

DATE 20 March 2013

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**QUEENSTOWN-LAKES DISTRICT COUNCIL**

**(the Council)**

**WANAKA GOLF CLUB INCORPORATED SOCIETY**

**(the Licensee)**

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**LICENCE TO OCCUPY ROAD RESERVE**

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**QUEENSTOWN**

## LICENCE TO OCCUPY ROAD RESERVE

DATED 20<sup>th</sup> March 2013

### PARTIES:

- (1) **QUEENSTOWN-LAKES DISTRICT COUNCIL** a District Council in terms of the Local Government Act 2002 ("the Council")
- (2) **WANAKA GOLF CLUB INCORPORATED SOCIETY** ("the Licensee")

### EXPLANATORY PART

1. Council has control of a portion of Road Reserve more particularly described in Part 1 of Schedule A hereto and referred to herein as the Land.
2. Council have agreed to grant the Licensee a Licence to use the Land upon and subject to the terms and conditions set out herein and the Schedules attached hereto.
3. The Parties have entered into this Licence to record the terms and conditions on which the Licensee will occupy the Land.

### 1. REFERENCE SCHEDULE

- 1.1 "The Land" means that part of the Road Reserve described in Part 1 of Schedule A hereto as the Land.
- 1.2 "The Term of the Licence" means the term provided for in Part 2 of Schedule A hereto.
- 1.3 "Commencement Date" means the date set out in Part 3 of Schedule A hereto.
- 1.4 "Licence Fee" means the Licence Fee stipulated in Part 4 of Schedule A.
- 1.5 "Payment Dates" means the payment dates stipulated in Part 6 of Schedule A hereto.
- 1.6 "Licence Fee Review Date" means the date or dates stipulated in Part 6 of Schedule A hereto.
- 1.7 "Permitted Use" means the permitted use described in Part 7 of Schedule A hereto.
- 1.8 "Public Access" means the access for the public over the Land described in Part 8 of Schedule A hereto.
- 1.9 "Renewal Provisions" means the terms on which this Licence may be renewed as stipulated in Part 9 of Schedule A hereto.
- 1.10 "General Conditions" means the General Conditions pertaining to this Licence as set out in Schedule B hereto.

- 1.11 "Specific Conditions" means the Specific Conditions pertaining to this Licence as set out in Schedule C hereto.

## **2. AGREEMENT TO GRANT LICENCE**

- 2.1 In consideration of the Licence Fee paid to the Council by the Licensee and the covenants herein contained the Council grants to the Licensee the Licence and right to use the Land for the Term and from the Commencement Date upon terms and conditions set out herein including the General Conditions and the Specific Conditions.

## **GENERAL CONDITIONS**

### **Covenants and Agreements**

The parties now covenant and agree:

## **3. PAY LICENCE FEE**

- 3.1 The Licensee shall pay the Licence Fee in advance on the Payment Dates without any deduction if demanded and shall in addition pay GST at the rate or rates applicable from time to time and the application fee and issuing fee referred to in Clause 4.2 herein.

## **4. PAY COSTS**

- 4.1 If at any time during the term Council shall be obliged to incur legal or other expenses because of any default on the part of the Licensee then the Licensee shall upon demand reimburse Council for its reasonable costs in that respect.
- 4.2 The Licensee will upon the signing of this Licence pay to the Council or its Agents the appropriate application and issuing fee in respect of this Licence as determined by the Council or its Agents from time to time.
- 4.3 In addition to the Licence Fee and other monies reserved by this Licence, the Licensee shall pay the Council's legal and/or administration costs of preparing this Licence and the Council's costs of obtaining any consents or approvals associated with this Licence.

## **5. PAY RATES TAXES AND GST**

- 5.1 The Licensee shall pay all rates, taxes, and assessments which are levied on or imposed in respect of the Land.

- 5.2 All amounts which the Licensee is liable to pay are in this Licence exclusive of Goods and Services Tax. Goods and Services Tax shall be payable in addition where appropriate.

6. **USE OF LAND**

- 6.1 The purpose of this Licence is to allow the Licensee to use the Land for the Permitted Use only. It is not a licence granting exclusive possession against Council nor shall the Licensee without the written consent of Council use the Land or any part of the land for any use other than the Permitted Use.

