



View Instrument Details

Instrument No 10230249.2
Status Registered
Date & Time Lodged 26 February 2016 10:20
Lodged By Rusk, Mandy
Instrument Type Encumbrance



Affected Computer Registers **Land District**
SA890/11 South Auckland

Annexure Schedule: Contains 4 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 Mandy Rusk as Encumbrancer Representative on 26/02/2016 10:17 AM

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 Mandy Rusk as Encumbrancee Representative on 26/02/2016 10:17 AM

*** End of Report ***

MEMORANDUM OF ENCUMBRANCE

DATED: This 3rd day of February 2016

BETWEEN: WYNBERG FARMS LIMITED at Waiuku (called "the Encumbrancer")

AND: WAIKATO DISTRICT COUNCIL a Body Corporate under the provisions of the Local Government Act 2002 (called "the Council")

1. INTERPRETATION:

In this Encumbrance and Covenants:

"the Council" means and includes the **WAIKATO DISTRICT COUNCIL** together with its successors and territorial authority for the time being for the district within which the land is situated.

"the Land" means the land described in the First Schedule and any part of it.

"the Encumbrancer" means and includes:

Wynberg Farms Limited
Registered Office and Address for Service:

C/- DRK Chartered Accountants Limited
48 Queen Street
Waiuku 2123

together with its respective liquidators, administrators and assigns.

"Schedule" refers to the several Schedules of this document.

AND obligations and covenants to be observed and performed by more than one person shall bind those persons jointly and severally.

AND words importing the singular shall include the plural; and the masculine gender the feminine or neuter and vice versa; and words importing persons shall include any body corporate including companies and vice versa.

2. RECITAL OF CIRCUMSTANCES:

2.1 THE Encumbrancer is registered as proprietor of an estate in fee simple in the land which is within the Council's district.

2.2 AS a result of the circumstances described in the Second Schedule the Encumbrancer has agreed:

(a) to grant and make the rent charge with the Council as set out, and subject to the conditions expressed in the Third Schedule, and

(b) to enter into the covenants in the Council's favour as set out in the Fourth Schedule.



3 THE ENCUMBRANCE:

THIS MEMORANDUM WITNESSES that the Encumbrancer **ENCUMBERS** the land for the benefit of the Council as set out in the Third Schedule **AND COVENANTS** with the Council as set out in the Fourth Schedule.

**FIRST SCHEDULE
("The Land")**

Part Allotment 12 Parish of Whangamarino and being part of the land comprised in Computer Freehold Register SA890/11 (South Auckland Registry).

**SECOND SCHEDULE
("The Circumstances")**

APPLICATION has been made to the Council for approval of the construction of a stock underpass, and in support of such application the Encumbrancer has agreed to enter into this Memorandum and the covenants of the Fourth Schedule.

**THIRD SCHEDULE
("Terms and Conditions of Encumbrance")**

- 1 **THE** term of the Encumbrance is 999 years commencing from the date hereof subject to earlier determination in the events provided in the Fifth Schedule.
- 2 **THE** rent charge is one dollar (\$1.00) to be paid to the Council by the 1st day of January in each year if demanded by that date. The first payment if so demanded is due on the 1st day of January next succeeding the date of this Memorandum.
- 3 **THE** covenants of the Fourth Schedule shall be enforceable only against the owners and occupiers for the time being of the land and not otherwise against the Encumbrancer.
- 4 **SECTIONS** 203, 204 and 205 of the Property Law Act 2007 apply to this Memorandum of Encumbrance but otherwise (and without prejudice to the Council's rights of action at common law as a rent chargee):
 - (a) **THE** Council 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 are implied in this Memorandum other than the covenants for further assurance implied by Section 154 of the Land Transfer Act 1952.
- 5 **IN** the event of the Encumbrancer wishing to enter into a mortgage or mortgages of the land to have priority to this Memorandum the Encumbrancer shall be entitled at his/her own cost in all things to a Memorandum of Priority granted by the Council in favour of any such mortgage or mortgages **PROVIDED** that the mortgagee thereunder consents to and acknowledges that it is bound by the covenants of this Memorandum for the purposes of Section 105 of the Land Transfer Act 1952.



**FOURTH SCHEDULE
("The Covenants")**

- 1 **THE** Encumbrancer shall at all times hereafter use and administer the land and the stock underpass constructed on or serving the land in a manner which ensures the structural integrity of the stock underpass.
- 2 **THE** Encumbrancer shall meet the cost of maintaining the structural integrity of the said stock underpass, and making good any damage which may be caused to the public utilities or the road as a result of construction or use of the said stock underpass.
- 3 **THE** Encumbrancer shall indemnify the Council against any claim for damages caused by the construction, use, or structural disintegration of the stock underpass.
- 4 **IN** the event that the Council wishes to widen the carriageway or road reserve under which the stock underpass is constructed, the Council shall meet all costs incurred in extending the underpass.
- 5 **UPON** termination of this agreement, upon the happening of either of the events specified in the Fifth Schedule:
 - (a) **THE** Council shall undertake the removal of the stock underpass and reinstate the roadway to its satisfaction. The Council agrees to ensure that its consultants and contractors shall take all reasonable care in removal of the underpass but the Council shall not be responsible for any damage that may occur to the underpass as a result of the removal.
 - (b) **THE** Encumbrancer shall reimburse the Council for the costs of such removal and reinstatement. Upon receipt of notice under Clause 1 of the Fifth Schedule the Council will within 21 days provide the Encumbrancer with an estimate of the costs of such removal and reinstatement.
 - (c) **OWNERSHIP** of the stock underpass shall pass to the Encumbrancer upon such removal and reinstatement, and payment as stated in clause 5(b) above.
 - (d) **AT** the request of the Encumbrancer the Council shall execute any discharge of encumbrance that may be required.
- 6 **THE** Encumbrancer shall pay all legal costs and disbursements directly or indirectly attributable to the preparation, execution, registration, enforcement and ultimate discharge of this Memorandum and its covenants.

**FIFTH SCHEDULE
("Events for Termination")**

- 1 **UPON** the Encumbrancer giving to the Council not less than two (2) months notice in writing.

OR
- 2 **UPON** the Council being satisfied that the covenants of the Fourth Schedule have become obsolete, unnecessary or no longer enforceable.

Handwritten signature and initials, possibly 'Ronal' and 'NMR', in black ink.

IN WITNESS WHEREOF this Memorandum has been executed this 3rd day of February 2015

SIGNED for WYNBERG FARMS LIMITED)
as Encumbrancer in the presence of:)

William Norman Hickey
William Norman Hickey (Director)

Mandy Veronica Rusk

Witness Signature

Witness Name Mandy Veronica Rusk
Barrister and Solicitor
WAIUKU

Occupation

Address

SIGNED for the)
WAIKATO DISTRICT COUNCIL by)
Gavin John Ion in the presence of:)

Gavin John Ion
Gavin John Ion, Chief Executive

Tracey King

Witness Signature

Witness Name Tracey King

Executive Assistant

Occupation

Hamilton.

Address

STU520

William Norman Hickey