

Approved by Registrar-General of Land under No. 2002/1026

Transfer instrument
Section 90, Land Transfer Act 1952



T 6372613.1 Transfer

Cpy - 01/03, Pgs - 034.06/04/05, 14:53



DocID: 110606835

Land registration district

OTAGO

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

All/part

Area/description of part or stratum

158375

158376

(continued on annexure schedule)

Transferor

Surname(s) must be underlined or in CAPITALS.

BENDEMEER AP LIMITED

Transferee

Surname(s) must be underlined or in CAPITALS.

BENDEMEER AP LIMITED

Estate or interest to be transferred, or easement(s) or profit(s) à prendre to be created
State if fencing covenant imposed.

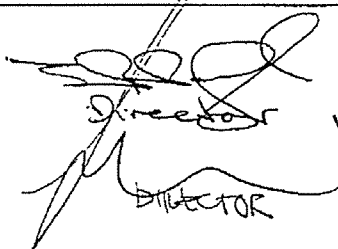
Fee Simple subject to Land Covenant (continued on annexure schedule)

Operative clause

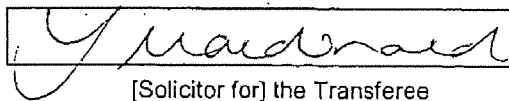
The Transferor transfers to the Transferee the above estate or interest in the land in the above certificate(s) of title or computer register(s) and, if an easement or profit à prendre is described above, that easement or profit à prendre is granted or created.

Dated this 23rd day of March 2005

Attestation (If the transferee or grantee is to execute this transfer, include the attestation in an Annexure Schedule).

 Director	Signed in my presence by the Transferor
	Signature of witness
Signature [common seal] of Transferor	Witness to complete in BLOCK letters (unless legibly printed)
	Witness name
	Occupation
	Address (continued on annexure schedule)

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


[Solicitor for] the Transferee

Annexure Schedule

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(Continue in additional Annexure Schedule, if required.)

Continuation of Certificate of Title Numbers:

158377, 158378, 158379, 158380, 158381, 158382, 158383, 158384, 158385, 158386, 158387, 158388, 158389, 158390, 158391, 158392, 160366, 181637, 181638, 181639, 181640, 181641, 181642, 181643, 181644, 181645, 181646, 181647, 181648, 181649, 181650, 181651, 181652, 181653, 181654 and 181655.

Continuation of "Estate or Easement to be created"

The Transferor when registered proprietor of the land formerly contained in Certificate of Title 15D/273 subdivided the land into residential Lots in the manner shown and defined on Deposited Plan 338474.

AND WHEREAS the Transferor and the Transferee have agreed mutually to covenant in the manner set out in Schedule B each for the benefit of the other and their successors in title to each of the Lots comprising the Dominant and Servient Lots.

AND WHEREAS it is the Transferor's intention to create for the benefit of the land in the Certificates of Title set out in Schedule A (herein referred to as the Dominant Lots) the land covenants set out in Schedule B over the land in Certificates of Title 158375 to 158392, 160366, 181637 to 181655 (hereinafter referred to as the Servient Lots) **TO THE INTENT** that the Servient Lots shall be bound by the stipulations and restrictions set out in Schedule B hereto and that the owner and occupier for the time being of any Dominant Lot may enforce the observance of such stipulations against the owners for the time being of the Servient Lots.

AND AS INCIDENTAL to the transfer of the fee simple so as to bind the Servient Lots and for the benefit of the respective Dominant Lots the Transferee **DOETH HEREBY COVENANT AND AGREE** in the manner set out in the Schedule B hereto so that the covenants run with the Servient Lots for the benefit of the respective Dominant Lots as described in Schedule A.

SCHEDULE A

1. 14939 square metres more or less being Lot 1 Deposited Plan 338474 being all of the land described in Certificate of Title 158375
2. 9289 square metres more or less being Lot 2 Deposited Plan 338474 being all of the land described in Certificate of Title 158376
3. 13463 square metres more or less being Lot 3 Deposited Plan 338474 being all of the land described in Certificate of Title 158377
4. 12279 square metres more or less being Lot 4 Deposited Plan 338474 being all of the land described in Certificate of Title 158378
5. 11603 square metres more or less being Lot 5 Deposited Plan 338474 being all of the land described in Certificate of Title 158379
6. 13584 square metres more or less being Lot 6 Deposited Plan 338474 being all of the land described in Certificate of Title 158380

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.

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7. 11079 square metres more or less being Lot 7 Deposited Plan 338474 being all of the land described in Certificate of Title 158381
8. 11880 square metres more or less being Lot 8 Deposited Plan 338474 being all of the land described in Certificate of Title 158382
9. 17962 square metres more or less being Lot 9 Deposited Plan 338474 being all of the land described in Certificate of Title 158383
10. 15037 square metres more or less being Lot 10 Deposited Plan 338474 being all of the land described in Certificate of Title 158384
11. 9640 square metres more or less being Lot 11 Deposited Plan 338474 being all of the land described in Certificate of Title 158385
12. 20920 square metres more or less being Lot 12 Deposited Plan 338474 being all of the land described in Certificate of Title 158386
13. 17345 square metres more or less being Lot 13 Deposited Plan 338474 being all of the land described in Certificate of Title 158387
14. 49179 square metres more or less being Lot 14 Deposited Plan 338474 being all of the land described in Certificate of Title 158388
15. 10250 square metres more or less being Lot 15 Deposited Plan 338474 being all of the land described in Certificate of Title 158389
16. 9433 square metres more or less being Lot 16 Deposited Plan 338474 being all of the land described in Certificate of Title 158390
17. 16824 square metres more or less being Lot 17 Deposited Plan 338474 being all of the land described in Certificate of Title 158391
18. 14900 square metres more or less being Lot 18 Deposited Plan 338474 being all of the land described in Certificate of Title 158392
19. 11849 square metres more or less being Lot 19 Deposited Plan 338474 being all of the land described in Certificate of Title 160366
20. 18903 square metres more or less being Lot 20 Deposited Plan 338474 being all of the land described in Certificate of Title 181637
21. 14085 square metres more or less being Lot 21 Deposited Plan 338474 being all of the land described in Certificate of Title 181638
22. 6927 square metres more or less being Lot 22 Deposited Plan 338474 being all of the land described in Certificate of Title 181639

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23. 6742 square metres more or less being Lot 23 Deposited Plan 338474 being all of the land described in Certificate of Title 181640
24. 29719 square metres more or less being Lot 24 Deposited Plan 338474 being all of the land described in Certificate of Title 181641
25. 22036 square metres more or less being Lot 25 Deposited Plan 338474 being all of the land described in Certificate of Title 181642
26. 50127 square metres more or less being Lot 26 Deposited Plan 338474 being all of the land described in Certificate of Title 181643
27. 17301 square metres more or less being Lot 27 Deposited Plan 338474 being all of the land described in Certificate of Title 181644
28. 37170 square metres more or less being Lot 28 Deposited Plan 338474 being all of the land described in Certificate of Title 181645
29. 35506 square metres more or less being Lot 29 Deposited Plan 338474 being all of the land described in Certificate of Title 181646
30. 13966 square metres more or less being Lot 30 Deposited Plan 338474 being all of the land described in Certificate of Title 181647
31. 6276 square metres more or less being Lot 31 Deposited Plan 338474 being all of the land described in Certificate of Title 181648
32. 6738 square metres more or less being Lot 32 Deposited Plan 338474 being all of the land described in Certificate of Title 181649
33. 7032 square metres more or less being Lot 33 Deposited Plan 338474 being all of the land described in Certificate of Title 181650
34. 6203 square metres more or less being Lot 34 Deposited Plan 338474 being all of the land described in Certificate of Title 181651
35. 4754 square metres more or less being Lot 35 Deposited Plan 338474 being all of the land described in Certificate of Title 181652
36. 13455 square metres more or less being Lot 36 Deposited Plan 338474 being all of the land described in Certificate of Title 181653
37. 16680 square metres more or less being Lot 37 Deposited Plan 338474 being all of the land described in Certificate of Title 181654

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38. 15425 square metres more or less being Lot 38 and 4635 square metres more or less being Lot 39 Deposited Plan 338474 being all of the land described in Certificate of Title 181655

SCHEDULE B

To conserve and enhance the character and quality of the Servient Lots, the Transferor and the Transferee mutually covenant as follows:

1 DEFINITIONS

- 1.1 Defined Terms. Unless the context specifies or requires otherwise, the following words and phrases when used in this Deed shall have the meanings hereinafter specified:

"Access Lot" means that part of Lot 300 Deposited Plan 338474 that is formed and sealed for the purpose of providing vehicle access to the Lots and Lots 301 and 302 Deposited Plan 338474.

