

View Instrument Details



Instrument No 12330882.5
Status Registered
Date & Time Lodged 21 February 2022 12:18
Lodged By Weir, Stuart Jason
Instrument Type Encumbrance



Affected Records of Title	Land District
1012366	North Auckland
1012367	North Auckland
1012368	North Auckland
1012369	North Auckland
1012370	North Auckland
1012371	North Auckland
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1012433	North Auckland
1012434	North Auckland
1012435	North Auckland
1012436	North Auckland
1012437	North Auckland
1012438	North Auckland

Annexure Schedule Contains 11 Pages.

Encumbrancer Certifications

I certify that I have the authority to act for the Encumbrancer and that the party has the legal capacity to authorise me to lodge this instrument ☒

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☒

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☒

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☒

Signature

Signed by Stuart Jason Weir as Encumbrancer Representative on 09/02/2022 01:17 PM

Encumbrancee Certifications

I certify that I have the authority to act for the Encumbrancee and that the party has the legal capacity to authorise me to lodge this instrument ☒

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☒

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☒

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☒

Signature

Signed by Stuart Jason Weir as Encumbrancee Representative on 09/02/2022 01:17 PM

Form 18**Encumbrance instrument**

(Section 100 Land Transfer Act 2017)

Land registration district

North Auckland

Record of Title (unique identifier)	All/part	Area/description of part
1012366 – 1012381 (inclusive), 1012384 - 1012422 (inclusive), 1012431 – 1012438 (inclusive)	All	

Encumbrancer*Surname(s) must be underlined.*

Greerton Holdings Limited

Encumbrancee*Surname(s) must be underlined.*

Greerton Holdings Limited

Estate or interest to be encumbered*Insert, eg, fee simple, leasehold in lease number, etc.*

Fee simple

Encumbrance memorandum number

Not applicable

Nature of security*State whether sum of money, annuity, or rentcharge, and amount.*

Annual rentcharge of the amount specified in clause 4.1 of the Annexure Schedule and such other sums of money as are payable by the Encumbrancer to the Encumbrancee pursuant to this encumbrance.

Operative clause

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above record of title(s) with the above sum of money, annuity, or rentcharge to be raised and paid in accordance with the terms set out in the Annexure Schedule and so as to incorporate in this encumbrance the terms and other provisions set out in the Annexure Schedule for the better securing to the Encumbrancee the payment(s) secured by this encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Form 18 continued

Terms *Continue on additional Annexure Schedule(s) if required.*

1	Length of term: Refer to the definition of “Term” in clause 1.1 of the Annexure Schedule
2	Payment date(s): Refer to clause 4.1 of the Annexure Schedule
3	Rate(s) of interest: Nil
4	Event(s) in which the sum, annuity, or rentcharge becomes payable: Refer to clauses 4.1 and 4.2 of the Annexure Schedule
5	Event(s) in which the sum, annuity, or rentcharge ceases to be payable: Refer to clauses 4.2 and 9.1 of the Annexure Schedule

Covenants and conditions *Continue on additional Annexure Schedule(s) if required.*

Refer to the Annexure Schedule

Modification of statutory provisions *Continue in additional Annexure Schedule(s) if required.*

Refer to the Annexure Schedule

Form L**Annexure Schedule**

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*Insert instrument type***Encumbrance instrument****1. Definitions and Interpretation**

1.1 **Definitions:** In this encumbrance, unless the context otherwise requires:

Activity means any activity on or use of, or in relation to, the Balance Land including:

- (a) any building, construction, earthworks, civil works, landscaping or other improvements or works on, or in relation to, the Balance Land (including for a supermarket, retirement village, childcare retail and/or commercial lot, area, building or precinct);
- (b) the Subdivision of the Balance Land;
- (c) the Development;
- (d) the Supermarket and Retail Operations;
- (e) retirement village;
- (f) childcare businesses;
- (g) any other retail and/or commercial activities; and
- (h) all associated or ancillary activities;

and **Activities** shall be interpreted accordingly.

Attorney means the Encumbrancee or its nominee.

Authority means any government, local, statutory or non-statutory authority, body or other person having jurisdiction over, or authority for, the Balance Land (or the Subdivision, development or use of the Balance Land) including the territorial authority and Land Information New Zealand.

