

S

LOAN DEED (INCORPORATING A FIRST RANK MORTGAGE AND A SECOND RANK TABLE CHARGE)

A

M

(1) << Name of the Borrower >>

(2) << Name of the Lender >>

P

(3) << Names of Directors >> 'The Owners'

L

E

**THIS DEED IS MADE** the << day >> <<Year>>

**BETWEEN:**

- (1) << Name of Director >> (the "Director") and
- (2) << Name of Company >> (the "Company") incorporated in England & Wales with company number << Co >> whose registered office is situated at << Registered Address >>
- (3) << Name of Director >> of the "Company" (the "Co-owner") of << Name of Co-owner >> of << Address >> (the "Owners")

**NOW IT IS HEREBY AGREED** as follows:

**BACKGROUND**

The Borrower is [connected] to the Lender. The Lender has agreed to provide the Borrower with a loan on a secured basis. The property on which the loan is to be secured is the Property of the Owners.

**1. Definitions and Interpretation**

1.1 In this Deed:-

**"Advance"**

the sum or sums to be made or to be made by the Lender under this Deed and shall be construed accordingly;

**"Commencement Date"**

the date of this Deed;

**"Event of Default"**

the circumstances as specified in Schedule 1;

**"Existing Security"**

any security or charge outstanding which has been created prior to the execution of this Deed or which has been created with the prior written consent of the Lender following the execution of the Deed;

**"Occupation Leases"**

the leases or tenancies and/or sub-leases or tenancies and each and all of them and any occupational interest and any right or interest therein or thereto including any rent or premium payable by the Property has the benefit of or is subject to time;

**"Potential Event of Default"**

the circumstances which would, on the occurrence of any of the events specified in Schedule 1, result in the expiry of any grace period or any determination under this Deed of Default;

**"Property"**

the property specified at Schedule 1;

**"Rents"**

the sums payable by the Borrower (other than the sums payable by way of account of insurance premiums,

S

ne like) payable under any  
cluding without limitation any  
able on or in respect of the  
e moneys payable in respect of

**“Repayment Date”**

tes specified in clause 7 where  
ent becomes due;

**“Repayment Instalment”**

instalments specified in clause 7

**“Security”**

debenture, charge (whether  
or equitable), pledge, lien,  
security, title retention or any  
ment having a similar effect to  
n as created by this Deed);

**“Unpaid Amount”**

ount of the Loan which has not  
te it falls due under this Deed;

**“Warranties”**

set out at clause 10.

1.2 Any reference in this  
construed as a refere  
extended at the relev

ovision of a statute shall be  
vision as amended, re-enacted or

1.3 The headings in this  
interpretation.

e only and shall not affect their

## 2. The Loan

Subject to and in accordan  
Borrower on the Commenc  
“Loan”).

nder agrees to lend to the  
sum of £<< amount >> (the

## 3. Purpose

3.1 The Borrower shall us  
for which the loan is t

it under this Deed for << purpose

3.2 The Lender is not obl  
is used.

now any amount under this Deed

## 4. Drawdown

4.1 The Loan is available  
>> Advances] [one A

wer in [not more than << number

4.2 The Lender shall pay  
available cleared fund  
account of, the Borro

the Borrower in immediately  
vant Advance to, or for the

A

M

P

L

E

4.3 [The Advances are paid to the Borrower by the Lender in the following amounts and on the following dates:]

<< Date >>	<< Amount >>
<< Date >>	<< Amount >>
<< Date >>	<< Amount >>
<< Date >>	<< Amount >>
<< Date >>	<< Amount >>]

Total: << Amount >>

## 5. Interest

5.1 The Loan shall bear interest at the rate of << [annual] [monthly] [daily] rate of << percentage >> per centum.

5.2 Interest will be calculated on the balance outstanding from the Commencement Date of the Loan in full, and will be charged to the Borrower [monthly] [quarterly] [annually].