"Ancillary Buildings" includes garages and storage Buildings and a Guest House

"Bendemeer" means the Access Lot, the Lots, the Common Area and all Improvements.

"Building" means any structure other than:

- (a) a fence or wall less than 2 metres in height above Ground Level; or
- (b) any other structure less than 5 square metres in area and less than 2 metres in height above Ground Level.

"Board" means the Board of Directors of the Management Company.

"Common Area" means Lot 300 on Deposited Plan 338474 (being the communal lot surrounding and between the Lots but excluding that part of the said Lot 300 that is formed and sealed for the purpose of providing vehicle access to the Lots) and all Improvements situated on that lot.

"Commercial Activity" means the use of land and/or buildings for the display, offering, provision, sale, or hire of goods, equipment or services for payment, exchange or other consideration.

"Common Ponds" means those ponds situated within Bendemeer within the Common Area, and includes any piping and pumps which convey water from one pond to another.

"Constitution" means the Constitution of the Management Company, as amended from time to time.

"Contribution" or "Contributions" means all contributions levied by the Management Company under this Deed and the Constitution,

"Deed" means this instrument, as it is amended or varied from time to time.

"Design Criteria" means the Design Criteria detailed in clause 3 of this Deed.

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"Design Team" means Bendemeer AP Limited and the project architect appointed by Bendemeer AP Limited

"Dwelling" means a Building or group of Buildings designed and occupied as a single self-contained household unit, whether by one or more persons, and includes normal accessory structures such as a garage, garden shed, glasshouse etc., and also includes Ancillary Buildings or Guest House.

"Encumbrance" or "Memorandum of Encumbrance" shall mean the Memorandum of Encumbrance to be entered into by the Transferee to secure the payment of the Contributions by the Transferee to the Management Company under the terms of this Deed (a draft of the Encumbrance is set out in Schedule C).

"External Land" means Lot 401 Deposited Plan 338474.

"Front" means that part of any Lot or of any Improvement which is nearest to or faces in the direction of the Access Lot to that Lot.

"Ground Level" means the finished ground level of a Lot as at the date of deposit of the Subdivision Plan creating that Lot.

"Guest House" means a single separate structure on the same Lot as a Dwelling, whether it is part of a Dwelling or a separate Building erected adjacent to a Dwelling, containing no more than one kitchen and/or one laundry.

"Home Office" means no more than two rooms in a Dwelling set aside for a home office or business carried on by a Lot Owner in the Dwelling.

"Homestay" means the use of a Dwelling for paying guests in addition to and at the same time as the use of that Dwelling by the Lot Owner.

"Homestead Area" means an area defined and identified on Bendemeer Farm – Baxter Brown Ltd Master Plan Ref 3230-CP4 dated July 2004 as a Homestead Area.

"Improvements" means every structure and all improvements of every type on a Lot, Access Lot or the Common Area, whether temporary or permanent, including Buildings, Dwellings, sheds, patios, tennis courts, swimming pools, ponds, garages, paths, vehicle access ways, storage buildings, footpaths, gazebos, fences, gates, screening walls, retaining walls, stairs, decks, fountains, poles, letter boxes, signs, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, playground equipment, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers, and facilities used in connection with water, sewage, gas, electric, telephone, regular or cable television, or other utilities and any earth modifications or excavation on the Lots.

"Lot" means a residential lot created as a result of subdivision of Bendemeer; being any of Lots 1 to 39 Deposited Plan 338474.

"Lot Owner" means the registered proprietor(s) of a Lot and any tenant, lessee, licensee, visitor or invitee of a Lot Owner.

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"Management Company" subject to Clause 5.1 means Bendemeer Management Limited, a New Zealand limited liability company.

"Management Company Property" means all real or personal property now or in the future owned or leased by the Management Company.

"Management Company Restrictions" means the land covenants contained in this Deed, as amended from time to time together with the Constitution and Management Company Rules from time to time in effect.

"Management Company Rules" means the rules adopted by the Board from time to time to manage and control matters and activities which the Management Company is authorised or required to deal with.

"Member" means any person holding shares in the Management Company

"Mortgage" means any mortgage, deed of trust, or other security document secured over a Lot to secure the payment of a debt or other obligation.

"Mortgagee" means the holder of a Mortgage.

"Property Management Activities" means the repair, maintenance or upgrading of the Common Area, the Access Lots and Management Company Property, including the provision and maintenance of communal facilities and the planting of such trees, shrubs and other vegetation as the Management Company deems suitable for the enhancement of the Common Area.

"Register of Members" means the book or register held by the Management Company to record the names and addresses of its Members.

"Residential Building Platform" means:

- (a) The building platforms identified on the Subdivision Plan for each Lot; or
- (b) A building platform whose final shape and location conforms to the following criteria:
 - The centre point of any platform is that of the centre point of the building platform for that Lot which is surveyed and recorded on the Subdivision Plan; and
 - The maximum area for a building platform shall be 1000 m²

Provided however that a building platform under part (b) of this definition shall prior to any Building or Dwelling being erected on that platform first be approved as to its final location and shape by the principal landscape architect Civic Corporation Limited.

"Resource Consent" means a resource consent issued pursuant to the Resource Management Act 1991 permitting the creation of a Lot or the construction of a Building or Dwelling on a Lot.

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"Subdivide" has the meaning ascribed to "subdivision of land" in Section 218(1) of the Resource Management Act 1991 including the creation of cross leases or units within the meaning of the Unit Titles Act 1972.

"Subdivision Plan" means any survey plan of subdivision (as that term is defined in the Resource Management Act 1991) which creates a Lot.

1.2 In this Deed:

- (a) the singular includes the plural, and vice versa.
- (b) "including" has no limiting effect;
- (c) references to a party approving or notifying or agreeing or objecting are doing so in writing;
- (d) references to statutes include amendments or replacements to that statute;
- (e) references to a person include individuals, companies, all partnerships, trusts, organisations and all other entities;
- (f) headings are inserted for ease of reference only and do not affect interpretation;

2 LIMITATIONS AND RESTRICTIONS

2.1 Private Residential Use. Subject to clause 2.4 the Lots must be used solely for private residential purposes, and with the exception of Lot 14, no more than one Dwelling may be constructed on any Lot.

2.2 Subdivision

- (a) Subject to subclause (b) below, and excepting Lots 38 and 39 Lots may not be further divided or subdivided without the unanimous approval of all the Lot Owners. Approval may be given or withheld by a Lot Owner at that Lot Owner's entire discretion.
- (b) Subclause 2.2 (a) does not apply to:
 - (i) a boundary adjustment which does not result in the creation of a greater number of separate titles than existed prior to the boundary adjustment; or
 - (ii) to the allocation or transfer to another Lot including any Lot created as a result of the subdivision of the External Land of any undivided share in Lot 300 Deposited Plan 338474 held by Lots 38 and 39.

2.3 Resource Consent. Construction of any Dwelling must be strictly in accordance with the conditions of the Resource Consent issued for Bendemeer relating to the construction of Dwellings and Improvements on Bendemeer.

