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DATED 21 January

2004
199

HER MAJESTY THE QUEEN

TO

ROBERT WILLIAM BUTSON
JAMES HERBERT LAPSLEY
NOELEEN MARCIA LAPSLEY
PAUL RUSSELL ADAMS

**SPECIAL LEASE OF CROWN LAND UNDER
SECTION 67(2) OF THE LAND ACT 1948**

MACALISTER TODD PHILLIPS BODKINS
Barristers, Solicitors, Notaries
Queenstown/Alexandra

Ph: (03) 442 8110 - Fax: (03) 442 8116

Email: maildesk@mactodd.co.nz

P O Box 653

QUEENSTOWN

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SPECIAL LEASE OF CROWN LAND

UNDER SECTION 67(2) OF THE LAND ACT 1948

DATED

21 January 2004

PARTIES:

- (1) **HER MAJESTY THE QUEEN** (hereinafter with her successors and assigns referred to as "the Lessor") of the one part

- (2) **ROBERT WILLIAM BUTSON** of Mount Nicholas, Farmer, **JAMES HERBERT LAPSLEY** of Queenstown, Tourist Operator, **NOELEEN MARCIA LAPSLEY** of Queenstown, Married Woman and **PAUL RUSSELL ADAMS** of Invercargill, Solicitor (hereinafter with its successors and assigns referred to as "the Lessee") of the other part

WITNESSETH that in consideration of the rent hereinafter reserved, and of the covenants, conditions and agreements contained and implied in this Deed and on the part of the Lessee to be paid observed and performed the Lessor leases to the Lessee and the Lessee takes on lease that area of land containing 1519m² more or less being Lot 1 on the annexed plan being a part of Part Section 74, Block XX Shotover Survey District (Otago Registry) together with the rights easements and appurtenances hereto belonging ("the leased land") for the term of nineteen (19) years from 24th February 1999.

THE LESSEE COVENANTS WITH THE LESSOR AS FOLLOWS:

1.1 For the first three (3) years of the term the Lessee shall pay an annual rent of \$1,000.00 (plus GST) payable without demand in advance on the 24th day of February in each year such rent to be discounted by 50% per annum provided that the Lessee agrees to

- (a) Allow pedestrian access to the wharf carriageways as of right without charge subject to the Lessee being able to restrict access from time to time where the public is likely to be in danger from the Lessee's operations or where the

presence of the public may interfere with the Lessee's operations. Where individual members of the public cause a nuisance the Lessee shall have the right to cause those people to be evicted and/or seek trespass orders against them if a recurrence is likely.

- (b) Allow watercraft under emergency (being life threatening circumstances) or on police business to embark and/or disembark passengers from the wharves without charge and to tie up temporarily if required by the emergency but subject to the operational requirements of the Lessee whose wharf is used.
- (c) Allow private pleasure craft owners (not plying for hire) to embark and/or disembark passengers at a designated part of the wharf without charge but subject to the operational requirements of the Lessee PROVIDED HOWEVER such right shall not entitle private pleasure craft to moor at the wharf except where permission is specifically granted by the Lessee.

1.2 During each three yearly period of the balance of the term of the lease the Lessee shall pay an annual rent on a "Fair Market Rent" basis to be determined by negotiation between the parties or if they fail to agree within 30 days of the commencement of such negotiations then by an arbitrator to be appointed beforehand by agreement and the arbitrator's determination will be binding on the parties. In setting the reviewed rental the parties will take into consideration the following:

- (i) The financial circumstances of the Lessor and Lessee.
- (ii) The ability of the Lessee's business to pay.
- (iii) The economic conditions that prevail at the time.
- (iv) The contribution the wharf makes to the Queenstown economy
- (v) That the Lessees have met the total cost of constructing and maintaining the improvements
- (vi) Any other matters which the parties agree may be relevant to setting a "fair market rental".

but in no case will the reviewed rental be less than the amount paid in the year prior to any review.

The reviewed rental shall be payable from the review date regardless of the time taken to negotiate the same.

