

ENCUMBRANCE INSTRUMENT

Section 101 Land Transfer Act 1952

Land registration district

NORTH AUCKLAND

ENC 6864991.4 Encumb

Cpy - 01/01, Pgs - 010, 16/06/06, 11:23



DocID: 312480021

Unique identifier(s) or C/T(s).

All or Part?

Area/description of part

99827	Whole	Lot 1 DP 208838, and Lot 800 DP 191892, and Lot 100-102 DP175624, and Lot 104-105 DP 175625, and Lot 4 DP 324751
NA113B/422	Whole	Lot 2 DP 182082
NA114A/991	Whole	Lot 161 DP 183253

Encumbrancer

Sumames must be underlined or in CAPITALS

GULF HARBOUR COUNTRY CLUB LIMITED

Encumbrancee

Sumames must be underlined or in CAPITALS

RODNEY DISTRICT COUNCIL

Estate or interest to be encumbered

Fee simple

Nature of security

Annual rent charge

Operative Clause

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above certificate(s) of title or computer register(s) with the above rent charge 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 payments secured by this encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Dated this 30th day of March 2006

Handwritten initials

Annexure Schedule A

ENCUMBRANCE INSTRUMENT Dated 30 March 2006 Page 1 of 4 pages

Terms

1. Length of term: 999 years from the date of this Instrument.
2. Payment date(s): The rent charge is \$1 to be paid to the Encumbrancee on or before the 1st day of January next succeeding the date of this Instrument and annually thereafter.
3. Event(s) in which the rent charge becomes payable: If demanded in writing by the Encumbrancee before the due date for each year.
4. Event(s) in which the rent charge ceases to be payable: Upon the Encumbrancee being satisfied that the covenants have been duly performed or have become obsolete, unnecessary or no longer enforceable.

Covenants and conditions

In this Instrument:

"Land" means Lot 1 DP 208838, and Lot 800 DP 191892, and Lot 100-102 DP175624 and Lot 104-105 DP 175625, and Lot 4 DP 324751, and Lot 2 DP182082, and Lot 161 DP 183253.

"Club Committee" means the committee of the Country Club established pursuant to the constitution of Gulf Harbour Country Club Limited.

"Country Club" means the leisure facility located at 180 Gulf Harbour Drive, Gulf Harbour (on Lot 2 DP182082 & Lot 1 DP208838) and the activities taking place in conjunction with the same, or any equivalent and related activity in substitution to the Country Club provided that the activity remains subordinate to the operation of the golf course and its "effects" (as defined in the Resource Management Act 1991) remain of the same or similar character, intensity and scale.

"Members" means those persons who hold specified preference shares in Gulf Harbour Country Club Limited but who do not hold (or are associated with holders of) ordinary shares in Gulf Harbour Country Club Limited.

"Subcommittee" means a subcommittee of the Club Committee comprising members of the Club Committee appointed by the Members.


"Temporary Activity" means the erection of buildings or other structures or facilities in connection with events or tournaments held in association with the Country Club.

The Encumbrancee is the territorial local authority for the district within which the Land is located.

The Encumbrancee and the Encumbrancer have agreed that this Encumbrance and these covenants be entered into by the Encumbrancer in favour of the Encumbrancee under the Resource Management Act 1991:

1. The Encumbrancer shall ensure that such part of the Land as is marked A on the

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b. 

Annexure Schedule A continued

attached Plan is used in its entirety solely as a golf course and Country Club and the Encumbrancer shall not permit any person to erect any building or other structure within area A without the prior written approval of the Encumbrancee unless that building or other structure is directly associated with the operation of a golf course and Country Club, including golf clubrooms, the Country Club, driving range, buildings to house machinery and equipment to service the golf course, maintenance sheds, shelters and toilets, golf practice facilities and golf school facilities, or a Temporary Activity. For the purposes of this clause, a resource consent as defined under the Resource Management Act 1991 for any building or activity shall constitute such written approval of the Encumbrancee. Before determining whether to provide any written approval for the purposes of this clause, the Encumbrancee shall consult with the Subcommittee provided that the Encumbrancee shall not be bound by any views expressed to it through such consultation.

2. (a) The Encumbrancer shall ensure that such part of the Land as is marked B on the attached Plan is used in its entirety solely as a golf course and Country Club and in addition for the following activities:

(i) Carparking areas;

(ii) Activities replacing or in substitution for activities existing within area B at the date of this Instrument provided the "effects" (as defined in the Resource Management Act 1991) following such replacement or substitution remain of the same or similar character, intensity and scale as before such replacement or substitution.

(b) Nothing in clause 2(a) shall preclude any hotel associated with or managed in conjunction with the Country Club.