Balance Land means:

- (a) the land currently contained in record of title 1012439 (being lot 1000, DP565781 (North Auckland Registry)); and
- (b) any other land in respect of which the Encumbrancee or any Related Company is the registered owner,

and includes any part of the land described in clauses (a) and (b) above.

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*Insert instrument type***Encumbrance instrument**

Development means the development and/or Subdivision of the Balance Land, which may include a supermarket, retirement village(s), childcare and a retail and/or commercial lot, area, building or precinct and/or residential lots.

Encumbrancee means the party named as the encumbrancee in this encumbrance and includes its transferees and assignees.

Encumbrancer means the party named as the encumbrancer in this encumbrance and includes the registered owner for the time being of the Encumbrancer's Land (but only for as long as that person is the registered owner of the Encumbrancer's Land) and any person claiming under the Encumbrancer.

Encumbrancer's Land means the land contained in record of title 1012366 – 1012381 (inclusive), 1012384 - 1012422 (inclusive), 1012431 – 1012438 (inclusive) – residential lot titles (North Auckland Registry) and includes any part of that land.

LTA means the Land Transfer Act 2017.

Power of Attorney means the power of attorney referred to in clause 6.

Related Company has the meaning given to that term in section 2 of the Companies Act 1993.

Secured Obligations means the obligations secured by this encumbrance, including those obligations set out in Schedule A.

Subdivision has the meaning given to the term "subdivision of land" in section 218 of the Resource Management Act 1991; and **Subdivide** has a corresponding meaning.

Supermarket and Retail Operations means all commercial and leisure activities, works, uses, effects and occupations carried on in supermarket and/or retail and/or commercial improvements on the Balance Land (including restaurants, bars, café and other food and drink outlets) at any time in accordance with prevailing practices and trends for the time being, including:

- (a) traffic from and the parking of vehicles by customers, employers, visitors, contractors or other persons;
- (b) loading and unloading of vehicles;
- (c) noise and/or smells arising and/or emitting from the Supermarket and Retail Operations on the Balance Land;
- (d) liquor licences; and

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*Insert instrument type***Encumbrance instrument**

- (e) lighting.

Term means the period:

- (a) commencing on the date this encumbrance is registered; and
- (b) ending 999 years later.

Working Day has the meaning given to that term in section 4 of the Property Law Act 2007.

1.2 Interpretation: In this encumbrance:

- (a) Clause headings and other headings are for ease of reference only and will not affect the interpretation of this encumbrance.
- (b) Any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- (c) References to parties are references to parties to this encumbrance (being the Encumbrancer and Encumbrancee).
- (d) References to persons will be deemed to include references to individuals, companies, partnerships, associations, trusts, government departments and local authorities in each case whether or not having separate legal personality.
- (e) Words importing the singular will include the plural and vice versa.
- (f) References to a statute include references to regulations, orders or notices made under that statute, and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise and include a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.
- (g) A reference to the word "include" or "including" is to be interpreted without limitation.

1.3 Binding on transferees and others: This encumbrance is binding on all:

Form L**Annexure Schedule**

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*Insert instrument type***Encumbrance instrument**

- (a) transferees, lessees, mortgagees, chargeholders, and their respective successors in title and assignees, of any estate or interest in the Encumbrancer's Land; and
- (b) occupiers of the Encumbrancer's Land.

2. Intention

- 2.1 The intention of this encumbrance is to secure the ongoing performance by the Encumbrancer of the Secured Obligations for the duration of the Term and the Encumbrancee is only required to provide a discharge of this encumbrance in accordance with clause 9.1.

3. Covenants

- 3.1 The Encumbrancer covenants with the Encumbrancee to perform the Secured Obligations.

4. Rentcharge

- 4.1 **Annual payment:** Subject to clause 4.2, the annual rentcharge of \$1,000.00 plus GST per annum (if demanded in writing by the Encumbrancee) is payable by the Encumbrancer to the Encumbrancee on each anniversary of the date this encumbrance is registered.
- 4.2 **Deemed waiver:** If during the 12 months preceding any day on which the annual rentcharge under clause 4.1 is payable, there has not been any breach by the Encumbrancer of any of the covenants under this encumbrance, then the annual rentcharge will be deemed to have been waived by the Encumbrancee.

