

## DEED OF LOAN - FLAT

(This Deed of Loan in conjunction with the Disclosure Statement comprise the Initial Disclosure required by Section 17 of the Credit Contracts and Consumer Finance Act 2003)

1. **DATE**
2. **LENDER** **WAIRARAPA BUILDING SOCIETY** duly incorporated under the Building Societies Act 1965 and having its registered office at 75 Queen Street, Masterton and its successors and assigns (called "the Lender").
3. **BORROWER**  
(called "the Borrower")
4. **GUARANTOR**  
Not Applicable  
(called "the Guarantor")
5. **IN CONSIDERATION** of the advance by the Lender to the Borrower (at the Guarantor's request) of the Principal Sum or loan/credit provided by the Lender, the Borrower covenants with the Lender and the Guarantor confirms that the Guarantee on the part of the Guarantor includes the moneys payable under this Deed of Loan (called "this Deed of Loan"). The Borrower and Guarantor (where applicable) UNDERTAKE to repay the Principal Sum and interest thereon at the times and in the manner provided by this Deed of Loan and on the terms and conditions set forth in this Deed of Loan and in the Security Agreement.
6. **AMOUNT OF THE LOAN/CREDIT** **Up to \$**  
the receipt of which sum is hereby acknowledged.
7. **DISBURSEMENT OF LOAN**  
Establishment Fee  
Net Advance  
**TOTAL – Up to** **\$**
8. **PURPOSE** The net advance available is to be used for
9. **LOAN AVAILABLE ON**
10. **ORDINARY INTEREST RATE** % per annum
11. **PENALTY INTEREST RATE** % per annum
12. **INTEREST REST PERIOD** Any period of one month ending on the last day of the month.
13. **TERM OF LOAN** The loan is repayable upon demand, but pending demand the term of the loan is for a period of years.
14. **PAYMENTS REQUIRED:**
  - 14.1 Interest only payments are required for the term of the loan.

Initials\_\_\_\_\_

14.2 The Mortgagee will inform the Mortgagor by monthly statement, on the first day of each month, of the amount of interest payable. Payment is required by the 7<sup>th</sup> day of the month following the month in which the interest was charged.

14.3 The principal sum and any interest outstanding shall be paid at the end of the contractual term.

14.4 Payments are to be made at the offices of the Mortgagee at 75 Queen Street, Masterton, or otherwise as directed by the Mortgagee in writing.

**15. METHOD OF INSTALMENT PAYMENT** An automatic payment authority/Direct Credit/  
An automatic transfer from WBS Account No  
unless otherwise requested by the Mortgagee in terms  
of this Contract. An automatic payment authority

**16. LOAN ACCOUNT NAME & REFERENCE** Other Loan

**17. SECURITY**

17.1 To secure to the Lender repayment of all monies owed by the Borrower and the performance of all other obligations of the Borrower to the Lender under this deed and under any other agreements with the Lender, the Borrower agrees to grant a mortgage to the Lender over any property, real and personal, of the Borrower.

17.2 The Borrower, for the consideration expressed in this Deed of Loan, hereby irrevocably appoints the Lender, every Attorney of the Lender and the General Manager of the Lender severally to be Attorney of the Borrower and to do and to execute anything which the Borrower covenants or agrees to do or execute under the Deed of Loan and generally to do all such things as may be at the sole discretion of the Lender or the Attorney appointed under this clause necessary or desirable in order to protect fully the interests of the Lender under the Deed of Loan.

17.3 The powers conveyed in 17.2 above include, but are not limited to, the ability to execute and register a mortgage and/or a caveat over the property at **[insert property address]**, containing square metres more or less being and being all Certificate of Title , owned by Borrower.

17.4 The costs of the Lender acting in accordance with clauses 17.2 and 17.3 will be to the Borrowers account.

**18. POWER TO ALTER INTEREST RATES**

18.1 The Lender may at any time and from time to time upon giving not less than one month's written notice of its intention to do so, alter the Ordinary Interest Rate and/or the Penalty Interest Rate and may as a consequence of any alteration in the Ordinary Interest Rate alter the Instalment Amount.

18.2 If the alteration is an increase, the alteration shall not take the Ordinary Interest Rate, or the Penalty Interest Rate above the Ordinary Interest Rate or the Penalty Interest Rate (as the case requires) commonly charged by the Lender at the time of the alteration in respect of new loans which the Lender considers to be of the like kind as the loan or loans secured by the Debenture and Instrument by Way of Security. The decision of the Lender's Board of Directors as to what are the rates so charged shall be final and conclusive.