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- 2.4 **Businesses.** Commercial Activity must not be conducted on a Lot, except for a Home Office, Homestay or any form of residential letting or visitor accommodation. This clause does not apply to a Commercial Activity on Lots 37 and 39.
- 2.5 **Aircraft.** A Lot or any part of the Common Area or Access Lots must not be used for the takeoff, storage, or landing of any form of aircraft (including, without limitation, motorised hang-gliders, microlight gliders and helicopters) except in the case of medical emergencies with the exception of a helipad which may be located on the Common Area which will be subject to a separate resource consent application, provided that the Management Company may establish a helipad site on the Common Area on two conditions, first that the site is acceptable to the registered proprietors of Lots 23, 25, 26, 27, 28, 29 and 30 on Deposited Plan 338474 ("the Land") and second that no helicopter be permitted to fly over any Lot other than that part of the Common Area that is farmed and located on the southern boundary of the subdivision adjacent to State Highway 6, but excluding any other parts of the Common Area.
- 2.6 **Antennae and Solar Systems.** Antennae or solar systems must not be visible from the Front of any Lot.
- 2.7 **Insurance Rates.** Nothing is to be done or kept on the Lots that would increase the rate of public liability insurance or cause the cancellation of any such insurance for the Common Area without the prior approval of the Management Company.
- 2.8 **Signs.** No sign of any kind including signs advertising a Lot for sale or lease, are to be displayed to the public view without the prior approval of the Management Company, provided that consent may not be unreasonably withheld to "For Sale" sign. The Management Company may otherwise permit or prohibit signs of any type in its absolute discretion. If the Management Company elects to permit a sign, it may set standards for such sign including maximum dimensions, style, colour, type, size, and location as it deems appropriate **PROVIDED THAT** the sign must comply with the requirements of the Queenstown Lakes District Council.
- 2.9 **Rubbish and Debris.** Rubbish or debris of any kind must not be placed or permitted to accumulate upon a Lot other than within covered containers, and odours must not be permitted to arise so as to render a Lot or any portion of that Lot unsanitary, unsightly, offensive, or detrimental to any other Lots or to their occupants. Refuse, garbage, and rubbish must be kept at all times in covered containers, and those containers must be kept within enclosed structures or otherwise appropriately screened from view. Open fires must not be made or allowed on any Lot outside a Dwelling except where the fire is located within an appropriate barbeque area or fitting and is not fit for the purpose of burning rubbish or debris, including vegetative matter.
- 2.10 **Noise.** Horns, whistles, bells, or other devices (other than security devices used exclusively for security purposes) must not be located, used, or placed on the Lots. No noise or other nuisance is to be permitted to exist or operate upon any portion of the Lots so as to be offensive or detrimental to any other Lot or to its occupants, including exterior speakers, unmuffled vehicles, barking dogs, motorcycles and motor scooters. Without limiting the generality of the foregoing, if any noise or nuisance emanates from a Lot, the Management Company may (but shall not be obliged to) enter that Lot and take such reasonable actions as are necessary to terminate the noise or nuisance (including silencing any burglar or security alarm or muzzling any barking dog).
- 2.11 **Construction of Improvements.** The construction of any Improvements are subject to the Design Criteria in Part 3 and the Building Controls in Part 4. During the construction period each Lot Owner must keep the construction site on the Lot in a tidy condition and shall ensure that the construction site and the Improvements being erected thereon are sufficiently secure so that unauthorized persons are not permitted entry onto a Lot.
- 2.12 **Repair of Buildings.** All Improvements must at all times be kept in good condition and repair and adequately maintained. The opinion of the Management Company as to condition and repair is final.

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- 2.13 **Alteration or Removal of Improvements.** Any alteration, remodelling, construction or reconstruction that alters or modifies the exterior appearance of any Improvements must comply, where appropriate, with the Design Criteria in Part 3 and the Building Controls in Part 4.
- 2.14 **Drainage.** There must be no interference with the established drainage patterns of the Lots unless adequate provision is made for proper drainage and is approved by the Management Company.
- 2.15 **Hazardous Activities.** No activities may be conducted on the Lots or on or in the Improvements that are or might be unsafe or hazardous to any person or property, including the discharge of firearms or fireworks, or the disposal of hazardous materials.
- 2.16 **Temporary Structures.** A tent, shed, or other temporary Building, or structure must not be placed upon a Lot except with the approval of the Management Company; provided however, that temporary structures necessary for storage of tools and equipment during actual construction may be maintained with the prior approval of Management Company. Approval may include the nature, size, duration, and location of such structure.
- 2.17 **Mining and Drilling.** No portion of a Lot is to be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth provided that this clause does not apply to any communal water supply bore.
- 2.18 **Unightly Articles and Vehicles.** An article deemed unsightly by the Management Company must not be permitted to remain on a Lot so as to be visible from adjoining Lots, public or private thoroughfares or the Access Lot. Without limiting the generality of the foregoing:
- (a) trailers, graders, trucks larger than a one ton utility, boats, tractors, semi-trailers, campers, wagons, buses, motorcycles, motor scooters, gliders, aero planes, micro lights, hang-gliders, fuel storage tanks, rubbish bins, machinery, garden maintenance equipment and inoperable vehicles shall be kept at all times, except when in actual use, in enclosed structures, screened from view;
 - (b) repair or maintenance work must not be done on any of the items listed in subclause (a), or on any motor vehicle (other than minor emergency repairs) except in an enclosed garage or other structure;
 - (c) service areas, storage areas and compost heaps, must be screened from view.
 - (d) Vehicles. Vehicles must not be parked on any part of the Common Area except in designated parking areas.
- 2.19 **Animals.**
- (a) Subject to subclause (b), ordinary household pets such as dogs, cats and birds may be kept, provided that in the case of dogs, the Homestead Area is fenced so that the dog is contained within the Homestead Area. The fencing must comply with this Deed and local body requirements.
 - (b) The Management Company may ban the keeping on a Lot of any particular breed or type of dog if the Management Company considers that to be necessary or appropriate for any reason.

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- (c) Breeding, raising, or boarding of pets for commercial purposes is not permitted on the Lots.
- (d) Reasonable steps must be taken to ensure that a Lot Owner's animal is kept within that Lot Owner's Homestead Area and is not allowed to roam loose.
- (e) Nothing in this clause prevents the Management Company from:
 - (i) carrying out farming operations, including livestock, on the Common Area; and
 - (ii) allowing part of the Common Area to be fenced and/or used for keeping privately owned animals such as horses.

2.20 **Laundry.** Washing machines or dryers must not be placed on front porches or at the Front of any Lot. Clotheslines or other structures intended for drying laundry must be located so as to be screened from view from any adjoining Lot. Laundry must not be draped over plants, trees or fences anywhere on a Lot.

2.21 **Banners, Streamers and Flags.** Banners and streamers must not be displayed on any Lot for any period in excess of forty-eight (48) hours. Only one (1) flag may be displayed on Lot at any given time.

2.22 **Owners Responsibility for Maintenance.**

- (a) Each Lot Owner must maintain and keep in good state of repair the exterior of all Improvements and the grounds and landscaping on the Lots must be kept trim and tidy.
- (b) Should the exterior of any Improvements or grounds and landscaping not be maintained in a manner that the Management Company deems necessary to preserve the appearance and value of the Lots, the Management Company may notify the Lot Owner of the work required and request that it be done within ninety (90) days from the giving of such notice.
- (c) In the event that such work or maintenance is not completed within the period provided for in subclause (b), or any extended period which may be agreed by the Management Company, the Management Company may (but is not obliged to) cause such work to be done. The Lot Owner is personally liable for the costs of such work. If the Lot Owner fails to pay those costs and expenses upon demand, those costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of two percent (2%) per month) shall be added to the Contribution chargeable against that Lot.
- (d) Any amounts added to the Contribution chargeable to the Lot pursuant to subclause (c) shall be secured by the Memorandum of Encumbrance referred to in this Deed for Contributions and may be collected by any means provided in this Deed for the collection of Contributions, including enforcement of that Encumbrance against the Lot, or any other remedies as are applicable to an Encumbrance under the Land Transfer Act 1952 and the Property Law Act 1952.
- (e) For the purposes of this clause, if the construction of a Building or Dwelling commences, and is not completed to the extent of completion of all exterior cladding within twelve months of the date construction started, the Lot Owner shall be deemed to be in breach of subclauses (a) and (b) above

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and may be required to complete the Building or Dwelling to the stage of completion of all exterior cladding. This time may be extended with written approval by the Management Company.

2.23 **Liability for Damage to Common Area and Access Lots.** A Lot Owner must not in any way alter, modify, add to, or otherwise perform any work whatsoever upon the Common Area or the Access Lots without the prior approval of the Management Company. A Lot Owner is liable to the other Lot Owners, or where applicable, the Management Company for all damages to:

- (a) the Common Area and the Access Lots
- (b) any Improvement constructed upon any Lot, the maintenance of which has been assumed by the Management Company,

where that damage is caused by the neglect, misuse or negligence of that Lot Owner, the full cost of all repairs of that damage is a Contribution chargeable to the Lot, secured by the Encumbrance against the Lot and collectable in the same manner as collection of Contributions.

