

# Jack's Point Constitution

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jack's point®

QUEENSTOWN | NEW ZEALAND

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**CONSTITUTION OF JACKS POINT  
RESIDENTS & OWNERS ASSOCIATION  
INCORPORATED**

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## INTRODUCTION

### 1. NAME

- 1.1 **Name of Society:** The name of the Society shall be Jacks Point Residents & Owners Association Incorporated.

### 2. DEFINITIONS AND INTERPRETATION

- 2.1 **Definitions:** In these rules, unless the context otherwise requires:

"**Act**" means the Incorporated Societies Act 1908.

"**Authority**" means any local body government or other authority having jurisdiction or authority over or in respect of any part of Jacks Point or its use.

"**Bank**" means a bank registered under the Reserve Bank of New Zealand Act 1989.

"**Bylaws**" means bylaws made by the Society from time to time under rule 10.1.

"**Capital Improvements**" means structural repairs to, and the replacement or renewal of, the Communal Facilities; or the funding of the Water Company by way of loans and/or capital for such purposes.

"**Commercial Member**" means a Member whose Developed Property is designated to be used for commercial purposes at Jacks Point by an instrument on the Owner's Title or is reasonably determined by the Society to be, or as being, used primarily for commercial purposes at Jacks Point.

"**Committee**" means the committee members from time to time elected to manage the affairs of the Society pursuant to this Constitution.

"**Communal Facilities**" means all land, lakes, wetlands, natural features, buildings, plant, equipment, facilities, Utilities (including, for clarity, any interest in the Water Company) and other amenities including any private roads, private ways, trails and walkways (whether public or private) within Jacks Point owned (whether directly or indirectly), leased, licensed, maintained or otherwise held, levied or operated in whole or in part by the Society from time to time including those facilities from time to time transferred to the Society by the Developer, by any other company which is directly or indirectly controlled by the Developer, or by any company of which the Developer is a subsidiary (whether directly or indirectly).

"**Constitution**" means this Constitution as amended or added to, including all schedules to this Constitution, but excluding the Appendices.

"**Controlling Member**" means Jacks Point Management Limited, or any assignee and/or successor in title whether in whole or in part or parts of Jacks Point, that continues the promotion and carrying out of such development and that Jacks Point Management Limited nominates as the Controlling Member.

**"Covenant"** has the meaning set out in rule 4.2.

**"Default Interest Rate"** means five per cent above the 90 day bill rate disclosed on Reuters screen page BKBM (or its successor's page) at 11.00am on the due date for payment.

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

**"Developed Property"** means a property within Jacks Point:

- a. for which a separate title (including, without limitation, a unit title or a certificate of title for an estate in fee simple) has issued; and
- b. which either:
  - i. is a bare lot available for immediate development as:
    - (1) a residential property;
    - (2) a commercial property (including commercial accommodation); or
    - (3) any other use permitted within Jacks Point;

including, in each case, a lot on which development/construction has commenced; or
  - ii. has been fully developed as:
    - (1) a residential property;
    - (2) a commercial property (including commercial accommodation); or
    - (3) any other use permitted within Jacks Point; but
- c. does not include:
  - i. a Golf Course property unless the Developer notifies the Society that such a property is for the purposes of this definition to be a Developed Property;
  - ii. any lot that is capable of further subdivision and that is not in any way restricted by a registered land covenant or encumbrance from subdivision of any sort unless the then registered proprietor of the lot, Golf Course Operator and the Society have entered into an irrevocable deed ("**Property Deed**") confirming that such lot is for the purposes of this definition to be a Developed Property under this Constitution. From the date provided in the Property Deed, the lot and any property contained in a separate title resulting from a subdivision of the lot (including, without limitation, a unit title or a certificate of

title for an estate in fee simple but excluding any land owned by the Society as a Communal Facility) will be a Developed Property for the purposes of this definition. The Property Deed may include a requirement for a covenant to be registered against the certificate of title for the lot to record the contents of the Property Deed.

**"Developer"** means Jacks Point Developments Limited promoting or carrying out the development (including maintenance) of Jacks Point, including any:

- a. Related Entity of Jacks Point Developments Limited that undertakes any part of the development or maintenance of Jacks Point; or
- b. Assignee and/or successor in title whether in whole or in part or parts of Jacks Point, that continues the promotion and carrying out of such development,

which is nominated as such in writing by Jacks Point Developments Limited

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

**"Exemption Notice"** means Securities Act (Jacks Point Development) Exemption Notice 2006 SR2006/20.

**"Expense Year"** means each 12 month period commencing on 1 July and ending on 30 June, or such other 12 month period as the Committee from time to time sets.

**"Golf Club"** means Jacks Point Golf Club Incorporated or any other golf club appointed under a Golf Course Encumbrance.

**"Golf Course"** means the Jacks Point golf course, any clubhouse and ancillary facilities, if any, including driving range and practise areas.

**"Golf Course Deed"** means the deed to be entered into by the Society to be called "Deed – Sale of Golf Assets and Neighbouring Developers" which for information and identification purposes is annexed to this Constitution as Appendix 1, or any replacement of that deed pursuant to its terms.

**"Golf Course Encumbrances"** means the encumbrances to be granted to the Society in respect of the Golf Course which for information and identification purposes are annexed to this Constitution as Appendix 2.

**"Golf Course Expenses"** means:

- c. while any levy which the Society has agreed to pay the owner of the Golf Course or the Golf Course Operator is payable under the Golf Course Encumbrances, that levy; but
- d. if the Golf Course is a Communal Facility, then all payments, costs and expenses properly or reasonably assessed or assessable,

paid or payable or otherwise incurred in respect of all direct costs of repairs, maintenance, renovations and landscaping of the Golf Course, and administration of the Golf Course and its business.

**"Golf Course Interest"** includes:

- a. any estate or interest in the land upon which the Golf Course is located;
- b. any shares in a company that is the registered proprietor of any estate or interest in the land upon which the Golf Course is located;
- c. any shares in a company that owns or operates the business of the Golf Course (in whole or in part);
- d. the business of the Golf Course (in whole or in part);
- e. any assets of the business of the Golf Course (in whole or in part).

**Golf Course Operator** means Jacks Point Golf Course Limited, its successors and any permitted assigns under the terms of the Golf Course Deed.

**"GST"** means goods and services tax charged under the Goods and Services Tax Act 1985.

**"Initial Price"** in respect of any Developed Property, means:

- a. for a Developed Property which has only been sold by the Developer to its first Owner, the aggregate of the price (inclusive of GST) at which the Developed Property is sold and the costs of construction (inclusive of GST) on that Developed Property;
- b. for a Developed Property which has been further on sold from an Owner (not being the Developer) to another Owner:
  - i. the aggregate of the latest sale price (inclusive of GST) and the costs of construction on that Developed Property (if at the time of sale it was a bare section) (inclusive of GST); or at the Committee's sole option
  - ii. the value provided by a valuation obtained from Quotable Value Limited (New Zealand) of that Developed Property.

**"Invitee"** means any invitee or staff of or any visitor to an Owner or Occupier.

**"Jacks Point"** means the integrated, residential and commercial development undertaken by the Developer and its associated and/or subsidiary companies within the Jacks Point Zone including but not limited to the recreational facilities, hotel/lodge, dwellings, commercial development, roading, lakes, open spaces, walkways, car parking, golf course, club house and all other associated infrastructure. At the Developer's option, exercisable by the Developer at any time on notice to

the chairperson of the Committee, it shall in addition include other development undertaken within Jacks Point Zone which is developed by an entity other than the Developer.

**"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.

**"Lot 14"** means Lot 14 DP 364700 being all the land contained in certificate of title 262754.

**"Manager"** means the manager or management company/ies of the Society (if any), appointed under rule 13.1. Where no manager/s have been appointed, any reference to the "Manager" in this Constitution shall be deemed to be, where appropriate, a reference to the Committee, subject to rule 12.10.

**"Member"** means each person who shall from time to time be a member of the Society under rules 4.1 to 4.10.

**"Members' Interest Group"** has the meaning set out in rule 16.5.

**"Member's Proportion"** means, in relation to each Developed Property, the proportion that :

- a. the Section Value of such Developed Property bears to the Total Value; or
- b. the land area of such Developed Property bears to the sum total of the land areas of all Developed Properties; or
- c. the land area of such Developed Property bears to the sum total of the land areas for all Developed Properties where the Committee bands the land area of that particular Developed Property with other Developed Properties of similar area, and the total land area is calculated using an appropriate average for such "bandings".

**"Membership"** means a membership of the Society.

**"Occupier"** means any person occupying any Developed Property under any lease, licence or other occupancy right and shall include the Owner and all members of an Owner's family.

**"Operating Expenses"** means the total sum of all rates, taxes, payments, costs, liabilities and expenses of the Society paid or payable, properly or reasonably assessed or assessable, or otherwise incurred:

- a. in respect of the Communal Facilities and/or the Golf Course;
- b. in the operation of the Society (including, without limitation, the management fees and expenses, as referred to in rule 13.1);
- c. in the administration and enforcement of a scheme for the provision of services, benefits, facilities and Utilities to Developed Properties; and



- d. as required by any resource consent granted in respect of Jacks Point to be undertaken by the Society in respect of the maintenance and upkeep of Jacks Point;

and will include, but not be limited to the following:

- e. all rates levied by any Authority which are at any time levied upon the Communal Facilities or upon the Society in respect of the Society's interest in the Communal Facilities or are paid or payable by the Society as a result of the receipt of any money under this Constitution;
- f. all premiums and costs payable by the Society in respect of all policies of insurance effected on the Communal Facilities for sums insured up to their full replacement value or, at the option of the Society, to their full value on an indemnity covered basis against loss, damage or destruction by such risks as the Society may deem necessary or desirable, including consequential loss and public risk liability;
- g. the cost of operating, supplying, servicing, maintaining, inspecting, testing, and repairing all services and Utilities from time to time provided to Owners or generally at Jacks Point, including (without limitation) watering equipment and systems, any water features, communications, equipment and systems (including without limitation, telephone, cable television and satellite television equipment and systems), fire fighting and protection equipment and systems, emergency or other alarm services or systems, security and monitoring services and systems, electrical and plumbing services, waste and rubbish compression and disposal systems and the plant and equipment required for any of such or other services and systems;
- h. all charges for lighting, gas and power, and all other forms of energy incurred by the Society in connection with the Communal Facilities, and other services or requirements furnished or supplied to the Communal Facilities for the general benefit or purposes of the Communal Facilities, including maintenance costs of lighting and power systems and equipment;
- i. all sanitation costs in respect of Jacks Point, including the costs of the removal and disposal of all waste and garbage from all properties contained in Jacks Point;
- j. all costs for the provision, at intervals deemed appropriate by the Society, of security services to the Communal Facilities or Jacks Point;
- k. all costs of repairs, maintenance, renovations and landscaping of the Communal Facilities. For clarity, and without limitation, this includes Communal Facilities that are not owned by the Society, but that the Society is obliged to or agrees to maintain from time to time;

- l. all Golf Course Expenses;
- m. all costs and expenditure (including the cost of attaining a necessary report) payable, incurred or suffered by the Society in complying with the Society's obligations under the Building Act 2004;
- n. any other items of expense which the Society, acting reasonably, considers necessary to incur for the good management and appearance of the Communal Facilities;
- o. all costs of managing, controlling, and administering the Communal Facilities, including such costs that consist of wages, allowances or other emoluments paid to persons employed by or contracted to the Society;
- p. all wages, allowances and other emoluments and any other payments by way of compensation including redundancy compensation paid or allowed to employees engaged for any of the foregoing purposes together with all taxes and levies thereon;
- q. Water Company Costs;

but will exclude for the purposes of calculating the Member's Proportion in an Expense Year:

- r. costs of any Capital Improvements; and
- s. any operating costs which are recovered pursuant to the levies set under rules 6.2a, 6.2b, 6.2d and/or 6.2e in that Expense Year.

**"Owner"** means each person registered as a proprietor (whether individually or with others) of a Developed Property.

**"Owner's Title"** means the certificate of title issued for an Owner's Developed Property.

**"Quarter"** means, respectively, the period of three calendar months between 1 July and 30 September, 1 October and 31 December, 1 January and 31 March or 1 April and 30 June in any year, and **"Quarterly"** shall have an equivalent meaning where the context permits.

**"Rating Valuation"** means the capital value of any Developed Property as it appears on the district valuation roll pursuant to the Rating Valuations Act 1998 or any successor to the district valuation roll.

**"Registrar"** means the person holding office from time to time as Registrar of Incorporated Societies in terms of the Act.

**"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.

**"Rental Agency"** means such entity as is established or appointed by the Developer to control and administer the letting of Developed Properties for residential accommodation purposes and if no such entity has been established by the Developer, means the Society or any such entity established by the Society for that purpose.

**"Residential Member"** means a Member whose Developed Property is designated to be used for residential purposes at Jacks Point by an instrument on the Owner's Title or is reasonably determined by the Society to be, or as being, used primarily for residential purposes at Jacks Point.

**"Section Value"** means, in respect of each Developed Property:

- a. the Rating Valuation; or
- b. if the Rating Valuation is not available, or if the Rating Valuation does not take account of construction on that Developed Property (where that construction is material), the Initial Price.

**"Service Lines"** means underground power cables, underground telephone and electronic data and computer media services, underground gas supply lines (if any) and underground water supply lines.

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

**"Special Resolution"** means a resolution of the Society in general meeting passed by a majority of not less than 75% of such Members (which, for the purposes of this definition, includes the Controlling Member (if any)) entitled to vote in person or by proxy on the question.

**"Total Value"** means the sum total of the Section Values of all Developed Properties as at a given date.

**"Users of the Member's Developed Property"** means any users of the Member's Developed Property, including any mortgagee in possession of that Member's Developed Property, the Occupiers of such Member's Developed Property, the Invitees of such Occupier, the Invitees of such Member and the purchaser of such Member's Developed Property.

**"Utilities"** means the following utilities and services:

- a. Sealed vehicle access over all roading within Jacks Point, including roading which is accessible to the general public connecting to the adjoining State Highway;
- b. Sewage treatment plants, disposal systems, wastewater and storm water disposal systems, and related reticulation connecting to all Developed Properties and Communal Facilities within Jacks Point;

- c. Service Lines connecting all Developed Properties and Communal Facilities within Jacks Point to appropriate supply networks, which, for clarity, may supply both Jacks Point and adjoining lands to the north and to the south;
- d. Domestic and irrigation water systems (including storage tanks, treatment facilities, reticulation, etc) connecting all Developed Properties and Communal Facilities within Jacks Point to water supply systems sourced from Lake Wakatipu and supplying both Jacks Point and, if applicable, adjoining lands to the north and to the south,

and in each case includes the supply of services and utilities as applicable, and any other services and utilities (such as by way of example only, rubbish collection services) that may be required at Jacks Point.

**"Vendor"** means any person who purchases a Developed Property with a view to its being offered for sale to the public in New Zealand and the Developed Property has not previously been offered for sale to the public in New Zealand.

**"Water Company"** means Coneburn Water Supply Co Limited.

**"Water Company Costs"** means the total sum of all payments, costs and expenses properly or reasonably assessed or assessable, paid or payable or otherwise incurred in respect of all costs of repairs, maintenance and renovations for the provision of water together with any levy which the Society has agreed to pay to Water Company under the Water Deed and any other deeds or agreements relating to water supply within the Jacks Point Zone which are anticipated by the Water Deed.

**"Water Deed"** means the deed to be called Deed Pertaining to Jacks Point Water Supply to be entered into by the Society and Coneburn Water Supply Co Limited in respect of water supply to Jacks Point, or any replacement of that deed pursuant to its terms, which for information and identification purposes is annexed to this Constitution as Appendix 3.

**"Working Day"** means a day of the week other than:

- a. Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, Labour Day and Waitangi Day;
- b. A day in the period commencing the 25<sup>th</sup> day of December in any year and ending with the 2<sup>nd</sup> day of January in the following year;
- c. If the first day of January in any year falls on a Friday, the following Monday;
- d. If the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

## 2.2 **Interpretation:** In this Constitution, unless the context otherwise requires:

- a. words denoting the singular shall include the plural and vice versa;
- b. one gender shall include the other gender;
- c. words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
- d. any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
- e. reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation;
- f. any reference to "month" or "monthly" shall mean, respectively, calendar month or calendar monthly;
- g. references to rules are references to rules in this Constitution;
- h. the table of contents, the section headings and clause headings have been inserted for convenience and a quick guide to the provisions of this Constitution and shall not form part of this Constitution or affect its interpretation in any way;
- i. reference to any statute, regulation, ordinance or Bylaw shall be deemed to extend to all statutes, regulations, ordinances or Bylaws amending, consolidating or replacing the same;

### 3. **OBJECTS**

3.1 **General:** The Society is formed to promote the following objects for the benefit of Members and/or Jacks Point:

- a. The promulgation and enforcement of Bylaws and covenants benefiting Members and/or Jacks Point generally.
- b. The creation and implementation of appropriate Design Guidelines and control mechanisms in respect of each Developed Property.
- c. The proper supply, operation, maintenance, repair, renovation and replacement of the Communal Facilities (whether owned directly or indirectly, leased or licensed by the Society or not).
- d. Providing and maintaining services, Utilities and benefits (including access to the Golf Course) to Members, and the proper landscaping of any landscaped area on any Developed Property.
- e. The ownership and continued ownership, leasing or licensing of any Communal Facilities owned (directly or indirectly) by, or leased or licensed to the Society (but, for avoiding doubt, not any Utilities that are not owned by, or leased or licensed to, or in respect of

which the Society has entered into a formal management agreement for the benefit of, the Society).

- f. The full and proper use of the Communal Facilities by Members and, where appropriate, members of the public.
  - g. The promulgation and enforcement of Bylaws and covenants to ensure that obligations regarding the management of any water bodies, wetlands, natural features, and Department of Conservation property, including compliance with all relevant laws and requirements of government departments (including the Overseas Investment Office and Land Information New Zealand) are upheld.
  - h. Providing communication between members of the Society, Golf Course Operator, Water Company and any Utilities company formed for the supply of Utilities to Jacks Point and any neighbouring developments, and established by the Developer or others within the Jacks Point Zone.
  - i. Facilitating the installation and maintenance of Service Lines and the supply of Utilities to properties within Jacks Point.
  - j. The performance and enforcement by the Society of its obligations and rights under the Golf Course Deed, Golf Course Encumbrances and the Water Deed (and any other deeds or agreements relating to water supply within the Jacks Point Zone which are anticipated by the Water Deed) for the benefit of the Members.
  - k. The levying of Members for the purpose of meeting the objects set out in this rule 3.
  - l. To engage in community discussion and/or actions on local issues with Queenstown Lakes District Council, other local or regional authorities, community groups, developers and/or individuals in circumstances where the issues have (or have the potential to) affect or impact on Society, its members, Communal Facilities and/or Jacks Point as a whole.
- 3.2 **Pecuniary gain not to be an object:** The Society does not have as an object the pecuniary gain of Members, and (subject to rule 16.1) no Member shall be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Society.
- 3.3 **Shares held by Society in utility company:** The Society must not hold shares in any company that holds, maintains or manages any of the Utilities or the Communal Facilities, including the Water Company, unless the constitution of that company provides that it cannot carry on:
- a. trading activities for a profit; or
  - b. business for a profit.

- 3.4 **Members may contract:** A Member may enter any agreement or understanding with the Society for the supply of any goods or services for such consideration and on such other terms and conditions as would be reasonable if that person were not a Member.

## **MEMBERSHIP**

### **4. MEMBERSHIP**

- 4.1 **First Members:** The first Members ("**First Members**") of the Society shall be those members named in Schedule 1. The First Members (other than the Controlling Member) shall resign from the Society as soon as more than 15 Owners (other than the Controlling Member) are Members. Those First Members shall have no obligations as Members. No reference in this Constitution to a "Member" shall be taken as including a reference to the First Members.
- 4.2 **Owners to be Members:** Each Owner shall be a Member, and only Owners shall be Members, and for that purpose:
- a. Each Member for so long as they are an Owner shall remain a Member in good standing of the Society and comply with the obligations under this Constitution.
  - b. Each Owner shall (immediately when called upon to do so) grant in favour of the Society an encumbrance and/or covenants ("Covenant") to be noted against that Owner's Title, securing that Owner's obligations to become and remain a Member, and to perform the obligations of a Member as set out in this Constitution and otherwise containing the terms required by the Society. Each Covenant will bind the respective Owner's successors in title so that contemporaneously with the acquisition of any interest in any Developed Property all such successors in title must become and remain a Member, and observe and perform the obligations of a Member as set out in this Constitution. In order to facilitate the effectiveness of the Covenants, each Owner shall comply with rule 9.2. The Covenants shall be prepared by the solicitors for the Society, and the respective Members shall pay the reasonable legal fees and disbursements of the Society's solicitors.
  - c. A Member shall cease to be a Member immediately upon the registration of a transfer of the Owner's Title (after the Society has consented to such transfer in terms of rule 7.2d), provided that such cessation shall not relieve a person of any obligation or liability arising before that person ceased to be a Member.
  - d. Each Member shall, before ceasing to be an Owner, provide the Society with the particulars and documentation necessary for maintenance of the register of Members pursuant to rule 4.6 in respect of the new Owner of its Developed Property. Upon the registration of the transfer of the Owner's Title to the new Owner, the new Owner shall become a Member.

- 4.3 **Fee:** The Society shall be entitled from time to time to set such reasonable fee in relation to the issue of a Membership or transfer of a Membership as the Society in its sole discretion will determine. If the Society incurs any third party costs in relation to the issue of a Membership or the transfer of a Membership (including, without limitation, solicitor client costs), the applicant (in the case of the issue of a Membership) or the seller (in the case of the transfer of a Membership) shall meet those reasonable third party costs.
- 4.4 **Appointment of Controlling Member:** Until the development of Jacks Point is fully completed as determined by the Controlling Member at its sole discretion, there shall be a Controlling Member for the Society. The purpose of the Controlling Member is to ensure that the Developer can develop Jacks Point as a premium development in accordance with the Jacks Point Zone. The Controlling Member shall have only the rights specified in this Constitution, and shall have no other rights or obligations of a Member in the Controlling Member's capacity as Controlling Member. No reference in this Constitution to a "Member" shall be taken as including a reference to the Controlling Member in its capacity as Controlling Member, provided that upon development of Jacks Point being completed (or at any earlier date, at the sole discretion of the Controlling Member), the Controlling Member be deemed to have resigned as Controlling Member, and thereafter there shall be no Controlling Member in respect of the Society.
- 4.5 **Categories of Membership:** The Committee may at any time specify categories of Membership (including between Residential Members and Commercial Members) to recognise any category of usage that may be appropriate.
- 4.6 **Register of Members:** The Society shall maintain a register of Members recording and holding the following particulars and documentation:
- a. **For each Member:**
    - i. *Particulars:* name, postal and email addresses, occupation, telephone number and facsimile number (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency; and
    - ii. *Documentation:* a duly signed direct debit authority for the purposes of rule 6.5 and duly signed written acknowledgement for the purposes of rule 7.2d.ii(2).
  - b. **For each Occupier:** Name, postal and email addresses, occupation, telephone number and facsimile number (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency.
  - c. **Membership:** the date upon which each Member became a Member.
  - d. **Voting:** Where there is more than one Owner of a Developed Property, which of such Owners is entitled to vote in accordance with rule 15.1 and where a Member is a corporation and has



appointed a representative under rule 15.5, the name and contact details of that representative.

- e. Any other particulars and documentation reasonably required by the Committee from time to time.
- 4.7 **No notice of trust:** No notice of any trust express, implied or constructive, will be entered on the register of Members.
- 4.8 **Register to be audited:** The Committee shall ensure that a qualified auditor (being a member of the Institute of Chartered Accountants or its successor) audits the register of Members once a year.
- 4.9 **Not assignable:** The rights, privileges and obligations of a Member are not assignable.
- 4.10 **More than one Owner:** If there is more than one Owner for a Developed Property:
- a. such Owners shall collectively constitute one Member and the liability of such Owners in relation to their Membership will be joint and several; and
  - b. such Owners will nominate one of their number to be their agent and:
    - i. such nominee will be deemed to be agent of and acting on behalf of all such Owners; and
    - ii. where the Constitution requires notice in respect of anything concerning or connected with the relevant Membership to be forwarded by the Society, the Society will be deemed to have discharged its obligation to notify the Owners if it has given notice to the nominee; but
    - iii. if no such nomination is made, the nominee shall be deemed to be the Owner appearing first on the Owner's Title.
- 4.11 **Address for service:** Subject to rule 4.12, the particulars given by each Member under rule 4.6a.i shall be the address for service at which any communication or notice in writing by the Society may be served on that Member by any of the following methods:
- a. By way of post to any postal address provided by the Member or to the current address to which the local authority sends rates demands for that Member, in which case the communication or notice shall be deemed to have been served within seven days of posting of any such communication or notice.
  - b. By way of facsimile or email to any facsimile number or email address provided by the Member in which case the communication or notice shall be deemed to have been served immediately upon faxing or emailing any such communication or notice to the Member.

