

Approved by Registrar-General of Land under No. 2002/6055

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

Sections 90A and 90F, Land Transfer Act 1952

**EI 7802746.10 Easeme**

Land registration district

OTAGO



Cpy - 01/01.Pgs - 014,01/05/08,11:59



DocID: 212181981

Grantor

Surname(s) must be underlined or in CAPITALS.

1. Jacks Point Residents & Owners Association Incorporated (as to Lot 10 DP 359052 contained in CT 240598) 2. Jacks Point Limited (as to the remaining land)

Grantee

Surname(s) must be underlined or in CAPITALS.

Jacks Point Residents &amp; Owners Association Incorporated

Grant\* of easement or profit à prendre or creation or covenant

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

Dated this 29th day of February 2007/8

**Attestation**

Signed by the duly authorised attorney for both Jacks Point Residents & Owners Association Incorporated and Jacks Point Limited

Signature [common seal] of Grantor

Signed in my presence by the Grantor

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Sarah Louise Swale  
Legal Executive  
Queenstown

Occupation

Address

Signed by its authorised attorney

Signature [common seal] of Grantee

Signed in my presence by the Grantee

Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Sarah Louise Swale  
Legal Executive  
Queenstown

Occupation

Address

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

[Solicitor for] the Grantee

\*If the consent of any person is required for the grant, the specified consent form must be used.

REF: 7003 - AUCKLAND DISTRICT LAW SOCIETY



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(Continue in additional Annexure Schedule if required.)

Purpose (nature and extent) of easement, <i>profit</i> , or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
<b>Continued on Annexure Schedule 3</b>	<b>Continued on Annexure Schedule 3</b>	<b>Continued on Annexure Schedule 3</b>	<b>Continued on Annexure Schedule 3</b>

**Easements or *profits à prendre*  
rights and powers (including  
terms, covenants, and conditions)**

Delete phrases in [ ] and insert memorandum number as required.

*Continue in additional Annexure Schedule if required.*

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Ninth Schedule of the Property Law Act 1952.

The implied rights and powers are ~~varied~~ ~~negatived~~ ~~added to~~ or **substituted** by:

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

[the provisions set out in Annexure Schedule 2].

## Covenant provisions

Delete phrases in [ ] and insert memorandum number as required.

*Continue in additional Annexure Schedule if required.*

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

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

~~[Annexure Schedule 2].~~

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

**Annexure Schedule**



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

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(Continue in additional Annexure Schedule, if required.)

**Annexure Schedule 2**

**Continuation of "Easement or Profit a Prendre Rights and Powers  
(including terms, covenants and conditions)"**

**1. RIGHT TO DRAIN WASTEWATER**

- 1.1 Each Right to Drain Wastewater will include the right for the Grantee and Other Authorised Persons to drain, discharge and convey wastewater and other waste material and fluid in any quantities (except during any periods of necessary cleansing, renewal, modification and/or repair) through the Wastewater System laid or to be laid under the surface of and through the soil of the Wastewater Drainage Area.
- 1.2 The Grantee will be responsible for the operation, repair, maintenance, modification and replacement whenever necessary of the Wastewater System within that Wastewater Drainage Area so as to keep the same in good order, repair, operation and condition and to prevent the same becoming a nuisance.
- 1.3 The Users of each Wastewater Drainage Area will each pay the cost of operating, repairing, maintaining, modifying and replacing the Wastewater System within that Wastewater Drainage Area as required by the Grantee from time to time.

**2. RIGHT TO DRAIN WATER**

- 2.1 Each Right to Drain Water will include the right for the Grantee and Other Authorised Persons to drain, discharge and convey water in any quantities (except during any periods of necessary cleansing, renewal, modification and/or repair) through the Water Drainage System laid or to be laid under the surface of and through the soil of the Water Drainage Area.
- 2.2 The Grantee will be responsible for the operation, repair, maintenance, modification and replacement whenever necessary of the Water Drainage System within that Water Drainage Area so as to keep the same in good order, repair, operation and condition and to prevent the same becoming a nuisance.
- 2.3 The Users of each Water Drainage Area will each pay the cost of operating, repairing, maintaining, modifying and replacing the Water Drainage System within that Water Drainage Area as required by the Grantee from time to time.

