

**Form B**

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

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

**Grantor**

**The Lakes International Golf Course Limited**

**Grantee**

**Pauanui Lakes Resort Residents Association Incorporated**

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

**The Grantor** being the registered proprietor of the servient tenements set out in Schedule A **grants to the Grantee** (and, if so stated in gross) the easements set out in Schedule A with the rights and powers or provisions set out in Annexure Schedule B

**Schedule A**

*Schedule, if required*

*Continue in additional Annexure*

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or In gross
Rights to take and convey water	V on DP 494805 V on DPS 88971	SA 70C/413	181833 275169 SA 70C/424 SA 70C/431 SA 70C/437 SA 70C/439 SA 70C/453 SA 70C/470 SA 70C/484 SA 70C/504
Rights to take and convey water	V on DP 494805 V on DPS 88971	SA 70C/413	Pauanui Lakes Resort Residents Association Incorporated (in gross)

Rights to drain, convey and treat sewage and waste water	B,C,D,E,F,G,K and N on DP494805 and  A,B,C,D,E,F,H,I,J and K on DP452487	597632	181833 275169 SA 70C/424 SA 70C/431 SA 70C/437 SA 70C/439 SA 70C/453 SA 70C/470 SA 70C/484 SA 70C/504
Rights to drain, convey and treat sewage and waste water	B,C,D,E,F,G,K and N on DP494805 and  A,B,C,D,E,F,H,I,J and K on DP452487	597632	Pauanui Lakes Resort Residents Association Incorporated (in gross)

**Form B** - continued

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**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*

The rights and powers implied in Schedule Five of the Property Law Act 2007 are hereby negated and substituted by the provisions set out in Annexure Schedule B

The rights and powers contained in this Easement Instrument are additional to and not in substitution for any existing rights to take or convey water, drain sewage or waste water in favour of the Dominant Tenement.

**Covenant provisions**

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

**Annexure Schedule B**

**Background**

- A. GC owns land and plant and equipment involved in providing potable water, sewage and waste water services to the PRA (amongst others).
- B. The PRA owns land and plant and equipment involved in the supply of potable water, sewage and waste water services to PRA Members' Properties.
- C. GC has agreed to supply services to the PRA on the terms contained in this Easement Instrument.

**Operative Terms**

**1. Easements and Covenants**

- 1.1 The Grantor for itself and its successors in title of the Servient Tenement covenants and agrees with:

- 1.1.1 the Grantee in gross; and

- 1.1.2 the Grantee and its successors in title for the benefit of the Dominant Tenement where the easements are not specified in Schedule A as being in gross,

that the Grantor will at all times observe and perform all the easements and covenants contained in this Easement Instrument to the intent that each of the easements and covenants will forever enure for the benefit of and be appurtenant to the Dominant Tenement provided that the Grantor will be liable only for breaches of the easements and covenants contained in this Easement Instrument which occur whilst the relevant Grantor is the registered proprietor of the Servient Tenement.

**2. Supply of Water**

- 2.1 GC shall supply and the Dominant Tenement shall be entitled to take, in perpetuity, Potable Water for PRA Member's properties from the Water Bore using the Water Supply System.
- 2.2 The Dominant Tenement shall be entitled to convey the Potable Water from the Water Bore through the land contained and described in SA 70C/413 to the boundary of SA70C/413 and SA70C/415 so as to connect into the Water Supply System.
- 2.3 The PRA shall pay an annual amount calculated as set out in clause 7 for the provision by GC of a permanent and uninterrupted supply of potable water, except to the extent required by any period of necessary cleansing, renewal, modification or repair of the Water Supply System.

**3. Sewage and Waste Water Services**

- 3.1 GC shall provide and the Dominant Tenement shall be entitled, in perpetuity, to drain, convey and treat sewage and waste water from PRA Members' properties, over the areas marked B,C,D,E,F,G,K and N on DP494805 and A,B,C,D,E,F,H,I,J and K on DP452487 using the Waste Water System and the Sewage System.