- c. By personally delivering any communication or notice to a Member in which case the communication or notice shall be deemed to have been served on all Owners if served on the Member who is the nominee of the Owners under rule 4.10b.

4.12 **Service on Occupier:** The Society may elect to serve any communication or notice on an Occupier of a Developed Property at the particulars given under rule 4.6b by any of the methods specified in rule 4.11 and such communication or notice shall be deemed to have been served on the Owner of that Developed Property.

## 5. **USE OF COMMUNAL FACILITIES AND GOLF COURSE**

5.1 **Use of Communal Facilities:** Subject to any rules of the Society relating to the use of the Communal Facilities, and subject to rule 5.3, each Member and Occupier shall be entitled to make full use of the Communal Facilities.

5.2 **Use of Golf Course:** While at the date of this Constitution, the Golf Course does not form part of the Communal Facilities, the Society will enter into the Golf Course Encumbrances which provide the basis on which Members are eligible to play the Golf Course. It is acknowledged that under the Golf Course Encumbrances the Golf Course Operator may impose such rules and regulations itself, directly to users of the Golf Course, and/or may impose such rules and regulations upon the Golf Club, which in turn will impose those rules and others upon members of the Golf Club.

5.3 **Persons not entitled to use Communal Facilities:** No person, other than those persons set out in rule 5.1, or those permitted by way of a lease agreement, which the Society has passed by Special Resolution, shall be entitled to use the Communal Facilities:

- a. save as any resource consent granted in respect of Jacks Point, any covenant or other consent or instrument requires any part of the Communal Facilities to be available for use by the general public or any section or class of it; but
- b. if the Society acquires the Golf Course, the Society acknowledges that the 18 homesite owners at the neighbouring development at the date of this Constitution known as Henley Downs shall have the same rights, on the same terms, to play the Golf Course, as the Members.

5.4 **Acquisition of Golf Course:** The Society may not at any time acquire the Golf Course Interest, except if first approved by a Special Resolution and subject to the provision of information required by rule 5.5. A Member is not entitled or eligible to vote on that Special Resolution where that Member or a Related Entity:

- a. is the vendor of a Golf Course Interest;

- b. has sold a Golf Course Interest to a third party with a view to that person on-selling the interest (whether to the Society or otherwise) and that person is the vendor of the interest in question.

**5.5 Information to be provided by Members:** Before any Special Resolution as required by rule 5.4 is put to the Society, the Society must send to all Members entitled to vote on that Special Resolution the following information:

- a. financial statements relating to the Golf Course Interest for the previous year and a summary of the financial statements for the previous five years in accordance with Securities Act (Jacks Point Development) Exemption Notice SR2006/20;
- b. details of the Golf Course Interest that it is proposed is sold or transferred to the Society;
- c. a report by an independent registered valuer as to the capital value of the Golf Course;
- d. a statement by the directors of the owner of the Golf Course as to whether, after due enquiry by them in relation to the period between the date of the financial statements referred to in rule 5.5a and the date that those statements are provided to the Society in relation to the Special Resolution required under rule 5.4, there has, in their opinion, arisen any circumstances that materially adversely affect:
  - i. the profitability or activities of the Golf Course Interest; or
  - ii. the value of the assets of the Golf Course Interest; or
  - iii. the ability of the business of the Golf Course Interest to pay its liabilities due within the next twelve months; and
- e. particulars of any material matters relating to the decision of the Society to acquire the Golf Course Interest.

## **6. COMPUTATION AND PAYMENT OF LEVIES**

- 6.1 a. The Society is responsible for setting the levies described in this section 6. All levies must be set in a way that is fair and equitable to the Society and to all Members, including without limitation the Residential Members, the Commercial Members, any category of Membership specified under rule 4.5, or any Members' Interest Group as defined under rule 16.5. The levies for an Expense Year will be set taking into account the estimated Operating Expenses for the Expense Year and any contingency sums/special levies contemplated under rule 6.9;
- b. For the purpose of setting and collecting levies under this rule 6:
  - i. the Society must not levy any Developed Property:

- (1) before the earlier of the date the Developer notifies the Society that it may levy such a Developed Property from; or the date that is 15 months after the date that the property meets the definition of Developed Property, whichever date first occurs;
- (2) while the Owner of that Developed Property is the Developer;

(an "**Excluded Property**");

- ii. references to "Developed Property" in this rule 6 shall be deemed to exclude any Excluded Property; and any defined terms that require reference back to the definition of Developed Property when used in this rule 6 shall likewise be deemed to exclude any Excluded Property. By way of example only, the calculation of Member's Proportion shall not include any Excluded Property.
- c. Levies may be fixed in any of the following ways or in any combination of them:
  - i. uniform annual charges ("**fixed charges**") provided that such levy must always be reasonable taking into account the nature of that Utility, service or other thing to which the charge relates and the location of Jacks Point. That levy may be payable per Member, or per Members' Interest Group (such as by way of example only, per Residential Member or any subset of Residential Member with identical interests);
  - ii. variable usage charges ("**variable charges**") provided that such levy must always be reasonable taking into account the nature of that Utility, service or other thing to which the charge relates and the location of Jacks Point. That levy may be payable per Member, or per Members' Interest Group (such as by way of example only, per Residential Member or any subset of Residential Member with identical interests);
  - iii. charges calculated on the basis of each Member's Proportion . For clarity, some charges may be calculated based on paragraph a. of the definition of Member's Proportion, other charges may be calculated based on paragraph b. of that definition and other charges may be calculated based on paragraph c. of that definition. ("**Members Proportion charge**");
  - iv. contingency sums/special levies under rule 6.9 ("**Special Charge**"); and
  - v. one-time connection/disconnection charges for connection and disconnection under rule 6.6 ("**connection charge**").

- d. Where a Residential Member's Developed Property comprises more than one Residential Unit or commercial tenancy, then to the extent that the Queenstown Lakes District Council and/or the Otago Regional Council levies charges or surcharges for services, utilities, connections or benefits based on the number of Residential Units and/or commercial tenancies on a lot (or would do so if the Developed Property were not in the Jacks Point Zone), the Society may calculate the levies for a Developed Property as if each Residential Unit or commercial tenancy were a Developed Property. For the purposes of this rule 6.1d a Residential Unit means a single self contained household unit, whether of one or more persons, and includes accessory buildings. Where more than one kitchen and/or laundry facility is provided on the lot there shall be deemed to be more than one Residential Unit.

6.2 **Levies:** Subject to rule 6.3, levies shall be fixed for each Member's Developed Property in accordance with this rule 6.2. Prior to or as soon as practicable after the commencement of each Expense Year, the Society shall by written notice advise each Member of:

- a. the fixed charges for that Expense Year;
- b. the rate for any variable charges for that Expense Year;
- c. the Society's estimate of that Member's Proportion charges for that Expense Year ("**the Society's Estimate**");
- d. any Special Charges for that Expense Year;
- e. any one time connection charges that the Society is levying in that Expense Year;

which, for clarity, may in each case take into account the anticipated new Developed Properties which will become available during that Expense Year.

6.3 **Levies before residential lots at Jacks Point are fully developed:**

- a. During each complete Expense Year (or part Expense Year) before the date Jacks Point first comprises 690 Developed Properties (but excluding any Developed Properties in Lot 14) ("Initial Developed Properties"), the levies for the Initial Developed Properties will be calculated as follows:

$$\text{Recoverable Expenses} = \frac{\text{EC}}{690} \times \text{Actual DP}$$

where:

EC is an estimate of the Operating Expenses and Special Charges (if any) calculated as if Jacks Point comprised 690 Initial Developed Properties, excluding costs and expenses directly arising from the land comprising Lot 14, such calculation to be undertaken by the Developer acting reasonably.

"Actual DP" is the actual number of Initial Developed Properties for the relevant Expense Year (including, for clarity, anticipated new Initial Developed Properties, taking into account the date that such Developed Properties are likely to be available).

- b. The Recoverable Expenses will then be divided and levied per Developed Property in accordance with rule 6.2.
- c. To the extent that the Recoverable Expenses for an Expense Year are not sufficient to meet:
  - i. the actual Operating Expenses for that Expense Year; and
  - ii. the Special Charges for that Expense Year (if any)

(together the "Total Expenses") the Developer will pay to the Society by way of a subsidy the difference between the Total Expenses and the Recoverable Expenses ("Subsidy") at the time or times as is necessary to ensure the Society's cashflow remains positive.

- d. If Jacks Point first comprises 690 Initial Developed Properties part way through an Expense Year, the Developer's Subsidy under rule 6.3c shall be apportioned as follows:

$$\frac{A}{B} \times \text{Subsidy}$$

Where: "A" means the number of days in the Expense Year before the date that Jacks Point comprised 690 Initial Developed Properties;

"B" means the total number of days in the Expense Year;

- e. No Subsidy is payable in any circumstance by the Developer under this rule 6.3 after the date on which Jacks Point first comprises 690 Initial Developed Properties or at any time after that date;
- f. Rule 6.7b does not apply when levies are calculated under this rule 6.3.

**6.4 New Developed Properties:** When a property becomes a Developed Property the Society shall advise the Member of that new Developed Property in writing of:

- a. the Society's Estimate for that Expense Year which shall be charged as follows:

$$\frac{A}{B} \times \text{the Society's Estimate}$$

Where: "A" means the number of days remaining in the Expense Year from the date the property becomes a Developed Property; and

"B" means the total number of days in the Expense Year;

- b. the fixed charges for that Expense Year (which shall be charged in the same proportion as the Society's Estimate);
- c. any variable charges;
- d. any Special Charges for that Expense Year; and
- e. any connection charges.

6.5 **Payment of levies:** Subject to rule 6.7, each Member shall, on the first day of each Quarter in each Expense Year, pay:

- a. one quarter of the Society's Estimate except if a Member has a new Developed Property in the relevant Expense Year (as provided for under Rule 6.4) that Member will pay  $\frac{x}{4}$  of the Society's Estimate. "x" means the number of Quarters left in the Expense Year from the date the property meets the definition of a Developed Property;
- b. any fixed charge that the Society has decided is payable for that Quarter;
- c. any Special Charge that the Society has decided is payable for that Quarter; and
- d. the specific variable charges applicable to that Member's usage, as per notification by the Society to that Member of the usage to which such charge relates;

by direct debit to a bank account nominated by the Society.

6.6 **Connection Charges:** One time connection charges are payable as determined by the Society from time to time which, without limitation, may include payment in advance of connection.

6.7 **Statement of Operating Expenses:**

- a. As soon as practicable after the end of each Expense Year the Society shall provide to each Member an itemised statement of the actual Operating Expenses for the just completed Expense Year in accordance with rule 12.11I.
- b. If:
  - i. the actual Operating Expenses for the previous Expense Year (as shown in the financial statements completed in accordance with rule 12.11I) are greater than the total levies fixed for that Expense Year under rule 6.2, the

Society shall add the difference to the Society's total estimate of the Operating Expenses for the then current Expense Year; or

- ii. the actual Operating Expenses for the previous Expense Year (as shown in the financial statements completed in accordance with rule 12.11I) are less than the total levies fixed for that Expense Year under rule 6.2, the Society shall credit the difference to the Society's estimate of the Operating Expenses for the then current Expense Year.

**6.8 Interim Payments:** If the Society has failed to advise a Member of the levies fixed under rule 6.2 or 6.3 for an Expense Year before the date the first Quarterly payment is due under rule 6.5, the Member shall on that date and every other date on which a payment is due under rule 6.5 until the levies fixed under rule 6.2 or 6.3 are available, pay one quarter of the total levies levied by the Society for the previous Expense Year (or, if the Member's property was a new Developed Property in that Year, that would have been payable by that Member). On the levies being fixed under rule 6.2 or 6.3 for the Expense Year and being advised to that Member:

- a. If the aggregate of a Member's payments made under this rule 6.8 during the Expense Year exceeds the aggregate of payments which should have been made under rule 6.5, the Society shall deduct the difference from the payment due by that Member in the next Quarter for the then Expense Year.
- b. If the aggregate of a Member's payments under this rule 6.8 during the Expense Year is less than the aggregate of payments which should have been made under rule 6.5, the Member shall immediately pay the Society the difference.

**6.9 Special Charges:** The Committee may from time to time fix:

- a. an additional levy to be paid by each Member to be set aside as a sinking fund to allow for and meet the costs of Capital Improvements, provided that any levy payable by a Member under rule 6.9a shall be equal to that Member's Proportion of the total estimated cost to be provided for and met from the proceeds of the levies paid by all Members; and
- b. such other levies, payable by each Member at such times as are set by the Society, as the Society considers are necessary for it to meet its obligations under this Constitution provided that any levy payable by a Member under rule 6.9b shall be equal to that Member's Proportion of the total estimated cost to be provided for and met from the proceeds of the levies paid by all Members; and
- c. such levies, payable by each Member of a Member's Interest Group at such times as are set by the Society, as the Society, acting reasonably, considers are necessary for any Members' Interest Group, provided that any levy payable by a Member of a Members' Interest Group under this rule 6.9c shall be equal to that Member's Proportion (but where such calculation of the Total Value



shall be deemed to be the sum total of the Section Values of Developed Properties of the Members' Interest Group, and the total land areas shall be deemed to be that of the Developed Properties of the Members' Interest Group) of the total estimated cost to be provided for and met from the proceeds of the levies paid by all Members of that Members' Interest Group;

and in each case the Committee will determine if that Member's Proportion will be calculated under paragraph a. or paragraph b. or paragraph c. of the definition of Member's Proportion.

6.10 **Estimate of Levies:** The Society shall provide to a Member within five Working Days of receiving a request, a statement of the levies that are estimated to be or were payable by that Member under this rule 6 for the period commencing from incorporation of the Society and ending on 30 June 2010 that:

- a. comprises estimates, historical data or both;
- b. is itemised in relation to the different Communal Facilities and services provided in relation to the development at Jacks Point;
- c. contains a statement in relation to each of the Communal Facilities and services as to whether the levy is fixed, variable or based on the Member's Proportion;
- d. contains a statement as to which of the Communal Facilities and services were, or are expected to be, provided in each Expense Year within that period;
- e. contains a statement as to what stage the development at Jacks Point is at, or is expected to be at, at the end of each Expense Year within the period;
- f. contains, if a levy is based on the Member's Proportion, a statement of a formula by which the levy can be calculated together with a worked example; and
- g. contains a statement of the principal assumptions on which any estimates are based.

## 7. **OBLIGATIONS OF MEMBERS**

7.1 **Covenants and Bylaws:** Each Member agrees to promptly and fully comply with the terms of this Constitution, any Bylaws and any covenants given in favour of the Society by such Member (whether by separate deed of covenant or as noted against each Owner's Title). No amendment to this Constitution shall be made that results in there being any conflict between the provisions of this Constitution (including any rule or Bylaw) and the provisions of the Covenant (as described in rule 4.2).

7.2 **Sale of Developed Property:** Where a Member sells ("the Seller" and, for the sake of clarity, "the Seller" includes any mortgagee, receiver, liquidator, assignee, or other entity exercising a power of sale under a

New Zealand Court order, act of Parliament, mortgage, charge, or other document) a Developed Property:

- a. Notwithstanding any other rule in this Constitution, the Seller shall remain liable for sums owed to the Society by that Seller.
- b. Without limitation, the Seller shall continue to be liable as a primary and principal debtor for all indebtedness of the purchaser of the Developed Property ("**the Purchaser**") to the Society until such time as:
  - i. the transfer of the certificate of title for that Developed Property to the Purchaser is registered at the Land Transfer Office; and
  - ii. the Purchaser is bound by the Covenant secured against the Developed Property; and
  - iii. the Seller has complied with its obligations under this rule 7.2 and rule 9.2.
- c. The Purchaser shall be liable as if a Member for all indebtedness of the Seller to the Society in respect of the Developed Property purchased and a statement of the Society given under rule 7.6 shall (in the absence of manifest error) be conclusive as to the sum of this indebtedness.
- d. The Seller must obtain the consent of the Society to the transfer of the Seller's Developed Property prior to the date of transfer. Notwithstanding anything else contained in this rule 7.2, the Society may decline to consent to a transfer of the Seller's Developed Property until:
  - i. the Seller has performed its obligations as a Member as set out in this Constitution, including (without limitation):
    - (1) the Seller's payment of all sums owed to the Society in full (including any fees charged or costs incurred under rule 4.3); and
    - (2) the Seller's provision of the Purchaser's particulars and documentation in accordance with rule 4.2d, and
  - ii. the Purchaser has:
    - (1) given an undertaking to pay immediately on settlement the levy which the Society will require under rule 6.5 for the next Quarter of its proposed membership in the Society; and
    - (2) given a written acknowledgement to the Society that it has read and understood this Constitution, all then current Bylaws and the Covenant.

**7.3 Lease of Developed Property:** No Member shall:

- a. For the purpose of this rule 7.3 the term "lease" means any change in possession of a Developed Property for consideration including any form of lease, tenancy, licence, or assignment and includes providing accommodation to any paying guest, and the term "lessee" means any person taking possession under a lease.
- b. No Member shall lease the Member's Developed Property for any period shorter than 32 days other than through the Rental Agency pursuant to rule 7.3d below. Where this rule 7.3b applies, Members must not advertise the Member's Developed Property for lease other than through the Rental Agency. This rule 7.3b shall not apply to a lease to friends or family of the Member, being persons known to the Member who have not been introduced to the Member's Developed Property through any form of marketing, provided that the Member notifies the Rental Agency of the names and contact details of the lessee under such lease.
- c. No Member shall lease the Member's Developed Property for more than a total of 90 days in any calendar year where that total is made up of a number of different lease terms each shorter than 32 days. The period of 90 days referred to in this rule 7.3c may be reduced by the Rental Agency from time to time, at its discretion, to achieve consistency with any requirement of an Authority to obtain resource consent for visitor accommodation activity and/or with any commercial/visitor accommodation activity rating levy.
- d. Any Developed Property leased through the Rental Agency pursuant to rule 7.3b above shall be leased by the Rental Agency on behalf of the Member at the market rent applicable for that type of Developed Property in Jacks Point and otherwise on normal residential leasing and commission conditions applicable as between landlord/rental agent and landlord/tenant.
- e. No Member shall lease the Member's Developed Property for any period of 32 days or longer ("lease period") without first notifying the Rental Agency of such lease and the names and contact details of the lessee. The Rental Agency is permitted to disclose those details to the Society to enable the Society to generally monitor and manage security within Jacks Point. No Member may lease the Member's Developed Property pursuant to this rule 7.3e for more than a total of 12 lease periods within a calendar year.

**7.4 Assignment or Sub-Letting:** Any assignment or subletting of the type or in the manner referred to in Section 109(2) of the Property Law Act 1952 shall be a breach of the provisions of this Constitution.

**7.5 Change of Control:** Where any Member is an unlisted company or any Occupier is an unlisted company then any change in the legal or beneficial ownership of any of its shares, issue of new capital or amalgamation which results in a change in the effective management or control of the company is deemed to be a transfer of the Seller's Developed Property requiring compliance with Rule 7.2d.i.

- 7.6 **Society to provide statement:** The Society shall, on application by a Member, or any person authorised in writing by such Member, provide the Member or authorised person with a statement of the indebtedness of the Member to the Society calculated to the date specified in the application. The statement shall show:
- a. the levies payable by such member for the current Expense Year calculated in accordance with rule 6;
  - b. payments made by the Member on account of Operating Expenses or other moneys owing in the current Expense Year;
  - c. payments due from the Member on account of Operating Expenses or other moneys owing in the current Expense Year, and not paid by the Member; and
  - d. any accumulated unpaid default interest.
- 7.7 **Payment of Rates and Compliance With Obligations:** For clarity, each Member acknowledges that it is still liable to pay rates levied by the Queenstown Lakes District Council and/or by the Otago Regional Council (or their successors) and to otherwise comply with all legal obligations in respect of that Member's Developed Property.
8. **MEMBERS' ASSISTANCE TO DEVELOPER FOR COMMUNAL FACILITIES**
- 8.1 **Future Development:** The Members acknowledge that development of Jacks Point is ongoing. The Society must allow the Developer such access to, and interests in, the Communal Facilities as are necessary or desirable for the development of Jacks Point to proceed, and to allow the Developer to add, replace, alter or remove where not required structures and services forming part of the Communal Facilities, and to procure that its Members amend this Constitution if such amendment is necessary or desirable for the development to proceed. The Members further acknowledge that the provisions of this rule 8.1 do not limit any other obligations agreed to by a Member or otherwise binding on a Member. Each Member agrees:
- a. to grant and now grants the Developer access to the Developed Property of that Member with such vehicles, machinery and tools as the Developer desires for the purpose of proceeding with the development. However, the Developer shall:
    - i. make good any damage caused by the Developer accessing a Developed Property of that Member under the provisions of this rule 8.1a; and
    - ii. in so doing, shall not unreasonably interfere with that Member's quiet enjoyment of that Member's Developed Property,
  - b. to, and hereby grants, such easements in favour of the Developer, any Member and/or the Society over or under the Member's

Developed Property as are required for Jacks Point to proceed or as may be necessary or desirable for development of Jacks Point, that easement to include terms equivalent to those set out in rules 8.1.a.i and 8.1.a.ii;

- c. not to prevent, hinder or obstruct the use by the Developer of the Communal Facilities, the addition, replacement, alteration or removal where not required of structures or services forming part of the Communal Facilities by the Developer, or the granting of any interests in the Communal Facilities by the Society to the Developer;
- d. that neither the Member nor the Society shall oppose, or take part in any opposition to, the development of Jacks Point;
- e. to support any resolution to amend this Constitution, where the Society is bound by agreement with the Developer to procure such amendment;
- f. to sign any document or do any other thing reasonably necessary to support any resource consent or other authorisation applied for by or on behalf of the Developer in respect to the development of Jacks Point;
- g. to permit the Society to temporarily close the Communal Facilities as may be required for the development to proceed or as may be necessary or desirable for the development of Jacks Point.

## 9. BREACH OF OBLIGATIONS

- 9.1 **Occupiers:** A reference to an act or omission by any Member shall include any act or omission by any Users of the Member's Developed Property.
- 9.2 Each Member must, without limitation and in addition to the requirements of rules 4.2 and 7.2:
  - a. procure that all leases, licences, agreements for sale and purchase and all other agreements and documents that relate to the Member's Developed Property include a provision for the benefit of the Society that requires all such Users of the Member's Developed Property to comply with this Constitution, all then current Bylaws and any covenants given in favour of the Society by that Member;
  - b. make all Users of the Member's Developed Property aware of the Covenant;
  - c. attach a copy of this Constitution, all then current Bylaws and any covenants given in favour of the Society by that Member to all leases, licences, agreements for sale and purchase and all other agreements and documents that relate to the Member's Developed Property; and
  - d. take all reasonable steps (including enforcing the terms of all leases, licences, agreements for sale and purchase and all other

agreements and documents that relate to the Member's Developed Property) to ensure that all Users of the Member's Developed Property comply with this Constitution. In any case of persistent default by a User of the Member's Developed Property of this Constitution, the Owner shall on demand by the Society and where legally possible, terminate the Users' of the Member's Developed Property rights to the Developed Property.

**9.3 Consequences:** Without prejudice to the Society's other rights and remedies, upon any breach of this Constitution by a Member ("**Offending Member**"):

- a. Where damage has been caused to the Communal Facilities, the Offending Member shall immediately make good such damage to the standard reasonably required by the Society.
- b. If such default continues for seven days after notice is given by the Society to the Offending Member to remedy the default, the Society may do anything, including paying money, necessary to remedy the default.
- c. All money paid and the expenses incurred by the Society (including any legal costs of the Society) in remedying, or attempting to remedy, any breach by an Offending Member of this Constitution, or incurred in the exercise, or attempted exercise, or enforcement, or attempted enforcement of any power, right or remedy of the Society in respect of such breach, shall be a debt due from the Offending Member to the Society.
- d. If any money payable by an Offending Member to the Society is in arrears and unpaid at the date, being seven days after the date specified in any invoice or demand for payment ("Due Date") (and, whether or not formal demand for payment has been made and without any formal demand being necessary), such money shall be payable by the Offending Member to the Society immediately on demand. Any money payable to the Society by an Offending Member after the Due Date:
  - i. will bear interest at the Default Interest Rate, computed on a daily basis from the Due Date until the date of payment in full; and
  - ii. in addition, the Society may also on the Due Date (or at any time between the Due Date and the date all such money is paid) charge the Offending Member a penalty fee of 10% of the amount owing (including any amount owing from previous invoices), to the intent that the Society may charge a further penalty of 10% on the same money payable, to the extent such money is not paid by the next Due Date.
- e. If such default continues for seven days after notice is given by the Society to the Offending Member to remedy the default (provided that the notification period may in the Society's sole discretion be abridged in the event the Society considers that necessary) then, in

addition to the consequences set out in rule 9.3, the Society may give further notice to the Offending Member suspending, for such time as the Society may determine, the Offending Member's right to use the Communal Facilities, and/or receive the supply of any Utility services, provided that nothing in this rule will relieve the Offending Member from the Member's obligation to pay any levies or other monies payable to the Society under the terms of this Constitution.

