

Orig. AG 13042838

13:37 21-Dec-2018 2 of 3

LANDS TITLES REGISTRATION OFFICE

SOUTH AUSTRALIA

APPLICATION

FORM APPROVED BY THE REGISTRAR-GENERAL

PRIORITY NOTICE ID

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

SERIES NO	PREFIX
2	AG

AGENT CODE

LODGED BY:

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CORRECTION TO:

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SUPPORTING DOCUMENTATION LODGED WITH INSTRUMENT
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CORRECTION	PASSED <i>[Signature]</i>
REGISTERED 23 JAN 2019 <i>[Signature]</i>	



APPLICATION TO NOTE LAND MANAGEMENT AGREEMENT

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION

The whole of the land comprised in Certificate of Title Register Book Volume 6216 Folio 966

ESTATE & INTEREST

Fee Simple

APPLICANT (Full name and address)

THE CORPORATION OF THE CITY OF MARION of 245 Sturt Road Sturt SA 5047

SPECIFY NATURE OF APPLICATION

The applicant applies

pursuant to section 57(5) of the Development Act 1993 to note the Land Management Agreement pursuant to section 57(2) of the Development Act 1993 dated 14 December 2018 ("the Agreement") between THE CORPORATION OF THE CITY OF MARION of 245 Sturt Road Sturt SA 5047 and RUDI OSCAR ESMAN and JANE ANN ESMAN both of 4 Donald Court Somerton Park SA 5044 to note the Agreement on the certificate of title for the land described above.

DATED 21 December 2018.....

CERTIFICATION **Delete the inapplicable*

Applicant

*The Prescribed Person has taken reasonable steps to verify the identity of the applicant.

*The Prescribed Person holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

*The Prescribed Person has retained the evidence to support this Registry Instrument or Document.

*The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Executed under Delegated Authority

Execution clause contained in Annexure

for: The Corporation of the City of Marion
on behalf of the Applicant

Lot 332

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

To be completed by lodging party ANNEXURE to APPLICATION dated <u>21/12/18</u> over Certificate of Title Volume: 6216 Folio: 966	Office Use Only NUMBER
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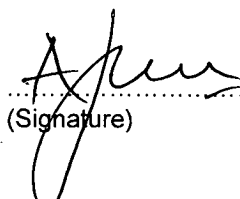
LAND: The whole of the land comprised in Certificate of Title Volume 6216 Folio 966

DEALING: Application to Note Land Management Agreement between THE CORPORATION OF THE CITY OF MARION and RUDI OSCAR ESMAN and JANE ANN ESMAN

APPLICANT: The Corporation of the City of Marion

EXECUTION

Signed as delegate for The Corporation of the City of Marion under section 20 of the Development Act 1993


.....
(Signature)

ADRIAN SKUU
.....
(Print full name)

CEO
.....
(Print position held)


.....
(Witness Signature)

Dana Bartlett
.....
(Witness name)

245 Stuart Rd
.....
(Address)

Stuart
.....

83756878

11/12/18
.....
(Date)

RUDI OSCAR ESMAN and JANE ANN ESMAN

("the Owner")

And

THE CORPORATION OF THE CITY OF MARION

("the Council")

LAND MANAGEMENT AGREEMENT

THIS AGREEMENT is made the

14th

day of

December

2018

BETWEEN

RUDI OSCAR ESMAN and JANE ANN ESMAN of 4 Donald Court, Somerton Park SA 5044 ("the Owner")

AND

THE CORPORATION OF THE CITY OF MARION of 245 Sturt Road, Sturt SA 5047 ("the Council")

BACKGROUND

- A. The Owner has entered into a contract of sale with Renewal SA to purchase the whole of the land comprised in Certificate of Title Register Book Volume 6216 Folio 966 ("the Land"). Renewal SA is the present owner of the Land.
- B. The Land forms part of a larger development called "Tonsley Village" developed by Peet Tonsley Pty Ltd (the Developer). The Owner has entered into a build contract with a builder to construct a dwelling on the Land ("the Development").
- C. The Developer has sought development approval under the Act for the Development by way of DA 100/L080/18. The Development, or any variation of the Development includes an Encroachment.
- D. The Owner recognises that the Encroachment encroaches over a public road which is under the care, control and management of the Council.
- E. The Council and the Owner recognise the importance of ensuring the safety of the public and occupiers of the Development and the need to ensure that the Encroachment is regulated by the terms of this Agreement.
- F. The Council and the Owner recognise the importance of ensuring that future owners of the Land are aware of their rights and responsibilities concerning the Encroachments.
- G. The Council and the Owner recognise that the design, construction and maintenance of Encroachments is important and that any Encroachments must be located, constructed, used and maintained in a manner which is acceptable to the Council.
- H. The parties have entered into this Agreement as a Land Management Agreement pursuant to section 57(2) of the Act to agree matters relating to the development and management of the Land, on the terms and conditions which follow.

