



Deed of Ground Lease

**Queenstown Lakes District
Council**

**Whakatipu Community Hub
Charitable Trust**



- 1.2.4 Singular will include plural and vice versa.
- 1.2.5 Where any term defined in this Agreement takes a different form for reasons of grammar, the different form has a corresponding meaning.
- 1.2.6 References to persons will include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental and other regulatory bodies or authorities and other entities, in each case whether having separate legal personality or not.
- 1.2.7 Reference to a party will include that party's executors, administrators, successors and permitted assigns.
- 1.2.8 Reference to a statute or regulation will include all amendments and re-enactments thereof and any subordinate legislation made thereunder.
- 1.2.9 Reference to dollars and \$ refers to New Zealand dollars (NZ\$) exclusive of goods and services tax unless specifically stated otherwise.
- 1.2.10 References to times of day or dates are to New Zealand times and dates respectively unless specifically stated otherwise.
- 1.2.11 Any provision requiring performance of two or more Parties shall bind those Parties jointly and severally.
- 1.2.12 The term including means including without limitation.
- 1.2.13 Any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- 1.2.14 The terms written and in writing include any means of reproducing words, figures or symbols in a tangible and visible form.

2 Grant of Ground Lease

- 2.1 The Lessor leases to the Lessee and the Lessee takes a ground lease of the Premises for the Initial Term beginning on the Commencement Date and ending on the Expiry Date, at the Annual Ground Rent.

3 Ground Rent

- 3.1 The Lessee must pay the Annual Ground Rent on each anniversary of the Commencement Date. The first annual payment of the Annual Ground Rent must be paid on the Commencement Date.

4 GST

- 4.1 The Lessee must pay to the Lessor all GST payable on the Annual Ground Rent and other money payable by the Lessee under this lease. The Lessee must pay GST:
 - 4.1.1 on the Annual Ground Rent on each occasion when any ground rent falls due for payment; and
 - 4.1.2 on any other money payable by the Lessee on demand.

5 Outgoings

- 5.1 The Lessee must pay the Outgoings without deduction or set-off. If any Outgoing is not separately assessed on or charged to the Premises, the Lessee must pay a proportion of that Outgoing. Such proportion shall be calculated by the Lessor as a part of the entire area the Outgoing relates to. Any Outgoing which is not assessed or charged for a period falling wholly within the Term will be apportioned between the Lessor and the Lessee.

6 Costs

- 6.1 Each party will bear their own costs of and incidental to the preparation and execution of this lease.
- 6.2 The Lessee will pay all costs, charges and expenses for which the Lessee becomes liable for in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any terms of this lease.

7 Lessee's Development of the Land

- 7.1 The Lessee shall be entitled to develop the Premises (**Lessee's Development**) to the extent and according to the requirements of the Operative and Proposed Queenstown Lakes District Council District Plans as exists from time to time and in accordance with all resource consents necessary for the Lessee's Development.

- 7.2 **Lessor Consent to Construction or Alteration** – Notwithstanding clause 8.1, the Lessee shall not make or permit:

- 7.2.1 any excavation or change to the physical state of the Premises;
- 7.2.2 any construction or erection of any buildings or other improvements on the Premises or make any alterations or additions to the Premises; or
- 7.2.3 any demolition, alteration, or addition to all or any part of the buildings or improvements on the Premises;

without the Lessor's prior written approval provided that such approval shall not be unreasonably withheld but may be given subject to such conditions as the Lessor may see fit to impose.

- 7.3 **Plans and Specifications** - In seeking the Lessor's approval under clause 7.2 the Lessee shall submit plans and specifications of the proposed work. The Lessor may require as a condition of approval that:

- 7.3.1 the Lessee obtains all consents or approvals or permits necessary to enable the proposed work to be lawfully effected and on request produces to the Lessor copies of them; and
- 7.3.2 upon completion of the work the Lessee produces to the Lessor any certificates of compliance issued by the relevant authorities.

8 Termination

- 8.1 If the Lessee does not commence the Lessee's Development within seven (7) years of the Commencement Date, both the Lessor or Lessee will be entitled to cancel this lease and the Lessee must yield up the Premises to the Lessor pursuant to the provisions of clause 12 of this lease.

9 Renewal of Lease

- 9.1 Prior to the 25th anniversary of this lease, the parties will endeavour to discuss a renewal term of this lease or a new lease based on same terms and conditions this lease.

