

Georgina Stuliglowa  
For Pension Practitioner.Com  
Daws House  
33-35 Daws Lane  
London  
NW7 4SD

11 October 2013

Dear Georgina

Please find enclosed documents on behalf of Chris Burgess (these have also been emailed to David Nicklin).

I trust this is in order but should you have any further queries then please do not hesitate to contact us.

Yours sincerely



Toyah Harris  
Administrator



**NWMG PENSION SCHEME**

**and**

**NORTH WEST MARBLE & GRANITE LIMITED**

**Date:**

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This Agreement is dated:

It is made between

The "Lender" NWMG PENSION SCHEME acting by RICHARD DAVID WILLIAMS of Edenfield, 47 Armistead Way, Cranage, Crewe, CW4 8FE and MICHAEL CONNETT of Crowthorne, Withers Lane, High Legh, Knutsford, WA16 0SF

and

The "Borrower" NORTH WEST MARBLE & GRANITE LIMITED (company number 07627000) of C/o UHY Hacker Young, St James Buildings, 79 Oxford Street, Manchester, M1 6HT

### **Background**

The purpose of this agreement is to set out the contractual terms under which a loan has been made by the Borrower to the Lender.

The terms of this Agreement are:

**1 Definitions that apply to this agreement:**

|                        |   |
|------------------------|---|
| <b>"Advance"</b>       | means a part of the Loan drawn down by the Borrower at his request.   |
| <b>"Basic rate"</b>    | means a rate of interest of 4 per cent fixed for the term of the loan.  |
| <b>"Higher Rate"</b>   | means a rate of interest 1 per cent higher than the Basic Rate.   |
| <b>"Interest Date"</b> | means the date in each month that interest is payable.  |
| <b>"Loan"</b>          | means the total amount of money lent now or at any later date than today, the amount outstanding as due from the Borrower to the Lender whether of capital or interest. |
| <b>"Security"</b>      | means the items set out in Schedule 1 or any one or more of them.   |

The terms "Lender" and "Borrower" include in the case of a corporation, any associated or subsidiary company.

**2 Amount of the Loan**

The Loan is in the sum of £107,000 (one hundred seven thousand pounds) or such lesser sum as shall in fact have been lent by the Lender to the Borrower at any time this agreement subsists, or such lesser sum as shall be outstanding after part repayment has been made.

**3 Advances**

3.1 Before any new Advance may be drawn down, the Borrower shall send to the Lender such information that they may require from time to time to be satisfied as to the appropriateness and the judiciousness

**4 Repayment conditions**

The Loan amount shall be paid in 5 equal instalments commencing one year from the date that the advancement is debited from, or at an earlier date as may be required by the Lender from time to time.

**5 Interest payable**

5.1 Interest shall be paid at the Basic Rate

5.1 Interest shall be calculated on a daily basis and cumulated daily.

5.2 Interest shall be paid on the Interest Date.

**6 Early repayment of part**

The Borrower may repay all or part of the Loan before the due date for repayment provided that not less than seven working days' notice is given by the Borrower to the Lender specifying the amount proposed to be prepaid. This notice then binds the Borrower to make that payment on the date he has specified.

**7 Method of payment**

All payments due to the Lender of both capital and interest shall be paid in pounds sterling by bankers order into such account and bank within the United Kingdom as the Lender may from time to time in writing notify.

## **8 Borrower's warranties**

The Borrower represents and warrants that:

- 8.1** It is authorised to enter into this agreement;
- 8.2** every Trustee is authorised to accept the liabilities set out in this agreement as if it was a party;
- 8.3** the execution of this agreement, the borrowing, and the performance by the Borrower of his obligations are fully within the Borrower's legal authority, are not in breach of the Trust Deed and rules of the Borrower, and do not and will not contravene or be in conflict with any provision of law or of any agreement binding upon the Borrower.
- 8.4** the Borrower has no undisclosed contingent obligations;
- 8.5** there are no material, unrealised or anticipated losses from any present commitment of the Borrower;
- 8.6** the Borrower will advise the Lender of material adverse changes which occur at any time prior to the date of final payment;
- 8.7** no litigation, arbitration proceedings or governmental proceedings are pending or threatened against the Borrower which would, if adversely determined, materially adversely affect the financial condition of the Borrower.
- 8.8** the Borrower has filed all tax returns, if any, which are required to be filed, and has paid all taxes which have become due;
- 8.9** the Security is not to be charged to any other person;