DEFINITIONS AND INTERPRETATION

1. The parties acknowledge that the matters set out in the Background to this Agreement are true and accurate and agree that they form part of the terms of this Agreement.

2. In this Agreement:

- 2.1 **Act** means the *Development Act 1993* (SA) and includes any successor legislation that may be in force at the relevant time including the *Planning, Development and Infrastructure Act 2016* (SA).
- 2.2 **Agreement** means this Agreement as executed by the parties.
- 2.3 **Authorisation** means the authorisation granted by the Council to the Owner pursuant to section 221 of the LG Act in clause 21 and includes any renewals or further authorisations granted by the Council for any Encroachment into the future under the LG Act.
- 2.4 **Allowable Encroachment Envelope** means the space defined in Annexure A.
- 2.5 **building and building work** has the same meanings as in the Act.
- 2.6 **Development** means has the meaning given to that term in Background C.
- 2.7 **Development Approval** means the development approval for DA 100/L080/18 or any development approval for the Development that includes an Encroachment.
- 2.8 **Encroaching Property** means each Encroachment within the Allowable Encroachment Envelope within the Land and, for the avoidance of doubt, where the Land includes land which is divided pursuant to the *Community Titles Act 1996* and the common property of that community corporation includes one or more such Encroachments, the community corporation shall be deemed to own the number of Encroaching Properties which is equal to the number of such Encroachments.
- 2.9 **Encroachment** means any building, structure or object or portion thereof erected on or connected to the Land that encroaches onto a public road.
- 2.10 **Encroachment Fee** means \$70.00 plus GST per annum to be adjusted annually on each anniversary of the date of this Agreement in proportion to the variation in the Adelaide All Groups Consumer Price Index (which the March index number being used as the base number and rounded up to the nearest dollar effective from date of review).
- 2.11 **Encroachment Requirements** means construction within the Allowable Encroachment Envelope and otherwise in accordance with all relevant Australian Standards, the Building Code of Australia as it applies to the Land, and any good industry practice which would apply to the construction of the Encroachment, in all cases to the reasonable satisfaction of the Council.
- 2.12 **Land** means the whole or any part of the land comprised in Certificate of Title Register Book Volume 6216 Folio 966 and includes any land further divided from the Land in future.
- 2.13 **LG Act** means the *Local Government Act 1999* (SA) and includes any successor legislation that may be in force at the relevant time.

- 2.14 **Natural Ground Level** means the natural ground level of the Land prior to any excavation or filing undertaken in the course of the Development.
- 2.15 **Notice** means a notice, demand, consent, approval or communication issued under this Agreement.
- 2.16 **Owner** means the person who has executed this Agreement with the Council and any person who is, or is entitled to become, the registered proprietor of an estate in fee simple of the Land, or any part of the Land, and includes a successor in title to an estate in fee simple to the Land.
- 2.17 **public road** has the same meaning as in the LG Act. For the sake of clarity, this definition includes footpaths, verges, and other areas not trafficable by motor vehicles.
- 2.18 **Regulations** means the *Development Regulations 2008* (SA) and includes any successor regulations that may be in force at the time under the Development Act or Planning, Development and Infrastructure Act.
- 2.19 **Rules** means the rules contained within Annexure B
3. In this Agreement unless the context otherwise requires:
- 3.1 a term, other than a term defined in the Background or in Clause 2, has the same meaning as in a provision of the Act or the Regulations as in force at the date of this Agreement. A term which is defined in the Background or in Clause 2 has the meaning there defined;
- 3.2 headings do not affect interpretation;
- 3.3 the term "person" includes a corporate body, partnership, association, government body or other entity;
- 3.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 3.5 singular includes plural and plural includes singular;
- 3.6 where two or more persons are bound by this Agreement to observe or perform any obligation or agreement whether express or implied then they shall be bound jointly and also severally; and
- 3.7 a reference to any statute or subordinate legislation includes all statutes and subordinate legislation amending, consolidating or replacing the statute or subordinate legislation referred to.
4. The requirements of this Agreement are to be construed as additional to any requirements upon either party in relation to the Land under the Act or any other legislation.
5. In the consideration of any further development application(s) for the Land under the Act, the provisions of this Agreement are to be afforded significant weight such that any proposed development which is contrary to this Agreement should be refused.

