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This deed is dated 25<sup>th</sup> March 2020

## **PARTIES**

- (1) The individuals listed in Schedule 1, each being a guarantor and indemnifier (**Guarantor**)
- (2) Jenkins Investments SSAS (PTSR 20000564RY) of 1 Carts & Wagons, Felcourt Farm, Felcourt Road, Felcourt, East Grinstead RH19 2LQ (**Lender**)

## **BACKGROUND**

- (A) The Lender has agreed to provide the Borrower with facilities on the terms set out in the Facility Agreement.
- (B) The Guarantor has agreed to enter into this guarantee for the purpose of providing credit support to the Lender for the Borrower's obligations under the Facility Agreement.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

The following definitions apply in this guarantee.

**Borrower:** Ssassy Property Ltd, a company incorporated and registered in England and Wales with company number 10727585 whose registered office is at c/o Optimise Accountants Limited, 31-33 Meadow Lane, Long Eaton, Nottingham, NG10 2FE.

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

**Facility Agreement:** the facility agreement made between the Borrower and the Lender, dated 27<sup>th</sup> March 2020

**Guaranteed Obligations:** all present and future payment obligations and liabilities of the Borrower due, owing or incurred under the Facility Agreement to the Lender (including, without limitation, under any amendment, supplement or restatement of the Facility Agreement, or in relation to any new or increased advances or utilisations).

**Repeating Warranties:** the Warranties set out in paragraphs 1 to 9 of Schedule 2.

**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,

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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.

**Warranties:** the representations and warranties set out in Schedule 2.

## 1.2 Interpretation

In this guarantee:

- (a) clause and Schedule 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);
- (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 **Lender** shall include the Lender'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, notarisation, 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 Lender entering into the Facility Agreement, the Guarantor guarantees to the Lender, 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 Lender in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Lender 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.

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### **3. LENDER 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 Lender 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; or
- (b) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Lender 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; or
- (c) any act or omission by the Lender or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Borrower or any other person; or
- (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; or
- (e) any grant of time, indulgence, waiver or concession to the Borrower or any other person; or
- (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; or
- (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; or
- (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 Lender.

**3.3** The Lender shall not be obliged before taking steps to enforce any of its rights and remedies under this Guarantee:

- (a) to take any action or obtain judgment in any court against the Borrower or any other person; or
- (b) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Borrower or any other person; or
- (c) to 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 Lender 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 Lender for application in or towards the discharge of the Guaranteed Obligations under this guarantee; and
- (b) on demand by the Lender, the Guarantor shall promptly transfer, assign or pay to the Lender 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 Lender from time to time for the discharge and performance of the Borrower of the Guaranteed Obligations.



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#### **4. INTEREST**

**4.1** The Guarantor shall pay interest to the Lender after as well as before judgment at the annual rate which is 5% above the base rate of Barclays Bank plc on all sums demanded under this guarantee from the date of demand by the Lender or, if earlier, the date on which the relevant damages, losses, costs or expenses arose in respect of which the demand has been made, until, but excluding, the date of actual payment.

**4.2** Interest under Clause 4.1 shall accrue on a day-to-day basis calculated by the Lender upon such terms as the Lender may from time to time determine and shall be compounded on the last Business Day of each month.

**4.3** The Lender 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 Lender in respect of any failure by the Borrower to make any payment in respect of the Guaranteed Obligations.

#### **5. COSTS**

**5.1** The Guarantor shall within five Business Days of demand, pay to, or reimburse, the Lender 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 Lender 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.

#### **6. REPRESENTATIONS AND WARRANTIES**

**6.1** The Guarantor represents and warrants that the Warranties are true and correct on the date of this guarantee.

**6.2** The Repeating Warranties are deemed to be made by the Guarantor by reference to the facts and circumstances then existing on each day whilst this guarantee remains in full force and effect.

#### **7. ACCOUNTS**

**7.1** The Lender 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 Lender to prove for the full amount of all its claims against the Borrower or any other person in respect of the Guaranteed Obligations.

**7.2** The Lender 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 the subject of this guarantee as the Lender, in its absolute discretion, may conclusively determine.

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

**7.4** If the Lender does not open a new account or accounts pursuant to Clause 7.3, 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.

**7.5** As from the time of opening or deemed opening of a new account or accounts, all payments made to the Lender 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

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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.

## **8. DISCHARGE CONDITIONAL**

**8.1** Any release, discharge or settlement between the Guarantor and the Lender in relation to this guarantee shall be conditional on no right, Security, disposition or payment to the Lender by the Guarantor, the Borrower or any other person in respect of the Guaranteed Obligations being avoided, set aside or ordered to be refunded pursuant to 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.

