defined in this Memorandum of Common Provisions or elsewhere in this Agreement shall have the same meaning as therein defined;
- (g) every obligation covenant agreement and condition expressed or implied in this Agreement and entered into between two or more of the parties referred to shall unless the contrary intention is expressed bind them and any two or greater number of them jointly and each of them severally;
- (h) words importing the singular number shall include the plural number and vice versa;
- (i) words importing any gender shall include the other genders;
- (j) words importing persons shall include corporations whether incorporated or unincorporated and any association of persons and any firm and vice versa; and "corporation" has the meaning given to it in the Corporations Law in force on the date of this Agreement;
- (k) any headings appearing in this Agreement are inserted only as a matter of convenience and in no way define limit construe or in any way affect the interpretation of this Agreement.

3. BUILDING RESTRICTIONS

- 3.1 The Encumbrancer will not erect or permit to be erected more than one dwelling house on the Land.
- 3.2 The Encumbrancer will not erect or permit to be erected any transportable home or dwelling house on the Land.
- 3.3 The Encumbrancer will not erect or permit to be erected any dwelling house with outside cladding of any material except that of a masonry nature.

- 3.4 The Encumbrancer will not erect or permit to be erected on the Land any boundary or divisions fences containing asbestos material.
- 3.5 The Encumbrancer will not erect or permit to be erected any fence of unpainted steel construction and any fences so constructed of steel materials shall be painted or be of colourbond material.
- 3.6 Notwithstanding any of the terms and conditions herein contained the Encumbrancee shall not be unreasonable in approving the plans specifications or other building requirements of the within Encumbrancer.

4. **AGREEMENT TO SUPPLY WATER**

- 4.1 The Encumbrancer shall not use or cause or permit to be used any reticulated water other than that supplied by the Minister of Works under the Water Works Act (1932) or the Water Company under the terms and conditions herein contained.
- 4.2 The Encumbrancer shall not use or cause or permit to be used for human consumption any reticulated water supplied by the Water Company as aforesaid.
- 4.3 The Water Company hereby agrees upon receipt from the Encumbrancer a written request for the supply of water in respect of the Land in accordance with these Terms and Conditions and upon water being supplied the Encumbrancer shall be deemed to have accepted such water upon these Terms and Conditions.
- 4.4 The Water Company shall use its best endeavours to provide a continuous supply of water PROVIDED HOWEVER that the Water Company shall not be liable to the Encumbrancer if the Water Company is unable for any reason whatsoever to supply water as required or at all or if there is deterioration in the quality of the water supplied however caused.
- 4.5 The Encumbrancer warrants and undertakes that the water supplied by the Water Company pursuant to this agreement will not be used for human consumption and shall be used only for household and domestic garden purposes.
- 4.6 The Water Company shall supply the Encumbrancer with a meter to be used on the Land for the purpose of measuring the quantity of water consumed by the Encumbrancer which meter shall at all times remain the property of the Water Company.
- 4.7 The water supplied to the Encumbrancer for use on the Land shall not be taken by extension of pipes or otherwise to any other land or property and the Encumbrancer shall not sell give transfer or otherwise make over any water supplied to any other person or for use on any other land or property whatsoever.

- 4.8 The Encumbrancer shall only convey water from one part of the Land to another by means of pipes and other water appliances properly connected to the service supplied by the Water Company which pipes and other water appliances shall be capable of withstanding the pressure of water supplied without leakage or waste.
- 4.9 In the event that the Land is at any time divided into two or more allotments the Water Company shall be at liberty to immediately cut off the supply of water to the allotment or allotments so created on which there is no meter located. The owner of each allotment so created which may be without a supply of water may make a written request to the Water Company for a new service to such allotment on these Terms and Conditions.

5. **WATER COMPANY'S RIGHT OF ENTRY ON THE LAND**

- 5.1 It shall be lawful for the Water Company its Authorised Officer servant or agent at any time or times without notice to the Encumbrancer to enter upon the Land or into any building or structure upon the Land for the purpose of reading the meter and to examine and ascertain the state of the meter and of any fittings installation and water appliances situated on the land or in any building or structure upon the Land and to determine that they are used or being used only for the purposes for which they may be lawfully used under this Agreement.
- 5.2 The meter shall be read at such times as the Water Company shall determine and in any case where it is not practicable for the meter reader to read the meter or in the event that the meter shall have been removed for the purpose of renewal repair or for any other reason the quantity of water supplied to the Encumbrancer during the period between the last reading and such attempted reading shall be deemed to be the same as that which was supplied during the corresponding period immediately prior to the last reading.
- 5.3 It shall be lawful for the Water Company its Authorised Officer servant or agent at any time or times without notice to the Encumbrancer to enter upon the Land or into any building or structure upon the Land for the purpose of affecting such repairs removals and alterations as the Water Company in its absolute discretion considers necessary and shall be entitled to recover the cost thereof from the Encumbrancer as a debt or liquidated damages in any Court of competent jurisdiction in the State and if the Encumbrancer fails or neglects to pay to the Water Company such costs the Water Company without notice cut off the supply of water to the Land and refuse to restore the same until such costs together with the expenses of cutting off and restoring such water have been paid.