9.4 Without prejudice to rules 9.1 to 9.3 (inclusive) each Member acknowledges that there is likely to be a covenant registered over that Member's Developed Property in favour of land owned by the Society restricting subdivision of that Developed Property and regulating timeframes for completion of construction and landscaping on that Developed Property, ("Property Covenant"). If:

- a. a Member ("Infringing Member") breaches the terms of the Property Covenant; and
- b. another Member who is affected by that breach complains to the Society and refers to this rule 9.4;
- c. the Society is reasonably satisfied that the Infringing Member has in fact breached the Property Covenant,

then the Society, as Owner of the land that is the dominant tenement in respect of such Property Covenant shall take appropriate action to enforce the Property Covenant. For clarity, the Society may, but is not obliged to, take any action in relation to a land covenant that is registered not only in favour of land owned by the Society but also in favour of land owned by other persons.

## THE SOCIETY

### 10. POWERS AND OBLIGATIONS OF THE SOCIETY

10.1 **Bylaws:** In the fulfilment of the purposes and objects of the Society, but subject to rule 16.6, the Society shall from time to time promulgate, amend and distribute to Members Bylaws for the use of the Communal Facilities (including any restrictions on use for security, maintenance or other reasons), Bylaws concerning the behaviour of Users of the Members' Developed Properties and Bylaws governing the use of Developed Properties.

10.2 **Repair of Communal Facilities:** The Society shall ensure the proper operation, maintenance, repair, renovation and replacement of the Communal Facilities. Each Member agrees and allows the Society (or any parties engaged under rule 10.4) access to the Developed Property of that Member for the purposes of this rule 10.2. However, the Society shall make good any damage caused by such access within a reasonable time frame after the completion of any work carried out to give effect to this rule 10.2.

10.3 **Insurance:** The Society shall effect and maintain all insurances as it considers prudent with respect to the Communal Facilities, the Society's affairs and members of the Committee, and shall meet all costs of such insurance (which shall include all valuations and other professional fees required or deemed desirable for the purposes of such insurances and the cost of certificates relating to such insurances). Insurance regarding members of the Committee may be effected, without limitation, in respect of:

- a. Liability, not being criminal liability, for any act or omission in a Committee member's capacity as such; and
- b. Costs incurred by that Committee member in defending or settling any claim or proceeding relating to any such liability, and
- c. Costs incurred by that Committee member in defending any criminal proceedings in which he or she is acquitted.

10.4 **Service contractors and utility suppliers:**

- a. For the supply and maintenance of Utilities or services (including security, landscaping, rubbish collection or other such essential services as the Society considers desirable) to Jacks Point, the Society may, from time to time, nominate:
  - i. service contractors;
  - ii. Utilities suppliers;
  - iii. an exclusive service contractor for a particular service; or
  - iv. an exclusive Utilities supplier.
- b. Any Member wishing to contract for services or Utilities to that Member's Developed Property must use the service contractor(s) or Utilities supplier(s) who have been nominated by the Society.
- c. Where service contractor(s) or Utilities supplier(s) have been nominated by the Society, every Member must comply with all guidelines for use of the particular services or Utilities reasonably imposed by such contractor(s) and supplier(s).

10.5 **Transfer of Facilities:** The Society acknowledges that the Developer may from time to time transfer land and/or facilities for communal use to the Society, including Utilities and the Society must accept transfer of such facilities.

10.6 **Agreement to Grant Easements:** Each Member agrees to grant any easements and/or covenants in favour of the Society over or under that Member's Developed Property which are necessary to permit the Society access to that Member's Developed Property to give effect to this Constitution or any Bylaw made by the Society under rule 10.1.

10.7 **Design Review Board:** The Society shall appoint 4 members of the Design Review Board (as defined in the Covenant) ("DRB Members")



pursuant to the Design Review Board organisation provisions of the Development Controls (as defined in the Covenant). The appointment of such DRB Members shall be for such term or terms as determined by the Society and the Society may at any time require the resignation of and replace any DRB Member, so that the appointment of DRB Members is at all times at the discretion of the Society. DRB Members may or may not be Members of the Society. The Society shall determine the extent (if any) to which DRB Members are recompensed for their work as a DRB Member.

## 11. LIMITATIONS OF THE SOCIETY

- 11.1 **No indebtedness:** The Society shall not borrow any money, other than short-term borrowing to cover any temporary shortfall in meeting the Society's obligations under this Constitution, except by Special Resolution.
- 11.2 **No encumbrances:** The Society shall hold the Communal Facilities in its own name and shall not mortgage, charge, encumber, transfer or otherwise deal with such Communal Facilities, except by Special Resolution, provided that where the Society is obliged to grant any interest in or right in respect of the Communal Facilities by any agreement with the Developer, such interests or rights may be granted by the Committee.
- 11.3 **No investments:** The Society shall hold all funds with a Bank, and shall not invest those funds other than by deposit with a Bank, except by Special Resolution.
- 11.4 **No improper use:** All Communal Facilities designed for recreational purposes shall be used only for such purposes.
- 11.5 **Application of funds:** All money paid to the Society by Members in accordance with this Constitution is to be applied exclusively for the purposes of:
- a. owning, administering, maintaining, replacing and renewing the Communal Facilities and the Golf Course;
  - b. managing and administering the Society and administering and enforcing this Constitution;
  - c. providing services, Utilities, facilities and benefits to Members; and
  - d. such further or other incidental matters as the Committee may deem beneficial for Members.

## OPERATION OF THE SOCIETY

### 12. COMMITTEE

- 12.1 **Powers:** The administration of the Society shall be vested in the Society in general meeting, and shall be delegated to the Committee. The Committee may exercise all the powers, authority and discretions of the

Society as permitted by this Constitution and do on its behalf all such acts as the Committee deem necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limits, which may from time to time be imposed by the Society. The Committee may delegate any of its powers to committees consisting of such member or members of their body as they think fit or to the Manager. Any committee so formed shall in the exercise of the powers so delegated conform to directions of the Committee.

- 12.2 **Bank accounts:** The Society shall establish a bank account with a Bank and any drawings on that account (including any cheque drawn on that account) shall be made only under the signature of the Manager and one other member of the Committee.
- 12.3 **Deeds:** Any contract which, if made between private persons, must be by deed shall, when made by the Society, be in writing under the common seal of the Society, to be affixed in accordance with rule 12.16.
- 12.4 **Other Documents:** All other documents and written announcements requiring execution on behalf of the Society must be signed by the chairperson.
- 12.5 **Composition:** The Committee shall comprise the following persons:
  - a. a chairperson;
  - b. a treasurer/secretary; and
  - c. subject to rule 12.5d, a minimum of five and a maximum of nine general Committee members, as determined by the Society in general meeting before election of Committee members
  - d. while the First Members (as defined in rule 4.1) of the Society remain Members, a minimum of one and a maximum of three general Committee Members, as nominated by the Controlling Member.
- 12.6 **Committee Members:** The chairperson shall be the nominee of the Controlling Member at its option (if there is one) or where there is no Controlling Member the chairperson shall be as elected by the Committee at every annual general meeting. The treasurer/secretary shall be the Manager or, where no Manager has been appointed, such other person as the Committee shall appoint from time to time. Subject to rule 12.5d, the balance of the Committee shall be elected by the Society at every annual general meeting, and may be elected at any other time by the Society in general meeting.
- 12.7 **Rotation of Committee:** At the annual general meeting of the Society in every year one third of the Committee, or if the number is not a multiple of three then the number nearest to one third, shall retire from office. The Committee members to retire shall be those who have been longest in office since they were last elected. If two or more of those Committee members were last elected on the same day, the Committee members to retire (unless they otherwise agree) shall be determined by lot. A retiring Committee member is eligible for re-election, and shall act as a

Committee member throughout the meeting at which that Committee member retires.

**12.8 Duration of Membership:** A Committee member shall hold the elected position until the earliest of:

- a. removal from office at an annual general meeting under rule 12.7;
- b. the date written resignation from the position is received by the Society;
- c. the date of removal from such position by the Society in general meeting; or
- d. the date of cessation of Membership.

**12.9 Casual vacancies on Committee:** In the event of a casual vacancy in any position on the Committee (whether caused by death, cessation of Membership from the Society, or some other means) the remaining Committee members may appoint another Member to fill the vacancy until the position is filled by the Society in general meeting.

**12.10 Manager and Controlling Member:** Notwithstanding any other rule in this Constitution, the Manager shall remain as treasurer/secretary, and the Controlling Member shall remain as chairperson, for so long as they remain Manager and Controlling Member respectively, and the Society shall not be entitled to remove either from those positions for any reason whatsoever. For so long as the Controlling Member remains the Controlling Member, it shall be entitled to exercise all the powers of the Committee referred to in rule 12.1 and where no Manager/s have been so appointed, any reference to the "Manager" in this Constitution shall be deemed to be the Controlling Member.

**12.11 Duties of Treasurer/Secretary:** The treasurer/secretary shall:

- a. convene general meetings when requested to do so in accordance with this Constitution;
- b. attend all meetings of the Committee and have full speaking rights at such meetings;
- c. give all notices required to be given by these rules or as directed from time to time by the Society or the Committee;
- d. keep minutes at all general meetings and Committee meetings and enter into the minute book:
  - i. the time, date and venue of such meeting;
  - ii. all business considered and resolutions passed at such meeting;
- e. hold in safe custody the common seal of the Society;

- f. receive, and issue receipts for, all annual levies, additional fees, and any other moneys paid to the Society;
- g. operate and maintain a current bank account in the name of the Society;
- h. pay all accounts properly incurred by or on behalf of the Society;
- i. report immediately to the Society any Member who fails to pay annual levies or additional fees within the prescribed period;
- j. keep all financial records and any security documents in safe custody;
- k. compile all proper accounting records from time to time as required by the Act or by the Committee which give a true, fair and complete account of the financial affairs and transactions of the Society; and
- l. compile the financial statements immediately following each financial year as required by the Act, and provide for the auditing of those records and the distribution of the audited financial statements to Members as soon as reasonably practicable after each audit is completed and in any case within five months of the end of the Expense Year.

12.12 **Conduct of Meetings:** The Committee may meet together, adjourn and otherwise regulate its meetings and procedures for conducting its business as it thinks fit. The Committee may meet at any time and the secretary shall, upon the request of the chairperson or any three Committee members, convene a meeting of the Committee.

12.13 **Quorum:** A majority of the members of the Committee from time to time, provided that such majority includes the Controlling Member (if there is one), shall form a quorum for a Committee meeting. No business of the Committee shall be conducted at any time when less than a quorum is present at the same time and place.

12.14 **Chairperson:** Subject to Rule 12.6, the Committee from time to time shall appoint, remove and replace a chairperson for such term as it sees fit from one of their number to chair Committee meetings and otherwise exercise the powers of the chairperson set out in this Constitution.

12.15 **Chairperson to have casting vote:** In the case of a tie in votes, the chairperson may exercise a casting vote.

12.16 **Seal:** The Committee shall obtain a common seal for the use of the Society and shall provide for its safe custody. The common seal shall not be used except by resolution of the Committee. Every instrument to which the common seal is affixed shall be signed by the chairperson and one other member of the Committee.

12.17 **Voting:** Resolutions of the Committee shall be passed by majority. Each Committee member shall be entitled to exercise one vote, provided that the treasurer/secretary shall not be entitled to vote and further provided that the Controlling Member (if there is one) shall be entitled to exercise a

number of votes equal to one more than the number of other Committee members present at any Committee meeting. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by such of the Committee members as would constitute a quorum at a Committee meeting shall be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted.

**12.18 Validity of Committee's actions:** All acts properly done by any meeting of the Committee or by any person acting as a Committee member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Committee member, or that they were disqualified, shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Committee member.

**12.19 Committee minutes and records:** The Committee shall cause proper minutes to be kept of the proceedings of all meetings of the Society and of the Committee. All minutes of business transacted at such meetings signed by the chairperson shall be accepted as a correct and accurate record of the business transacted at such meetings without any further proof of the facts contained in such minutes.

### **13. MANAGER**

**13.1 Duties:** Subject to rule 12.10, the Committee may:

- a. appoint, remove and replace a manager from time to time to carry out such of the obligations of the Society, and to exercise such of the discretions and powers of the Society, as the Committee shall see fit;
- b. enter into and terminate from time to time management agreement(s) or equivalent arrangements whereby the Committee appoints a third party to carry out certain of the obligations of the Society to operate, maintain, repair, renovate and replace all or any of the Communal Facilities,

and the Committee may pay any fee or expense associated with either such appointment or outsource.

### **14. GENERAL MEETINGS**

**14.1 Annual general meeting:** In addition to any other meetings in that year, the Society shall hold an annual general meeting each year which must be held:

- a. not later than 18 months after the date of the last annual general meeting or in respect of the first annual general meeting not later than 18 months after the Society's date of registration; and
- b. not later than six months after the end of each Expense Year.

The Committee will determine the time and place of each year's annual general meeting but this meeting must be held in the Queenstown district of New Zealand.

14.2 **Special general meetings:** A general meeting other than an annual general meeting may be requested by the Committee, or by written requisition signed by not less than 25% of current Members, or by written notice of the Controlling Member (if there is one). The secretary shall call a special general meeting within 14 days of receiving an effective request.

14.3 **Powers of the Society in general meeting:** The Society in a general meeting may, by resolution, exercise all powers, authorities and discretions of the Society notwithstanding that any such power, authority and discretion may have been delegated to the Committee by or pursuant to this Constitution. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by:

- a. 75% of the Members entitled to vote in person or by proxy at general meetings; or
- b. the Controlling Member providing that:
  - i. the Controlling Member has first provided every Member 14 days notice in writing of its intention to enter into such a resolution;
  - ii. every notice under this rule 14.3b shall outline the matter at issue together with a statement of intention from the Controlling Member that it intends to pass such resolution;
  - iii. during the 14 day notice period every Member shall have the right to provide written submissions to the Controlling Member regarding the matter at issue;
  - iv. the Controlling Member shall in good faith consider all submissions prior to entering into such written resolution;

shall be as valid and effectual as if it had been passed at a general meeting of the Society duly convened and constituted.

14.4 **Quorum:** No business shall be transacted at any general meeting of the Society unless the quorum is present when a meeting proceeds to business. Quorum shall be not less than 20% of all Members or 10 Members (whichever is the lesser) eligible to vote at general meetings, present in person or by proxy, together with the Controlling Member (if there is one).

14.5 **Notice of general meeting:** A notice of general meeting of the Society shall be sent to every Member and to the Controlling Member not less than 14 days before the date of such meeting. Such notice shall specify:

- a. the date, time and venue of such meeting;
- b. the nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgement in relation to it; and
- c. the text of any Special Resolutions to be submitted to the meeting.

- 14.6 **Failure to give notice:** The accidental omission to give notice, or the non-receipt of such notice by a Member, shall not invalidate the proceedings at any such meeting.
- 14.7 **The chairperson:** The chairperson at any general meeting shall be:
- a. the chairperson of the Society; or
  - b. if the chairperson is not present or is unwilling to take the chair, then those Committee members who are present may choose one of their number to chair the meeting; or
  - c. if for any reason no chairperson is selected by the Committee, any Member appointed by a majority of Members present in person or by proxy.
- 14.8 **Adjournment:** If a quorum is not present within half an hour from the time appointed for the holding of a general meeting convened on requisition of Members, the meeting shall be dissolved. In any other case the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Committee shall determine (such date not to be later than 14 days from the date of the adjourned meeting). If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present together with the Controlling Member (if there is one) shall constitute a quorum.
- 14.9 **Adjourned meetings:** No business other than that business which might have been transacted at the meeting from which the adjournment took place, shall be transacted at any adjourned meeting. Members shall not be entitled to receive any notice in respect of adjourned meetings.
15. **VOTING**
- 15.1 **One Member one vote:** Each Member present at a general meeting of the Society (not at that time being in breach of this Constitution) shall be entitled to one vote for each Developed Property of which that Member is a registered proprietor, which may be exercised either in person or by proxy. Where there is more than one Owner in respect of any Developed Property such Owners are collectively a Member pursuant to rule 4.10, and only one such Owner shall be entitled to vote. In the absence of agreement between such Owners as to who shall exercise this vote, the Owner appearing first on the Owner's Title shall be entitled to exercise that vote. On the death of any Member, the trustee of that Member's estate shall be entitled to exercise that Member's vote.
- 15.2 **Controlling Member's vote:** The Controlling Member (if there is one) shall be entitled:
- a. to exercise a number of votes equal to one more than the number of Members entitled to vote at any general meeting (including, for the sake of clarity, of any Members' Interest Group under rule 16.6); provided that

- b. on any matter which must be passed by Special Resolution, to exercise a number of votes equal to 76% of the number of Members entitled to vote on that matter (including, for the sake of clarity, of any Members' Interest Group under rule 16.5),

but the Controlling Member is not able to exercise its power under this rule 15.2 to pass the Special Resolution required under rule 5.4.

**15.3 Exercise of Controlling Member's Vote:** In the event that the Controlling Member intends to exercise a vote equivalent to one more than the number of Members entitled to vote at any meeting in accordance with rule 15.2 above, the Controlling Member shall:

- a. provide to every Member 14 days notice in writing of its intention to exercise such vote;
- b. every notice under this rule shall outline the matter at issue together with a statement of intention from the Controlling Member as to the vote it intends to cast;
- c. during the 14 day notice period every Member shall have the right to provide written submissions to the Controlling Member regarding the matter at issue;
- d. the Controlling Member shall in good faith consider all submissions prior to exercising the Controlling Member's vote.

**15.4 Appointment of Mediator:** An independent mediator shall be appointed to act in a dispute between any Members and the Developer concerning the Developer's compliance with this Constitution when exercising its powers or performing its duties as the Controlling Member if:

- a. 50% or more of the Members comprising a Members' Interest Group; or
- b. 25% of all Members of the Society,

vote to appoint a mediator. The Members in question must promptly give full written particulars of the failure ("dispute") to the Controlling Member, and the dispute will be referred to mediation. The mediation process is:

- c. the parties will appoint a mediator and if they fail to agree the mediator will be appointed by the President of the New Zealand Law Society or the President's nominee;
- d. the parties must co-operate with the mediator in an effort to resolve the dispute;
- e. if the dispute is settled, the parties must sign a copy of the terms of settlement;
- f. if the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease;



- g. the cost of the mediator's fee and costs including travel, room hire, refreshments etc must be met as to half by the Society and as to half by the Controlling Member;
- h. the terms of settlement are binding on the parties;
- i. the terms of settlement may be tendered in evidence in any legal proceedings;
- j. the parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible in any arbitration or legal proceedings.

**15.5 Corporation representatives:** Any corporation which is a Member may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Society, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which that person represents as that corporation could exercise if it were a natural person. References in this Constitution to a Member being present in person shall mean and include a representative appointed pursuant to this rule, and such person may also stand for election to the Committee.

**15.6 No vote if fees unpaid:** Unless all annual levies and additional fees presently payable by the Member to the Society have been paid in full, the Member shall not be entitled to vote at any general meeting of the Society, whether in his own right or as a proxy for another person.

**15.7 Voting at meetings:** At any general meeting:

- a. A properly notified resolution may be put to the vote by the chairperson or by any Member present at the meeting and entitled to vote.
- b. Resolutions put to the vote shall be decided on voices or a show of hands, unless a poll is demanded on or before declaration of the result of the voices or show of hands by:
  - i. the chairperson of the meeting; or
  - ii. at least five Members present in person or by proxy; or
  - iii. the Controlling Member (if there is one).
- c. In the case of a resolution put to the vote of the meeting by voices or a show of hands, a declaration by the chairperson that such resolution has been carried or lost or an entry to that effect in the Society's minute book, shall be conclusive evidence of that fact, without further proof of the number or portion of votes recorded in favour of or against such resolution.
- d. Resolutions shall be passed by a majority of votes, except where a Special Resolution or a unanimous resolution of all Members is required by this Constitution.

- e. In the case of a tie in votes, the chairperson may exercise a casting vote.
  - f. A Member may exercise the right to vote either by being present or by proxy. A proxy for a Member is entitled to attend, to be heard and vote at a meeting of the Society as if the proxy were the Member. A proxy must be appointed by notice in writing signed by the Member and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding twelve months. No proxy is effective in relation to a meeting unless a signed copy of the notice of appointment is delivered to the chairperson or the secretary of the Society at least 24 hours before the start of the meeting.
- 15.8 **Good faith:** Members shall, in exercising any vote at any general meeting, or as a Committee Member, exercise such vote in good faith with a view to ensuring that all Members are treated fairly by the Society, and that each Member shall bear that Member's Proportion of Operating Expenses and of all costs and expenses to be met by levies made by the Society under rule 6, irrespective of whether any expenditure by the Society benefits all Members.

## GENERAL

### 16. GENERAL

- 16.1 **Dissolution:** The Society may be wound up in accordance with section 24 of the Act. Upon the winding up of the Society:
- a. ownership of the Communal Facilities (including, without limitation, any shares in Water Company) shall vest in, and
  - b. the then balance of any sinking fund collected by the Committee in accordance with rule 6.9a shall be distributed to,
- the Members as tenants in common in shares equal to the Member's Proportion under paragraph a. of the definition of Member's Proportion.
- 16.2 **Alteration of Constitution:** Subject to rule 16.3, 16.4, 16.5 and 16.6 this Constitution shall not be amended, added to or rescinded unless:
- a. such action is taken at an annual general meeting, or a general meeting convened for that purpose;
  - b. written notice of the proposed amendment, addition or rescission has been given to all Members in accordance with this Constitution;
  - c. such action is taken by Special Resolution; and
  - d. such action is taken with the written consent of the Controlling Member (if there is one).

- 16.3 **Rights of Controlling Member:** Notwithstanding any other rule in this Constitution, this Constitution shall not be amended, added to or rescinded so as to alter, add to or rescind rules 4.2, 5.1, 7.1, 7.2, 8.1, 9.2, 10.1, 13.1, 14.3, 15, 16.1, 16.2, 16.3 or 16.5 so as to detrimentally affect the rights of the Controlling Member.
- 16.4 **Alteration of Certain Rules:** Notwithstanding rule 16.2, rules 3.3, 5.4, 5.5, 6.10, 12.11, 15.4 or any rule or part of a rule that would, if amended, have the effect of altering these rules so that a condition in the Exemption Notice would no longer be met must be approved by a Special Resolution and the Developer, the Controlling Member and any Vendor shall not vote on such resolution.
- 16.5 **Alteration of Constitution Affecting Members' Interest Groups:** Notwithstanding rule 16.2 this Constitution shall not be amended to, added to or rescinded in a manner that affects a Member's Interest Group unless:
- a. such action is taken at an annual general meeting, or a special general meeting convened for that purpose, and
  - b. written notice of the proposed amendment, addition or rescission has been given to all Members in accordance with this Constitution and
  - c. such action is taken by Special Resolution, and
  - d. each Member's Interest Group affected by the amendment, addition or rescission passes a Special Resolution of that Member's Interest Group; and
  - e. such action is taken with the written consent of the Controlling Member (if there is one),
- where a "Members' Interest Group" is defined as a group of Members whose:
- f. affected rights are identical; and
  - g. whose rights are affected by the action or proposal in the same way.

For the purposes of the Constitution and the definition of the term "Members' Interest Group", one or more Members' Interest Groups may exist in relation to any action or proposal; and if an action is taken in relation to some Members and not others or expressly distinguishes between certain types of Members (such as by way of example on Residential Members), Members may fall into 2 or more Members' Interest Groups.

