

DEED OF GUARANTEE & INDEMNITY

PARTICULARS OF GUARANTEE

DEED dated:

GIVEN by:

GUARANTOR(S): QLCHT Property Portfolio Limited (Company No. 3044794) and Queenstown Lakes Community Housing Trust (Registration No. 1966669)

(If a Guarantor is signing in a limited liability trustee capacity add after their name: (limited liability trustee))

Physical address: c/- RVG Law, Level 3, 32 Rees Street, Queenstown, 9300

Postal address: c/- RVG Law, PO Box 1513, Queenstown 9348

Facsimile: 03 409 2007

Email: steve@rvg.nz

IN FAVOUR of:

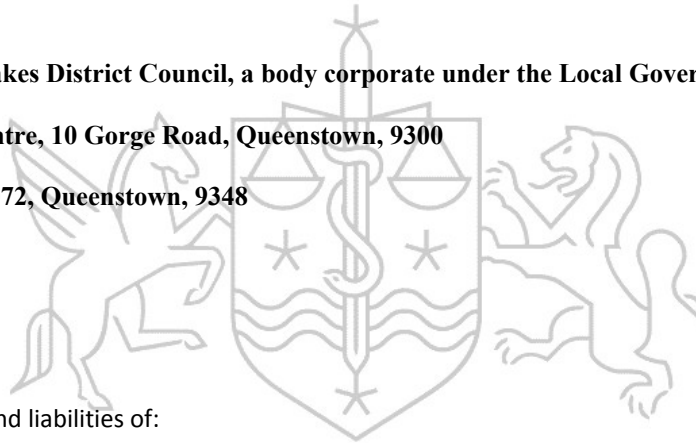
BENEFICIARY: Queenstown Lakes District Council, a body corporate under the Local Government Act 2002

Physical address: The Civic Centre, 10 Gorge Road, Queenstown, 9300

Postal address: Private Bag 50072, Queenstown, 9348

Facsimile: 03 450 2223

Email: services@qldc.govt.nz



IN RESPECT of the obligations and liabilities of:

PRINCIPAL OBLIGOR: QLCHT Property Portfolio Limited

Physical address: c/- RVG Law, Level 3, 32 Rees Street, Queenstown, 9300

Postal address: c/- RVG Law, PO Box 1513, Queenstown 9348

Facsimile: 03 409 2007

Email: steve@rvg.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)]

guarantee the obligations of the Principal Obligor to Westpac New Zealand Limited pursuant to a Wholesale Development Loan Agreement between the Principal Obligor and Westpac New Zealand Limited.

at the Guarantor(s) request the Guarantor(s) hereby unconditionally and irrevocably guarantee(s) 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 (**guaranteed obligations**), 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.

GUARANTEED OBLIGATIONS: Description of the obligations of the Principal Obligor to the Beneficiary and the relevant documents under which the obligations arise and monies which may be payable in respect of them (“the guaranteed indebtedness”):

[Insert detailed description of guaranteed obligations and also guaranteed indebtedness]

Indemnification by the Principal Obligor of the Beneficiary against any and all liabilities that the Beneficiary may sustain or incur directly or indirectly arising out of the Beneficiary discharging its obligations as guarantor of the obligations of the Principal Obligor to Westpac New Zealand Limited pursuant to a Deed of Guarantee and Indemnity.

LIMITATIONS OF GUARANTEE:

[Insert details if there is a limit either by amount or proportion of the total guaranteed obligations/guaranteed indebtedness]

None



The following Guarantor(s) enter into this guarantee as limited liability trustees (Refer clause 7 of general terms and conditions):

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* **QLCHT Property Portfolio Limited**
in the presence of:

Witness signature

Witness name

Witness occupation

Witness address

Signature of Guarantor

Print full name
~~Director / Trustee / Authorised Signatory / Attorney*~~
Delete the options that do not apply
If no option is deleted, the signatory is signing in their personal capacity

Signature of Guarantor

Print full name
~~Director / Trustee / Authorised Signatory / Attorney*~~
Delete the options that do not apply
If no option is deleted, the signatory is signing in their personal capacity

SIGNED by the Guarantor* **Queenstown Lakes Community Housing Trust**
in the presence of:

Witness signature

Witness name

Witness occupation

Witness address

Signature of Guarantor

Print full name
~~Director / Trustee / Authorised Signatory / Attorney*~~
Delete the options that do not apply
If no option is deleted, the signatory is signing in their personal capacity

Signature of Guarantor

Print full name
~~Director / Trustee / Authorised Signatory / Attorney*~~
Delete the options that do not apply
If no option is deleted, the signatory is signing in their personal capacity

* If this deed is signed under:

- (i) a Power of Attorney – please attach a **Certificate of non-revocation** (ADLS form code: 4098WFP); or
- (ii) an Enduring Power of Attorney – please attach a **Certificate of non-revocation and non-suspension of the enduring power of attorney** (ADLS form code: 4997WFP).

Also insert the following wording for the Attorney’s signature above:

Signed by [full name of the donor] by his or her Attorney [attorney’s signature].

Note: Signing by a company – Companies must sign this document in accordance with section 180 of the Companies Act 1993, to ensure it is binding as a deed. In general, this means:

- (a) if there are two or more directors of the company, two directors must sign and no witnessing is necessary;
- (b) if there is only one director of the company, that director signs and the signature must be witnessed.

Other methods of signing may be permitted by the company’s constitution or if an attorney has been appointed.

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

1.0 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 as a separate and additional obligation unconditionally and irrevocably undertakes that if, for any reason, the Principal Obligor does not pay when due any guaranteed indebtedness, each Guarantor will pay such amount to the Beneficiary, as a debt due upon demand.

1.3 Obligations joint and several

Unless limited by the terms of the guarantee, the respective obligations of each Guarantor under this deed are joint and several unlimited obligations.

1.4 Indemnity

Notwithstanding anything contained in this guarantee or any other document, should the guaranteed indebtedness or any part of it 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 indebtedness 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 indebtedness 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 for 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 indebtedness 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.

2.0 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/guaranteed indebtedness 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 paid all of the guaranteed indebtedness; 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.

2.5 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:

- (1) 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
- (2) 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.

3.0 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.

4.0 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.

5.0 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.

6.0 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.

7.0 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; and
- (2) if the trustee is a Guarantor this guarantee is being given for the benefit of and in the interests of the trust; and
- (3) all of the persons who are trustees of the trust have approved entry into this guarantee; and
- (4) that person has properly signed this guarantee in accordance with the terms of the trust; and
- (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 is described in the particulars of guarantee 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.

8.0 Counterparts

This deed may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same deed. A party may enter into this deed by signing a counterpart copy and sending it to another party, including by facsimile or email.

Dated _____

Between
QLCHT Property Portfolio Limited (Company No. 3044794) and the Queenstown Lakes Community Housing Trust (Registration No. 1966669)

Guarantor

and
Queenstown Lakes District Council, a body corporate under the Local Government Act 2002

Beneficiary

and
QLCHT Property Portfolio Limited (Company No. 3044794)

Principal Obligor



DEED OF GUARANTEE & INDEMNITY

Guarantor's Solicitor:

Steve Brent, RVG Law
steve@rvg.nz

Beneficiary's Solicitor:

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