- 18.3 As from the date when any alteration takes effect, references to and covenants relating to Ordinary Interest rate, Penalty Interest Rate, Instalments and the Instalment Amount shall be construed and have effect as references to and covenants relating to the Ordinary Interest Rate, Penalty Interest Rate, Instalments and Instalment Amount as altered.
- 18.4 The power to alter interest rates under clause 20.1 will not apply during any period in respect of which the lender has agreed in writing that the Ordinary Interest Rate will be fixed for that period.

#### **19. SPECIAL CONDITIONS**

- 19.1 Subject to the Clauses in Section 19 of this Loan Deed, the funds made available under this Loan Deed are unsecured.
- 19.2 In consideration of the loan made by the Lender to the Borrower the Borrower agrees to mortgage its property legally described as [insert legal description and title reference] and/or any other land in which the Borrower has an interest that can be mortgaged (the "Property") in favour of the Lender to secure repayment of all money owed by the Borrower to the Lender (the "Mortgage"). The Borrower agrees to sign all documents and do all things necessary for the Lender to register the Mortgage over the Property. The Mortgage will be in a commonly used all obligations form chosen by the Lender's solicitors.
- 19.3 The Lender may caveat all or any of the Property to protect the Lender's interests under this Loan Deed.
- 19.4 The Borrower, for the consideration expressed in this Loan Deed, hereby irrevocably appoints the Lender, every Attorney of the Lender and the General Manager of the Lender severally to be Attorney of the Borrower and to do and to execute anything which the Borrower covenants or agrees to do or execute under this Loan Deed, including without limitation to sign a client authority and instruction form to enable the registration of the Mortgage and generally to do all such things as may be at the sole discretion of the Lender or the Attorney appointed under this clause necessary or desirable in order to protect fully the interests of the Lender under this Loan Deed.
- 19.5 The costs of the Lender acting in accordance with this clause 19 will be to the Borrowers account.

#### **20. PAYMENT OF PRINCIPAL SUM AND INTEREST**

- 20.1 The Borrower will pay the Principal Sum to the Lender in the manner hereinbefore set out.
- 20.2 Where this Deed of Loan provides for payments on account of principal and interest then the payments received by the Lender during an interest period shall be applied on the interest date upon which such interest period expires first in or towards interest payable and secondly in reduction of the Principal Sum.
- 20.3 If the Borrower fails to make any payment required by any of the terms of this Deed of Loan, then the Borrower must pay default interest on any such payment that is not paid when due. For this purpose Default interest is charged at the rate of interest shown as the "**PENALTY INTEREST RATE**" on page 1 of this Deed, is charged at that rate on the amount that has not been paid, calculated on a daily basis from the time that the payment should have been made until the day that it is actually paid by the Borrower, and is payable on demand.

- 20.4 All amounts payable by the Borrower shall be paid in such manner as the Lender may from time to time direct.
- 20.5 If the Lender obtains judgement against the Borrower for any sum payable pursuant to this Deed of Loan, the Borrower shall pay to the Lender interest on the sum for which judgement is obtained at the penalty interest rate from the date of judgment until the date of payment of such sum, calculated on a daily basis as set out in clause 22.3.

## **21. RE-ADVANCE OF MONIES**

Subject to the sole discretion of the Lender, the Borrower may apply to have re-advanced monies, which as a result of principal repayments in terms of this loan agreement, have reduced the amount owing by the Borrower to less than the AMOUNT OF THE LOAN/CREDIT on page one of this Deed of Loan, **provided** that the total amount outstanding following any re-draw will not exceed the AMOUNT OF THE LOAN/CREDIT on page one of this Deed of Loan. Any such re-advance by the Lender will be subject to the terms and conditions of this Deed of Loan and any other conditions imposed at the time a re-advance is approved.

## **22. GOODS & SERVICES TAX**

- 22.1 The Borrower undertakes that the Borrower is not registered for GST and that the property referred to in clause 19.3 above is not subject to GST upon its sale.
- 22.2 The Borrower shall forthwith advise the Lender in writing should the Borrower become liable to be or become registered with the Inland Revenue Department for Goods & Services Tax pursuant to the Goods & Services Act 1985 and in that event use the land for the purpose of that registered taxable activity and shall provide the Lender with the Borrower's GST registration number.