- 16.6 **Introduction, Alteration or Cancellation of Bylaws:** If the Committee wishes to promulgate new Bylaws or vary or cancel any Bylaws:
- a. that Bylaw shall not be effective until it is approved by the Members by resolution in accordance with rule 15.7; provided that

- b. if that Bylaw only regulates a Members' Interest Group, that Bylaw shall not be effective until it is approved by a majority resolution of the Members' Interest Group, in which case the process for notification and voting as set out under rule 15.7 shall be deemed to apply.
- 16.7 **Acceptance by Registrar:** No such amendment, addition or rescission shall be valid unless and until accepted by the Registrar.
- 16.8 **Registered office:** The registered office of the Society shall be situated at a place nominated by the Committee.
- 16.9 **Liability of Members:** No Members shall be under any liability in respect of any contract or other obligation made or incurred by the Society.
- 16.10 **Society to Indemnify:** The Society shall indemnify and keep indemnified:
  - a. each Member against any liability properly incurred by such Member in respect of the affairs of the Society, to the extent of property owned by the Society; and
  - b. members of the Committee from and against any liability in respect of any act or omission in their capacity as a Committee member, to the extent of property owned by the Society, except where criminal liability is adjudged in respect of any Committee member.
- 16.11 **No action in favour of Members:** No action in law or otherwise shall lie in favour of any Member against any other Member or the Committee, or any Committee member in respect of any act or omission pursuant to this Constitution. Nothing in this rule shall prevent an action in respect of any loss or expense arising from the wilful default of the person against whom such action is taken.
- 16.12 **Member to indemnify Society:** Each Member shall indemnify and keep indemnified the Society from and against any action, claim, demand, loss, damage, cost, expense and liability for which the Society may become liable in respect of or arising from any breach of this Constitution by the Member.
- 16.13 **Arbitration:** Any difference or dispute which may arise between a Member and the Society concerning this Constitution or any act or thing to be done, suffered or omitted under this Constitution, or concerning the construction of this Constitution shall be referred to the arbitration of a single arbitrator if the parties can agree upon one, but otherwise to two arbitrators (one to be appointed by either party) and an umpire (to be appointed by the arbitrators before entering upon the reference). Any dispute, difference or question as to the jurisdiction of the arbitrator shall be determined by the arbitrator. The arbitration shall be conducted in accordance with and subject to the provisions of the arbitration statutes for the time being in force in New Zealand. Such arbitration shall be a condition precedent to the commencement of any action at law.

16.14 **Approval:** Where in this Constitution any reference is made to the approval or consent of the Society or the Developer:

- a. Such approval or consent shall be given at the sole discretion of the Society or the Developer, as appropriate;
- b. No approval or consent given on any occasion by either the Society or the Developer shall serve as a precedent for, or be binding in any way with respect to, any future application for consent or approval; and
- c. Such reference shall mean the prior written approval or consent of the Society or the Developer, as appropriate.

16.15 **Balance Date:** The financial year of the Society shall end on 30 June in each year.

**SCHEDULE 1**

**FIRST MEMBERS**

Jacks Point Limited.

Jacks Point Equities Limited.

Jacks Point Land Limited.

Jacks Point Golf Course Limited.

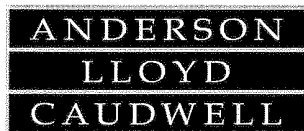
Jacks Point Land Holdings Limited.

## APPENDIX 1

### Deed – Sale of Golf Assets and Neighbouring Developers

#### DEED – SALE OF GOLF ASSETS AND NEIGHBOURING DEVELOPERS

between  
 Jacks Point Residents & Owners  
 Association Incorporated  
 and  
 Jacks Point Limited  
 and  
 Jacks Point Equities Limited  
 and  
 Jacks Point Land Limited  
 and  
 Jacks Point Golf Course Limited



BARRISTERS, SOLICITORS & NOTARIES SINCE 1862

QUEENSTOWN, DUNEDIN & CHRISTCHURCH  
 NEW ZEALAND

Tel: 64 3 442 7570  
 Fax: 64 3 442 8848  
 E-mail: [lawyers@alclegal.com](mailto:lawyers@alclegal.com)  
 PO Box 201  
 Queenstown



## Deed – Sale of Golf Assets and Neighbouring Developers

Date:

2006

### Parties

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1. **Jacks Point Residents & Owners Association Incorporated** ("the Society")
2. **Jacks Point Limited** ("JPL")
3. **Jacks Point Equities Limited** ("JPE")
4. **Jacks Point Land Limited** ("OwnerCo")
5. **Jacks Point Golf Course Limited** ("OperatorCo")

### Background

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- A. The Society represents landowners in Jacks Point. At the date of this deed JPL:
  - (i) owns the land out of which title(s) to the Freehold Land will issue; and
  - (ii) leases certain land under the Henley Downs Lease,
 both of which comprise the Golf Course. The Golf Course forms part of Jacks Point.
- B. It is intended that upon the issue of title(s) to the Freehold Land and the Leasehold Land (or shortly after that):
  - (i) OwnerCo will own the Freehold Land and the Leasehold Land which is part of Jacks Point; and
  - (ii) OperatorCo will operate the Golf Course pursuant to a lease and sublease from OwnerCo.
- C. It is also intended that OperatorCo will own and operate the Business.
- D. In consideration of this deed and in consideration of the Society, OwnerCo and OperatorCo entering into the Golf Encumbrances, the parties have agreed to grant each other the arrangements with regard to Neighbouring Developers set out in this deed.

### Agreement

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#### 1. Definitions and Construction

##### Definitions

- 1.1 In this deed, unless the context otherwise requires:

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- 3 -

<b>"Business"</b>	means the business undertaken by OperatorCo in respect of operating the Golf Course and by OperatorCo in respect of any golf-related business reasonably associated with the operation of the Golf Course.
<b>"Business Assets"</b>	means any assets (tangible or intangible) including goodwill in respect of the Business, including OperatorCo's interest in the Freehold Land and the Leasehold Land.
<b>"Controlling Member"</b>	has the meaning attributed to it in the Constitution.
<b>"Constitution"</b>	means the Constitution of the Society, which is its rules for the purposes of the Incorporated Societies Act 1908.
<b>"Freehold Land"</b>	means the area approximately shown on the plan attached to this deed (Lots 15, 17, 18 and 19).
<b>"Golf Assets"</b>	means the Freehold Land and the Leasehold Land and the Business Assets.
<b>"Golf Course"</b>	means the golf course situated on the Freehold Land and the Leasehold Land, and includes the Freehold Land and the Leasehold Land.
<b>"Golf Encumbrances"</b>	means [describe the 2 encumbrances]
<b>"Grantor"</b>	<p>as to the Freehold Land and the Leasehold Land, means whomever of the following owns the Freehold Land and the Leasehold Land from time to time:</p> <ul style="list-style-type: none"> <li>(a) JPL; or</li> <li>(b) OwnerCo; or</li> <li>(c) any other company which is a subsidiary (whether directly or indirectly) of JPE; and</li> </ul> <p>as to the Business, means whomever of the following owns the Business from time to time:</p> <ul style="list-style-type: none"> <li>(a) OperatorCo; or</li> <li>(b) any other company which is a subsidiary (whether directly or indirectly) of JPE; and</li> </ul> <p>as to the Shares, means whomever of the following owns the Shares from time to time:</p> <ul style="list-style-type: none"> <li>(a) JPE; or</li> <li>(b) any other company which is a subsidiary (whether directly or indirectly) of JPE.</li> </ul>

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<b>"Henley Downs Lease"</b>	means:
	(a) an agreement to lease in respect of 7 holes of the Golf Course being approximately 24 hectares of land contained in Certificate of Title OT 17C/864, between Henley Downs Holdings Limited as lessor and JPL as lessee, under which the parties agree to register a memorandum of lease upon the issue of a freehold title for that land, thereby creating a leasehold title; or
	(b) the memorandum of lease described in paragraph a, of this definition.
<b>"Jacks Point"</b>	has the meaning attributed to it in the Constitution.
<b>"Jacks Point Zone"</b>	means the residential and commercial development zone called the Jacks Point Special Zone established by the Queenstown Lakes District Council as a resort zone under Part 12 of the Queenstown Lakes District Plan.
<b>"Leasehold Land"</b>	means:
	(a) the lessee's interest in the land described in the Henley Downs Lease; or
	(b) the land contained in the leasehold title arising from the Henley Downs Lease.
<b>"Neighbouring Developer"</b>	means any developer of Neighbouring Developments.
<b>"Neighbouring Developments"</b>	means any development, other than Jacks Point, involving residential lots within the Jacks Point Zone which is being developed by a developer other than JPL or one of the subsidiaries of JPE.
<b>"Securities Act Exemption Information"</b>	means the information set out in clause 6(1)(n) of the Securities Act (Jacks Point Development) Exemption Notice 2006 or any equivalent requirement to provide information pursuant to any other exemption notice in substitution for that Notice.
<b>"Subsidiary"</b>	has the meaning attributed to it in the Companies Act 1993, or any equivalent definition in any Act or amendment or repeal of that Act.
<b>"Shares"</b>	means all shares in the companies which own the Golf Course and/or the Business from time to time.
<b>"Term"</b>	means the term described in clause 2.

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### **Construction**

- 1.2 In this deed, unless the context requires otherwise:
- a. References to clauses are to those named in this deed;
  - b. Headings are for convenience only and do not affect interpretation;
  - c. The singular includes plural and vice versa, and words importing any gender include the other genders;
  - d. Statute, regulation or by-law includes all statutes, regulations, or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute;
  - e. References to any party includes the successors and any permitted assigns of that party; and
  - f. A reference to "written" or "writing" includes facsimile communications.

### **2. Term**

- 2.1 The term of this deed commences on the execution of this deed and expires on the earlier of the expiry date of the Henley Downs Lease or any earlier date of termination of the Henley Downs Lease.

### **3. Sale to Society**

- 3.1 If, at any time during the Term, the Grantor wishes to sell any of the Golf Assets or any of the Shares (whether together, separately or partially) to the Society, the applicable Grantor will give the Securities Act Exemption Information to the Society either prior to:

- a. the applicable Grantor and the Society entering into an agreement for sale and purchase; or
- b. the Society confirming the sale and purchase;

on the basis that the Society requires the Securities Act Exemption Information prior to obtaining approval from its members to the purchase.

### **4. Neighbouring Developments**

- 4.1 In consideration of the Golf Encumbrances and of the provisions of this deed, while JPL remains the Controlling Member, the Society will not admit as a member any owner of a lot in the Neighbouring Developments without the consent of JPL. The consent of JPL may be granted or refused at the absolute discretion of JPL.
- 4.2 If JPL, by notice in writing to the Society, requires the Society to admit lot owners in Neighbouring Developments as members of the Society:
- a. The Society will immediately admit those lot owners as members of the Society and on such terms as JPL gives notice to the Society, but those terms

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will not be more favourable than those of members whose lots are within Jacks Point; and

- b. If the Neighbouring Developer or any lot owner within any of the Neighbouring Developments is paying any sum of money or other consideration, in consideration of the admission of its lot owners as members of the Society and/or in consideration of the acquisition of golfing rights in respect of the Golf Course, then JPL will retain any such sum or consideration. If such sum or consideration is paid to the Society, the Society will immediately pay it to JPL.

## 5. Notices

- 5.1 a. Any notice or other communication ("notice") given under this deed must be in writing.
- b. It may be served personally or sent to any of the relevant party's communication points listed below. Notwithstanding anything else in this clause, if notices are given by any method other than email, then a copy of the notice must also be sent by email to the appropriate email address listed below.
- c. Each party will notify the other in writing of any changes.

Party: Jacks Point Residents & Owners Association Incorporated  
 Address: C/- Anderson Lloyd Caudwell, 17 Marine Parade, Queenstown,  
 Attention: Warwick Goldsmith & Bryan Henderson  
 and by fax: 0-3-450-0799  
 and by email to both of the following:  
[bryan.henderson@alclegal.com](mailto:bryan.henderson@alclegal.com)  
[warwick.goldsmith@alclegal.com](mailto:warwick.goldsmith@alclegal.com)

Party: Jacks Point Limited  
 Address: C/- Anderson Lloyd Caudwell, 17 Marine Parade, Queenstown,  
 Attention: Warwick Goldsmith & Bryan Henderson  
 and by fax: 0-3-450-0799  
 and by email to both of the following:  
[bryan.henderson@alclegal.com](mailto:bryan.henderson@alclegal.com)  
[warwick.goldsmith@alclegal.com](mailto:warwick.goldsmith@alclegal.com)

Party: Jacks Point Equities Limited  
 Address: C/- Anderson Lloyd Caudwell, 17 Marine Parade, Queenstown,  
 Attention: Warwick Goldsmith & Bryan Henderson  
 and by fax: 0-3-450-0799  
 and by email to both of the following:  
[bryan.henderson@alclegal.com](mailto:bryan.henderson@alclegal.com)  
[warwick.goldsmith@alclegal.com](mailto:warwick.goldsmith@alclegal.com)

Party: Jacks Point Land Limited  
 Address: C/- Anderson Lloyd Caudwell, 17 Marine Parade, Queenstown,  
 Attention: Warwick Goldsmith & Bryan Henderson  
 and by fax: 0-3-450-0799  
 and by email to both of the following:

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[bryan.henderson@alclegal.com](mailto:bryan.henderson@alclegal.com)  
[warwick.goldsmith@alclegal.com](mailto:warwick.goldsmith@alclegal.com)

Party: Jacks Point Golf Course Limited  
 Address: C/- Anderson Lloyd Caudwell, 17 Marine Parade, Queenstown,  
 Attention: Warwick Goldsmith & Bryan Henderson  
 and by fax: 0-3-450-0799  
 and by email to both of the following:  
[bryan.henderson@alclegal.com](mailto:bryan.henderson@alclegal.com)  
[warwick.goldsmith@alclegal.com](mailto:warwick.goldsmith@alclegal.com)

- 5.2 Notices are deemed served at the following times:
- a. when given personally, upon delivery;
  - b. when sent by post (other than airmail) or document exchange, 3 business days after posting;
  - c. when sent by airmail outside New Zealand, 5 business days after posting;
  - d. when sent by facsimile or email upon receipt of the correct answerback or receipt code.
- 5.3 Any notice which has been served on a Saturday, Sunday or public holiday is deemed to be served on the first business day after that day.
- 5.4 A notice may be given by an authorised officer, employee or agent.
- 5.5
- a. Notice may be given personally to a director, employee or agent of the party at that party's address or to a person who appears to be in charge at the time of delivery or according to sections 387 to section 390 (inclusive) of the Companies Act 1993.
  - b. If the party is a natural person, partnership or association, the notice may be given to that person or any partner or responsible person. If they refuse to accept the notice, it may be brought to their attention and left in a place accessible to them.
- 5.6 Time is of the essence.
6. **Further Assurance**
- 6.1 Each party will with due diligence sign all necessary deeds and documents and do everything that is reasonably required to carry out the terms of this deed.
- 6.2 If the Grantor is a subsidiary of JPE (whether directly or indirectly), JPE shall do all things necessary to procure that the Grantor complies with its obligations under this deed.
- 6.3 The parties agree that the obligations of the Grantor under this deed are joint and several.

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## 7. **Dispute Resolution**

- 7.1 If a party has any dispute with the other party in connection with this deed:
- a. That party will promptly give full written particulars of the dispute to the other.
  - b. The parties will promptly meet together and in good faith try and resolve the dispute.
- 7.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 7.3 A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 7.4 The mediation procedure is:
- a. The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
  - b. The parties must co-operate with the mediator in an effort to resolve the dispute.
  - c. If the dispute is settled, the parties must sign a copy of the terms of the settlement.
  - d. If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
  - e. Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.
- 7.5 The terms of settlement are binding on the parties and override the terms of the deed if there is any conflict.
- 7.6 The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 7.7 The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible in any arbitration or legal proceedings.
- 7.8 Either party may commence arbitration proceedings when mediation ceases under clause 7.4d.
- 7.9 If the dispute is referred to arbitration:
- a. The arbitration will be conducted by one arbitrator appointed by the parties.
  - b. If the parties cannot agree on an arbitrator within 14 days the appointment will be made by the president of the New Zealand Law Society or the president's nominee.

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- c. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 7.10 Neither party will unreasonably delay the dispute resolution procedures in this clause 7.
- 7.11 This clause 7 does not apply to:
  - a. Any dispute arising in connection with any attempted renegotiation of this deed; or
  - b. An application by either party for urgent interlocutory relief.
- 7.12 Pending resolution of any dispute the parties will perform this deed in all respects including performance of the matter which is the subject of dispute.
- 8. **Waiver**
  - 8.1 Any failure by a party to enforce any clause of this deed, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this deed.
- 9. **General**
  - 9.1 The warranties, undertakings, agreements and indemnities given under this deed or pursuant to this deed shall not merge on settlement of any of the transactions contemplated by this deed but shall remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.
  - 9.2 If any part of this deed is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this deed and they shall remain in full force and effect.
  - 9.3 This deed constitutes the entire agreement between the parties on the subject matter of this agreement and supersedes and extinguishes all earlier negotiations, understandings and agreements, whether oral or written between the parties relating to the subject matter of this deed.
  - 9.4 JPL and its successors or assigns may in its absolute discretion without the consent of the other parties to this deed, assign all or any of its rights and transfer its obligations under this deed to any other person.

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**Signed by the parties**

Signed by **Jacks Point Residents & Owners Association Incorporated** by affixing its common seal in the presence of:

\_\_\_\_\_

\_\_\_\_\_

Signed by **Jacks Point Limited** by:

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

Signed by **Jacks Point Equities Limited** by:

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

Signed by **Jacks Point Land Limited** by:

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

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Signed by **Jacks Point Golf Course**  
**Limited** by:

---

Director's signature

---

Director's signature

---

Director's full name

---

Director's full name

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## APPENDIX 2

## Golf Course Encumbrances

Approved by Registrar-General of Land under No. 2002/6117

## Encumbrance instrument

Section 101, Land Transfer Act 1952

Land registration district <b>OTAGO</b>			<b>BARCODE</b>
Unique identifier(s) or C/T(s)      All/part      Area/description of part or stratum			
<b>262755</b>	<b>All</b>		
Encumbrancer <i>Surname(s) must be underlined or in CAPITALS</i>			
<b>Jacks Point Limited</b>			
Encumbrancee <i>Surname(s) must be underlined or in CAPITALS</i>			
<b>Jacks Point Residents &amp; Owners Association Incorporated</b>			
Estate or interest to be encumbered <i>Insert, eg, fee simple; leasehold in lease number, etc.</i>			
<b>Fee Simple</b>			
Encumbrance memorandum number			
<b>Not applicable</b>			
Nature of security <i>State whether sum of money, annuity, or rentcharge, and amount.</i>			
<b>Continued on Annexure Schedule 2</b>			
Operative clause <i>Delete words in [ ], as appropriate</i>			
<p>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 sum of money, annuity, or rentcharge to be raised and paid in accordance with the terms set out in the <del>above encumbrance memorandum</del> [Annexure Schedule(s)] and so as to incorporate in this encumbrance the terms and other provisions set out in the <del>above encumbrance memorandum</del> [and] [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.</p>			
Dated this      day of			
Attestation			
By its duly authorised agent and attorney		Signed in my presence by the Encumbrancer	
<div style="border: 1px solid black; height: 100px; width: 100%;"></div>		<i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i>  <b>Witness name</b>  <b>Occupation</b>  <b>Address</b>	
Signature [common seal] of Encumbrancer			
Certified correct for the purposes of the Land Transfer Act 1952.			
		<div style="border: 1px solid black; width: 200px; height: 20px; margin: 0 auto;"></div> [Solicitor for] the Encumbrancee	

REF: 7008 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/6117

**Annexure Schedule 1**Encumbrance  
instrument

Dated

Page **1** of **13** pages**Terms***(Continue in additional Annexure Schedule(s) if required.)*

- |   |   |
|---|---|
| 1 | Length of term  |
| 2 | Payment date(s)   |
| 3 | Rate(s) of interest   |
| 4 | Event(s) in which the sum, annuity, or rentcharge becomes payable       |
| 5 | Events(s) in which the sum, annuity, or rentcharge ceases to be payable |

**Covenants and conditions***(Continue in additional Annexure Schedule(s) if required.)*

Continued on Annexure Schedule 2

**Modification of statutory provisions***(Continue in additional Annexure Schedule(s) if required.)*

Continued on Annexure Schedule 2

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 2 of 13 Pages

(Continue in additional Annexure Schedule, if required.)

**Annexure Schedule 2****Continuation of Nature of Security, Covenants and Conditions  
and Modification of Statutory Provisions****BACKGROUND**

- A. The Encumbrancer is registered as proprietor of the fee simple estate in the Freehold Land which is located within Jacks Point.
- B. The Encumbrancee has been established to provide for and administer a general scheme applicable to and for the benefit of the Jacks Point Land and each of the lots subdivided from the Jacks Point Land whose registered proprietors must be members of the Encumbrancee.
- C. The Leasehold Owner will be the registered proprietor of the lessee's interest in the Leasehold Land (which is also located within Jacks Point).
- D. The Golf Course, as part of the development of Jacks Point, will be operated on the Freehold Land and the Leasehold Land by OperatorCo pursuant to:
  - i. a registered lease of the Freehold Land between the Encumbrancer (as lessor) and OperatorCo (as lessee); and
  - ii. a registered sublease of the Leasehold Land between the Leasehold Owner (as lessor) and OperatorCo (as lessee).
- E. Society Members will have certain access rights to the Golf Course pursuant to:
  - i. this encumbrance in respect of the Encumbrancer's interest as registered proprietor of the Freehold Land ("the **OwnerCo Freehold Encumbrance**");
  - ii. an encumbrance instrument between the Encumbrancee (as encumbrancee) and the Leasehold Owner (as encumbrancer) in respect of the Leasehold Owner's interest as lessee of the Leasehold Land under lease number \_\_\_\_\_ ("the **OwnerCo Leasehold Encumbrance**");
  - iii. an encumbrance instrument between the Encumbrancee (as encumbrancee) and OperatorCo (as encumbrancer) in respect of the OperatorCo's interest as lessee of the Freehold Land under lease number \_\_\_\_\_ and as sublessee of the Leasehold Land under lease number \_\_\_\_\_ ("the **OperatorCo Encumbrance**").
- F. The existence and ongoing maintenance of the Golf Course is an integral part of Jacks Point. The Encumbrancee, by paying the levies in the OperatorCo Encumbrance, provides benefits to

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

REF: 7025 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 3 of 13 Pages

(Continue in additional Annexure Schedule, if required.)

the Society Members being the right to use the Golf Course and additional value in each Society Member's property from being in a development which contains a well maintained Golf Course.

- G. The Encumbrancer wishes to encumber the Freehold Land for the benefit of the Encumbrancee on the terms and conditions contained in this OwnerCo Freehold Encumbrance.

**OPERATIVE PARTS****1. Interpretation**

- 1.1 In this OwnerCo Freehold Encumbrance unless the context otherwise requires:

"**Business**" means the business undertaken by OperatorCo in respect of operating the Golf Course and by OperatorCo in respect of any golf related business reasonably associated with the operation of the Golf Course.

"**Club**" means Jacks Point Golf Club Incorporated, or any other club or incorporated body appointed under clause 5.

"**Constitution**" means the constitution of the Encumbrancee, which is its rules for the purposes of the Incorporated Societies Act 1908.

"**Encumbered Golf Course**" means that part of the Golf Course which is located on the Freehold Land.

"**Encumbrancee**" means Jacks Point Residents & Owners Association Incorporated.

"**Encumbrancer**" means the registered proprietor of the Freehold Land from time to time.

"**Freehold Land**" means the land contained in fee simple certificate of title OT262755.

"**Golf Assets**" means:

- a. the Freehold Land; and
- b. the Leasehold Land; and
- c. any assets (tangible or intangible) including goodwill in respect of the Business, including OperatorCo's interest in the Freehold Land and the Leasehold Land.

"**Golf Course**" means the golf course located on the Freehold Land and the Leasehold Land, and includes the Freehold Land and the Leasehold Land.

"**Henley Downs Lease**" means:

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

REF: 7025 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 4 of 13 Pages

(Continue in additional Annexure Schedule, if required.)

a. an agreement to lease in respect of approximately 24 hectares of land contained in Certificate of Title OT 17C/864, between Henley Downs Holdings Limited as lessor and Jacks Point Land Limited as lessee, under which the parties agree to register a memorandum of lease upon the issue of a freehold title for that land (to be OT277414), thereby creating a leasehold title; or

b. the memorandum of lease described in paragraph a, of this definition.

"Jacks Point" has the meaning attributed to it in the Constitution.

"Jacks Point Land" means the land formerly contained in Lot 1, DP337993, certificate of title OT156346 and Lots 2 and 5, DP337993 and Lot 5, DP26261, certificate of title OT156347, except land contained in Lot 13 DP364700, certificate of title OT 262753.

"Jacks Point Zone" has the meaning attributed to it in the Constitution.

"Leasehold Land" means the land which is the subject of the Henley Downs Lease and contained in leasehold certificate of title OT \_\_\_\_\_.

"Leasehold Owner" means the registered proprietor of the lessee's interest in the Leasehold Land from time to time.

"LTA" means the Land Transfer Act 1952.

"Opening Date" means 31 December 2007 or such earlier date on which the Golf Course is declared open for play by OperatorCo.

"OperatorCo" means Jacks Point Golf Course Limited and its successors and assigns.

"OperatorCo Encumbrance" means the encumbrance instrument referred to in Background paragraph E.iii.