5.3 In the event of a default, the said interest rate shall apply to the total of principal and interest.

## 6. Repayments

6.1 The Borrower shall repay the Loan in accordance with Schedule 2.

6.2 The Borrower may not prepay the Loan which is repaid.

## 7. Value Added Tax

All consideration expressed in the Loan Agreement shall be deemed to include Value Added Tax as Deed by the Borrower to the Lender.

## 8. Security

The Owners as legal owners of the Property hereby charge (to the intent that the security so constituted shall be a first charge) in favour of the Lender in respect of the Unpaid Amount of the Loan.

8.1 by way of equitable charge

8.2 by way of fixed charge in respect of the Property and all benefit and advantages at any time arising and/or vesting in the Property

a) any resident or non-resident of the Property; any connected with the Property;

b) any company or other legal entity immediately expectant upon the determination of the Lender of any lease under which the Property is held.

8.3 by way of mortgage Leases and the Rent indemnities, rent due any of the Occupations constitute the Lender's obligation to and in the Occupation benefit of any guarantees, held from time to time in respect of nothing in this sub-clause shall constitute an admission.

## 9. Warranties

The Borrower warrants as follows:

- 9.1 The Owners are the legal owners of and have good title to the Property and no Security exists in respect of the Property except for the Existing Security.
- 9.2 The Borrower has taken all necessary steps to ensure that the Deed is valid and enforceable and has obtained all required or necessary consents to execute and deliver and perform its obligations under this Deed. Any such consents are in full force and effect.
- 9.3 The information, in whatever form, supplied by the Borrower to the Lender in connection with the Deed was, at the time it was supplied, to the best of the Borrower's knowledge and belief, true, accurate and complete, in all material respects at the time it was supplied; and
- 9.3.1 complete, true, accurate and complete, in all material respects at the time it was supplied; and
- 9.3.2 not misleading, in all material respects, nor rendered misleading by a failure to disclose any material facts.
- 9.4 There has been no material change in the financial condition of the Borrower since the information supplied by the Borrower to the Lender in connection with the Deed was last updated or amended, except to the extent that the Lender has been notified in writing of such change in the financial condition of the Borrower by the Borrower to the Lender.
- 9.5 No Event of Default has occurred or is occurring at the date of this Deed.

## 10. Covenants

The Borrower covenants with the Lender as follows:

- 10.1 The Owners shall not create any Security (except for the Existing Security) in respect of the Property or any part thereof nor agree to do so without the Lender's consent.
- 10.2 The Borrower shall notify the Lender promptly on becoming aware of it of any potential Event of Default or Event of Default (and the steps taken to remedy it) promptly on becoming aware of it.

## 11. Events of Default

- 11.1 Each of the events set out below is an Event of Default.
- 11.1.1 Non-payment of any instalment due under this Deed on or after the Repayment Date;

S

A

M

P

L

E

- 11.1.2 Any of the V or incorrect;
  - 11.1.3 Commencer or the Borrower;
  - 11.1.4 Any proced possession of
  - 11.1.5 Any Security discharged v
  - 11.1.6 The Borrower reason;
  - 11.1.7 The death of
  - 11.1.8 Where any e reasonable c affect the ab under, or oth
- to have been) incomplete, untrue
- proceedings against the Borrower ent with creditors;
- the Borrower to attach or take ent of a debt;
- becomes enforceable and is not ment commencing;
- tor of the Lender ceases for any
- ances exist) which, in the likely to materially and adversely perform all or any of its obligations terms of this Deed.

11.2 The Borrower shall b steps to obtain paym

rrured by the Lender in taking any this Deed.

## 12. Enforcement

The Unpaid Amount plus i of notice and/or the obta payable without further not shall become immediately without the Lender needing

mount shall (subject to the service r) become immediately due and ne security created under clause 9 currence of any Event of Default payment.

