



## Deed of Guarantee

**IMPORTANT WARNING TO INTENDED GUARANTOR/S:** By signing this document you agree to underwrite the rental and other responsibilities of the Tenant under his/her tenancy agreement. This means that if the tenant fails to do so you will have to pay instead.

**YOU SHOULD CAREFULLY CONSIDER TAKING LEGAL ADVICE BEFORE SIGNING THIS DOCUMENT.**

Note: The signature(s) of the Guarantee must be witnessed.

\* Delete as appropriate

**TO** (Name of Landlord) Boatswain Ltd c/o Knightstone Properties Ltd

**FROM** (Name of Guarantor(s))

Of (Address of Guarantor(s))

Contact details (of Guarantor(s))

Email address:

Telephone/mobile number:

### **PARTICULARS:**

Tenant:

(Name of Tenant(s) for whom the guarantee is given)

Property Address: Flat , 34 Deacon Street, LE2 7EF, Leicester, United Kingdom.

Tenancy Agreement dated: 6 November 2019. Rent: £ p/a each

Term: 48 weeks PLUS the time during which there is any continuation of the tenancy under a statutory periodic tenancy (this is the tenancy which follows on at the end of the fixed term if the tenant chooses to remain in the property) OR any continuation period under any contractual continuation of the tenancy.

### **Guarantee**

1.1 **IN CONSIDERATION** of you having agreed to my/our\* request to accept the Tenant as a tenant of the Property upon the terms of the Agreement at the Rent for the Term **I/WE\* HEREBY GUARANTEE** the payment by the Tenant to you of the rent and any other money payable under the Agreement and also

that the Tenant will comply with the terms of the Agreement but in relation to Rent only this Guarantee is subject to the limit contained in Clause 1.2.

- 1.2 My/our liability under this Guarantee in respect of the rent payable under the Agreement shall be limited to the nominated Tenant of total rent (or other money) for the Property.

#### **More than one tenant**

1. If there is more than one tenant under the Tenancy Agreement (even if the identity of any of the tenants changes) the Tenant is jointly and individually (severally) liable with any other tenant to pay the Rent and otherwise comply with the other terms of the Agreement. As I/we\* are guaranteeing the Tenant's obligations under the Agreement this includes guaranteeing the Tenant's liability for the nominated Tenant. This means that I/we\* agree that I/we\* are fully responsible for the payment of all the rent (or other money) and for the whole of the losses which may result if the nominated Tenant breaks any of the terms of the tenancy (for what is meant by losses see Clause 16 below) if the Tenant fails to pay.

#### **Payment on demand**

2. If the Tenant fails to pay the rent or any other money payable under the terms of the Agreement I/we\* will, upon written demand by you, pay you the Rent or other money which shall be unpaid.
3. If the Tenant does not comply with any of the terms of the Agreement which are the Tenant's responsibility I/We\* will, on written demand, pay you all losses which you are entitled to recover as a result of the Tenant breaking the terms of the Agreement (for what are losses see Clause 16 below). Details of the amount of the loss and how it is calculated must be provided by you.

#### **Continuation of Guarantee**

4. This Guarantee shall continue if a statutory periodic tenancy arises under the Housing Act 1988 or there is a contractual continuation on the expiry of the fixed term granted by the Agreement. I/we\* agree that I/we\* will pay the rent and any other money payable and also pay any losses if any of the other terms of the tenancy are broken (for what are losses see Clause 16 below) under this statutory periodic tenancy or contractual continuation.

