



View Instrument Details

Instrument No. 8349562.1
Status Registered
Date & Time Lodged 26 Nov 2009 10:15
Lodged By ODonnell, Kerry Amanda
Instrument Type Easement Instrument

Toitu te
Land whenua
Information
New Zealand



Affected Computer Registers Land District

277414	Otago
308243	Otago
326396	Otago
326408	Otago
435176	Otago
455237	Otago

Annexure Schedule: Contains 14 Pages.

Grantor Certifications

I certify that I have the authority to act for the Grantor and that the party has the legal capacity to authorise me to lodge this instrument	<input checked="" type="checkbox"/>
I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument	<input checked="" type="checkbox"/>
I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply	<input checked="" type="checkbox"/>
I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period	<input checked="" type="checkbox"/>
I certify that the Mortgagee under Mortgage 7070749.3 has consented to this transaction and I hold that consent	<input checked="" type="checkbox"/>
I certify that the Mortgagee under Mortgage 7070749.4 has consented to this transaction and I hold that consent	<input checked="" type="checkbox"/>
I certify that the Mortgagee under Mortgage 7070749.5 has consented to this transaction and I hold that consent	<input checked="" type="checkbox"/>
I certify that the Mortgagee under Mortgage 8280553.2 has consented to this transaction and I hold that consent	<input checked="" type="checkbox"/>

Signature

Signed by Kerry Amanda ODonnell as Grantor Representative on 26/11/2009 10:09 AM

Grantee Certifications

I certify that I have the authority to act for the Grantee and that the party has the legal capacity to authorise me to lodge this instrument	<input checked="" type="checkbox"/>
I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument	<input checked="" type="checkbox"/>
I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply	<input checked="" type="checkbox"/>
I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period	<input checked="" type="checkbox"/>

Signature

Signed by Kerry Amanda ODonnell as Grantee Representative on 26/11/2009 10:09 AM

***** End of Report *****

Form B**Easement instrument to grant easement or *profit à prendre*, or create land covenant**

(Sections 90A and 90F Land Transfer Act 1952)

Grantor

Arith Holdings Limited

Grantee

Arith Holdings Limited and Jacks Point Residents and Owners Association Incorporated and Jacks Point Land Holdings Limited

Grant of Easement or *Profit à prendre* or Creation of Covenant

The **Grantor** being the registered proprietor of the servient tenement(s) set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A*Continue in additional Annexure Schedule, if required*

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Continued on Annexure Schedule 3	Continued on Annexure Schedule 3	Continued on Annexure Schedule 3	Continued on Annexure Schedule 3

Form B**Easement instrument to grant easement or *profit à prendre*, or create land covenant****Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)**

Delete phrases in [] and insert memorandum number as required; continue in additional Annexure Schedule, if required

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby ~~[varied]~~ ~~[negatived]~~ ~~[added to]~~ or ~~[substituted]~~ by:

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]~~

~~[the provisions set out in Annexure Schedule _____]~~

Covenant provisions

Delete phrases in [] and insert Memorandum number as require; continue in additional Annexure Schedule, if required

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]~~

~~[Annexure Schedule 2]~~

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Annexure Schedule 2**CONTINUATION OF COVENANT PROVISIONS****Background**

- A. The Servient Tenement is being developed as part of Jacks Point.
- B. It is intended that the Servient Tenement be subject to a general scheme applicable to and for the benefit of the Dominant Tenement to ensure that Jacks Point is developed and administered in a co-ordinated and harmonious manner and to conserve and enhance the character, value and amenity values of Jacks Point ("**Scheme**").
- C. The Society has been established to provide for and administer the Scheme for the benefit of the Servient Tenement and the Dominant Tenement as implemented through the Constitution and the Bylaws.
- D. It is intended that this Instrument shall be and remain registered against the titles to each of the Servient Tenement and the Dominant Tenement to give effect to the Scheme so that:
 - a. owners or occupiers for the time being of the Servient Tenement shall be bound by the provisions of this Instrument;
 - b. owners and occupiers for the time being of any of the Dominant Tenement can enforce the observance of the provisions of this Instrument by the owners or occupiers for the time being of any of the Servient Tenement in equity or otherwise; and
 - c. the obligations and covenants of the Grantor under this Instrument are for the benefit of the Grantee and also for the benefit of the Society (in accordance with the Contracts Privity Act 1982).

1 Interpretation

- 1.1 In this Instrument unless the context otherwise requires:

"**Allotment**" means:

- a. the Servient Tenement; and
- b. any part of the Servient Tenement for which a separate title (including without limitation a unit title or a certificate of title for an estate in fee simple) has issued as a result of the subdivision of the Servient Tenement or otherwise.