5. Priority

- 5.1 This encumbrance shall rank as a first charge in respect of the Encumbrancer's Land and the Encumbrancer shall procure that any chargeholder or mortgagee enters into a priority instrument to reflect the same.

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*Insert instrument type***Encumbrance instrument****6. Power of Attorney**

- 6.1 **Appointment:** The Encumbrancer irrevocably and unconditionally nominates, constitutes and appoints the Attorney to be the true and lawful attorney of the Encumbrancer for the purposes of:
- (a) executing on behalf and in the name of the Encumbrancer all approvals, dispensations, authorities, consents and other documents which this encumbrance requires the Encumbrancer to execute; and
 - (b) performing on behalf and in the name of the Encumbrancer all acts, matters and things which this encumbrance requires the Encumbrancer to perform.
- 6.2 **Continuing Power of Attorney:** The parties acknowledge that the Power of Attorney has been given for valuable consideration and will operate and continue to operate until such time as this encumbrance is discharged in accordance with clause 9.1.
- 6.3 **Separate deed:** The Encumbrancee may require the Encumbrancer to execute and provide to the Encumbrancee a separate power of attorney deed recording the appointment of the Attorney as the attorney of the Encumbrancer on the terms contained in this clause 6. The form of such power of attorney deed will be prepared by the Encumbrancee's lawyer at the cost of the Encumbrancee. The Encumbrancer must provide such duly executed power of attorney deed to the Encumbrancee within 5 Working Days of the power of attorney deed being provided to the Encumbrancer.

7. Consent of the Encumbrancee

- 7.1 **Consent to certain activities:** Subject to clause 7.2, for the purposes of the Property Law Act 2007 and the LTA, the Encumbrancee consents to the following dealings affecting the Encumbrancer's Land without having to execute a consent instrument (provided such dealings do not constitute a breach of this encumbrance):
- (a) creation, variation or surrender of an easement;
 - (b) variation of a mortgage instrument or priority of mortgages;
 - (c) registration of a lease, lease variation instrument or surrender of a lease; and
 - (d) sale or otherwise disposal of a licence or shares to which the licence relates (or any of them).
- 7.2 **Capacity and Purpose:** The consent of the Encumbrancee recorded in clause 7.1 is given by the Encumbrancee in its capacity as encumbrancee under, and for the

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*Insert instrument type***Encumbrance instrument**

purpose of, this encumbrance and does not constitute the consent of the Encumbrancee in any other capacity or for any other purpose.

8. Implied Terms

8.1 Sections 203 to 205 of the Property Law Act 2007 apply to this encumbrance, but otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rent charger or encumbrancee):

- (a) the Encumbrancee shall be entitled to none of the powers and remedies given to encumbrancees by the LTA and the Property Law Act 2007; and
- (b) no covenants on the part of the Encumbrancer are implied in this encumbrance other than the covenants requiring persons to give effect to instruments implied by section 208 of the LTA.

9. Discharge and Redemption

9.1 **Discharge:** Provided the Encumbrancer has fully complied with the covenants contained in this encumbrance, the Encumbrancer will be entitled to a discharge of this encumbrance, at the request and cost of the Encumbrancer, at the end of the Term.

9.2 **Covenants by Encumbrancer:** The Encumbrancer irrevocably covenants with the Encumbrancee that until this encumbrance has been discharged in accordance with clause 9.1:

- (a) the Encumbrancee will have no obligation to discharge this encumbrance pursuant to section 97 of the Property Law Act 2007 or otherwise;
- (b) the Encumbrancer will not take any steps whatsoever to redeem or discharge this encumbrance or to have it revoked, cancelled, surrendered, lapsed, modified, extinguished or otherwise removed from the title to the Encumbrancer's Land pursuant to sections 97, 115 or 317 of the Property Law Act 2007 or otherwise;
- (c) the Encumbrancer surrenders and waives any right, entitlement or ability that the Encumbrancer may have to redeem or discharge this encumbrance or to have it revoked, cancelled, surrendered, lapsed, modified, extinguished or otherwise removed from the title; and
- (d) the Encumbrancer will not encourage, support or assist any other person to do anything which the Encumbrancer has agreed not to do and will not procure any other person to do so.

