

APPENDIX 6 – Relocatable buildings bond template

THIS DEED is dated the day of 20xx

BETWEEN [*name of land owner*] (“the Owner”)

AND [*choose relevant Council*] SOUTH WAIRARAPA DISTRICT COUNCIL | CARTERTON DISTRICT COUNCIL | MASTERTON DISTRICT COUNCIL (“the Council”)

BACKGROUND

- A. The Owner(s) is/are the registered proprietor of land onto which it is intended to place a Relocated Building.
- B. Rule [*choose relevant Rule from applicable Zone*] GRUZ-R3(1) | RLZ-R3(1) | MUZ-R3(1) | TCZ-R3(1) | NCZ-R3(1) | GIZ-R3(1) | GRZ-R3(1) | SETZ-R3 | OSZ-R3(1) | SARZ-R3 | MPZ-R3(1) | FUZ-R3(1) of the Wairarapa Combined District Plan classifies Relocatable Buildings as a Permitted Activity provided they comply with the Performance Standards specified in the applicable rule.
- C. The Performance Standards require that the Owner provide a Relocatable Buildings Bond in favour of the Council to secure the performance of the Reinstatement Works required to the exterior of the Relocatable Building in accordance with the Building Pre-Inspection Report.
- D. The Owner and the Council have agreed that the performance by the Owner of the Owner’s obligations under this Relocatable Buildings Bond is to be secured by the provision of a Cash Deposit on the terms and conditions set out herein.

NOW THIS DEED WITNESSES:

1. INTERPRETATION

1.1 Defined Terms

In this Deed unless the context otherwise requires:

“Act” means the Resource Management Act 1991 as amended from time to time, and includes any legislation enacted in substitution for that legislation;

“Bond” or “Relocatable Buildings Bond” means the Bond created by this Deed;

“Building Pre-Inspection Report” means a report prepared by an appropriately qualified person in accordance with the Relocatable Buildings rule and performance standard identifying the Reinstatement Works;

“Cash Deposit” means any sum or sums of money deposited in cleared funds with the Council from time to time by the Owner, any financial institution at the request of the Owner or other party at the request of the Owner, which have a value totalling the Quantum;

“Completion of the Reinstatement Works” means the date on which the Council confirms in writing to the Owner that the Reinstatement Works have been completed;

“Commencement Date” means the date on which the Relocatable Building is placed on the site, whether on temporary supports or otherwise;

“Council” means the [*choose relevant Council*] South Wairarapa District Council | Carterton District Council | Masterton District Council and its successors and assigns;

“Monitoring Sum” means the Council’s actual and reasonable costs for carrying out monitoring and administration in relation to the Reinstatement Works;

“Owner” means [*name of registered proprietor(s) of the land onto which the Relocatable Building is to be placed and who is/are to be bound by this Bond*] together with successors and permitted assigns;

“Performance Standards” mean the Performance Standards in Rule [*choose relevant Rule from applicable Zone*] GRUZ-R3(1) | RLZ-R3(1) | MUZ-R3(1) | TCZ-R3(1) | NCZ-R3(1) | GIZ-R3(1) | GRZ-R3(1) | SETZ-R3 | OSZ-R3(1) | SARZ-R3 | MPZ-R3(1) | FUZ-R3(1) of the Wairarapa Combined District Plan;

“Plan” or “District Plan” means the Wairarapa Combined District Plan;

“Quantum” means the sum as determined from time to time in accordance with clause 3.1;

“Reinstatement Works” means the extent of the work required to the exterior of the Relocatable Building as specified in the Building Pre-Inspection Report for the purposes of the District Plan. The exterior reinstatement works will not include matters regulated by the building legislation such as re-joining of the roof; re-joining of the building (if shifted in more than one section) or connection to foundations; but may include matters required by the District Plan for work to be undertaken and completed to the exterior of the building to a workmanlike standard and to achieve a tidy appearance, including, without limitation:

- a. Repair of broken windows and window frames;
- b. Repair of rotten weatherboards or other damaged wall cladding;
- c. Necessary replacement or repair of roof materials;
- d. Cleaning and/or painting of the exterior where necessary e.g. roof, walls, window frames etc; and/or
- e. Replacement and painting of baseboards or other foundation cladding.