3. The Encumbrancer shall not permit any person to erect any building or other structure within the area marked B on the attached plan without the prior written approval of the Encumbrancee unless that building or structure is directly associated with:

(a) the activities specified in clause 2(a); or

(b) the operation of a golf course and Country Club including golf clubrooms, the Country Club, driving range, buildings to house machinery and equipment to service the golf course, maintenance sheds, shelters and toilets, golf practice facilities and golf school facilities, or a Temporary Activity.

For the purpose of this clause, resource consent as defined under the Resource Management Act 1991 for any building or activity shall constitute such written approval of the Encumbrancee. Before determining whether to provide any written approval for the purposes of this clause, the Encumbrancee shall consult with the Subcommittee provided that the Encumbrancee shall not be bound by any views expressed to it through such consultation.

4. The Encumbrancee need not be concerned as to the validity of appointment of the subcommittee.

5. The Encumbrancee may enter the Land for the purpose of determining compliance with this Encumbrance.

6. The Encumbrancer's liability under these covenants shall not be released, varied or affected in any way by any delay, extension of time or other indulgence to the Encumbrancer or suffered or permitted by the Encumbrancee or by any failure or

Annexure Schedule A continued

ENCUMBRANCE INSTRUMENT Dated 30 March 2006 Page 3 of 4 pages

neglect of the Encumbrancee to enforce its rights or powers or any obligation of the Encumbrancer under these covenants.

7. The Encumbrancee's powers, rights and remedies under this Encumbrance are in addition to and not in substitution for all other powers, rights and remedies conferred upon it by legislation and the exercise of any power, right or remedy under this Encumbrance shall not prejudice the Encumbrancee's authority to exercise any such legislative powers, rights or remedies.
8. The Encumbrancer must pay all reasonable legal costs and disbursements attributable to the preparation, execution, registration, enforcement and ultimate discharge of this Encumbrance and its covenants.
9. The Encumbrancer must further pay to the Encumbrancee, forthwith upon demand, an amount equal to any output tax payable by the Encumbrancee under the Goods and Services Tax Act 1985 in respect of taxable supplies made to or for the Encumbrancer directly or indirectly attributable to matters referred to in, or arising from, this Instrument of Encumbrance.

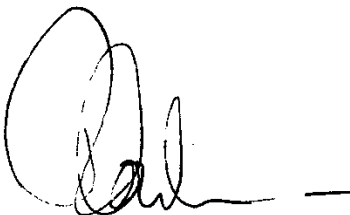
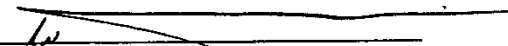
Modifications of statutory provisions

1. The Covenants are enforceable only against the owners and occupiers for the time being of the Land.
2. Section 104 of the Property Law Act 1952 applies to this Instrument of Encumbrance, but otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rent chargee):
 - (a) the Encumbrancee is entitled to none of the powers and remedies given to encumbrancees by the Land Transfer Act 1952 and the Property Law Act 1952; and
 - (b) no covenants in addition to those expressed above, are implied on the part of the Encumbrancer other than the covenants for further assurance implied by section 154 of the Land Transfer Act 1952.


Annexure Schedule A continued

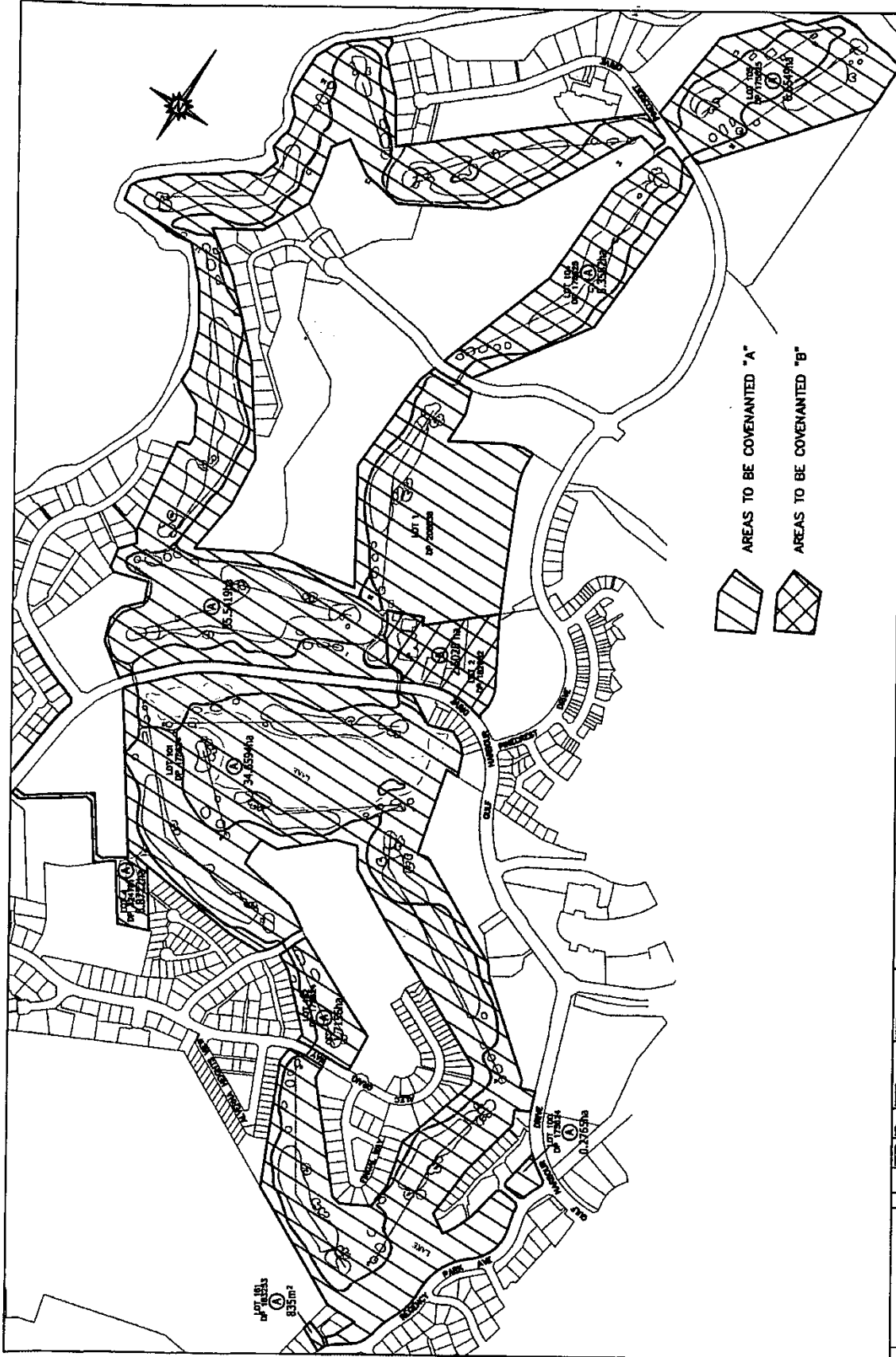
ENCUMBRANCE INSTRUMENT Dated 30 March 2006 Page 4 of 4 pages

Attestation

 R A Coulson Attorney	Signed in my presence by the Encumbrancer
	 Signature of witness Witness to complete in BLOCK letters (unless legible printed) Witness name Occupation Address
Signature [common seal] of Encumbrancer	SEAN V. GARELLI SOLICITOR AUCKLAND


Certified correct for the purposes of the Land Transfer Act 1952


Solicitor for the Encumbrancee



AREAS TO BE COVENANTED "A"

AREAS TO BE COVENANTED "B"

 <p>H.C. HARRISON CONSULTING ENGINEERS</p> <p>9 Cambridge Drive Albany NSW 4177 Australia Tel: 08 9488 1188</p>		<p>GULF CORPORATION LTD GULF HARBOUR</p>		<p>PROPOSED GOLF COURSE COVENANT AREA SCHEDULE B STAGE 2</p>		<p>06190-SC05</p>	
<p>DATE: 15/03/2012</p>		<p>SCALE: 1:5000</p>		<p>PROJECT: 06190-SC05</p>		<p>REVISION: A1</p>	
<p>BY: [Signature]</p>		<p>DATE: 15/03/2012</p>		<p>PROJECT: 06190-SC05</p>		<p>REVISION: C</p>	
<p>DATE: 15/03/2012</p>		<p>SCALE: 1:5000</p>		<p>PROJECT: 06190-SC05</p>		<p>REVISION: A1</p>	
<p>BY: [Signature]</p>		<p>DATE: 15/03/2012</p>		<p>PROJECT: 06190-SC05</p>		<p>REVISION: C</p>	

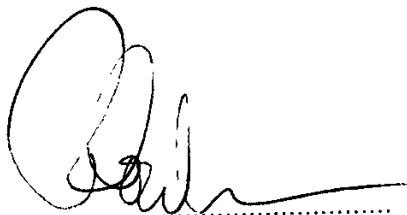
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CERTIFICATE OF NON REVOCATION OF POWER OF ATTORNEY

I, **Roger Alan Coulson** of Auckland, hereby certify that:

1. By deed dated the 21st day of November 2005 **Gulf Harbour Country Club Limited** appointed me its Attorney on the terms and subject to the conditions set out in the said deed a copy of which is deposited at Land Information New Zealand under No.
2. At the date hereof I have not received any notice or information of the revocation of that appointment by the liquidation of **Gulf Harbour Country Club Limited** or otherwise.