10 Maintenance of Premises and Buildings

- 10.1 The Lessee shall keep the Premises and all other buildings or improvements on the Premises in good repair and condition.
- 10.2 **Lessee's Obligations** – The Lessee shall punctually, at the Lessee's expense, throughout the Term to the reasonable requirements of the Lessor:
- 10.2.1 keep the Premises and all other buildings or improvements on the Premises clean and tidy, free and clear from all rubbish, noxious weeds and plants to the satisfaction of the Lessor;
- 10.2.2 repair and make good any damage to any part of the Premises and all other buildings or improvements on the Premises (if any) caused by the Lessee or persons under the control of the Lessee;
- 10.2.3 keep and maintain any paving and other sealed or surfaced areas in a good and proper serviceable condition having regard to their purpose;
- 10.2.4 keep and maintain any garden or lawn area in a tidy and cared for condition; and
- 10.2.5 comply with all statutes, regulations and by-laws.
- 10.3 **Limitations on Lessee's Maintenance Obligations** – The Lessee's obligations under clause 9.1 do not extend to deterioration arising from fair wear and tear, or apply to damage caused by fire, flood, earthquake, earth subsidence, storm, tempest, act of God or inevitable accident to the extent that insurance proceeds are available to reinstate such damage (unless the Lessee's act or omission has caused insurance proceeds to be unavailable which, but for the act or omission, would have been available towards the cost of making good the damage).
- 10.4 **Car Park** – The Lessor and Lessee will commit all reasonable endeavours in a timely fashion following the Commencement Date of this lease to agree on repairs and maintenance of the carparking area and whether any revenue (or portion of revenue) generated from carparking on the Land is contributed for such repairs and maintenance.

11 Insurance

- 11.1 **Lessee to Insure Buildings** - The Lessee shall insure and keep insured all buildings or improvements on the Premises (if any) against destruction or damage by fire, earthquake, storm, water damage and malicious damage to the full insurable value on an indemnity cover basis or, at the option of the Lessor, up to the full replacement value, such insurance to be effected with such insurance office as first approved by the Lessor in writing from time to time. The Lessee shall pay the premiums for such insurance, when due.
- 11.2 **Public Risk Insurance** - The Lessee must throughout the Term keep current a public risk insurance policy applicable to the Premises and all other buildings or improvements on the Premises (if any) in the joint names of the Lessor and the Lessee for their respective rights and interests.

12 Use of Premises

- 12.1 **Permitted Use** - The Lessee must only use the Premises for the Permitted Use and may not use the Premises for a use or activity other than the Permitted Use.
- 12.2 **No Nuisance** - The Lessee must not carry on any noxious, noisy or offensive business or activity in or about the Premises or do anything which is or may become a nuisance or annoyance to any person, but the carrying on of the Permitted Use by the Lessee in a reasonable manner will not of itself be a breach of this clause, and must comply in all respects with all acts, bylaws, regulations, rules and requisitions relating to the Premises and the Lessee's use of the Premises.
- 12.3 **Car Park** – the Lessor agrees to grant the Lessee free parking on the Land. The parties will discuss and agree on any parking restrictions or enforcement the Lessor w

13 **Obligations on Termination of Ground Lease**

- 13.1 **Premises** - At the expiration or sooner determination of the lease the Lessee will peaceably and quietly yield up to the Lessor the Premises and all improvements and installations situated on the Premises in a clean and tidy condition to the Lessor's reasonable satisfaction. However, the Lessee may at any time before the expiration or sooner determination of the lease remove any improvements and installations erected by it on the Premises.
- 13.2 **Asset valuation** – The parties will negotiate in good faith the compensation payable from the Lessor to the Lessee for the Premises and any structures the leased part of the Land that are remaining on expiry of this lease. Failing agreement by the parties, the amount of compensation will be determined in accordance with clause 17.

14 **Assignment and Subleasing**

- 14.1 Subject to the provisions of this section, the Lessee must not:
- 14.1.1 assign the Lessee's interest in this Lease; or
- 14.1.2 sublease or part with possession or share occupation of the whole or any part of the Premises.
- without the Lessor's prior written consent (not to be unreasonably withheld).

15 **14.2 The Lessor and Lessee will use their best endeavours to discuss ancillary commercial tenants on the Premises such as a café or similar and the use of revenue generated from the tenancies. Quiet Enjoyment**

- 15.1 If the Lessee pays the Annual Ground Rent and performs the Lessee's obligations in this Lease, the Lessee will be entitled to quiet enjoyment of the Premises without interruption by the Lessor or any person claiming under the Lessor.

16 **Default**

- 16.1 **Termination on Default** - If the Lessee fails to perform or observe any of this Lease's terms, then the Lessor may without prejudice to any of the Lessor's other rights or remedies at law or in equity sue the Lessee for specific performance or cancel this lease by immediately or thereafter re-entering the Premises if the Lessor has first observed the requirements, where it is required by law to do so, of sections 243-264 Property Law Act 2007.
- 16.2 **Act of Default** - It shall be an act of default under this lease if the Lessee:
- 16.2.1 being a natural person:

- (a) is declared bankrupt or insolvent according to law; or
- (b) assigns his or her estate or enters into a deed of arrangement for the benefit of creditors; or

16.2.2 being a company:

- (a) is or is deemed to be unable to pay the Lessee's debts under section 287 of the Companies Act 1993;
- (b) goes into liquidation (other than voluntary liquidation for the purpose of reconstruction or amalgamation approved in writing by the Lessor);
- (c) is wound up or dissolved;
- (d) enters into voluntary administration or any assignment or other compromise or scheme of arrangement with the Lessee's creditors or any class of the Lessee's creditors; or
- (e) has a receiver, manager or receiver and manager appointed relating to any of the Lessee's assets.