2.24 **Compliance with Management Company Restrictions.**

- (a) All Lot Owners must comply strictly with the Management Company Restrictions. Failure to comply with any of the Management Company Restrictions constitutes a violation of this Deed and gives rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Management Company.
- (b) Without limiting any rights or powers of the Management Company set out in this Deed, the Management Company may (but is not obliged to) remedy or attempt to remedy any violation of any of the Management Company Restrictions. The Lot Owner in default is personally liable to the Management Company for all costs and expenses of effecting (or attempting to effect) such remedy. If the Lot Owner fails to pay those costs and expenses upon demand, those costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate or if there is no such maximum lawful rate at the rate of two percent (2%) per month), shall be added to and deemed part of the Contribution chargeable to the Lot.

2.25 **Water Supply and Sewerage Systems.** All water supply and sewage disposal reticulation must be constructed and maintained in strict accordance with the requirements of the Queenstown Lakes District Council and of the Management Company.

2.26 **Butane and Fuel Tanks.** Butane or fuel tanks or other structures or facilities for the storage of combustible fuel (other than for gas grills or heating) must not be placed or maintained on a Lot unless approved by the Management Company and the Queenstown Lakes District Council. All such tanks must be screened from view from the Lots, Access Lot and vehicle accessways.

2.27 **Swimming Pools.** Any swimming pool (as defined in the Fencing of Swimming Pools Act 1987) on the Lots must comply with any applicable regulations concerning swimming pool enclosure requirements, particularly the Fencing of Swimming Pools Act 1987.

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2.28 **Common Ponds.** Neither the Management Company nor any individual Lot Owner may increase or reduce the size of any Common Pond nor alter any Common Pond without the consent in writing of the Management Company in the case of an individual Lot Owner, or in the case of the Management Company, a written resolution of the Board.

2.29 **Airconditioning Units.** Airconditioning units or window fans must not be installed in the Front wall(s) or window(s) of any Improvements except with the Management Company's prior approval.

2.30 **Relocated Buildings.** A relocated building (including any building transported in substantially built up form) must not be erected, placed or constructed on a Lot.

2.31 **Fences.** The following controls apply to fences and walls:

- (a) Fencing is permitted around the exterior boundary of Bendemeer and within Common Areas as designated by Management Company.
- (b) Fencing is permitted within or around the boundary of any Homestead Area only.
- (c) Apart from fencing permitted pursuant to the preceding two subclauses, no fencing shall be allowed without the consent of the Management Company, and in particular no fencing shall be allowed on any part of any Lot outside a Homestead Area (other than along the external boundary of Bendemeer).
- (d) All permitted Homestead Area fencing shall be in post and wire, post and rail or a combination of stone and post and rail or stone and post and wire.
- (e) No fence or post and rail shall exceed a height of 1.2 metres above Ground Level.
- (f) No wall may be erected on any Lot except for retaining walls for landscaping or construction purposes which are not boundary walls or privacy walls (pursuant to subclause (g)) the maximum amount of stone wall of any perimeter fence shall be 20%. When stone is used it shall be sourced from Gibbston, shall be a maximum of 1200mm above ground level, shall be recessed pointing or be dry wall construction and shall have a 350mm "soldier course" included in that wall. Any timber posts or rails must be either hardwood or macrocarpa and left on an unstained and unpainted finish. The rails shall be 150mm by 100mm, notched to the posts, with a span no greater than 2.25 metres and two rails are permitted. Posts shall be 150mm square in timber to match the railing.
- (g) Walls for the purpose of privacy shall be at no greater distance than 5 metres from any building and shall not exceed 2.0 metres in height and shall be subject to matters contained in building covenants relating to colour and claddings.

2.32 **Use of Common Area**

- (a) All Lot Owners own the Common Area jointly and shall enjoy the use of the Common Area equally subject to the terms of the Constitution, the provisions of this Deed, the future resolutions and decisions of the Directors and Shareholders of the Management Company, and any Management Company farming operations on the Common Area.

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- (b) Subject to subclause (c). below, the Common Area is to be used for providing access and services to the Lots (including the installation, where appropriate, of sewage reticulation and water tanks for the use of adjacent Lots), for farming operations to be carried out by the Management Company, and for the general recreational use of the Lot Owners. No Buildings are to be erected on the Common Property other than those allowed by the Management Company. The only commercial activity allowed on the Common Property is any farming operation carried out by the Management Company, or any other Commercial Activity as is determined by the shareholders of the Management Company by special resolution.
- (c) A Lot Owner has a right of access to and enjoyment of the Common Area together with any facilities on the Common Area, which is to be appurtenant to and passes with the title to the Lot, subject to any restrictions outlined in this Deed, and to the following restrictions and reservations:
- (i) Vehicle access is only over the nominated driveways and roads and Access Lots.
 - (ii) The Management Company may suspend a Lot Owner's rights (except right of access under subclause (i) above) for any period during which any Contribution payable by that Lot Owner remains past due, and for any period during which the Lot Owner is in violation of the Management Company Restrictions and/or Rules;
 - (iii) The Management Company may dedicate any part of the Common Area for services on conditions as may be determined by the Management Company.
 - (iv) The Management Company may make reasonable rules and regulations regarding the use of the Common Area and facilities located on the Common Area by the Lot Owners and other persons entitled to such use, including restrictions reasonably necessary for any farming or other management regime.
- (d) Access and enjoyment of the Common Area is at the Lot Owner's own risk.

2.33 **Insurance.** A Lot Owner must maintain insurance on the Improvements located on the Lot, providing fire and all risks cover and all other coverage in the kinds and amounts commonly required by lending institutions for Improvements similar in construction, location and use. Those insurance policies must be for the full replacement value of the Improvements constructed upon the Lot. Payment of the premium for the insurance policies is the responsibility of the Lot Owner.

2.34 **Restoration.** In the event of fire or other destruction the Lot Owner must promptly repair, restore or remove any damaged or destroyed Improvements.

2.35 **Structural Planting.** Existing structural planting shall not be felled unless it is dead, diseased or dangerous, as defined by a qualified arborist. Any structural planting that is removed shall be replaced by a tree of the same species and a minimum height of 3.0 metres at the time of planting.

2.36 **No Planting.** No trees, shrubs or other plants may be planted or allowed to grow on any Lot outside the Homestead Area on that Lot other than pasture grass, provided that this clause does not apply to or restrict structural planting required or allowed to be carried out by Resource Consent or approved by the Management Company and Design Team.

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2.37 **Other Growth.** A Lot Owner must not allow any broom, gorse, thistles, other noxious weeds or pines, arches or firs or other wilding trees (ie trees likely to spread naturally onto surrounding land) to grow on their Lot.

2.38 **Partition.** A Lot Owner(s) shall not by way of voluntary agreement with another Lot Owner(s) or by bringing any action apply to partition any undivided share held by a Lot Owner(s) in the Common Area and/or the Access Lots.

3 DESIGN CRITERIA AND APPROVAL PROCESS

The following Design Criteria are designed to protect the interest of all owners in protecting the character of Bendemeer as an international, private estate. The Design Criteria are additional to the requirements of the relevant District and Regional Plans and any resource consent granted to Bendemeer.

3.1 Bendemeer Philosophy

Bendemeer is a premium residential farm estate within 110 ha. It is a master planned development designed to ensure that all owners enjoy both a private house estate site and the natural beauty of the whole property.

The unique feature of Bendemeer is that it combines spectacular landscape, views of mountains and lakes on a scale rarely available. The principal objective for the development of Bendemeer is to preserve the size and quality of its natural assets and make them available to a small group of owners to enjoy collectively.

These criteria are intended to ensure that development of homes is maintained at high standards and that Buildings contain design integrity that is sympathetic to the landscape and the character of the property as a whole.

Owners are required to comply with the provisions of the Resource Consent for Bendemeer and District Plan for the development and all other applicable requirements for Building developments. These criteria are not a substitute for those requirements and do not remove the need to comply with them.

3.2 Site Development

Overall co-ordination of design is important in creating a master planned development and in preserving the integrity and beauty of the natural landscape for all owners. Planting and landscaping are key elements in this process.

3.3 Building Location

The Homestead Areas may not be altered. All Buildings and Dwellings shall be erected within the Residential Building Platforms.

3.4 Building Development Introduction

Bendemeer is intended to be a premium residential community and a master planned development. Bendemeer AP Limited wishes to ensure the rural character of Bendemeer is retained and that the Buildings will contain design integrity.

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3.5 Design Control

In order to achieve the required standard, a Design Team comprising representatives of Bendemeer AP Limited and a project architect has been established.