OWNER'S GENERAL UNDERTAKINGS AND OBLIGATIONS

6. The Owner is liable to the Council for any wilfully negligent act or omission on the part of an officer, employee, contractor, agent, invitee, lessee or licensee of the Owner which, if done or not done by the Owner would constitute a breach of this Agreement.
7. Where a person ceases to be the Owner, such person ceases to be a party to this Agreement, but without prejudice to rights or obligations already accrued.
8. The Owner acknowledges the operation of section 221(5) of the LG Act and, to the extent necessary, the Owner indemnifies the Council in respect of any injury, loss or damage arising from an Encroachment to which section 221(5) does not apply.

CONSTRUCTION OF ENCROACHMENTS

9. The Owner acknowledges and agrees that they must not cause, suffer or permit any building or portion thereof to encroach onto a public road other than that approved in the Development Approval.
10. Without limiting clause 9, the Owner acknowledges and agrees that any Encroachment onto public road from the Land must be constructed in accordance with the Encroachment Requirements.
11. The Owner acknowledges and agrees that the requirements of clauses 9 and 10 above are in addition to any provisions of the Council's Development Plan or any planning assessment criteria which may apply to the Land and that these requirements will be given significant weight in the assessment of any development application made in respect of the Land.

MAINTENANCE OF ENCROACHMENTS

12. Any Encroachment remains the property of the Owner.
13. Upon commencing any building work for the construction of any building or portion thereof that will encroach onto a public road, the Owner must take out and thereafter maintain whilst this Agreement remains in force home building insurance covering any Encroachment against damage by fire, storm, tempest, earthquake, flood, explosion, lightning, malicious damage, and also insuring against any damage to any plate glass on the Land (and such other risks as the Council may reasonably require) for full reinstatement value.
14. The Owner must provide the Council, with a copy of the certificate of currency for the insurance policies required by clause 13, provided that, should such a request be satisfied in a timely fashion to the satisfaction of the Council, the Council may not request such evidence more than once in respect of any year.
15. At all times the Owner must maintain any Encroachment:
 - 15.1 to the Council's reasonable satisfaction; and
 - 15.2 in accordance with any and all applicable requirements of the Building Code of Australia and the Act.

16. Upon becoming aware of any defect or safety concern in relation to an Encroachment, the Owner must immediately:
 - 16.1 notify the Council of the nature of the defect or safety concern; and
 - 16.2 undertake any required remediation works to the reasonable satisfaction of the Council.
17. If the Owner does not comply with clause 16.2 within 28 days of becoming aware of the matter which is the subject of clause 16, the Council may, but is not required to, by written notice undertake any required remediation work, at the cost of the Owner, with such costs to be paid by the Owner within 7 days of the Council providing the Owner with evidence of such costs being incurred.
18. Costs incurred and not paid in accordance with clause 17 will be a debt due from the Owner to the Council.

RULES

19. At all times the Owner, its occupants and invitees must comply in all respects with the Rules.
20. Under this Agreement, the Owner is held responsible for any breach of the Rules which occurs during the life of this Agreement.