6. **OBLIGATIONS OF ENCUMBRANCER**

- 6.1 The Encumbrancer shall not cause allow or permit the meter and the pipes leading from the Water Company's main to the Land and all pipes fittings and other water appliances situated on the Land or in any building and structure upon the Land to be obstructed in any way and in the event of the Encumbrancer failing or neglecting to keep them free from all obstructions the Water Company may at all reasonable times enter upon the Land for the purpose of removing any such obstructions or altering the position of the meter.
- 6.2 The Encumbrancer shall not damage alter or remove or interfere with the meter or the meter seals or permit or suffer the same to be damaged altered or removed or interfered with and in the event of there being any damage or injury to the meter or any defect therein the Encumbrancer shall give immediate notice thereof to the Water Company.
- 6.3 The Encumbrancer shall not take water from the mains of the Water Company except through the Water Company's meter situated on the Land. If the Encumbrancer shall connect any pipe or fitting or water appliance to the Water Company's mains or obtain water from the Water Company's mains otherwise than through the meter the Encumbrancer shall forfeit and pay to the Water Company the sum calculated in accordance with the formula set out in Item 1 of the Schedule as payment towards the damages suffered by the Water Company as a result of the Encumbrancer's breach of this Agreement. Any pipes connecting the Land to the Water Company's mains other than through the meter shall be prima facie evidence of a breach of this clause.

7. **ASSESSMENT OF QUANTITY OF WATER SUPPLIED**

- 7.1 The quantity of water which shall be registered by the meter as having been supplied shall be deemed to be the quantity supplied and the Encumbrancer shall except as hereinafter provided be estopped from disputing the correctness of such register or from alleging that the meter was not in good working order and condition PROVIDED ALWAYS that if the Encumbrancer shall any time be dissatisfied with the quantity registered by the meter and decide to have the same tested the Encumbrancer may give written notice of such desire to the Water Company who shall thereupon test the meter by passing through it into a vessel of known capacity sufficient water to fill such vessel and if upon such test the meter registers above 5% more than was actually passed through it at such testing then the Water Company will bear the expense of such testing and will also allow the Encumbrancer a proportionate rebate upon the quantity of water over-registered since the last reading of the meter prior to the said test in respect of which the said notice was given but if the meter upon such testing shall not register more than 5% above the quantity which shall have actually passed through it then the Encumbrancer shall pay to the Water Company the cost of such testing.

- 7.2 During any period in which the Encumbrancer is in receipt of the supply of water from the Water Company the Encumbrancer will not obtain or procure a supply of water otherwise than from the mains of the Water Company pursuant to these Terms and Conditions and in particular the Encumbrancer will not sink or excavate any bore or well for the purpose of obtaining water provided that nothing herein contained shall prohibit a Encumbrancer from catching and storing in tanks rainwater from the roof of any building or structure upon the Land.

8. **COSTING OF WATER SUPPLIED**

- 8.1 The Water Company shall charge the Encumbrancer for the following;

- (a) the Connection Fee;
- (b) the Basic Rate for the supply of water; and
- (c) the Excess Water Charge.

- 8.2 The Water Company shall;

- (a) cause the meter to be read at such intervals as the Water Company may deem necessary but in any event at least during the month of June in any year;
- (b) on or before the 1st day of July in any year (or such lesser period as the Water Company may determine) serve on the Encumbrancer an account specifying the Excess Water Charged for the period up to the date of such reading of the meter and since the meter was last read together with the Basic Rate for the year between such 1st day of July on or before which such account is given and the 30th day of June in the following year or such lesser period as the Water Company may determine. Such account upon the service of the same shall be payable to the Water Company on or before the last day of the month immediately following the month in which the account was served. Any account which is not paid in full by the due date will thereupon be subject to payment by the Encumbrancer of interest on the full amount thereof or any amount from time to time due with respect thereto at the rate specified in Item 2 of the Schedule calculated from the date of default to the date of payment.