#### **Cancellation of guarantee**

5. (i) This Guarantee cannot be revoked or cancelled by you for so long as the Tenant remains a tenant of the Property during the fixed term tenancy granted by the Agreement.  
(ii) Once the fixed term of the tenancy has come to an end if a statutory periodic tenancy or contractual continuation arises the Guarantor can cancel this Guarantee on giving not less than three month's notice in writing to the Landlord. This notice can take effect at the end of the fixed term but no earlier. This means that the earliest date when notice can be given is three months before the end of the fixed term. The cancellation of the Guarantee shall take effect as from the expiry of this notice but subject to sub-clause (iii). This notice must be given to expire on a rent payment day or the last day of the fixed term of the tenancy.  
(iii) If, within one month of receiving notice from the Guarantor to cancel the agreement, the Landlord gives notice to the Tenant under Section 21 of the Housing Act 1988 and informs the Guarantor that this has been done then (if the Tenant fails to vacate the property) so long as the Landlord starts court proceedings for possession of the property under Section 21 within one month of the expiry of the Section 21 Notice the notice of cancellation of the Guarantee shall not be operative for a further period of 3 months from the date when it would otherwise have taken effect. The cancellation of this Guarantee shall then take effect at the end of this extended period instead.

#### **Death or Bankruptcy of the Guarantor**

6. This Guarantee shall be cancelled if I/we\* die or become bankrupt. If there is more than one Guarantor then it shall only be cancelled on the death or bankruptcy of the last Guarantor to die or become bankrupt. Cancellation shall take effect on the next rent payment day after the date of the death or bankruptcy.

#### **Death of the Tenant**

7. (i) This Guarantee will not be cancelled on the death of the Tenant if the fixed term of the tenancy is still running at the date of death, but it will end on the expiry of the fixed term (unless the tenancy is terminated earlier) but subject to sub-clause (ii).

(ii) The Guarantee shall only continue under sub-clause (i) for the duration of the remainder of the fixed term if the landlord makes a written offer to the personal representatives of the deceased Tenant to accept a surrender of the tenancy with effect from the next rent payment day after the date of death and the personal representatives refuse or fail to effect such a surrender. It will end on the date of the surrender or, if earlier, the day before the next rent payments date after the date of the tenant's death. For who is the personal representations see Clause 16.

(iii) In the event of the tenancy being a periodic tenancy at the date of death this Guarantee shall be cancelled at the end of the period of the tenancy current at the date of the Tenant's death.

#### **Bankruptcy of the Tenant**

8. This Guarantee will not be cancelled on the Tenant's bankruptcy (as the tenancy potentially can continue even if the Tenant becomes bankrupt).

#### **Effect of cancellation**

9. The cancellation of the Guarantee under Clauses 6, 7 or 8 means that any amounts payable in respect of arrears of rent or other money or losses down to the date of cancellation must be paid.

#### **Alterations to the Tenancy**

10. (i) This Guarantee shall continue in force even if there is an alteration in the terms of the Agreement with or without my/our\* consent (including any increase in the amount of rent payable in respect of the property by the Tenant) but subject to the provisions of this clause.

(ii) The Guarantee will apply to any statutory periodic tenancy or contractual continuation which arises at the end of the fixed term (see Clause 5 above).

(iii) However, for these purposes a variation shall not include any new or further agreement entered into by the Tenant and yourself under which a tenancy of the property is granted or extended unless I/we\* also agree to guarantee the extended or new tenancy. This means that I/we\* will only be responsible for guaranteeing any new or extended tenancy if I/we\* expressly agree to this at the time (for what is an extended tenancy see paragraph 16 below). This Guarantee will apply to the tenancy up to the date the existing tenancy ends or to the day before the extended term takes effect (as the case may be).

(iv) If there is any variation to the Agreement with my/our\* written consent I/we\* will be bound by it and will guarantee the Agreement as varied.

(v) If there is variation to the terms of the Agreement without my/our consent I/we\* will only be liable to pay what I/we\* would have had to pay according to the terms of the Agreement as if it had not been varied.

#### **Termination of the Tenancy**

11. This Guarantee shall not be cancelled because the tenancy under the Agreement is terminated by Court Order by re-entry forfeiture notice or otherwise but I/we\* shall only be liable for any failure to pay the rent or other money or for any loss resulting from any non compliance with the terms of the tenancy occurring up to the date of termination.

