

**MEMORANDUM OF ENCUMBRANCE****TO SECURE RENT CHARGE SUBJECT TO DEFEASANCE ON PERFORMANCE
OF POSITIVE COVENANTS AND RESTRICTIVE COVENANTS IN GROSS****WHEREAS****JACK ROBERT MCDONALD and LILLIAN SHEILA MCDONALD**

called ("the Grantors") are registered as proprietors of an estate in fee simple in that piece of land containing 533m² (more or less) being Lot 47 Deposited Plan 300645 and being all the land described in Certificate of Title 3249 (Canterbury Registry) called ("the land") **AND** by agreement in writing entered into by the Grantors for the benefit of **KIWI GREEN ISLAND CLUB LIMITED** a duly incorporated company having its registered office at Christchurch in New Zealand (with its successors and assigns called "the Grantee") dated the 26th day of April 2003.

THE GRANTORS HAVE AGREED in relation to the land and the dwelling and related buildings on it to do certain things **AND** refrain from doing certain things to secure the Grantors' performance and observance of that agreement by granting to and making with the Grantee the rent charge and covenants set forth in this Memorandum.

NOW THIS MEMORANDUM WITNESSES

1. That the Grantors **ENCUMBER** the land for the benefit of the Grantee in fee simple with an annual rent charge in each year of a sum equivalent to twenty times the annual charges to be paid by the Grantors to the Grantee under clause 9 of this Memorandum in that year such amount to be paid in one annual sum on the last day of September 2003 and thereafter on the last day of September in every year thereafter (but subject to clauses 2 to 4 of this Memorandum).
2. If during the twelve months immediately preceding the 30th day of September 2003 and in each year thereafter during the continuance of this encumbrance for the preceding twelve months there has been no breach of any of the Grantor's covenants following or, in the case of the breach of any of the Grantor's covenants contained in clauses 6.1-6.13, 7.8, 7.12, 7.15, 7.16, 7.19 or 8.4, if any breach has been rectified by the Grantor within 10 working days of the issue of a written warning or, in the case of a breach of the Grantor's covenants contained in clauses 7.1-7.7, 7.9-7.11, 7.13, 7.14, 7.17, 7.18, 8.1-8.3, if any breach has been rectified by the Grantor immediately he receives a written warning and no further breaches of such covenants are committed by Grantor, then the annual rent charge payable on that day in each year shall be deemed to have been paid and the Grantors shall be entitled to an acknowledgement to that effect.
3. Section 104 of the Property Law Act 1952 applies save as modified by the proviso to clause 2 above to this Memorandum of Encumbrance and the Grantee has the rights of distress conferred by Section 150 of the Property Law Act 1952 as if the land were not under the Land Transfer Act, 1952; but otherwise and without prejudice to the Grantee's rights of action and common law as a rent chargee:

- (a) The Grantee shall be entitled to none of the powers and remedies given to Mortgagees and Encumbrancees by the Land Transfer Act 1952 and the Property Law Act 1952;
 - (b) No covenants on the part of the Grantors and the Grantors' successors in title are implied in this Memorandum other than the covenants for further assurance implied by Section 154 of the Land Transfer Act 1952.
4. This rent charge shall immediately determine and the Grantors be entitled to a discharge of this Memorandum of Encumbrance when the secured covenants are fully performed and no longer enforceable and any moneys that may have become owing under this security are fully paid. Until the Grantors are entitled to a discharge of this Memorandum of Encumbrance as set out above it is to remain registered against the Certificate of Title for the land for all time and the Grantee shall not be obliged to discharge this Memorandum of Encumbrance on any sale of the land by the Grantor or any successor in title.

5. **IN THIS ENCUMBRANCE**

"Property Owners' Levy" means the charge made and levied under clause 9.

"Terrace Downs Country Resort and Golf Club" means the land and buildings owned by the Grantee and utilised by the Terrace Downs Country Resort and Golf Club and any successor in title to it.

"Property" means the property utilised by the Grantee and or Terrace Downs Country Resort and Golf Club.

AND THAT the Grantors **COVENANT** with the Grantee (such covenants being called "the secured covenants") as follows":-

6. **THE GRANTOR WILL:-**

- 6.1 Build on the land only in accordance with Building Design Guidelines as adopted by the Grantee immediately prior to the Grantor commencing to build and with Plans, Specifications and Lot Plan showing the location of the proposed building approved in writing by the architect nominated by the Grantee prior to the commencement of the construction work involved and in the style and to the standard generally required by the Grantee for buildings so that the design shall be in keeping with the resorts Alpine Theme and design guidelines incorporating stone work, timber and steep pitched roofs.
- 6.2 Use in construction of the building exterior cladding and roofing material selected only from a range of materials and colours approved by the architect nominated by the Grantee to harmonise with the environment and compliment neighbouring properties unless such materials have been approved in writing by the architect.