## **23. FEES**

- 23.1 The Lender shall be entitled to charge the fees that are set out in the Disclosure Statement, including in respect of the application for a loan; release fees, administration fees, and fixed interest rate break fees.
- 23.2 The Lender may vary or supplement the fees referred to in clause 25.1 from time to time in its discretion, and any fees which are not expressed to be payable to the Lender at a definite time are payable to the Lender on demand by it.
- 23.3 The decision of the Lender's Board of Directors as to what are the amounts and fees to be so charged shall be final and conclusive.

## **24. FULL OR PART PREPAYMENT**

If the loan or any part thereof is subject to a fixed rate of interest and is repaid prior to due date either in part or in full, then the Lender reserves the right to charge an early repayment fee. Such a fee is calculated as follows, either:

- (a) the cost to WBS as determined by its interest rate swap counterparty;

OR (where there is **no** interest rate swap counterparty)

- (b) the amount prepaid multiplied by the difference between the 90 day bank bill rate on the date of prepayment and the rate applying to your loan on the same date, divided by 100 and then multiplied by the number of days the loan had to go before the fixed rate applying to it expired.

Should either of the above result in a charge of \$200 or less, no charge will be made.

The above formula is **not** the formula prescribed in the Credit Contracts and Consumer Finance Regulations 2004 or the Credit Contracts and Consumer Finance Amendment Regulations 2004.

## **25. LIEN**

The Lender shall have a first and paramount lien upon all moneys in respect of shares, deposits or other moneys standing to the credit of the Borrower. In respect of any sum due and owing under this Deed of Loan, the Lender may at any time set off, appropriate or use any such share moneys, deposits and other moneys for the credit or in reduction of any amounts owing under this Deed of Loan and thereafter no interest shall be payable by the Lender upon moneys so appropriated.

## **26. ACKNOWLEDGEMENTS**

26.1 The Borrower and Guarantor acknowledge:

- (a) That unless this loan offer is accepted within twenty one (21) days of the date hereof and the funds uplifted within thirty (30) days of the date from which the loan is available, this loan offer will lapse.
- (b) That this Deed of Loan is conditional upon the satisfaction of the conditions (if any) stipulated by the Lender and communicated to the Borrower or the Borrower's Solicitor. The decision of the Lender's Board of Directors as to what conditions have still to be satisfied shall be final and conclusive.
- (c) That the information supplied to the Lender is accurate and may be relied upon and acknowledge that the Lender may cancel this Deed of Loan at any time prior to settlement in the event of the discovery of any errors or omissions which in the opinion of the Lender materially affects its decision to agree to lend.
- (d) The moneys secured by any security the Lender may obtain pursuant to clause 19.3 will include the moneys expressed in this Deed of Loan, together with all moneys which the Lender is liable to pay or advance to or for the Borrower or which the Lender has already lent, paid or advanced to or for the Borrower or moneys due or owing or unpaid to the Lender by the Borrower or the Guarantor on any account and howsoever arising and including contingent liabilities or in respect of any Guarantee or indemnity given to the Lender for the Borrower or at the Borrower's request and whether or not as principal debtor or surety.
- (e) That this Deed of Loan contains all the terms and conditions relevant to the moneys payable under this Deed of Loan.

- (f) That they have received a copy of this Deed of Loan on or before the same date as this Deed of Loan has been executed, and before signing by them.
- (g) That they have received, understood and accepted the Disclosure Statement relating to this loan and provided in accordance with the Credit Contracts and Consumer Finance Act 2003, also before signing by them.

