

Licence to Occupy Road Reserve

QUEENSTOWN LAKES DISTRICT COUNCIL

MERTHA INVESTMENTS LIMITED

Table of Contents

Parties	1
Background	1
This Licence Records.....	1
1. Definitions	1
2. Covenant to Licence	1
3. Statutory Provisions	2
4. Licence Fee and other costs.....	2
5. Term.....	2
6. Use of the Licenced Area.....	3
7. Insurance and Indemnity.....	4
8. Default by Licensee.....	5
9. Reinstatement	5
10. Assignment/Subletting	6
11. Dispute Resolution	6
12. Licensee to Pay Licensor's Costs	6
13. Notices	6
14. General.....	7
SCHEDULE 1: DETAILS OF RESERVE AND LICENCED AREA	9
SCHEDULE 2: PLAN OF LICENCED AREA.....	10
SCHEDULE 3: SPECIAL CONDITIONS.....	11

DATE**2021****PARTIES**

QUEENSTOWN LAKES DISTRICT COUNCIL a Local Authority under the Local Government Act 2002 (**Licensor**)

MERTHA INVESTMENTS LIMITED (**Licensee**)

BACKGROUND

- A. The Licensor owns and controls the road reserve more particularly described in Schedule 1 (**Reserve**).
- B. The Licensor has agreed to grant the Licensee a licence to occupy that part of the Reserve more particularly described in Schedule 1 and outlined on the Plan attached to this Licence (**Licensed Area**) on the terms set out in this Licence.

THIS LICENCE RECORDS**1. Definitions**

1.1 **Definitions:** In this Licence unless the context otherwise requires:

Commencement Date means 1 April 2021;

Expiration Date means the date on which the Term shall expire or such earlier date on which the Licence is terminated;

Licence means this licence;

Licensee means the Licensee and the Licensee's successors and permitted assigns;

Licensor means the Licensor and the Licensor's executors, administrators, successors, assigns, and where the context permits the employees and agents of the Licensor;

Licensed Area has the meaning given to it paragraph B;

Licence Fee means \$1.00 if demanded;

Permitted Use means Sign, Hedging, Stone Walls, Fence, Flag-stones and Bollards];

Plan means the plan of the Licensed Area annexed to this Licence at Schedule 2;

Reserve has the meaning given to it in paragraph A; and

Term means ongoing unless otherwise terminated in accordance with the terms of this licence.

2. Covenant to Licence

In consideration for payment of the Licence Fee, the Licensor licences to the Licensee, and the Licensee takes on a licence from the Licensor of the Licensed Area for the Term, upon the terms contained in this Licence.

3. Statutory Provisions

- 3.1 **Exclusion of Statutory Provisions:** Any covenants and powers implied in licences by virtue of the provisions of any statute or regulations are, to the extent they are inconsistent with anything in this Licence, expressly excluded from this Licence.
- 3.2 **Compliance with Legislation and Bylaws:** The Licensee shall comply with all statutes, regulations, and bylaws affecting the Licenced Area or the Reserve made or imposed on it by any lawful authority.

4. Licence Fee and other costs

- 4.1 **Licence Fee:** The Licensee shall pay to the Licensor the Licence Fee in one lump sum on the Commencement Date.
- 4.2 **Other costs:** The Licensee shall pay for all other costs incurred by it or the Licensor in relation to its use of the Licenced Area including but not limited to:
- 4.2.1 Utilities charges; and
- 4.2.2 Rates, taxes, and assessments which are levied on or imposed in respect of the Licenced Area,
- such payments being payable upon demand being made by the Licensor.
- 4.3 **Parking fees:** In addition to the Licence Fee, the Licensor shall be entitled to charge an additional fee for any carparking required by the Licensee at Licensor's current rate for carparks. The Licensor shall be entitled to review this rate on each Licence Fee Review Date to ensure that it is in line with current rates. Any fees under this clause shall be payable upon demand being made by the Licensor.
- 4.4 **GST:** All amounts which the Licensee is liable to pay are in this Licence exclusive of GST. In circumstances which are appropriate GST shall be payable in addition.

