**Encumbrance Instrument**

(Section 101 Land Transfer Act 1952)

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| Affect instrument identifier and type (if applicable) | All/Part | Area/Description of part or stratum |
|  | All |  |

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| **Encumbrancer** |  |  |
| [Landowners name(s)]  |

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| **Encumbrancee** |  |  |
| **NEW ZEALAND TRANSPORT AGENCY** |

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

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| **Encumbrance Memorandum number** |  |
| Not applicable |

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| **Nature of security** | *State whether sum of money, annuity or rentcharge and amount* |
| Rentcharge of TEN DOLLARS ($10.00) per annum, and such other sums of money as are payable by the Encumbrancer to the Encumbrancee pursuant to this Encumbrance Instrument. |

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| **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 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. |

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| **Terms** |  |
| 1 Length of term  **999 years**2 Payment date(s) **See below**3 Rate(s) of interest **Nil**4 Event(s) in which the sum, annuity or rentcharge becomes payable **See Below** |

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| **Covenants and conditions** | *Continue in Annexure Schedule(s), if required* |
| Payment date(s) and event(s) in which the sum, annuity, or rentcharge becomes payable:1. In respect of rentcharge, 1 January in each year; and
2. In respect to other sums of money, ten working days after written demand is made by the Encumbrancee to the Encumbrancer.

Continued on the attached Annexure Schedule 2. |

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| **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 or remedies given to encumbrancees in 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. |

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| **BACKGROUND**1. [Encumbrancer] (together with its successors, assignees, tenants, lessees and persons under its control) (“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 (“Land”).
2. The Land [fronts/is in the vicinity of] [name of State Highway] (“State Highway”).
3. Under sections 61(1) and 80(1) of the Government Roading Powers Act 1989, the Encumbrancee has sole powers of control for all purposes of all State highways and motorways.
4. As a result of proposed changes to the State Highway, the road-traffic noise levels within the existing building (“the building”) on the Land were assessed as requiring building-modification mitigation in accordance with NZS 6806:2010 (or any amended or replacement standards addressing the same subject matter). To reduce the road-traffic noise, the Encumbrancee has paid the Encumbrancer to install [describe building treatment] on the property (“the Works”). Details of the Works are included in Annexure Schedule 3.
5. For valuable consideration the Encumbrancer has agreed to encumber the Land for the benefit of the Encumbrancee with the security specified on this front page of this Encumbrance Instrument, and to covenant with the Encumbrancee to secure compliance by the Encumbrancer with the agreements set out in this Encumbrance Instrumentation.

**OPERATIVE PROVISIONS**1. If, on the due date for payment (as set out in Annexure Schedule 1) of the rentcharge imposed under this Encumbrance Instrument, the Encumbrancer has fully complied with all the obligations imposed pursuant to this Encumbrance Instrument, the rentcharge 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.
3. The Encumbrancer acknowledges and accepts that the Works reduce but do not eliminate road-traffic noise in the building, and that road-traffic noise is still audible.
4. The Encumbrancer owns the Works and is responsible for all maintenance of the Works, including replacement of worn parts.
5. The Encumbrancer will undertake all required operation and maintenance of the Works.
6. The Encumbrancer acknowledges and accepts that road-traffic noise levels inside the building may increase if the Works are not operated or maintained.
7. The Encumbrancer will ensure that any new or altered habitable spaces on the Land will be designed, constructed and operated so that road-traffic noise does not exceed 40 dB LAeq(24h) inside.

**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 or severally.
2. The Encumbrancer covenants with the Encumbrancee:
	1. to pay all legal costs and disbursements in the preparation, execution, registration, enforcement and any ultimate release of this Encumbrance Instrument, in respect of any consents sought by the Encumbrancer for 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. 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 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. No delay or failure of 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.
5. In this Encumbrance Instrument a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislation provision substituted for it, and a regulation or statutory instrument issued under it.
6. In this Encumbrance Instrument, “working day” means any day except Saturdays, Sundays, public and Anniversary day holidays, and any day in the period commencing on the 23rd day of December in any year and ending on the 10th day of January in the following year, both days excluded.
7. If at any time any part or provision of this Encumbrance Instrument is or becomes invalid, void, illegal or unenforceable in any respect whatsoever, then:
	1. that part or provision shall be severed from this Encumbrance Instrument;
	2. such invalidity and severing shall not in any way affect or impair the validity, legality and enforceability of any other part or provision of this Encumbrance Instrument; and
	3. the parties shall enter into appropriate substitute instrument(s) to give full and proper effect to the agreements and understandings in this Encumbrance Instrument.
8. The Encumbrancer:
	1. acknowledges that this Encumbrance Instrument:
		1. has been granted for valuable consideration received, in full compensation for the grant of this Encumbrance Instrument; and
		2. is intended to charge the Land and bind the Encumbrancer (and successors) to perform the Encumbrancer’s obligations for the period of time set out in this Encumbrance Instrument; and
	2. therefore covenants with the Encumbrancee:
		1. not to seek to discharge, surrender, lapse, vary, amend, withdraw or remove in any manner whatsoever this Encumbrance Instrument prior to the expiry of that period of time , whether by payment of the total security or otherwise;
		2. to preserve for the period of time set out in this Encumbrance Instrument the integrity of the arguments in this Encumbrance Instrument; and
		3. always act in good faith and do all acts and things and enter into and execute all documents, instruments (including any replacement encumbrance) and/or easement or land covenant whenever reasonably required by the Encumbrancee and otherwise obtain any necessary consents all of which may be reasonably necessary and appropriate to give full force and effect to the intentions and understandings of the Encumbrancer and the Encumbrancee.
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| **Building TREATMENT WORKS** |