## 13. Power of sale

- 13.1 Section 103 of the L the security constitu and the power of sa of Property Act 192 immediately exercis becomes due and r as to the giving of n
  - 13.2 Notwithstanding any the Loan shall be de meaning of Section execution of this De
  - 13.3 The restriction of th contained in Section Deed.
  - 13.4 For the purpose of S "Mortgagor" shall in and subsection (18) apply.
- shall not apply to the Loan and come immediately enforceable rferred on mortgagees by the Law by this Deed shall become e Loan or any part thereof e restrictions contained in that Act
- this Deed or any other document, ue and payable within the erty Act 1925 immediately on the
- mortgage securities which is ty Act 1925 shall not apply to this
- Property Act 1925 the expression deriving title under the Borrower y of Property Act 1925 shall not

## 14. Receivers

- 14.1 At any time after the occurrence of any of the events mentioned in clause 12, the Lender may appoint one or more receivers or receivers of the whole or any part of the Property;
- 14.2 The Lender may (a) appoint one or more persons as receiver or receivers either in the place of or in addition to any receiver or receivers previously appointed under this Deed; or (b) remove any receiver or receivers previously appointed under this Deed;
- 14.3 If at any time and by any instrument(s) any two or more persons shall hold office as receiver or receivers of the same assets or income each one of them shall be deemed to be authorised to exercise the powers and discretions hereof as if he were the sole receiver or receiver of such assets or income. The contrary shall be stated in any of the instruments appointing or removing them) to exercise all the powers and discretions hereof individually and to the exclusion of the other or others;
- 14.4 Every such appointment or removal by the Lender may be made either by deed or by any instrument in writing signed by the Lender or by any officer or person authorised in writing by the Lender;
- 14.5 Every receiver for the time being appointed under this Deed shall be subject to any limitations or restrictions expressed in the instrument appointing him but if the Lender is of the opinion that the Owners may have been wound up or an administrative arrangement has been made in relation to the Property or as the result of any voluntary arrangement (as defined) have in relation to the Property in respect of which he is appointed:
- a) all the powers and discretions conferred by the Law of Property Act 1925 and on Administrative Receivers appointed under those provisions;
  - b) power in the absence of any order or arrangement made by the Owners and at the Borrower's cost to exercise all the powers and discretions of an absolute owner and do all such things as the Owners could do as absolute owners in the absence of any such order, administration, voluntary arrangement or arrangement made by the Owners;
- 14.6 In addition and without prejudice to the powers conferred on the receiver for the time being appointed under this Deed by the provisions hereof and the Law of Property Act 1925 and on Administrative Receivers appointed under those provisions, the receiver for the time being appointed under this Deed shall have and may exercise the following powers;
- a) power to take possession of the Property and get in the Property;
  - b) power to develop, complete, construct, alter, repair, improve, maintain, or replace any part of the Property and the fixtures and fittings thereof or to undertake or concur in the completion or carrying out of any project (without modification) of any project in which the Lender is or interested in prior to his appointment; and power to demolish, alter, improve, maintain, or replace any part of the Property and the fixtures and fittings thereof or to undertake or concur in the completion or carrying out of any project (without modification) of any project in which the Lender is or interested in prior to his appointment; and power to demolish, alter, improve, maintain, or replace any part of the Property and the fixtures and fittings thereof or to undertake or concur in the completion or carrying out of any project (without modification) of any project in which the Lender is or interested in prior to his appointment;