**3. RIGHT TO TREAT WASTEWATER**

- 3.1 Each Right to Treat Wastewater will include the right for the Grantee and Other Authorised Persons to store, treat, discharge and process wastewater and other waste material and fluid in any quantities (except during any periods of necessary renewal, modification and/or repair) in the Wastewater Treatment System under, on above and into the surface of the Wastewater Treatment Area.

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**Annexure Schedule**



Insert type of instrument

"Mortgage", "Transfer", "Lease" etc

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3.2 The Grantee will be responsible for the repair, maintenance, modification and replacement whenever necessary of the Wastewater Treatment Systems and everything else that forms part of the Wastewater Treatment System under, on above and into the surface of the Wastewater Treatment Area.

3.3 The Users of each Wastewater Treatment Area will each pay the cost of operating, repairing, maintaining, modifying and replacing the Wastewater Treatment System within that Wastewater Treatment Area as required by the Grantee from time to time.

**4. GENERAL**

4.1 Except where inconsistent with this Instrument, the Grantee and Other Authorised Persons will in addition to the Rights have the rights set out in Schedule 4 of the Land Transfer Regulations 2002.

4.2 All Easement Systems will at all times remain under the ownership and control of the Grantee.

4.3 The Rights and associated obligations granted by this Instrument will be in common with any rights and obligations for the Grantor and Other Authorised Persons and Other Grantees.

4.4 The Grantor may grant Other Rights in respect of the Servient Land for the benefit of Other Grantees, provided they do not diminish the Rights. The Grantor, in the event of a breach of the terms and conditions of other rights by one of the Other Grantees, will either:

- a. Take all reasonable steps to require that Other Grantee to remedy such breach; or
- b. Assign to the Grantee such remedies under the Other Rights as the Grantor may have that are necessary for the Grantee at the Grantee's cost to require that Other Grantee to remedy such breach.

4.5 Each Right:

- a. May be exercised at all times, repeated any number of times and will be for all time from the date of this Instrument ("the Term").
- b. Includes (without limitation) the right to use any Easement System already situated in the Servient Land for the purpose of that Right.
- c. Includes (without limitation) the right to lay, install and construct an Easement System and any replacement Easement System of any kind (even if of an entirely different nature from the existing Easement System provided it is for the purpose contemplated by the relevant Right) reasonably required by the Grantee (including (without limitation) the right to reasonably excavate land for the purpose of that construction).

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*[Signature]*

*[Signature]*

*[Signature]*

**Annexure Schedule**

Insert type of instrument

"Mortgage", "Transfer", "Lease" etc

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- 4.6 No power is implied in respect of any Right for the Grantor to determine the Right for breach of any provision in this Instrument (whether express or implied) or for any other cause, it being the intention of the parties that each Right will subsist for the Term unless it is surrendered.
- 4.7 The Grantor (without limitation) covenants:
- a. not to do anything which impedes, interferes with or restricts the rights of the Grantee and Other Authorised Persons;
  - b. not to permit:
    - i. the growth of any trees, shrubs or other vegetation;
    - ii. the erection or establishment of any structure; nor
    - iii. any activity whatsoever without limitation;