3.6 General Design Criteria

- (i) On all Lots excepting Lots 23 and 31, no Improvements may exceed a height of 7 metres above Ground Level except that:
 - (a) Aerials and/or antennae, mounting fixtures, mast caps, lightning rods or similar appendages for the purpose of telecommunications (excluding dish antennae) may exceed that maximum permitted 7 metre height by up to 2 metres.
 - (b) Chimneys (not exceeding 1.1 metres in any direction) may exceed that maximum permitted height by up to 1.5 metres.
- (ii) On Lots 23 and 31 no Improvements shall exceed 5 metres in height above Ground Level except that:
 - (a) Aerials and/or antennae, mounting fixtures, mast caps, lightning rods or similar appendages for the purpose of telecommunications (excluding dish antennae) may exceed that maximum permitted 5 metre height by up to 2 metres.
 - (b) Chimneys (not exceeding 1.1 metres in any direction) may exceed that maximum permitted height by up to 1.5 metres.
- (iii) Roof claddings shall be in cedar shingles (natural), slate, copper, zinc, steel (corrugated or tray in mid to dark greys only) or grey Butynol where applicable on flat roofs
- (iv) Wall claddings to be in timber, smooth plaster, stone, linea board, concrete or unpainted metals (steel, copper, zinc) only. No other materials will be permitted.

Where paint is used, colours will be approved by the Design Team.
Paint colours shall generally be:

- Napa 5B025 (grey - brown)
- Stonewall 42027 (grey - brown)
- Tea 6B035 (taupe)
- Masala 3GR12 (grey-green)
- Tapa 5GR05 (grey)
- Lemon Grass 6G022 (grey)
- Diesel 1GR21 (brown-black)

(note: colours recommended above are from the Resene 2002 range)

- (v) Joinery shall be in timber, aluminium or steel and shall match all roofing, gutter and spouting colours

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3.7 Landscape Architectural Guidelines

Screening and mitigation are to be provided by landscaping around each Dwelling and Homestead Area. A range of design concepts may be adopted to provide further screening and absorption and will include:

- An integrated design solution for each that brings the landscaping into the built form of the Dwellings and Ancillary Buildings.
- Providing for quick growing taller vegetation behind houses to lower the apparent height and scale of any structure.
- Foreground plantings to provide further screening and to visually 'tie' the Dwellings to the landform.
- The use of mounding behind or in front of Dwellings for enhanced mitigation, screening and shelter from prevailing winds.
- Taking advantage of the local topography to 'step' Buildings into the landscape or minor excavations to 'sit' them into the ground form, thus reducing perceived bulk, scale and height impacts.

4 BUILDING CONTROLS AND APPROVAL

4.1 No Dwelling or other Improvements may be erected on any Lot unless:

- (a) The Dwelling or other Improvements have been designed by a registered architect and approved by the Design Team and the landscape plan prepared pursuant to clause 4.3 has been approved by the Design Team PROVIDED THAT the Design Team may in its sole discretion approve Dwellings or other Improvements that deviate from the general design criteria set out in clause 3.6 where that deviation is, in the opinion of the Design Team, minor and the overall design of the Dwelling or other Improvements fulfils the overall design philosophy; and
- (b) The final design of the Dwelling has been approved by the Principal: Resource Management (Civic Corporation Limited).

4.2 On each occasion where the Design Team's approval is required pursuant to clause 4.1(a), the Design Team may charge a design approval fee of a maximum of \$500.00 plus GST.

4.3 Prior to the construction of a Dwelling on any Lot the Lot Owner shall submit a landscaping plan for the Homestead Area for the approval of the Principal: Landscape Architecture (Civic Corporation Limited). The landscape plan shall be designed to meet the following:

- (a) Illustrate compliance with fencing and planting covenants contained in this Instrument.
- (b) Landscaping including tree planting is to run with the contour and should be used to accentuate and enhance the landform. Planting on ridges and skylines should be avoided.
- (c) Landscaping should be utilized to provide aesthetics, shelter and screening from adjacent properties and shall not be used to demarcate boundaries.
- (d) Landscaping and planting shall be aligned with the existing character of planting established by the structure plan (BaxterBrown Planning & Design: Bendemeer - Planting Plan ref 3230-WF18g.DWG dated April 2004).

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- (e) Generally, landscaping shall be designed so as to not compromise the ice sculptured legibility of the site and in particular when viewed from SH6 to the south of the site, Morven Ferry and Arrow Junction Roads, and any other public place to the south of the site other than the Crown Range Road.

5. MANAGEMENT COMPANY

5.1 Bendemeer AP Limited shall be the Management Company until the earlier of the following:

- (a) The date Bendemeer AP Limited ceases to own any Lot;
- (b) The date Bendemeer AP Limited advises the registered proprietors of all the Lots by notice in writing that it resigns from its role as Management Company.

All of the following provisions relating to the Management Company are subject to this clause 5.1 and where appropriate do not come into operation until Bendemeer AP Limited is no longer the Management Company.

5.2 Incorporation

The Management Company has been incorporated for the purpose of managing the Common Area and the Access Lots, and (where appropriate) ensuring compliance with these covenants and providing management services and facilities for the Lot Owners.

5.3 For the purposes of this clause 5 and clause 6 "Lot" shall mean a residential lot created as a result of subdivision at Bendemeer; being any of Lots 1 to 39 Deposited Plan 338474 or a residential lot created as a result of subdivision of the External Land where such lot is transferred into the ownership of Bendemeer AP Limited.

5.4 Shareholding

The shareholding of the Management Company comprises 38 A Shares and 5 B Shares all initially to be owned by the Transferor who shall transfer one such A Share to each Transferee upon settlement of the sale of the individual Lots. For the purposes of this clause, joint registered proprietors are deemed to be one registered proprietor and the share relating to that Lot is owned jointly by the joint registered proprietors. The Transferor shall hold the five (5) B Shares in conjunction with Lots 38 and 39 until such time as either:

- (a) Lots 38 and 39 are subdivided and contained within their own separate Certificates of Title in which case the A Share allocated to Lots 38 and 39 shall be allocated to Lot 38 and one B Share shall be deemed to have been converted to an A Share and held by Lot 39 with the holder of the newly converted A Share having the same obligations and liabilities as all other A Shareholders as set out in this Deed and the Constitution. The remainder of the B Shares shall be held in conjunction with Lot 39 until such time as the External Land is subdivided; and/or
- (b) The External Land is further subdivided in which case upon such subdivision being completed and those newly subdivided lots being transferred into the ownership of Bendemeer AP Limited, then one B Share shall be allocated to each new lot (to a maximum of four lots) and shall be deemed to have been converted to an A Share, with the holder of those newly converted A Shares having the same obligations and liabilities as all other A Shareholders as set out in this Deed and the Constitution. In the event that a separate Certificate of Title has not issued for Lots 38 and 39 at the time of completion of

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the subdivision of the External Land, any remaining B Shares shall continue to be held by the owner of Lots 38 and 39 until such time as Lots 38 and 39 are held in separate Certificates of Title.

5.5 Delegation of Authority

The Management Company is vested with the powers prescribed by the law of New Zealand or set out in its Constitution or in this Deed.

5.6 Membership

- (a) Membership of the Management Company is appurtenant to and runs with ownership of the Lots. Membership in the Management Company may not be severed from the ownership of a Lot or in any way transferred, pledged, mortgaged or alienated except together with the title to the Lot.
- (b) Each Lot Owner is bound by the Constitution of the Management Company and, when conveying title to the Lot, must concurrently execute a share transfer of that Lot Owner's share in the Management Company. A Lot Owner must notify that transferee of the Lot of such transferee's obligation to take a transfer of the Lot Owner's share in the Management Company and be bound by the Constitution.

5.7 Voting Rights

The right to cast votes and the number of votes which may be cast for election of directors of the Board and on all matters to be voted on by the Members is calculated as follows:

- (a) The owner of each Lot has one (1) vote for each Lot so owned. In no event is any Lot entitled to more than one (1) vote. For the avoidance of doubt, B Shares do not carry any voting rights until converted to A Shares pursuant to clause 5.4.
- (b) When more than one person owns any Lot, all those persons are Members. The vote of the senior who tenders a vote shall be accepted to be exclusion of the votes of the other joint holders. For this purpose seniority is determined by the order in which the names stand in the Register of Members, or, failing that, the order in which the names are recorded on the certificate of title for that Lot in the Land Registry Office. In no event does the vote for a Lot exceed the total share vote to which that Lot is entitled under this subclause.
- (c) The right of any Member to vote shall be suspended by the Management Company for any period during which:
 - (i) any Contribution against a Member's Lot(s) remains past due;
 - (ii) the Member or such Member's Lot is in violation of the Management Company Restrictions;
 - (iii) as provided in this Deed, if the Member has failed to execute and deliver to the Management Company a signed share transfer form.