## **9 The Security**

- 9.1** Each of the items listed in Schedule 1 is represented by a contract which is lodged with the Lender and receipt of which the Lender acknowledges.
- 9.2** So far as the Lender has taken up an undated document of transfer of any Security, he undertakes not to date or use such document until Seven days after he has served notice of default in the terms specified in this agreement.
- 9.3** After the expiry of seven days from the date of service of a notice of default, the Lender may sell the Security or any of it in a publicly used exchange or market place and the Borrower shall not complain at the price realised.

## **10 Event of Default**

An "event of default" occurs when:

- 10.1** the Borrower fails to pay in full and on the due date for payment any sum due and remains in default for fourteen days after the Lender by notice to the Borrower has demanded immediate payment; or
- 10.2** in the opinion of the Lender, any representation or warranty made by the Borrower is found to be incorrect;
- 10.3** in the opinion of the Lender; the value of the security from time to time is insufficient to meet the obligations of the Borrower to the Lender;

## **11 Notice of default**

- 11.1** Where an event of default has occurred the Lender may issue a notice of default. When the Lender does so, the whole amount of the Loan then outstanding and any unpaid interest immediately fall due for payment.
- 11.2** From the date when the Lender issues a notice of default, the rate of interest on the loan and on any unpaid interest shall be the Higher Rate and such interest shall be cumulated and calculated monthly.
- 11.3** Each Event of Default stands on its own, independently from any other Event of Default and shall not be limited by another Event of Default.
- 11.4** When an event of default happens, the Lender may serve on the Borrower a notice specifying the default.

## **12 Consequences of Termination**

At any time after issue of a valid notice of default by the Lender:

- 12.1** the Lender may sell the Security wherever it may be, whereupon the Borrower has no further interest in the Security, but only in the proceeds of sale, if in excess of the sum of all sums due to the Lender.
- 12.2** the Borrower shall pay to the Lender:
  - 12.2.1** all money due at any time under this agreement;
  - 12.2.2** damages for any breach of this agreement;

12.3 When at any time, the Lender is entitled to sell the Security and does sell it for a sum which exceeds the total sums due to him from the Borrower, then the balance of the realisation in excess of the Loan and other sums due by the Borrower, shall be paid immediately to the Borrower.

12.4 The Borrower now undertakes that upon notice of default having been given, he will use his best endeavours to assist the Lender in any way possible, to transfer the Security to the name of the Lender or to a third party by way of realisation.

### 13 Assignment

13.1 This Agreement shall be binding upon any successors, permitted assigns and transferees of either party, but the Borrower shall not assign or transfer any of its rights or obligations without the previous written consent of the Lender.

13.2 The Lender may assign its rights obligations to any other person without consent of the Borrower.

13.3 The Lender may disclose to a potential assignee who may propose enter into contractual relations with the Lender, such information about the Borrower as the Lender shall consider appropriate.

### 14 Promise to provide information

Until all obligations of the Borrower under this agreement have been performed in full and the Loan has been repaid, the Borrower agrees that, unless at any time the Lender shall otherwise expressly consent in writing, he will furnish to the Lender:

14.1 Within 6 months of the Lender's Year End during the term of the loan, a financial statement will be provided to the Lender;

14.2 The Lender may request that the Financial Statement be Independently Audited and the Borrower will do everything necessary in an expedient manner to assist with that request. The costs for the Audit will be borne by the Borrower.

14.3 The Financial Statement will be prepared on a consolidated basis and in conformity with generally accepted accounting principles, duly certified by an independent and professionally qualified accountant.

14.4 from time to time such other information concerning the Borrower as the Lender may reasonably request.



**15 Contract is divisible**

Each sub paragraph in this agreement is independent and severable from each other paragraph and therefore separately enforceable. If any restriction is unenforceable for any reason but would be enforceable if part of the wording were deleted, it will apply with such deletions as may be necessary to make it valid and enforceable.