AUTHORISATION UNDER LG ACT

21. For the purposes of section 221 of the LG Act, and subject to the Owner complying with the Encroachment Conditions, the Council authorises the Owner to alter public road adjacent to the Land to create an Encroachment ("the Authorisation"). For the avoidance of doubt, the Authorisation does not extend to any maintenance, repairs or other works on or for the Encroachment including, but not limited to the use of cranes, ladders, platforms, scaffolding, the placement of cables or any other items on the public road. These activities require authorisation under Section 221 of the *Local Government Act 1999*, for which the Owner must apply for a further authorisation.
22. The Authorisation granted in clause 21 shall be for a term of 42 years from the date on which the Owner commences construction of the Encroachment. Provided that the Owner has complied with the terms of this Agreement and that there are no outstanding breaches, whether or not such breach is known to the Council at the time, upon the expiry of the Authorisation the Owner shall be entitled to request a renewal of the Authorisation on the same terms and conditions of this Agreement for an additional term of 42 years.
23. In considering a request for renewal pursuant to clause 22, and any term which it fixes for such a renewal if so granted, the Council will take into account the Owner's compliance or otherwise with this Agreement and the nature of the Encroachment which requires the granting of the Authorisation.
24. In consideration of the Council granting the Authorisation, the Owner must pay the Encroachment Fee annually for each Encroaching Property, payable on 1 July each year.

25. If the Owner breaches a term of this Agreement, the Council may, by Notice served on the Owner specifying the nature of the breach, require the Owner to remedy the breach within such time as is specified in the Notice, but which time must not be less than thirty (30) days. If the Owner fails to comply with the Notice, the Council (or its servants or agents) may:
 - 25.1 remedy the breach and recover the Council's costs of doing so from the Owner; or
 - 25.2 terminate the Authorisation.
26. Upon the expiry or termination of the Authorisation the Owner must, if it does not obtain a renewal of the Authorisation or a fresh authorisation within 2 months of the expiry or termination of the Authorisation:
 - 26.1 cease using any portion of a dwelling or structure on the Land that constitutes an Encroachment; and
 - 26.2 remove any Encroachment protruding from the Land.

COUNCIL'S POWERS AND OBLIGATIONS

27. The Council, including any employee or agent of the Council authorised by the Council, may at any reasonable time after giving at least two (2) business days written notice to the Owner enter the Land for the purpose of:
 - 27.1 inspecting the Land and any building or structure on the Land; or
 - 27.2 exercising any other powers of the Council under this Agreement, or pursuant to any other law.
28. If the Owner is in breach of this Agreement, the Council may, (without limiting any other remedy available to the Council, including under Part 11 of the Act), by Notice served on the Owner specifying the nature of the breach, require the Owner to remedy the breach within such time as is specified in the Notice, but which time must not be less than thirty (30) days. If the Owner fails to comply with the Notice, the Council (or its servants or agents) may enter the Land and cause the works or requirements specified in the Notice to be carried out and may recover its costs of doing so against the Owner.
29. Without providing a Notice to the Owner, the Council may apply to the Registrar-General to note this Agreement against the Certificate of Title of the Land.
30. In the event of a breach or threatened breach of the Agreement by the Owner, the Council may (without limiting any other remedy available to the Council, including under Part 11 of the Act), obtain an injunction restraining the Owner from committing a breach of the Agreement without proving any actual damage has or will be sustained by the Council. The parties agree that a breach of this Agreement by the Owner may cause injury for which damages may not be an adequate remedy to the Council.

OPERATION AND APPLICATION OF THE AGREEMENT

31. Upon execution, this Agreement is effective as a deed.

32. The parties intend that this Agreement will be effective as a Land Management Agreement pursuant to section 57(2) of the Act upon being registered under the *Real Property Act 1886* as a note against the instrument of title to the Land.
33. This Agreement is the whole agreement between the parties in relation to the matters contained within it. This Agreement may only be varied by a supplementary agreement executed by the Council and the Owner.
34. Nothing in this Agreement shall be construed as the Council granting consent, approval or in any way agreeing to the Development Application or any current or future development of the Land.

NOTING OF THIS AGREEMENT

35. Each party shall do and execute all such acts, documents and things necessary so that as soon as practicable following the execution of this Agreement by all parties, the Agreement is noted against the Certificate of Title for the Land pursuant to the provisions of Section 57 of the Act.
36. The Owner must obtain all appropriate consents (including from all holders of registered interests rights or endorsements on the relevant certificates of title pertaining to the Land) and also pay any consent fees, stamp duty and registration costs on this Agreement.

WAIVER

37. The Council or its delegate may, conditionally or unconditionally, waive compliance by the Owner with the whole or any part of the Owner's past or future obligations under this Agreement.
38. To be effective, a waiver must be in writing and signed by the Council or its delegate.
39. The failure, delay, relaxation or indulgence by a party in exercising a power or right under this Agreement is not a waiver of that power or right.
40. An exercise of a power or right under this Agreement does not preclude a further exercise of it or the exercise of another right or power.