5. Term

- 5.1 **Term of Licence:** The Term shall commence on the Commencement Date and shall expire on the Expiration Date unless otherwise agreed between the parties or terminated in accordance with the provisions of this Licence.
- 5.2 **Licensor's right to suspend or terminate:** The Licensor may temporarily suspend or terminate this Licence if in the opinion of the Licensor there is a risk to public safety or the environment, health and safety concerns, or there is any interference with the use of any road located within the Reserve. Any suspension shall be for such period of time until the Licensor decides that the risk or interference has subsided. The Licensee shall continue to pay the Licence Fee during any period of suspension and the Licensor shall not be liable to the Licensee for any loss sustained by reason of suspension or termination under this clause.
- 5.3 **Licenced Area required for other use:** If during the Term, the Licensor requires all or part of the Licenced Area for another use, then the Licensor may:
- 5.3.1 temporarily suspend this Licence for that period the Licensor requires the Licenced Area. The Licensee shall not be required to pay the Licence Fee during any period of suspension and the Licensor shall not be liable to the Licensee for any loss sustained by reason of this suspension; or
- 5.3.2 terminate this Licence and the Licensor shall not be liable to the Licensee for any loss sustained by reason of such termination.

- 5.4 **Monthly Tenancy:** Should the Licensee with the consent of the Licensor (such consent to be in the Licensor's sole discretion) continue to occupy the Licenced Area beyond the Expiration Date the Licensee shall do so as a monthly tenant at a monthly licence fee to be determined by the Licensor. Such tenancy shall be determinable by one month's notice in writing given at any time by either party to the other and otherwise on the terms of this Licence but applicable to a monthly tenancy.
- 5.5 **Licensee's Right to Terminate:** If during the Term, the Licensee no longer requires the Licenced Area then the Licensee may terminate this Licence upon the giving of one (1) month's written notice to the Licensor (**Early Termination Date**). On or before the Early Termination Date, the Licensee must remove all of its property and reinstate the Licenced Area in accordance with clause 10. Termination of the licence in accordance with this clause 6.5 shall be without prejudice to the rights of either party against the other.

6. Use of the Licenced Area

- 6.1 **Use of Licenced Area:** The Licensee shall only use the Licenced Area for the Permitted Use.
- 6.2 **Signage:** The Licensee shall not place any additional signage on the Licenced Area or the Reserve without prior written approval from the Licensor.
- 6.3 **Rubbish:** The Licensee shall ensure that the Licenced Area and the Reserve are kept free from all rubbish, waste, and tree and plant debris at all times. Rubbish, waste, and debris must be removed from the Licenced Area and the Reserve and disposed of at the end of each day.
- 6.4 **Noise:** The Licensee shall comply with the decibel levels set out in the Queenstown Lakes District Council District Plan. If noise complaints are received then noise levels shall be reduced and/or mitigated by the Licensee.
- 6.5 **Nuisance:** The Licensee shall not allow the Licenced Area to be used in any way which may constitute a nuisance or annoyance to the Licensor or any person lawfully using the Licenced Area or the Reserve.
- 6.6 **Interference with Road:** The Licensee shall at all times ensure that its activities on the Licenced Area do not interfere with the use of any road or footpath located within the Reserve.
- 6.7 **Qualified Persons:** The Licensee shall ensure that all works and operations on the Licenced Area are carried out and/or supervised by suitably qualified persons at all times.
- 6.8 **Health and Safety:** The Licensee must at all times comply with the Health and Safety in Employment Act 1992 and its regulations and shall take all reasonable steps to protect the safety of all persons present on the Licenced Area and the Reserve and eliminate any dangers to those persons. The Licensee must prior to occupying the Licenced Area have in place a health and safety plan and shall provide a copy of this to the Licensor upon request. The Licensee shall comply with this plan during the Term.
- 6.9 **Traffic Management:** Where in the sole discretion of the Licensor, the Licensee's use the Licenced Area requires a traffic management plan to be in place, such plan must be submitted to and approved by the Licensor prior to the activity requiring a traffic management plan being undertaken on the Licenced Area.
- 6.10 **Maintenance:** The Licensee shall keep the Licenced Area and any existing improvements on the Licenced Area in the same good order and repair as at the Commencement Date.
- 6.11 **Fencing:** If required by the Licensor, the Licensee will fence the Licenced Area using materials approved by the Licensor. Such fencing shall be to a high standard and