9. **BREACH OF THIS AGREEMENT BY ENCUMBRANCER**

- 9.1 If the Encumbrancer shall fail to pay the Fee for the water supplied or to be supplied pursuant to these Terms and Conditions or if the Encumbrancer shall fail to pay any other moneys payable pursuant this Agreement at the times and in the manner herein provided or shall commit any breach of this Agreement or if the Encumbrancer shall vexatiously complain to the Water Company without good cause of any alleged interruption to or defect in the supply of water or otherwise act so as to cause any unwarranted nuisance or annoyance to the Water Company the Water Company may with or without determining this Agreement (which the Water Company may thereupon

determine) upon giving 7 days notice to the Encumbrancer cut off the supply of water by such means as the Water Company shall think fit and for such period as the Water Company may determine or indefinitely without prejudice to the Water Company's rights to pursue and maintain any claim against the Encumbrancer for such amount as may be payable by the Encumbrancer pursuant to this Agreement or any breach thereof. In the event that the supply of water be cut off the Encumbrancer shall be liable to pay to the Water Company in addition to any other moneys payable to the Water Company hereunder or otherwise the expense of such cutting off of the supply of water and in the event of its reinstatement the expense of such reinstatement.

10. **TRANSFER OF THE LAND BY ENCUMBRANCER**

10.1 The Encumbrancer and the successors in title of the Encumbrancer shall be successively released and discharged from the observance and performance of the covenants Terms and Conditions and other stipulations contained in this Agreement upon ceasing to be registered as the proprietor of the Land to the intent that the covenants Terms and Conditions and other stipulations shall be binding only upon the registered proprietor for the time being of the Land PROVIDED HOWEVER that such release and discharge as hereinbefore referred to shall be without prejudice to the rights and remedies of the Water Company against the Encumbrancer for any antecedent breach of this Agreement and provided also that unless and until the Encumbrancer has duly carried out and performed all such acts matters and things as may be herein provided to be carried out and performed on the part of the Encumbrancer the Water Company shall not be liable pursuant to this Agreement or otherwise to supply water to the Land.

11. **SERVICE OF NOTICE**

11.1 Any notice demand or account given or purporting to be given under this Agreement or otherwise in relation to the supply of water by the Water Company or the payment therefor including the payment of any rate or Fee fixed by the Water Company shall be in writing and may be signed in the name of the Water Company by its Authorised Officer and served upon the Encumbrancer at the Land or by posting the same in a prepaid envelope addressed to the Encumbrancer at the Encumbrancer's last known postal address to the Water Company and the said notice demand or account shall be conclusively deemed to have been received by the Encumbrancer at the expiration of two Business Days after the date of such posting whether the same shall be actually received by the Encumbrancer or not and notwithstanding that such notice demand or account may be returned through the post office undelivered.

12. MISCELLANEOUS

- 12.1 The Water Company shall have the same rights powers and authority as those vested in the Minister of Works under the Water Works Act 1932 insofar as applicable under this Agreement to fix from time to time the Fee payable by the Encumbrancer for providing the supply of water in respect of the Land and any additional services to the Land which may from time to time be provided by the Water Company at the request of the Encumbrancer including but not limited to determining the Terms and Conditions upon which the Water Company shall provide such supply of water and additional services.
- 12.2 The Water Company shall from time to time fix the Water Allocation in respect of the Land and the Basic Rate payable in respect of such Water Allocation.
- 12.3 In the event that the Water Company shall vary any Fee payable pursuant to this Agreement or the Water Allocation or the Terms and Conditions contained in this Agreement the Water Company shall give to the Encumbrancer one month notice in writing of any such variations and at the expiration of such one month period such variation shall come into full force and effect and this Agreement and the Schedule shall be deemed to be varied in accordance therewith.
- 12.4 This Agreement may be determined (other than as provided in Clause 9 hereof) by either party hereto giving not less than one month's written notice to the other party in which event the Encumbrancer shall be liable to pay within 7 days of the date of expiration of such notice the Excess Water Charge calculated by a meter reading to be made as near as practicable to the date upon which such notice expires and the Water Company shall be obliged to refund or give credit for the pro-rata proportion of the Basic Rate paid (if any) with respect to the remainder of the financial year within which such notice is given.
- 12.5 This Agreement shall be constructed and enforced in accordance with and the rights of the parties shall be governed by the laws of the State. The Encumbrancer hereby further irrevocably consents and agrees that any legal action or proceeding arising out of or in any way connected with the enforcement of the rights by the Water Company against the Encumbrancer in respect of this Agreement may be instituted in a Court of competent jurisdiction in the State and the parties agree to submit to the non exclusive jurisdiction of the Courts of the State in any such legal action or proceeding.
- 12.6 The Water Company and each Authorised Officer of the Water Company are jointly and severally empowered to act as the Encumbrancer's attorney for the purpose of doing all acts and things which may or ought to be done by the Encumbrancer under this Agreement and the Encumbrancer shall not do or cause or permit to be done any act or thing which may in any way restrict limit determine or invalidate the Water Company's and its Authorised Officer's rights to act as attorney for the Encumbrancer as aforesaid.