7. **OFFENSIVE ACTIVITIES**

- 7.1 The Licensee shall not carry on or permit or suffer to be carried upon the Land any noxious, noisy, offensive or illegal activity. The Licensee shall not create, permit or suffer to be created any nuisance upon the Land.

8. **MANAGEMENT OF THE LAND**

The Licensee agrees:

- 8.1 Not to do or permit or suffer to be done any act, matter or thing which shall annoy or disturb or in any way interfere with the quiet enjoyment by the Council, or other lawful users of the Land or any adjoining property.
- 8.2 Not to allow any rubbish to accumulate on the Land.
- 8.3 Not to erect any further buildings or improvements on the Land without Council's prior written consent.
- 8.4 Not to dig up or excavate the Land or to lay cables, pipes or anything else within the Land without Council's prior written consent.
- 8.5 Not to use or permit to be used any building on the Land for purposes of human habitation.
- 8.6 To observe all fire restrictions imposed by competent authorities.

- 8.7 To keep all buildings erections fences gates drains and other improvements now or hereafter erected or made on the Land in good and substantial repair and condition as they now are.
- 8.8 To do everything reasonably necessary or appropriate to keep the facilities to a good standard of maintenance and repair.
- 8.9 To keep any grounds yards surfaced area garden or lawn areas within the Land in a clean and tidy state.
- 8.10 To comply with any Notices or Orders given by any competent authority (including the Council) in respect of the Land and shall keep the Council indemnified in respect of all such matters.

## 9. **PUBLIC ACCESS**

- 9.1 The Licensee shall hold this Licence subject to the Public Access (if any).

## 10. **TERM**

- 10.1 The Licensee shall hold this Licence for the Term of the Licence.

## 11. **BOUNDARIES**

- 11.1 If the boundaries of the Land are not surveyed boundaries then they shall be as delineated in this Licence.
- 11.2 The Licensee shall not require Council to effect a survey of the Land or its boundaries.

## 12. **SPECIAL CONDITIONS**

- 12.1 The Licensee shall at all times comply with the special conditions (if any) set out in Schedules B and C hereto. Should the Licensee fail to comply with such special conditions then the Council reserves the right to determine this Licence in accordance with Clause 17 hereof.

## 13. **COMPLY WITH STATUTES AND BY-LAWS**

- 13.1 The Licensee shall comply with the provisions of all statutes regulations ordinances and by-laws (present or future) affecting the Land or any activity thereon and also (insofar as

they affect the Land) with the provisions and requirements of all licences requisitions and notices lawfully issued made or given by any authority of competent jurisdiction including the Council.

**14. LICENCE NOT ASSIGNABLE**

14.1 There is no right of assignment or sub-licence. Council retains sole discretion in determining whether any assignment if requested shall be approved.

14.2 The notification of the existence of this Licence to any purchaser of the adjoining property, shall be solely the Licensee's responsibility. The Licensee shall fully indemnify Council for any claim that relates to the non performance of this clause by the Licensee.

**15. INSURANCE AND INDEMNITY**

15.1 The Licensee shall use the Land entirely at the Licensee's risk in every respect. The Council shall have no liability to the Licensee or any other persons for damage or loss suffered by the Licensee's or other persons in respect of the Land and the use whether to themselves, their property or otherwise.

15.2 The Licensee indemnifies the Council against all damage to Council's property or loss or claims of any kind sustained or received by the Council arising from the use of the Land by the Licensee or any invitees of the Licensee.

15.3 The Licensee shall fully indemnify the Council for any claims, or actions that occur due to the existence or otherwise of this Licence.

15.4 The Licensee shall at all times during the term of this Licence carry on appropriate All Risk Insurance Cover and Public Liability Cover for an amount of not less than One Million Dollars (\$1,000,000.00) in respect of both insurance covers. Council shall be entitled to liaise with the Licensees insurance company in this regard and the insurance company shall notify the Council in the event that any Public Liability Insurance is cancelled by the Licensee.

15.5 The Licensee by its contractors, servants and invitees shall immediately comply with the Council's requests to:

- (i) mitigate dangers emanating from the use of the Land;

- (ii) reduce or eliminate nuisances or other aggravating factors which interfere or could potentially interfere with the public use of the road adjoining the Land.