2. That the Lessee shall pay the rent hereby reserved in the manner provided under this lease free of exchange and all other deductions and also will pay and discharge all rates taxes assessments and outgoings whatsoever that are now or may in future be assessed levied or payable in respect of the leased land or any part of parts of the leased land during the term of this lease.
3. That the Lessee shall use the leased land solely for the purpose of a wharf from which to conduct the Lessee's business.
4. That the Lessee will not transfer assign sublease or otherwise dispose of its interest or any part thereof in the leased land without the previous approval in writing of the Commissioner which approval shall not be unreasonably withheld. Where the Lessee is a Company the provisions of this clause shall apply to all transfers and other dispositions of shares in the Lessee Company as if such shares were interest in the land.
5. The Lessee may from time to time impose such conditions as it considers necessary for the purposes of ensuring the safety of the persons using the wharf and to ensure the efficient operation of the wharf.
6.
 - (a) The Lessee will prior to the erection of or alterations or additions to any structure or buildings or other appliances or improvements on the said land furnish to the Commissioner plans specifications and colour schemes of the structure or buildings to be erected or of the alterations or additions to be made or of other appliances or improvements to be erected and will not erect such structure or buildings or appliances or other alterations or improvements or carry out any development on the leased land without the prior written

approval of the Commissioner whose consent will not be arbitrarily or unreasonably withheld.

- (b) The Lessee will annually appoint an officer for a joint inspection to be carried out with officers appointed by the Commissioner no later than 1 December each year of the said term, such joint inspection to consider the adequacy and maintenance of existing development and to consider proposed developments for the following year on the leased land. In carrying out all developments the Lessee shall have careful regard to all environmental and aesthetic factors together with water values and shall comply with any written directions from the Commissioner designed to ensure that the Lessee complies with the spirit of this subclause.
- (c) That if at any time the Lessor considers that any remedial work or maintenance is reasonably required as a result of any work carried out by the Lessee under the terms of this lease, the Lessee shall carry out such remedial work or maintenance as is specified in writing by the Commissioner within such time as the Commissioner shall consider to be reasonable. If the remedial work or maintenance is not carried out within the time specified the Lessee hereby agrees that the Lessor may do the work at the cost of the Lessee and that the Lessee will pay the costs involved upon demand from the Commissioner.

7. The Lessee will provide for the approval of the Lessor an indicative development plan showing specific details of proposed developments and no approvals to new developments will be given until the Lessee has forwarded detailed plans referred to in clause 6(a) hereof to the Commissioner together with full financial statements showing details of the proposed source of finance covering the capital cost and future maintenance of all facilities. At all times the Lessee shall comply with the requirements under the Resource Management Act 1991 and any other statutes or bylaws.

8. The Lessee will to the satisfaction of the Commissioner and any other Authority having jurisdiction in the matter dispose of all refuse away from the said land and

will keep the leased land in a clean and tidy condition to the satisfaction of the Commissioner or other Authority.

9. The Lessee will not carry out any disturbance of the lake bed vegetation on the leased land or carry out earthworks or excavation for any purposes whatsoever without the prior approval of the Commissioner being first obtained.
10. The Lessee will permit any person or persons appointed by the Commissioner to inspect the leased land and all buildings erections and installations situated thereon at reasonable intervals and the Lessee will immediately comply with all reasonable directions from the Commissioner in regard to repairs and maintenance sanitation disposal or any other matter whatsoever.
11. That the Lessee will with respect to its occupation and use of the leased land other than use authorised in terms of clause 1.1(a), (b) or (c) hereof indemnify and keep indemnified the Lessor from and against all actions suits claims demands proceedings losses damages compensation sums of money costs (including solicitor and client costs) charges and expenses whatsoever to which the Lessor shall or may be liable for or in respect of the leased land or any building structure fitting fixture chattel or erection now on or in future erected on it or for or in respect of the construction erection or use of any of the above or for or in respect of all losses damages accidents or injuries of whatsoever nature or kind and howsoever sustained or occasioned (and whether to any property or resulting in the destruction of any property or not) at upon or in connection with the leased land or any building structure fitting fixture chattel or erection as aforesaid and although outside the same or which may be consequent upon the installation maintenance working keeping or storage of any plant structure machinery or goods by the Lessee or in respect of leakage of water inflammable liquid or other liquid flowing into or from the said land **AND** notwithstanding that any of such actions suits claims demands proceedings losses damages compensation sums of money costs charges and expenses shall have resulted from any act or thing which the Lessee may be authorised or obliged to do under these presents and notwithstanding that any time waiver or other indulgence has been given to the Lessee in respect of any obligation of the Lessee under this lease **AND IT IS HEREBY EXPRESSLY AGREED**

AND DECLARED that the obligation of the Lessee under this clause shall continue after the expiration or other determination.

