



QUEENSTOWN LAKES DISTRICT COUNCIL
DOCUMENTATION FOR SIGNING AND SEALING

TO: Mike Theelen, Chief Executive
FROM: STEWART BULLIS
DATE: 17/11/16
SUBJECT: GUARANTEE IN FAVOUR OF QLCHT
FILE REF:

Urgent Request?

Please indicate date required by: 18/11/16

In submitting this document for execution I confirm that to the best of my knowledge, and on making proper enquiry, that this document is fit for execution by Council.

In particular:

- That the key details (terms, legal descriptions etc) have been checked and are correct
- Council's delegations have been followed (who authorised this transaction)
- Any and all consenting issues observed (financial contributions, consent conditions, etc)
- Document meets legal requirements and has received legal scrutiny if necessary
- Arrangements have been made for custody of document and records (including electronic) have been updated.

COMMENTS Council approved a new GUARANTEE FOR QLCHT AT OCTOBER MEETING. A CORRESPONDING INDEMNITY HAS BEEN EXECUTED FROM QLCHT TO QLDC.

Monetary value (if applicable) \$ 2 m.

Authority (please tick the appropriate box)

- Council / Committee Resolution (to be included in documentation, together with date)
- Statutory Delegation
- Financial Delegation

SIGNATURE

DEED OF GUARANTEE & INDEMNITY

Particulars of Guarantee

Deed dated: 17th day of November 2016

Given by:

Guarantor(s): Queenstown Lakes District Council, a body corporate under the Local Government Act 2002

Physical address: The Civic Centre, 10 Gorge Road, Queenstown

Postal address: Private Bag 50072, Queenstown 9348

Facsimile: 03 450 2223

Email: services@qldc.govt.nz

In favour of:

Beneficiary: Central Lakes Trust (Registration No. 111 5557)

Physical address: 190 Waenga Drive, Cromwell

Postal address: PO Box 138, Cromwell 9342

Facsimile: 03 443 0265

Email: info@clt.net.nz

In respect of the obligations and liabilities of:

Principal Obligor: QLCHT Shotover Country Limited (Company No. 553 8726)

Physical address: c/- Cavell Leitch, Level 3, 32 Rees Street, Queenstown 9300

Postal address: c/- Cavell Leitch, PO Box 1513, Queenstown 9348

Facsimile: 03 409 2007

Email: stephen.brent@cavell.co.nz

In consideration of the **Beneficiary** agreeing to:

[Insert brief description of what the Beneficiary provides/concedes to the Principal Obligor that is being guaranteed by the Guarantor(s)]

provide a loan of \$4,000,000 to the Principal Obligor pursuant to a Term Loan Agreement between the Principal Obligor and the Beneficiary

at the Guarantor(s) request the Guarantor(s) hereby unconditionally and irrevocably guarantees to the Beneficiary the performance of and compliance by the Principal Obligor of all its obligations to the Beneficiary details of which are more fully described below, and the Guarantor(s) will further indemnify the Beneficiary in accordance with the provisions set out in the General Terms and Conditions with effect from the date of this Guarantee.

The terms and conditions that apply to this Guarantee (other than those implied by law) are as set out in:

- these Particulars of Guarantee; and
- the General Terms and Conditions.

Description of the obligations of the Principal Obligor to the Beneficiary and the relevant documents under which the obligations arise ("the Guaranteed Obligations") and monies which may be payable in respect of them ("the Guaranteed Obligations") and of the relevant documents:
[Insert detailed description of guaranteed obligations]
Term Loan Agreement between the Beneficiary and the Principal Obligor for a loan of \$4,000,000 (as attached) from the Beneficiary to the Principal Obligor

Limitations of Guarantee:
[Insert details if there is a limit either by amount or proportion of the total guaranteed obligations]
\$2,000,000

The following Guarantor(s) enter into this guarantee as limited liability trustees:
N/A

INDEPENDENT ADVICE

The Guarantor(s) have been advised to obtain independent legal advice prior to entering into this Guarantee which is a formal legally binding document.

EXECUTED as a deed

SIGNED by the Guarantor *
The Common Seal of Queenstown Lakes District was affixed
in the presence of:

H White
 Witness Signature


Hannah White
 Witness Name

GA
 Witness Occupation

Queenstown
 Witness Address


 Signature of Guarantor

JAMES BOULTON
 Print Full Name
 (for a company specify position:
 Director/Attorney/Authorised Signatory)


 Signature of Guarantor

Michael Renier Andrew Theeler
 Print Full Name
 (for a company specify position:
 Director/Attorney/Authorised Signatory)

~~SIGNED by the Guarantor*~~

~~in the presence of:~~

~~Signature of Guarantor~~

~~Witness Signature~~

~~Print Full Name~~

~~(for a company specify position:)~~

~~Witness Name~~

~~Director/Attorney/Authorised Signatory)~~

~~Witness Occupation~~

~~Signature of Guarantor~~

~~Witness Address~~

~~Print Full Name~~

~~(for a company specify position:)~~

~~Director/Attorney/Authorised Signatory)~~

* If appropriate, add:

"by its director(s)" OR "by its appointed attorney"

Note: **Signing by a company** – to ensure that this document binds the company as a deed, it must be signed in accordance with section 180 of the Companies Act 1993.