## 16. ACCESS

- 16.1 The Licensee shall be permitted to use and enjoy the Land in terms of this Licence and its members and visitors shall be entitled in common with the Council's other tenants and occupiers (if any) and their visitors (and subject to any Public Access) to pass and re-pass along any portion of Council's land required, at the commencement of the term, for access purposes to the Land or any property adjoining it, but the Licensee shall use such access reasonably and will not in any way impede the access of others nor allow persons using the Land to cause any impediment to such access.

## 17. TERMINATION

- 17.1 If at any time any of the following occur:
- (a) the Licence Fee is in arrears and unpaid for seven days after the due date for payment (whether or not demanded); or
  - (b) any provision of this Licence including those special conditions set out in Schedules B and C hereof is breached by the Licensee or the Licensee fails to perform any of the covenants conditions or agreements in this Licence to be performed by the Licensee; or
  - (c) the Licensee is declared bankrupt (if an individual), has a receiver appointed or goes into liquidation (if a Company); or
  - (d) The Licensee sells its interest in its property which adjoins the Land.

the Council may immediately terminate this Licence and expel and remove the Licensee from the Land without being guilty of any manner of trespass or conversion. At the same time all rights and interests of the Licensee under this Licence shall terminate but without releasing the Licensee from any liability because of any breach of this Licence or any unpaid Licence Fee.

- 17.2 The Licensee acknowledges and agrees that the Council shall not be liable to pay compensation of any kind to the Licensee for the termination or expiry of this Licence.

**18. NO COMPENSATION FOR IMPROVEMENTS**

- 18.1 On termination of the Licence there shall be no entitlement to compensation for any improvements on the Land though the right shall be available to the Licensee if all fees have been paid and conditions of the Licence met to remove any improvements effected or purchased by the Licensee from the said Land provided the Licensee makes good all damage which may be done by the removal of any improvements. Any improvements on the Land which remain after the expiration or sooner termination of the term may at Council's option be forfeited to the Council.

**19. SUITABILITY**

- 19.1 No warranty or representation expressed or implied has been or is made by Council that the Land is now suitable or will remain suitable or adequate for use by the Licensee or that any use of the Land by the Licensee will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction (including the Council).

**20. COUNCILS RIGHT TO REVOKE LICENCE OR RE-TAKE POSSESSION**

- 20.1 If for any reason connected with the purpose for which the Council is holding the Land or the proper exercise by Council of its obligations as the Territorial Local Authority, Council considers it to be necessary (and Council shall be the sole judge of this) to take possession of the whole or any part of the Land either temporarily or permanently then Council shall have the right on 28 days written notice to re-enter the appropriate part or all of the Land and if need be revoke this Licence in respect of the whole or part of the Land. No compensation shall be made for any re-entry taking of possession or revocation of this Licence however a fair and reasonable adjustment of the Licence fee shall take place in accordance with the circumstances.

**21. LICENCE FEE REVIEW**

- 21.1 Council may review the Licence Fee up to the full market Licence Fee on the Licence Fee Review Dates by giving written notice to the Licensee nominating what the Council considers to be such full market Licence Fee.
- 21.2 On receipt of such notice the Licensee may within 28 days (time being of the essence) object to such nominated Licence Fee. If the Licensee does not object within that period, the Licence Fee nominated by the Council shall be the Licence Fee payable for the relevant period.

21.3 Immediately following receipt by Council of the Licensee's notice of objection the parties shall endeavour to agree upon current market Licence Fee, but if agreement is not achieved within fourteen (14) days then the new Licence Fee may be determined in the following manner.

21.3.1 Each party shall appoint a valuer and give written notice of the appointment to the other party within fourteen (14) days.

21.3.2 The valuers appointed before commencing their determination shall appoint an umpire who need not be a registered valuer.

21.3.3 The valuers shall determine the current market Licence Fee of the Land and if they fail to agree then the Licence Fee shall be determined by the umpire.