aesthetically pleasing to the public. The Licensee shall maintain the fencing in the same good order and repair during the Term to the satisfaction of the Licensor.

- 6.12 **Additions, alterations, improvements:** The Licensee is not permitted to make any additions, alterations, or improvements to the Licenced Area without the prior consent of the Licensor.
- 6.13 **Disturbance of ground:** The Licensee shall not excavate, penetrate, or disturb the surface of the land comprising the Licenced Area or the Reserve without the prior consent of the Licensor.
- 6.14 **Notice:** The Licensee shall immediately give notice to the Licensor of any accidents, events or activities on the Licenced Area or the Reserve which may endanger the public.
- 6.15 **Directions of Licensor:** The Licensee shall comply with all reasonable directions of the Licensor in its use and occupation of the Licenced Area.
- 6.16 **Access by Licensor:** The Licensor shall be entitled to enter the Licenced Area at all times without notice for the purpose of monitoring compliance by the Licensee with the terms of this Licence.
- 6.17 **Non-exclusive:** The Licensee acknowledges that the Licensee's rights under this Licence are not exclusive and the Licensor and members of the public shall be permitted to pass and re-pass along any portion of the Licenced Area if required to access other land.
- 6.18 **Non-objection:** The Licensee agrees that it:
- 6.18.1 will not, and will not procure any third party to object to any activity of the Licensor (or any lessee or licensee of the Licensor) on the Reserve or any land adjoining the Reserve; and
- 6.18.2 will sign any required support and/or affected persons approval for, and shall not oppose or frustrate, or encourage any third party to oppose or frustrate, any action by the Licensor for any resource consent, notice of requirement for designation, or building consent in respect of the Reserve and any land adjoining the Reserve.

7. Insurance and Indemnity

- 7.1 **Insurance:** The Licensee, at the Licensee's expense, shall effect and keep current in respect of the Licenced Area, and the Licensee's use of the Licenced Area, a policy of public risk insurance for an amount not less than \$2 million dollars or such other amount from time to time reasonably required by the Licensor, for any one event. Such policy shall be effected with an insurance company and on terms acceptable to the Licensor (acting reasonably). The Licensee shall prior to occupying the Licenced Area provide to the Licensor a copy of a certificate of currency of the insurance policy, with such certificate to be issued recording the Licensor as an additional insured. The Licensee shall ensure that such policy includes a provision that the policy will not be cancelled other than for non-payment of premiums and that if the policy is to be cancelled, then the insurer or the Licensee will give the Licensor notice of the proposed cancellation.
- 7.2 **Licensee to Occupy at Licensee's Risk:** The Licensee agrees to occupy and use the Licenced Area at the Licensee's risk and releases to the full extent permitted by law the Licensor and the Licensor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Licenced Area.
- 7.3 **Indemnity by Licensee:** The Licensee shall keep the Licensor indemnified against all claims, actions, losses, and expenses of any nature which the Licensor may suffer or incur or for which the Licensor may become liable in respect of:

- 7.3.1 the negligent or careless use or misuse of the Licenced Area by the Licensee or persons under the control of the Licensee;
- 7.3.2 any accident or damage to property or any person arising from any occurrence in or near the Licenced Area wholly or in part by reason of any act or omission by the Licensee or persons under the control of the Licensee; and
- 7.3.3 anything otherwise arising from the use of the Licenced Area by the Licensee.