whether on the Servient Land or otherwise which may hamper the exercise of the Rights or endanger or cause nuisance to the Grantee and Other Authorised Persons during the exercise of the Rights;
  - c. not to do anything, whether on the Servient Land or otherwise, which may adversely affect the land stability of the Servient Land and will do all things necessary to ensure the continued stability of the Servient Land and to avoid erosion on the Servient Land.
- 4.8 The Grantee may for the purpose of exercising any Right or complying with any obligation of the Grantee under this Instrument in relation to any Right:
- a. Enter the Servient Land with or without agents, servants, contractors and workmen with all necessary tools, implements, machinery, vehicles of any kind and equipment of any kind;
  - b. Remain on the Servient Land for such time as is reasonable for the purpose of performing such Rights or obligations.
- 4.9 In exercising any rights under subclause 4.8 the Grantee will:
- a. Cause as little damage, disturbance, inconvenience and interruption to the Servient Land and to the use of the Servient Land as is reasonably necessary; and
  - b. Forthwith make good any damage done to the Servient Land and to the occupier of the Servient Land.
- 4.10 If any party ("the **Defaulting Party**") neglects or refuses to perform or join with another party ("the **Other Party**") in performing any obligation under this Instrument the following provisions will apply:

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.

**Annexure Schedule**



Insert type of instrument

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- a. The Other Party may serve upon the Defaulting Party a written notice ("a **Default Notice**") requiring the Defaulting Party to perform or to join in performing such obligation and stating that, after the expiration of 7 days from service of the Default Notice the Other Party may perform such obligation;
- b. If at the expiry of the Default Notice the Defaulting Party still neglects or refuses to perform or join in performing the obligation the Other Party may:
  - i. Perform such obligation; and
  - ii. For that purpose enter the relevant Servient Land and carry out any work; and
  - iii. The Defaulting Party will be liable to pay to the Other Party the costs of the Default Notice and the costs incurred in performing such obligation; and
  - iv. The Other Party may recover from the Defaulting Party as a liquidated debt any moneys payable pursuant to this subclause.

**5. ARBITRATION**

5.1 If a party has any dispute with any other party in connection with this Instrument:

- 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.

5.2 If the dispute is not resolved within 14 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to arbitration.

5.3 The arbitration will be conducted by one arbitrator appointed by the parties involved.

5.4 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.

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

5.6 No party will unreasonably delay the dispute resolution procedures in this clause.

5.7 This clause does not apply to:

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

5.8 Any matter requiring the agreement, approval or consent of another party to this Instrument will not be the subject of arbitration under this clause 5.

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**Annexure Schedule**



Insert type of instrument

"Mortgage", "Transfer", "Lease" etc

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**6. INTERPRETATION**

6.1 In this Instrument unless the context otherwise requires:

"**Default Notice**" has the meaning given to those words in clause 4.10.

"**Defaulting Party**" has the meaning given to those words in clause 4.10.

"**Easement Area**" means that part of the Servient Land described in Annexure Schedule 3 as being subject to a Right.

"**Easement System**" means

- a. In the case of a Right to Drain Wastewater, means the Wastewater Drainage System.
- b. In the case of a Right to Drain Water, means the Water Drainage System.
- c. In the case of a Right to Treat Wastewater means the Wastewater Treatment System.

"**Grantee**" means Jacks Point Residents and Owners Association Incorporated and its successors.

"**Grantee and Other Authorised Persons**" in relation to any Right means:

- a. the Grantee;
- b. the agents, servants, workmen, tenants, licensees and invitees of the Grantee; and
- c. where the context so admits, means any of such persons.

"**Grantor**" in relation to any Right means the registered proprietors from time to time of the Servient Land that is subject to the relevant Right.

"**Grantor and Other Authorised Persons**" in relation to any Right means:

- a. the Grantor;
- b. the agents, servants, workmen, tenants, licensees and invitees of the Grantor; and
- c. where the context so admits, means any of such persons.

"**Instrument**" means this instrument as it may be varied from time to time.

"**Other Dominant Land**" means the land (other than the Servient Land) that from time to time is to have the benefit of an Easement System.

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**Annexure Schedule**

Insert type of instrument

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**"Other Grantee"** means any person (other than the Grantee and Other Authorised Persons) who is granted Other Rights by the Grantor including (without limitation):

- a. persons who are granted Other Rights by way of easements in gross; and
- b. registered proprietors of Other Dominant Land and their successors in title from time to time.

