

# Lake Hood Encumbrance Instrument

## STAGE 4 ENCUMBRANCE INSTRUMENT

1. **THAT** the Encumbrancer **ENCUMBERS THE LAND** forever for the benefit of the Encumbrancee in fee simple with an annual rent charge in each year of a sum equivalent to twenty times the annual charges to be paid by the Encumbrancer to the Encumbrancee under clause 8 of this Memorandum in that year such amount to be paid in one annual sum on the 31st day of December 2004 and on the 31st day of December in every year thereafter (but subject to clauses 2 to 4 of this Memorandum).
2. **IF** during the 12 months immediately preceding the 31st day of December 2004 and in each year thereafter during the continuance of this Encumbrance for the preceding 12 months there has been no breach of any of the Encumbrancer's covenants following or if any breach has been rectified by the Encumbrancer within 10 working days of the issue of a written warning or if any breach has been rectified by the Encumbrancer immediately upon receipt of a written warning and no further breaches of such covenants are committed by the Encumbrancer, then the annual rent charge payable on that day in each year shall be deemed to have been paid and the Encumbrancers shall be entitled to an acknowledgement to that effect.
3. **SECTION 104** of the Property Law Act 1952 applies (save as modified by the proviso to clause 2 above) to this Memorandum of Encumbrance and the Encumbrancee has the rights of distress conferred by section 150 of the Property Law Act 1952 as if the land were not under the Land Transfer Act 1952 but otherwise and without prejudice to the Encumbrancee's rights of action in common law as a rent charge.
  - (a) The Encumbrancee shall be entitled to none of the powers and remedies given to mortgagees and encumbrances by the Land Transfer Act 1952 and the Property Law Act 1952.
  - (b) No covenants on the part of the Encumbrancer and the Encumbrancer's successors in title are implied in this Memorandum other than the covenants for further assurance implied by section 154 of the Land Transfer Act 1952.

For the avoidance of doubt it is hereby recorded that notwithstanding the provisions of Section 104 of the Property Law Act 1952 the Encumbrancer shall not be liable for any breaches of the terms of this Memorandum which occur after the original Encumbrancer or any intermediate transferee of the land has disposed of his or its interest in the land.



4. **THIS** rent charge shall immediately determine and the Encumbrancer be entitled to a discharge of this Memorandum of Encumbrance when the secured covenants are fully performed and no longer enforceable and any monies that may have become owing under this security are fully paid.

5. In this Encumbrance

**“Property Owners; Levy”** means the charge made and levied under clause 8.

**“Huntingdon Park Property Owners Association”** means the organisation established by the owners of all the Lots in the Huntingdon Park Residential Subdivision collectively.

**AND THAT** the Encumbrancer **Covenants** with the Encumbrancee (such covenants being called “the secured covenants”) as follows:-

6. **THE ENCUMBRANCER WILL:-**

6.1 Become a member of the Huntingdon Park Property Owners Association and maintain such membership for so long as the Encumbrancer is the owner of the land.

6.2 Duly and punctually pay all sums properly levied in respect of the Encumbrancer’s land by the Encumbrancee at such times and in such manner as the Encumbrancee may from time to time direct.

6.3 Comply with and observe the provisions of the Restrictive Covenant registered against the title to the land.

6.4 Within five working days of the Encumbrancer unconditionally selling the Encumbrancer’s land, give notice of the sale to the Encumbrancee and the Huntingdon Park Property Owners Association together with full details of the purchaser’s name and address.





**7. THE ENCUMBRANCER WILL NOT**

- 7.1 Use the Encumbrancer’s dwelling or permit it to be used in such manner or for such purpose as to cause a nuisance or disturbance to other members of the Huntingdon Park Property Owners Association.
- 7.2 Make undue noise in or about the Encumbrancer’s dwelling at any time of the day or night in such manner as to disturb, irritate or annoy any other member of the Huntingdon Park Property Owners Association.
- 7.3 Deposit or throw any rubbish dirt dust or other material anywhere except into bins or receptacles provided for this purpose and in accordance with the directions given by the Encumbrancee or the Huntingdon Park Property Owners Association from time to time.

**8. THE Encumbrancer and any other occupier of the dwelling on the Encumbrancer’s land shall:-**

- 8.1 Meet and pay to the Encumbrancee as directed the Encumbrancer’s reasonable share and proportion of the Property Owners’ levy as levied annually in advance by the Encumbrancee (which in the first year hereof shall be the sum of \$300.00 including GST) for the benefit of the Encumbrancer and the Encumbrancer’s land in common with other members of the said Association for the following purposes:
  - 8.2 A contribution towards maintenance of the canals and the lake
  - 8.3 Garbage collection and disposal
  - 8.4 Administration
- 8.5 The amount of such levies shall be determined s the Encumbrancee and/or the Huntingdon Park Property Owners Association deems reasonable. Any increase in the levy shall be no greater than the accumulated percentage of rate rises imposed by the Ashburton District Council since the last levy was struck unless the approval of a majority of the Huntingdon Park Property Owners Association has first been obtained. Such levy shall be due for payment on the 20th day of the month following the posting of the account to the Encumbrancer or otherwise as the Encumbrancee may determine.