“Relocatable Building” shall have the same meaning as the definition of “Relocatable Building” in Section 1 of the District Plan;

“Security” means the Cash Deposit;

“Site” means the whole of the land onto which the Relocatable Building is to be placed;

“Term” means the period from the Commencement Date to Completion of the Reinstatement Works.

1.2 Joint and Several

- 1.2.1 References in this Deed to the “Owner” are references to the parties (if more than one) named in this Deed as the Owner jointly and severally, and the representations, covenants and

undertakings of the Owner in this Deed shall be deemed to be given jointly and by each of them severally.

2. THE BOND

2.1 Undertaking to Comply

The Owner undertakes to the Council to:

- a. complete, at the expense of the Owner, the Reinstatement Works as set out in the Building Pre-Inspection Report within the timeframe specified by Performance Standards in Rule [*choose relevant Rule from applicable Zone*] GRUZ-R3(1) | RLZ-R3(1) | MUZ-R3(1) | TCZ-R3(1) | NCZ-R3(1) | GIZ-R3(1) | GRZ-R3(1) | SETZ-R3 | OSZ-R3(1) | SARZ-R3 | MPZ-R3(1) | FUZ-R3(1) of the District Plan or within such reasonable timeframe otherwise agreed by the Owner and the Council in writing; and
- b. promptly remedy any breach by the Owner of its obligations under this Deed within seven (7) days of a request in writing by the Council to do so, or within such reasonable timeframe otherwise agreed by the Owner and the Council in writing.

2.2 Council Right to Access

The Council may from time to time, under section 171 of the Local Government Act 2002, enter onto the Site to ascertain whether the Reinstatement Works have been completed to the satisfaction of the Council.

2.3 Council Right to Rectify

If the Owner fails to comply with the Owner's obligations, or any of them, referred to in clause 2.1 within seven (7) days of receipt of the notice in writing from the Council referred to in clause 2.1(b), or within such reasonable timeframe otherwise agreed by the Owner and the Council in writing, which notice shall refer to the failure and request the failure to be rectified, then:

- a. the Council may (but shall not be under any obligation to) undertake, or procure that its contractors undertake, all or part of those obligations referred to in the notice;
- b. for that purpose, the Council (including its contractors and assigns) may, at all reasonable times, enter the Site, including any Relocatable Building on the Site; and
- c. the Owner will pay to the Council upon demand the amount of all costs, expenses, liabilities and other amounts incurred by the Council under or in connection with the exercise by the Council of its rights under clause 2.3(a) and (b), less the amounts paid to the Council and which the Council is entitled to retain on its own behalf from the Security under clause 4.1 or otherwise.

2.4 Provision of Security

To better secure to the Council the completion by the Owner of its obligations under this Deed and the District Plan, the Owner undertakes on or before the date the Council issues a building consent to relocate the building to the Site, to deposit into a bank account in the name of the

Council, with a bank nominated by the Council in cleared funds, the Cash Deposit totalling the Quantum.

2.5 Application of Security

- 2.5.1 The Council may, from time to time, apply all or part of the Cash Deposit for payment of the Monitoring Sum which sum shall be deducted from the Cash Deposit before or on repayment of the balance of the Cash Deposit upon Completion of the Reinstatement Works in accordance with clause 3.2.1.
- 2.5.2 If the Owner fails to comply with any of its obligations referred to in clause 2.1 within seven (7) days of receipt of a notice in writing from the Council, which refers to the failure and requests the failure to be rectified, or within such reasonable timeframe otherwise agreed by the Owner and the Council in writing, then the Council may, from time to time apply all or part of the Cash Deposit for the payment of any sum payable by the Owner to the Council under this Deed and/or the Act, including any sum incurred by the Council under clause 2.3 of this Deed, or retain all or part of those proceeds to cover amounts as reasonably estimated by the Council to be incurred or which may (in the reasonable estimation of the Council) be incurred by the Council or its contractors under clause 2.3 or in respect of those matters.

3. QUANTUM PROVISION AND RELEASE OF THE SECURITY

3.1 Quantum and Provision of the Security

- 3.1.1 The Quantum of the Bond as at the Commencement Date shall be one hundred twenty five (125) percent of the estimated cost of the Reinstatement Works as established by the Pre-Inspection Report. A loading of 25% of the estimated cost of remediation is added to protect the Council from price fluctuations.
- 3.1.2 For the avoidance of doubt, the Quantum of the Relocatable Buildings Bond does not include any bond required by the Council for the purposes of its Land Transport Bylaw.

