

MEMORANDUM OF ENCUMBRANCE

CERTIFICATE(S) OF TITLE BEING ENCUMBERED	
The whole of the land comprised in Certificate of Title Register Book Volume Folio	
ESTATE AND INTEREST	ENCUMBRANCES
An estate in fee simple	Nil
ENCUMBRANCER (Full Name and Address)	
ENCUMBRANCEE (Full Name and Address and Mode of Holding)	
Kebaro Pty Ltd ACN 064 584 667 of C/- PO Box 555, Goolwa SA 5214	
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	
(a) Insert the amount of the annuity or rent charge	(a) OF AN ANNUAL SUM OF TWO HUNDRED DOLLARS (\$200.00) (PLUS CPI INCREASES SINCE SEPTEMBER 2000) AS A RENT CHARGE (IF DEMANDED BY THE ENCUMBRANCEE)
(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 PERIOD OF TWO HUNDRED (200) YEARS
(c) State the times appointed for payment of the annuity or rent charge. Any special covenants may be inserted on page 2.	(c) IN FOUR EQUAL INSTALMENTS ON THE 1ST DAY OF JANUARY, APRIL, JULY AND OCTOBER IN EACH AND EVERY YEAR

IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE as follows:

The purpose of this encumbrance

1. The encumbrancer on page 1 (“you”, “your”) grants this encumbrance -
 - (a) for the benefit of the encumbrancee on page 1 (“we”, “our”, “us”)
 - (b) for the benefit of the land presently comprised in Certificate of Title Register Book Volume 5917 Folio 307 and its successor title and its owner from time to time
 - (c) for the benefit of each other allotment of land within the Marina, and each present and future owner of land within the Marina
 - (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 Marina and
 - (f) with the intent that these covenants run with and bind the land and your successors in title.

Interpreting this encumbrance

2. In this encumbrance, unless the contrary intention appears -
 - (a) “the Marina” means the marina and residential development presently known as “The Marina Hindmarsh Island” being the whole of the area in the south-west corner of Hindmarsh Island bounded by Randell Road, Monument Road and the River Murray except for Crown Land
 - (b) “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
 - (c) “development guidelines” means those guidelines for the Marina set out at the website www.tmhi.com.au
 - (d) “allotment” means any allotment in the Marina
 - (e) “waterfront allotment” means an allotment with a boundary with land that is permanently under water
 - (f) “water’s edge” of a waterfront allotment means where the land strikes the water when the water level is at 0.75 metres Australian Height Datum
 - (g) “Australian Height Datum” has the same meaning as given in the Australian Bureau of Meteorology Glossary found at www.bom.gov.au/lam/glossary
 - (h) “S.A. Water” means South Australian Water Corporation or its successor
 - (i) “plus CPI increases since September 2000” means that the figure given must be increased annually each 1st January in line with increases in the Consumer Price Index Number (All Groups) for Adelaide between the September 2000 quarter and the September quarter expiring immediately before that 1st January
 - (j) “you” and “your” includes the registered proprietor for the time being of the land

- (k) reference to giving access to us includes giving access to our employees, agents and contractors
 - (l) 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)
 - (m) reference to any statute includes statutes which change or replace it and
 - (n) any word indicating the singular includes the plural, and vice versa.
3. If there are more than one of you then -
- we only have to give notices to one of you and
 - all your obligations in this encumbrance are joint and several.

Restrictions on the use and development of the land

4. You must use the land only for private residential purposes.

Development must not be undertaken on the land without our prior written approval or contrary to the terms of our written approval.

You must not breach any development guidelines we issue from time to time relating to carrying out any development on the land.

Development rules

5. You 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 an allotment must not be within 25 metres from the water's edge. You may calculate the set back by referring to the development guidelines.
 - (b) For a waterfront allotment -
 - no fixed fence may be constructed anywhere within the area 4 metres from the water's edge and
 - you must not obstruct us, or any emergency service, from crossing your allotment in that area (including, if need be, with plant and equipment).
 - any fence less than 25 metres from the water's edge must be a post and rope fence.
 - (c) Any development on any allotment must not -
 - have a floor level below 3.0 metres Australian Height Datum
 - include excavation below 1.0 metre Australian Height Datum or
 - be within 3 metres from any boundary between the land and any road reserve.
 - (d) No development may exceed 2 storeys or 6 metres in height measured to the highest point of the roof ridge (whichever is lower) above the average level of the land.
 - (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 our prior written consent).
 - (f) External walls facing a street or water (that is, a lagoon or the marina basin) must be rendered in colours and a design approved by us.
 - (g) All materials used must be new.