**8.2** If any right, Security, disposition or payment referred to in Clause 8.1 is avoided, set aside or ordered to be refunded, the Lender 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.

## **9. PAYMENTS**

**9.1** All sums payable by the Guarantor under this guarantee shall be paid in full to the Lender 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 deductions or withholdings whatsoever except as may be required by law or regulation which is binding on the Guarantor.

**9.2** If any deduction or withholding is required by any law or regulation to be made by the Guarantor, the amount of 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.

**9.3** The Guarantor shall promptly deliver or procure delivery to the Lender of all receipts issued to him evidencing each deduction or withholding which he or she has made.

**9.4** The Guarantor shall not and may not direct the application by the Lender of any sums received by the Lender from the Guarantor under, or pursuant to, any of the terms of this guarantee.

## **10. TRANSFER**

**10.1** This guarantee is freely assignable or transferable by the Lender.

**10.2** 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.

## **11. LENDER'S RIGHT OF SET-OFF**

**11.1** The Lender may at any time set off any liability of the Guarantor to the Lender against any liability of the Lender 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 Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this Clause 11.1 shall not limit or affect any other rights or remedies available to it under this guarantee or otherwise.

**11.2** The Lender is not obliged to exercise its rights under Clause 11.1. If, however, it does exercise those rights it must promptly notify the Guarantor of the set-off that has been made.

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## **12. EVIDENCE OF AMOUNTS AND CERTIFICATES**

**12.1** Any certificate, determination or notification by the Lender 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.

## **13. REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS**

**13.1** Any amendment to this guarantee shall be in writing and signed by or on behalf of each party.

**13.2** Any waiver of any right or consent given under this guarantee is only effective if it is in writing and signed by the waiving or consenting party. 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.

**13.3** No delay or failure to exercise any right under this guarantee shall operate as a waiver of that right.

**13.4** No single or partial exercise of any right under this guarantee shall prevent any further exercise of the same right or any other right under this guarantee.

**13.5** Rights and remedies under this guarantee are cumulative and do not exclude any rights or remedies provided by law or otherwise.

## **14. SEVERANCE**

**14.1** 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.

## **15. THIRD PARTY RIGHTS**

**15.1** 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.

## **16. COUNTERPARTS**

**16.1** 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.

**16.2** Transmission of the executed signature page of a counterpart of this guarantee by fax or e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this guarantee. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

## **17. PERPETUITY PERIOD**

**17.1** If the rule against perpetuities applies to any trust created by this guarantee, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).





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## **18. NOTICES**

**18.1** A notice given to a party under or in connection with this agreement shall be in writing and sent to the party at the address given in this agreement or as otherwise notified in writing to the other party.

**18.2** The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

<b>Delivery method</b>	<b>Deemed delivery date and time</b>
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of delivery.	9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

**18.3** For the purpose of Clause 18.2 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

**18.4** 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.

**18.5** A notice given under this agreement is not valid if sent by email.

## **19. GOVERNING LAW**

**19.1** 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.

**19.2** The Guarantor irrevocably consents to any process in any proceedings under Clause 20 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.

## **20. JURISDICTION**

**20.1** 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 Lender 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

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permitted by the law of such other jurisdiction.

## **21. JOINT AND SEVERAL LIABILITY**

**21.1** Each Guarantor named in Schedule 1 shall be jointly and severally liable in respect of the Guaranteed Obligations and all other obligations assumed in this agreement.

## **22. AGENT FOR SERVICE**

**21.1** The Guarantor irrevocably Empowered Trustes, 2 Carts & Wagons, Felcourt Farm, Felcourt, East Grinstead, RH19 2LQ as its agent to receive on its behalf in England or Wales service of any proceedings under Clause 20.

**21.2** Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Guarantor) and shall be valid until such time as the Lender has received prior written notice from the Guarantor that such agent has ceased to act as agent.

**21.3** If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Guarantor shall forthwith appoint a substitute acceptable to the Lender and deliver to the Lender the new agent's name, address within England and Wales.]

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

## **SCHEDULE 1**

### **The Guarantors**

**JOHN RUSSELL MCQUEEN of 12 Bowness Avenue, Headington, Oxford, OX3 0AJ**

**CLIVE HUGH MAPLE of 19 Verica Gardens, Pamber Heath, Hampshire, RG26 3EU**

**IAN JOHN PRITCHETT of Hawthorns, Kingston Road, Frilford, Abingdon, OX13 5NX**



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## **SCHEDULE 2**

### **REPRESENTATIONS AND WARRANTIES**

#### **1. CAPACITY**

**1.1** The Guarantor has the capacity to execute, deliver and perform his or her obligations under this guarantee and the transactions contemplated by them.