**"Other Party"** has the meaning given to those words in clause 4.10.

**"Other Rights"** means rights granted by the Grantor to Other Grantees on the same or similar terms and conditions as the Rights granted by this Instrument.

**"Right"** means any right granted by this Instrument.

**"Right to Drain Wastewater"** means the rights recorded by this Instrument in relation to each Wastewater Drainage Area.

**"Right to Drain Water"** means the rights recorded by this Instrument in relation to the Water Drainage Area.

**"Right to Treat Wastewater"** means the rights recorded by this Instrument in relation to each Wastewater Treatment Area.

**"Servient Land"** in relation to any Right means the land described in Annexure Schedule 3 as the servient tenement which is subject to the relevant Right.

**"Term"** has the meaning given to that word in clause 4.5.

**"Users"** means such of the Grantor, the Grantee and the Other Grantees who have the benefit of the relevant Right.

**"Wastewater Drainage Area"** means that part of the Servient Land described in Annexure Schedule 3 as being subject to a Right to Drain Wastewater.

**"Wastewater System"** means the system on, above or under the Wastewater Drainage Areas used by Users to drain wastewater and includes (without limitation) all pumps, pipes, conduits, tanks, electrical installations and wastewater drainage equipment. A reference to the Wastewater System specifically in respect of one or more of the Wastewater Drainage Areas means that part of the Wastewater System that is contained within those Wastewater Drainage Areas.

**"Water Drainage Area"** means that part of the Servient Land described in Annexure Schedule 3 as being subject to a Right to Drain Water.

**"Water Drainage System"** means the system used to drain water by Users through the Water Drainage Areas and includes (without limitation) all pumps, pipes, conduits, tanks, electrical

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**Annexure Schedule**



Insert type of instrument

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installations, and anything else installed within the Water Drainage Areas to allow the Water Drainage System to drain water from all Users. A reference to the Water Drainage System specifically in respect of one or more of the Water Drainage Areas means that part of the Water Drainage System that is contained within those Water Drainage Areas.

**"Wastewater Treatment Area"** means that part of the Servient Land described in Annexure Schedule 3 as being subject to a Right to Treat Wastewater.

**"Wastewater Treatment System"** means the system used to treat wastewater under, on or above the surface of the Wastewater Treatment Areas and includes without limitation all pumps, pipes, conduits, tanks, electrical installations, wastewater treatment equipment and the soil in the Wastewater Treatment Areas. A reference to the Wastewater Treatment System specifically in respect of one or more of the Wastewater Treatment Areas means that part of the Wastewater Treatment System that is contained under, on or above those Wastewater Treatment Areas.

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**Annexure Schedule**

Insert type of instrument

"Mortgage", "Transfer", "Lease" etc



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(Continue in additional Annexure Schedule, if required.)

**Annexure Schedule 3****Continuation of Schedule A**

Purpose (nature and extent) of easement	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Right to Drain Water.	XB on DP 380128 ✓	Lot 109 DP 380128 (CT 321093) ✓	In gross
	VX, VY on DP 380128 ✓	Lot 304 DP 380128 (CT 321093) ✓	
	VI on DP 380128 ✓	Lot 4020 DP 380128 (CT 321114) ✓	
	WO on DP 380128 ✓	Lot 4015 DP 380128 (CT 321109) ✓	
	WN on DP 380128 ✓	Lot 4014 DP 380128 (CT 321108) ✓	
	WM on DP 380128 ✓	Lot 4013 DP 380128 (CT 321107) ✓	
	WL on DP 380128 ✓	Lot 4012 DP 380128 (CT 321106) ✓	
	WK on DP 380128 ✓	Lot 4011 DP 380128 (CT 321105) ✓	
	WJ on DP 380128 ✓	Lot 4010 DP 380128 (CT 321104) ✓	
	VJ on DP 380128 ✓	Lot 4021 DP 380128 (CT 321115) ✓	
	VA, VK on DP 380128 ✓	Lot 4022 DP 380128 (CT 321116) ✓	
	VB, VL on DP 380128 ✓	Lot 4024 DP 380128 (CT 321118) ✓	
	VC, VM on DP 380128 ✓	Lot 4025 DP 380128 (CT 321119) ✓	
	VD, VN on DP 380128 ✓	Lot 4027 DP 380128 (CT 321121) ✓	
	VO, VP on DP 380128 ✓	Lot 4035 DP 380128 (CT 321129) ✓	
	VG, VR, VS on DP 380128 ✓	Lot 4038 DP 380128 (CT 321132) ✓	

