

Schedule 6

MEMORANDUM OF ENCUMBRANCE

Encumbrance instrument
(Section 101 Land Transfer Act 1952)

2015/6249
APPROVED
Registrar-General of Land

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Affected instrument Identifier and type (if applicable)	All/part	Area/Description of part or stratum
Continued on annexure schedule	All	Unit 1 and Accessory Unit [] on DP [] [all units to be included]

Encumbrancer
Pamber (Auckland) Limited

Encumbrancee
Pamber (Auckland) Limited

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

Encumbrance Memorandum Number *(if applicable)*
Nil

Nature of security *State whether sum of money, annuity or rentcharge and amount*
Annual rent charge of \$20.00 (twenty dollars)

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 rentcharge, to be raised and paid in accordance with the terms set out in the ~~above Encumbrance Memorandum~~ [Annexure Schedule(s)] and so as to incorporate in this Encumbrance the terms and other provisions set out in the ~~above Encumbrance Memorandum~~ [and] [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.

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Terms

1 Length of term **999 years from the registration of this encumbrance instrument.**

~~2 Payment date(s)~~

~~3 Rate(s) of interest~~

~~4 Event(s) in which the sum, annuity or rentcharge becomes payable~~

5 Event(s) in which the sum, annuity or rentcharge ceases to be payable

Otherwise in accordance with the annexure schedule.

Covenants and conditions

Continue in Annexure Schedule(s), if required

In accordance with the annexure schedule.

Modification of statutory provisions

Continue in Annexure Schedule(s), if required

In accordance with the annexure schedule.

BACKGROUND

- A. The Encumbrancer is registered as proprietor of the Land.
- B. The Encumbrancee has requested that the owner and occupier for the time being of the Land be bound by the covenants acceptable to and for the benefit of the Encumbrancee or its successors, assignees or transferees from time to time.
- C. The Encumbrancer has agreed to enter into the covenants in the Encumbrancee's favour and to grant and make the rent charge set out herein.

1. INTERPRETATION

In this encumbrance instrument unless the context indicates otherwise:

1.1 Definitions:

"Body Corporate" means Body Corporate [].

"Body Corporate Rules" means the Operational Rules of the Body Corporate from time to time.

"Council" means Auckland Council and includes its predecessors and successors as territorial authority of the district where the Land is situated and its officers and agents.

"Encumbrancer" means the Encumbrancer named in this encumbrance instrument and includes the person for the time being registered as proprietor of the Land and any person claiming under the Encumbrancer but only for as long as that person is registered proprietor of the Land.

"Encumbrancee" means the Encumbrancee named in this encumbrance instrument and its successors and assigns.

"Land" means the stratum estate in computer freehold register identifiers [] (North Auckland Registry).

"Residential Units" means Principal Units 2A to 2M (inclusive).

"Retail Units" means Principal Units 1A to 1D (inclusive).

- 1.2 **Defined Expressions:** expressions defined in the main body of this encumbrance instrument have the defined meaning in the whole of this encumbrance instrument including the background.
- 1.3 **Headings:** section, clause and other headings are for ease of reference only and do not affect this encumbrance instrument's interpretation.
- 1.4 **Joint and Several Liability:** an obligation by two or more persons binds those persons jointly and severally.
- 1.5 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.
- 1.6 **Parties:** references to parties are references to parties to this encumbrance instrument.

- 1.7 **Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality.
- 1.8 **Plural and Singular:** words importing the singular number include the plural and vice versa.
- 1.9 **Schedules:** the schedules to this encumbrance instrument and the provisions and conditions contained in these schedules will have the same effect as if set out in the body of this encumbrance instrument.
- 1.10 **Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to this memorandum's sections, clauses and schedules; and
- 1.11 **Statutes and Regulations:** references to any statutory provision includes any statutory provision which amends or replaces it, and any subordinate legislation made under it.

2. INTENTION OF ENCUMBRANCE

- 2.1 The intention of this encumbrance is to secure the ongoing performance by the Encumbrancer of the obligations described in the First Schedule and the Encumbrancee is only required to provide a release of this encumbrance in the circumstances described in clause 7.

3. COVENANTS

- 3.1 The Encumbrancer covenants with the Encumbrancee to observe and perform the covenants contained in the First Schedule.

4. COSTS

- 4.1 The Encumbrancer shall pay all reasonable costs directly or indirectly attributable to the preparation, stamping, registration, enforcement and discharge of this encumbrance and any documents associated with it.