12. The Lessee shall having regard to the purpose for which this Lease is granted, provide an appropriate range of facilities and amenities for full and safe enjoyment for its patrons.
13. The Lessee shall not erect or display or permit to be erected or displayed on the leased land any hoardings or advertising matter of any description without first obtaining the approval of the Commissioner. Operational signs are however permitted.
14. The Lessee will insure within the meaning ascribed to those words in the Fourth Schedule to the Land Transfer Act 1952 all buildings tenements and premises belonging to the Lessee and will produce to the Commissioner on demand the receipt or receipts for the annual or other premiums payable on account thereof and the policy or policies and all moneys received pursuant to any such insurance shall be expended in or towards repair reinstatement and re-erection of buildings, structures, tenements and premises on the leased land PROVIDED HOWEVER that if the Lessor determines that such destroyed or damaged buildings structures tenements and premises are not to be repaired reinstated or re-erected The Lessee shall immediately remove the damaged or destroyed structure or buildings tenements and premises or the remains thereof and shall immediately restore the area to the satisfaction of the Lessor and that in such event the cost of removing damaged or destroyed buildings tenements and premises and restoring the area shall be paid from the proceeds of the insurance and the balance shall be paid to the Lessee or other persons entitled to the same.
15. The Lessee will to the satisfaction of the Commissioner throughout the term of the Lease maintain repair and keep in good substantial repair order and condition all buildings structures and other erections now existing or hereafter erected on the leased land.
16. The Lessee will punctually observe and comply with and shall ensure that the Lessee's staff and employees observe and comply with every law statute rule regulation or bylaw now or future in force and all consents orders and directions

which may be given under the same or any of them insofar as the same or any of them relates to the said land or to the control management or use of any building structure erection or device thereon or to any business or operations conducted by the Lessee on or from the leased land or to the conduct of any persons under its control or with its consent using or being upon the same or any building structure or erection thereon.

17. The Lessee will from time to time during the continuance of the lease at the proper time for that purpose apply for and endeavour to obtain at its own expense all such licences permits or renewals thereof as may be necessary for the proper conduct of the Lessee's trading activities and will at the expiration or sooner determination of the term hereby granted transfer and assign and do all acts necessary for transferring and assigning such licences unto the Lessor or to such other person as the Lessor may appoint for that purpose **AND** that the Lessee will not do or suffer to be done any act matter or thing in or about the leased land during the continuance of the lease whereby any such licence may be or become liable to be forfeited or suspended or the renewal thereof refused.

AND IT IS HEREBY AGREED AND DECLARED BY AND BETWEEN THE LESSOR AND THE LESSEE

- (a) That the Lessee shall have no right of acquiring the fee simple of the said land.
- (b) That the Lessee shall have the right to levy and collect charges for services rendered and facilities afforded and if required by the Commissioner shall satisfy the Commissioner that such charges are reasonable and not onerous.
- (c) That if
- (i) The rent hereby reserved or any part thereof shall be in arrears or unpaid on any day on which the same ought to be paid and shall remain unpaid for thirty (30) days thereafter whether the same shall be lawfully demanded or not, or

- (ii) Default is made by the Lessee in the complete performance and observance of any of the covenants conditions and agreements contained in this lease, or
- (iii) The Lessee shall become bankrupt or enter into any composition with or assignment for the benefit of its creditors (or being a company an order is made or an effective resolution is passed for winding up the company or a receiver of the assets of the company or any part thereof is appointed) or the Lessee shall abandon the leased land or cease to function or shall fail to adequately provide services for the public in accordance with these presents;

then in any such case it shall be lawful for the Lessor without suit notice or demand to immediately enter in and upon the leased land or any part of it in the name of the whole and determine this lease but without discharging the Lessee from liability for rent due or accruing due or from any previous breach of the covenants conditions and agreements herein contained or implied in this lease.