5.8 Duties of the Management Company

Subject to, and in accordance with this Deed and the Constitution, the Management Company has and performs each of the following duties:

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(a) **Management of Company Property, Common Area and Access Lots**

- (i) **Ownership and Control.** To operate, maintain and where applicable lease, let out on hire, or manage all Management Company Property including the Common Area and all Improvements located on the Common Area, and the Access Lots.
- (ii) **Water Supply.** To hold any water permit for domestic and/or irrigation water supply to Bendemeer and to operate, manage and maintain all water supply systems.
- (iii) **Repair and Maintenance.** To maintain in good repair and condition the Common Area and all Improvements, services, the Access Lots and Management Company Property, including all paths, vehicle access ways, security access gates (if any) on those access ways, and fences located within the Common Area.
- (iv) **Rates.** To pay all rates and other taxes and charges levied upon or with respect to the Management Company Property, to the extent that those taxes and charges are not levied directly upon the Lot Owners. The Management Company has all rights granted by law to contest the legality and the amount of those taxes and charges.
- (v) **Landscape Plan.** To carry out and maintain landscaping on the Common Area in accordance with the landscape plan approved by the Queenstown Lakes District Council.
- (vi) **Refuse.** To arrange and implement a communal refuse disposal system whereby refuse is disposed of at a Council refuse transfer station.
- (vii) **Communal.** Provide and manage a pavilion, tennis court, and other communal services.

(b) **Insurance.** To obtain and maintain in effect policies of insurance that, in the opinion of the Management Company, are reasonably necessary or appropriate to carry out the Management Company's functions including:

- (i) insurance on the Improvements constructed upon the Common Area and the Management Company Property; and
- (ii) other insurances, including those policies of liability and property damage insurance as the Board in its discretion deems necessary

Insurance premiums for those policies are a common expense to be included in the Contributions.

(c) **Rules and Bylaws.** To establish from time to time Management Company Rules not in conflict with this Deed, as it deems proper, covering any and all aspects of its functions, including the use and occupancy of Management Company Property.

(d) **Records.** To keep books and records of the Management Company's affairs (including a Register of Members) and to make those books and records, together with current copies of Management Company

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Restrictions, available for inspection by the Lot Owners, Mortgagees, and insurers or guarantors of any Mortgagee upon request during normal business hours.

- (e) **Other.** To carry out and enforce all duties of the Management Company set out in the Constitution and this Deed.
- (f) **Facilities.** Provide management facilities and services to Lot Owners under contract for the maintenance of grounds, cleaning and general services.
- (g) **Legal and Accounting Services.** To retain and pay for legal and accounting services necessary or proper in the operation of the Management Company.
- (h) **Other Services to Lots.** To manage, operate and maintain the communal sewage disposal system, stormwater disposal system and any other services (such as electricity, telecommunications, etc.) to the Lots.
- (i) **Management Company Property and Services.** To pay for water supply, sewage disposal, rubbish removal, landscaping, gardening, and all other utilities or services to, and all repair and maintenance of the Access Lots, the Common Area and Management Company Property, including any recreational facilities, easements, access ways, rights-of-ways, parking areas, footpaths, paths, tracks, fences and ponds located within or upon the Common Area and the Access Lots.
- (j) **Other Services and Properties.** To obtain and pay for any other property and services and to pay any other taxes or assessments that the Management Company or the Board is required or permitted to secure or to pay for pursuant to applicable law or under the terms of the Management Company Restrictions.
- (k) **Common Area.** To maintain and manage the Common Area, including carrying out any farming or agricultural activities and maintaining and/or constructing Improvements or additions to the Common Area, subject to the terms of this Deed and strictly in accordance with any Resource Consent. Without derogating from the generality of that, the Management Company may allow all or part of the Common Area to be fenced and/or used for the grazing and/or housing of animals such as horses owned by any Lot Owners.
- (l) **Security Services.** To provide for, construct and maintain facilities for the provision of security regarding Bendemeer.
- (m) **Landscaping.** Contract with the Lot Owner to manage and maintain the landscaping to a high standard including the farming and mowing of pasture on those areas outside the Homestead Area within a Lot.

5.9 Powers and Authority of the Management Company

The Management Company has the powers of a New Zealand limited liability company subject only to limitations upon the exercise of that power as are expressly set out in this Deed or the Constitution. Further it is authorised to perform all acts that may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of New Zealand or by this Deed. Without in any way limiting the generality of the two preceding sentences, the Management Company has the following powers:

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- (a) **Contributions.** To levy Contributions.
- (b) **Right of Entry and Enforcement.** At any time in an emergency without notice, or in a non-emergency after twenty four (24) hours written notice, to enter without being liable to the Lot Owner or any other person the Lots or Improvements, or to enter at any time without notice the Common Area and the Access Lots, for the purpose of enforcing the Management Company Restrictions or for the purpose of maintaining or repairing any area, Improvement, or other facility or services to conform to the Management Company Restrictions. The expense incurred by the Management Company in connection with entry of a Lot and the maintenance and repair work conducted on that Lot is:
 - (i) a personal obligation of the Lot Owner;
 - (ii) deemed to be a Contribution against the Lot;
 - (iii) to be secured by the Encumbrance (subject to any maximum sum specified) against the Lot entered upon; and
 - (iv) to be enforced in the same manner and to the same extent as Contributions.
- (c) **Right of Enforcement.** In its own name and on its own behalf or in the name of and on behalf of a Lot Owner, to commence and maintain legal action, or to restrain and enjoin any breach or threatened breach of the Management Company Restrictions. Further, it is authorised to settle claims, enforce the Encumbrance, and take all action as it deems necessary or expedient to enforce the Management Company Restrictions. Each Lot Owner indemnifies and holds harmless the Management Company, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Management Company's acts or activities under this clause (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Management Company's negligence in connection with any of them), except for those costs, losses, damages, expenses, liabilities, claims or cause of actions arising by reason of the Management Company's gross negligence or wilful misconduct. "Gross negligence" does not include simple negligence, contributory negligence or similar negligence short of gross negligence.
- (d) **Access.** To grant access to the Common Area and the Access Lots to any person for the purpose of constructing, erecting, operating, or maintaining on, in or under the Common Area or the Access Lots:
 - (i) roads, streets, footpaths, street lights, driveways, parking areas, tracks, paths and fences;
 - (ii) lines, cables, wires, conduits, pipelines, or other devices for the supply of services;
 - (iii) sewerage and water supply systems, stormwater drainage systems, sprinkler systems, and pipelines;
 - (iv) ponds and water features and any other Improvements or facilities

Nothing set out above is to be construed to permit the use or occupancy of any Improvements or other facility in a way that would violate the applicable use and occupancy restrictions imposed on it by the Management Company Restrictions or by a governmental authority.

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- (e) **Manager.** To retain and pay for the services of a Manager to manage and operate the Management Company, including the Management Company Property and the Common Area, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Management Company or by the Manager. To the extent permitted by law, the Management Company and the Board may delegate any duties, powers, and functions to the Manager. By this Deed, the Members of the Management Company release the Management Company and the members of the Board from liability for any omission or improper exercise by the Manager of any duty, power, or functions so delegated.

5.10 Indemnity

- (a) To the fullest extent permitted by law, but without duplication of (and subject to) any rights or benefits arising under the Constitution, the Management Company indemnifies any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, or legal proceedings (whether civil, criminal, administrative, or investigative) by reason of the fact that person is or was a director, officer, committee member, employee, servant, agent of the Management Company, against expenses (including legal fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with that action, or proceedings if it is found and determined by the Board or a court that person:

- (i) acted in good faith and in a manner which that person reasonably believed to be in, or not opposed to, the best interests of the Management Company; or
- (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful.

The termination of any action, or legal proceedings by settlement, does not itself create a presumption that the person did not act in good faith or in a manner reasonably believed to be in, or not opposed to, the best interests of the Management Company, or, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

- (b) The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant, or agent of the Management Company, against any liability asserted against that person or incurred by that person in any such capacity, or arising out of the status of that person, whether or not the Management Company would have the power to indemnify such person against that liability under this Deed or otherwise.

5.11 Legal Proceedings

The Management Company is authorised to initiate and pursue legal proceedings for the purposes of this Deed for or on behalf of any or all of the Lot Owners.