If two directors sign, no witnessing is necessary.

If only one director or a director and authorised signatory(ies) or attorney(ies) sign, signatures must be witnessed.

Note: If this Guarantee is given in conjunction with a Consumer Credit Contract as defined by the Credit Contracts and Consumer Finance Act 2003 the initial disclosure statement required to be given to you by the Act is made up of the information in these Particulars of Guarantee, the General Terms and Conditions and any Relevant Document.

General Terms and Conditions

1. Guarantee and indemnity

1.1 Guarantee

Each Guarantor unconditionally and irrevocably guarantees to the Beneficiary the due performance of and compliance by the Principal Obligor with the Guaranteed Obligations.

1.2 Payment

Each Guarantor unconditionally and irrevocably undertakes that if, for any reason, the Principal Obligor does not pay when due any Guaranteed Indebtedness, each Guarantor will pay the Guaranteed Indebtedness immediately on demand. The Guaranteed Indebtedness means all indebtedness of the Principal Obligor to the Beneficiary arising out of the Guaranteed Obligations.

1.3 Obligations joint and several

Unless limited by the terms of the Guarantee, the respective obligations of each Guarantor pursuant to subclause 1.1 or 1.2 are joint and several unlimited obligations.

1.4 Indemnity

Notwithstanding anything contained in this Guarantee or any other document, should the Guaranteed Obligations or any part of them not be recoverable by the Beneficiary from any Guarantor, or any of the Guaranteed Obligations not be enforceable against any Guarantor:

- (1) whether by reason of:
 - (a) any legal or other limitation, disability or incapacity of or affecting any Principal Obligor, any Guarantor or the Beneficiary; or
 - (b) any Principal Obligor or any Guarantor ceasing to be legally liable to pay the Guaranteed Obligations or any part thereof or to perform any of the Guaranteed Obligations by reason of any law relating to insolvency, liquidation or otherwise; or
 - (c) any law, judgment or order of any court postponing or reducing or otherwise affecting payment of the Guaranteed Obligations or any part thereof or performance of any of the Guaranteed Obligations; or
 - (d) any other fact or circumstance whatsoever; or
- (2) whether or not any transaction relating to the Guaranteed Obligations has been declared void from the beginning or has been subsequently avoided; or
- (3) whether or not any matter or fact having or causing a material adverse effect has been or ought to have been within the knowledge of the Beneficiary,

then each Guarantor, as a separate and additional liability under this Guarantee, indemnifies the Beneficiary in respect of the Guaranteed Obligations in respect of any loss suffered by the Beneficiary directly or indirectly as a result of any failure by any Principal Obligor to perform any of the Guaranteed Obligations, and each Guarantor as a principal debtor shall pay to the Beneficiary on demand, and in the manner specified in such demand, a sum equal to the amount of the Guaranteed Obligations or such part thereof and the terms of these General Terms and Conditions shall (with all necessary modifications) apply as far as possible to this indemnity.

2. Nature of guarantee obligations

2.1 Liability as principal debtor

As between each Guarantor and the Beneficiary (but without affecting the obligations of the Principal Obligor) each Guarantor is liable under this Guarantee as a sole and principal debtor and not merely as a surety.

2.2 No discharge

No Guarantor is to be discharged, nor are any obligations of the Guarantor(s) to be affected, by anything which, but for this clause, would or might have discharged a Guarantor or affected the Guarantor's obligations, including:

- (1) any time, indulgence, waiver or consent whenever given to the Principal Obligor or another person; or
- (2) an amendment to the Guaranteed Obligations or to another security interest, guarantee, indemnity or other agreement (whether or not that amendment might increase the liability of a Guarantor(s) under these General Terms and Conditions or otherwise); or
- (3) the making of, or failure to make, a demand on the Principal Obligor or another person for payment; or
- (4) the failure to obtain, or the failure of a person to execute or otherwise be bound by, the Guaranteed Obligations or another security interest, guarantee, indemnity or other agreement; or
- (5) the enforcement of, or failure to enforce, the Guaranteed Obligations or another security interest, guarantee, indemnity or other agreement; or
- (6) the release of a party from the Guaranteed Obligations or a security interest, guarantee, indemnity or other agreement; or
- (7) the dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation, death, bankruptcy or insolvency of any party or another person (or the commencement of steps to effect the same); or
- (8) the illegality, invalidity, unenforceability of, or defect in, a provision of the Guaranteed Obligations or a party's obligations under any of them for any reason whatsoever, and whether or not known to the Beneficiary; or
- (9) any other matter or thing whatsoever.

The Beneficiary shall be under no liability to any Guarantor in respect of any of these matters, even if that Guarantor's rights of subrogation or otherwise may be prejudiced as a result.