- (d) That if at any time after making such enquiries as the Lessor thinks fit and after giving the Lessee an opportunity of explaining the usage of the leased land the Lessor is of the opinion that the leased land is not being used or is not being sufficiently used for the purpose or purposes specified in clause 3 hereof the Lessor may terminate the Lease in the manner herein prescribed.

- (e)
 - (i) That if this lease shall be terminated in accordance with clause (c) or clause (d) then where the Lessee has not first removed its improvements and the Lessor is of the opinion that the said land shall again be leased the Lessor shall arrange for a valuation to be made of the improvements that are then on the leased land and as soon as possible thereafter shall publicly offer the leased land for lease weighted with the value of improvements belonging to the outgoing Lessee.

- (ii) Where such improvements remain in situ the Lessor is of the opinion that the leasing of the leased land is being hindered by reason of the value of the improvements being excessive or of the terms for payment being onerous, the Lessor may in the Lessor's discretion from time to time reduce the value of the improvements or vary these terms as the case may be and again offer the leased land and improvements for lease until such time as an offer suitable to the Lessor is received for the land and improvements.
- (iii) Where the leased land and improvements are acquired under the provisions of this clause by an incoming Lessee the value of the improvements shall be paid by him in cash before he is admitted into possession of the leased land and from the amount so paid the Lessor shall be entitled to deduct and retain any moneys due and owing to the Lessor for any breach or default and shall forthwith pay the remainder to the Lessee under this lease **PROVIDED** that with the prior consent of the Lessee the value of the improvements or any part thereof may be paid by instalments over a period of years. Any payment by instalments over a period of years shall be subject to such conditions as to payment of interest and otherwise.
- (iv) If the Lessor should publicly offer the land and improvements for lease as provided in this lease and not receive any suitable offers the Lessor may offer the improvements for sale for removal and in the event of a suitable offer being received and accepted the Lessor shall be entitled to deduct and retain any moneys due and owing to the Lessor by the Lessee including any damages assessed by the Lessor for any breach or default and to apply the remainder of such proceeds towards the costs of removal or destruction of any unsaleable item and the clearing and landscaping of the leased land.
- (f) That if on the expiry or sooner determination of the lease created by these presents the Lessor determines that the leased land should not again be leased (such determination to be made on reasonable grounds after consultation with the Lessee) then the Lessee shall not be entitled to compensation for any

improvements effected by the Lessee on the leased land, but on such expiry or sooner determination the Lessee may remove within such time as the Lessor shall determine such improvements as were effected by the Lessee and shall leave the leased land in a clean and tidy state to the satisfaction of the Lessor.

- (g) That if any improvements are destroyed by earthquake fire or tempest fall into disuse or disrepair and are no longer required by or useable by the Lessee then the Lessee must remove such improvements from the leased land and shall leave the said land in a clean and tidy state to the satisfaction of the Commissioner.
- (h) That this lease is issued subject to the provisions of Section 11 of the Crown Minerals Act 1991.
- (i) Any notice required to be given by the Lessor to the Lessee under this lease may be given for and on behalf of the Lessor by the Commissioner of Crown Lands or his duly authorised agent.
- (j) If the Lessee has not been in breach of this lease and has given to the Commissioner written notice to renew the lease at least three (3) calendar months before the end of the term then the Lessor will at the cost of the Tenant renew the lease for a further term of 19 years from the renewal date as follows:
- (i) The annual rent shall be agreed upon between the parties or failing agreement shall be determined in accordance with Clause 1.2 but such annual rent shall not be less than the rent payable during the period twelve (12) months immediately preceding the renewal date.
 - (ii) Such annual rent shall be subject to review during the further term on the review dates or if no dates are specified then after the lapse of the equivalent periods of time as are provided in this lease for rent reviews.
 - (iii) The renewed lease shall otherwise be upon and subject to the covenants and agreements expressed and implied in this lease except

that the term of this lease plus all further terms shall expire on or before the final expiry date being 23 February 2037.