"OwnerCo Freehold Encumbrance" means this encumbrance instrument together with all annexure schedules.

"OwnerCo Leasehold Encumbrance" means the encumbrance instrument referred to in Background paragraph E.ii.

"PLA" means the Property Law Act 1952.

"Rent Charge" means the charge described in clause 2 of this OwnerCo Freehold Encumbrance.

"Society Member" means each Member (as defined in the Constitution) of the Encumbrancee.

"Shares" means all shares in the companies which own the Golf Course and/or the Business from time to time.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

REF: 7025 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**

Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 5 of 13 Pages

(Continue in additional Annexure Schedule, if required.)

"Term" means the term described in clause 2.1.

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. References to the parties are references to the Encumbrancee and Encumbrancer.
- d. This OwnerCo Freehold Encumbrance binds or benefits the parties and their heirs, executors, successors and assigns in perpetuity of the Freehold Land.
- e. References to clauses are to those named in this OwnerCo Freehold Encumbrance.
- f. Headings are convenience only and do not affect interpretation.
- g. Words importing any gender include the other genders.
- h. Statute, regulation or by-law includes all statutes, regulations or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute.
- i. A reference to "written" or "writing" includes facsimile communications.

2. **Term and Rent Charge**

2.1 The term of this OwnerCo Freehold Encumbrance commences on the Opening Date and expires on the earlier of:

- a. The expiry date of the Henley Downs Lease or any earlier date of termination of the Henley Downs Lease; and
- b. The date on which any sale of the Golf Assets or the Shares to the Encumbrancee settles.

2.2 Subject to clause 2.4, the Encumbrancer encumbers the Freehold Land for the benefit of the Encumbrancee for the Term, with an annual rent charge ("the **Rent Charge**") of \$1.00 to be paid on each anniversary of the Opening Date.

2.3 If during the year preceding the Opening Date and each successive year after that there has been no breach of the covenants and obligations of the Encumbrancer contained in this OwnerCo Freehold Encumbrance, the Rent Charge will be deemed to have been paid.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

REF: 7025 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 6 of 13 Pages

(Continue in additional Annexure Schedule, if required.)

- 2.4 The Rent Charge will determine immediately and the Encumbrancer will be entitled to a release of this OwnerCo Freehold Encumbrance if all covenants expressed in this OwnerCo Freehold Encumbrance become obsolete or no longer enforceable or the Term has expired.
3. **Covenant - Access to Golf Course**
- 3.1 The Encumbrancer covenants with the Encumbrancee that:
- a. All Society Members have the right to use the Encumbered Golf Course in terms of this clause 3.
  - b. If, for any reason (except when clause 6 applies), OperatorCo is unable or unwilling to provide to Society Members the access to the Encumbered Golf Course described in the OperatorCo Encumbrance, OwnerCo will either (at its option):
    - i. Enter an encumbrance with the Encumbrancee on terms consistent with the OperatorCo Encumbrance in respect of the levy payable by the Encumbrancee and granting the access right to the Society Members, both as described in the OperatorCo Encumbrance; or
    - ii. Cause another entity which has the right to grant such access rights to enter an encumbrance with the Encumbrancee on terms consistent with the OperatorCo Encumbrance in respect of the levy payable by the Encumbrancee and granting the access rights to the Society Members both as described in the OperatorCo Encumbrance.
- 3.2 The Encumbrancee acknowledges that owners of the 18 homesites within the Jacks Point Zone known as Henley Downs, neighbouring Jacks Point Land, will have the same rights to use the Encumbered Golf Course as the Society Members who own the 18 homesites within Jacks Point to have the right to use the Encumbered Golf Course. It is acknowledged that Society Members who own a homesite within Jacks Point, by paying a levy to the Encumbrancee which pays levies under the OperatorCo Encumbrance, have the right of either being a member of the Club or a Green Fees Player as provided in the OperatorCo Encumbrance.
4. **Further Assurance**
- 4.1 Each party will with due diligence sign all necessary deeds and documents and do everything that is reasonably required to carry out the terms of this OwnerCo Freehold Encumbrance.
5. **Covenant - New Club**
- 5.1 The Encumbrancee acknowledges that OperatorCo will grant access rights in respect of the Encumbered Golf Course to the Club on an annual or other basis. If, for any reason, OperatorCo does not grant such access rights to the incumbent Club at any time, the Encumbrancer covenants with the Encumbrancee that the Encumbrancer will cause such access rights to be granted to another incorporated body or club for the purposes of operating a golf club on the Encumbered Golf Course.

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REF: 7025 - AUCKLAND DISTRICT LAW SOCIETY



Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**

Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

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(Continue in additional Annexure Schedule, if required.)

**6. Default**

- 6.1 All the covenants expressed in this OwnerCo Freehold Encumbrance will be deemed to have become obsolete and no longer enforceable for the purposes of clause 2.4 after the expiry of 90 days if the Encumbrancer gives notice in writing to the Encumbrancee that the Encumbrancee:
- a. has not duly paid all payments owing to OperatorCo under the OperatorCo Encumbrance 14 days after the Encumbrancee receives written notice of OperatorCo demanding payment of them, and the parties to the OperatorCo Encumbrance have exhausted the arbitration procedure described in the OperatorCo Encumbrance; or
  - b. has not fulfilled any of its obligations under this OwnerCo Freehold Encumbrance, the OwnerCo Leasehold Encumbrance or other obligations under the OperatorCo Encumbrance; and:
    - i. the default cannot be remedied; or
    - ii. the default can be remedied but has not been 21 days after the Encumbrancee receives written notice of the default, and the parties have exhausted the procedure described in clause 8 of this Encumbrance, or if applicable, the procedure described in the dispute resolution clause of the OwnerCo Leasehold Encumbrance or the OperatorCo Encumbrance, provided that this OwnerCo Freehold Encumbrance will not be deemed to have become obsolete and no longer enforceable for the purposes of clause 2.4 if the default is remedied before the Encumbrancee receives notice to that effect; or
  - c. becomes liable to be or is placed in liquidation; or
  - d. cannot pay its debts when they fall due.

**7. Liability**

- 7.1 Subject to clause 2 this OwnerCo Freehold Encumbrance binds the Encumbrancer's successors in title so that contemporaneously with the acquisition of any interest in the Freehold Land all such successors in title must comply with the covenants of this OwnerCo Freehold Encumbrance.
- 7.2 The Encumbrancer will do all things necessary to ensure that any invitees of the Encumbrancer on the Freehold Land and any lessees or occupiers of the Freehold Land comply with the provisions of this OwnerCo Freehold Encumbrance.

**8. Dispute Resolution**

- 8.1 If a party has any dispute with the other party in connection with this OwnerCo Freehold Encumbrance:

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(Continue in additional Annexure Schedule, if required.)

- a. That party will promptly give full written particulars of the dispute to the others.
- b. The parties will promptly meet together and in good faith try and resolve the dispute.
- 8.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 8.3 A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 8.4 The mediation procedure is:
  - a. The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
  - b. The parties must co-operate with the mediator in an effort to resolve the dispute.
  - c. If the dispute is settled, the parties must sign a copy of the terms of the settlement.
  - d. If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
  - e. Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.
- 8.5 The terms of settlement are binding on the parties and override the terms of this OwnerCo Freehold Encumbrance if there is any conflict.
- 8.6 The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 8.7 The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible by the recipient in any arbitration or legal proceedings.
- 8.8 Either party may commence arbitration proceedings when mediation ceases under clause 8.4d.
- 8.9 If the dispute is referred to arbitration:
  - a. The arbitration will be conducted by one arbitrator appointed by the parties.
  - b. If the parties cannot agree on an arbitrator within 14 days the appointment will be made by the president of the New Zealand Law Society or the president's nominee.
  - c. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 8.10 Neither party will unreasonably delay the dispute resolution procedures in this clause 8.

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**Annexure Schedule**Insert type of instrument  
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8.11 This clause 8 does not apply to:

- a. Any dispute arising in connection with any attempted renegotiation of this OwnerCo Freehold Encumbrance; or
- b. An application by either party for urgent interlocutory relief.

8.12 Pending resolution of any dispute the parties will perform this OwnerCo Freehold Encumbrance in all respects including the performance of the matter which is the subject of dispute.

**9. Modification of the Statutory Provisions**

9.1 Section 104 of the PLA applies to this OwnerCo Freehold Encumbrance but that 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 LTA and the PLA;
- b. no covenants on the part of the Encumbrancers and their successor in titles are implied in this OwnerCo Freehold Encumbrance other than the covenants for further assurance implied by section 154 of the LTA.

9.2 The Encumbrancee consents to the registration of any of the following instruments executed by the Encumbrancer in respect of the Freehold Land and/or the Leasehold Land:

- a. The variation of a mortgage instrument or priority of mortgages (sections 102 (4) and 103(3) LTA);
- b. The creation, variation or surrender of an easement (section 90E (3) LTA);
- c. The registration of a lease, a lease variation instrument or the surrender of a lease (sections 115 (4), 116 (7) and 120 LTA);
- d. The creation, variation or surrender of a land covenant; and
- e. The disposal of a licence or shares to which the licence relates (section 121 I (1) LTA),

and this consent will be deemed to be the consent of the mortgagee (which term includes encumbrance) as specified in the LTA to the registration of a particular instrument specified in clauses b to e inclusive above.

9.3 If it is determined that further written consent is required from the Encumbrancee in respect of the matters provided for under clause 9.2 (rather than deemed consent), then the Encumbrancee will immediately, at the request of the Encumbrancer, give that written consent.

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**Annexure Schedule**

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(Continue in additional Annexure Schedule, if required.)

- 9.4 The Encumbrancer must give 7 days prior notice in writing to the Encumbrancee if it wishes to lodge any instruments to which clauses 9.2b to e apply at Land Information New Zealand for registration. If:
- a. the Encumbrancee does not object to that lodgement within 7 days of receiving notice by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so; or
  - b. the arbitrator referred to under clause 9.5 rules that the instruments specified in the Encumbrancer's notice may be lodged,
- then the Encumbrancer shall be entitled to lodge the instruments specified in the Encumbrancer's notice.
- 9.5 If within 7 days of the Encumbrancer giving notice under clause 9.4, the Encumbrancee objects to the lodgement of the instruments specified in the Encumbrancer's notice by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so then:
- a. The parties will promptly meet together and in good faith try and resolve the dispute;
  - b. If the dispute is not resolved within 7 days of the written objection being given (or any longer period agreed to by the parties) the dispute will be referred to arbitration;
  - c. The arbitration will be conducted by one arbitrator appointed by the parties involved;
  - d. If the parties cannot agree on an arbitrator within 7 days the appointment will be made by the President of the New Zealand Law Society or the President's nominee;
  - e. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996;
  - f. No party will unreasonably delay the dispute resolution procedures in this clause;
  - g. This clause does not apply to an application by any party for urgent interlocutory relief.
- 9.6 Without limiting clause 9.2, the Encumbrancer must not lodge any instruments to which clauses 9.2b to e apply if the Encumbrancee objects to the lodgement of those instruments by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so and the arbitrator referred to under clause 9.5 has not ruled that those instruments may be lodged.
10. **Waiver**
- 10.1 Any failure by a party to enforce any clause of this OwnerCo Freehold Encumbrance, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this OwnerCo Freehold Encumbrance.

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**Annexure Schedule**

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(Continue in additional Annexure Schedule, if required.)

- 11. General**
- 11.1 The warranties, undertakings, agreements and indemnities given under this OwnerCo Freehold Encumbrance or pursuant to this OwnerCo Freehold Encumbrance will not merge on settlement of any other transactions contemplated by this OwnerCo Freehold Encumbrance but will remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.
- 11.2 If any part of this OwnerCo Freehold Encumbrance is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this OwnerCo Freehold Encumbrance and they will remain in full force and effect.
- 11.3 Except for the Encumbrancee's statutory obligations, under no circumstances will this OwnerCo Freehold Encumbrance be varied.
- 11.4 Any notice required to be served on any party will be in writing and served in accordance with the PLA.
- 11.5 The Encumbrancer will pay the Encumbrancee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Encumbrancee's rights, remedies and powers in this OwnerCo Freehold Encumbrance and will indemnify the Encumbrancee against all claims and proceedings arising out of the breach by the Encumbrancer of any of its obligations set out in this OwnerCo Freehold Encumbrance.
- 11.6 The Encumbrancee will pay the Encumbrancer's legal costs (as between solicitor and client) of and incidental to the release or attempted release of this OwnerCo Freehold Encumbrance under clause 6 and will indemnify the Encumbrancer against all claims and proceedings arising out of the breach by the Encumbrancee of any of its obligations set out in this OwnerCo Freehold Encumbrance.

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(Continue in additional Annexure Schedule, if required.)

**WESTPAC BANKING CORPORATION** as Mortgagee under Mortgage No. 6128838.3 hereby consents to the registration of the within encumbrance instrument but without prejudice to the Bank's rights powers and remedies under its said Mortgage executed by Westpac Banking Corporation.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2006

EXECUTED by \_\_\_\_\_ )  
**WESTPAC BANKING CORPORATION** )  
 by: \_\_\_\_\_ )  
 in the presence of: \_\_\_\_\_

\_\_\_\_\_  
 Authorised Signatory

**Witness**

Signature: \_\_\_\_\_  
 Name (full): \_\_\_\_\_  
 Occupation: \_\_\_\_\_  
 Address: \_\_\_\_\_

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REF. 7025 – AUCKLAND DISTRICT LAW SOCIETY

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(Continue in additional Annexure Schedule, if required.)

**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**

I, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ HEREBY CERTIFY:

1. THAT by Deed dated the 28th day of April 2006 ("the Deed"), a copy of which was deposited in the Otago Land Registry Office, under number \_\_\_\_\_, I was appointed the lawful attorney of **JACKS POINT LIMITED** ("the Company"), on the terms and subject to the conditions set out in the Deed.

2. THAT at the date hereof I have not received any notice or information of the revocation of that appointment by the commencement of liquidation of the Company, or otherwise.

SIGNED by: \_\_\_\_\_ (name)

\_\_\_\_\_ (signature)

at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2006

SIGNED in my presence:

Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name:

Occupation:

Address:

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REF: 7025 - AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/6117

**Encumbrance instrument**  
Section 101, Land Transfer Act 1952

Land registration district

OTAGO



BARCODE

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

All/part

Area/description of part or stratum

Continued on  
Annexure Schedule 2

Encumbrancer

Surname(s) must be underlined or in CAPITALS

Jacks Point Golf Course Limited

Encumbrancee

Surname(s) must be underlined or in CAPITALS

Jacks Point Residents &amp; Owners Association Incorporated

Estate or interest to be encumbered

Insert, eg, fee simple; leasehold in lease number, etc.

Continued on Annexure Schedule 2

Encumbrance memorandum number

Not applicable

Nature of security

State whether sum of money, annuity, or rentcharge, and amount.

Continued on Annexure Schedule 3

Operative clause

Delete words in [ ], as appropriate

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 sum of money, annuity, or rentcharge to be raised and paid in accordance with the terms set out in the ~~{above encumbrance memorandum}~~ [Annexure Schedule(s)] **and** so as to incorporate in this encumbrance the terms and other provisions set out in the ~~{above encumbrance memorandum}~~ ~~{and}~~ [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.

Dated this                  day of

**Attestation**By its duly authorised and appointed  
attorney

Signed in my presence by the Encumbrancer

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Signature [common seal] of  
Encumbrancer

Address

Certified correct for the purposes of the Land Transfer Act 1952.

[Solicitor for] the Encumbrancee

REF: 7008 – AUCKLAND DISTRICT LAW SOCIETY



Approved by Registrar-General of Land under No. 2002/6117

**Annexure Schedule 1**Encumbrance  
instrument

Dated

Page **1** of **19** pages**Terms***(Continue in additional Annexure Schedule(s) if required.)*

- 1 ~~Length of term~~
- 2 ~~Payment date(s)~~
- 3 ~~Rate(s) of interest~~
- 4 ~~Event(s) in which the sum, annuity, or rentcharge becomes payable~~
- 5 ~~Event(s) in which the sum, annuity, or rentcharge ceases to be payable~~

**Covenants and conditions***(Continue in additional Annexure Schedule(s) if required.)***Continued on Annexure Schedule 3****Modification of statutory provisions***(Continue in additional Annexure Schedule(s) if required.)***Continued on Annexure Schedule 3****All signing parties and either their witnesses or solicitors must sign or initial in this box.**

REF: 7008 -- AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

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Page 2 of 19 Pages

(Continue in additional Annexure Schedule, if required.)

**Annexure Schedule 2**

Continuation of Unique Identifier (or C/Ts)	Continuation of Estate or Interest to be Encumbered
262755	Leasehold Interest in lease number [ ], being a lease of the fee simple estate OT 262755
	Leasehold Interest in lease number [ ], being a sublease of the leasehold interest in lease number [ ]

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REF: 7025 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
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(Continue in additional Annexure Schedule, if required.)

**Annexure Schedule 3****Continuation of Nature of Security, Covenants and Conditions  
and Modification of Statutory Provisions****BACKGROUND**

- A. The Encumbrancer is registered as proprietor of the lessee's interest in the Freehold Land and the sublessee's interest in the Leasehold Land, both of which are located within Jacks Point.
- B. The Encumbrancee has been established to provide for and administer a general scheme applicable to and for the benefit of the Jacks Point Land and each of the lots subdivided from the Jacks Point Land whose registered proprietors must be members of the Encumbrancee.
- C. The Freehold Owner is the registered proprietor of the fee simple estate in the Freehold Land.
- D. The Leasehold Owner is the registered proprietor of the lessee's interest in the Leasehold Land.
- E. The Golf Course, as part of the development of Jacks Point, is operated on the Freehold Land and the Leasehold Land by the Encumbrancer pursuant to:
  - i. A registered lease of the Freehold Land from the Freehold Owner; and
  - ii. A registered sublease of the Leasehold Land from the Leasehold Owner.
- F. The Encumbrancer also owns the buildings on the Golf Course and will operate certain activities out of them.
- G. The Golf Course is to be maintained and operated to a best practice standard.
- H. Society Members will have certain access rights to the Golf Course pursuant to:
  - i. This encumbrance in respect of the Encumbrancer's interest as lessee of the Freehold Land under lease number \_\_\_\_\_ and as sublessee of the Leasehold Land under lease number \_\_\_\_\_ ("OperatorCo Encumbrance");
  - ii. An encumbrance instrument between the Encumbrancee (as encumbrancee) and the Freehold Owner (as encumbrancer) in respect of the Freehold Owner's interest as registered proprietor of the Freehold Land ("OwnerCo Freehold Encumbrance");
  - iii. An encumbrance instrument between the Encumbrancee (as encumbrancee) and the Leasehold Owner (as encumbrancer) in respect of the Leasehold Owner's interest as lessee of the Leasehold Land under lease number \_\_\_\_\_ ("OwnerCo Leasehold Encumbrance").

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**Annexure Schedule**Insert type of instrument  
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(Continue in additional Annexure Schedule, if required.)

- I. The existence and ongoing maintenance of the Golf Course is an integral part of Jacks Point. The Society, by paying the levies in this OperatorCo Encumbrance, provides benefits to the Society Members being the right to use the Golf Course and additional value in each Society Member's property from being in a development which contains a well maintained Golf Course.
- J. The Encumbrancer wishes to encumber the lessee's interest in the Freehold Land under lease number \_\_\_\_\_ and the sublessee's interest in the Leasehold Land under lease number \_\_\_\_\_ for the benefit of the Encumbrancee on the terms and conditions contained in this OperatorCo Encumbrance.

**OPERATIVE PARTS****1. Interpretation****1.1** In this OperatorCo Encumbrance, unless the context otherwise requires:

"**Adult**" means a person aged 20 years or over as at the first day of the Operating Year in question.

"**Business**" means the business undertaken by the Encumbrancer in respect of operating the Golf Course and by the Encumbrancer in respect of any golf related business reasonably associated with the operation of the Golf Course.

"**Club**" means Jacks Point Golf Club Incorporated, or any other club or incorporated body appointed under clause 6.

"**Constitution**" means the constitution of the Encumbrancee, which is its rules for the purposes of the Incorporated Societies Act 1908.

"**Default Interest Rate**" means five per cent above the 90 day bill rate disclosed on Reuters screen page BKBM (or its successor's page) at 11.00am on the due date for payment.

"**Developed Property**" has the meaning given to it in the Constitution, and Developed Properties has the same meaning.

"**Encumbrancee**" means Jacks Point Residents & Owners Association Incorporated.

"**Encumbrancer**" means the registered proprietor of the lessee's interest in the Freehold Land and the sublessee's interest in the Leasehold Land from time to time.

"**Excluded Property**" has the meaning given to it in the Constitution (and in particular in clause 6.1b of the Constitution), and Excluded Properties has the same meaning.

"**Three Year Review Date**" means 1 July 2010 and every three years after that.

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**Annexure Schedule**
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(Continue in additional Annexure Schedule, if required.)

**"Freehold Land"** means the land contained in fee simple certificate of title OT262755 upon which 11 holes of the Golf Course are located.

**"Freehold Owner"** means the registered proprietor of the Freehold Land from time to time.

**"Golf Assets"** means:

- a. the Freehold Land; and
- b. the Leasehold Land; and
- c. any assets (tangible or intangible) including goodwill in respect of the Business, including the Encumbrancer's interest in the Freehold Land and the Leasehold Land.

**"Golf Course"** means the golf course situated on the Freehold Land and the Leasehold Land, and includes the Freehold Land and the Leasehold Land.

**"Golf Course Expenses"** means all payments, costs and expenses (excluding GST) properly or reasonably assessed or assessable, paid or payable or otherwise incurred by the Encumbrancer (as shown in the financial statements of the Encumbrancer for the Operating Year commencing on a Three Year Review Date) in respect of:

- a. all direct costs of repairs, maintenance, (including depreciation of equipment and lease of equipment), renovations and landscaping of the Golf Course; and
- b. the capital costs of repairs, maintenance, renovations, landscaping and improvements of the Golf Course including the capital costs of any equipment required in relation with the Golf Course; and
- c. the administration, operation and management of the activities related to the Golf Course, including the total labour costs of all persons undertaking these functions where these functions are a substantial part of that person's role; but
- d. excluding any internal maintenance of any club house at the Golf Course.

**"Green Fees Player"** means a player playing a casual round of golf on the Golf Course for green fees, who is not a member of the Club.

**"GST"** means goods and services tax charged in accordance with the Goods and Services Tax Act 1985.

**"Henley Downs Lease"** means:

- a. an agreement to lease in respect of approximately 24 hectares of land contained in Certificate of Title OT 17C/864, between Henley Downs Holdings Limited as lessor and Jacks Point Land Limited as lessee, under which the parties agree to register a

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**Annexure Schedule**

Insert type of instrument  
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(Continue in additional Annexure Schedule, if required.)

memorandum of lease upon the issue of a freehold title for that land (to be OT277414), thereby creating a leasehold title; or

b. the memorandum of lease described in paragraph a of this definition.

"Index" means the New Zealand Consumer Price Index (all groups) published by the New Zealand Department of Statistics. The parties will use an appropriate alternative index if the Index is no longer published or the basis for calculating the Index has materially changed. The alternative index will be chosen by the President of the New Zealand Law Society or the President's nominee if the parties cannot agree.

"Jacks Point" has the meaning attributed to it in the Constitution.

"Jacks Point Land" means the land formerly contained in Lot 1, DP337993, certificate of title OT156346 and Lots 2 and 5, DP337993 and Lot 5, DP26261, certificate of title OT156347, except land contained in Lot 13 DP364700, certificate of title OT 262753.

"Jacks Point Zone" has the meaning attributed to it in the Constitution.

"Leasehold Land" means the land which is the subject of the Henley Downs Lease and contained in leasehold certificate of title OT \_\_\_\_\_ upon which 7 holes of the Golf Course are located.

"Leasehold Owner" means the registered proprietor of the lessee's interest in the Leasehold Land from time to time.

"Levy Paying Developed Property" means all Developed Properties, except Excluded Properties.

"Levy Per Property" means the sum, described as such, and calculated under clauses 4.2 and 4.3.

"Levy Review Date" means 1 July 2011 and every three years after that.

"LTA" means the Land Transfer Act 1952.

"Number of Levy Paying Developed Properties" means the number of Levy Paying Developed Properties from time to time. However, where a Society Member joins part way through an Operating Year, that Society Member's Levy Paying Developed Property will be deemed to be a fraction of a Levy Paying Developed Property equal to:

$$X \div 4$$

where "X" is the number of complete or part quarters of that current Operating Year since the Society Member has joined. So, for the purposes of this calculation, in any Operating Year, if a Society Member obtains a Levy Paying Developed Property at any time during:

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(Continue in additional Annexure Schedule, if required.)

