

DATED

2011

BALLANTYNE INVESTMENTS LIMITED

(“THE DEVELOPER”)

AND

QUEENSTOWN LAKES DISTRICT COUNCIL

(“COUNCIL”)

STAKEHOLDERS DEED

MAR-382654-16-6-V1:LAL

MACALISTER TODD PHILLIPS

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WANAKA

STAKEHOLDERS DEED

DEED made this

day of

2011

PARTIES:

- (1) **BALLANTYNE INVESTMENTS LIMITED** (hereinafter referred to as “the Developer”)

- (2) **QUEENSTOWN LAKES DISTRICT COUNCIL** (herein after referred to as “the Council”)

BACKGROUND

- A. The Developer is the owner of the land described in the First Schedule (“the Land”). The Land comprises “North Three Parks”. The Developer proposes to develop the Land in accordance with the provisions of a new zone (“North Three Parks Zone”) to be incorporated in the Council’s District Plan by way of a plan change (“the Plan Change”).

- B. The Council intends to construct a sports facility (The Wanaka Sports Complex “the Complex”) to be located in part on the Developer’s land. The relevant areas are shown marked “A” and “B” on the plan attached as the Second Schedule (“the Complex Land”).

- C. It is proposed that the Developer will transfer the Complex Land to the Council in part in lieu of future reserve land development contributions which become due as development occurs in the North Three Parks Zone (Area “A”) and in part for a cash sum (Area “B”).

- D. In the event that the Plan Change does not become operative as specified below the Council will (if it elects to proceed with the purchase) pay the Developer cash for all of the Complex Land to be transferred to it for the Complex.

IT IS AGREED AS FOLLOWS

1. Subject to the provisions of Clause 12 hereof, the Developer will within 12 months of the Plan Change becoming operative transfer to the Council that part of the Complex Land comprising Area "A" at no cost.
2. Area "A" will be accepted by the Council in satisfaction of an equivalent area that would otherwise be required as the reserve land development contribution for development within the North Three Parks Zone. For avoidance of doubt the Area "A" is for the reserve land contribution only and will not form a credit for any cash development contributions payable for development within the North Three Parks Zone.
3. Area "B" shall be transferred by the Developer to the Council contemporaneously with Area "A" for a purchase price to be determined by independent valuation as at the time of the transfer. The parties shall each appoint a registered valuer who shall agree a purchase price for Area "B". In the event agreement cannot be reached between the two registered valuers, then they shall jointly appoint a third expert, who must be a registered valuer, who shall then proceed to determine the purchase price. The parties shall share equally in the cost of the third expert. The Developer will at its cost carry out and complete a subdivision to create a title for the Complex Land.
4. For the avoidance of doubt the transfer of Area "A" shall not relieve the Developer of any obligations to provide other additional reserve land in the North Three Parks Zone pursuant to clause 8 hereof.
5. Each party will pay their own costs associated with the agreement including the costs arising from the transfer of the Complex Land.
6. It is agreed that as development takes place within the North Three Parks Zone the Developer will "drawdown" against the reserve land development contribution credit provided by the transfer of Area "A" to the Council. The actual areas of reserve land

contribution resulting from the development as it occurs will be determined by the Council at the time future resource consents or building consents are granted.

7. If actual reserve land development contributions exceed those provided in advance under this agreement by the transfer of Area "A" to the Council, then further reserve land will be provided by the Developer as required.
8. If actual reserve land contributions are less than that provided under this agreement there shall be no "credit" due back to the Developer from the Council.
9. In the event that the Plan Change becomes operative the Developer will provide at its cost road access to the Complex Land. This roading is to be completed in accordance with the Council's standards for road construction. It may be constructed by The Developer any time after transferring of the Complex Land to the Council, in the course of the development of the North Three Parks zone. For the avoidance of doubt, cycle, pedestrian and vehicle access is able to be provided to the Complex Land from the adjacent Three Parks development.
10. In the event that the Plan Change becomes operative the Developer will provide at its cost normal infrastructure services in or under the road adjacent to the Complex Land. The Council will pay the cost of any increased capacity required in these services (if any) in order to provide for the requirements of the Complex.
11. In the event that the Plan Change does not become operative within two years of the date of this agreement or such longer period as the Council specifies in its absolute discretion the Council may elect to purchase the Complex Land from the Developer. The purchase price for the Complex Land shall be determined in the manner described in clause 3. The Developer will at the Council's cost carry out and complete the subdivision and issue of new title for the Complex Land in order that the Complex Land can be transferred to the Council within 12 months of being notified of the Council's election to purchase the Complex Land.

12. In the event that the Council decides to designate the Complex Land for the Complex the Developer will provide a written consent and/or approval to the designation upon the request of the Council.
13. It is intended that this agreement run with the Land and will be binding on future owners. From the date of this agreement until such time as the Complex Land is transferred to the Council, the Council may register and maintain a caveat against the Land or such part thereof comprising the Complex Land protecting its interest under this agreement.