6 CONTRIBUTIONS

6.1 Contributions

The Transferee by entering into this Deed covenants to pay to the Management Company those amounts as the Management Company determines from time to time (called 'Contributions'). All Contributions shall be fixed, established and collected from time to time as set out below. For the avoidance of doubt Contributions can only be recovered from each A Shareholder.

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Annexure Schedule

Insert type of Instrument

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



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6.2 Use of Contributions

Contributions levied by the Management Company must be used exclusively for the purposes of ensuring appropriate funding for any business of the Management Company (as defined by this Deed or the Constitution of the Management Company), promoting the amenity, health, safety, security and welfare of the Lot Owners, maintenance of Management Company Property, the Common Area, the Access Lots and for carrying out the purposes and obligations of the Management Company as stated in this Deed or as otherwise provided in the Constitution.

6.3 Establishing the Contributions

- (a) Each financial year, the Management Company is to estimate the expenses to be incurred by it during the year in performing its functions including a reasonable provision for contingencies and appropriate replacement reserves less any expected income and any surplus from the prior year's fund, capital costs in defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of any Access Lots or Improvement located on the Common Area or Management Company Property. Contributions sufficient to pay those costs are then to be levied as provided in this Deed. The level of Contributions set by the Management Company is final and binding. If the sums collected prove inadequate for any reason, including non-payment of any individual Contributions, the Management Company may at any time, and from time to time, levy further Contributions in the same manner. All Contributions are due and payable by the Lot Owners to the Management Company during the financial year in equal monthly, quarterly, semi-annual, annual or other periodic installments, as the Board determines in its sole discretion, on or before the first day of the applicable period.
- (b) Subject to the following subclause, Contributions must be levied equally in respect of each Lot so that each Lot contributes equally to the expenses incurred by the Management Company. This principle of equal contribution is not affected by any inequality in the undivided shares held by Lot Owners in the Common Area or the Access Lots.
- (c) Any expenses or costs incurred by the Management Company in respect of a particular Lot or arising from the action or inaction of a particular Lot Owner are to be levied as a Contribution against that Lot and are payable by that Lot Owner.

6.4 Late Charges

If any Contribution is in arrears, the Lot Owner may be required by the Management Company to pay a late charge including interest at up to 2% per month compounded monthly as the Board may determine. That late charge (plus any reasonable handling costs) is to be a charge against the Lot to which the Contribution relates and shall be added to that Contribution.

6.5 Lot Owner's Personal Obligation for Payment of Contributions

- (a) Contributions are the personal and individual debt of the Lot Owner. No diminution or abatement of Contributions is allowed for inconveniences arising from making of repairs or improvements to the Common Area or any Lot or the Access Lots. A Lot Owner is not exempted from liability for Contributions through non-use of the Lot or the Common Area or the Access Lots or otherwise.
- (b) Subject to subclauses (c) and (d) below, no person is be liable for any Contributions other than Contributions incurred for the period during which that person or body is the registered proprietor of a Lot.

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(c) The registered proprietor of a Lot is liable for any outstanding Contributions payable for any period prior to the date that person becomes a registered proprietor of a Lot, provided that this subclause does not apply where that registered proprietor obtains written advice from the Management Company prior to becoming a registered proprietor of the Lot that no outstanding Contribution is payable in respect of the Lot.

(d) The registration of a transfer of a registered proprietor's interest in any Lot does not relieve the transferor from any liability arising prior to the date of registration of that transfer.

6.6 Encumbrances to Secure Contributions

All sums assessed or charged in the manner provided in this clause 6 but unpaid, together with all costs and expenses of collection (including reasonable legal fees), are to be secured by the Memorandum of Encumbrance For Securing A Sum of Money, are deemed to be Contributions, and constitute a charge on or against the Lot covered by that Contribution. The Encumbrance is to be in favour of the Management Company to secure the payment of Contributions and is superior to all other liens and charges against the Lot provided that the Management Company has the power to subordinate that Encumbrance to any other lien encumbrance or charge. That power is at the Board's sole discretion. Any subordination must be supported by a unanimous resolution of the Board.

6.7 Restrictions on Rights and Powers

The rights and powers which would normally accrue to and be enjoyed by the registered proprietor of a Lot in relation to any share in the Common Area or the Access Lots owned by that registered proprietor or by the dominant tenement in relation to any easement registered against the title to a Lot are to be restricted as specified in this Deed. In particular (without derogating from the generality of this clause) the right of a Lot Owner to:

- (a) use the Common Area arising as a consequence of that Lot Owner holding an undivided interest in the Common Area, as far as that right includes a right of vehicle access, is subject to clause 2.32(c);
- (b) take and use water from the Bendemeer water supply and/or any other water supply system servicing Bendemeer is limited in accordance with any Management Company Rules established by the Management Company from time to time to ensure that all Lot Owners have fair and equal access to water supply.

6.8 Construction Activities. This Deed is not to be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements, so long as such construction is pursuant to the written approval of the Management Company and Resource Consent.

7 NOTICES OF MORTGAGE

7.1 Notice to Management Company. If a Lot or any Improvement are mortgaged by the Lot Owner, the Lot Owner must notify the Board, giving the name and address of the Lot Owner's Mortgagee. The Board may, at its sole discretion, maintain such information in a book or record entitled "Mortgagees of Owners".

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7.2 **Examination of Books.** The Management Company is to permit Mortgagees to examine the books and records of the Management Company during normal business hours upon one business day's notice (not less than 24 hours).

8. DISPUTES

Except where otherwise expressly provided, if any dispute or issue relating to the construction, meaning or effect of this Deed or the rights and liabilities of a Lot Owner or Member arises:

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and
- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period being agreed by the parties):
 - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
 - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or failing agreement to be appointed by the President for the time being of the Otago District Law Society.

9 GENERAL PROVISIONS

9.1 **Notices.** A notice given by this Deed must be in writing and may be delivered either personally or by post. If delivery is made by post, it is deemed to have been delivered on the tenth (10th) day (other than a Saturday, Sunday, or statutory holiday) after a copy of the notice has been deposited in the post, (postage prepaid), addressed to the Lot Owner at the address given by that Lot Owner to the Secretary of the Management Company for the purpose of service of notices, or to the residence located on the Lot or to the current rating address for that Lot as recorded in the Council's records if no address has been given to the Secretary of the Management Company. That address may be changed from time to time by notice given by the Lot Owner to the Management Company.

9.2 **Interpretation.** This Deed is to be construed and governed under the laws of New Zealand.

10. REMEDY ON BREACH

If there should be any breach of any of the covenants contained in this Deed and without prejudice to any other liability which the Transferee may have to the Transferor and any person or persons having the benefit of such covenants the Transferee will upon written demand being made by the Transferor or any registered proprietor(s) of any other Lot:-

- (a) pay to the person making such demand as liquidated damages the sum of \$100 (One Hundred Dollars) per day for every day that such breach or non-observance continues after the date upon which written demand has been made; and

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- (b) do or cause to be done anything necessary to remedy and such breach.

In the event that the Transferee does not comply with paragraph (b) of this clause within a reasonable period of time after the demand has been made then the Transferee hereby irrevocably authorises the Transferor or the registered proprietor making the demand together with their employees and agents to enter and remain on the Lot to do anything necessary to remedy an breach at the Transferee's cost and without being liable for any damage or deterioration occasioned to the Lot in exercising these powers.

PROVIDED HOWEVER that the Transferor shall not be required to or be obliged to enforce all or any of the covenants and restrictions contained in this Deed nor be liable to the Transferee for any breach thereof by any registered proprietor of any other Lot.

11. NON-OBJECTION TO FUTURE DEVELOPMENT

- 11.1 For the purposes of this clause, the following phrases have the following meanings:

"lodge any submission" includes personally or through any agent or servant directly or indirectly lodge or support in any way any objection or submission to a Planning Proposal and includes taking part in a planning hearing appeal or reference arising in respect of a Planning Proposal whether as a party or otherwise.

"Planning Proposal" includes any application for a resource consent and/or plan change and/or variation of any nature (as those terms are defined under the Resource Management Act 1991) to the relevant Queenstown Lakes District Council District Plan or any Proposed District Plan.