21.3.4 When the Licence Fee has been determined 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.

21.4 In no event shall the Licence Fee determined ever be less than that payable for the previous twelve months. Pending the determination of the reviewed Licence Fee, the Licensee shall pay the Council's nominated Licence Fee with an adjustment to be made between the parties once the reviewed Licence Fee is determined.

## **22. INSPECTION**

22.1 The Council and its officers and agents retain the right at all reasonable times to enter upon the Land to inspect same or any buildings or other structures thereon.

## **23. RENEWAL**

23.1 Subject to the Licensee fulfilling the terms and conditions of this Licence to the Council's satisfaction, Council may renew this Licence at its sole discretion in accordance with the Renewal Provisions (if any).

23.2 If Council decides to renew the Licence it shall be renewed in the following manner:

- (a) By sending a renewal letter to the Licensee at the expiry of the term of this Licence. The letter will specify the renewal term and new annual licence fee payable.
- (b) The Licensee shall have thirty (30) working days from the date of the invoice for payment of the annual fee in which to make the appropriate payment and return a copy of the renewal letter signed indicating approval of the renewal terms. Satisfactory performance by the Licensee of the foregoing requirement will constitute a renewal subject to Clause 20 hereof.

## **24. REMOVAL AND REMEDIATION BY THE COUNCIL**

- 24.1 Upon determination of this Licence howsoever, the Licensee shall if required by the Council:
- (a) Immediately prior to such determination remove all alterations or additions installed or erected on the Land by the Licensee;
  - (b) Restore and make good all damage to the Land caused by such removal, or otherwise caused by the Licensee, such making good and restoration to be effected immediately after the determination of this Licence.
- 24.2 If the Licensee fails to complete any removal and making good when required to do so by the Council then the Council may either:
- (a) do so, whereupon the Licensee shall on demand pay all costs and expenses incurred by the Council in so doing
  - (b) elect not to effect such removal and give written notice to the Licensee that unless the Licensee effects removal within 14 days of the date on which the notice is given the alterations or additions not removed shall be forfeited to Council without compensation. If the Licensee fails to comply with the notice, the alterations and additions shall become the property of the Council accordingly.

**25. BOND**

- 25.1 The Council reserves the right to require the Licensee to enter into a Bond (in addition to this Licence) to protect any Council property from damage by the Licensee whether such property is situated within the Land or adjacent to it. The Council also reserves the right to charge an appropriate administration fee in respect of the preparation of such Bond.

**26. COUNCIL'S CAPACITY**

- 26.1 Notwithstanding that the Council enters into this Licence in its corporate capacity as vested owner of the Road Reserve, the Licensee acknowledges that nothing in this Licence shall fetter, restrict or bind the Council in its regulatory capacity and any consents or agreements given herein by the Council shall not be construed as consent or agreement by the Council in its regulatory capacity.

**27. MISCELLANEOUS**

- 27.1 Any notice or other document required to be given or served under this Licence shall be given or served by registered post or by delivery to the Licensee at the Licensee's last known place of abode or business. Any notice or other documents shall when given or served by the methods mentioned above, be deemed to have been served on the other party one day after the date of posting or delivery. Any notice or document to be given or served by the Council to the Licensee, may be signed on behalf of the Council by any authorised Officer or the Council's Solicitors.

**28. DISPUTE RESOLUTION**

- 28.1 In the event of any dispute arising between the parties to this Licence in respect of or in connection with the Licence (including the validity, breach or termination of it) the parties shall, without prejudice to any other right or entitlement they might have pursuant to the Licence, immediately explore in good faith whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution techniques.
- 28.2 Without reducing the general nature of the dispute resolution techniques, the parties may convene a meeting to discuss and resolve the issues involved.

- 28.3 The parties shall have fourteen (14) days to action or remedy the issues raised at the meeting.
- 28.4 If the breach or conflict has not been resolved at the expiration of the fourteen (14) day period a meeting of the parties will be urgently convened in a further effort to resolve the issues involved. If the issues involved are incapable of resolution, either party reserves the right to immediately terminate the Licence.
- 28.5 If at the meeting convened pursuant to clause 28.4 a process for rectifying any conflict or breach is agreed at the meeting, the defaulting party will have a further 7 days to make good the matters at issue. If the breach or conflict has not been resolved at the expiration of 7 days, the other party may terminate the Licence.
- 28.6 If the Licence has been terminated by Council pursuant to Clauses 28.4 or 28.5 the rights and interests under this Licence shall terminate without releasing the Licensee's from any liability because of any breach of this agreement or unpaid Licence fees.