SEVERANCE

41. Where a clause or part of a clause in this Agreement would, but for this clause, be unenforceable:
 - 41.1 the clause or part of the clause shall be read down to the extent necessary to avoid that result; or
 - 41.2 where the clause or part of the clause cannot be read down, it may be severed from this Agreement and the remainder of the clause or of the Agreement shall continue in force, unless this would result in a material change to the intended effect of the Agreement.

GOVERNING LAW

42. This Agreement is governed by the law in South Australia.

NOTICES

43. A Notice must be in writing, be signed by the party issuing the Notice, and be hand delivered or sent by pre-paid post to the recipient's address as stated in this Agreement, or as last notified.
44. A Notice is deemed to be received:
 - 44.1 if hand delivered, on delivery; and
 - 44.2 if sent by pre-paid post, two business days after posting.
45. If two or more people comprise a party, providing a Notice to one is effective as notice to all.

ABOUT THE COUNCIL

46. The Council may delegate any of its powers under this Agreement or pursuant to law.
47. The Council enters into this Agreement as a council acting under section 57(2) of the Act and not in any other capacity. This Agreement does not preclude or pre-empt the exercise by the Council of any other regulatory function of power.

COSTS

48. The Owner will pay its and the Council's costs of and incidental to the preparation, negotiation and execution of this Agreement. The Owner will pay the costs of and incidental to any documents prepared and executed pursuant to this Agreement and the costs of registering this Agreement, unless stated otherwise in this Agreement or those other documents.

COUNTERPARTS

49. This Agreement may be executed in any number of counterparts which together will constitute one instrument. A party may execute this Agreement by signing any counterpart.

Executed by:

The Council

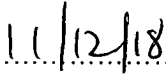
Signed for THE CORPORATION OF THE CITY
OF MARION by its authorised delegate
pursuant to section 20 of the *Development
Act 1993* in the presence of:



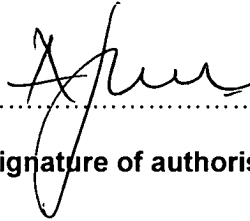
Signature of witness



Name of witness (print)



Date



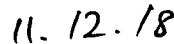
Signature of authorised delegate



Name of authorised delegate (print)



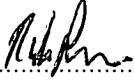
Position of authorised delegate



Date

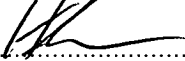
Executed by:

The Owner



RUDI OSCAR ESMAN

In the presence of:



Witness Signature

Hamish McGarry

Witness Name:

14/12/18

Date



JANE ANN ESMAN

In the presence of:



Witness Signature

Hamish McGarry

Witness Name:

14/12/18

Date

ANNEXURE A

Allowable Encroachment Envelope

The Allowable Encroachment Envelope is the lower height limited space bounded by:

1. the boundary between the Land and the adjacent public road;
2. the extensions of the boundaries of the Land with any adjacent allotments which are also adjacent to the public road;
3. a minimum distance of 600mm from the carriageway portion of the public road measured from the footpath side of the kerb; and
4. a height clearance of 2700mm minimum measured from finished footpath height.

ANNEXURE B

Rules

1. The Owner must comply with these rules and must ensure that its invitees comply with these rules at all times when they are present on the Land.
2. In these rules, 'occupant' refers to any person present on the Land who must comply with these rules pursuant to rule 1
3. Each occupant must not:
 - 3.1 obstruct or permit the obstruction of any portion of the public road in connection with the use of an Encroachment;
 - 3.2 hang or suspend any item or object (including any item or object designed to be hung or suspended) from an Encroachment;
 - 3.3 throw or jettison any item or object (including a person) from an Encroachment;
 - 3.4 climb up or down with the purpose of gaining access to or from the Land through any doorway, entranceway or window constructed on an Encroachment;
 - 3.5 use an Encroachment for the storage of any waste, rubbish, fuels or combustible materials, laundry;
 - 3.6 conduct any offensive activity from an Encroachment;
 - 3.7 do anything that would cause any insurance policy required by this Agreement to become void or to be subject to an increased premium.