- 3.2 The PRA shall pay an annual amount calculated as set out in clause 7 for the provision by GC of a permanent and uninterrupted waste water and sewage removal and treatment service except to the extent reasonably required by any period of any necessary cleansing, renewal, modification or repair of the Sewage System and Waste Water System.
4. **Water Shortages or Interruption of Supply of Water**
- 4.1 GC shall notify the PRA in writing at the earliest practical time in the event that the supply of Potable Water to the PRA is interrupted, is likely to be interrupted or the quantity of Potable Water available for supply may not be sufficient for the needs of the PRA or PRA Members' Properties (**Supply Notice**).
- 4.2 If the existing Water Bore runs out of Potable Water then the GC shall use its best endeavours to locate and install a new water bore. The cost of locating, drilling and installing the new water bore shall be shared equally between the GC and the PRA.
5. **Interruption of the provision of Sewage or Waste Water Services**
- 5.1 GC shall notify the PRA in writing at the earliest practical time in the event that the provision of the Sewage System or the Waste Water System to the PRA is interrupted or is likely to be interrupted (**Services Notice**).
6. **Maintenance**
- 6.1 Pursuant to this Easement Instrument and subject to clauses 6.2 and 6.3, GC shall at its cost replace, maintain and upkeep the Water Supply System, Sewage System and Waste Water System to the boundary of each PRA Members' Property to the standards set by the Local Authority.
- 6.2 The obligations imposed on GC for replacement, maintenance and upkeep of the Water Supply System, the Sewage System and the Waste Water System shall not apply to any part of the Water Supply System, the Sewage System or the Waste Water System owned by the PRA that:
- 6.2.1 is shown to have been constructed outside of the parameters of its construction specifications and permits; or
- 6.2.2 is negligently interrupted by contractors not employed by GC;
- until such time as the PRA rectify the construction or interruption.
7. **Fee**
- 7.1 GC shall provide Potable Water, the Sewage System and the Waste Water System to the PRA for PRA Members' Properties for an annual fee plus GST calculated at the rate and payable on the same basis as the annual levies made by the Local Authority to its un-metered Rating Units situated in the Pauanui/Tairua area with the exception of the Recreation Centre. Accordingly the charge for services will vary from year to year.
- 7.2 The annual fee payable in respect of a Developed Site shall be the equivalent annual levy charged by the Local Authority for a developed un-metered Rating Unit in the Pauanui/Tairua area. The annual fee payable in respect of an Undeveloped Site shall be the equivalent annual levy charged by the Local Authority for an undeveloped un-metered Rating Unit in the Pauanui/Tairua area.
- 7.3 The amount payable will be calculated and payable on the same dates as those of the Local Authority currently being for a year commencing on 1 July and ending on 30 June

and payable in three equal instalments in advance on 8 April, 8 September and 8 December of each year. If at the time that the first payment is due, the Local Authority has not calculated the levy which it is to apply to its Pauanui/Tairua Rating Units for the ensuing year, that payment will be made at the same rate as paid in the previous year and subsequent payments will be adjusted to give effect to any change.

- 7.4 Recreation Centre – A water meter has been installed in the Recreation Centre to measure Potable Water supply to the Recreation Centre. The PRA shall pay water charges for the Recreation Centre based on the quantity of Potable Water supplied to the Recreation Centre at the water meter rates used by the Local Authority on the same dates as the other payments due under this Easement Instrument.
- 7.5 The PRA shall not be liable to pay fees in relation to Potable Water supply the Sewage System and the Waste Water System for any of the Original Developer Sections presently under mortgage until the relevant section is sold and permanent membership of the PRA is obtained from the new owners. If back levies are received from any Original Developer Section by the PRA then the PRA will make a payment to GC for the respective years covered by the back payment but no earlier than 1 July 2011 at the rate of \$50 for each bare section in each of the years through to 30 June 2013 and the amount calculated in Clause 7.1 above for subsequent years.

## 8. Term

- 8.1 The parties agree that this Easement Instrument will continue in perpetuity unless and until it is terminated in writing by both parties.