**16 Notices and service**

**16.1** Any notice or other information required or authorised by this agreement to be given by either party to the other may be given by hand or sent by first class pre-paid post, or electronic means to the other party at the address last provided for that type of communication.

**16.2** Any notice or other information given by post shall be deemed to have been given on the second day after it was posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid and posted, or that it has not been so returned to the sender, shall be sufficient evidence that it has been duly given.

**16.3** Any notice or other information sent by electronic means, shall be deemed to have been duly sent on the date of transmission.

**16.4** Service of any legal proceedings concerning or arising out of this agreement shall be effected by causing the same to be delivered to the party to be served at his main place of business or his registered office, or to such other address as may from time to time be notified in writing by the party concerned.

**17 Headings**

The headings in this document are for reference only.

**18 Dispute Resolution**

In the event of a dispute arising out of this agreement the parties undertake to attempt to settle it through professional mediation before commencing litigation.

**19 Waiver**

The failure by either party to enforce at any time or for any period any one or more of the

terms or conditions of this Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Contract.

20 Jurisdiction

This Contract shall be interpreted according to the Laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

Signed by Director of  
NORTH WEST MARBLE & GRANITE LIMITED



Witness

Signature:



Name:

DOROTHY JONES

Address:

73 WHALLEY RD  
NORTHWICH  
CHESHIRE, CW9 5QB

Signed by the Trustees of  
NWMG PENSION SCHEME



Richard David Williams

Witness

Signature:

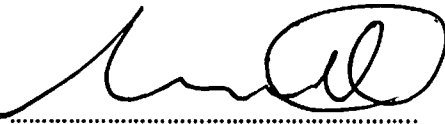


Name:

DOROTHY JONES

Address:

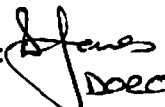
73 WHALLEY RD  
NORTHWICH, CHESHIRE  
CW9 5QB



Michael Connett

Witness

Signature:



Name:

DOROTHY JONES

Address:

73 WHALLEY RD  
NORTHWICH  
CHESHIRE  
CW9 5QB

**Schedule 1**

**Assets pledged as security**

**Stock in hand held by the Borrower from time to time pursuant to Schedule 2 of this agreement**

## Schedule 2

### Liens and charges over assets

| Name of the asset | Terms of lien  |
|-------------------|--|
| Stock in hand     | <p><b>Assets:</b> means "stock in hand" belonging to the Borrower or to which the Borrower is or may become entitled or in which the Borrower may have an interest, in each case at any time during the Security Period.</p> <p><b>Permitted Security Interests:</b> means the Security;</p> <p>(a) liens or rights of set-off arising in the normal course of trading or by operation of law securing obligations not more than 30 days overdue,</p> <p>(b) any banker's lien or right of set-off pursuant to a bank's standard account opening documentation; and</p> <p>(c) any rights by way of reservation or retention of title which are required by the supplier of any property to the company in the normal course of such supplier's business</p> <p><b>Security:</b> means the security from time to time constituted by, or pursuant to, the Charging Deed</p> <p><b>Security Period:</b> means the period beginning on the date of Charging Deed and ending on the date on which the Lender is satisfied that all the secured Liabilities have been irrevocably paid and discharged in full.</p> |

## **CHARGING DEED**

**Dated:** .....

### **Parties:**

The "Lender" NWMG PENSION SCHEME acting by RICHARD DAVID WILLIAMS of Edenfield, 47 Armistead Way, Cranage, Crewe, CW4 8FE and Michael Connett of Crowthorne, Withers Lane, High Legh, Knutsford, WA16 0SF

and

The "Borrower" NORTH WEST MARBLE & GRANITE LIMITED (company number 07627000) of C/o UHY Hacker Young, St James Buildings, 79 Oxford Street, Manchester, M1 6HT

### **Terms referred to in this Deed:**

The advance is the amount of £107,000 (hereinafter referred to as the "Advance"):

The property to be charged: Stock in hand held by the Borrower from time to time pursuant to Schedule 2 of charge agreement which forms part thereof (hereinafter referred to as the ("Property")).