8. Default by Licensee

8.1 **Default:** If at any time:

- 8.1.1 any payment due by the Licensee to the Licensor under this Licence is in arrears and unpaid for ten (10) days after the due payment date (whether it has been demanded or not);
- 8.1.2 the Licensor gives written notice to the Licensee specifying any breach (other than a breach of the type referred to in (a) above) of this Licence which breach remains unremedied seven (7) days after giving the notice;
- 8.1.3 the Licensee goes into liquidation, is declared bankrupt, is wound up or dissolved, enters into a scheme of arrangement with any of its creditors, goes into voluntary administration or a statutory manager is appointed, or has a receiver appointed;

then it shall be lawful for the Licensor (or any person duly authorised by the Licensor) to re-enter upon the Licenced Area in accordance with the Property Law Act 2007 and determine this Licence without releasing the Licensee from any liability in respect of the breach or non-observance of any terms, covenants and conditions of this Licence and without prejudice to any action or other remedy which the Licensor has for arrears of monies due or breach of covenant or for damage as a result of any such event.

9. Reinstatement

- 9.1 **Reinstatement:** On the Expiration Date, the Licensee shall yield up the Licenced Area in the same good order and repair that it was in prior to the Licensee's occupation of the Licenced Area. Any damage caused to surfaces or property owned by the Licensor shall be repaired to the condition it was in prior to the Commencement Date by the Licensor (or its contractors) and all costs associated with the repair shall be borne by the Licensee. A photographic record of the condition of the Licenced Area may be supplied to Licensor prior to the Commencement Date to identify any pre-existing damage. If a photographic record of the condition of the Licenced Area is not submitted prior to the Commencement Date the determination of damage caused will be at the sole discretion of the Licensor.
- 9.2 **Removal of Property by Licensee on Termination:** The Licensee shall:
 - 9.2.1 on the Expiration Date remove the Permitted Equipment and any other property of the Licensee from the Licenced Area; and
 - 9.2.2 restore and make good damage to the Licenced Area and the Reserve caused by such removal or otherwise caused by the Licensee; .
- 9.3 **Failure to remove:** If the Licensee fails to complete any removal and making good when required under subclause 10.2 the Licensor may either:
 - 9.3.1 do so, and the Licensee shall on demand pay all costs and expenses incurred by the Licensor in so doing; or

- 9.3.2 elect not to effect such removal and give written notice to the Licensee that unless the Licensee effects removal within fourteen (14) days of the date on which the notice is given, any property of the Licensee not removed shall be forfeited to the Licensor without compensation. If the Licensee fails to comply with the notice the property of the Licensee shall become the property of the Licensor accordingly.

10. Assignment/Subletting

The Licensee shall not assign, sublease, mortgage, charge, or otherwise dispose (whether in whole or part) of any of its interest in this Licence without the prior written consent of the Licensor (which may be withheld in its absolute discretion or given subject to such conditions as the Licensor sees fit).

11. Dispute Resolution

- 11.1 **Informal methods:** If any party has a dispute with any other party in connection to this Licence:
- 11.1.1 That party will promptly give full written particulars of the dispute to the other; and
- 11.1.2 The parties' will promptly meet together and in good faith try to resolve the dispute.
- 11.2 **Arbitration:** If the dispute is not resolved within ten (10) days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to a single arbitrator chosen by the parties or if they cannot agree, by the President of the New Zealand District Law Society.
- 11.3 **Urgent relief:** This clause shall not apply to any application to the Court by either party for urgent interlocutory relief.

12. Licensee to Pay Licensor's Costs

- 12.1 **Costs:** The Licensee shall pay:
- 12.1.1 The reasonable costs of and incidental to the preparation, negotiation, and execution of this Licence;
- 12.1.2 all costs, charges and expenses for which the Licensor shall become liable in consequence of, or in connection with, any breach or default by the Licensee in the performance of any of the covenants in this Licence; and
- 12.1.3 all costs, charges and expenses (including actual legal costs as between solicitor and client) that may be incurred by the Licensor in enforcing or attempting to enforce any of the Licensee's covenants, or any of the Licensor's rights, under or arising out of this Licence.