OTHER MATTERS

14. If The Developer disposes of the Land or any part thereof or makes any agreement to dispose of the Land or any part thereof, then:
 - a) The transaction must be on terms that bind the transferee to this agreement; and
 - b) The Developer must obtain from the transferee and lodge with Council within 10 working days of entering into the transaction, a written acknowledgement that the transferee is bound by this agreement.
15. The parties acknowledge that issues may arise in future in relation to the matters covered by this Deed, which may not have been fully anticipated at the time of completion of this Deed. The parties will act in good faith towards each other to resolve any such issues as they arise and to resolve any issues, which might arise between them at any time in relation to this Deed.
16. In consideration of Council agreeing to enter into this Deed the Developer hereby covenants with the Council as follows:
 - a) That the Developer shall neither submit in opposition nor permit nor suffer any agent or servant or any other representative of the Developer to submit in opposition nor support any submission in opposition to:
 - (i) Any present or future application for any resource consent or any notice of requirement made by the Council or made on the Council's behalf or supported in part or in full by the Council for the use of the Complex Land for the Complex.

- b) That the Developer shall not withhold:
 - (i) Any dispensation or consent reasonably required in connection with any notice of requirement, application for resource consent or approval made or supported by the Council or on its behalf in connection with the Councils proposal to use the Complex Land for the Complex.
 - c) Not to oppose the Councils interest in any appeals arising from any of the matters referred to in this clause 17.
17. The provisions of this Deed are directly enforceable by each party against the other party through operation of law without reference to any resource management procedures.
18. As far as the Council is concerned this Deed has been negotiated and finalised by the Executive Arm of the Council, the Regulatory Arm of the Council has not been involved in any way, and in particular any members of the Hearings Panel who may determine any resource consent application have not been involved. The Deed does not bind, restrict or any way fetter the Council's regulatory powers and obligations under the Resource Management Act or any other relevant legislation.
19. Each notice or other communication under this Deed is to be in writing, is to be made by facsimile, personal delivery or by post to the addressee at their facsimile number or address and marked to the person (if any) from time to time designated for the purposes by the addressee to the other parties. No communication is effective until such communication is deemed to be received by the addressee:
- a) In the case of facsimile, on the business day in which it was sent or, if sent after 5.00pm (in the case of receipt) (or if sent on a non-business day) on the business day after the date of sending;
 - b) In the case of personal delivery, when delivered;
 - c) In the case of a letter on the third business day after posting by fast post.

20. Addresses for service of the parties are as follows:
- Ballantyne Investments Limited
c/- Paterson Pitts Partners (Wanaka) Limited
PO Box 283
WANAKA 9343
Attention: Duncan White
- Queenstown-Lakes District Council
10 Gorge Road
Private Bag 50072
QUEENSTOWN
Facsimile: 03 442 7334
21. The warranties, undertakings, agreements and indemnities given under or pursuant to this Deed do not merge upon completion but remain enforceable to the fullest extent, notwithstanding any rule to the contrary.
22. No failure or delay on the part of any party to this Deed in exercising any power or right under this Deed shall operate as a waiver of the power or right nor shall any single or partial exercise of such power or right to include any other or future exercise of the same, or any other right or power under this Deed.
23. If a final decision is made by a Court that any term of this Deed is unlawful and unenforceable it will be severed by this Deed to the extent that it is unlawful and unenforceable, and the rest of the Deed will remain in force.
24. DISPUTE RESOLUTION
- Negotiation
- 24.1 The Council and the Developer shall actively and in good faith negotiate to achieve the speedy resolution of any dispute or difference which may arise between them concerning any matter arising under this Deed.
- Mediation
- 24.2 Every dispute or difference that is not resolved by negotiation under clause 24.1 above between Council and The Developer may be referred by either party to mediation by the giving of written notice to the other party.

24.3 If a dispute has been referred to mediation then the parties shall endeavour to agree on a mediator and on reaching such agreement shall seek to hold the mediation as soon as possible at a place convenient to both parties and the mediator within 2 months or as soon thereafter as can be agreed. At the said mediation, the mediator shall discuss the matter with the parties and endeavour to resolve it by agreement between the parties. All matters relating to the mediation shall be without prejudice, and shall not be referred to in any later court or arbitral proceedings. The parties shall each bear their own costs in the mediation, and shall each pay half the costs of the mediator.

EXECUTED for and on behalf of)
BALLANTYNE INVESTMENTS LIMITED)
in the presence of:)

.....
Signature

.....
Full Name

.....
Address

.....
Occupation

EXECUTED for and on behalf of)
QUEENSTOWN LAKES DISTRICT COUNCIL)
in the presence of:)

.....
Signature

.....
Full Name

.....
Address

.....
Occupation

**FIRST SCHEDULE
DESCRIPTION OF LAND**

TBA

**SECOND SCHEDULE
PLAN**