

## DEED OF GUARANTEE AND INDEMNITY

Date:	
Society:	HINCKLEY AND RUGBY BUILDING SOCIETY Upper Bond Street, Hinckley, Leicestershire, LE10 1NZ
Guarantor(s):	[FULL NAME OF DIRECTOR] of [ADDRESS] [FULL NAME OF DIRECTOR] of [ADDRESS]
Borrower:	[NAME OF BORROWER] a company incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS]
Mortgage Conditions:	Hinckley & Rugby Building Society Mortgage Conditions 2022
Guaranteed Amount:	The Amount Owed by the Borrower to us under the Mortgage from time to time
Mortgage:	The Mortgage granted by the Borrower to the Society dated on or around the date of this Deed
Property:	[ADDRESS OF THE PROPERTY USED AS SECURITY]

### 1. Definitions and interpretation

#### 1.1 Definitions

The following definitions apply in this guarantee.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Guaranteed Obligations:** all monies, debts and liabilities of any nature from time to time due, owing or incurred by the Borrower to the Society on any current or other account under or in connection with any present or future banking or credit facilities provided by the Society to the Borrower.

**Rights:** any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise.

**Security:** a mortgage, charge, pledge, lien or other security interest securing any obligation of any person, or any other agreement having a similar effect.

**Tax:** all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction and any penalty, fine, surcharge, interest, charges or costs relating to them.

#### 1.2 Interpretation

In this guarantee:

- (a) clause, Schedule and paragraph headings shall not affect the interpretation of this guarantee;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to **Society** shall include the Society's successors, permitted assigns and permitted transferees
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** includes fax but not e-mail;

- (i) a reference to **this guarantee** (or any provision of it) or to any other agreement or document referred to in this guarantee is a reference to this guarantee, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this guarantee) from time to time;
- (j) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this guarantee and a reference to a paragraph is to a paragraph of the relevant Schedule;
- (k) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (l) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- (m) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (n) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisisation, registration and resolution;
- (o) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (p) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

## 2. Guarantee and indemnity

2.1 In consideration of the Society making or continuing loans to, giving credit or granting banking facilities, accommodation or time to the Borrower as the Society in its absolute discretion sees fit, the Guarantor guarantees to the Society, whenever the Borrower does not pay any of the Guaranteed Obligations when due, to pay on demand the Guaranteed Obligations.

2.2 The Guarantor as principal obligor and as a separate and independent obligation and liability from his or her obligations and liabilities under clause 2.1 agrees to indemnify and keep indemnified the Society in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Society arising out of, or in connection with, the Guaranteed Obligations not being recoverable for any reason or any failure of the Borrower to perform or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations.

## 3. Society protections

3.1 This guarantee is and shall at all times be a continuing security and shall cover the ultimate balance from time to time owing to the Society by the Borrower in respect of the Guaranteed Obligations.

3.2 The liability of the Guarantor under this guarantee shall not be reduced, discharged or otherwise adversely affected by:

- (a) any intermediate payment, settlement of account or discharge in whole or in part of the Guaranteed Obligations;
- (b) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Society may now or after the date of this guarantee have from or against any of the Borrower and any other person in connection with the Guaranteed Obligations;
- (c) any act or omission by the Society or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Borrower or any other person;
- (d) any termination, amendment, variation, novation, replacement or supplement of or to any of the Guaranteed Obligations including without limitation any change in the purpose of, any increase in or extension of the Guaranteed Obligations and any addition of new Guaranteed Obligations;
- (e) any grant of time, indulgence, waiver or concession to the Borrower or any other person;
- (f) any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Borrower or any other person;
- (g) the death or incapacity (whether mental or physical) of the Guarantor, or any notice of his or her death or incapacity; or
- (h) any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Borrower or any other person in connection with the Guaranteed Obligations;
- (i) any claim or enforcement of payment from the Borrower or any other person; or
- (j) any act or omission which would not have discharged or affected the liability of the Guarantor had he or she been a principal debtor instead of a guarantor; or
- (k) any other act or omission except an express written release by deed of the Guarantor by the Society.