2.3 Continuing guarantee

A Guarantor's obligations under this Guarantee:

- (1) are by way of continuing security, notwithstanding intermediate payments, settlement of accounts or payments or any other matter or thing whatsoever;
- (2) are in addition to, are not to be merged in and are without prejudice to, any security interest, guarantee, indemnity or other agreement, whenever in existence, in favour of any person, whether from a Guarantor or otherwise; and
- (3) are to remain in full force and effect until the execution by the Beneficiary of an unconditional discharge of the obligations of a Guarantor under this Guarantee.

2.4 Unconditional discharge of guarantee

If, in the opinion of the Beneficiary:

- (1) the Principal Obligor has paid and performed and complied with all the Guaranteed Obligations; and
- (2) the Beneficiary is under no obligation to make available any further credit, advance or facility under any relevant document in respect of any Guaranteed Obligations; and
- (3) each Guarantor has discharged all its obligations under these General Terms and Conditions; and
- (4) there is no reasonable possibility that all or any portion of the Guaranteed Indebtedness received or recovered by the Beneficiary from the Guarantor(s) or any other person will or may have to be refunded or repaid under any applicable law (including, without limitation, any law relating to preferences or insolvency),

the Beneficiary will, at the request and cost of the Guarantor(s), execute a discharge of the obligations of the Guarantor(s) under this Guarantee.

Any discharge or any composition or arrangement which a Guarantor may effect with the Beneficiary will be deemed to be made subject to the condition that it will be void if a payment or security interest which the Beneficiary may previously have received or may later receive from a Guarantor or another person in respect of Guaranteed Obligations is set aside under applicable law or proves to have been, for whatever reason, invalid. In that case:

- (5) that payment or security interest will be deemed not to have discharged or affected the obligation of that Guarantor(s) in respect of which that payment or security interest was made, given or received; and
- (6) the Beneficiary and each Guarantor will be deemed to be restored to the position in which each would have been, and will be entitled to exercise all the rights which each would have had, if that payment or security interest had not been made or given.

3. Notices

The following applies to all notices between the parties to this Guarantee, whether authorised by this Guarantee or by the general law:

- (1) All notices must be served in writing.
- (2) All notices may be served by any means prescribed by law or by one of the following means:
 - (a) Where the party is an individual, then in accordance with the provisions of section 354 of the Property Law Act 2007; or
 - (b) Where the party is an incorporated company, then in accordance with the provisions of section 387 of the Companies Act 1993.
- (3) If a party changes its physical address and contact details from those specified in the Particulars of Guarantee that party shall forthwith notify the other parties of such change and the new physical address contact details.

4. Expenses**4.1 Enforcement expenses**

Each Guarantor will pay on demand all costs and expenses (including all taxes and legal expenses on a solicitor/client basis) sustained or incurred by the Beneficiary as a result of the exercise of, or in protecting or enforcing or otherwise in connection with, its rights under this Guarantee.

5. Time of the essence

Time shall be deemed to be of the essence in relation to any matter or thing required to be done by the Guarantor(s) including but without limitation the payment of any money or the performance of any obligation under this Guarantee.

6. Assignment**6.1 Benefit of this Guarantee**

This Guarantee is binding upon all parties and their respective successors and, in the case of the Beneficiary, its assignees or transferees.

6.2 No assignment or novation by Guarantor(s)

The Guarantor(s) may not assign any rights or novate any obligations or otherwise deal with this Guarantee without the prior written consent of both the Beneficiary and the Principal Obligor and then only on such terms and conditions as either the Beneficiary or Principal Obligor may impose as a condition of its consent.

7. Trustee Guarantors**7.1 If any person enters into this Guarantee as trustee of a trust, then that person warrants that:**

- (1) that person has power to enter into this Guarantee and their obligations under it under the terms of the trust;
- (2) if the trustee is a Guarantor this guarantee is being given for the benefit of and in the interests of the trust;
- (3) all of the persons who are trustees of the trust have approved entry into this Guarantee;
- (4) that person has properly signed this Guarantee in accordance with the terms of the trust;
- (5) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this Guarantee.

7.2 If that person has no right to or interest in any of the assets of the trust except in that person's capacity as trustee of the trust or if otherwise that person is described as a limited liability trustee, that person's liability under this deed shall not be personal and unlimited but shall be limited to an amount equal to the value of the assets of the trust that are available to meet that person's liability unless the right of that person to be indemnified from the assets of the trust has been lost and in which case that person's liability under this guarantee shall be personal and unlimited.

[Drafting Note: Some trustees (e.g. relatives) may have a right or interest in the trust but nevertheless the beneficiary may agree they can be limited liability trustees]

Dated 17th November 2016

Between
QLDC

Guarantor

and
GENERAL LAND TRUST

Beneficiary

and
QLCHT Shetland County Ltd (# 553 8726)

Principal Obligor

**DEED OF
GUARANTEE
& INDEMNITY**

Guarantor's Solicitor:

Beneficiary's Solicitor: