

Attachment B: Covenant & Deed of Modification

DEED OF COVENANT

DATED at Queenstown this 8th day of August 1996

PARTIES

- A. **QUEENSTOWN-LAKES DISTRICT COUNCIL** at Queenstown ("the Vendor")
- B. **MOUNT ASPIRING COLLEGE FOUNDATION** at Wanaka ("the Purchaser")

BACKGROUND

- (a) By an Agreement for Sale and Purchase dated the 31st day of July 1996 ("the Agreement"), the Vendor agreed to sell to the Purchaser Part Lot 221 DP 8072 situated at Totara Terrace and Plantation Road, Wanaka containing 9231 m² being Lot 9 DP 25559, CT 17C/694 ("the Land"); and
- (b) The Agreement provides for a nominal consideration of \$1.00 to be paid by the Purchaser to the Vendor upon possession being granted and upon the transfer of Title of the Land to the Purchaser; and
- (c) By the Agreement the Purchaser agreed to enter into this Covenant with the Vendor that should the Purchaser sell, transfer or otherwise dispose of the Land or any part of the Land at any time after the date of this Agreement, then ;
- (i) The Purchaser shall pay to the Vendor the balance of the Purchase price being the full market value of the land calculated as at the date of such sale, transfer or other disposition of the Land or of the part sold, disposed of or transferred;
- (ii) If the Purchaser should sell, transfer or otherwise dispose of part of the Land then the Purchaser shall pay to the Vendor the market value of the part so sold, disposed of or transferred;



- (iii) The market value shall be determined by Registered Valuers appointed by the both parties hereto or their umpire as set out herein; and
- (d) The Purchaser has agreed that the Vendor's right to be paid the market value of the Land pursuant to the Agreement and this Covenant is to be secured by a Memorandum of Encumbrance to be registered against the Legal Title to the Land.
- (e) The Purchaser agreed to enter into this Covenant with the Vendor recording these agreements and covenants; and
- (f) Definitions:

In this Deed of Covenant

- (i) "the Land" means the land exclusive of improvements;
- (ii) "market value" in respect of the land means the market value of the land exclusive of improvements thereon but inclusive of the value of the land as an improved site.

COVENANTS

The Purchaser hereby Covenants with the Vendor as follows:

Not to sell or dispose of the Land

- 1.1 If the Purchaser shall at any time after the date of the Agreement sell, transfer or otherwise dispose of the Land or any part of the Land then;
 - (a) The Purchaser shall pay to the Vendor the full market value of the Land, such market value to be calculated as at the date of such sale, transfer or other disposition of the Land;



- (b) If the Purchaser shall sell, transfer or otherwise dispose of part of the Land, then the Purchaser shall pay to the Vendor the market value, calculated as described in this Deed of Covenant, of the part so sold, disposed of or transferred;
- (c) The market value of the Land shall be determined as follows:
- (i) Each party shall appoint a registered valuer acting as an expert and shall give written notice of the appointment to the other party within fourteen days of the purchaser notifying the vendor in writing that it has sold or otherwise disposed of the Land or any part thereof.
 - (ii) If the party receiving a notice fails to appoint a valuer within the fourteen day period then the valuer appointed by the other party shall determine the market value of the Land and such determination shall be binding on both parties.
 - (iii) Before commencing their determination the valuers appointed shall appoint an umpire who need not be a registered valuer.
 - (iv) The valuers shall determine the current market value of the Land and if they fail to agree then the market value shall be determined by the umpire.
 - (v) Each party shall be given the opportunity to make written or verbal representations to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe and shall have regard to any such representations but not be bound thereby.



- (vi) When the market value has been determined by the valuers, the valuers shall give written notice thereof to the parties. The notice shall provide as to how the costs of the determination shall be borne and such provision shall be binding on the parties.
- 1.2 The transfer or other disposition of all or any part of the Land to another subsidiary entity wholly owned and controlled by the Purchaser (such entity called the “subsidiary entity”) shall not be a sale, transfer or other disposition of the Land for the purposes of this Deed of Covenant provided that the Purchaser shall obtain the prior written consent of the Vendor to any such sale or other disposition to a subsidiary entity. The vendor shall not unreasonably withhold the grant of such written consent to such sale, transfer or other disposition to a subsidiary entity wholly owned and controlled by the purchaser.
- 1.3. The Parties agree that if the Purchaser shall dispose of any interest in the capital or ownership of the Purchaser or subsidiary entity which is the registered proprietor of the Land or part of the Land or if there is any change in the control or management of the Purchaser or subsidiary entity which is the registered proprietor of the Land or part of the Land whereby the effective control of the Purchaser or subsidiary entity which is the registered proprietor of the Land or part of the Land ceases to be vested in the Mount Aspiring College Foundation or the Mount Aspiring College or any subsidiary entity owned and controlled by the Mount Aspiring College Foundation or the Mount Aspiring College, then that disposition or change of control or management shall be deemed to be a sale, transfer or other disposition of the Land or part of the Land for the purposes of this Deed of Covenant and the provisions of paragraph 1.1 hereof shall apply.

Memorandum of Encumbrance

2. The Purchaser shall forthwith execute a registrable Memorandum of Encumbrance granting to the Vendor security over the Land for the balance of the market value of the Land payable by the Purchaser to the Vendor as provided in this Deed of

Covenant and the Purchaser shall pay the Vendor's solicitors' costs of preparation and registration of the Memorandum of Encumbrance.

Not to Mortgage without Consent

3. The Purchaser shall not further Mortgage or charge or otherwise encumber the Land without having received the prior written consent of the Vendor on each such occasion (if more than one). The Vendor shall not unreasonably withhold such written consent provided that the Purchaser first meets the requirements of clause 4 below.

Priority of Loans to Build Hostels

4. The Vendor agrees that;
- (a) Should the Purchaser raise a loan for the purposes of building or completing construction of the Purchaser's proposed Student Hostel Accommodation on the Land; and
 - (b) Should the Lender of such loan require the Purchaser to execute a Memorandum of Mortgage to be registered against the Certificate of Title of the Land as a first charge Mortgage; and
 - (c) The Purchaser provides to the Vendor evidence to the satisfaction of the Vendor of the need for the loan and of the requirement that the loan be secured by a first mortgage charge; and

THEN the Vendor will execute a Memorandum of Priority granting such Mortgage priority over the Memorandum of Encumbrance securing to the Vendor the unpaid value of the Purchase Price PROVIDED THAT such priority granted by the Memorandum of Priority shall be limited in the Mortgage or in a separate Deed of Priority entered into between the Vendor and the Mortgagee named in such Mortgage to a maximum of the principal sum, or amount of priority as may be the case, specified in the Mortgage or the Deed of Priority, as

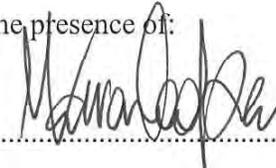
may be applicable, plus not more than 1 years interest thereon and the Mortgagees' reasonable costs of enforcement or attempted enforcement of repayment of the loan secured by the Mortgage.

IN WITNESS OF THE covenants herein this deed has been executed by the Vendor and the Purchaser:

Executed by the **QUEENSTOWN LAKES DISTRICT COUNCIL**

by affixing it's COMMON SEAL

in the presence of:


..... Mayor


..... Chief Executive Officer

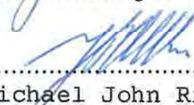


Executed by the **MOUNT ASPIRING COLLEGE FOUNDATION**

at Wanaka by affixing its COMMON SEAL

in the presence of:


.....
John McGregor Buchanan, Foundation Board Member


.....
Michael John Richards Allison, Foundation Board Member



DATED at Queenstown

1996

BETWEEN **QUEENSTOWN-LAKES
DISTRICT COUNCIL**

The Vendor

AND **MOUNT ASPIRING
COLLEGE FOUNDATION**

The Purchaser

DEED OF COVENANT

MACALISTER TODD PHILLIPS
SOLICITORS
QUEENSTOWN

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DEED OF MODIFICATION

THIS DEED is made this 22nd day of April 1997

PARTIES

BETWEEN **THE QUEENSTOWN LAKES DISTRICT COUNCIL**
(hereinafter called "The Vendor")

AND **MOUNT ASPIRING COLLEGE FOUNDATION** at Wanaka
(hereinafter called "the Purchaser")

BACKGROUND

A. BY an Agreement for Sale and Purchase dated 31 July 1996 ("the Agreement") the Vendor agreed to sell to the Purchaser the land now contained in Certificate of Title 17C/694.

B. THE Agreement included certain special conditions in clause 22 relating to priority between a registered Memorandum of Mortgage securing loans to the Purchaser ("the Mortgage") and the Memorandum of Encumbrance securing to the Vendor the unpaid balance of the purchase price ("the Encumbrance").

C. THE Purchaser has granted the Mortgage to ANZ Banking Group (New Zealand) Limited and the Vendor has executed a registered Memorandum of Priority whereby the Mortgage has priority over the Encumbrance.

D. PURSUANT to the Agreement the Vendor and the Purchaser executed a Deed of Covenant dated 8th August 1996 ("the Deed of Covenant") recording the Covenants expressed in the Agreement. The provisions of clause 22 of the Agreement are included in clause 4 of the Deed of Covenant.