- (h) No roof may be flat.
- (i) Every corrugated iron roof must be constructed using metal sheeting that is factory coated and pre-coloured. Every tiled roof must be constructed using tiles of a colour approved by us.
- (j) All structures on the land must be of such a design, appearance and colour so as to be architecturally compatible with each other.
- This includes any clothesline, letterbox, garden ornament or solar water heating unit.
- (k) All landscaping and fencing of the land must be completed within 30 days after it is first occupied, or a builder's certificate of practical completion is given to you, whichever date is the earlier.
- (l) No garage, shed, carport or veranda may be constructed on the land before a dwelling is constructed. Any garage or shed must not be greater than 78 square metres.
- (m) At least two car parking spaces per dwelling must be provided.
- At least one of them must be under the cover of a garage or carport.
- (n) No aerial, satellite dish, windmill or other structure may be erected so that any part of it is above the roof ridge line of a dwelling on the land.
- (o) Any evaporative air-conditioning unit installed on a roof must be architecturally compatible with the roof.
- Otherwise, air-conditioning units must be below the eaves line, and be screened from public view.
- (p) No signs may be erected on the land except a sign which advertises a display home, or vacant or improved land for sale in the Marina, 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). Only one sign per allotment is allowed, and it must not state the sale price of the land or improvements on it.
- (q) Driveways must be at least 3 metres wide.
- (r) A driveway must be 5½ metres or less in width where it meets the street alignment.
- (s) Any tank must be either -
- colourbond (or painted so as to be compatible with a dwelling) and rectangular in shape or
 - located behind a suitable screen.
- (t) Unless the law otherwise requires, fences, retaining walls or similar structures must not exceed 1.8 metres in height.
- (u) From immediately before the laying of the concrete slab or foundations for construction on the land you must ensure that a temporary fence is erected on the perimeter of the land to prevent rubbish and debris escaping. The fence must be 1200mm in height, and must be constructed of 50mm galvanised chicken mesh wire, with star droppers at 3 metre centres.
- On completion of construction, you must remove and dispose of that fence.
- If you do not so erect (or remove) that fence, we may do so and charge you for it.
- (v) At all times during the carrying out of any construction on the land, you must place any waste, rubbish, debris, sewerage, wastewater or noxious material into a suitable receptacle and remove it from the land.
- (w) If the land does not have a jetty or pontoon already constructed by us, then you must not erect a jetty or pontoon unless you follow the following rules:
- a fixed pile jetty must have the piles driven within the boundary of your land;

- a fixed pile jetty must be constructed of permapine including the deck and the piles. The piles must be treated permapine with a minimum diameter of 150 millimetres with a perfectly round log;
- the fixed pile jetty must end at least 1.8 metres each side boundary of your land and must be centrally located.

If you are erecting a floating pontoon, then:

- the pontoon must be supplied by a manufacturer recognised by us;
 - the pontoon may have a maximum width of 3 metres;
 - the pontoon must be appropriately anchored to the rip rap walling and must have the side closest to your land located along the waterfront boundary of your property or just inside your waterfront boundary;
 - the pontoon must end at least 1.8 metres each side boundary of your land and must be centrally located;
 - the gangway must be manufactured by a manufacturer recognised by us from aluminium or other material approved by us;
 - the gangway must be a minimum of 1.2 metres wide.
- (x) In relation to any building work done on the land, you must not –
- (i) allow any spoil arising from site preparation, excavation, trenching or other activity to remain on (or adjacent to) the land after construction starts
 - (ii) allow any building waste to be placed or remain on (or adjacent to) the land unless in a commercial bin situated within the land and which has a lid and adequately contains all such waste
 - (iii) allow such bin to overfill or overflow (in addition to spoil removal, three site cleans are considered the minimum required during the construction of each separate dwelling, and also building waste must be recycled whenever possible)
 - (iv) allow any building waste to be carried off the land by wind or surface water
 - (v) allow any other unsightly build up of building waste on (or adjacent to) the land
 - (vi) allow any concrete, plastering, paint wastes or wash water onto any footpath, verge, water table or road
 - (vii) damage footpaths, street trees, kerbs, water table, road surfaces the Marina or other infrastructure or features adjacent to the land
 - (viii) permit, suffer or allow your builder, or any suppliers or subcontractors of yours or your builder, to do or allow anything which is not permitted in this clause.
- (y) Development must not be undertaken except in strict accordance with the terms of our prior written approval.