- 6.3 Insure and keep insured all buildings and other improvements on the land to the replacement value thereof (including demolition costs and architects fees) against fire, flood, explosion, wind, storm, hail, snow, aircraft and other aerial devices dropped therefrom, impact, riot and civil commotion, malicious damage caused by burglars, and earthquake in excess of indemnity value, and will provide the Grantee on demand with a copy of the policy/ies and evidence that the current premium/s has/have been paid.
- 6.4 Forthwith apply insurance money received by him in respect of damage to any buildings or improvements in rebuilding or reinstating the said building or improvements so far as the rebuilding or reinstatement may lawfully be effected.
- 6.5 Permit the Grantee (or its agents or servants) at all reasonable hours and, in the case of the purpose set out in sub-clause (ii) except in the event of an emergency, on giving 24 hours notice, to enter into and upon the Grantors land for any of the following purposes:-
- (i) Viewing the condition of dwelling and buildings;
 - (ii) Maintaining, repairing and renewing (and at the cost of the Grantor where any such work becomes necessary through the omission, neglect or default of the Grantor) any pipes, conduits, wires, cables or ducts for the time being in, upon or passing through the land and used in connection with the enjoyment of any other land being part of Terrace Downs Country Resort and Golf Club;
 - (iii) Maintaining, repairing or renewing any Terrace Downs Country Resort and Golf Club property'
 - (iv) Ensuring that the rules contained in these covenants are being observed by the Grantor.

PROVIDED THAT permission for the Grantee to carry out any work pursuant to clauses 6.5(ii) or 6.5(iii) is conditional upon the Grantee carrying out such work as expeditiously as possible and on completion of any such work restoring the land and any dwelling or building thereon as nearly as possible to their former state and condition.

- 6.6 Comply in all respects with all acts, by-laws and regulations and planning ordinances for the time being in force in the area in which the land is situated in so far as they relate to the use, occupation or enjoyment of the land and the dwelling and buildings on it.
- 6.7 Forthwith and at all times carry out any work that may be ordered by any competent Local Authority or Public Body in respect of the land and the buildings on it to the satisfaction of the Authority or Board.
- 6.8 Ensure that either the Grantor or one or two other occupiers of the Grantor's dwelling join as an active member or members of the Terrace Downs Country



Resort and Golf Club and maintain such membership for as long as the Grantor is the owner of the land.

- 6.9 Duly and punctually pay all sums properly levied in respect of the Grantors land and the Terrace Downs Country Resort and Golf Club by the Grantee at such times and in such manner as the Grantee may from time to time direct.
- 6.10 Repair and maintain the Grantor's dwelling, and buildings and keeping them in good order repair and condition to the standard generally required by the Grantee for the Terrace Downs Country Resort and Golf Club.
- 6.11 Not plant any trees, shrubs or other flora on the land which results in unreasonable loss of sunlight for adjoining properties or, without the prior written consent of the Grantee, between the dwelling erected or to be erected on the land and the boundary of the land fronting on to the adjoining golf club land and will permit the Grantee and its employees and workmen at its cost to have full access to the land for planting, replacing, maintaining and removing such trees, shrubs and flora thereon as the Grantee in its sole discretion decides is necessary to stop any unreasonable loss of sunlight for adjoining properties or to harmonise with the adjoining golf club **PROVIDED THAT** in so planting and replacing such trees, shrubs and flora, the Grantee shall ensure that the Grantor's views of the Terrace Downs Country Resort and Golf Club and the surrounding countryside and access to sunlight shall not be unreasonably obstructed or impaired.
- 6.12 Not make any addition or structural alterations to the dwellings or buildings or fences or improvements to the land without the consent of the Grantee, which consent shall not be arbitrarily or unreasonably withheld.
- 6.13 To enable the Grantee to determine whether the Grantor is observing the provisions of clause 7.14, permit the Grantee to install on the land a meter to enable the Grantee to monitor the volume of water used by the Grantor and will further permit the Grantee and its employees and workmen to have reasonable access to the land at all reasonable times but in any event at not less than monthly intervals to take readings from the meter.
- 6.14 Within five working days of the Grantor unconditionally selling the Grantor's land, give notice of the sale to the Grantee together with full details of the purchaser's name and address.
- 6.15 Pay each cost and expenses (including all legal expenses on a solicitor and own client basis and taxes) sustained or incurred by the Grantee in connection with:
 - (a) the preparation, negotiation, entry into and registration of this Encumbrance and each other transaction required or contemplated by this Encumbrance;



- (b) each amendment to, or waiver in respect of, or any discharge of this Encumbrance or any transaction required or contemplated by this Encumbrance; and
- (c) the exercise of, or in protecting or enforcing its rights or attempting to do so, or otherwise in connection with its rights, under this Encumbrance or in respect of any transaction required or contemplated by this Encumbrance,

in each case on demand and on a full indemnity basis.