#### **Non cancellation**

12. This Guarantee cannot be cancelled and I/we\* will not cease to be liable -

- if you do not take any action to enforce compliance with the Agreement
- if you give any time to pay or opportunity to make good any non compliance with the terms of the Agreement
- if you refuse to accept rent or any other monies following any failure to comply with the terms of the tenancy agreement in order to protect your rights as landlord under the Agreement

#### **Demands**

13. Any demand shall be valid if sent by post or left at my/our address specified above or such other address as I/we\* may notify to you in writing as to where any such demand should be sent (so long as a receipt for such notification of an alternative address is issued by you).

#### **Joint and individual liability of more than one Guarantor**

14. If there is more than one guarantor our liability under this Guarantee is joint and individual (several) so that if either of us fail to pay then the other will be fully liable to pay.

#### **Definitions**

15. For the purposes of this Guarantee –

- (i) "losses" included any damages, expenses or costs (including legal costs) which result if any rent or other monies payable or are not paid or if any term of the Agreement is broken.
- (ii) An "extended tenancy" is where there is an agreement to extend the fixed term of the tenancy when it ends or to grant a fixed term in place of a periodic tenancy.
- (iii) "personal representative" includes whoever has priority to apply for a Grant of Representations to the Estate of the Tenant if the Tenant dies.

**Legal costs**

16. You will be entitled to recover any legal costs which you may incur in recovering any payment due from us under this Guarantee.

**Notice to the Landlord**

17. Any notice I/we\* give to you shall be effective if sent by post or left at your address specified above or such other address as you may notify to me/us as being the address to which any notices addressed to you should be sent.

**IN WITNESS** whereof the Guarantor has executed this instrument as a deed on the day and year first above

Dated:

**THE GUARANTOR'S SIGNATURE MUST BE WITNESSED**

Signed and Delivered as a Deed   
 (First Guarantor/Sole Guarantor sign here)

in the presence of:

**WITNESS**

Signature of Witness:

Name of witness:

Address of Witness:

I/we\* acknowledge that I/we\* have received a copy of the Tenancy Agreement dated:

I/we\* also confirm that I/we\* have received a copy of the Explanatory Guide for this Guarantee

## **Explanatory Guide to Deed of Guarantee**

### **IMPORTANT WARNING TO ANY INTENDED GUARANTOR/S**

- (1) Please read this Guide thoroughly before signing the Guarantee.
- (2) You should read the Guarantee through carefully and consider its terms before signing it.
- (3) You should also carefully read the tenancy agreement through to make sure that you are fully aware of the responsibilities of the tenant under this agreement because you are guaranteeing that the tenant will comply with the terms of the agreement.
- (4) You should consider taking legal advice before signing the guarantee.
- (5) You must carefully consider the financial position of a tenant and whether or not the tenant will be able to meet his/her financial commitments under the tenancy, especially whether or not the tenant is able to pay the rent. You should also consider whether the tenant is likely to behave in a responsible way and comply with the other obligations under the tenancy, e.g. not to damage the property. You must realise that you will be agreeing to stand behind the tenant and make sure the tenant keeps his/her promises under the tenancy agreement.
- (6) Where the tenant is one of a group of tenants (e.g. a student or young professional) then different tenants may be guaranteed by different guarantors. This will not just necessarily apply where there is a group of tenants but could also be the case in other situations. Where different tenants are guaranteed by different guarantors then particular issues arise which are explained below. You should read this information carefully.

This explanatory guidance details the responsibilities of the Guarantor, if the Guarantor signs the Guarantee. It also gives the answers to frequently asked questions about the guarantee.

### **What the Guarantor is liable for**

The Guarantor agrees with the landlord to pay the landlord what the tenant who is guaranteed has to pay under the tenancy agreement, if the tenant fails to do so. If the tenant fails to pay any rent (or any other money due) then the Guarantor must pay this in full. If the tenant breaks any of the terms of the tenancy and the landlord suffers loss then the guarantor must pay the landlord the amount of that loss, if the tenant does not do so.

### **Unlimited liability for the nominated tenant**

The form of Guarantee which you are being asked to sign is one under which there is unlimited liability. This means that there is no maximum amount fixed which the Guarantor has to pay if the tenant does not pay.