- 11.2 The Transferee covenants with the Transferor that the Transferee shall not at any time lodge any submission against any Planning Proposal by Bendemeer AP Limited or any body or person to whom Bendemeer AP Limited has separately assigned the benefit of the covenant contained in this clause 11, and shall be deemed to have given written approval to such Planning Proposal for the purposes of the Resource Management Act 1991, to carry out any of the following:

- (a) A commercial café activity on Lot 39 as authorised pursuant to any resource consent, or any variation of that activity, or any activity similar to that activity.
- (b) A commercial lodge on Lot 37 authorised pursuant to any resource consent, or any variation of that activity or any activity similar to that activity.
- (c) To amend the location and route of the entry road into Bendemeer off the adjoining State Highway provided that the entry road shall generally access Bendemeer so that Lots 1, 2 and 3 are among the first to be accessed off the State Highway.

PROVIDED HOWEVER that nothing in this clause 11 shall apply where the Planning Proposal will have the effect of materially adversely affecting the value of any Lot or will materially adversely affect a Lot Owner's proposed use and future enjoyment of that Lot Owner's Lot.

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Insert type of instrument

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



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12. RE-PURCHASE OPTION AND ON SALE

- 12.1 In consideration of the Transferor entering into and executing this Instrument the Transferee hereby grants to Bendemeer AP Limited an option to purchase the Lot back from the Transferee if the Transferee decides to sell the Lot. If the Transferee wishes to sell the Lot the Transferee must by notice in writing to Bendemeer AP Limited offer to sell the Lot to Bendemeer AP Limited upon terms and conditions no more favourable to the Transferee than any offer the Transferee may have received from a third party purchaser. If Bendemeer AP Limited fails to accept the offer within five (5) working days after the date Bendemeer AP Limited receives the notice then the Transferee shall be free to sell the Lot at that price (or any higher price) and on similar terms and conditions to any other person for a period of 3 months after expiry of the five (5) working days' notice period.
- 12.2 If the Transferee makes an offer pursuant to clause 12.1 and Bendemeer AP Limited declines to accept the offer, and if the Transferee subsequently reduces the price the Transferee is prepared to accept for the Lot, an option in favour of Bendemeer AP Limited will arise again and clause 12.1 will apply. This will happen whenever the Transferee reduces the sale price of the Lot so that Bendemeer AP Limited will always have a first option to purchase the Lot at the lowest price the Transferee is willing to accept.
- 12.3 If Bendemeer AP Limited declines any offer pursuant to clause 12.1 and the Transferee fails to sell the Lot within the three month period referred to in clause 12.1 then the Transferee is no longer free to sell the Lot at any price without first offering it back to Bendemeer AP Limited pursuant to clause 12.1.
- 12.4 Clauses 12.1 - 12.3 shall apply until Bendemeer AP Limited has unconditional agreements to sell all Lots in the subdivision or such earlier date as Bendemeer AP Limited in its absolute discretion elects and advises the Transferee accordingly.

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Annexure Schedule



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SCHEDULE C

MEMORANDUM OF ENCUMBRANCE FOR SECURING A SUM OF MONEY

Section 101 Land Transfer Act 1952

The registered proprietor named and described in the Schedule hereto as proprietor of the land ("the land") described in the Schedule and desiring to render the land available for the purpose of securing to and for the benefit of **BENDEMEER MANAGEMENT LIMITED** at Queenstown (hereinafter called "the Encumbrancee") the sum of money referred to in the Schedule ("the sum of money")

DO HEREBY ENCUMBER the said land for the benefit of the Encumbrancee with the sum of money to be raised and paid at the time and in the manner as the Encumbrancee shall decide pursuant to a Transfer creating Land Covenants dated day of 200 (hereinafter called "the Land Covenants") registered under No.

PROVIDED ALWAYS that the liability of any given registered proprietor hereunder is limited to obligations and liabilities accruing during their time as registered proprietor and ceases (except for any obligation or liability which has arisen during their time as registered proprietor) upon transfer of the land.

PROVIDED ALSO that if and whenever the obligations set out in the said Land Covenants shall have been duly and wholly complied with or shall by effluxion of time or otherwise become no longer enforceable then this Memorandum of Encumbrance shall be wholly discharged by the Encumbrancee.

AND SUBJECT as aforesaid the Encumbrancee shall be entitled to all the powers and remedies given to mortgagees and rent chargees by the Land Transfer Act 1952 and the Property Law Act 1952.

IN WITNESS whereof these presents have been executed this day of 200

EXECUTED by the registered proprietor
named and described in the Schedule
hereto)
)
)
)

(by the affixing of its seal)
in the presence of:)
)

Correct for the purposes of the Land Transfer Act 1952

Solicitor for the Encumbrancee

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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.)

SCHEDULE TO MEMORANDUM OF ENCUMBRANCE

REGISTERED PROPRIETOR:

LAND:

(a) Registration District

(b) Land

Area	Description	Title Reference
------	-------------	-----------------

SUBJECT TO AND TOGETHER WITH the easements covenants restrictions and conditions as set out on the title.

The sum of money is the sum of such Contributions as shall be levied and fixed in each year during the continuance of the Land Covenants by Bendemeer Management Limited in respect of the land together with any other charges, in relation thereto as are fixed and made by Bendemeer Management Limited pursuant to the provisions of the Land Covenants to be raised and paid at the times and in the manner set out pursuant to the provisions of the Land Covenants and are notified by Bendemeer Management Limited to the registered proprietor from time to time.

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Annexure Schedule



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

Transfer

Dated **23 March 2005**

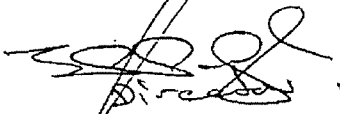
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(Continue in additional Annexure Schedule, if required.)

"Continuation of Attestation"

SIGNED for and on behalf of
BENDEMEER AP LIMITED
as Transferee in the presence of:

)
)
)


Director.

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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.)

MORTGAGEES' CONSENT

STRATEGIC NOMINEES LIMITED as mortgagee of the servient tenement pursuant to Memorandum of Mortgage No. 6256457.2 DO TH HEREBY CONSENT to the registration of the attached Instrument SUBJECT TO AND WITHOUT PREJUDICE to it's rights, powers and remedies under the said mortgage.

DATED this **23rd** day of **March** 2005.

SIGNED for and on behalf of the
STRATEGIC NOMINEES LIMITED
by:

Marc Aubrey Lindale
Director

Graham Edward Jackson
DIRECTOR

Witness

Name

Occupation

Address

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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.)

MORTGAGEES CONSENT

COVENANT TRUSTEE COMPANY LIMITED as mortgagee of the servient tenement pursuant to Memorandum of Mortgage 5823844.4 DO TH HEREBY CONSENT to the registration of the attached instrument SUBJECT TO AND WITHOUT PREJUDICE to it's rights, powers and remedies under the said mortgage.

DATED this 23rd day of March 2005

SIGNED for and on behalf of the

COVENANT TRUSTEE COMPANY LIMITED

by:

Witness

Peter John Orpin
Solicitor

Name Auckland

Occupation

Address

TCS LOCKHART



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.

Landonline User ID: macalisterpbqu

LODGING FIRM: Macalister Todd Phillips Bodkins

Address: P O Box 653

Queenstown

SPHJ

Uplifting Box Number: 29

ASSOCIATED FIRM:

Client Code / Ref: 315074.18 - jem

HEREWITH

Survey Plan (#)

Title Plan (#)

Traverse Sheets (#)

Field Notes (#)

Calc Sheets (#)

Survey Report

Dealing / SUD Number:
(LINZ Use only)

Priority Percentage Stamp
(LINZ use only)

Plan Number Pre-Allocated or
to be Deposited:

Rejected Dealing Number: withdrawn dealing no 6362674

Other (state)

Priority Order	CT Ref	Type of Instrument	Names of Parties	DOCUMENT OR SURVEY FEES	MULTI-TITLE FEES	NOTICES	ADVERTISING	NEW TITLES	OTHER	RE-SUBMISSION & PRIORITY FEE	FEES \$ GST INCLUSIVE
1	158375 et al	T	Bendemeer AP Ltd	50.00	37	\$74					\$124.00
2											
3											
4											
5											
6											

Land Information New Zealand Lodgement Form

Annotations (LINZ use only)

Fees Receipt and Tax Invoice

GST Registered Number 17-022-095

LINZ Form P005

LINZ Form P005 - PDF

Original Signatures?



Subtotal (for this page)

Total for this dealing

Less Fees paid on Dealing # withdrawn dealing no

Cash/Cheque enclosed for

\$0.00