- a. the first quarter commencing 1 July, that is deemed to be one Levy Paying Developed Property;
- b. the second quarter commencing 1 October, that is deemed to be three quarters of a Levy Paying Developed Property;
- c. the third quarter commencing 1 January, that is deemed to be one half of a Levy Paying Developed Property;
- d. the fourth quarter commencing 1 April, that is deemed to be a quarter of a Levy Paying Developed Property.

"Opening Date" means 31 December 2007 or such earlier date on which the Golf Course is declared open for play by the Encumbrancer.

"Operating Year" means each calendar year beginning 1 July after the Opening Date, and ending on the following 30 June, and includes any broken periods at the beginning and at the end of the Term.

"OperatorCo Encumbrance" means this encumbrance instrument together with all annexure schedules.

"OwnerCo Freehold Encumbrance" means the encumbrance instrument referred to in Background paragraph H.ii.

"OwnerCo Leasehold Encumbrance" means the encumbrance instrument referred to in Background paragraph H.iii.

"Partner" means:

- a. a spouse; or
- b. a de facto partner as defined in section 2D of the Property (Relationships) Act 1976; or
- c. a partner to a civil union as defined in sections 4 and 5 of the Civil Unions Act 2004.

"PLA" means the Property Law Act 1952.

"Rent Charge" means the charge described in clause 2.

"Quarter" has the meaning given to it in the Constitution.

"Society Member" means each Member (as defined in the Constitution) of the Encumbrancee.

"Shares" means all shares in the companies which own the Golf Course and/or the Business from time to time.

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REF: 7025 – AUCKLAND DISTRICT LAW SOCIETY

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**"Term"** means the term described in clause 2.**"Total Levy"** means the amount payable from time to time by the Encumbrancee to the Encumbrancer under clause 4.1.**"Youth"** means a person aged under 20 years as at the first day of the Operating Year in question.

## 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. References to the parties are references to the Encumbrancee and the Encumbrancer;
- d. This OperatorCo Encumbrance binds or benefits the parties and their heirs, executors, successors and assigns in perpetuity of the lessee's interest in the Freehold Land and/or the sublessee's interest in the Leasehold Land;
- e. References to clauses are to those named in this OperatorCo Encumbrance;
- f. Headings are for convenience only and do not affect interpretation;
- g. Words importing any gender include the other genders;
- h. Statute, regulation or by-law includes all statutes, regulations, or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute; and
- i. A reference to "written" or "writing" includes facsimile communications.

2. **Term and Rent Charge**

## 2.1 The term of this OperatorCo Encumbrance commences on the Opening Date and expires on the earlier of:

- a. The expiry date of the Henley Downs Lease or any earlier date of termination of the Henley Downs Lease; and
- b. The date on which any sale of the Golf Assets or the Shares to the Encumbrancee settles.

## 2.2 Subject to clause 2.4, the Encumbrancer encumbers the lessee's interest in the Freehold Land under lease number \_\_\_\_\_ and the sublessee's interest in the \_\_\_\_\_

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Leasehold Land under lease number \_\_\_\_\_ for the benefit of the Encumbrancee for the Term, with an annual rent charge ("the **Rent Charge**") of \$1.00 to be paid on each anniversary of the Opening Date.

- 2.3 If during the year preceding the Opening Date and each successive year after that there has been no breach of the covenants and obligations of the Encumbrancer contained in this OperatorCo Encumbrance, the Rent Charge will be deemed to have been paid.
- 2.4 The Rent Charge will determine immediately and the Encumbrancer will be entitled to a release of this OperatorCo Encumbrance if all covenants expressed in this OperatorCo Encumbrance become obsolete or no longer enforceable or the Term has expired.
3. **Covenants**
- 3.1 The parties covenant with each other to perform their respective obligations set out in clauses 4, 5, 6 and 8 of this OperatorCo Encumbrance.
- 3.2 The Encumbrancer covenants that it will comply with its obligations as lessee in respect of the registered lease of the Freehold Land and/of the registered sublease of the Leasehold Land.
4. **Levy**
- 4.1
- a. During each Operating Year during the Term, the Encumbrancee will pay the Total Levy to the Encumbrancer on the following basis:
    - i. In respect of the Operating Years from the Opening Date to 30 June 2011 a sum equal to:
 

Levy Per Property x Number of Levy Paying Developed Properties

plus GST on that sum, or such lesser sum for that Operating Year as the Encumbrancer confirms to the Encumbrancee by notice in writing before the commencement of the Operating Year in question.
    - ii. From 1 July 2011 a sum calculated under clause 4.4.
  - b. The Total Levy will not be charged prior to the Opening Date. Subject to clause 4.3, during each Operating Year, a quarter of the Total Levy is payable in arrears on or before the last day of each Quarter.
- 4.2 For the following periods, the Levy Per Property shall be:
- a. Subject to clause 4.3, for the Operating Year beginning 1 July 2006 - \$650.00;
  - b. Subject to clause 4.3, for the Operating Year beginning 1 July 2007 - \$650.00;

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- c. For the Operating Year beginning 1 July 2008 - \$800.00;
- d. For the Operating Year beginning 1 July 2009 - \$950.00; and
- e. For the Operating Year beginning 1 July 2010 - \$1,100.00.
- 4.3 If the Opening Date is part way through an Operating Year then the Levy Per Property will be altered as follows:
- a. If the Opening Date is between 1 July and 30 September (both inclusive) in the relevant Operating Year, the Levy Per Property will be the full amount set out in clause 4.2;
- b. If the Opening Date is between 1 October and 31 December (both inclusive) in the relevant Operating Year, the Levy Per Property will be three quarters of the full amount set out in clause 4.2, and one third of the Total Levy is payable in arrears on or before the last day of each of the remaining three Quarters in that year;
- c. If the Opening Date is between 1 January and 31 March (both inclusive) in the relevant Operating Year, the Levy Per Property will be one half of the full amount set out in clause 4.2, and one half of the Total Levy is payable in arrears on or before the last day of each of the remaining two Quarters in that year;
- d. If the Opening Date is between 1 April and 30 June (both inclusive) in the relevant Operating Year, the Levy Per Property will be one quarter of the full amount set out in clause 4.2, and the Total Levy is payable in arrears on or before the last day of the remaining Quarter in that year.
- 4.4 a. The Total Levy for the Operating Year commencing on a Levy Review Date will be the lesser of the sums calculated as follows:
- i.  $C \times \frac{D}{E}$ ; and
- ii.  $F \times \frac{D}{E}$
- where:
- C is the Golf Course Expenses for the Operating Year commencing on the most recent Three Year Review Date;
- D is the Index for the quarter ended 31 March, immediately before the Levy Review Date;
- E is the Index for the quarter ended 31 March, immediately before the date one year before the Levy Review Date;

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F is the Total Levy which is current immediately before the Levy Review Date.

- b. The Golf Course Expenses and therefore the Total Levy will not be finalised under clause 4.4a at the commencement of the relevant Operating Year. Until the Total Levy can be calculated the Encumbrancee will make the quarterly payments calculated under clause 4.4a.ii. If, when the Golf Course Expenses are finalised, the Total Levy payable is calculated under clause 4.4a.i then the Encumbrancer will credit the difference between the amount paid and the amount that should have been paid to the amount payable in the following Quarter.
- c. Except for a year that commences on a Levy Review Date (which will be reviewed under clause 4.4a) the Total Levy will be altered each year as at the first day of each Operating Year ("CPI Review Date"), the first such CPI Review Date to be 1 July 2012 as follows:

$$T = H \times \frac{I}{J}$$

where:

T is the Total Levy for the twelve months commencing on the CPI Review Date;

H is the Total Levy which is current immediately before the CPI Review Date;

I is the Index for the quarter ended 31 March, immediately before the relevant CPI Review Date;

J is the Index for the quarter ended 31 March, immediately before the date a year prior to the CPI Review Date.

**5. Access to Golf Course**

- 5.1 The Encumbrancer shall grant all Society Members the right to use the Golf Course in terms of this clause 5.
- 5.2 Subject to clause 5.3, the Encumbrancer will permit Society Members to use the Golf Course subject to any rules and regulations, in respect of the use of the Golf Course reasonably imposed by the Encumbrancer from time to time. Subject to clause 5.3, Society Members have this right to use the Golf Course, either as:
- a member of the Club; or
  - a Green Fees Player.
- 5.3 The rights of Society Members to use the Golf Course in terms of clause 5.2 is limited to a maximum of 2 Adults and 2 Youths (collectively called "Eligible Persons") per Developed Property. The Eligible Persons must be nominated under clause 5.4 and must be:

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- a. Persons who are individuals named as the Society Member or the Partner of a Society Member; or
  - b. Natural persons who are the beneficial owners of shares in the Society Member, if the Society Member is a company and the Partner of any beneficial owner; or
  - c. If the Society Member is a trust, natural persons who are the settlor or a trustee of the trust or a beneficiary of the trust specified by name (rather than by class) in the trust deed as a beneficiary or the Partner of such a person; or
  - d. Youths who are the children of Adults who are Eligible Persons under clauses 5.3a, 5.3b. or 5.3c.
- 5.4 The Society Member must nominate the Eligible Persons by notice in writing to the Encumbrancer. The Society Member may from time to time vary the nomination by notice in writing to the Encumbrancer but only if:
- a. The existing nomination was made more than a year earlier; or
  - b. One of the Eligible Persons has died and the nomination replaces only the deceased Eligible Person.
- 5.5 The Encumbrancee acknowledges that the Encumbrancer:
- a. will impose the rules and regulations described in clause 5.2 itself, directly upon users of the Golf Course, and/or will impose such rules and regulations upon the Club, which in turn imposes those rules and others upon members of the Club;
  - b. without limiting the previous paragraph, may at any time, or from time to time, restrict the times at which a Green Fees Player or a member of the Club who does not have a handicap from an accredited golf club can use the Golf Course, or prohibit such a person from using the Golf Course, while acting reasonably; and
  - c. will impose a levy upon the Club in consideration of the Encumbrancer granting members of the Club the right to play on the Golf Course.
- 5.6 The Encumbrancee acknowledges that green fees paid by Green Fees Players, including Eligible Persons who are Green Fees Players, will be paid to the Encumbrancer. The green fees payable by a Green Fees Player who is an Eligible Person will be no more than 75% of the published green fee rate in respect of the Golf Course from time to time.
- 5.7 The Encumbrancee acknowledges that owners of the 18 homesites within the Jacks Point Zone known as Henley Downs, neighbouring Jacks Point Land, will have the same rights to use the Golf Course as the Society Members who own the 18 homesites within Jacks Point have the right to use the Golf Course. It is acknowledged that Society Members who own a homesite within Jacks Point obtain the right to use the Golf Course by paying a levy to the Encumbrancee

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which pays the levies under this OperatorCo Encumbrance and either being a member of the Club or a Green Fees Player as set out in clause 5.2.

**6. New Club**

- 6.1 The Encumbrancee acknowledges that the Encumbrancer will grant access rights in respect of the Golf Course to the Club on an annual or other basis. If, for any reason, the Encumbrancer does not grant such access rights to the incumbent Club at any time, the Encumbrancer will cause such access rights to be granted to another incorporated body or club for the purposes of operating a golf club on the Golf Course.

**7. Further Assurance (etc)**

- 7.1 Each party will with due diligence sign all necessary deeds and documents and do everything that is reasonably required to carry out the terms of this OperatorCo Encumbrance.

**8. Default**

- 8.1 If the Encumbrancee fails to make any payment due under this OperatorCo Encumbrance, the Encumbrancee will pay interest on the full amount owing to the Encumbrancer at the Default Interest Rate, calculated on a daily basis, from the date payment was due until payment is made in full, including payment of interest under this clause. This clause is without prejudice to any other rights or remedies of the Encumbrancer.
- 8.2 All the covenants expressed in this OperatorCo Encumbrance will be deemed to have become obsolete and no longer enforceable for the purposes of clause 2.4 after the expiry of 90 days if the Encumbrancer gives notice in writing to the Encumbrancee that the Encumbrancee:
- a. has not duly paid all payments owing to the Encumbrancer under this OperatorCo Encumbrance 14 days after the Encumbrancee receives written notice from the Encumbrancer demanding payment of them, and the parties have exhausted the mediation procedure and (if the dispute is referred to arbitration) the arbitration procedure described in clause 10; or
  - b. has not fulfilled any of its other obligations under this OperatorCo Encumbrance, the OwnerCo Freehold Encumbrance or the OwnerCo Leasehold Encumbrance, and:
    - i. the default cannot be remedied; or
    - ii. the default can be remedied but has not been 21 days after the Encumbrancee receives written notice of the default, and the parties have exhausted the procedure described in clause 10, or if applicable the dispute resolution clause of the OwnerCo Freehold Encumbrance or the OwnerCo Leasehold Encumbrance, provided that this OperatorCo Encumbrance will not be deemed to have become obsolete and no longer enforceable for the purposes of clause 2.4 if the default is remedied before the Encumbrancee receives notice to that effect; or

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- c. becomes liable to be or is placed in liquidation; or
- d. cannot pay its debts when they fall due.

**9. Liability**

- 9.1 Subject to clause 2, this OperatorCo Encumbrance binds the Encumbrancer's successors in title so that contemporaneously with the acquisition of the lessee's interest in the Freehold Land and/or the sublessee's interest in the Leasehold Land all such successors in title must comply with the covenants of this OperatorCo Encumbrance.
- 9.2 The Encumbrancer will do all things necessary to ensure that any invitees of the Encumbrancer on the Freehold Land and/or the Leasehold Land and any lessees or occupiers of the Freehold Land and/or the Leasehold Land comply with the provisions of this OperatorCo Encumbrance.

**10. Dispute Resolution**

- 10.1 If a party has any dispute with the other party in connection with this OperatorCo Encumbrance:
  - a. That party will promptly give full written particulars of the dispute to the others.
  - b. The parties will promptly meet together and in good faith try and resolve the dispute.
- 10.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 10.3 A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 10.4 The mediation procedure is:
  - a. The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
  - b. The parties must co-operate with the mediator in an effort to resolve the dispute.
  - c. If the dispute is settled, the parties must sign a copy of the terms of the settlement.
  - d. If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
  - e. Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.
- 10.5 The terms of settlement are binding on the parties and override the terms of this OperatorCo Encumbrance if there is any conflict.

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- 10.6 The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 10.7 The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible in any arbitration or legal proceedings.
- 10.8 Either party may commence arbitration proceedings when mediation ceases under clause 10.4d.
- 10.9 If the dispute is referred to arbitration:
- a. The arbitration will be conducted by one arbitrator appointed by the parties.
  - b. If the parties cannot agree on an arbitrator within 14 days the appointment will be made by the president of the New Zealand Law Society or the president's nominee.
  - c. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 10.10 Neither party will unreasonably delay the dispute resolution procedures in this clause 10.
- 10.11 This clause 10 does not apply to:
- a. Any dispute arising in connection with any attempted renegotiation of this OperatorCo Encumbrance; or
  - b. An application by either party for urgent interlocutory relief.
- 10.12 Pending resolution of any dispute the parties will perform this OperatorCo Encumbrance in all respects including performance of the matter which is the subject of dispute.
- 11. Modification of the Statutory Provisions**
- 11.1 Section 104 of the PLA applies to this OperatorCo Encumbrance but that 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 LTA and the PLA;
  - b. no covenants on the part of the Encumbrancers and their successor in titles are implied in this OperatorCo Encumbrance other than the covenants for further assurance implied by section 154 of the LTA.
- 11.2 The Encumbrancee consents to the registration of any of the following instruments executed by the Encumbrancer in respect of the Freehold Land and/or the Leasehold Land:

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- a. The variation of a mortgage instrument or priority of mortgages (sections 102 (4) and 103(3) LTA);
  - b. The creation, variation or surrender of an easement (section 90E (3) LTA);
  - c. The registration of a lease, a lease variation instrument or the surrender of a lease (sections 115 (4), 116 (7) and 120 LTA);
  - d. The creation, variation or surrender of a land covenant; and
  - e. The disposal of a licence or shares to which the licence relates (section 121 I (1) LTA),
- and this consent will be deemed to be the consent of the mortgagee (which term includes encumbrance) as specified in the LTA to the registration of a particular instrument specified in clauses b to e inclusive above.
- 11.3 If it is determined that further written consent is required from the Encumbrancee in respect of the matters provided for under clause 11.2 (rather than deemed consent), then the Encumbrancee will immediately, at the request of the Encumbrancer, give that written consent.
- 11.4 The Encumbrancer must give 7 days prior notice in writing to the Encumbrancee if it wishes to lodge any instruments to which clauses 11.2b to e apply at Land Information New Zealand for registration. If:
- a. the Encumbrancee does not object to that lodgement within 7 days of receiving notice by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so; or
  - b. the arbitrator referred to under clause 11.5 rules that the instruments specified in the Encumbrancer's notice may be lodged,
- then the Encumbrancer shall be entitled to lodge the instruments specified in the Encumbrancer's notice.
- 11.5 If within 7 days of the Encumbrancer giving notice under clause 11.4, the Encumbrancee objects to the lodgement of the instruments specified in the Encumbrancer's notice by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so then:
- a. The parties will promptly meet together and in good faith try and resolve the dispute;
  - b. If the dispute is not resolved within 7 days of the written objection being given (or any longer period agreed to by the parties) the dispute will be referred to arbitration;
  - c. The arbitration will be conducted by one arbitrator appointed by the parties involved;
  - d. If the parties cannot agree on an arbitrator within 7 days the appointment will be made by the President of the New Zealand Law Society or the President's nominee;

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- e. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996;
  - f. No party will unreasonably delay the dispute resolution procedures in this clause;
  - g. This clause does not apply to an application by any party for urgent interlocutory relief.
- 11.6 Without limiting clause 11.2, the Encumbrancer must not lodge any instruments to which clauses 11.2b to e apply if the Encumbrancee objects to the lodgement of those instruments by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so and the arbitrator referred to under clause 11.5 has not ruled that those instruments may be lodged.
12. **Waiver**
- 12.1 Any failure by a party to enforce any clause of this OperatorCo Encumbrance, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this OperatorCo Encumbrance.
13. **General**
- 13.1 The warranties, undertakings, agreements and indemnities given under this OperatorCo Encumbrance or pursuant to this OperatorCo Encumbrance shall not merge on settlement of any of the transactions contemplated by this OperatorCo Encumbrance but shall remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.
- 13.2 If any part of this OperatorCo Encumbrance is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this OperatorCo Encumbrance and they shall remain in full force and effect.
- 13.3 Except for the Encumbrancee's statutory obligations, under no circumstances will this OperatorCo Encumbrance be varied.
- 13.4 Any notice required to be served on any party will be in writing and served in accordance with the PLA.
- 13.5 The Encumbrancer will pay the Encumbrancee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Encumbrancee's rights, remedies and powers in this OperatorCo Encumbrance and will indemnify the Encumbrancee against all claims and proceedings arising out of the breach by the Encumbrancer of any of its obligations set out in this OperatorCo Encumbrance.
- 13.6 The Encumbrancee will pay the Encumbrancer's legal costs (as between solicitor and client) of and incidental to the release or attempted release of this OperatorCo Encumbrance under clause 8 and will indemnify the Encumbrancer against all claims and proceedings arising out of

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**Annexure Schedule**

Insert type of instrument

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the breach by the Encumbrancee of any of its obligations set out in this OperatorCo  
Encumbrance.

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**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**I, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ **HEREBY CERTIFY:**

1. THAT by Deed dated the 28th day of April 2006 ("the Deed"), a copy of which was deposited in the Otago Land Registry Office, under number \_\_\_\_\_, I was appointed the lawful attorney of **JACKS POINT GOLF COURSE LIMITED** ("the Company"), on the terms and subject to the conditions set out in the Deed.

2. THAT at the date hereof I have not received any notice or information of the revocation of that appointment by the commencement of liquidation of the Company, or otherwise.

SIGNED by: \_\_\_\_\_ (name)

\_\_\_\_\_  
(signature)

at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2006

SIGNED in my presence:

\_\_\_\_\_  
Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name:

Occupation:

Address:

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REF: 7025 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/6117

**Encumbrance instrument**  
Section 101, Land Transfer Act 1952

Land registration district

OTAGO



BARCODE

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

All/part

Area/description of part or stratum

All

Encumbrancer

Surname(s) must be underlined or in CAPITALS

Jacks Point Limited

Encumbrancee

Surname(s) must be underlined or in CAPITALS

Jacks Point Residents &amp; Owners Association Incorporated

Estate or interest to be encumbered

Insert, eg, fee simple; leasehold in lease number, etc.

Leasehold interest in lease number \_\_\_\_\_  
comprised in certificate of title \_\_\_\_\_

Encumbrance memorandum number

Not applicable

Nature of security

State whether sum of money, annuity, or rentcharge, and amount.

Continued on Annexure Schedule 2

Operative clause

Delete words in [ ], as appropriate

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 sum of money, annuity, or rentcharge to be raised and paid in accordance with the terms set out in the ~~[above encumbrance memorandum]~~ [Annexure Schedule(s)] and so as to incorporate in this encumbrance the terms and other provisions set out in the ~~[above encumbrance memorandum]~~ [and] [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.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

**Attestation**

By its duly authorised attorney and agent

Signed in my presence by the Encumbrancer

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Signature [common seal] of  
Encumbrancer

Address

Certified correct for the purposes of the Land Transfer Act 1952.

[Solicitor for] the Encumbrancee

REF: 7008 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/6117  
**Annexure Schedule 1**



Encumbrance  
instrument

Dated

Page **1** of **12** pages

**Terms**

*(Continue in additional Annexure Schedule(s) if required.)*

1	Length of term
2	Payment date(s)
3	Rate(s) of interest
4	Event(s) in which the sum, annuity, or rentcharge becomes payable
5	Events(s) in which the sum, annuity, or rentcharge ceases to be payable

**Covenants and conditions**

*(Continue in additional Annexure Schedule(s) if required.)*

**Continued on Annexure Schedule 2**

**Modification of statutory provisions**

*(Continue in additional Annexure Schedule(s) if required.)*

**Continued on Annexure Schedule 2**

**All signing parties and either their witnesses or solicitors must sign or initial in this box.**

REF: 7008 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 2 of 12 Pages

(Continue in additional Annexure Schedule, if required.)

**Annexure Schedule 2****Continuation of Nature of Security, Terms, Covenants and Conditions  
and Modification of Statutory Provisions****BACKGROUND**

- A. The Encumbrancer is registered as proprietor of the lessee's interest in the Leasehold Land which is located within Jacks Point.
- B. The Encumbrancee has been established to provide for and administer a general scheme applicable to and for the benefit of the Jacks Point Land and each of the lots subdivided from the Jacks Point Land whose registered proprietors must be members of the Encumbrancee.
- C. The Freehold Owner is the registered proprietor of the fee simple estate in the Freehold Land (which is also located within Jacks Point).
- D. The Golf Course, as part of the development of Jacks Point, will be operated on the Freehold Land and the Leasehold Land by OperatorCo pursuant to:
- i. a registered lease of the Freehold Land between the Freehold Owner (as lessor) and OperatorCo (as lessee); and
  - ii. a registered sublease of the Leasehold Land between the Encumbrancer (as lessor) and OperatorCo (as lessee).
- E. Society Members will have certain access rights to the Golf Course pursuant to:
- i. this encumbrance in respect of the Encumbrancer's interest as lessee of the Leasehold Land under lease number \_\_\_\_\_ ("the **OwnerCo Leasehold Encumbrance**");
  - ii. an encumbrance instrument between the Encumbrancee (as encumbrancee) and the Freehold Owner (as encumbrancer) in respect of the Freehold Owner's interest as registered proprietor of the Freehold Land ("the **OwnerCo Freehold Encumbrance**");
  - iii. an encumbrance instrument between the Encumbrancee (as encumbrancee) and OperatorCo (as encumbrancer) in respect of the OperatorCo's interest as lessee of the Freehold Land under lease number \_\_\_\_\_ and as sublessee of the Leasehold Land under lease number \_\_\_\_\_ ("the **OperatorCo Encumbrance**").
- F. The existence and ongoing maintenance of the Golf Course is an integral part of Jacks Point. The Encumbrancee, by paying the levies in the OperatorCo Encumbrance, provides benefits to the Society Members being the right to use the Golf Course and additional value in each Society Member's property from being in a development which contains a well maintained Golf Course.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

REF: 7025 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 3 of 12 Pages

(Continue in additional Annexure Schedule, if required.)

- G. The Encumbrancer wishes to encumber the lessee's interest in the Leasehold Land under lease number \_\_\_\_\_ for the benefit of the Encumbrancee on the terms and conditions contained in this OwnerCo Leasehold Encumbrance.

**OPERATIVE PARTS**

## 1. Interpretation

## 1.1 In this OwnerCo Leasehold Encumbrance unless the context otherwise requires:

"**Business**" means the business undertaken by OperatorCo in respect of operating the Golf Course and by OperatorCo in respect of any golf related business reasonably associated with the operation of the Golf Course.