17 Indemnity

- 17.1 **Indemnity by Lessee** - The Lessee indemnifies the Lessor against all actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind suffered or incurred by the Lessor resulting from the Lessee's acts or omission, except where section 268 Property Law Act 2007 applies.

18 Disputes

- 18.1 **Alternative dispute resolution** - If any dispute or difference (other than a dispute of the type referred to in clause) arises between the Lessor and the Lessee, or if any matter or issue arises which either the Lessor or the Lessee wishes to have resolved or remedied either may serve a Dispute Notice on the other. For the purposes of this and the following clauses the term **Dispute Notice** means a written notice issued by either the Lessor or Lessee:

- 18.1.1 Specifying reasonable details of the nature of the matter or issue to be resolved;
- 18.1.2 Designating the person with authority to negotiate and settle the matter or issue specified in the notice of behalf of the issuer of the notice; and
- 18.1.3 Requiring the recipient of the notice to enter into negotiations with the issuer of the notice to resolve the matter or issue specified in that notice and, for that purpose, to appoint a representative with authority to negotiate a settlement.

- 18.2 **Dispute resolution procedures** - Upon service of a Dispute Notice, the following procedures will apply:

18.2.1 The recipient of the Dispute Notice will within ten (10) Working Days of receipt of that Dispute Notice give written notice to the issuer of the Dispute Notice of the person designated by the recipient as having authority to negotiate and settle the matter or issue specified in the Dispute Notice.

18.2.2 The respective representative designated by the Lessor and the Lessee ("the Representatives") will, following whatever investigations each deems appropriate,

seek to resolve the dispute within ten (10) Working Days of the date the notice referred to in subclause 17.2.1 is received by the issuer of the Dispute Notice.

18.2.3 If the dispute is not resolved within ten (10) Working Days (or such longer period as the Representatives may in writing agree is appropriate), the Representatives will seek to agree on a process for resolving the dispute through means other than litigation or arbitration such as further negotiations, mediation, conciliation or determination by an independent expert (including a person appointed for that purpose by the President for the time being of the District Law Society of the district where the Premises are located).

18.2.4 If appropriate, the Representatives may also agree on:

- (a) the procedures and timetable for any exchange of documents and other information relating to the dispute
- (b) procedural rules and a timetable for the conduct of the selected mode of proceedings
- (c) a procedure for selection and compensation of any neutral person who may be employed by the parties to assist in resolution of the dispute, and
- (d) whether the parties should seek the assistance of a dispute resolution organisation.

18.2.5 Either the recipient or the issuer of the Dispute Notice may, so long as:

- (a) that party has acted in good faith in attempting to resolve the dispute in accordance with the foregoing procedures
- (b) a period of 25 Working Days (or such longer period as the Representatives may have agreed is appropriate for the dispute resolution process agreed between them) has elapsed since service of the Dispute Notice, and
- (c) written notice terminating the dispute resolution process has been served on the other party,

exercise the rights reserved by this Lease (including reference of the matter or issue in dispute to arbitration in accordance with the arbitration provisions in the Lease or commencement of Court proceedings in relation to the matter or issue in dispute, as may be appropriate) or at common law.

SCHEDULE 1

Lessor:	Queenstown Lakes District Council
Lessee:	Whakatipu Community Hub Charitable Trust
Land:	All of the Lessor's land situated at 3 Murchison Road, Frankton, Queenstown comprised in Record of Title 659427 (Otago Registry)
Premises:	The area of land situated at 3 Murchison Road, Frankton, Queenstown comprising approximately 8,658m ² and more particularly contained in Record of Title 659427 (Otago Registry) as annotated on the attached Premises Plan at Schedule 2
Initial Term:	34 years and 364 days from the Commencement Date
Commencement Date:	TBC
Annual Ground Rent:	\$1.00 per annum plus GST
Permitted Use:	Offices, meeting rooms and community events as permitted under the operative district plan
Outgoings	All rates, charges, levies, assessments, duties, impositions, expenses, insurance premiums and fees from time to time payable in relation to the Premises

SCHEDULE 2

Premises Plan

DRAFT

SIGNATURES

Signed by)
Queenstown Lakes District Council) _____
in the presence of:) Authorised Signatory

Witness signature

Witness name

Witness occupation

Witness town of residence

Signed by)
Whakatipu Community Hub) _____
Charitable Trust)
in the presence of:) Authorised Signatory

Witness signature

Witness name

Witness occupation

Witness town of residence