SIGNED at Auckland this 30th day of March 2006

A handwritten signature in black ink, appearing to read 'Roger Alan Coulson', written over a dotted line.

Roger Alan Coulson



Insert type of instrument
 "Caveat", "Mortgage" etc

Mortgage

Page **1** of **1** pages

Consentor

Surname must be underlined or in CAPITALS

Capacity and Interest of Consentor

(eg. Caveator under Caveat no./Mortgagee under Mortgage no.)

<p>The New Zealand Guardian Trust Company Limited</p>	<p>Mortgage under Mortgage No. 569889.1 5696889.1 </p>
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Consent

Delete Land Transfer Act 1952, if inapplicable, and insert name and date of application Act.


Delete words in [] if inconsistent with the consent.

State full details of the matter for which consent is required.

Pursuant to [section 238(2) of the Land Transfer Act 1952]
 [section _____ of the _____ Act _____]
 [Without prejudice to the rights and powers existing under the interest of the Consentor]
 the Consentor hereby consents to:
(a) Registration of the attached Encumbrance in favour of Rodney District Council;
(b) Registration of the attached Mortgage Priority Instrument to rank the Encumbrance referred to in (a) above as a first charge, Mortgage 569889.1 as a second charge and Mortgage 6157247.2 as a third charge.
 5696889.1

Dated this _____ day of **24 MAR 2006**

Attestation

 <p>Signature of Consentor</p>	<p>Signed in my presence by the Consentor Executed under the name and seal of The New Zealand Guardian Trust Company Limited Signature of Witness _____ Witness to complete in BLOCK letters (unless legibly printed) Witness name <u>_____</u> Authorised Signatory Occupation <u>Raywyn Hum</u> Authorised Signatory Address <u>19 Shallmar Place Manukau</u> Executive Assistant </p>
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An Annexure Schedule in this form may be attached to the relevant instrument, where consent is required to enable registration under the Land Transfer Act 1952, or other enactments, under which no form is prescribed.

Annexure Schedule - Consent Form

Land Transfer Act 1952 section 238(2)



Insert type of instrument
"Caveat", "Mortgage" etc

Mortgage

Page **1** of **1** pages

Consentor

Surname must be underlined or in CAPITALS

Capacity and Interest of Consentor

(eg. Caveator under Caveat no./Mortgagee under Mortgage no.)

Capital & Merchant Finance Limited

Mortgage under Mortgage No. 6157247.2

Consent

Delete Land Transfer Act 1952, if inapplicable, and insert name and date of application Act.

Delete words in [] if inconsistent with the consent.

State full details of the matter for which consent is required.

Pursuant to [section 238(2) of the Land Transfer Act 1952]

[section _____ of the _____ Act _____]

[Without prejudice to the rights and powers existing under the interest of the Consentor]

the Consentor hereby consents to:

- (a) Registration of the attached Encumbrance in favour of Rodney District Council;
- (b) Registration of the attached Mortgage Priority Instrument to rank the Encumbrance referred to in (a) above as a first charge, Mortgage ~~569889.1~~ as a second charge and Mortgage 6157247.2 as a third charge.

569889.1

Dated this **30th** day of **March 2006**

Attestation

Capital + Merchant Finance Limited by its attorney Colin William Givan

Signature of Consentor

Signed in my presence by the Consentor

Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name **Donald Paul Schnell**
Occupation **Solicitor**
Address **Auckland**

An Annexure Schedule in this form may be attached to the relevant instrument, where consent is required to enable registration under the Land Transfer Act 1952, or other enactments, under which no form is prescribed.

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, **COLIN WILLIAM GIRVEN** of Auckland Solicitor hereby certify:

1. **THAT** by Deed dated the 18th May 2004 **CAPITAL + MERCHANT FINANCE LIMITED** of Auckland in New Zealand appointed me **COLIN WILLIAM GIRVEN** its Attorney on the terms and subject to the conditions set out in the said Deed and a copy of the said deed is deposited in the Land Registry Office at Auckland under abstract number 6040973.1.
2. **THAT** as at the date hereof I have not received any notice or information of the revocation of that appointment by the winding up or dissolution of the said **CAPITAL + MERCHANT FINANCE LIMITED**.

DATED at Auckland this 30th March day of March 2006



Colin William Girven