### **Recital**

The Lender proposes to make an Advance to the Borrower upon the security of a Legal Charge over the Property, the particulars of which are affixed to Schedule 1 of a Loan Agreement between the Borrower and the Lender.

### **Operative Provisions**

As a consequence of signing this Deed, the Borrower consents :-

- (a) to the making of the Advance and any further advances by the Borrower
- (b) to the creation of the Legal Charge over the Property to secure the Advance and further advances

The Borrower undertakes with the Lender :-

- (a) that such present and future rights or interest as the Borrower may have in the Property shall be postponed and made subject to the rights and interests of the Lender under its Legal Charge
- (b) that no claim to any such rights or interest shall be made against the Lender
- (c) that no prior charge exists over the Property

DATED THIS DAY OF .....

EXECUTED as a Deed

by the said NORTH WEST MARBLE & GRANITE LIMITED  
acting by

Director: ..... 

in the presence of :-

Witness

Signature: 

Name:

Address

DOROTHY JONES  
73 WHALLEY ROAD  
NORTHWICH  
CHESHIRE, CW9 5QB

DATED THIS DAY OF .....

EXECUTED as a Deed

by the said RICHARD DAVID WILLIAMS

in the presence of :-

Witness

Signature: 

Name:

Address:

DOROTHY JONES  
73 WHALLEY ROAD  
NORTHWICH  
CHESHIRE, CW9 5QB

DATED THIS DAY OF .....

EXECUTED as a Deed

by the said MICHAEL CONNETT

in the presence of :-

Witness

Signature: 

Name:

Address:

DOROTHY JONES  
73 WHALLEY ROAD  
NORTHWICH  
CHESHIRE, CW9 5QB

## Pension Scheme Loan

Telephone: 0800 634 4862 Fax: 020 8711 2522 Email: [info@pensionpractitioner.com](mailto:info@pensionpractitioner.com)

The purpose of this fact sheet is to provide you with important information about your pension scheme loan.

In making a loan to your business you must ensure that it is secured at outset by an asset of equal value that is unencumbered. The nature of the asset is flexible; however it is imperative that in the event of default the pension scheme is able to recover its loss.

### Security

Where a loan ceases to be secured by any charge at all at any time after the loan is made, an unauthorised payments charge will arise calculated on the amount owing (including interest).

Where no security exists or the asset is not secured as a first charge, there will be an unauthorised payment charge equal to the amount of the loan (including interest). We will require independent verification that the security is unencumbered and equal to the value of the loan made.

Where the business undertakes a transaction which reduces the value of the security, an unauthorised payments charge will apply on the amount of reduction in the charge. If the replacement security is not equal to either the value of the previous security or the amount of the loan still outstanding, an unauthorised payments charge will apply. The charge will be the reduction in value of the charge.

The unauthorised charge will be equal to no less than 40% of the transaction and will be payable to HMRC. For example, QQ Ltd SSAS makes a loan to QQ Ltd of £250,000. QQ Ltd offers a property as security that has a value of £300,000. Six months later QQ sell the property and replace the security with another property worth £200,000. The amount of loan outstanding including interest is £230,000. An unauthorised payments charge will arise on the difference between the value of the security and the amount of the loan outstanding - £30,000 at the rate of 40% resulting in a tax charge of £12,000.

### Loan term

The maximum term of the loan is 5 years. HMRC recognises that sometimes loans will be made and the business will sometimes get into financial difficulties during the term of the loan. The loan period can be extended and the loan repayment date may be postponed or "rolled over" for a period up to a further 5 years starting from the standard repayment date. This can only take place once.

### Repayment instalments

The instalments can be to a maximum of annually in arrears.

For annual instalments, all loans must be repaid in equal instalments of capital and interest for each complete year of the loan, beginning on the date that the loan is made and ending on the last day of the following 12 month period – known as a loan year. If the loan is for less than a complete year, then the incomplete year is treated as the final year of the loan.

Most loan repayments are repaid monthly or quarterly in arrears, this ensures that the repayments are regular and commercial to the scheme.

You must ensure that loan repayments are made in accordance with the loan repayment schedule. If you do not make those payments on time, it will be a loan default.

It is your responsibility to ensure that the payments are made and not Pension Practitioner .Com. We recommend that to ensure automatic collection you set up a standing order from the Company to your pension scheme.

### Interest rate

The minimum interest rate a scheme may charge is calculated by reference to 1% above the average of the base lending rates of the leading high street banks. Any rate less is considered an unauthorised amount.

The average rate calculated should be rounded up as necessary to the nearest multiple of ¼%. There is no cap on the rate charge but it must be commercial and on arms length terms.

The rate can be variable or fixed for the loan term.

### The loan amount

The amount of loan which can be made to the business is 50% of the aggregate of the amount of the cash sums held and the net market value of the assets of the SSAS valued immediately before the loan is made.

Where, at the time the loan is made it is found to exceed the 50% limit, an unauthorised payments tax charge will be applied to the additional amount.

The 50% limit is applied as at the date the money is loaned to the employer. The loan will not be re- tested at a later date if there is a drop in value of the scheme assets unless the terms of the loan are changed.

Any further advances made after the original loan was made are to be treated as a new loan made on the date the further advance was made.

### Unauthorised payments charge & surcharge

There are a number of circumstances where the unauthorised payments charge (UPC) can arise. The UPC is at a rate of 40%, based on the amount of the unauthorised payment. A surcharge threshold is reached if the unauthorised payments percentage reaches 25%.

The rate of the unauthorised payments surcharge is 15%, when added together with the UPC the total tax is 55%. The surcharge is a freestanding tax charge, which means any losses a taxpayer may have cannot be set against the tax charge.

It is very important that in making the loan careful consideration is made to the requirements for repayment and to ensure that the loan is not paid to a business that is ailing, insolvent or unlikely to meet its repayment conditions. The tax consequences of non compliance are very significant.



## 2 Pension Scheme Loan

Telephone: 0800 634 4862 Fax: 020 8711 2522 Email: [info@pensionpractitioner.com](mailto:info@pensionpractitioner.com)

Whilst tax charges are assessed against the Administrator, HMRC has the power to seek recovery against those persons (the trustees) obligated to hold and invest the assets.

We act for the trustees as a Practitioner we will also provide the Trustees with information issued by HMRC to ensure that loans made meet regulatory requirements.

### Loans secured against shares

Where HMRC Pension Schemes Services Division has been advised of a loan secured against shares as part of an enquiry audit, those shares may be valued by the HMRC Shares and Valuation Office. Whilst we rely on clients' accountants to provide a commercial and accurate valuation of the shares pledged in favour of the pension scheme, we also recommend advanced disclosure of the valuation basis to HMRC in advance of a pension scheme loan being made. This will help with any subsequent audit enquiry into the pension scheme.

### Loans secured against residential property and other "taxable" assets

The holding of or interest in residential property or other types of taxable assets will give rise to a tax charge on the pension scheme. Whilst a loan secured against residential and other taxable assets, does not mean that the loan is taxed on the pension scheme (as no consideration has been paid), any payment of fees from the pension scheme in connection with that loan will be taxed. We therefore recommend that the pension scheme loan fees are met by the recipient of the loan independently.

The use of taxable property as a means of security carries a risk. For example, where in the event of default, there is a right to occupy or immediate assignment of the taxable property in favour of the pension scheme this then creates a pension tax charge. Any legal charge must be drafted by a solicitor with specialised experience of this area of pension practice to ensure an appropriate worded document.

This information is for guidance purposes, which will be subject to change. For further information please contact : The Pensions Service, HMRC, Pension Scheme Services, Yorke House, Castle Meadow Road, Nottingham. NG2 1BG or your Practitioner.

I confirm that I have read and understood the content of this fact sheet.

Trustee  
Date:

10.10.13

Trustee  
Date:

10/10/2013

*This information is for guidance purposes, which will be subject to change. For further information please contact: The Pensions Service, HMRC, Pension Scheme Services, Yorke House, Castle Meadow Road, Nottingham NG2 1BG or your Practitioner*