5. IMPLIED TERMS

- 5.1 Sections 203 and 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 Land Transfer Act 1952 and the Property Law Act 2007; and
 - (b) no covenants on the part of the Encumbrancer and their successors in title are implied in this encumbrance other than the covenants for further assurance implied by Section 154 of the Land Transfer Act 1952.

6. FIRST CHARGE

- 6.1 This encumbrance shall rank as a first charge in respect of the Land and the Encumbrancer shall enter into a priority with any chargeholder or mortgagee to reflect the same.

7. **DISCHARGE**

7.1 The Encumbrancer shall be entitled to a discharge of this encumbrance at the request and cost of the Encumbrancer upon it being established to the Encumbrancee's reasonable satisfaction that the covenants in this encumbrance have become obsolete.

8. **CONSENT OF ENCUMBRANCEE**

8.1 For the purposes of the Property Law Act 2007 and the Land Transfer Act 1952, the Encumbrancee consents to the following dealings affecting the computer freehold register identifiers without having to execute a consent instrument:

- (a) creation, variation or surrender of an easement or covenant;
- (b) variation of a mortgage instrument or priority of mortgages;
- (c) registration of a lease, lease variation instrument or surrender of a lease;
- (d) deposit of subdivision plan; and
- (e) any dealing that is expressed as subject to this encumbrance.

9. **RENT CHARGE**

- (a) The annual rent charge of \$20.00 per annum (if demanded in writing by the Encumbrancee) is payable by the Encumbrancer to the Encumbrancee on each anniversary date of this encumbrance (subject to clause 9(b)).
- (b) If during the 12 months preceding any day on which the annual rent charge under clause 9(a) is payable, there has not been any breach by the Encumbrancer of any of the covenants under this Encumbrance, then the annual rent charge will be deemed to have been paid.

FIRST SCHEDULE
(Covenants of Encumbrancer)

The Encumbrancer covenants with the Encumbrancee as follows:

1. Each Encumbrancer covenants and agrees it shall not vote in favour of any changes to the Body Corporate Rules that:
 - (a) restrict trading hours for any business operating from the Retail Units to shorter hours than those allowed by any Council rules; or
 - (b) restricts the Retail Units from being used as a restaurant or for food retailing or any other use which is allowed by any local body rules except for the uses referred to in clause 2 of this Encumbrance and except for any use:
 - (i) for any manufacturing or industrial purposes;
 - (ii) as an education institution;
 - (iii) for government related occupiers who have direct dealings with members of the public (eg. Work and Income New Zealand, Immigration or the Inland Revenue Department).
 - (c) decreases the level of noise permitted by the opening Body Corporate Rules to emanate from a Retail Unit if the resulting level of noise as measured in any of the Residential Units already complies with the Council rules.

Prohibited Use

2. Each Encumbrancer covenants and agrees it shall not use or permit all or any part of the Land or all or part of a Unit to be used for the carrying on of any of the following uses:
 - (a) liquor retailing (except as part of a café or restaurant with a liquor licence);
 - (b) a Tavern style business;
 - (c) a business involving gambling;
 - (d) any business incorporating internet and computer gaming;
 - (e) sale of second hand goods;
 - (f) massage parlour;
 - (g) brothel or sex shop;
 - (h) funeral parlour;
 - (i) tattooist.
3. Those of the Encumbrancers who are the registered proprietors of the Retail Units covenant and agree that they will not use or permit all or any part of those Retail Units for residential purposes or sleeping.
4. Those of the Encumbrances who are the registered proprietors of the Residential Units covenant and agree that they will use those Units for residential purposes only.
5. **Carparking**
 - 5.1 Each of the Encumbrancers who are the registered proprietors of the Retail Units ("Retail Units") shall ensure that, subject to clause 5.2 of this Encumbrance, the respective accessory units (in the nature of carparks) that are owned in conjunction with the principal unit shall at all times be made available, to the exclusion of all others, for the use of:
 - (a) The customers of the tenants or occupiers of all or any of the Retail Units; and

- (b) Customers of a registered proprietor of all or any of the Retail Units where the registered proprietor is occupying its unit.

to the intent that, subject to the discretion of the Encumbrancee, all carpark areas that attach to the Retail Units will be used for a carpark for customers only.

- 5.2 The Encumbrancee may at its absolute discretion, and by notice in writing to the registered proprietor of a unit, vary or release the obligations of the Encumbrancer in clause 5.1 of this Encumbrance, either permanently or for a limited time.
- 5.3 The Encumbrancers who are the registered proprietors of the Residential Units shall ensure that none of their visitors, contractors or invitees shall use any carpark areas that are owned by the registered proprietors of the Retail Units.

Schedule 7

PRE-CONTRACT DISCLOSURE STATEMENT