How to obtain our approval for development

6. If you wish to undertake any development on the land, you must give us a written request for approval, pay us the fee we fix (acting reasonably) from time to time to apply for our approval, and give us 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

- including an engineering or cadastral survey showing any required set back from the water's edge
- 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.
7. The plans must also be such as would be suitable for lodging with a council for planning or building approval.
 8. If the proposed development includes a jetty or pontoon, you must give us engineering drawings of the proposed jetty or pontoon at the time of giving us the written request for approval.
 9. We may call for reasonable further information. You must then provide it promptly.
 10. We must consider the above documents within a reasonable period after you give them to us, and then promptly inform you of our decision.
 11. No approval is effective unless in writing signed by our authorised officer.
 12. Approval may be given subject to conditions.
 13. We must not unreasonably refuse approval, or place unreasonable conditions on it.

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 Marina
 - does not conform with any rules for development in this encumbrance, or any of our development guidelines or
 - may have an undesirable affect on the development, appearance or amenities of the Marina.
 14. Once we have given approval, you must -
 - promptly obtain any required statutory approvals for the development
 - give a copy of your approved plans, this encumbrance, and the development guidelines, to your builder
 - ensure your builder complies with them and
 - promptly carry out the development in accordance with the terms of our approval and any statutory approval.
 15. An approval lapses if you do not substantially commence the development within one year of approval complete the development within two years of approval.

Rules governing your use of the land

16. You must not breach any of the following rules in using or owning the land.
 - (a) You must not amalgamate, alter the boundaries of or subdivide the land, or create any additional allotment from it.
 - (b) Transportable buildings and incinerators are not permitted on the land.
 - (c) You must not use any caravan, tent or other shelter on the land as a place of residence.
 - (d) You must not use any vessel moored to the land as a place of residence.
 - (e) You must not allow any vehicle, caravan, vessel or trailer to be permanently parked or slipped on the land

without our prior written approval.

- (f) You must not place any tent, vehicle, caravan, vessel or trailer on any area between the dwelling and a Marina lagoon or the Marina basin.
- (g) You must not allow the land to become or to remain untidy.
- (h) You must not allow rubbish or weeds to accumulate on the land.
- (i) You must not allow any landscaping or vegetation (including lawn) on the land to die or fall into or remain in a state of disrepair.
- (j) You must not cut down or lop any vegetation on the land which exceeds 1 metre in height without our prior written approval.

However, this does not apply to cutting down or lopping required of you to comply with your legal obligations.

- (k) You must not 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 any such claim.

- (l) You 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 Marina lagoon or the Marina basin or the Marina's sewerage system.
- (m) You must not keep any animals on the land except a domesticated cat (maximum of one), or domesticated dogs or birds, that are kept under control at all times.
- (n) You must not permit any vessel to be on the land or moored to the land unless all halyards or rigging on the vessel are tied down.

You must not allow any mast or rigging noise to come from such a vessel.

- (o) You must not carry out any smelly or noisy repairs or alterations to any vehicle or vessel on the land or moored to the land.
- (p) You must not draw water from a Marina lagoon, the Marina basin, or the River Murray.
- (q) You must not use non-organic fertilisers on lawns or gardens.
- (r) You must not allow the land to be infested with weeds or grass or become a fire hazard. You must mow the weeds and grasses on your land at least once every 3 calendar months to a height of no more than 2 centimetres. If you do not then we can do this work and charge you a reasonable fee for doing so.
- (s) You must not build hard surfaces or allow substantial trees and bushes which restrict your adjoining neighbours' views or sight lines, within the 25 metre setback from the waterfront boundary. You must not plant any trees or bushes which are in breach of our published guidelines.
- (t) You must maintain your jetty or pontoon in good and substantial repair.
- (u) You must extend your household insurance policy to include public liability insurance for the area of the jetty or pontoon and if you have a vessel moored on the jetty or pontoon, the policy of insurance must extend to that vessel.
- (v) If you have a floating pontoon, any vessel which is moored to the pontoon must not be wider than 3.5 metres.
- (w) If you have a floating pontoon, your jetty or pontoon must be lit to the same standards as we impose on other jetties and pontoons within the Marina.
- (x) If you have a jetty and you wish it to be lit, your jetty must be lit to the same standards as we impose on other jetties and pontoons within the Marina.