## 9. Warranties

- 9.1 GC warrants that:
- 9.1.1 it has the authority to enter into this Easement Instrument;
  - 9.1.2 it owns the GC Land and GC Plant;
  - 9.1.3 it has the legal rights to supply the services to the PRA in perpetuity;
  - 9.1.4 it will supply Potable Water and
  - 9.1.5 the Water Supply System, Sewage System and Waste Water System will meet and comply with the standards set from time to time by the Local Authority and the laws of New Zealand.
- 9.2 PRA warrants that:
- 9.2.1 it has the authority to enter into this Easement Instrument;
  - 9.2.2 it owns the PRA Land and PRA Plant;
  - 9.2.3 it has the legal rights and necessary easements to supply the services to the PRA Members' Properties;

## 10. Notices

- 10.1 All notices required to be given or served under the terms of this Easement Instrument shall be in writing, signed by or on behalf of the party giving the notice and given to or served upon the other party in the manner set out in section 353(1) of the Property Law Act 2007 and the sections referred to in it.

**11. Dispute Resolution**

11.1.1 If any dispute or difference arises out of or in connection with this Easement Instrument, or the subject matter of this Easement Instrument, including any question regarding its existence, validity or termination ("the Dispute") the parties shall be required to proceed in the manner set out in clause 14 of Schedule 4 of the Land Transfer Regulations 2002.

11.1.2 The procedure prescribed in this clause shall not prevent GC from taking proceedings for the recovery of any monies payable under this document which remain unpaid or from exercising the rights and remedies set out in clause 7.

**12. General**

12.1 Failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of this Easement Instrument shall not affect or impair that provision in any way or the rights of that party to avail itself of the remedies it may have in respect of any breach of any such provision.

12.2 This Easement Instrument constitutes the entire agreement of the parties in relation to its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

12.3 Each party will execute such further documents and do all acts, matters or things as shall reasonably be required to give effect to the provisions and intent of this Easement Instrument.

12.4 If any provision of this Easement Instrument is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

12.5 The rights powers and remedies provided in this Easement Instrument are cumulative and not exclusive of any rights powers or remedies provided by law.

12.6 This Easement Instrument may not be amended, modified or supplemented except by a written agreement of the parties.

**13. Enforceability by PRA**

13.1 It is acknowledged and agreed that individual PRA Members are not persons who are intended to have the benefit of this Easement Instrument for the purposes of the Contracts (Privity) Act 1982.

13.2 The provisions of this Easement Instrument are enforceable only by the PRA and not by individual PRA Members.

**14. Definitions**

14.1 **Developed Site** means a PRA Members' Property which does have a legally habitable dwelling on it.

14.2 **Lakes Development** means the Servient Tenement, the Dominant Tenement and all other land and buildings and Ratings Units located at the Pauanui Lakes Resort, 100 Augusta Drive, Pauanui.

14.3 **GC** means The Lakes International Golf Course Limited.

14.4 **GC Land** means the Servient Tenement.

- 14.5 **GC Plant** means all of the plant and equipment forming part of the Water Supply System, Sewage System and Waste Water System on and within the GC Land.
- 14.6 **Local Authority** means Thames Coromandel District Council, Waikato Regional Council or such other local body, government department or other authority having jurisdiction or authority in respect of the Servient Tenement.
- 14.7 **Original Developer Sections** means those sections/Rating Units set out and described in the schedule attached hereto marked "C".
- 14.8 **Potable Water** means potable water that complies with the New Zealand Ministry of Health Guidelines.
- 14.9 **PRA** means Pauanui Lakes Resort Residents Association Incorporated.
- 14.10 **PRA Land** means the land contained and described in the following Identifiers:
- 181833
  - 275169
  - SA 70C/424
  - SA 70C/431
  - SA 70C/437
  - SA 70C/439
  - SA 70C/453
  - SA 70C/470
  - SA 70C/484
  - SA 70C/504
- 14.11 **PRA Member** means a member of the PRA.
- 14.12 **PRA Members' Properties** means properties within the Lakes Development the registered proprietor of which is a PRA Member, the PRA and the Recreation Centre as long as it is leased by the PRA.
- 14.13 **PRA Plant** means the plant and equipment forming part of the Water Supply System, Sewage System and Waste Water System on and within the PRA Land.
- 14.14 **Rating Unit** means a "rating unit" as defined in the Rating Valuations Act 1998.
- 14.15 **Recreation Centre** means the recreation centre and associated buildings, tennis courts, pools and recreation areas leased by the PRA as set out and described in the attached schedule marked "D"
- 14.16 **Sewage System** means all plant, equipment, pipes, pumps, tanks, filters, drains and any other infrastructure used in the provision of the sewage system in the removal and treatment of sewage from the PRA Members' Properties.
- 14.17 **Water Bore** means a shaft bored in the ground, either vertically or horizontally for the extraction of potable water and includes any vertical pipe (casing) and any well screen to keep the borehole from caving, the Water Bore being situated on Identifier SA 70C/413 (being part of GC Land).
- 14.18 **Water Supply System** means all plant, equipment, Water Bore, pipes, pumps, filters, drains and any other infrastructure used in the supply of Potable Water to the PRA Members' Properties.