### **Liability of the Guarantor where there is more than one tenant**

Where there is more than one tenant then the individual liability of those tenants is joint and several. This means that if one tenant fails to pay the other tenant must pay instead. All tenants are individually liable to pay the full rent (or any other payment). Likewise, all tenants are individually responsible for paying the landlord for any other losses suffered, e.g. because the property is damaged or there is some other breach of the terms of the tenancy. This means that any guarantor of an individual tenant is liable for the full amount of any unpaid rent or other loss, only what the nominated tenant owes.

### **What happens if there are different guarantors for different tenants and one of those guarantors cannot pay?**

This section deals with the situation where you have different guarantors for different tenants. As explained above, this form of guarantee is unlimited. For all responsibilities under the guarantee, e.g. for damage to the property, you will be fully liable to compensate the landlord. This applies only where the nominated tenants who is responsible for causing the loss. The landlord can pursue any of the guarantors in that situation and therefore the full amount of these costs could be claimed proportionally from you.

Where recovery is made from any individual guarantor that guarantor can look to any other guarantors or any other tenant responsible and claim appropriate contribution from them towards the loss that the guarantor has had to pay. Whether or not in reality you can recover will depend on the financial position of the other guarantors/tenant against whom you are making the claim.

### **Frequently asked questions**

**1. How long does the Guarantee last for?**

Initially, the tenancy starts as a fixed term tenancy, e.g. for six months or twelve months. Please check the tenancy agreement to see how long it will last for. A Guarantor's responsibility may not end when the fixed term tenancy ends. It will do so only if the tenant moves out on or before the last day of the tenancy. After that the tenancy can run on as a statutory periodic tenancy or there may be a provision in the tenancy agreement for it to continue automatically after the end of the fixed term. It will then carry on as a monthly, weekly, four weekly or fortnightly tenancy. Again, you need to check the tenancy agreement. Importantly, you, as guarantor, remain liable to pay the rent and to pay for any loss, e.g. due to damage if the tenant fails to do so during any run on of the tenancy after the end of the fixed term.

**2. Does the Guarantee end if a new tenancy agreement is signed?**

Yes. The guarantee will end unless you agree to sign a new form of guarantee for the new tenancy. You are still responsible if there is an automatic run on of the tenancy after the end of the initial fixed term - see Question 1.

**3. What happens if the tenancy is expressly extended?**

If the landlord agrees to extend the fixed term, e.g. by giving a letter saying that it will run on for another fixed period of six months, then again your responsibility as guarantor ends when the extension starts, unless you agree to guarantee any extension.

**4. When do I have to pay if the tenant fails to do so?**

If the tenant does not pay what he/she should pay then the landlord must make a written demand and you then agree to pay whatever is legally due.

**5. Can the guarantee be cancelled?**

You as guarantor can cancel the guarantee but only in certain circumstances. No cancellation is allowed in relation to the initial fixed term of the tenancy. You can give three months written notice to cancel the guarantee, but this cannot take effect earlier than the end of the fixed term. This means, for example, that if there is a fixed term for one year and you want to end a guarantee you should give notice at least three months before the end of the fixed term. The guarantee will then end at the point when the fixed term runs out.

If the tenancy is running on as a periodic tenancy after the end of the fixed term, you can give three months' notice to cancel it. Any cancellation then takes effect from the end of the three month notice period (but no earlier than the end of the fixed term tenancy).

To cancel, written notice must be given to the landlord. Importantly, where you give notice which will take effect once the tenancy is running on as a periodic tenancy then the notice must run out on a rent payment day to be valid. However, importantly, in certain circumstances the three month notice period can be extended by the landlord - see next question.