- 12.7 No failure to exercise and no delay in exercising on the part of the Water Company any right power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right power or privilege preclude any other further exercise thereof or the exercise of any other right power or privilege.
- 12.8 The Encumbrancer acknowledges and agrees that;
- (a) a certificate purporting to be signed or sealed by the Water Company or signed by an Authorised Officer of the Water Company or any person purporting to be an Authorised Officer of the Water Company stating that as at any stated date or dates that the amount owing by the Encumbrancer to the Water Company (and/or the occurrence of any of the events acts or states of affairs set out in this Agreement and/or any other act matter or thing arising under this Agreement) shall for all purposes and in all Courts and at all times be prima facie evidence of the facts stated in such certificate;
 - (b) nothing contained in this Agreement shall operate to merge extinguish postpone lessen or otherwise prejudice any other obligation however arising from time to time binding the Encumbrancer in favour of the Water Company and all such other covenants and obligations shall be deemed collateral to this Agreement;
 - (c) time shall be of the essence of the obligations of the Encumbrancer under this Agreement unless otherwise agreed in writing by the Water Company;
 - (d) that each of the provisions of this Agreement shall be severable and distinct from one another and if at any time any one or more of the provisions of this Agreement is or becomes invalid illegal or unenforceable in any respect under any law the validity legality and enforceability of the remaining provisions of this Agreement shall not in any way be thereby affected or impaired.
- 12.9 The Encumbrancer and the successors in title of the Encumbrancer shall be successively released and discharged from the payment of the said annuity and from the observance and performance of the covenants terms and conditions and other stipulations herein contained and applied forthwith upon ceasing to be registered as the proprietor of the Land to the intent that the said annuity and the covenants terms and conditions and other stipulations shall be binding only upon the registered proprietor for the time being of the Land.
- 12.10 Subject as aforesaid the Encumbrancee shall be entitled to all the powers and remedies given to the Encumbrances by virtue of the Real Property Act 1886 (as amended).

SCHEDULE
(Clause 1.1(l))

Item 1
(Clause 6.3)

- The amount payable by the Encumbrancer to the Water Company shall be a sum equivalent to the average consumption of water per day for each consumer supplied by the Water Company multiplied by the number of days during the period that the water supply was improperly obtained by the Encumbrancer plus an amount equivalent to the Connection Fee as set out in Item 4 of this Schedule.

Item 2
(Clause 8.2(b))

- 1.5 per centum per month or part thereof.

Item 3
(Clause 2.1(c))

- The rate equivalent to the water rate charged from time to time by the Minister of Works pursuant to the provisions of the Water Works Act 1932 in respect of water supplied to residential land the same or substantially the same as the Land for a quantity of water not exceeding the Water Allocation as determined under this Agreement but in any event shall not be less than Thirty Dollars (\$30.00) per each three (3) month period for a Water Allocation of 136,000 litres.

Item 4
(Clause 2.1(i))

- The Fee charged from time to time by the Minister of Works under the Water Works Act 1932 for providing a direct service for the supply of water in respect of residential land the same or substantially same as the Land but in any event shall not be less than the sum of \$160.00 which includes the supply of a meter on the Land.

Item 5

(Clause 2.1(h))

- The rate equivalent to the water rate charged from time to time by the Minister of Works pursuant to the provisions of the Water Works Act 1932 in respect of the quantity of water supplied to residential land the same or substantially the same as the Land in excess of the quantity fixed at such time as the water allocation for such residential land but in any event shall not be less than 88 cents per each 1,000 litres or part thereof in excess of the Water Allocation as stated in Item 6 of this Schedule.

Item 6

(Clause 2.1(j))

- The Water Allocation shall be the quantity of water fixed from time to time by the Minister of Works pursuant to the provisions of the Water Works Act 1932 and referred to therein as the water allocation in relation to residential land the same or substantially the same as the Land but in any event shall not be less than 136,000 litres in respect of each three (3) month period during the continuance of this Agreement.