14.19 **Waste Water System** means all plant, equipment, pipes, pumps, tanks, filters, drains and any other infrastructure used in the provision of the waste water system in the removal and treatment of waste water from the PRA Members' Properties.

15. **Interpretation**

15.1 In this Easement Instrument unless the context otherwise requires:

15.1.1 This Easement Instrument includes the schedules, annexures and Introduction of this Easement Instrument.

15.1.2 Reference to any party includes that party's executors, administrators, successors and/or permitted assigns (as the case may be).

15.1.3 The singular includes the plural and vice versa.

15.1.4 Words importing one gender include all genders.

15.1.5 References to a month or year are to a calendar month or year as the case may be.

15.1.6 Where a party includes more than one person, the covenants, agreements and warranties on the part of that party shall be deemed to be joint and several.

15.1.7 Reference to the Introduction, clauses, subclauses, schedules and annexures are to the Introduction, clauses, subclauses, schedules and annexures of this Easement Instrument.

15.1.8 Person includes any person, corporation, trust, body corporate or partnership.

15.1.9 References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.

**Annexure Schedule C**  
**Original Developers Sections**

CT	OWNER	LEGAL DESCRIPTION	AREA
203437	Pauanui Lakes Properties Ltd	Lot 109 Deposited Plan 88978	0.0600
203438	Pauanui Lakes Properties Ltd	Lot 110 Deposited Plan 88978	0.0600
203441	Pauanui Lakes Properties Ltd	Lot 106 Deposited Plan 88979	0.0600
203442	Pauanui Lakes Properties Ltd	Lot 107 Deposited Plan 88979	0.0600
203443	Pauanui Lakes Properties Ltd	Lot 108 Deposited Plan 88979	0.0600
275123	Pauanui Lakes Properties Ltd	Lot 19 Deposited Plan 367718	0.0595
275124	Pauanui Lakes Properties Ltd	Lot 20 Deposited Plan 367718	0.0600
275125	Pauanui Lakes Properties Ltd	Lot 21 Deposited Plan 367718	0.0600
275126	Pauanui Lakes Properties Ltd	Lot 22 Deposited Plan 367718	0.0600
275127	Pauanui Lakes Properties Ltd	Lot 23 Deposited Plan 367718	0.0600
275128	Pauanui Lakes Properties Ltd	Lot 24 Deposited Plan 367718	0.0600
275129	Pauanui Lakes Properties Ltd	Lot 25 Deposited Plan 367718	0.0600
275130	Pauanui Lakes Properties Ltd	Lot 26 Deposited Plan 367718	0.0600
275131	Pauanui Lakes Properties Ltd	Lot 27 Deposited Plan 367718	0.0600
275132	Pauanui Lakes Properties Ltd	Lot 28 Deposited Plan 367718	0.0600
275133	Pauanui Lakes Properties Ltd	Lot 29 Deposited Plan 367718	0.0600
275168	Pauanui Lakes Properties Ltd	Lot 64 Deposited Plan 367718	0.0779
65005	Pauanui Lakes Properties Ltd	Lot 149 Deposited Plan 88976	0.0660
65006	Pauanui Lakes Properties Ltd	Lot 151 Deposited Plan 88976	0.0650
65008	Pauanui Lakes Properties Ltd	Lot 111 Deposited Plan 88977	0.0630

**Annexure Schedule D  
Recreation Centre**

All the land and buildings being 7,739 m<sup>2</sup> more or less contained in Lot 210 Deposited Plan 344295 and Lot 1 Deposited Plan 452487 and contained and described in Identifier SA586610.