

14274-15

**BETWEEN**

**HER MAJESTY THE QUEEN**

**and**

**QUEENSTOWN WHARVES LP**

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**DEED OF VARIATION OF LEASE**

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Released under the Official Information Act 1982

THIS DEED dated the <sup>4<sup>th</sup></sup> ~~4<sup>th</sup>~~ day of February 2014  
~~2013~~

**BETWEEN** Her Majesty the Queen acting by and through  
the Commissioner of Crown Lands (the "Lessor")

**AND** Queenstown Wharves LP being a Limited Partnership (NZ) registered  
on 21 December 2012 under No. 2572981 (the "Lessee")

#### BACKGROUND

- A. The Lessor leased the Land to Ngai Tahu Property Limited under the Lease.
- B. Ngai Tahu Property Limited assigned its interest in the Lease to the Lessee by deed dated 15 of January 2013
- C. The Lessor and the Lessee have agreed to vary the Lease as set out in this deed.

#### WITNESSES AS FOLLOWS:

#### 1 INTERPRETATION

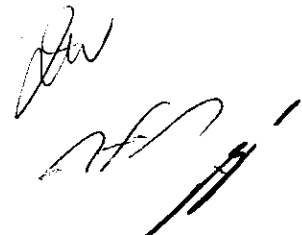
In this deed unless the context otherwise requires:

##### 1.1 Definitions:

"Lease" means the Deed of Lease under section 67(2) of the Land Act 1948 dated 19<sup>th</sup> of January 2006 in respect of the Land including the Deed of Assignment and variation of Lease dated 15 January 2013; and

"Land" means 2351 square metres more or less situated in the Otago Land District being part of the bed of Lake Wakatipu as outlined in red on the plan attached to the Lease.

"Lessee" means Queenstown Wharves LP being a Limited Partnership (NZ) registered on 21 December 2012 under No. 2572981 and includes its successors and permitted assigns;



"Lessor" means Her Majesty the Queen acting by and through the Commissioner of Crown Lands and includes her successors and assigns; and

"Operative Date" means 31 January 2013

- 1.2 **Defined Expressions:** expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background;
- 1.3 **Headings:** section, clause and other headings are for ease of reference only and do not form any part of the context or affect this deed's interpretation;
- 1.4 **Joint and Several Obligations:** where two or more persons are bound by a provision in this deed, that provision will bind those persons jointly and each of them severally;
- 1.5 **Lease Terms:** capitalised terms not otherwise defined in this deed have the meaning given to them in the Lease;
- 1.6 **Parties:** references to parties are references to parties to this deed; and
- 1.7 **Plural and Singular:** singular words include the plural and vice versa.

## 2 VARIATION

The Lease is varied as follows, with effect from the Operative Date:

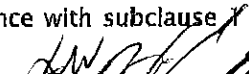
Clause 1 (c) of the Lease is deleted and replaced with the following clauses:

(c) **Rent Review.**



The annual rent shall be reviewed by the 31<sup>st</sup> of December in each three year period of this lease or any renewed term hereof ("the review dates") in the following manner:

- (i) Either party may not earlier than 3 months prior to a rent review date and not later than the next rent review date give written notice to the other party specifying the annual rent proposed as the current market rent as at the relevant rent review date.
- (ii) If the party receiving the notice ("the Recipient") gives written notice to the party giving the notice ("the Initiator") within 20 working days after service of the Initiator's notice disputing the annual rent proposed and specifying the annual rent



proposed by the Recipient as the current market rent, then the new rent shall be determined in accordance with subclause 2(d). 

(iii) If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply.

 (iv)  The annual rent agreed, determined or imposed pursuant to subclause 2(d) shall be the annual rent payable as from the relevant rent review date, or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant rent review date but subject to subclause 2(e).

(v) The market rent review at the option of either party may be recorded in a deed.

(d) **Rent Determinations**

Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within 10 working days then the new rent may be determined either:

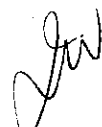

(i) By one party giving written notice to the other requiring the new rent to be determined by arbitration; or

(ii) If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:

a) Each party shall appoint a valuer and give written notice of the appointment to the other party within 20 working days of the parties agreeing to so determine the new rent.

b) If the party receiving a notice fails to appoint a valuer within the 20 working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties.

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- c) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer. If the parties cannot agree on the third expert, the appointment shall be made on the application of either party by the president or vice president for the time being of The New Zealand Institute of Valuers.
- d) The valuers appointed by the parties shall determine the current market rent of the premises but if they fail to agree then the rent shall be determined by the third expert.
- e) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third expert may prescribe and they shall have regard to any of the representations but not be bound by them.
- f) The parties shall jointly and severally indemnify the third expert for their costs. As between the parties, they will share the costs equally. A party may pay the other party's share of the costs and recover the payment on demand from the other party.
- g) If the parties agree, they may release the third expert from liability for negligence in acting as third expert in accordance with this subclause 1(d).

When the new rent has been determined the person or persons determining it shall give written notice of it to the parties. The notice shall provide as to how the costs of the determination shall be borne and it shall be binding on the parties.

(e) **Interim Market Rent**

Pending determination of the new rent, the Lessee shall from the relevant rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant rent review date, until the determination of the new rent pay an interim rent as follow:


- (i) If both parties supply a registered valuer's certificate substantiating the new rent proposed, the interim rent payable shall be halfway between the new rents proposed by the parties; or
- (ii) If only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or
- (iii) If no registered valuer's certificate is supplied, the interim rent payable shall be the rent payable immediately prior to the relevant rent review date:

but in no circumstances shall the interim rent be less than the rent payable during the period 12 months immediately prior to any review date.

The interim rent shall be payable with effect from the relevant rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant rent review date and, subject to subclause 1(f), shall not be subject to adjustment.

- (f) Upon determination of the new rent, any overpayment shall immediately be refunded to the Lessee. Any shortfall in payment shall immediately be payable by the Lessee.

### 3. CONTINUANCE

Except as expressly varied by this deed, the terms of the Lease (both express and implied) remain unchanged and continue in full force and effect after execution of this deed.

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In witness of which this deed has been executed:

Signed by  
**QUEENSTOWN WHARVES LP**  
by its authorised signatory being  
Queenstown Wharves GP Limited by its directors

[ s 9(2)(a) ]

Director

Signature

Name:

[ s 9(2)(a) ]

[ s 9(2)(a) ]

Director

Signature

Name:

[ s 9(2)(a) ]

SIGNED for and on behalf of the  
**Commissioner of Crown Lands**  
pursuant to delegated authority

[ s 9(2)(a) ]

[ s 9(2)(a) ]

In the presence of

Jan Webster  
Portfolio Manager  
Crown Property Management  
C/- Land Information New Zealand  
National Office

Witness Name:

Witness Address:

Witness Occupation:

) Diane Cardwell  
) Portfolio Manager **TECHNICAL LEADER**  
) Crown Property Management  
) Land Information New Zealand  
) National Office

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