3.3 The Society shall not be obliged, before taking steps to enforce any of its rights and remedies under this guarantee, to:

- (a) take any action or obtain judgment in any court against the Borrower or any other person;
- (b) make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Borrower or any other person; or
- (c) make demand, enforce or seek to enforce any claim, right or remedy against the Borrower or any other person.

3.4 The Guarantor warrants to the Society that he or she has not taken or received, and shall not take, exercise or receive the benefit of any Rights from or against the Borrower, its liquidator, an administrator, co-guarantor or any other person in connection with any liability of, or payment by, the Guarantor under this guarantee but:

- (a) if any of the Rights is taken, exercised or received by the Guarantor, those Rights and all monies at any time received or held in respect of those Rights shall be held by the Guarantor on trust for the Society for application in or towards the discharge of the Guaranteed Obligations under this guarantee; and
- (b) on demand by the Society, the Guarantor shall promptly transfer, assign or pay to the Society all other Rights and all monies from time to time held on trust by the Guarantor under this clause 3.4.

3.5 This guarantee is in addition to and shall not affect nor be affected by or merge with any other judgment, Security, right or remedy obtained or held by the Society from time to time for the discharge and performance of the Borrower of the Guaranteed Obligations.

3.6 The Society shall not be entitled to recover any amount in respect of interest under both this guarantee and any arrangements entered into between the Borrower and the Society in respect of any failure by the Borrower to make any payment in respect of the Guaranteed Obligations.

#### **4. Costs**

The Guarantor shall promptly on demand, pay to, or reimburse, the Society on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Society in connection with:

- (a) the preparation, negotiation, execution and delivery of this guarantee;
- (b) any actual or proposed amendment, variation, supplement, waiver or consent under or in connection with this guarantee;
- (c) any discharge or release of this guarantee;
- (d) the preservation, or exercise and enforcement, of any rights under or in connection with this guarantee or any attempt so to do; and
- (e) any stamping or registration of this guarantee.

#### **5. Accounts**

5.1 The Society may place to the credit of a suspense account any monies received under or in connection with this guarantee in order to preserve the rights of the Society to prove for the full amount of all its claims against the Borrower or any other person in respect of the Guaranteed Obligations.

5.2 The Society may at any time and from time to time apply all or any monies held in any suspense account in or towards satisfaction of any of the monies, obligations and liabilities that are the subject of this guarantee as the Society, in its absolute discretion, may conclusively determine.

5.3 If this guarantee ceases for any reason whatsoever to be continuing, the Society may open a new account or accounts in the name of the Borrower.

5.4 If the Society does not open a new account or accounts under clause 5.3, it shall nevertheless be treated as if it had done so at the time that this guarantee ceased to be continuing whether by termination, calling in or otherwise, in relation to the Borrower.

5.5 As from the time of opening or deemed opening of a new account or accounts, all payments made to the Society by or on behalf of the Borrower shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount for which this guarantee is available at that time, nor shall the liability of the Guarantor under this guarantee in any manner be reduced or affected by any subsequent transactions, receipts or payments.

#### **6. Discharge conditional**

6.1 Any release, discharge or settlement between the Guarantor and the Society in relation to this guarantee shall be conditional on no right, Security, disposition or payment to the Society by the Guarantor, the Borrower or any other person in respect of the Guaranteed Obligations being avoided, set aside or ordered to be refunded under any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason.

6.2 If any right, Security, disposition or payment referred to in clause 6.1 is avoided, set aside or ordered to be refunded, the Society shall be entitled subsequently to enforce this guarantee against the Guarantor as if such release, discharge or settlement had not occurred and any such right, Security, disposition or payment had not been given or made.

#### **7. Payments**

7.1 All sums payable by the Guarantor under this guarantee shall be paid in full to the Society in the currency in which the Guaranteed Obligations are payable:

- (a) without any set-off, condition or counterclaim whatsoever; and
- (b) free and clear of any deduction or withholding whatsoever except as may be required by law or regulation which is binding on the Guarantor.

7.2 If the Guarantor is required to make any deduction or withholding by any law or regulation from any payment due under this guarantee, the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required.

7.3 Following any deduction or withholding, or any payment required in connection with that deduction or withholding, the Guarantor shall promptly deliver or procure delivery to the Society evidence reasonably satisfactory to the Society that either a withholding or deduction

has been made or any appropriate payment paid to the relevant taxing authority (as applicable).

7.4 The Guarantor shall not and may not direct the application by the Society of any sums received by the Society from the Guarantor under, or in relation to, any of the terms of this guarantee.

## **8. Transfer**

8.1 This guarantee is freely assignable or transferable by the Society.

8.2 The Guarantor may not assign any of his or her rights and may not transfer any of his or her obligations under this guarantee or enter into any transaction which would result in any of those rights or obligations passing to another person.

## **9. Society's right of set-off**

9.1 The Society may at any time set off any liability of the Guarantor to the Society against any liability of the Society to the Guarantor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this guarantee. If the liabilities to be set off are expressed in different currencies, the Society may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Society of its rights under this clause 10.29.1 shall not limit or affect any other rights or remedies available to it under this guarantee or otherwise.

9.2 The Society is not obliged to exercise its rights under clause 10.1. If, however, it does exercise those rights it must promptly notify the Guarantor of the set-off that has been made.

## **10. Evidence of amounts and certificates**

Any certificate, determination or notification by the Society as to a rate or any amount payable under this guarantee is (in the absence of manifest error) conclusive evidence of the matter to which it relates and shall contain reasonable details of the basis of determination.

## **11. Remedies, waivers, amendments and consents**

11.1 No amendment of this guarantee shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

11.2 A waiver of any right or remedy under this guarantee or by law, or any consent given under this guarantee, is only effective if given in writing and signed by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

11.3 A failure or delay by a party to exercise any right or remedy provided under this guarantee or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this guarantee. No single or partial exercise of any right or remedy provided under this guarantee or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this guarantee by the Society shall be effective unless it is in writing and signed.

11.4 The rights and remedies provided under this guarantee are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **12. Severance**

If any provision (or part of a provision) of this guarantee is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this guarantee.

## **13. Joint and several liability**

13.1 Unless expressly provided otherwise in this guarantee and indemnity, each of the Guarantors shall be jointly and severally liable for their respective obligations and liabilities arising under this guarantee and indemnity.

13.2 The Society may take action against, or release or compromise the liability of any Guarantor or grant time or other indulgence without affecting the liability of any other Guarantor.

## **14. Third party rights**

14.1 A person who is not a party to this guarantee shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this guarantee. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

14.2 The rights of the parties to rescind, terminate or agree any amendment or waiver under this guarantee are not subject to the consent of any other person.

## **15. Counterparts**

15.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

## **16. Notices**

### **16.1 Delivery**

Any notice or other communication given to a party under or in connection with this guarantee shall be:

(a) in writing;

- (b) delivered by hand by pre-paid first-class post or other next working day delivery service or sent by fax; and
  - (c) sent to:
    - (i) the Guarantor at: the address provided at the beginning of this guarantee
    - (ii) the Society at: the address provided at the beginning of this guarantee
- or to any other address or fax number as is notified in writing by one party to the other from time to time.

**16.2 Receipt**

Any notice or other communication given under or in connection with this guarantee shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address; and
- (b) if posted by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;

A notice or other communication given as described in clause 16.2(a) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day. For the purposes of clause 16.2, all references to time are to local time in the place of deemed receipt.

16.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.4 A notice or other communication given under or connection with this guarantee is not valid if sent by email.

**17. Governing law**

17.1 This guarantee and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of England and Wales.

17.2 The Guarantor irrevocably consents to any process in any proceedings under clause 18 being served on it in accordance with the provisions of this guarantee relating to service of notices. Nothing contained in this guarantee shall affect the right to serve process in any other manner permitted by law.

**18. Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this guarantee or its subject matter or formation. Nothing in this clause shall limit the right of the Society to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Signature of Guarantor(s)	Signature, name (in BLOCK CAPITALS) and address of the Witness <small>(EACH SIGNATURE MUST BE SEPARATELY WITNESSED BY THE SOLICITOR ACTING FOR THE GUARANTOR)</small>
Signature	Signature  Name/Address
Signature	Signature  Name/Address
Signature	Signature  Name/Address
Signature	Signature  Name/Address