Sewer

17. You must not allow any sewerage system to be installed or to be used on the land other than in accordance with the rules in this clause and the following clauses.

18. You must ensure that any sewerage system on the land is constructed in accordance with the standards and specifications issued under the *Sewerage Act*.

You must not allow them to be constructed unless you ensure they are suitable for connection to the Marina's sewerage system.

19. If you request, we will connect any development on the land to the Marina's sewerage system.

If we demand it, you must permit us to so connect any such development.

20. Regardless of whether such connection happens, you must pay us availability fees for the availability of the Marina's sewerage system.

21. When such connection happens, you must pay us a connection fee.

The fee will include all our costs of connecting the development on the land to the Marina's sewerage system.

22. After such connection happens, you must pay us usage fees for the use of the sewerage system.

23. You must not use the sewerage system unless you have paid all availability fees, connection fees and usage fees that are due and payable.

24. The above availability and usage fees will be as reasonably set by us.

Generally, they will be calculated as if the land was a deep drainage parcel of land outside the Adelaide and Aldinga drainage areas and rated for that purpose by S.A. Water, but the rate will never be below .001683 cents in the dollar, being that declared in the S.A. Government Gazette of the 28th day of June 2007.

25. We will bill you once each quarter for the above availability and usage fees.

You must pay them within 14 days of billing.

If you do not, we may, without limiting any of our other legal rights, disconnect the land from the Marina's sewerage system. We also have a right to impose a late payment fee.

26. Before we connect any development on the land to the Marina's sewerage system or any time thereafter, you must ensure the sewerage system on the land is purged of all builder's material, dirt, rubbish and other objects.

If we are of the reasonable opinion that any blockage or malfunction in the Marina's sewerage system was caused by your breach of this clause, you must pay all costs associated with rectifying the blockage or malfunction.

27. You must not use the sewerage system for any purpose other than the purposes for which it was designed.

28. You must allow us access to the land (including any dwelling) for the purposes of inspection, maintenance, repair or replacement of the Marina's sewerage system.

29. We must maintain the Marina's sewerage system to reasonable standards.

However, we are not responsible for any failure of the sewerage system to properly operate, including without limiting generality any cessation of service (intermittent or otherwise), or blockage or stoppage of the sewerage system.

We are not liable to you for any inconvenience, loss or damage due to any such failure.

30. If we transfer, assign or lease the sewerage system to any person, authority or government agency, we are released from our obligations under this encumbrance relating to the system.

Maintenance of any embankment and rip rap walling

31. The following rules apply if the land is a waterfront allotment. You must not breach any of these rules.

- (a) You must not alter in any way the shape of the embankment or the rip rap walling (that is, any embankment and rip rap walling in the vicinity of the water's edge).
- (b) You must not permit the embankment or the rip rap walling to be in disrepair or to fall into disrepair.
- (c) You must allow us access onto the land for the purpose of inspecting the embankment and rip rap walling.
- (d) If we are of the opinion that any embankment or rip rap walling is in a state of disrepair we may, by written notice to you, require you to carry out repair or maintenance at your expense.

The notice must specify the nature of such repair or maintenance work.

- (e) You must carry out such repair or maintenance work within 28 days of service of the notice.
Or such lesser period specified in the notice, if the repair or maintenance work is required as a matter of urgency.
- (f) If you do not carry out the repair or maintenance work specified in the notice in a satisfactory manner within the time required above, then we may carry it out.

You must give us access onto the land to carry it out.

The cost to us of carrying it out is payable by you to us on demand.

Rules relating to terrace allotments

32. The following rules apply if the land is one of the residential allotments around the marina basin (commonly known a "terrace allotments"). You must not breach any of these rules.

- (a) Only a two storey terrace home may be constructed as a dwelling on the land and it must face the marina basin and must be (at its facade) constructed from boundary to boundary.
- (b) You must commence construction of a dwelling on the land within six calendar months of the date on which settlement occurs under the contract for the purchase of the land from us.

You must complete construction of the dwelling within eighteen calendar months of settlement.