3.2 Release of Owner of Security

- 3.2.1 Upon Completion of the Reinstatement Works, the Council shall release the Owner from the obligations under clause 2 of this Deed, and repay the balance of the Cash Deposit remaining after application under clause 2.5 or clause 4.1, if any, to the party which provided the Cash Deposit.

4. PAYMENT OF QUANTUM AND CALLS ON THE SECURITY

4.1 If the Owner:

- 4.1.1 Fails to comply with the Owner's obligations, referred to in clause 2;
- 4.1.2 Abandons the Site without taking adequate and proper measures to rehabilitate the Site to the reasonable satisfaction of the Council; and/or
- 4.1.3 Fails to comply with any of the obligations of the Owner under this Deed, the Council may, without notice and without limitation of its rights under clause 2, forfeit (take) such of the Quantum as it estimates will be the cost of carrying out remedial work (including the

Reinstatement Works) or measures to rehabilitate the Site to a standard similar to surrounding properties (which costs may include any Monitoring Sum) and may call, apply or enforce, without further notice, on or exercise its rights in respect of the Security in that sum. The Council may at any reasonable time and from time to time enter the Site and take such steps and carry out such works as may be necessary to rehabilitate the Site;

- 4.1.4 Transfers ownership of the Site without the Council having received a bond from the Transferee containing the same terms and conditions as are set out in this Bond, then the Quantum shall be forfeited to the Council and the Council may, without notice, call on or exercise its rights in respect of the Security in that sum.

5. RESOURCE MANAGEMENT ACT 1991

The powers and remedies given to the Council in the Bond are in addition to all other powers and remedies conferred on it by the Resource Management Act 1991 and the exercise by the Council of any power or remedy under the Bond shall not prejudice its authority to exercise any other such power or remedy.

6. VARIATION AND RENEWAL

The Bond may be varied or renewed at any time by agreement in writing between the Owner and the Council.

7. ARBITRATION

In the event of any dispute or difference between the parties arising out of the Deed or the construction of interpretation thereof then the dispute or difference shall be referred to a sole arbitrator to be agreed upon between the parties or failing agreement, appointed in accordance with the provisions of the Arbitration Act 1996 and its amendments or any Act passed in substitution therefore.

8. NOTICES

All notices required or permitted to be given under or in connection with this Deed shall be in writing and be served on a person or on a body (whether incorporated or not) in accordance with the method of service of documents in section 352 of the Act or any section enacted in substitution thereof.

- 8.1 The Owner: If to the Owner to:

[add address]

- 8.2 The Council: If to the Council to:

[Choose applicable Council]

The Chief Executive
South Wairarapa District Council
19 Kitchener Street
PO Box 6, Martinborough 5741

The Chief Executive
Carterton District Council
28 Holloway Street
PO Box 9 Carterton 5743

The Chief Executive
Masterton District Council
161 Queen Street
PO Box 444, Masterton

9. COSTS

- 9.1 Without prejudice to any other right of recovery or reimbursement of costs or expenses by the Council at law or otherwise, the Owner agrees to pay to the Council, promptly upon receiving a request in writing and an appropriate tax invoice, the Council's reasonable legal costs and disbursements incurred in connection with the preparation and engrossment of this Deed.

10. MISCELLANEOUS

- 10.1 All payments under this Deed will be made in cleared funds without deduction, withholding, set-off or counterclaim.
- 10.2 The entry into and performance of obligations under this Bond shall not merge with or release any rights or obligations under the District Plan, nor shall the provision of the Security merge with or release the Owner's covenants under this Deed.
- 10.3 The Owner undertakes that it shall not exercise its rights under a Building Consent to relocate a building unless and until the Owner has signed this Deed and has caused the Cash Deposit to be deposited in cleared funds with the Council having a value not less than the Quantum.
- 10.4 The Owner acknowledges and agrees that all references to the approval, determination or satisfaction of the Council in this Deed shall be deemed to mean the approval, determination or satisfaction of the Council at its reasonable discretion.

In witness of which this Deed has been executed.

SIGNED by [owner]

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Director

Director

THE COMMON SEAL of)

[insert] DISTRICT COUNCIL)

affixed in the presence of:)

Mayor

Chief Executive