"**Building**" means any structure on the Servient Tenement other than:

- a. a fence or wall less than one metre in height above Ground Level;

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- b. any other structure less than five square metres in area and less than one metre in height above Ground Level.

"Bylaws" means any bylaws promulgated by the Society in accordance with the Constitution from time to time.

"Constitution" means the constitution of the Society from time to time which is its rules for the purposes of the Incorporated Societies Act 1908.

"Council" means the Queenstown Lakes District Council or its successor.

"Covenants" means the covenants set out in this Instrument.

"Design Guidelines" means the design guidelines that form part of the Bylaws.

"Design Review Board" means the body established pursuant to the design review procedure detailed in the Development Controls.

"Developed Property" means any part of the Servient Tenement that falls within the definition of "Developed Property" under the Constitution.

"Developer" has the meaning given to it under the Constitution.

"Development Controls" means the development controls dated July 2003 as approved by the Council and as may be amended from time to time by the Society with the approval of the Council and pursuant to any Outline Development Plan.

"District Plan" means the Queenstown-Lakes District Plan.

"Dominant Tenement" means in relation to any Covenant the land described in Annexure Schedule 3 as the dominant tenement which has the benefit of that Covenant.

"Golf Course" means any golf course constructed on the Servient Tenement within the Jacks Point Zone.

"Grantee" means the registered proprietors of the Dominant Tenement from time to time.

"Grantor" means the registered proprietors of the Servient Tenement from time to time.

"Ground Level" means:

- a. where an instrument is registered against the certificate of title for an Allotment which includes a plan recording the ground level applicable to that Allotment, the level shown on that plan which is deemed to:
 - i. be the finished ground level of that Allotment at the date of the deposited plan which creates a separate certificate of title for that Allotment; and

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- a. slope evenly between the contour lines shown on the plan recording the ground level applicable to that Allotment.
- b. where there is no instrument registered against the certificate of title for an Allotment as described in (a) above, the natural ground level of that Allotment as at 10 October 1995 (being "ground level") as determined pursuant to the District Plan.

"Instrument" means the front page of this Instrument, Annexure Schedule 1, Annexure Schedule 2 and Annexure Schedule 3.

"Jacks Point" means the integrated residential and commercial development undertaken on Jacks Point Land within the Jacks Point Zone including but not limited to recreational facilities, hotel/lodge, dwellings, commercial development, roading, lakes, open spaces, walkways, car parking, Golf Course, clubhouse and all other associated infrastructure.

"Jacks Point Land" means the land which was comprised or is comprised in Lot 1 DP 337993 Certificate of Title 156364 and Lot 2 and Lot 5 DP 337993 and Lot 5 DP 26261 Certificate of Title 156347 (but excluding Lot 13 DP 364700) and Henley Downs land which was comprised in historic Certificates of Title 147423 and 147424.

"Jacks Point Zone" means the residential and commercial development zone called the Jacks Point Zone established by the Queenstown Lakes District Council as a resort zone under Part 12 of the District Plan.

"Lodge any Submission" means (without limitation) personally or through any agent or servant to directly or indirectly lodge or support in any way any objection or submission to any Planning Proposal and includes (without limitation) taking any part in a planning hearing, appeal or reference arising in respect of a Planning Proposal whether as a party or otherwise.

"Member" means a member of the Society.

"Outline Development Plan" means the anticipated plan or plans of that name in respect of the Servient Tenement and subject to further amendment as approved by the Council from time to time.

"Planning Proposal" includes (without limitation) any application for resource consent and/or plan change and/or variation of any nature under or to the relevant District Plan or proposed District Plan or the Jacks Point Zone.

"Related Entity" in relation to a person means:

- a. any holding company of the person; or
- b. any person that is an associated person (as defined by the Securities Act 1978) or subsidiary of that holding company or of the person.

"Scheme" means as defined in Background Clause B above.

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"Servient Tenement" means in relation to any Covenant the land described in Annexure Schedule 3 as the servient tenement which is subject to that Covenant.

"Society" means Jacks Point Residents & Owners Association Incorporated.

1.2 For the avoidance of doubt:

- a. Words importing the singular number include the plural and vice versa.
- b. A covenant to do something is also a covenant to permit or cause that thing to be done and a covenant not to do something is also a covenant not to permit or cause that thing to be done.
- c. This Instrument binds and benefits the parties and their heirs, executors, successors and assigns in perpetuity and also any lessee or occupier of the Servient Tenement and the Dominant Tenement.

2 **General Covenants**

2.1 The Grantor covenants and agrees:

- a. to observe and perform all the Covenants at all times; and
- b. that the Covenants shall run with and bind the Servient Tenement for the benefit of the Dominant Tenement.

2.2 The Grantor covenants and agrees:

- a. to pay the Grantee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Grantee's rights, remedies and powers under this Instrument;
- b. to indemnify the Grantee against all claims and proceedings arising out of a breach by the Grantor of any of its obligations set out in this Instrument;
- c. to pay the Grantee interest on all amounts due by the Grantor to the Grantee at the Default Interest Rate as defined in the Constitution (or if there is then no such Default Interest Rate defined in the Constitution, at the rate of 12% per annum) from the date of demand until paid.

3 **Covenants relating to the Society**

3.1 The Grantor covenants with the Grantee:

a. *Membership of Society*

On becoming the registered proprietor of a Developed Property:

- i. to join as a Member;
- ii. to remain a Member while the Grantor continues to be the registered proprietor of that Developed Property; and

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- iii to fulfil and to continue to fulfil the obligations of a Member as set out in the Constitution and the Bylaws.

- b *Levies*

Without limiting the Grantor's obligations under clause 3.1a, to pay the Society all levies and any other moneys which shall be fixed, established and demanded from time to time by the Society in accordance with the Constitution and the Bylaws.

- c *Late Charges*

To pay any late charges demanded by the Society (including, without limitation, default interest at such rate as the Society may designate from time to time) in respect of any money owed by the Grantor to the Society which is in arrears.

- d *Costs*

To pay the Society's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Society's rights, remedies and powers under this Instrument and/or the Constitution and/or the Bylaws.

- e *Indemnity*

To indemnify the Society against all claims and proceedings arising out of a breach by the Grantor of any of its obligations set out in the Constitution and/or this Instrument and/or the Bylaws.

- f *Sale of Developed Property*

Not to transfer or otherwise dispose of the Grantor's interest in a Developed Property otherwise than in accordance with clause 8.

4 **Covenants relating to Buildings**

- 4.1 Without limiting the Grantor's obligations under clause 3.1a, the Grantor covenants with the Grantee:

- a *Development Controls*

To comply with the Development Controls applicable to the Grantor's Allotment.

- b *Design Guidelines*

To comply with the Design Guidelines applicable to the Grantor's Allotment.

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To comply with the Design Review Board process as provided for in the Development Controls or as otherwise approved by the Council and the Society.

d. *Building Approval*

i. Not to commence construction of any proposed Building on the Grantor's Allotment without having first obtained the written consent of the Design Review Board to the plans and specifications and exterior design and appearance of the Grantor's proposed Building.

ii. Not to make any changes to the plans and specifications of the exterior design or appearance of any Building on the Grantor's Allotment once approval has been obtained from the Design Review Board.

e. *Future Alterations*

Not to make additions or alterations to any Building on the Grantor's Allotment without the prior written consent of the Design Review Board.

f. *Compliance with the Building Act 2004*

Not to occupy any Building on the Grantor's Allotment without a current code compliance certificate issued under the Building Act 2004 (or any subsequent replacement legislation).

5. *Covenants relating to Open Fires*

5.1 The Grantor covenants with the Grantee in respect of those parts of the Servient Tenement identified as Residential R(HD) in the Jacks Point Zone:

a. Not to allow or install any open, solid fuel fires within any residential building or on any residential lot other than:

i. any internal or external barbecue fire being operated for cooking purposes;

ii. any low-emission solid fuel burner emitting no more than 1.5 gm of particulate per kilogram of fuel burnt and with 65% fitting efficiency when measured and assessed in accordance with NZS:4012:1999 and 4013:1999 or equivalent replacement standard.

6. *Covenants relating to Certain Protected Areas*

6.1 The Grantor covenants with the Grantee in respect of any land included within the Servient Tenement and known as the "Lakeshore Landscape Protection Area", "Peninsula Hill Landscape Protection Area" and "Highway Landscape Protection Area" in the Jacks Point Zone:

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- a. Not to carry out or allow to be carried out any commercial forestry activity.
- b. Not to erect or allow to be erected any Building other than:
 - i. Buildings erected for a temporary purpose for a maximum of one year (such as a filming tower).
 - ii. Buildings related to service infrastructure (such as water holding tanks).
 - iii. Farm buildings (which exclude any buildings used for residential purposes).

7 Covenants in Relation to Future Development

7.1 The Grantor covenants and agrees with the Grantee that the Grantor will not at any time Lodge any Submission against any Planning Proposal:

- a. By Dickson Stewart Jardine and Jillian Frances Jardine (or their successors in title) which is not materially inconsistent with the provisions of the Jacks Point Zone applicable to land contained in (or formerly contained in) Certificates of Title 18D/1020, 2679 and 18D/1023.
- b. In respect of the land formerly contained in Certificates of Title OT147423 and OT147424:
 - i. by Arith Holdings Limited and its successors in title for a visitor accommodation lodge on that land situated within the Tablelands area as identified in the Jacks Point Zone Figure 2, Henley Downs Structure Plan (as contained in the District Plan), provided that such lodge (or any part of it) is not located in the area between the southern boundary of Henley Downs Lands (as shown on the Jacks Point Zone Figure 2, Henley Downs Structure Plan (as contained in the District Plan)) and a line parallel to and 700 metres north of that boundary;
 - ii. by Arith Holdings Limited and its successors in title to subdivide, develop or use any part of that land identified as Village (V/HD) in the Jacks Point Zone for commercial, visitor accommodation and/or residential purposes; and
 - iii. to subdivide, develop or use any part of that land (not being land referred to in 7.1b.ii. above) for any commercial, residential, rural, recreational or other activity or development provided that the benefit of this subclause iii. shall be limited to:
 - A. Mountain Land Trust Limited or any nominee of Mountain Land Trust Limited (nominated as such in writing); and/or
 - B. Arith Holdings Limited or any nominee of Arith Holdings Limited (nominated as such in writing); and/or

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- C. Henley Downs Farm Limited or any nominee of Henley Downs Farm Limited (nominated as such in writing).
- c. By Mountain Land Trust Limited or any nominee of Mountain Land Trust Limited (nominated as such in writing) for any development or activity on the land formerly contained in Lot 1 DP 337993 Certificate of Title 156346 and Lot 2 and Lot 5 DP 337993 and Lot 5 DP 26261 Certificate of Title 156347 (Otago Registry) but excluding Lot 13 DP364700.
- 7.2 The Grantor and Grantee agree that the Grantor's obligations and covenants under clause 7.1 are for the benefit of:
- a. the persons named in or nominated under that clause; and
 - b. (where so provided) their successors in titles to the land referred to in clause 7.1 (in accordance with the Contracts Privity Act 1982).
- 7.3 The Grantor hereby gives written approval for the purposes of the Resource Management Act 1991 to any Planning Proposal referred to in clause 7.1. The Grantor shall provide any necessary further written approval to any such Planning Proposal if requested by any of the persons named in or nominated under clause 7.1 (or where so provided under clause 7, their successors in title) as having the benefit of that clause and in the event of failing to do so those persons shall be entitled to provide a copy of this clause 7 to the relevant consent authority as evidence that such written approval is given.
- 8. Transfer of Developed Properties**
- 8.1 This Instrument binds the Grantor's heirs, executors, administrators, successors and assigns for the benefit of the Grantee and the Grantee's heirs, executors, administrators, successors and assigns.
- 8.2 The Grantor must obtain the Society's prior written consent to any transfer by the Grantor ("**Vendor**") of its interest in a Developed Property ("**Transfer**"). Notwithstanding anything else in this Instrument, the Society must consent to a Transfer if:
- a. the Vendor has performed its obligations under this clause and as a Member as set out in the Constitution; and
 - b. the purchaser ("**Purchaser**") of the relevant Developed Property has met any requirements set out in the Constitution.
- 8.3 Any Transfer will be on the following terms:
- a. The Vendor shall remain liable for sums owed to the Society by that Vendor.
 - b. Without limitation, the Vendor shall continue to be liable as a primary and principal debtor for all indebtedness of the Purchaser to the Society until such time as:

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- i. the Transfer to the Purchaser is registered at Land Information New Zealand;
 - ii. the Vendor has performed its obligations under this clause and as a Member as set out in the Constitution; and
 - iii. the Purchaser has met any requirements set out in the Constitution.
- c. The Purchaser shall be liable jointly and severally with the Vendor for all indebtedness of the Vendor to the Society in respect of that Developed Property purchased and a statement of indebtedness issued by the Society shall (in the absence of manifest error) be conclusive as to the sum of such indebtedness.

9 Covenants relating to the Golf Course

9.1 For so long as the Grantor is the registered proprietor of the Golf Course, the Grantor covenants with the Grantee in respect of the Golf Course that:

- a. The Golf Course shall be constructed and maintained in accordance with international integrated pest management procedures applicable to golf courses.
- b. The Golf Course shall be constructed and maintained as a "target" golf course which minimises mown areas of fairway and green and maximises retention of natural character and landscape.
- c. The Golf Course shall be constructed and maintained to a "best practice" standard to minimise application of chemical fertilisers, pesticides and herbicides and to maximise natural and/or organic procedures as far as is reasonably and practically possible with respect to local climatic and natural conditions.

10 Vesting of Roads and Reserves

10.1 The Grantee consents to the deposit or registration of any survey plan ("Survey Plan") by the Grantor in respect of the Servient Tenement which has the effect of vesting all or any part of the Servient Tenement as any road ("Road") or reserve ("Reserve") in any local authority, territorial authority or the Crown and agrees that the covenants in this instrument shall cease to apply in respect of the Servient Tenement within such Road or Reserve upon the survey approval of the Survey Plan by LINZ and this clause will be deemed to be the consent of the Grantee to the deposit or registration of the Survey Plan.

10.2 The consent of any registered proprietor of an encumbrance or interest registered against the Dominant Tenement registered after the date of registration of this instrument ("Encumbrancees") will take its interest in the Dominant Tenement subject to the terms of this instrument and in particular without limitation to this clause and will be deemed to have given its consent to the deposit or registration of the Survey Plan.

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10.3 If the Grantor elects and/or the consent of all or any of the Encumbrancees is required to register or deposit the Survey Plan then the Grantee will in a timely manner:

- a execute any required consent or covenant surrender documents; and/or
- b use reasonable endeavours to provide all required consents from the Encumbrancees,

as are necessary to deposit or register the Survey Plan. The Grantor and Grantee will meet their own costs associated with the above.

10.4 The Grantee irrevocably appoints the Grantor to be its lawfully authorised attorney to:

- a execute any required consent or easement surrender document;
- b use reasonable endeavours to obtain all required Encumbrancees' consent registered over the Dominant Tenement;

as are necessary to deposit or register the Survey Plan if in the sole opinion of the Grantor the Grantee is not complying with clause 10.3 in a timely manner. No person dealing with the Grantor as the attorney in its capacity under the clause needs to enquire if the Grantor is validly exercising its power as attorney under this clause.

10.5 Each party will meet their own costs associated with this clause.

11 Enforcement by the Society

11.1 The Grantor and the Grantee agree that:

- a The Grantor's obligations and covenants under this Instrument are for the benefit of the Grantee and also for the benefit of the Society (in accordance with the Contracts Privity Act 1982).
- b The Society may facilitate the observance of this Instrument by the Grantor by taking all necessary steps to enforce its observance on behalf of the Grantee. Where the Grantee is the registered proprietor of a Developed Property, that Grantee irrevocably appoints the Society to be its attorney and in its name and at its expense to do any thing which the Society considers necessary or desirable to enforce or attempt to enforce the Grantee's rights or powers under this Instrument.
- c Without limiting the appointment made in clause 11.1b that appointment may specifically extend to the Society issuing proceedings in the name of the Grantee, provided that in doing so the Society indemnifies the Grantee against all costs arising from or incidental to those proceedings.

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12 Notice

12.1 Any notice required to be served on any party shall be in writing and served in accordance with the Constitution, or if the Constitution is silent as to service requirements as the law otherwise requires in accordance with the Property Law Act 2007.

13 Severability

13.1 If any of the provisions of this Instrument is judged invalid, unlawful or unenforceable for any reason whatsoever by a Court of competent jurisdiction, such invalidity, unenforceability or illegality will not affect the operation, construction or interpretation of any other provision of this Instrument to the intent that the invalid, unenforceable or illegal provisions will be treated for all purposes as severed from this Instrument.

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Annexure Schedule 3**Continuation of Schedule A**

Purpose (nature and extent) of easement	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Land Covenants (as set out in Annexure Schedule 2)	Lot 35 DP381477 (CT 326408)	Lot 35 DP381477 (CT 326408)	<p>Lots 1-2, 4-5, 11 DP 368273 (CT 277414)</p> <p>Lots 105-108 DP381477 (CT326396)</p> <p>Lots 20, 22, 25 & 28 DP364700 (CT 435176) part</p> <p>Lot 201 DP414673, Lot 200 DP381477, Lot 2 DP19857 and Lot 8-9 DP398514 (CT 455237)</p> <p>Lot 30 DP376679 (CT 308243)</p>