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*Insert instrument type***Encumbrance instrument****9.3 Clarifications:** For the avoidance of doubt:

- (a) if any obligation of the Encumbrancer in this encumbrance is of a restrictive nature (for example, it requires the Encumbrancer not to do something), the performance of that obligation will require the Encumbrancer to observe and comply with the restriction; and
- (b) if any obligation of the Encumbrancer in this encumbrance is of a continuing nature, that obligation will be treated as not having been performed for as long as it is capable of still being performed, observed or complied with.

10. Transfer and Assignment

- 10.1 The Encumbrancee may transfer or assign all or part of its rights and powers under this encumbrance without the consent of the Encumbrancer. The transferee or assignee is to have the same rights and powers under this encumbrance (or proportion of those rights if it is the transferee or assignee of part only) as if named in this encumbrance as the Encumbrancee.

11. Contractual Privity

- 11.1 This encumbrance is intended to be for the benefit, and enforceable at the suit, of each Related Company of the Encumbrancee and the Attorney in terms of section 12 the Contract and Commercial Law Act 2017.

12. Miscellaneous

- 12.1 **Costs:** The Encumbrancer will, immediately on demand by the Encumbrancee, pay all costs (including legal fees on a solicitor and own client basis) incurred by the Encumbrancee in relation to the enforcement (or attempted enforcement) and discharge of this encumbrance.
- 12.2 **Governing Law and Jurisdiction:**
- (a) This encumbrance is governed by, and is to be construed in accordance with, New Zealand law.
 - (b) The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of or relating to this encumbrance, its performance or subject matter.
- 12.3 **Joint and Several:** Where the Encumbrancer consists of more than one person, this encumbrance shall bind such persons jointly and severally.

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Annexure Schedule

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Insert instrument type

Encumbrance instrument

- 12.4 **Further Assurances:** Without limiting the effect of section 208 of the LTA, the Encumbrancer must do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this encumbrance.
- 12.5 **Partial Invalidity:** If any provision of this encumbrance is or becomes invalid or unenforceable, then:
- (a) that provision shall be deemed deleted from this encumbrance;
 - (b) such invalidity or unenforceability shall not affect the other provisions of this encumbrance, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision; and
 - (c) the parties shall immediately enter into substitute or additional instrument(s) to give full effect to the provisions of this encumbrance (including any provision deemed deleted by clause 12.5(a)).
- 12.6 **Exercise of Rights and Waivers:**
- (a) No failure to exercise, and no delay in exercising, a right of the Encumbrancee under this encumbrance will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right by the Encumbrancee.
 - (b) No waiver by the Encumbrancee of its rights under this encumbrance is effective unless it is in writing and signed by the Encumbrancee.

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*Insert instrument type***Encumbrance instrument****SCHEDULE A**

The Encumbrancer shall:

1. **Applications:** Not, directly or indirectly, submit in opposition (nor permit nor suffer any agent or servant or any other representative of the Encumbrancer howsoever to submit in opposition) nor support, finance or contribute to any submission in opposition to:
 - (a) any present or future application for any consent, approval or permit required from any Authority made or supported by the Encumbrancee (or any Related Company), including any application for any district or other plan change or variation, in connection with any Activity;
 - (b) any Activity.
2. **Appeals:** Not, directly or indirectly, oppose the Encumbrancee's interest in any appeals arising from any matter referred to in clause 1 of this Schedule.
3. **Noise, smells and other consequences:** Not, directly or indirectly, object to the noise, smells or any other consequences of any Activity.
4. **Consent of Encumbrancer:** Not withhold any approval, dispensation, authority or consent required in connection with:
 - (a) any application for a consent, approval or permit made or supported by the Encumbrancee (or any Related Company) in connection with any Activity;
 - (b) any change to or variation or review of any district plan or regional plan which would allow a proposal in connection with any Activity,

and the Encumbrancer shall promptly, and no later than 15 Working Days after receipt of request by the Encumbrancee, provide any such approval, dispensation, authority or consent (as applicable) on request by the Encumbrancee.
5. **Interference:** Allow the Encumbrancee to proceed with the Activities without interference, objection, opposition or restraint from the Encumbrancer.
6. **Proceedings:** Bring no proceedings for damages, nuisance or interference arising from any Activity, nor support, finance or contribute to any such proceedings.
7. **Encouragement:** Not, directly or indirectly, encourage, support or assist any other person to do any thing which the Encumbrancer has agreed not to do, including without limitation those contained in clauses 1 to 6 above, and will not procure any other person to do so.