**1.2** The Guarantor is not dead or, by reason of illness or incapacity (whether mental or physical), incapable of managing his or her own affairs.

**1.3** The court has not made an order or appointed a deputy under section 16 of the Mental Capacity Act 2005 in respect of the Guarantor.

#### **2. NON-CONTRAVENTION**

**2.1** The execution, delivery and performance of the obligations in, and transactions contemplated by, this guarantee does not and will not contravene any agreement or instrument binding on the Guarantor or his or her assets, or any applicable law or regulation.

#### **3. AUTHORISATIONS**

**3.1** The Guarantor has taken all necessary action and obtained all required or desirable authorisations to enable him to execute, deliver and perform his or her obligations under this guarantee and to make this guarantee admissible in evidence in England and Wales. Any such authorisations are in full force and effect.

#### **4. BINDING OBLIGATIONS**

**4.1** The Guarantor's obligations under this guarantee are, subject to any general principles of law limiting obligations, legal, valid, binding and enforceable.

#### **5. LITIGATION**

**5.1** No litigation, arbitration or administrative proceedings are taking place, pending or, to the Guarantor's knowledge, threatened against him or any of his or her assets.

#### **6. ASSETS NOT IMMUNE TO ACTION**

**6.1** None of the Guarantor's assets are entitled to immunity on any grounds from any legal action or proceeding (including, without limitation, suit, attachment prior to judgment, execution or other enforcement).

#### **7. NO DEFAULT**

**7.1** No event or circumstance is outstanding which constitutes a default under any deed or instrument which is binding on the Guarantor, or to which his or her assets are subject, which might have a material adverse effect on the Guarantor's ability to perform his or her obligations under this guarantee.

#### **8. RANKING OF OBLIGATIONS**

**8.1** The Guarantor's payment obligations under this guarantee rank at least pari passu with the claims of all his or her other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law generally.

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## **9. BANKRUPTCY AND ANALOGOUS EVENTS**

**9.1** The Guarantor has not suspended, or threatened to suspend, payment of his or her debts, is not unable to pay his or her debts as they fall due, has not admitted inability to pay his or her debts and is not deemed either unable to pay his or her debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986.

**9.2** The Guarantor has not commenced negotiations with all or any class of his or her creditors with a view to rescheduling any of his or her debts, and has not made a proposal for or entered into any compromise or arrangement with his or her creditors.

**9.3** The Guarantor is not the subject of a bankruptcy petition, application or order.

**9.4** No person has become entitled to appoint a receiver over any of the assets of the Guarantor, and no receiver has been appointed over any of the assets of the Guarantor.

**9.5** No creditor or encumbrancer has attached or taken possession of, and no distress, execution, sequestration or other such process has been levied or enforced on or sued against, any of the Guarantor's assets.

**9.6** No event has occurred and no proceeding has been taken in any jurisdiction to which the Guarantor is subject which has an effect equivalent or similar to any of the events mentioned in Paragraph 9.1 to Paragraph 9.5 (inclusive).

## **10. ACCURACY OF INFORMATION**

**10.1** The information contained in Annex 1 to this agreement is true, accurate and complete in all material respects.

**BY ENTERING INTO THIS GUARANTEE YOU MIGHT BECOME LIABLE INSTEAD OF OR AS WELL AS THE BORROWER.**

**YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE BEFORE ENTERING INTO THIS GUARANTEE.**

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Signed as a deed by **JOHN RUSSELL MCQUEEN GOVAN:**

in the presence of:

  
Guarantor

  
.....

SIGNATURE OF WITNESS:

NAME, ADDRESS AND OCCUPATION OF WITNESS:

SIMONE PRITCHETT  
HAWTHORNS  
KINGSTON ROAD  
FRITFORD  
ABINGDON  
OXFORDSHIRE  
OX13 5NX.

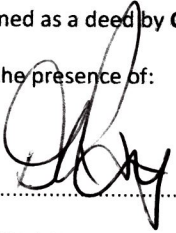
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Signed as a deed by **CLIVE HUGH MAPLE:**

in the presence of:

  
.....

SIGNATURE OF WITNESS:

NAME, ADDRESS AND OCCUPATION OF WITNESS:

DAWN RAY  
18 VERICA GARDENS, PAMBER HEATH  
HANTS. RG26 3EU.  
BUSINESS CONSULTANT.

   
.....  
Guarantor

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Signed as a deed by IAN JOHN PRITCHETT:

Ian Pritchett

in the presence of:

**Guarantor**

P. M. W.

SIGNATURE OF WITNESS:

NAME, ADDRESS AND OCCUPATION OF WITNESS:

Mr Piers, Philip Ashley-Carter

26 Wootton Rd

Abingdon

Oxon

OX14 1JD.

Occupation: Construction Manager.