13. Notices

- 13.1 **Notices:** All notices or other communications given under this Licence shall be by personal delivery, by posting by registered or ordinary mail, or by email.
- 13.2 **Delivery:** Any notice, consent, information, application or request is to be treated as given or made at the following time:
- 13.2.1 if it is delivered, when it is left at that party's address (as notified from time to time);
- 13.2.2 if it is sent by post, three (3) days after it is posted; or

13.2.3 in the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing (excluding emails generated automatically).

13.3 **Licensor authority:** In the case of any notice or document required to be served or given by the Licensor the same may be signed on behalf of the Licensor by any authorised officer of the Licensor or by the Licensor's solicitors.

14. General

14.1 **Regulatory capacity:** Notwithstanding that the Licensor enters into this Licence in its capacity as owner of the Reserve, the Licensee acknowledges that nothing in this Licence shall fetter, restrict or bind the Queenstown Lakes District Council in its regulatory capacity and any consents or agreements given herein by the Licensor shall not be construed as consent or agreement by the Queenstown Lakes District Council in its regulatory capacity.

14.2 **No legal interest:** This Licence grants the Licensee a non-exclusive right to occupy the Licenced Area and the Licensee does not have any legal interest in the Licenced Area or the Reserve.

14.3 **Amendments:** No amendment to this Licence will be effective unless it is in writing and signed by all the parties.

14.4 **Waiver:** Failure by a party to enforce at any time any one or more of the terms or conditions of this Licence is not a waiver of that party's right to subsequently enforce at any time any one or more of the terms or conditions of this Licence.

14.5 **Invalidity:** If any of the provisions of this Licence is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions will not in any way be affected or impaired.


14.6 **Law:** This Licence is to be governed by and construed in accordance with the laws of New Zealand and each party irrevocably and unconditionally agrees that the Courts of New Zealand have jurisdiction to hear and determine any proceedings brought in relation to this Licence.

EXECUTED as a Licence

SIGNED for and on behalf of)
QUEENSTOWN LAKES DISTRICT COUNCIL)
as LICENSOR under delegated authority)
by Principal RM Engineer – David Wallace)
in the presence of:)



Signature



Signature

Blake Hoger

Full Name


12 Fantail Lane, Mount Creighton

Address

Property Advisor

Occupation

SIGNED by **MERTHA INVESTMENTS LIMITED**)
as **LICENSEE**)
in the presence of:)



Signature

Jeannie Crawford

Full Name

3 Douglas Ave, Arrowtown

Address

Self Employed

Occupation

Signature

Signature

SCHEDULE 1: DETAILS OF RESERVE AND LICENCED AREA

Reserve: *Wiltshire Street road reserve.*

Licensed Area: *That part of Road Reserve shown in Schedule 2.*

SCHEDULE 2: PLAN OF LICENCED AREA



patch

Landscape - Address: Patch 1006
Scale 1:75 @ A1 - 1:150 @ A3

FORK & TAP - Arrowtown
Landscape Plan - 13 January 2021

SCHEDULE 3: SPECIAL CONDITIONS

1. The licence shall remain at Council's pleasure.
2. Building and Resource Consent to be obtained prior to works commencing if required.
3. Approval of a Traffic Management Plan (TMP) and Corridor Access Request (CAR) by Council Engineers before work commences.
4. All activities are to be undertaken in accordance with Worksafe New Zealand's standards for the work environment.
5. Any works within the road reserve to be undertaken to the specification and approval of Council's Engineers.
6. All services including 3-waters, phone, power and gas within the road reserve must be identified and catered for and no compromise shall be made to Council Infrastructure or access to same.
7. Structures must not compromise roading or services maintenance activities.
8. Ongoing maintenance of the structures are to be the responsibility of the Licensee.
9. Landscaping within the road reserve is to be maintained by the Licensee.
10. The applicant consents to a Covenant in Gross being recorded against the title of Part Section 1 Block X Town of Arrowtown to ensure the recommended terms and conditions of the Licence continue in perpetuity for all future owners of the property.