"**Club**" means Jacks Point Golf Club Incorporated, or any other club or incorporated body appointed under clause 5.

"**Constitution**" means the constitution of the Encumbrancee, which is its rules for the purposes of the Incorporated Societies Act 1908.

"**Encumbered Golf Course**" means that part of the Golf Course that is located on the Leasehold Land.

"**Encumbrancee**" means Jacks Point Residents & Owners Association Incorporated.

"**Encumbrancer**" means the registered proprietor of the lessee's interest in the Leasehold Land from time to time.

"**Freehold Land**" means the land contained in fee simple certificate of title OT262755.

"**Freehold Owner**" means the registered proprietor of the fee simple estate in the Freehold Land from time to time.

"**Golf Assets**" means:

- a. the Freehold Land; and
- b. the Leasehold Land; and

any assets (tangible or intangible) including goodwill in respect of the Business, including OperatorCo's interest in the Freehold Land and the Leasehold Land.

"**Golf Course**" means the golf course situated on the Freehold Land and the Leasehold Land, and includes the Freehold Land and the Leasehold Land.

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REF: 7025 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**
 Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page

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of

12

Pages

(Continue in additional Annexure Schedule, if required.)

**"Henley Downs Lease"** means:

- a. an agreement to lease in respect of approximately 24 hectares of land contained in Certificate of Title OT 17C/864, between Henley Downs Holdings Limited as lessor and the Encumbrancer as lessee, under which the parties agree to register a memorandum of lease upon the issue of a freehold title for that land (to be OT277414), thereby creating a leasehold title; or
- b. the memorandum of lease described in paragraph a, of this definition.

**"Jacks Point"** has the meaning attributed to it in the Constitution.

**"Jacks Point Land"** means the land formerly contained in Lot 1, DP337993, certificate of title OT156346 and Lots 2 and 5, DP337993 and Lot 5, DP26261, certificate of title OT156347, except land contained in Lot 13 DP364700, certificate of title OT 262753.

**"Jacks Point Zone"** has the meaning attributed to it in the Constitution.

**"Leasehold Land"** means the land which is the subject of the Henley Downs Lease and contained in leasehold certificate of title OT \_\_\_\_\_.

**"LTA"** means the Land Transfer Act 1952.

**"Opening Date"** means 31 December 2007 or such earlier date on which the Golf Course is declared open for play by OperatorCo.

**"OperatorCo"** means Jacks Point Golf Course Limited and its successors and assigns.

**"OperatorCo Encumbrance"** means the encumbrance instrument referred to in Background paragraph E.iii.

**"OwnerCo Freehold Encumbrance"** means the encumbrance instrument referred to in Background paragraph E.ii.

**"OwnerCo Leasehold Encumbrance"** means this encumbrance instrument together with all annexure schedules.

**"PLA"** means the Property Law Act 1952.

**"Rent Charge"** means the charge described in clause 2 of this OwnerCo Leasehold Encumbrance.

**"Society Member"** means each Member (as defined in the Constitution) of the Encumbrancee.

**"Shares"** means all shares in the companies which own the Golf Course and/or the Business from time to time.

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REF: 7025 - AUCKLAND DISTRICT LAW SOCIETY



Approved by Registrar-General of Land under No. 2002/5032

**Annexure Schedule**

Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 5 of 12 Pages

(Continue in additional Annexure Schedule, if required.)

"Term" means the term described in clause 2.1.

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. References to the parties are references to the Encumbrancee and Encumbrancer.
- d. This OwnerCo Leasehold Encumbrance binds or benefits the parties and their heirs, executors, successors and assigns in perpetuity of the lessee's interest in the Leasehold Land.
- e. References to clauses are to those named in this OwnerCo Leasehold Encumbrance.
- f. Headings are convenience only and do not affect interpretation.
- g. Words importing any gender include the other genders.
- h. Statute, regulation or by-law includes all statutes, regulations or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute.
- i. A reference to "written" or "writing" includes facsimile communications.

2. **Term and Rent Charge**

2.1 The term of this OwnerCo Leasehold Encumbrance commences on the Opening Date and expires on the earlier of:

- a. The expiry date of the Henley Downs Lease or any earlier date of termination of the Henley Downs Lease; and
- b. The date on which any sale of the Golf Assets or the Shares to the Encumbrancee settles.

2.2 Subject to clause 2.4, the Encumbrancer encumbers the lessee's interest in the Leasehold Land under lease number \_\_\_\_\_ for the benefit of the Encumbrancee for the Term, with an annual rent charge ("the **Rent Charge**") of \$1.00 to be paid on each anniversary of the Opening Date.

2.3 If during the year preceding the Opening Date and each successive year after that there has been no breach of the covenants and obligations of the Encumbrancer contained in this OwnerCo Leasehold Encumbrance, the Rent Charge will be deemed to have been paid.

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REF: 7025 – AUCKLAND DISTRICT LAW SOCIETY

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**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 6 of 12 Pages

(Continue in additional Annexure Schedule, if required.)

2.4 The Rent Charge will determine immediately and the Encumbrancer will be entitled to a release of this OwnerCo Leasehold Encumbrance if all covenants expressed in this OwnerCo Leasehold Encumbrance become obsolete or no longer enforceable or the Term has expired.

3. **Covenant - Access to Golf Course**

3.1 The Encumbrancer covenants with the Encumbrancee that:

- a. All Society Members have the right to use the Encumbered Golf Course in terms of this clause 3.
- b. If, for any reason (except when clause 6 applies), OperatorCo is unable or unwilling to provide to Society Members the access to the Encumbered Golf Course described in the OperatorCo Encumbrance, OwnerCo will either (at its option):
  - i. Enter an encumbrance with the Encumbrancee on terms consistent with the OperatorCo Encumbrance in respect of the levy payable by the Encumbrancee and granting the access right to the Society Members, both as described in the OperatorCo Encumbrance; or
  - ii. Cause another entity which has the right to grant such access rights to enter an encumbrance with the Encumbrancee on terms consistent with the OperatorCo Encumbrance in respect of the levy payable by the Encumbrancee and granting the access rights to the Society Members both as described in the OperatorCo Encumbrance.

3.2 The Encumbrancee acknowledges that owners of the 18 homesites within the Jacks Point Zone known as Henley Downs, neighbouring Jacks Point Land, will have the same rights to use the Encumbered Golf Course as the Society Members who own the 18 homesites within Jacks Point to have the right to use the Encumbered Golf Course. It is acknowledged that Society Members who own a homesite within Jacks Point, by paying a levy to the Encumbrancee which pays levies under the OperatorCo Encumbrance, have the right of either being a member of the Club or a Green Fees Player as provided in the OperatorCo Encumbrance.

3.3 The Encumbrancer covenants that it will comply with its obligations as lessee in respect of the registered lease of the Leasehold Land.

4. **Further Assurance**

4.1 Each party will with due diligence sign all necessary deeds and documents and do everything that is reasonably required to carry out the terms of this OwnerCo Leasehold Encumbrance.

5. **Covenant - New Club**

5.1 The Encumbrancee acknowledges that OperatorCo will grant access rights in respect of the Encumbered Golf Course to the Club on an annual or other basis. If, for any reason,

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**Annexure Schedule**

Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 7 of 12 Pages

(Continue in additional Annexure Schedule, if required.)

OperatorCo does not grant such access rights to the incumbent Club at any time, the Encumbrancer covenants with the Encumbrancee that the Encumbrancer will cause such access rights to be granted to another incorporated body or club for the purposes of operating a golf club on the Encumbered Golf Course.

**6. Default**

6.1 All the covenants expressed in this OwnerCo Leasehold Encumbrance will be deemed to have become obsolete and no longer enforceable for the purposes of clause 2.4 after the expiry of 90 days if the Encumbrancer gives notice in writing to the Encumbrancee that Encumbrancee:

- a. has not duly paid all payments owing to OperatorCo under the OperatorCo Encumbrance 14 days after the Encumbrancee receives written notice of OperatorCo demanding payment of them, and the parties to the OperatorCo Encumbrance have exhausted the arbitration procedure described in the OperatorCo Encumbrance; or
- b. has not fulfilled any of its obligations under this OwnerCo Leasehold Encumbrance, the OwnerCo Freehold Encumbrance or other obligations under the OperatorCo Encumbrance; and:
  - i. the default cannot be remedied; or
  - ii. the default can be remedied but has not been 21 days after the Encumbrancee receives written notice of the default, and the parties have exhausted the procedure described in clause 8 of this Encumbrance, or if applicable, the procedure described in the dispute resolution clause of the OwnerCo Freehold Encumbrance or the OperatorCo Encumbrance, provided that this OwnerCo Leasehold Encumbrance will not be deemed to have become obsolete and no longer enforceable for the purposes of clause 2.4 if the default is remedied before the Encumbrancee receives notice to that effect; or
- c. becomes liable to be or is placed in liquidation; or
- d. cannot pay its debts when they fall due.

**7. Liability**

7.1 Subject to clause 2, this OwnerCo Leasehold Encumbrance binds the Encumbrancer's successors in title so that contemporaneously with the acquisition of any interest in the Leasehold Land all such successors in title must comply with the covenants of this OwnerCo Leasehold Encumbrance.

7.2 The Encumbrancer will do all things necessary to ensure that any invitees of the Encumbrancer on the Leasehold Land and any lessees or occupiers of the Leasehold Land comply with the provisions of this OwnerCo Leasehold Encumbrance.

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**Annexure Schedule**
 Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 8 of 12 Pages

(Continue in additional Annexure Schedule, if required.)

- 8. Dispute Resolution**
- 8.1 If a party has any dispute with the other party in connection with this OwnerCo Leasehold Encumbrance:
- That party will promptly give full written particulars of the dispute to the others.
  - The parties will promptly meet together and in good faith try and resolve the dispute.
- 8.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 8.3 A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 8.4 The mediation procedure is:
- The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
  - The parties must co-operate with the mediator in an effort to resolve the dispute.
  - If the dispute is settled, the parties must sign a copy of the terms of the settlement.
  - If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
  - Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.
- 8.5 The terms of settlement are binding on the parties and override the terms of this OwnerCo Leasehold Encumbrance if there is any conflict.
- 8.6 The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 8.7 The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible by the recipient in any arbitration or legal proceedings.
- 8.8 Either party may commence arbitration proceedings when mediation ceases under clause 8.4d.
- 8.9 If the dispute is referred to arbitration:
- The arbitration will be conducted by one arbitrator appointed by the parties.
  - If the parties cannot agree on an arbitrator within 14 days the appointment will be made by the president of the New Zealand Law Society or the president's nominee.

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**Annexure Schedule**Insert type of instrument  
"Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

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(Continue in additional Annexure Schedule, if required.)

- c. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.

8.10 Neither party will unreasonably delay the dispute resolution procedures in this clause 8.

8.11 This clause 8 does not apply to:

- a. Any dispute arising in connection with any attempted renegotiation of this OwnerCo Leasehold Encumbrance; or
- b. An application by either party for urgent interlocutory relief.

8.12 Pending resolution of any dispute the parties will perform this OwnerCo Leasehold Encumbrance in all respects including the performance of the matter which is the subject of dispute.

**9. Modification of the Statutory Provisions**

9.1 Section 104 of the PLA applies to this OwnerCo Leasehold Encumbrance but that 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 LTA and the PLA;
- b. no covenants on the part of the Encumbrancers and their successor in titles are implied in this OwnerCo Leasehold Encumbrance other than the covenants for further assurance implied by section 154 of the LTA.

9.2 The Encumbrancee consents to the registration of any of the following instruments executed by the Encumbrancer in respect of the Freehold Land and/or the Leasehold Land:

- a. The variation of a mortgage instrument or priority of mortgages (sections 102 (4) and 103(3) LTA);
- b. The creation, variation or surrender of an easement (section 90E (3) LTA);
- c. The registration of a lease, a lease variation instrument or the surrender of a lease (sections 115 (4), 116 (7) and 120 LTA);
- d. The creation, variation or surrender of a land covenant; and
- e. The disposal of a licence or shares to which the licence relates (section 121 I (1) LTA),

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**Annexure Schedule**

Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page 10 of 12 Pages

(Continue in additional Annexure Schedule, if required.)

and this consent will be deemed to be the consent of the mortgagee (which term includes encumbrance) as specified in the LTA to the registration of a particular instrument specified in clauses b to e inclusive above.

9.3 If it is determined that further written consent is required from the Encumbrancee in respect of the matters provided for under clause 9.2 (rather than deemed consent), then the Encumbrancee will immediately, at the request of the Encumbrancer, give that written consent.

9.4 The Encumbrancer must give 7 days prior notice in writing to the Encumbrancee if it wishes to lodge any instruments to which clauses 9.2b to e apply at Land Information New Zealand for registration. If:

- a. the Encumbrancee does not object to that lodgement within 7 days of receiving notice by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so; or
- b. the arbitrator referred to under clause 9.5 rules that the instruments specified in the Encumbrancer's notice may be lodged,

then the Encumbrancer shall be entitled to lodge the instruments specified in the Encumbrancer's notice.

9.5 If within 7 days of the Encumbrancer giving notice under clause 9.4, the Encumbrancee objects to the lodgement of the instruments specified in the Encumbrancer's notice by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so then:

- a. The parties will promptly meet together and in good faith try and resolve the dispute;
- b. If the dispute is not resolved within 7 days of the written objection being given (or any longer period agreed to by the parties) the dispute will be referred to arbitration;
- c. The arbitration will be conducted by one arbitrator appointed by the parties involved;
- d. If the parties cannot agree on an arbitrator within 7 days the appointment will be made by the President of the New Zealand Law Society or the President's nominee;
- e. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996;
- f. No party will unreasonably delay the dispute resolution procedures in this clause;
- g. This clause does not apply to an application by any party for urgent interlocutory relief.

9.6 Without limiting clause 9.2, the Encumbrancer must not lodge any instruments to which clauses 9.2b to e apply if the Encumbrancee objects to the lodgement of those instruments by providing the Encumbrancer with full written details of the Encumbrancee's reasons for doing so and the arbitrator referred to under clause 9.5 has not ruled that those instruments may be lodged.

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**Annexure Schedule**

Insert type of instrument  
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Encumbrance

Dated

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(Continue in additional Annexure Schedule, if required.)

**10. Waiver**

- 10.1 Any failure by a party to enforce any clause of this OwnerCo Leasehold Encumbrance, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this OwnerCo Leasehold Encumbrance.

**11. General**

- 11.1 The warranties, undertakings, agreements and indemnities given under this OwnerCo Leasehold Encumbrance or pursuant to this OwnerCo Leasehold Encumbrance will not merge on settlement of any other transactions contemplated by this OwnerCo Leasehold Encumbrance but will remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.
- 11.2 If any part of this OwnerCo Leasehold Encumbrance is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this OwnerCo Leasehold Encumbrance and they will remain in full force and effect.
- 11.3 Except for the Encumbrancee's statutory obligations, under no circumstances will this OwnerCo Leasehold Encumbrance be varied.
- 11.4 Any notice required to be served on any party will be in writing and served in accordance with the PLA.
- 11.5 The Encumbrancer will pay the Encumbrancee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Encumbrancee's rights, remedies and powers in this OwnerCo Leasehold Encumbrance and will indemnify the Encumbrancee against all claims and proceedings arising out of the breach by the Encumbrancer of any of its obligations set out in this OwnerCo Leasehold Encumbrance.
- 11.6 The Encumbrancee will pay the Encumbrancer's legal costs (as between solicitor and client) of and incidental to the release or attempted release of this OwnerCo Leasehold Encumbrance under clause 6 and will indemnify the Encumbrancer against all claims and proceedings arising out of the breach by the Encumbrancee of any of its obligations set out in this OwnerCo Leasehold Encumbrance.

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**Annexure Schedule**
 Insert type of instrument  
 "Mortgage", "Transfer", "Lease" etc

Encumbrance

Dated

Page **12** of **12** Pages

(Continue in additional Annexure Schedule, if required.)

**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**I, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ **HEREBY CERTIFY:**

1. THAT by Deed dated the 28th day of April 2006 ("the Deed"), a copy of which was deposited in the Otago Land Registry Office, under number \_\_\_\_\_, I was appointed the lawful attorney of **JACKS POINT LIMITED** ("the Company"), on the terms and subject to the conditions set out in the Deed.

2. THAT at the date hereof I have not received any notice or information of the revocation of that appointment by the commencement of liquidation of the Company, or otherwise.

SIGNED by: \_\_\_\_\_ (name)

\_\_\_\_\_ (signature)

at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2006

SIGNED in my presence:

Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name:

Occupation:

Address:

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REF: 7025 - AUCKLAND DISTRICT LAW SOCIETY



### APPENDIX 3

#### Water Deed

## DEED PERTAINING TO JACKS POINT WATER SUPPLY

between

Jacks Point Limited

and

Jacks Point Residents & Owners

Association Incorporated

and

Coneburn Water Supply Co Limited



BARRISTERS, SOLICITORS & NOTARIES SINCE 1862

QUEENSTOWN, DUNEDIN & CHRISTCHURCH  
NEW ZEALAND

Tel: 64 3 379 0037  
Fax: 64 3 379 0039  
E-mail: [lawyers@alclegal.com](mailto:lawyers@alclegal.com)  
PO Box 13-831  
Christchurch

## **Deed Pertaining to Jacks Point Water Supply**

---

Date:

2006

### **Parties**

---

1. **Jacks Point Limited ("JPL")**
2. **Jacks Point Residents & Owners Association Incorporated ("the Society")**
3. **Coneburn Water Supply Co Limited ("WaterCo")**

### **Background**

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- A. JPL is the developer of a development known as Jacks Point. The Society represents landowners in Jacks Point.
- B. The Council requires there to be a single communal potable water supply installed to service the developments within the Jacks Point Zone. That water supply is operated on behalf of the residents. This communal water system will be managed by a special purpose company or other similar entity that is established pursuant to the Tripartite Agreement. Under the Tripartite Agreement there is to be a cost sharing arrangement between JPL and the Neighbouring Developers for the establishment of the communal water system.
- C. That utilities company is to be WaterCo, all of the shares in which are held by the Society.
- D. WaterCo will supply potable water, on behalf of the Society, to Society Members in Jacks Point and to any other landowners within the Jacks Point Zone who access water in terms of this deed. WaterCo will supply this water to all residents on the same terms, which will be the cost of such water. This cost will reflect the direct costs of operating and maintaining the water supply system to deliver water to landowners within the Jacks Point Zone plus the long term maintenance costs of preserving a quality water supply system for the future.
- E. JPL is the first of the developers within the Jacks Point Zone to begin development, and has constructed water supply assets with the capacity to meet the forecast water supply needs of the development it undertakes at Jacks Point. JPL will vest those assets in WaterCo at no cost to WaterCo, on the basis that JPL must cause water to be supplied to Society Members at no incremental capital cost to the Society or WaterCo, as set out in this deed. The Neighbouring Developers are not ready to join this entity, and it is not certain when or if they will seek access to the communal water supply system.
- F. Upon the Neighbouring Developers wishing to join WaterCo, or obtain access to the communal water supply system, JPL will be entitled to claim reimbursement from Neighbouring Developers of some of JPL's expenditure on such assets pursuant to the Tripartite Agreement.
- G. The parties enter this deed to record the ongoing operation of WaterCo.

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## **Agreement**

### **1. Definitions and Construction**

#### **Definitions**

#### **1.1 In this deed, unless the context otherwise requires:**

<b>"Bulk Water Charge"</b>	means the sums charged by WaterCo to the Society under clauses 4.1a, and 4.1d.
<b>"Constitution"</b>	means the constitution of the Society, which is its rules for the purposes of the Incorporated Societies Act 1908.
<b>"Controlling Member"</b>	has the meaning attributed to it in the Constitution.
<b>"Council"</b>	means the Queenstown Lakes District Council.
<b>"Developed Property"</b>	has the meaning attributed to it in the Constitution.
<b>"Easements"</b>	means easements and/or covenants and/or similar registered documents which permit water to be taken from Lake Wakatipu to a storage facility on Jacks Point, and from there to land within Jacks Point.
<b>"GST"</b>	means goods and services tax charged in accordance with the Goods and Services Tax Act 1985.
<b>"Jacks Point"</b>	has the meaning attributed to it in the Constitution.
<b>"Jacks Point Zone"</b>	has the meaning attributed to it in the Constitution.
<b>"JPL's Reimbursement"</b>	has the meaning attributed to it in clause 7.1c.
<b>"Licences"</b>	means any licences to occupy or similar documents which permit water to be taken from Lake Wakatipu to a storage facility on Jacks Point, and from there to land within Jacks Point.
<b>"Lot 14"</b>	means Lot 14 shown on the attached plan being part of Lot 2 and Lot 5 DP 337993 and Lot 5 DP 26261 certificate of title 156347 (Otago Registry).
<b>"Material Right"</b>	means any Easement or Licence reasonably required to permit the supply of water to a land owner within Jacks Point.
<b>"Neighbouring Development"</b>	means any development, other than Jacks Point, within the Jacks Point Zone which, at the date of this deed, is being developed by a developer other than JPL or one of the subsidiaries of Jacks Point Equities Limited.

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<b>"Neighbouring Developer"</b>	means any developer of a Neighbouring Development.
<b>"Neighbouring Landowner"</b>	means any owner of land within a Neighbouring Development.
<b>"Neighbouring Residents Entity"</b>	means any entity or entities representing the Neighbouring Developers and/or the Neighbouring Developments and/or lot owners within the Neighbouring Developments.
<b>"Necessary Capital Sum"</b>	has the meaning attributed to it in clause 6.2.
<b>"Option"</b>	means the option granted by WaterCo to the Society to purchase the Water Infrastructure Assets as set out in clause 3.10.
<b>"Public Domain"</b>	means the land shown as Lot 13 of the attached plan and which is to vest in the Council as a recreation reserve or local purpose reserve.
<b>"Securities Act Exemption Information"</b>	means any information which the Society is required to provide under clause 6(1)(p) of the Securities Act (Jacks Point Development) Exemption Notice 2006 or any equivalent requirement to provide information pursuant to any other exemption notice in substitution for that Notice.
<b>"Settlement Date"</b>	means the date of this Deed.
<b>"Shares"</b>	means all of the shares in the capital of WaterCo.
<b>"Society Member"</b>	means each Member (as defined in the Constitution) of the Society;
<b>"Total Advances"</b>	has the meaning attributed to it in clause 6.2.
<b>"Tripartite Agreement"</b>	means an agreement dated 29 August 2003 between JPL, Henley Downs Holdings Limited, Dickson Stewart Jardine, Jillian Frances Jardine and Gerard Brendan Boock.
<b>"Water Infrastructure Assets"</b>	means: <ul style="list-style-type: none"> <li>(a) the Easements; and</li> <li>(b) the Licences; and</li> </ul>

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- (c) all physical improvements in, on or under the land which is the subject of the Easements and the Licences in respect of the supply of water, including, without limitation, water pipes, storage tanks, and pumps; and
- (d) any water permits or other rights to take water, whether under the Resource Management Act 1991, or otherwise, in respect of communal potable water to be supplied within the Jacks Point Zone.

**"Working Day"**

means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, Labour Day and Waitangi Day;
- (b) a day in the period commencing the 25th day of December in any year and ending with the 2nd day of January in the following year;
- (c) if the first day of January in any year falls on a Friday, the following Monday, and
- (d) If the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

**Construction**

1.2 In this deed, unless the context requires otherwise:

- a. References to clauses are to those named in this deed;
- b. Headings are for convenience only and do not affect interpretation;
- c. The singular includes plural and vice versa, and words importing any gender include the other genders;
- d. Statute, regulation or by-law includes all statutes, regulations, or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute;
- e. References to any party includes the successors and any permitted assigns of that party; and
- f. A reference to "written" or "writing" includes facsimile communications.

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## 2. **Transfer of Water Infrastructure Assets**

- 2.1 JPL will transfer to WaterCo, and WaterCo will receive a transfer of the Water Infrastructure Assets by way of deed and (where appropriate) registered transfer on the following terms:
- a. The transfer will take place on the Settlement Date.
  - b. There will be no consideration for the transfer.
  - c. It will be a condition of the transfer that all of the Shares in WaterCo will be held by the Society on the Settlement Date.
  - d. The Water Infrastructure Assets will be transferred free of any encumbrance.
  - e. Such other terms as would customarily be included in such a deed by solicitors practising in Otago.

## 3. **WaterCo Structure and Restrictions**

- 3.1 WaterCo may not in any financial year make a taxable profit.
- 3.2 WaterCo will be a single purpose company, and may undertake no business or trading activity other than the supply of potable water within the Jacks Point Zone.
- 3.3 The obligations and restrictions in clauses 3.1 and 3.2 will be contained in the constitution of WaterCo.
- 3.4 WaterCo warrants to JPL and the Society that:
- a. WaterCo will at all times ensure that it complies with Drinking Water Standards of New Zealand 2005 or any other water standards applicable under New Zealand law to Jacks Point and will at all times provide to JPL or its nominee such details of the maintenance and operation of the business of WaterCo as JPL or its successor is required to provide to the Council or its successor; and
  - b. WaterCo will at all times complete regular monitoring and maintenance of primary treatment tanks and water distribution systems in accordance with the recommendations of the designer of the tanks and the water distribution systems which form part of the Water Infrastructure Assets; and
  - c. WaterCo will at all times ensure that it complies with the lawful requirements of the Council or its successor with regard to the supply of water pursuant to the Water Infrastructure Assets, whether under resource consents in respect of Jacks Point, or otherwise. Without limiting this, WaterCo will comply with any requirements imposed by any relevant resource consent in respect of the supply of water within Jacks Point upon the holder of that consent; and
  - d. WaterCo will not sell any of the Water Infrastructure Assets, at any time, including at a time when WaterCo is in receivership or liquidation, other than to an entity which enters a deed with JPL and the Society on terms consistent with this deed.
- 3.5 The Society will take all reasonable steps to cause WaterCo to comply with the obligations in clause 3.4 at all times.

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- 3.6 Subject to clause 3.7, the Society will not, and will not permit any other person or entity other than WaterCo to, create or build another potable water supply scheme within Jacks Point. Without limiting this obligation, the Society will not use or give permission to any other person or entity other than WaterCo to use the Easements or the Licences or any encumbrances or easements or licences or other interests in land which are in favour of WaterCo for the carrying of water, while WaterCo remains duly incorporated in New Zealand.
- 3.7 Clause 3.6 shall not apply in the event that:
- a. WaterCo is placed into liquidation or a receiver is appointed in respect of WaterCo; or
  - b. any Material Right is determined, terminated, surrendered or is at an end for any reason.
- 3.8 WaterCo will not, and the Society will ensure that WaterCo does not, issue any new Shares to any person or entity other than the Society pursuant to clauses 6 and 7.
- 3.9 Whenever required by the Society or by JPL, WaterCo will immediately provide the Securities Act Exemption Information to the Society.
- 3.10 WaterCo will immediately enter into an agreement with the Society granting the Society an option to purchase the Water Infrastructure Assets on the following terms:
- a. The Option may be exercised by the Society for the period of three calendar months from either the date:
    - i. WaterCo is placed in liquidation or a receiver is appointed in respect of WaterCo; or
    - ii. any Material Right is determined, terminated, surrendered or is at an end for any reason.
  - b. The purchase price for the Water Infrastructure Assets will be determined by an independent valuer who in setting the price must take into account the following:
    - i. WaterCo's obligations under this deed, including the obligation for a purchaser to enter into a deed on the same terms as set out in clause 3.4d.
    - ii. WaterCo will not hold any of the Easements anticipated by this deed once it is in liquidation or receivership.
  - c. The independent valuer will be appointed by agreement between WaterCo and the Society, or failing agreement will be appointed by the President of the New Zealand Law Society.
  - d. In accepting the transfer of the Water Infrastructure Assets, the Society must take all reasonable steps to cause JPL to comply with the Tripartite Agreement, to the extent that the Tripartite Agreement applies to the supply of water within the Jacks Point Zone on an ongoing basis.
  - e. The Society will be entitled to revoke the exercise of the Option within five Working Days of the value being set by the valuer.

- f. The remaining terms of the Option will be those that are customarily included in an option deed by solicitors practising in Otago.

#### 4. **WaterCo Supply and Charges**

- 4.1 WaterCo will, on behalf of the Society, supply potable water to the Society Members. Subject to clause 4.2 WaterCo will charge the Society for the supply of such water in the following manner:
  - a. WaterCo will charge the Society, for the supply of water to Society Members, a single Bulk Water Charge. The Bulk Water Charge will be based on WaterCo's reasonable estimate of its expenses for the period in a manner consistent with clause 4.2.
  - b. The terms and timing of payment of the Bulk Water Charge by the Society to WaterCo will be as agreed between WaterCo and the Society, having regard to the Society's method and timing of collection of levies. Failing such agreement, the Bulk Water Charge is payable monthly in advance.
  - c. At the same time as WaterCo provides the Society with the account for the Bulk Water Charge, it will provide written advice to the Society of the total volume of water delivered to the Society and Society Members in the previous period and of the details of its estimated expenses upon which the charges are based (as described in clause 4.2) for the period which is being charged.
  - d. After the end of each financial year of WaterCo, and within a reasonable time after WaterCo has completed its annual accounts for taxation purposes, WaterCo will reconcile the Bulk Water Charges which it has charged to the Society under clause 4.1a against its actual expenses for taxation purposes for that financial year, and will:
    - i. Send details of that reconciliation to the Society; and
    - ii. If, during that financial year, WaterCo has charged more than its actual expenses for taxation purposes, immediately credit that excess to the Society against the next payments due by the Society to WaterCo;
    - iii. If, during that financial year, WaterCo has charged less than its actual expenses for taxation purposes, immediately charge the Society for the shortfall, which the Society will pay to WaterCo within a reasonable time; and
    - iv. Make the refund or charges described in clauses 4.1d.ii and 4.1d.iii within such period of the end of the financial year as is necessary to ensure that WaterCo complies with clause 3.1.
  - e. If the Society fails to make any payment due under this clause 4.1, the Society will pay WaterCo interest on the full amount owing to WaterCo at a rate 5% above the 90 day bill rate disclosed on Reuters screen page BKBM (or its successor's page) at 11.00 am on the due date for payment calculated on a daily basis, until payment is made in full, including payment of interest under this clause. This clause is without prejudice to any other rights of WaterCo.



- 4.2 Because WaterCo may not make a taxable profit in any financial year, over the course of each financial year, WaterCo may only charge the Society a total sum under clause 4.1 equal to its expenses for taxation purposes.
- 4.3 The parties acknowledge that WaterCo will supply potable water to the owner and/or operator of the golf course within the Jacks Point Zone and the owner(s) of Lot 14. The supply of such water will be on the following terms:
- a. WaterCo will charge the owner and/or operator of the golf course and the owners(s) of Lot 14 a sum equal to WaterCo's actual expenses in providing that water, calculated on a reasonable basis.
  - b. such other commercial terms to be negotiated separately between WaterCo and the owner and/or operator of the golf course within the Jacks Point Zone and the owner(s) of Lot 14.
- 4.4 The parties acknowledge that following vesting of the Public Domain in the Council WaterCo will supply potable water to the Council in respect of the Public Domain. The supply of such water will be on the following terms:
- a. WaterCo will charge the Council a sum equal to WaterCo's actual expenses in providing that water, calculated on the same basis as Society members purchase water.
  - b. such other commercial terms to be negotiated separately between WaterCo and the Council.
- 5. Water Charges by the Society to Society Members**
- 5.1 The parties will cause each Developed Property to have a water meter installed which is capable of reading the volume of water supplied to each Developed Property. The Society will be responsible for the reading of those water meters to enable it to calculate the on-charging described in clause 5.2.
- 5.2 The Society will on-charge to the Society Members the Bulk Water Charge, on the following basis:
- a. The Society will divide the Bulk Water Charge into two sums:
    - i. A fixed cost component which reasonably reflects the fixed costs disclosed by WaterCo under clause 4.1; and
    - ii. A variable cost component which reasonably reflects the variable costs disclosed under the same clause.
  - b. The Society will apportion and charge that fixed cost component to Society Members per Developed Property, on a reasonable basis, and will charge the variable component to Society Members based on the proportionate use of water by each Society Member.
  - c. The parties acknowledge that the same charges described in the last paragraph will be charged to JPL in respect of any Developed Property owned by JPL that is subject to Society levies.
- 5.3 If a Society Member fails to make payment of the sums described in clause 5.2 and the Society requests WaterCo by notice in writing then WaterCo will stop the supply

of water to the defaulting Society Member's Developed Property until the Society requests that water be resupplied.

## 6. **WaterCo Capital Works**

### 6.1 The parties acknowledge that:

- a. because WaterCo will in no financial year make a taxable profit, WaterCo has little or no ability to fund capital expenditure; and
- b. WaterCo has purchased the Water Infrastructure Assets on the basis that they are compliant with Drinking Water Standards of New Zealand 2005 and that they provide sufficient water capacity for all of the Developed Properties which JPL will create at Jacks Point, calculated reasonably, based on the maximum volume of water set out in Resource Consent (Water Permit) No. 2004.724 (as set out in a deed which vests the Water Infrastructure Assets from JPL into WaterCo); and
- c. Subject to clause 7.1h, if WaterCo is required to improve the quality of water above Drinking Water Standards of New Zealand 2005, or to increase its water capacity, WaterCo will need to fund any capital expenditure in respect of such improvement or increase; and
- d. In order to smooth the cost to the Society Members of the funding of WaterCo's long term capital works programmes, WaterCo will seek a capital levy from the Society to allow WaterCo to build up funds over time to finance such capital works programmes, as further set out in clause 6.5.

Therefore any capital expenditure will be funded by way of a capital levy payable by Society Members to the Society which will be paid by the Society to WaterCo by way of loans and/or subscriptions for Shares in terms of this clause 6.

### 6.2 Subject to clause 6.3, if WaterCo requires money for capital expenditure (which for the purposes of clause 6 is deemed to include the funding of long term capital works programmes as set out in clause 6.1d and the payment of interest and repayment of principal in respect of any borrowings permitted under clause 6.4) at any time, or from time to time:

- a. WaterCo will submit to the Society, annually, projected capital expenditure requirements for as many years in the future as it can reasonably predict.
- b. The nature and sum of the capital expenditure requirements described in those budgets, as varied by any amended budgets provided by WaterCo to the Society during the financial year, will constitute notice by WaterCo to the Society that WaterCo requires the Society to pay such a sum ("Necessary Capital Sum") to WaterCo at the time(s) specified in those budgets.
- c. On or before the date each of those Necessary Capital Sums is required by WaterCo, the Society will make a payment to WaterCo equal to each Necessary Capital Sum. Such payment will be by way of an interest free advance by the Society to WaterCo.
- d. The Society will levy the Society Members so that it receives as part of the next levy payable by the Society Members a sum not less than the Necessary Capital Sum, to fund that advance to WaterCo.

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- e. If either JPL or the Society gives notice to WaterCo, or if WaterCo gives notice to the Society, requiring the total current balance of all advances made by the Society to WaterCo under clauses 6.2c and 6.3 ("Total Advances") to be converted to share capital, WaterCo and the Society will take all reasonable steps so that WaterCo will issue and the Society will subscribe for shares in WaterCo with a total subscription price equal to the Total Advances, and such subscription will occur as soon as practicable after such notice is given. Without limiting this obligation, WaterCo and the Society will take all reasonable steps to cause WaterCo to issue these Shares in a manner which complies with the Companies Act 1993 or any Act in substitution, amendment, or repeal of that Act.
  - f. Unless otherwise agreed to by the Society, WaterCo will execute and at all times maintain a first ranking registered General Security Agreement in favour of the Society, in the form provided by the Society, to secure all interest free advances by the Society to WaterCo and WaterCo's other obligations to the Society under this deed, and under the Option described in clause 3.10.
- 6.3 If at any time WaterCo requires money for working capital or capital expenditure purposes before such money would be available under the process described in clauses 6.1 and 6.2, then the Society will take all reasonable steps to make an interest free shareholders advance to WaterCo until WaterCo and the Society can comply with the procedure described in clauses 6.1 and 6.2, at which date the funds paid to WaterCo pursuant to clause 6.2 will be used to repay that shareholders advance.
- 6.4 WaterCo may borrow from a bank or other external lender to fund capital expenditure in respect of potable water, and the Society may, if it agrees to do so, provide a guarantee in respect of such borrowings to the lender.
- 6.5 WaterCo will take all reasonable steps, on an ongoing basis, to plan a long term capital works programme, and to fund future expenditure on such a programme by way of long term capital expenditure, as anticipated by clause 6.1d, so as to smooth the cost to Society Members of such long term capital works programmes.

## **7. Neighbouring Developers**

- 7.1 If Neighbouring Developers elect to do so at a later date, then the Neighbouring Landowners will obtain the right to purchase water from WaterCo either because:
- a. All of the Neighbouring Landowners within that Neighbouring Development become Society Members; or
  - b. All of the Neighbouring Landowners (or a Neighbouring Residents Entity representing all of them) enter(s) a water supply contract, as set out in clause 7.1f.
- To that end:
- c. The Society recognises that under the Tripartite Agreement JPL is entitled to receive reimbursement ("JPL's Reimbursement") from Neighbouring Developers, Neighbouring Residents Entities, or Neighbouring Landowners in respect of its disproportionate expenditure on the Water Infrastructure Assets, including its expenditure under clauses 7.1j.

- d. The Society hereby irrevocably authorises and instructs JPL to negotiate with the Neighbouring Developer and/or the Neighbouring Residents Entities and/or the Neighbouring Landowners as to the terms of entry of the Neighbouring Landowners into the water scheme administered by WaterCo, including JPL's Reimbursement payable by the Neighbouring Developer, or Neighbouring Residents Entity, or Neighbouring Landowners to JPL, and including any issue of shares under clause 7.1i. Neither the Society nor WaterCo will negotiate with Neighbouring Developers and/or Neighbouring Residents Entities and/or Neighbouring Landowners to enter the water scheme administered by WaterCo without the prior consent in writing of JPL. Such consent may be refused by JPL at its absolute discretion. This clause 7.1d only applies until the later of:
- i. the date JPL ceases to be the Controlling Member; and
  - ii. the date all of the Neighbouring Developments have entered into the water scheme administered by WaterCo, as anticipated by this deed,
- or such earlier date as JPL gives notice to the Society that this clause no longer applies.
- e. Notwithstanding the previous paragraph, those terms must be reasonable, having regard to the Tripartite Agreement.
- f. If Neighbouring Residents Entities or Neighbouring Landowners obtain the right to purchase water from WaterCo, as provided in this clause, and if directed by JPL, WaterCo will supply water to the appropriate Neighbouring Residents Entity upon the same terms as the Society and/or will supply water to the Neighbouring Landowners upon the same terms as the Society charges Society Members under clauses 4, 5, and 6. The parties acknowledge that this may mean that WaterCo receives advances from the Neighbouring Residents Entity, or advance levy or capital levy payments from Neighbouring Landowners so that the Neighbouring Landowners are in the same position as the Society Members under clause 6.
- g. The Neighbouring Residents Entity (if there is one) or the Neighbouring Landowners will acquire such water according to the principles set out in the Tripartite Agreement; and
- h. A Neighbouring Landowner or Neighbouring Residents Entity may only purchase water from WaterCo, or become a Society Member, and a Neighbouring Residents Entity may only subscribe for shares under paragraph i, if the Society and WaterCo have first obtained JPL's confirmation in writing that JPL has received JPL's Reimbursement.
- i. Subject to clause 7.1h, if negotiated by JPL under clause 7.1d, WaterCo will, when required by JPL, issue new shares to the Neighbouring Residents Entity or the Neighbouring Landowners for a total of \$1, and:
- i. the number of such shares to be issued will be such that the party subscribing for the shares holds a proportion of the total share capital of WaterCo which is consistent with the Tripartite Agreement; and
  - ii. The Society will take all reasonable steps to cause WaterCo to issue these shares on those terms; and

- iii. Without limiting the previous paragraph, the Society will pass a shareholders' resolution approving the issue of the shares on these terms, and (if required by the directors of WaterCo) indemnify the directors in respect of any resolutions passed and any certificate signed by those directors in respect of such issues of shares.
  - j. Notwithstanding anything else in this clause, the Neighbouring Landowners may only obtain the right to purchase water from WaterCo in the manner anticipated in clauses 7.1a and 7.1b if JPL (either itself or by the Neighbouring Developer or Neighbouring Residents Entity or Neighbouring Landowners as set out later in this clause) has first caused sufficient water capacity to be constructed and transferred to WaterCo for no consideration so that WaterCo has sufficient water capacity to comply with clause 6.1b and also to supply water to the Neighbouring Landowners, calculated reasonably, based on the maximum volume of water set out in Resource Consent (Water Permit) No. 2004.724. JPL, at its discretion, may cause the Neighbouring Developer or Neighbouring Residents Entity or Neighbouring Landowners to construct that capacity to cause JPL to comply with this paragraph.
  - k. The parties will enter a deed to replace this deed with any Neighbouring Residents Entities or Neighbouring Landowners which or who become shareholders in WaterCo as a result of those negotiations. This deed will be on terms consistent with this deed including an option to purchase the Water Infrastructure Assets in favour of the shareholders of WaterCo in proportion to their shareholdings. The prior execution of such a deed will be a condition of such parties becoming shareholders.
- 7.2 Notwithstanding anything else in this clause, JPL may not negotiate any terms with the Neighbouring Residents Entities or Neighbouring Landowners under clause 7.1 which are in any way inconsistent with clauses 3, 4.2 and 6 to the intent that:
- a. WaterCo will at all times be a non-profit making company, as described in clause 3; and
  - b. The principles by which WaterCo will charge, and require funding, for water use will at all times be consistent with the principles set out in clauses 4.2 and 6 and fair and reasonable as between Society Members and Neighbouring Landowners. If Neighbouring Residents Entities or Neighbouring Landowners become shareholders in WaterCo, then WaterCo will charge, and require funding from those Neighbouring Residents Entities in exactly the manner set out in clauses 4.2 and 6, notwithstanding that the Neighbouring Residents Entities may choose a manner of charging for water which is not consistent with clause 5.
- 7.3 Notwithstanding anything else in this clause, the parties will ensure that any water supply arrangements between WaterCo and the Neighbouring Residents Entities, the Neighbouring Developers, and/or the Neighbouring Landowners are on commercial terms no more favourable to the Neighbouring Landowners than to the Society Members (as set out in this deed).
- 7.4 In consideration of JPL transferring the Water Infrastructure Assets to WaterCo in terms of clause 2.1, the Society will not sell, transfer or dispose of any of the Shares to any party other than Neighbouring Residents Entities or Neighbouring Landowners in the manner set out in this clause 7.

**8. Dispute Resolution**

- 8.1 If a party has any dispute with the other party in connection with this deed:
- a. That party will promptly give full written particulars of the dispute to the other.
  - b. The parties will promptly meet together and in good faith try and resolve the dispute.
- 8.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 8.3 A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 8.4 The mediation procedure is:
- a. The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
  - b. The parties must co-operate with the mediator in an effort to resolve the dispute.
  - c. If the dispute is settled, the parties must sign a copy of the terms of the settlement.
  - d. If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
  - e. Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.
- 8.5 The terms of settlement are binding on the parties and override the terms of the deed if there is any conflict.
- 8.6 The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 8.7 The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible in any arbitration or legal proceedings.
- 8.8 Either party may commence arbitration proceedings when mediation ceases under clause 8.4d.
- 8.9 If the dispute is referred to arbitration:
- a. The arbitration will be conducted by one arbitrator appointed by the parties.
  - b. If the parties cannot agree on an arbitrator within 14 days the appointment will be made by the president of the New Zealand Law Society or the president's nominee.
  - c. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 8.10 Neither party will unreasonably delay the dispute resolution procedures in this clause 8.

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- 8.11 This clause 8 does not apply to:
- a. Any dispute arising in connection with any attempted renegotiation of this deed; or
  - b. An application by either party for urgent interlocutory relief.
- 8.12 Pending resolution of any dispute the parties will perform this deed in all respects including performance of the matter which is the subject of dispute.
9. **Term**
- 9.1 The term of this deed will commence on the date of execution of it and will continue indefinitely.
10. **Further Assurances**
- 10.1 Each party will with due diligence sign all necessary deeds and documents and do everything that is reasonably required to carry out the terms of this deed.
11. **Waiver**
- 11.1 Any failure by a party to enforce any clause in this deed, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this deed.
12. **General**
- 12.1 The warranties, undertakings, agreements and indemnities given under or pursuant to this deed shall not merge on settlement of any of the transactions contemplated by this deed but shall remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.
- 12.2 If any part of this deed is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this deed and they shall remain in full force and effect.
- 12.3 This deed constitutes the entire agreement between the parties on the subject matter of this deed and supersedes and extinguishes all earlier negotiations, understandings and agreements, whether oral or written between the parties relating to the subject matter of this deed.
- 12.4 JPL and its successors or assigns may in its absolute discretion without the consent of the Society and WaterCo, assign all or any of its rights and transfer its obligations under this deed to any other person.
- 12.5 Neither WaterCo nor the Society may assign any of their rights or transfer any of their obligations under this deed to any other person without the written consent of JPL.

Deed Pertaining to Jacks Point Water Supply
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**Signed by the parties**

Signed by **Jacks Point Limited** by:

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

Signed by **Jacks Point Residents & Owners Association Incorporated** by affixing its common seal in the presence of:

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
  
\_\_\_\_\_

Signed by **Coneburn Water Supply Co Limited** by:

\_\_\_\_\_  
Director's signature

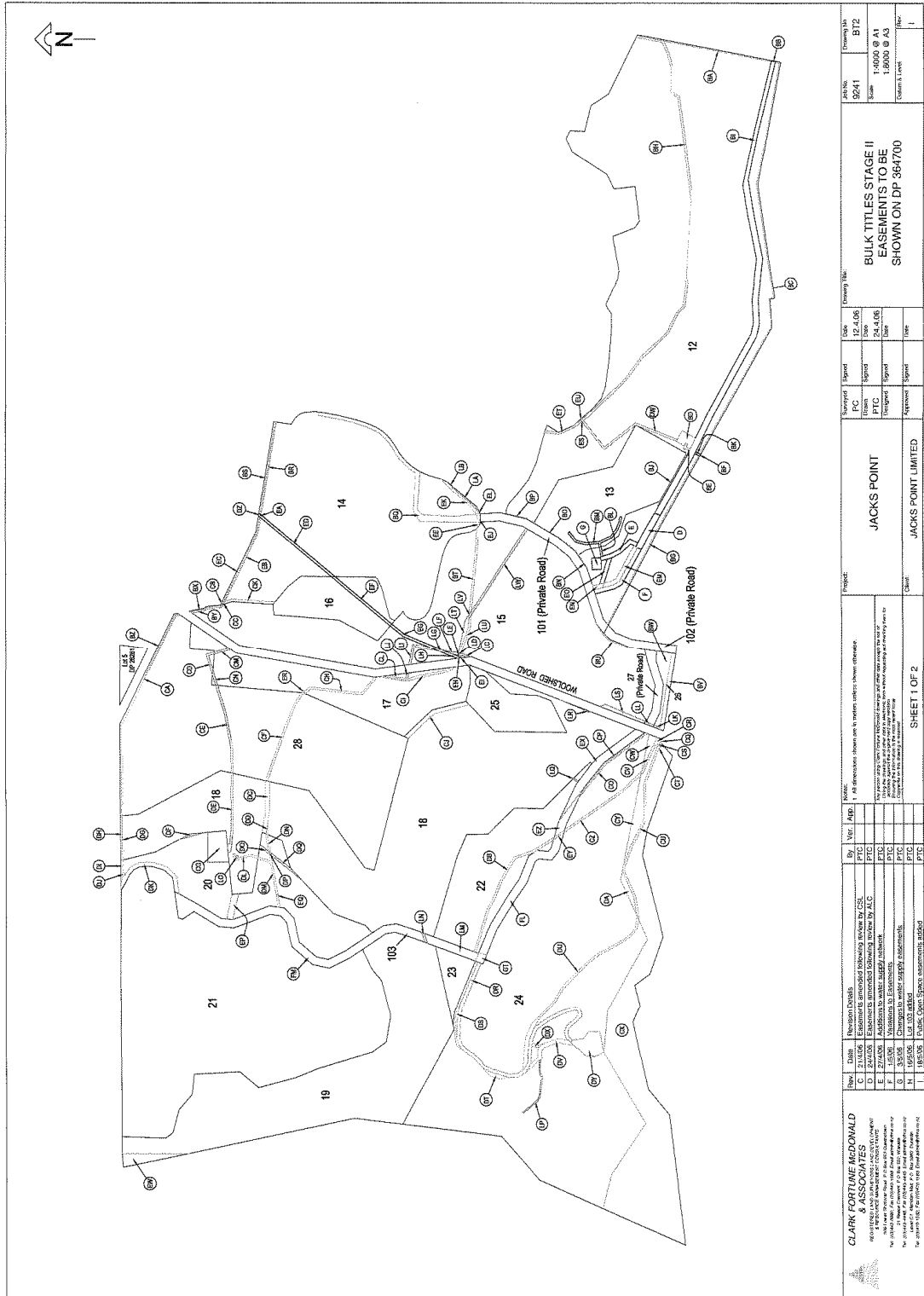
\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

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