- (c) If construction is not commenced and completed within these time limits (and we have not given written approval for an extension of time) then -
 - (i) We may request you to transfer the land to us or our nominee. The request may be made at any time after the expiry of the time limit.
 - (ii) We may, in our sole discretion, determine a GST inclusive price for the transfer of the land. This price must be at least 90% of the gross sale price of the land when we sold it to you.
 - (iii) You must, within one calendar month after the date of a request under clause (i), transfer an estate in fee simple in the land in accordance with the request, subject only to this encumbrance.
 - (iv) You must promptly execute all relevant documentation submitted to you by us for the purpose of giving effect to the transfer.
 - (v) Rates, taxes and all other outgoings relating to the land will be adjusted to the date of settlement of the transfer. All costs associated with the transfer will be paid by us or our nominee.

- (vi) The price fixed by us is payable to you on settlement.
- (d) Subject to this clause, you must not lease or transfer the land unless a dwelling, approved by us under this encumbrance, has been completed upon the land. If such a dwelling has not been completed on the land and you desire to transfer the land, then the following provisions will apply -
 - (i) You must notify us in writing that you desire to sell the land.
 - (ii) We have the option of re-purchasing the land, subject only to this encumbrance, for a price fixed by us in the same manner as set out in clause (c)(ii).
 - (iii) The option is to be exercised by notice in writing to you within one month of you giving us a notice under clause (i).
 - (iv) If the option is exercised, within one month thereafter, you must transfer an estate in fee simple in the land to us or our nominee, subject only to this encumbrance.
 - (v) Clause (c) sub-clauses (iv), (v) and (vi) apply to such transfer as if set out in this clause.
 - (vi) Until the expiry of the period stated in clause (iii), you must not transfer or agree to transfer the land to any other person (unless in the meantime we, in writing, unconditionally decline the offer).
 - (vii) This clause does not prevent a transfer of the land, upon your death, to a person entitled to the land under your will or upon your intestacy.
- (e) If a dwelling approved by us under this encumbrance has not been completed on the land and you cause or permit the land to be advertised for sale without first complying with clause (d) then the following provisions will apply -
 - (i) We have the option of re-purchasing the land, subject only to this encumbrance, for a price fixed by us in the same manner as set out in clause (c)(ii).
 - (ii) The option must be exercised by notice in writing served on you within one calendar month of the date on which we become aware that the land has been advertised for sale. (A certificate under the hand of a manager or secretary or other senior officer of ours is conclusive evidence of such date).
 - (iii) Clause (d) (iv) and clause (c) sub-clauses (iv), (v) and (vi) then apply as if set out in this clause (e).
- (f) The area of the land between the dwelling erected on it and our land around the marina basin must be solely a lawned area.

Upon completion of construction of a dwelling on the land, you must immediately establish lawn on that area at your cost.

We will then regularly mow that lawned area, and water it as reasonably appropriate.
- (g) From the time we no longer own the land, you must pay us \$140.00 p.a. (plus CPI increases since September 2000) as a maintenance levy.

That levy must be paid in four equal instalments on 1st January, 1st April, 1st July and 1st October.

Rear Loaded Allotments

33. The following rules apply if the land is one of the residential rear loaded allotments on Princess Royal Parade, being Lots 184 to 227 (commonly known as "rear loaded allotments"). You must not breach any of these rules.
- a) Any development on a rear loaded allotment must have:
 - (i) a 4 metre set back to Princess Royal Parade;
 - (ii) 0 metre set back to rear of allotment;

- (iii) no crossover entry from Princess Royal Parade;
- (iv) 1 metre set back to side boundaries, garaging may be placed on one side boundary at rear only.
- b) The build line on Princess Royal Parade must be on the 4 metre set back line;
- c) All elevations must contain a minimum of 50% masonry construction and/or appearance. The Princess Royal Parade elevation must contain render to masonry proportion.
- d) No fencing is to be erected forward of the build line to Princess Royal Parade.
- e) Landscaping to the Princess Royal Parade street front must consist of lawn, monolithic rock or similar (i.e. large immovable), red gum bark chips, pebbles with native species plantings.
- f) The pedestrian entry path from Princess Royal Parade must be no wider than 1.5 metres and only to the front boundary of the allotment. There is to be no paving in the verge to Princess Royal Parade.

Telstra Smart Community

- 34 The following rules apply if the land is an allotment which provides you with the ability to enter into a Telstra Smart Community Package. You must not breach any of these rules.
- (a) You must not alter, interfere with, obstruct, damage or destroy any infrastructure relating to the Telstra Smart Community, including but not limited to the Passive Optic Network, conduits, pits, cables, distribution hubs, cabinets, Optical Network Termination and Power Supply Unit.
 - (b) You must not prevent any employee, agent or subcontractor of Telstra Corporation Limited from accessing the land for the purposes of inspection, operation, maintenance or repair of the Telstra Smart Community infrastructure.