**6. Does the landlord have to accept a cancellation notice?**

Yes, so long as it complies with what is said in the answer to the last question, but this is subject to two important qualifications. Firstly, the landlord could decide to end the tenancy if you cancel the guarantee and ask the tenant to leave. Secondly, under the terms of the guarantee itself, if the landlord decides to give a Section 21 notice to the tenant to evict the tenant then your guarantee can continue. To do this the landlord must give the tenant a Section 21 notice and inform you within one month of receiving the notice from you cancelling the guarantee. The landlord must then start Court possession proceedings within one month of the date when the Section 21 notice runs out. If this happens your cancellation of the guarantee does not take effect for an additional three months from the date when it would otherwise have taken effect. Instead, you can remain liable for a further three months making a total of six months from when you gave notice of cancellation. If, in the meantime, the tenant leaves then the tenancy ends and the guarantee will also end.

**7. What happens if the guarantor dies?**

If the guarantor dies then the guarantee is cancelled as from the next rent payment after the date of death. However, if there is more than one guarantee this only applies when the last guarantor dies. However, any money due down to the date when the guarantee ends still remains payable.

**8. What happens if the guarantor becomes bankrupt?**

The same rules apply for bankruptcy of a guarantor as on death.

**9. What happens if the tenant dies?**

If the tenant dies and the fixed term of the tenancy is running then the guarantee will continue until the fixed term runs out. It will end if the tenancy ends earlier. However, this only applies if the landlord makes a written offer to accept a surrender of the tenancy as from the next rent payment day after death and this is refused or not taken up. If it is taken up then it will end on the next repayment date after the tenant's death (or earlier if the tenancy ends before then).

**10. Is the guarantee ended if the tenant becomes bankrupt?**

No. This is because the tenancy can still carry on even if the tenant becomes bankrupt.

**11. What happens if the guarantee is cancelled?**

Even if the guarantee is cancelled the guarantor must still pay whatever is owed and not paid by the tenant. This is worked out up to the date for which the cancellation of the guarantee takes effect.

**12. What happens if the tenancy ends?**

Again, if the tenancy ends the guarantor is still responsible for paying whatever is owed at the end of the tenancy if the tenant does not pay.

**13. What happens if the terms of the tenancy are altered, e.g. an increase in the amount of rent payable or the length of the tenancy is extended?**

Importantly, the guarantee is not ended automatically but what happens will depend on the way in which the tenancy is altered. The following rules apply:

- (a) If a new or extended agreement is entered into then as guarantor you are only responsible for the guarantee renewal or extended tenancy if you sign a new guarantee - see Questions 2 and 3.
- (b) If there is any other variation then you will continue to guarantee the tenancy as varied if you agree in writing that you consent to the variation, e.g. you will also be responsible for the increased rent.
- (c) If there is a variation to the existing tenancy to which you do not agree you will still be responsible for guaranteeing the tenancy but only in line with the pre-variation terms. For example if the rent is increased from £500 to £600 per month you would only be responsible for guaranteeing the original £500 per month; not the amount of the increase, unless you agree to guarantee the increased amount.

**14. What happens if the landlord gives the tenant time to comply or otherwise does not strictly enforce the tenancy agreement?**

The guarantee is not cancelled. The guarantor will still be liable even if the landlord fails to take action to enforce its terms, gives the tenant time to pay or to make good the broken term of the tenancy, or if the landlord refuses to accept rent protect his/her legal rights as landlord.

**15. How are notification given to you by the landlord?**

The guarantee document provides that any notice must be sent by post or left at the specified address. This will apply for example if you are required to make a payment under the guarantee.

**16. What happens if there is more than one guarantor?**

If there is more than one guarantor then you are jointly and individually liable. This means that any guarantor could be called upon to pay the full amount. This is dealt with in clause 15 of the guarantee but this particular clause only applies as between those guarantors who actually sign the document. This is explained in more detail under the Section above - liability for guarantor where there is more than one tenant.

**17. Can the landlord recover legal cost?**

Yes, the landlord can recover legal costs against the guarantor if steps have to be taken to enforce the guarantee.

**18. How do I give notice to the Landlord?**

You must give notice in writing by letter or sent by post or left at the landlord's address as stated in the Guarantee or as subsequently notified to you if this change.