- (k) That the Lessor may at any time transfer her interest herein to any other party.
- (l) That these presents are intended to take effect as a lease under Section 67(2) of the Land Act 1948 and the provisions of the said Act and of the regulations made thereunder applicable to such a lease shall where not inconsistent with the provisions of this lease be binding in all respects upon the parties hereto in the same manner as if such provision had been fully set out in this lease.
- (m) The Lessee shall pay the Lessor's Solicitors costs of and incidental to the preparation of this lease and any variation or renewal or any Deed recording a rent review any stamp duty payable, registration fees and the Lessor's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Lessor's rights remedies and powers under this lease.
- (n) That if on the expiry or sooner determination of the lease created by these presents the Lessor determines that the land should again be leased then it shall in the first instance offer such lease to the Lessee and the Lessee shall have thirty (30) days from receipt of such notice to accept the terms and conditions for re-leasing offered by the Lessor and if the Lessee does not accept such terms and conditions within such time then the Lessor shall be free to offer the lease of the land to any third party provided the same is not on terms and conditions more favourable than those previously offered to the Lessee.
- (o) Provided that on the expiry or sooner determination of the lease and the failure of the Lessee to accept any offer of renewed lease then the Lessor may in its absolute discretion require the Lessee to remove all or any part of its improvements from the said land.

~~SIGNED by MURRAY ROBERT)
McKENZIE Manager Crown Property)
Services, Land Information New Zealand)
for and on behalf of Her Majesty the Queen)
pursuant to an authority given to him by the)
Minister of Lands under Section 4B of the)
Public Works Act 1981 in the presence)
of:)~~

SIGNED by ROBERT WILLIAM)
BUTSON as Lessee in the presence of:)

[s 9(2)(a)]

SIGNED by JAMES HERBERT)
LAPSLEY as Lessee in the presence of:)

[s 9(2)(a)]

SIGNED by PAUL RUSSELL ADAMS)
as Lessee in the presence of:)

[s 9(2)(a)]

SIGNED by NOELEN MARCIA LAPSLEY)
as Lessee in the presence of:)

[s 9(2)(a)]