Notice to rectify breach

35. We can enter the land at any time for the purpose of inspecting the land to determine whether any of your obligations under this encumbrance have been breached. You must not do anything to obstruct or hinder our entry or inspection.
36. If we are of the opinion that there has been a breach of any of your obligations under this encumbrance (whether by you or by someone else), we may, by written notice to you, require you to remedy the breach.
- The notice must specify the nature of the work required to remedy the breach.
- You must remedy the breach within 28 days of service of the notice.
- Or such lesser period specified in the notice, if work is required as a matter of urgency.
37. If you do not remedy the breach in accordance with the notice in a satisfactory manner within the time required above, then we may carry it out.
- You must give us access onto the land to carry out the required work.
- The cost to us of carrying it out is payable by you to us on demand.
38. If the breach relates to your obligations concerning the Marina's sewerage system, we also have the right to disconnect that service.

Marina works and boat noises

39. You acknowledge that the land forms part of a large deep water marina and residential development which is currently under construction.

In carrying out further construction within the Marina, we will make reasonable efforts to minimise dust, noise, road diversions and other inconveniences to you.

However, we are not liable to you for any such inconvenience, or for any loss or damage caused to you by any such construction.

40. You acknowledge that certain rigging and other noises emanate from moored boats in windy conditions.

We have no liability to you in relation to that.

Statutory provisions also apply

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

42. They include, amongst other rights and obligations -

- (a) an obligation on you to keep all improvements on the land in good repair
- (b) a right of ours at all convenient times to enter the land to inspect the state of repair of such improvements
- (c) an obligation on you 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 ours to sell the land if you default in payment of the rent charge or in observing your obligations expressed or implied in this encumbrance
- (f) a power of ours, if you default in payment of the rent charge, to enter and take possession of the land or bring an action for recovery of the land, or to distrain the goods of the tenant or occupier of the land.

Power of sale of the land

43. Notwithstanding s.136 of the *Real Property Act*, you agree that we may, if we exercise our power of sale, require the purchaser of the land to accept the sale of the land subject to an encumbrance in the same terms as this encumbrance.

Your obligations on transferring the land

44. Unless we tell you otherwise in writing, you must cause the prospective purchaser or transferee to execute in our favour an encumbrance in the form which we then reasonably require from purchasers or transferees.

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.

45. If you fail to comply with clause 41 then you transfer the land subject to this encumbrance. Even after the transfer to a transferee, we can still request you to, and you must arrange for the discharge of the encumbrance and the grant of a new encumbrance in accordance with Clause 41.

46. If you cease to be a registered proprietor of the land, you must tell us the name and address of any new proprietor.

Once you do so, you will no longer be liable to pay us the rent charge.

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

But our 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

48. We may, in our absolute discretion, waive compliance with any development guidelines, or with any of the requirements of this encumbrance.

49. We may modify, waive or release any of the covenants in this encumbrance.

50. We may also modify, waive or release any of the covenants in any encumbrance relating to any other land in the Marina.

Such modifications, waiver or release do not release you from any covenants in this encumbrance.

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.

51. 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.

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

Assignment by us

53. We may transfer or assign our rights under this encumbrance.

Severance of invalid clauses

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

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

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

Costs

57. The costs of the preparation of this encumbrance and any discharge of it, and the stamp duty and registration fee on it, must be paid by you.

58. You must also pay us any costs we incur as a result of any breach of this encumbrance by you or your employees, agents, contractors or invitees.

59. 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 you.

How notices may be given

60. All notices (which includes approvals or demands) must be in writing.
61. All notices must be given to the other party.
62. Notices can be given in person.
63. Notices can also be left at the other party's address on page 1, or at the other party's last known address.
64. Notices can also be sent there by post, but they must be correctly addressed and posted.
65. Notices can also be given to you by being left at, or sent by post to, the land.
66. If posted, a notice is treated as given the next business day after posting.
67. If a party has a facsimile number, a notice may be sent by facsimile transmission to that facsimile number.

In that case, the notice is treated as given when the sender's facsimile machine confirms that the transmission has been successfully completed.
68. If a party has an e-mail address, a notice may be sent by e-mail to that address.
69. Any notice may be signed by a party, or any person that party authorises to sign it.