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**Annexure Schedule**

Insert type of instrument

"Mortgage", "Transfer", "Lease" etc



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Purpose (nature and extent) of easement	Shown (plan reference) <i>rd</i>	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
	<i>all on DP 380128</i> VH, VV, VU on DP 380128 ✓	Lot 4042 DP 380128 (CT 321136) ✓	<i>in gross rd.</i>
	VW, VQ, VT ✓ on DP 380128	Lot 10 DP 359052 (CT 240598) ✓	
	XL, XM ✓ on DP 380128	Lot 12 DP 364700 (CT 262752) ✓	
Right to Drain Waste Water	XB on DP 380128 ✓	Lot 109 DP 380128 ✓ (CT 321093)	
	XD on DP 380128 ✓	Lot 203 DP 380128 ✓ (CT 321094)	
	VX on DP 380128 ✓	Lot 304 DP 380128 ✓ (CT 321093)	
	<i>rd</i> VZ, XO, XM, XN, XP on DP 380128 and XQ, <del>XR, XS, XT, XU</del>	Lot 12 DP 364700 (CT 262752) ✓	
Right to Treat Wastewater <i>rd</i>	<i>rd</i> XO, XP on DP 380128, <del>XQ, XT on DP 380128</del> <i>rd</i>	Lot 12 DP 364700 (CT 262752) ✓	

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**Annexure Schedule**



Insert type of instrument

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(Continue in additional Annexure Schedule, if required.)

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

I, **RODNEY JAMES HODGE** of **Queenstown** HEREBY CERTIFY:

1. THAT by Deed dated 27 June 2006 ("the Deed"), a copy of which was deposited in the Otago Land Registry Office, under number 6929597.2 I was appointed the lawful attorney of **JACKS POINT RESIDENTS AND OWNERS ASSOCIATION INCORPORATED** ("the Society"), 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 Society, or otherwise.

SIGNED by: Rodney James Hodge (name)

[Signature] (signature)

at Queenstown this 29th day of February 2008

SIGNED in my presence:

[Signature]  
Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name:

**Sarah Louise Swale**

Occupation:

**Legal Executive**

**Queenstown**

Address:

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**Annexure Schedule**



Insert type of instrument

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Transfer

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(Continue in additional Annexure Schedule, if required.)

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

I, Rodney James HODGE of Queenstown HEREBY CERTIFY:

1. THAT by Deed dated 28<sup>th</sup> of April 2006 ("the Deed"), a copy of which was deposited in the Otago Land Registry Office, under number 6848087.6 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: Rodney James HODGE

(signature)

at Queenstown this 29th day of February 2008

SIGNED in my presence:

Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name:

Sarah Louise Swale  
Legal Executive  
Queenstown

Occupation:

Address:

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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 Society, or otherwise.

SIGNED by: Rodney James Hodge (name)

[Signature] (signature)

at Queenstown this 29th day of February 2008

SIGNED in my presence:

[Signature]  
Signature of Witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name: **Sarah Louise Swale**

**Legal Executive**

Occupation: **Queenstown**

Address:

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[Signature]

[Signature]