E. THE parties have agreed to modify the provisions of both the Agreement and the Deed of Covenant relating to priorities between the Mortgage and the Encumbrance to

provide that in addition to priority for loans to build the Student Hostel, loans to build facilities for the Purchaser's overseas student programme, to enhance the Purchaser's outdoor pursuits confidence course and any other development on the property shall take priority over the Encumbrance.

MODIFICATION

1.0 OF THE AGREEMENT

1.1 THE Vendor and the Purchaser AGREE that the terms and conditions of the Agreement are hereby modified by revoking the provisions of clause 22 of the Agreement and hereby further agree that from the date of this Deed the following provisions shall apply:

"22.1 The Vendor agrees that if:

- (a) The Purchaser needs to raise a loan to carry out its proposal to build a student hostel, build facilities for its overseas student programme or to enhance its outdoor pursuits confidence course on the property; and*
- (b) such loan is required by the Lender thereof to be secured by a Memorandum of Mortgage registered against the Title to the property as a First Mortgage Charge;*

THEN the Vendor will execute a Memorandum of Priority granting such Mortgage priority over the Memorandum of Encumbrance securing to the Vendor the unpaid balance of the purchase price PROVIDED THAT such priority shall be limited in the Mortgage or in a separate Deed of Priority entered into between the Vendor and the Mortgagee named in the Mortgage to which priority is to be granted, to a principal amount, or amount of priority as may be the case, specified in the Mortgage or Deed of Priority, as may be applicable, plus a maximum sum of one years interest thereon and

the costs of enforcement or attempted enforcement of repayment of the loan secured by the Mortgage.

22.2 *The Vendor agrees that should the Purchaser need to raise a loan to carry out any other development on the property and such loan is required by the Lender thereof to be secured by a Memorandum of Mortgage to be registered against the Title to the property as a First Mortgage Charge and the Purchaser provides to the Vendor evidence to the satisfaction of the Vendor of such need for a loan and of the requirement that it be secured by a First Mortgage Charge over the property THEN the Vendor will execute a Memorandum of Priority on the same terms and conditions as are specified in clause 22.1 above."*

2.0 OF THE DEED OF COVENANT

2.1 THE Vendor and the Purchaser AGREE that the terms and conditions of the Deed of Covenant are hereby modified by revoking the provisions of clause 4 of the Deed of Covenant and hereby further agree that from the date of this Deed the following provisions shall apply:

"4. *The Vendor agrees that:*

- (a) *Should the Purchaser raise a loan for the purposes of building or completing construction of the Purchaser's proposed student hostel accommodation, or to build facilities for its overseas student programme, or to enhance its outdoor pursuits confidence course on the land; and*
- (b) *should the Lender of such loan require the Purchaser to execute a Memorandum of Mortgage to be registered against the Certificate of Title of the land as a First Charge Mortgage;*

THEN the Vendor will execute a Memorandum of Priority granting such Mortgage priority over the Memorandum of Encumbrance securing to the Vendor the unpaid value of the purchase price PROVIDED THAT such priority granted by the Memorandum of Priority shall be limited in the Mortgage or in a separate Deed of Priority entered into between the Vendor and the Mortgagee named in such Mortgage to a maximum of the principal sum, or amount of priority as may be the case, specified in the Mortgage or the Deed of Priority, as may be applicable, plus not more than one years interest thereon and the Mortgagee's reasonable costs of enforcement or attempted enforcement of repayment of the loan secured by the Mortgage.

- 5. *The Vendor agrees that should the Purchaser raise a loan to carry out any other development on the land and such loan is required by the Lender thereof to be secured by a Memorandum of Mortgage to be registered against the Title to the land as a First Mortgage Charge and the Purchaser provides to the Vendor evidence to the satisfaction of the Vendor of such need for a loan and of the requirement that it be secured by a First Mortgage Charge over the land THEN the Vendor will execute a Memorandum of Priority on the same terms and conditions as are specified in clause 4 above."*

EXECUTED by the parties on the date first mentioned above.

The Common Seal of
**QUEENSTOWN LAKES
DISTRICT COUNCIL**
was hereto affixed
in the presence of:



[Signature].....Chief Executive Officer

[Signature].....Mayor

The Common Seal of
**MOUNT ASPIRING
COLLEGE FOUNDATION**
was hereto affixed
in the presence of:

)
)
)
)
)

Chairman

Principal



DATED 22nd April 1997

BETWEEN **THE QUEENSTOWN
LAKES DISTRICT
COUNCIL** ("the Vendor")

AND **MOUNT ASPIRING
COLLEGE FOUNDATION**
("the Purchaser")

**DEED OF MODIFICATION OF TERMS
OF AGREEMENT FOR SALE AND
PURCHASE**

MACALISTER TODD PHILLIPS BODKINS
SOLICITORS
QUEENSTOWN

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