7. THE GRANTOR WILL NOT:-

- 7.1 Use or permit the Grantors dwelling to be used for any purpose which is illegal or may be injurious to the reputation of the Terrace Downs Country Resort and Golf Club.
- 7.2 Keep any animal or bird in or about the Grantors dwelling or at the Terrace Downs Country Resort and Golf Club without the prior approval in writing of the Grantee provided however that notwithstanding the giving of any such approval no such animal shall be allowed in or on any pool provided for the use of the Grantor and the owner or occupier of any other dwelling or land at the Terrace Downs Country Resort and Golf Club or in the immediate vicinity of such pool.
- 7.3 Use the Grantors dwelling or permit it to be used in such manner or for such purpose as to cause a nuisance or disturbance to the occupier of any other dwelling or land at the Terrace Downs Country Resort and Golf Club.
- 7.4 Obstruct or interfere with or disturb or trespass upon the rights of any other property owned at the Terrace Downs Country Resort and Golf Club or the occupier of any other dwelling there in the quiet and uninterrupted occupation and enjoyment of the premises so occupied by him or her.
- 7.5 Subdivide the land without the written consent of the Grantee.
- 7.6 Do or permit to be done anything whereby any obstruction restriction or hindrance may be caused to the roads, driveways and pathways or other parts of the Terrace Downs Country Resort and Golf Club or to persons lawfully using the same.
- 7.7 Hang or display on or from windows, balconies or other parts of the Grantors dwelling or buildings in such a way as to be visible from the Terrace Downs Country Resort and Golf Club property, laundry, towels, clothing, bedding or other articles and will not store or place any article or paint the external portion of any dwelling or building in such colour or manner which the Grantee resolves may constitute a detraction in any way from the general appearance of the Terrace Downs Country Resort and Golf Club or any part of it.



- 7.8 Exhibit or put on any part of the land including the outside of the dwelling or in any building any trade business or professional or advertising sign or any notice or nameboard or plate provided that the Grantee may permit a name plate of a uniform design and size in respect of the dwelling in common with that permitted for other dwellings at the Terrace Downs Country Resort and Golf Club.
- 7.9 Make undue noise in or about the Grantor's dwelling or the Terrace Downs Country Resort and Golf Club or play or have in use any musical instrument, stereo, radio, television, washing machine, clothes dryer or any other machine at any time of the day or night in such manner as to disturb, irritate or annoy any occupant in any other dwelling in the Terrace Downs Country Resort and Golf Club.
- 7.10 Hold any auction sale on the land or the Terrace Downs Country Resort and Golf Club property without the prior written approval of the Grantee.
- 7.11 Deposit or throw any rubbish, dirt, dust or other material anywhere except into bins or receptacles provided for this purpose and in accordance with the directions given by the Grantee from time to time and shall ensure that any refuse is securely wrapped and in the case of tins or other containers completely drained of liquids or adequately sealed.
- 7.12 Use or store in or upon the Grantors land or dwelling except with the approval in writing of the Grantee any inflammable chemical liquid or gas or other inflammable material other than a reasonable amount of liquids, gases or other materials used or intended to be used for domestic purposes or which are stored as fuel in the fuel tank of a motor vehicle or other internal combustion engine.
- 7.13 Use for any purpose other than that for which they were constructed any toilet or other water apparatus or put in such toilet or water apparatus any sweepings rubbish bags or other unsuitable substance.
- 7.14 Waste any water or fail to ensure that any water taps on the Grantors land or the adjoining Terrace Downs Country Resort and Golf Club property are turned off after use by the Grantor.
- 7.15 Repair, alter or make good any exterior part of the Grantor's dwelling, building or improvements on the land except with the prior written approval of the Grantee which may specify conditions under which the work shall be done.
- 7.16 Erect or permit or suffer to be erected or placed upon the Grantor's land any caravan, hut or shed of any kind either permanent or temporary, other than temporary workers sheds during construction of the dwelling which shall be removed on practical completion of the dwelling.
- 7.17 Store or leave any boat, trailer, boating equipment or the like on the land or the Terrace Downs Country Resort and Golf Club property except in any area



or areas that may from time to time be designated or permitted for that purpose by the Grantee or with the prior written consent of the Grantee.

- 7.18 Park any car other than in the garage(s) or spaces provided on the land or elsewhere at Terrace Downs Country Resort and Golf Club other than as permitted or directed by the Grantee.
- 7.19 Lease, rent or enter into any agreement for tenancy or the like occupancy of the land or any buildings or the dwelling on it to any person for a period in excess of three months without the prior consent of the Grantee and the Grantor will if required by the Grantee arrange all such leaseings, rentings, tenancies or occupancies for any period in excess of three months through the agency of the Grantee upon such basis as the Grantee may reasonably require to ensure security and observance of the Terrace Downs Country Resort and Golf Club rules at all times and will not allow any occupancy of the land without prior notice to the Grantee and details of the occupancy proposed. The Grantee shall be entitled to make reasonable charges for any commercial services the Grantee may provide in arranging tenancies for the Grantor.

8. THE GRANTOR AND ANY OTHER OCCUPIER OF THE DWELLING ON THE GRANTORS LAND SHALL

- 8.1 Take all reasonable steps to ensure that the Grantors invitees do not behave in manner likely to interfere with the quiet and uninterrupted occupation and enjoyment by the occupiers of any other dwelling or the Terrace Downs Country Resort and Golf Club or of any person lawfully using the Terrace Downs Country Resort and Golf Club property or any premises occupied by them.
- 8.2 Promptly notify the Grantee of any accident to or defect in the water pipes, gas pipes, electric installations, fixtures or the Grantors dwelling which comes to the Grantors knowledge and the Grantee shall have authority by its servants or agents in the circumstances having regard to the urgency involved to examine or make such repairs or renovations as they may deem necessary for the safety and preservation of the Grantors land and dwelling as often as necessary.
- 8.3 Ensure that any animal approved in writing pursuant to clause 7.2 is restrained at all times, remove any waste from such animal, and if any complaint is received by the Grantee from the owners or occupiers of any other dwelling, relating to noise made by any such animal, and in the Grantee's reasonable opinion such complaint is justified, remove the animal from the property.
- 8.4 Observe and perform all rules and regulations relating to the security of the Terrace Downs Country Resort and Golf Club property and its amenities as the Grantee may from time to time prescribe.

9. THE GRANTOR SHALL PAY PROPERTY OWNERS' LEVY:-

THE GRANTOR SHALL meet and pay to the Grantee the Grantors reasonable share and proportion of the Property Owners' Levy as levied annually by the Grantee



in the management of the Terrace Downs Country Resort and Golf Club property for the benefit of the Grantor and the Grantor's land in common with other property owners at the Terrace Downs Country Resort and Golf Club and for the following purposes:

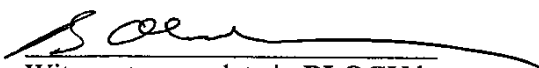
- 9.1 Garbage collection and disposal.
- 9.2 Security services and installation.
- 9.3 Administration.
- 9.4 Utilities.
- 9.5 Roading and footpath maintenance.
- 9.6 Gardens and ground maintenance.
- 9.7 Sports facilities contributions.

The amount of such levies for the Property Owner's Levy shall be determined as the Grantee deems reasonable and shall be due for payment to the Grantee on the 20th of the month following the posting of the account to the Grantor or otherwise as the Grantee may determine. The Grantee covenants and agrees to provide such amenities and services in accordance with the Terrace Downs Country Resort and Golf Club requirements and the reasonable requirements of the Grantor.

THE GRANTOR SHALL also pay to the Grantee on demand an excess water levy at such rate as the Grantee deems reasonable for all water used by the Grantor on the land in excess of 25% of the average water used by the owners or occupiers of all other properties of the Terrace Downs Country Resort and Golf Club during each 12 month period ending on 30 September in each year.

Dated this 28th day of May 2003

SIGNED by
JACK ROBERT MCDONALD and
LILLIAN SHEILA MCDONALD
as the Grantors in the presence of:



Witness to complete in **BLOCK** letters
(unless typewritten or legibly stamped)

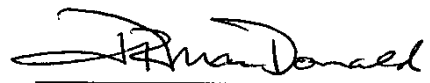
Witness name

Occupation

Address

BRETT RODNEY BRAMWELL ABRAHAM
Solicitor
PAPATOETOE







Correct for the purposes of the Land Transfer Act

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke.

Solicitor for Grantee

Handwritten initials or a signature in the bottom right corner, possibly reading 'H' or 'K' with a diagonal stroke.