## **29. NO LEASE**

- 29.1 The Licensee has only a right of occupation of the Land for the term of this Licence and has no interest in the Land.
- 29.2 This Licence does not create any lease, tenancy or interest in the property. The legal right to possession of the Land remains vested in the Council throughout the term.

## **30. INTERPRETATION**

It is agreed unless the context otherwise requires:

- 30.1 Where there are obligations by more than one person, those obligations shall bind those persons jointly and severally, and
- 30.2 The benefits and burdens shall be binding upon the parties and the respective successors and personal representatives and reference to the parties shall be construed accordingly.

- 30.3 Where there is a reference to any statute that reference shall unless the context requires otherwise include any modifying or replacement statutory provisions.
- 30.4 Words importing the singular include the plural and vice versa.
- 30.5 A person includes any individual, company, corporation, firm, partnership, joint venture association, organisation, trust, estate, agency estate, government department or municipal authority in each case whether or not having separate legal personality.
- 30.6 Clause headings are inserted for reference only and shall not affect the interpretation of this Licence.
- 30.7 Any Schedules to this Licence shall have the same affect as if set out in the body of this Licence.

**SCHEDULE 'A'**

<b>Part 1</b>	<b>The Land</b>
	<b>Description of the Land</b>
	Ballantyne Road adjacent to Section 12 Blk XLIX, Tn of Wanaka
<b>Part 2</b>	<b>Term of Licence</b>
	Permanent but remains at the Council's pleasure
<b>Part 3</b>	<b>Commencement Date of Licence</b>
	20 <sup>th</sup> March 2013
<b>Part 4</b>	<b>Licence Fee payable by Licensee</b>
	\$562.50 paid on Receipt 150425
<b>Part 5</b>	<b>Licence Fee Payment Dates</b>
	Not applicable
<b>Part 6</b>	<b>Licence Fee Review Date</b>
	Not applicable
<b>Part 7</b>	<b>Permitted Use</b>
	To locate a portion of car park within the Ballantyne Road reserve
<b>Part 8</b>	<b>Public Access</b>
	Not applicable.
<b>Part 9</b>	<b>Renewal Provisions</b>
	Not applicable.

## SCHEDULE 'B'

### General Conditions Pertaining to this Licence.

#### A GENERAL CONDITIONS

1. This Licence remains at the Council's pleasure.
2. That any compliance costs charged by Lakes Environmental Limited or Council relating to monitoring and compliance or requirements imposed by this Licence shall be paid by the Licensee.
3. This Licence may be cancelled if there is any failure to comply with any of the conditions of the Licence. If the Licence is cancelled the Licensee will be required to immediately remove and vacate the areas of land that this Licence applies to and undertake all necessary restoration work Council considers appropriate.
4. Where a Traffic Management Plan is deemed appropriate or is required by QLDC Engineering, the plan must be submitted to and approved by Council's Engineer prior to the activity requiring a Traffic Management Plan being undertaken.
5. Review

Without derogating from the Council's right to revoke this Licence or retake possession, the Council may in any of the following circumstances serve notice of its intention to review the conditions of this Licence.

Where:

- (a) there is or is likely to be an adverse environmental effect arising from the exercise of this Licence, which was unforeseen when the Licence was granted.
- (b) Monitoring of the exercise of the Licence or other information received has revealed that there is or is likely to be an adverse effect on the environment.
- (c) There has been a change in circumstances such that the conditions of the Licence are no longer appropriate in terms of the purpose of the Licence.

SIGNED by the said

**QUEENSTOWN LAKES DISTRICT COUNCIL**

**as Licensor**

by affixing its common seal in  
the presence of:

.....  
Mayor

.....  
Chief Executive Officer

SIGNED by the said

**WANAKA GOLF CLUB INCORPORATED SOCIETY**

**as Licensee**

.....

in the presence of:

Witness Signature:

.....

Witness Name:

Witness Address:

Witness Occupation: