

# View Instrument Details



**Instrument No** 9099897.8  
**Status** Registered  
**Date & Time Lodged** 01 October 2012 11:53  
**Lodged By** Rattray, Harry Aylmer  
**Instrument Type** Encumbrance



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Affected Computer Registers	Land District
582326	Wellington
582328	Wellington
582329	Wellington

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**Annexure Schedule:** Contains 5 Pages.

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## 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 Matthew Peter Whimp as Encumbrancer Representative on 01/10/2012 09:08 AM

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## 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 Matthew Peter Whimp as Encumbrancee Representative on 01/10/2012 09:08 AM

\*\*\* End of Report \*\*\*

**Encumbrance instrument**

(Section 101 Land Transfer Act 1952)

Affected instrument Identifier of part or stratum and type (if applicable)	All/part	Area/Description
582326 582328 582329	All	

**Encumbrancer**

**Waikanae North Limited**

**Encumbrancee**

**Charles Fleming Retirement Village Limited**

**Estate or interest to be encumbered** *Insert e.g. Fee simple; Leasehold in Lease No. etc.*

Fee simple

**Encumbrance Memorandum Number**

Not applicable

**Nature of security** *State whether sum of money, annuity or rent charge and amount*

Rent charge of ONE THOUSAND DOLLARS (\$1,000.00) per annum, and such other sums of money as are payable by the Encumbrancer to the Encumbrancee pursuant to this Encumbrance Instrument.

**Encumbrance** *Delete words in [ ], as appropriate*

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above computer register(s) with the above sum of money, annuity or rent charge, to be raised and paid in accordance with the terms set out in the Annexure Schedule(s) and so as to incorporate in this Encumbrance the terms and other provisions set out in the Annexure Schedule(s) 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.

**Annexure Schedule**

*Insert instrument type*

**Encumbrance**

*Continue in additional Annexure Schedule, if required*

**Terms**

1 Length of term	999 years (the <i>Term</i> )
2 Payment date(s)	See below
3 Rate(s) of interest	Nil
4 Event(s) in which the sum, annuity or rent charge becomes payable	See below

**Covenants and conditions**

*Continue in Annexure Schedule(s), if required*

Payment date(s) and event(s) in which the sum, annuity, or rent charge becomes payable:

- (a) in respect of the rent charge, 1 January in each year; and
- (b) in respect of other sums of money, ten working days after written demand is made by the Encumbrancee to the Encumbrancer.

Continued on the attached annexure schedule.

**Modification of statutory provisions**

*Continue in Annexure Schedule(s), if required*

Sections 154 and 156 of the Land Transfer Act 1952, Sections 23, 203-205, 289-290 and 301-302 of the Property Law Act 2007 and Section 4 of the Contracts (Privity) Act 1982 shall apply to this Encumbrance Instrument but otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rent-chargee) the Encumbrancee shall not be entitled to any of the powers and remedies given to encumbrances by the Land Transfer Act 1952 and the Encumbrancee and its successors and assigns shall not be entitled to any of the powers and remedies given to mortgagees under the Land Transfer Act 1952 or the Property Law Act 2007.

## Annexure Schedule

Page 2 of 4 Pages

Insert instrument type

## Encumbrance

Continue in additional Annexure Schedule, if required

**BACKGROUND**

A. Waikanae North Limited (together with its successors, assignees, tenants, lessees and persons under its control) (the *Encumbrancer*) is registered as proprietor of an estate in fee simple in all that parcel of land described on the front page of this Encumbrance Instrument (the *Land*).

B. The Encumbrancer and Encumbrancee have entered into an agreement dated 4 October 2010 whereby the Encumbrancer agreed that:

- a retirement village and/or a group of housing units, designed for and marketed predominately to elderly persons, which may include a care home and/or associated studio units for the care and for accommodation of elderly persons, and all associated and ancillary utilities (a *Retirement Village*).

may not be developed on the Land. The parties have therefore agreed to enter into this Encumbrance Instrument to encumber the Land for the benefit of the Encumbrancee on the terms set out in this Encumbrance Instrument.

**SCHEDULE**

1. If, on the due date for payment (as set out in page 2 of this Encumbrance Instrument) of the rent charge imposed under this Encumbrance Instrument, the Encumbrancer has fully complied with all of the obligations imposed under this Encumbrance Instrument, then the rent charge payable on that day shall not be required to be paid by the Encumbrancer.
2. The Encumbrancer acknowledges that the covenants in this Encumbrance Instrument are of a permanent nature, and the Encumbrancer shall not be entitled to a discharge of the Encumbrance Instrument during the Term, whether by payment of the total security or otherwise other than in accordance with clause 8 of this Encumbrance Instrument. The rent charge imposed under this Encumbrance Instrument secures the due performance of the obligations imposed under this Encumbrance Instrument, including (without limitation) under clause 3, throughout the Term.
3. The Encumbrancer covenants with the Encumbrancee that the Encumbrancer will not throughout the Term construct, develop or place, or permit or cause to be constructed, developed or placed, a Retirement Village on the Land or any part of the Land.

**GENERAL**

1. This Encumbrance Instrument shall be binding on all transferees, tenants, lessees, mortgagees, chargeholders and their respective successors in title and assigns of any estate or interest in the Land. Where this Encumbrance Instrument binds or benefits a party, it shall bind or benefit that party jointly and severally.
2. The Encumbrancer covenants with the Encumbrancee:

**Annexure Schedule**

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*Insert instrument type***Encumbrance***Continue in additional Annexure Schedule, if required*

- 2.1 to pay all legal costs and disbursements in the enforcement and any ultimate release of this Encumbrance Instrument, in respect of any consents sought by the Encumbrancer from the Encumbrancee to the registration of any instrument, and in respect of the performance and observance by the Encumbrancer of this Encumbrance Instrument including legal costs on a solicitor/client basis; and
- 2.2 to otherwise indemnify the Encumbrancee against any claims loss and expense of whatever kind incurred by the Encumbrancee as a consequence of the Encumbrancer failing to comply with the provisions and terms of this Encumbrance Instrument.
3. The Encumbrancer shall only be liable under this Encumbrance Instrument for any breach of this Encumbrance Instrument committed while that Encumbrancer is a registered proprietor of the Land.
4. If there is any breach by the Encumbrancer of the obligations in this Encumbrance Instrument then without prejudice to any other liability which the Encumbrancer may have to the Encumbrancee the Encumbrancer will upon written demand being made by the Encumbrancee remove or cause to be removed from the Land or any part of the Land any building constructed or placed on, over or under the Land or any part of the Land in breach of the obligations in this Encumbrance Instrument.
5. No delay or failure by the Encumbrancee to enforce performance of any of the covenants set out in this Encumbrance Instrument and no indulgence granted to the Encumbrancer by the Encumbrancee shall prejudice the rights of the Encumbrancee to enforce any of the covenants or provisions of the Encumbrance Instrument.
6. The Encumbrancee hereby consents to the registration of any of the following instruments executed by the Encumbrancer in respect of the Land or any part of the Land, but without prejudice to the Encumbrancee's rights under this Encumbrance:
  - 6.1 the registration of a transfer of the Land or any part of the Land (section 90 Land Transfer Act 1952);
  - 6.2 the creation, variation or surrender of an easement (section 90E(3) Land Transfer Act 1952);
  - 6.3 the creation, variation or discharge of a mortgage instrument or priority of mortgages (section 101, 102(4) and section 103(3) Land Transfer Act 1952);
  - 6.4 the registration of a lease, a lease variation instrument or the surrender of a lease, (sections 115(4), 116(7) and 120 Land Transfer Act 1952);
  - 6.5 the disposal of a licence or shares to which the licence relates (section 121(1) Land Transfer Act 1952); and

**Annexure Schedule**

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*Insert instrument type***Encumbrance***Continue in additional Annexure Schedule, if required*

6.6 the deposit of a plan of subdivision in respect of the Land (section 167 Land Transfer Act 1952);

and this consent shall be deemed to be the consent of the mortgagee (which term includes Encumbrancee), as specified in the Land Transfer Act 1952, to the registration of a particular instrument specified in clauses 6.1 to 6.6.

7. If it is determined that written consent is required from the Encumbrancee (rather than deemed consent under clause 6) then the Encumbrancee shall as soon as practical at the request of the Encumbrancer, give that written consent.
8. The Encumbrancer shall be entitled to a discharge of this Encumbrance Instrument if a Retirement Village has not been, or is not being, developed on the land comprised in computer freehold register 582325 or any part thereof on the date that is 15 years after the date of this Encumbrance Instrument.
9. The benefit of this Encumbrance Instrument is assignable by the Encumbrancee and shall be binding on any such assignee.
10. In this Encumbrance Instrument a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it, and a regulation or statutory instrument issued under it.
11. In this Encumbrance Instrument, "working day" means a day on which registered banks are open for business in Wellington, excluding Saturdays, Sundays, public holidays, and any day in the period commencing on the 23<sup>rd</sup> day of December in any year and ending on the 10<sup>th</sup> day of January in the following year, both days included.
12. If any person challenges the enforceability of this Encumbrance Instrument, or for any reason this Encumbrance Instrument is required to be discharged or removed from the computer freehold registers to the Land, while the obligations under this Encumbrance Instrument are, or would be, on the face of the wording of this Encumbrance Instrument still required to be performed or observed, then the Encumbrancer agrees to accept, execute and deliver any documents, and to do all other things, as are reasonably required by the Encumbrancee to secure the due performance and observance of the obligations expressed to operate under this Encumbrance Instrument.