*Solicitor
Invercargill*

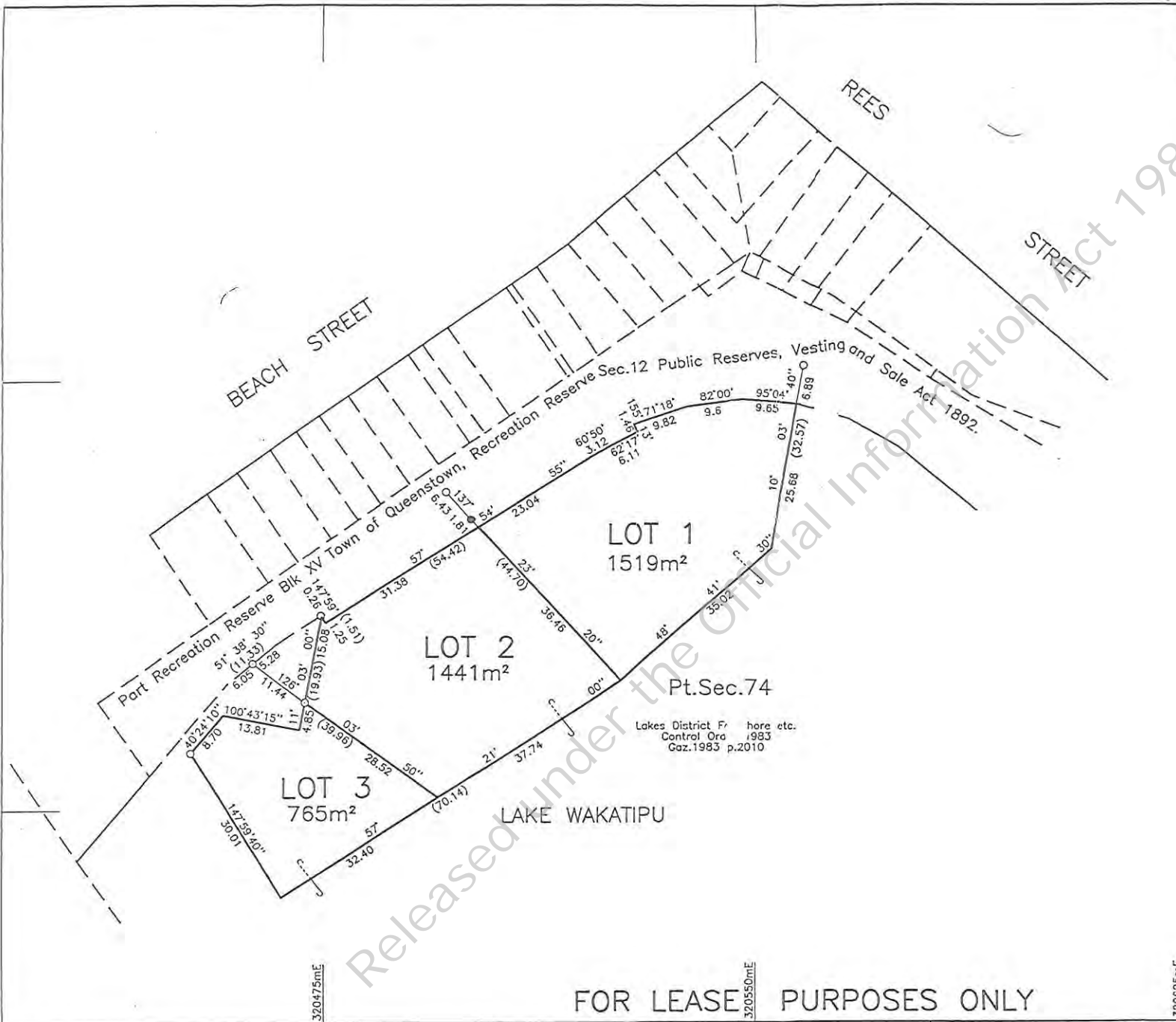
[s 9(2)(a)]

SIGNED by MURRAY ROBERT)
MACKENZIE Crown Property)
Contract Manager (acting under)
delegated authority) for and on)
behalf of the Commissioner of)
Crown Lands)

[s 9(2)(a)]

In the presence of:

[s 9(2)(a)]



Approvals
 I hereby certify that this plan was approved by the Queenstown Lakes District Council pursuant to Section 223 of the Resource Management Act 1991 on the day of 1999 and, for the purposes of Section 224(c) Resource Management Act 1991, that all of the conditions of the subdivision consent have been complied with to the satisfaction of the said Council.

.....Chief Executive Officer

710925mN

710850mN

Total Area 3724m²

Comprised in Pt. Sec. 74
 Lakes District Foreshore etc, Control Order 1983
 Gaz. 1983 p.2010

I, of Queenstown, Registered Surveyor and holder of an annual practising certificate (or who may act as a registered surveyor pursuant to section 25 of the Survey Act 1986, hereby certify that this plan has been made from surveys executed by me or under my directions, that both plan and survey are correct and have been made in accordance with the Survey Regulations 1972 or any regulations made in substitution thereof.

Dated at Queenstown this day of 19..... Signature

Field Book.....p..... Traverse Book.....p.....
 Reference Plans S.O.24936

Examined..... Correct.....

Approved for Lease Purposes Only
 /..... /..... Chief Surveyor

Deposited this day of 19.....
 for Registrar General of Land

File 7087
 Received
 Approved DNLM 97/3

FOR LEASE PURPOSES ONLY

LAND DISTRICT OTAGO
 SURVEY BLK. & DIST. XV TN OF QUEENSTOWN
 NZMS 261 Sheet F41

LOTS 1-3 BEING PT. SEC. 74

Territorial Authority QUEENSTOWN LAKES DISTRICT
 Surveyed by CLARK FORTUNE McDONALD & ASSOCS.
 Scale 1:500 Date: JULY 1999