**27. EVENTS OF DEFAULT**

- 27.1 Without limiting any other rights of the Lender under this Loan Deed (and in particular the right of the Lender to make demand for repayment at any time) if any of the following events occur:
- (a) The Borrower fails to pay any amount outstanding under this Loan Deed when due;
  - (b) If there is any breach of or default by the Borrower in the due performance or observance of any obligation contained or implied in this Loan Deed or any security and, if capable of remedy, such failure is not remedied within 14 days after notice of such failure is given by the Lender to the Borrower;
  - (c) If the Borrower substantially changes the nature of its business (if applicable) from that carried on as at the date of this Loan Deed, or a change of control in the Borrower occurs without the Lender's prior written consent;
  - (d) If a judgment of any Court against the Borrower shall remain unsatisfied for more than seven days;
  - (e) Any legal action is taken in relation to any asset of the Borrower (other than action which the Lender is satisfied is without foundation or is immaterial) or any security over any of the Borrower's assets becomes enforceable;
  - (f) Any action is taken for or with a view to the bankruptcy or liquidation of the Borrower or the appointment of a statutory manager, voluntary administrator, liquidator or receiver (or similar) to the Borrower or the Borrower becomes insolvent or unable to pay its debts, or takes any step with a view to a rescheduling any of its indebtedness (or of any part which it will or might otherwise be unable to pay when due), or makes a general assignment or composition with or for the benefit of its creditors;
  - (g) If the Borrower is a natural person, if the Borrower is declared or becomes bankrupt or subject to the no asset procedure, or changes its name without the prior written consent of the lender, or ceases to be of full legal capacity for any reason, or becomes subject to an order under the Protection of Personal and Property Rights Act 1988, or dies;
  - (h) If, in the opinion of the Lender, an unsatisfactory feature develops in the Borrower's affairs or if the Borrower does not continue to conduct its affairs to the Lender's satisfaction;
  - (i) If there is any material adverse change in the financial condition of the Borrower which, in the opinion of the Lender, could result in the Borrower defaulting under this Loan Deed or not being able to meet its obligations upon demand;

- (j) If the Borrower, being a company, makes any distribution at a time when any monies under this Loan Deed are overdue to the Lender;
  - (k) If the Borrower, being a company, ceases to satisfy the solvency test set out in section 4 Companies Act 1993 (whether or not the Companies Act 1993 then applies to the Borrower);
  - (l) If the Borrower, being a company, without the prior written consent of the Lender enters into a "major transaction" (as defined in section 129 Companies Act 1993, whether or not that Act applies to the company at that time);
  - (m) If an order is lawfully made requiring the Borrower being a company to pay any debts of another company;
  - (n) If the Borrower uses any monies advanced under this Loan Deed for a purpose that has not been agreed with the Lender;
  - (o) If the Borrower has made a statement or provided information to the Lender which is materially untrue or incorrect;
  - (p) If this Loan Deed or any security is invalid or unenforceable;
  - (q) If the Borrower assigns or attempts to assign any of the Borrower's rights or obligations under this Loan Deed;
  - (r) If the Lender becomes entitled to enforce any security;
  - (s) Without the prior written consent of the Lender, the Borrower creates or permits to subsist any security over the whole or any part of its assets;
  - (t) Any of the above events of default occurs in relation to any Guarantor, or if any Guarantor gives notice terminating or reducing the Guarantor's liability to the lender; then (subject to compliance with any legal requirements relating to notices required to be given including under the Property Law Act 2007), the Lender may terminate this Loan Deed immediately by notice in writing to the Borrower, and declare all amounts payable under this Loan Deed to be immediately due and payable, and the Lender may exercise its rights and remedies under any security granted to it.
- 27.2 This clause 27 does not affect any other legal or equitable right of the Lender. Termination of this Loan Deed shall be without prejudice to any rights, liabilities and remedies arising or accrued prior to or upon termination.

## **28. TRANSMISSION AND AGREEMENT BY FACSIMILE**

The parties acknowledge that execution of a facsimile copy of this agreement and transmission thereof by facsimile each to the other or their respective agents or solicitors shall be sufficient to constitute offer and acceptance and to satisfy the requirements of Section 2, Deed of Loans Enforcement Act 1956.

## **29. DISBURSEMENT**

We authorise and direct you to pay the net advance to our Solicitors  
 Or  
 as instructed by the Borrower.

**THIS DEED OF LOAN WILL LAPSE IF NOT ACCEPTED WITHIN 21 DAYS OF THE DATE HEREOF**

**DATED** the \_\_\_\_\_ day of \_\_\_\_\_ 201 \_\_\_\_\_

Signed by **WAIRARAPA BUILDING SOCIETY**  
by affixing its common Seal in the presence of:

\_\_\_\_\_  
(Authorised officer)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Authorised officer)

\_\_\_\_\_  
Signature

**SIGNED** by the Borrower

and

in the presence of:

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Town

**Name of Company**

*(If only one Director signs then that Director's signature must be witnessed)*

\_\_\_\_\_  
Director's Name

\_\_\_\_\_  
Director's Signature

\_\_\_\_\_  
Director's Name  
in the presence of:

\_\_\_\_\_  
Director's Signature

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Town