- rebuilding, or any part thereof;
- c) power to repair, alter, improve, fit out and furnish the Property or any part thereof and fittings thereon;
  - d) power to provide without limitation heating, lighting and power, and to do all things deemed expedient in relation to the Property;
  - e) power to enter into, rescind, vary, modify, assign, sub-let or novate any agreement, option agreement, lease, licence, or professional appointment or agreement, or to grant any way to the Property or any part thereof and to appoint, hire and employ and discharge such contractors, advisers, professionals, agents, servants, officers, workmen and others upon such terms and conditions as he thinks fit and to discharge such persons;
  - f) without the need to observe all or any of the restrictions of the Law of Property Act 1925 to transfer or convey, accept or concur in terminating or concur in surrendering leases, grant or concur in terminating licences in effect in respect of which the receiver is appointed on such terms and conditions as he thinks fit, any such sale, transfer, leasing, termination, surrendering or licensing, to effect by conveying, assigning, transferring, surrendering or licensing;
  - g) power to sever from the Property and sell the same separately from the Property in which they are affixed or in which they are contained;
  - h) power to carry out the disposal of any land or buildings and other premises by conveying, transferring or assigning or otherwise disposing of the same and for that purpose to enter into contracts and so as to discharge all actual obligations in the name of the Property;
  - i) power to acquire any real or personal property which he may consider necessary to acquire in order to maintain or enhance the value of any part thereof and to grant or surrender any licences and to make exchanges of land and to enter into the revision of boundaries;
  - j) power to make any compromise of claims as he shall think fit;
  - k) power to effect any expenses which he shall deem necessary;
  - l) power to employ such managers, contractors and other persons and to engage such persons and consultants on such terms as he shall think fit without limitation power to engage in partnership;



# E

- |      |  |
|------|--|
| 14.7 | Every receiver so appointed shall be the Owners' agent and shall be solely responsible for his acts and defaults and shall be entitled to remuneration.  |
| 14.8 | Every receiver so appointed shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Lender (or failing such agreement to be fixed by the Lender appropriate to the work and responsibilities involved) and shall be reimbursing from time to time adopted in accordance with the current practice of his firm and without being limited by the provisions specified in Section 109(6) of the Law of Property Act 1925. |

15.1 No party to this deed shall be entitled to have notice to be entered on the registered title to the property pursuant to the provisions of the Deed.

15.2 The Lender may apply to the Land Registry to have notice to be entered on the registered title in relation to this Deed. The Borrower shall not object to such an application.

- 15.3 "Agreed notice" and "Agreed notice period" shall have the meanings ascribed to them by section 34 of the Land Registration Act 2002.
16. **Land Registry Restriction**
- 16.1 The Owners consent to the Lender applying to the Land Registry to enter the following restriction in the register of the Property:
- "No disposition of the registered estate in favour of any person other than the proprietor of the registered estate shall be registered without the prior written consent signed by << Name of Lender >> (<< Company number >> or << Registered number >> or << Address of Lender >> or their conveyancer).
- 16.2 If requested by the Owners, the Lender shall provide written consent for the purposes of the restriction in the register of the Property after either:
- a) the Loan has been repaid in full;
  - b) an alternative property security to the Lender has been charged to the Lender in satisfaction of the Loan or in substitution for the Property.
17. **Assignment and Transfer**
- 17.1 The Lender may assign or transfer any of its rights or obligations by novation.
- 17.2 The Borrower and the Lender shall not assign or transfer any of their rights or obligations under this Deed.
18. **Appropriation**
- The Lender may appropriate any sums payable by the Borrower to the Lender towards satisfaction of the Loan in any manner as the Borrower has with the Lender.
19. **Set-Off**
- 19.1 The Lender may set off any sums payable by the Borrower to the Lender under this Deed against any Unpaid Amount.
- 19.2 The Lender shall not be bound by any rights given to it under this clause.
20. **Release and Reassignment**
- Following the date on which the Loan has been repaid in full the Lender shall, at the request and cost of the Borrower, release the Property from the charge created by this Deed and shall reassign to the Borrower or (as the case may be) to the Lender under this Deed.

21. **Cumulative and Continuous**

21.1 This Deed is a continuing security for the Lender regardless of any intermediate payments made by the Borrower and will not be prejudiced by any payment, omission or circumstance which, but for this Clause, would affect its effectiveness.

21.2 The security constituted by this Deed is in addition to and is not in any way prejudiced by any rights which the Lender may have in respect of the Loan including any rights arising under any other Security.

22. **Remedies, Waivers, Amendments**

22.1 Any amendment to this Deed must be made in writing and signed by or on behalf of each party.

22.2 Any waiver of any right or remedy under this Deed is only effective if it is in writing and signed by the Lender, the party presenting party, and applies only in the circumstances for which it is given.

22.3 No delay or failure to exercise a right or remedy under this Deed shall operate as a waiver of that right.

22.4 No single or partial exercise of a right or remedy under this Deed shall prevent any further exercise of that right or remedy.

22.5 The parties' rights and remedies under this Deed are cumulative and not exclusive of any other rights or remedies provided by law or otherwise.

23. **Severance**

If any provision of this Deed is held to be unenforceable in whole or in part, the remainder of the provisions of this Deed shall remain in full force and effect.

24. **Third Party Rights**

A person who is not a party to this Deed has no rights under this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. **Communications**

25.1 All communications between the Lender and the Borrower in connection with the loan shall be in writing and delivered by hand or by post or sent by fax or e-mail:

25.1.1 (in the case of the Lender) to its registered office or such change of address as may be notified to the Borrower and the Owners by the Lender;

25.1.2 (in the case of the Borrower) to any address of the Borrower which forms part of the Deed or such other address as may be notified to the Lender by the Borrower;

- 25.1.3 (in the case of the Owners) to any address of the Owners which forms part of the Deed or such other address as may be notified to the Lender by the Owners.
- 25.2 Communications shall be deemed to have been received:
- 25.2.1 if sent by pre-paid post, on the Business Day after posting (exclusive of any day which is a Bank Holiday); or
- 25.2.2 if delivered by hand, on the Business Day prior to 5.00 pm, at the time of delivery; or
- 25.2.3 if sent by fax, on the Business Day prior to 5.00 pm, at the time of transmission.
- 25.3 Communications addressed to the Lender shall be marked for the attention of << Name of person >>

## 26. **Governing Law and Jurisdiction**

This Deed (including any notices and obligations arising therefrom or associated therewith) shall be construed in accordance with, the laws of England and Wales. Any dispute, proceedings or claim between the Parties relating to this Deed (including any non-contractual matters and obligations arising therefrom) shall fall within the jurisdiction of the courts of England and Wales.

**IN WITNESS OF WHICH** the parties have signed and delivered this Deed the day and year first above written.

Signed as a deed by  
<<Name of Borrower>>  
in the presence of:

Signature of witness \_\_\_\_\_

Name (in BLOCK CAPITALS) \_\_\_\_\_

Address \_\_\_\_\_

Executed as a deed by <<Lender's name>> [two directors] and its secretary] [two directors]

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of [Director] [Secretary]

Signed as a deed by  
<<Name of Co-owner>>  
in the presence of:

Signature of witness \_\_\_\_\_

Name (in BLOCK CAPITALS) \_\_\_\_\_

Address \_\_\_\_\_

[Alternative execution clause for ( )]

Executed as a deed by affixing  
the common seal of  
<<Lender's Name>>  
in the presence of

seal here>>

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary]

[Alternative execution clause for ( ) signature in presence of a  
witness)

Executed as a deed by  
<<Lender's Name>>  
acting by a director in the  
presence of

Signature:

or

Signature of witness \_\_\_\_\_

Name (in BLOCK CAPITALS) \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ ]

Property Address: << Insert full address of property to be charged >>  
Freehold or leasehold? << Insert "Freehold" or "Leasehold" >>  
Land Registry title number: << Insert title number >>

S

A

M

P

L

E

Loan Amount: £<<  
Interest payable: £<<  
Commencement Date: << D

Repayment Date	Capital Balance remaining	Repayment	Interest Repayment
<< Date >>	<< Loan A		
<< Date >>			
<< Date >>			
<< Date >>			
<< Date >>			
<< Date >>			
<< Date >>			
<< Date >>			
<< Date >>			