

Deed of Guarantee

England & Wales

This is an important document. The Lender requires you to obtain legal advice from a solicitor independent of the Borrower before signing this Deed of Guarantee and you should only sign this document if you want to be legally bound by its terms. Once you have signed this Deed of Guarantee, the Lender may become entitled to enforce its rights against you instead of or as well as enforcing its rights against the Property or the Borrower, if the Borrower fails to pay money to the Lender in accordance with the Mortgage Agreement. Your liability as Guarantor under this document is limited as set out in clause 3.

Date:	
Account Number:	
Borrower(s) Name:	
Lender:	Magellan Homeloans which is a trading name of Mars Capital Finance Limited of Ashcombe House, 5 The Crescent, Leatherhead, Surrey KT22 8DY and its successors, assignees and transferees (whether legal or equitable or whether by absolute assignment or by way of novation or by way of security only).
Guarantor(s) Name and Address:	
Property:	
Guaranteed Amount:	£ together with such interest, costs, further advances and other amounts as are referred to in clause 3 of this Deed of Guarantee

I Definitions

I.1 In this Deed of Guarantee, the following expressions are used and have the following meaning:

Costs means all costs, charges, fines and expenses reasonably and properly incurred by the Lender in exercising its rights under the Mortgage Deed.

Further Advance means any further sums the Lender subsequently lends the Borrower under the Mortgage Deed after the first Loan Advance as set out in the Mortgage Offer.

Loan Advance means the sum sent to the Borrower's solicitor to complete the purchase as set out in the Mortgage Offer and any Further Advances, which includes such other sums of whatever nature owed by the Borrower to the Lender on or before the Issue Date such as interest, charges, costs, expenses and premiums.

Mortgage Agreement means the entire legal agreement between the Lender and the Borrower under which the Lender provides the Loan Advance to the Borrower including the Mortgage Offer, the Special Conditions, the Mortgage Conditions, the Mortgage Deed and any other document entered into between the Lender and the Borrower relating to this and any subsequent Loan Advance by the Lender.

Mortgage Conditions means the Lender's Mortgage Conditions 2013 (England and Wales) as set out in this document.

Mortgage Deed means the legal document signed by the Borrower making the Property part of the Lender's security for the repayment of the all monies owed by the Borrower.

Obligations means all sums of money secured by the Mortgage Deed including the Loan Advance, any Further Advances, Costs and all other sums which are or may become payable by the Borrower to the Lender under the Mortgage Agreement and any reasonable costs or expenses the Lender incurs in order to protect or enforce its security or recover all or any part of the sums owed by the Borrower (including but not limited to costs incurred in anticipation of, preparing for or defending any court action).

1.2 References to the **Guarantor** include the legal representatives of any Guarantor who dies, becomes insolvent or becomes unable to manage his affairs.

1.3 Where more than one person is giving this Deed of Guarantee then:

- (a) references to the **Guarantor** refer to both or all of the persons who are together the Guarantor, and each of those persons separately;
- (b) if any of the persons who are together called the **Guarantor** dies, becomes insolvent or unable to manage his affairs, this will not affect the liability of the remaining persons;
- (c) the liability of the Guarantor to the Lender is both joint and several, which means the Lender may enforce against each Guarantor individually or all Guarantors jointly for any sum;
- (d) any notice served under clause 7 of this Deed of Guarantee on any one of the persons who are together the Guarantor shall be deemed to have been served on all of the persons who are together the Guarantor.

2 The Guarantor's obligation to the Lender

2.1 The Guarantor guarantees the proper and punctual performance by the Borrower(s) of all the Obligations with the Lender and all obligations detailed in the Mortgage Conditions and that the Guarantor will, upon demand, pay to the Lender (without deduction or set off) any sums of money unpaid under the Mortgage Agreement (including without limitation all principal, interest, Costs and other amounts due from the Borrower(s) or his personal representatives) under or by virtue of the Mortgage Deed and that if the Property is at any time sold by the Lender and the proceeds of sale are insufficient to cover the money due to the Lender then the shortfall will immediately on demand be paid by the Guarantor to the Lender.

2.2 If for any reason any of the Mortgage Agreement or the Obligations under it are void or unenforceable against the Borrower, the Lender may recover the same from the Guarantor as though the Guarantor were primarily liable to the Lender for them.

3 Limits on the liability of the Guarantor

3.1 The Guarantor will be liable to the Lender under this Deed of Guarantee for amounts not exceeding the total of the following amounts:

- (a) the Guaranteed Amount plus 3 months' interest on such amount, Costs arising in any way in respect of the Mortgage Agreement and interest on all of these amounts from the date the Lender demands payment from the Guarantor until actual payment is received by the Lender; and
- (b) the initial amount of every Further Advance to which the Guarantor gives written consent plus 3 months' interest on such amount, the Costs (arising in any way in respect of such Further Advance), and interest on all of these amounts from the date the Lender demands payment from the Guarantor until actual payment is received by the Lender.

4 Continuing nature of this Deed of Guarantee

4.1 This Deed of Guarantee and the Guarantor's liability under it shall be a continuing security and shall not be considered as satisfied or discharged regardless of whether or not:

- (a) the Lender has made a previous demand or the Guarantor has made any previous payment under this Deed of Guarantee;
- (b) the Lender allows the Borrower or the Guarantor additional time to make any payment to the Lender or allows the Borrower or the Guarantor any other concession;
- (c) the Lender comes to any other arrangement with the Borrower or the Guarantor in relation to the Obligations;
- (d) the Lender takes any other security guarantee or similar obligation in relation to the Obligations, or when taken, that other security guarantee or similar obligation is unenforceable for any reason;
- (e) the Borrower or any one of the persons who, together with others, is called the Guarantor dies, becomes insolvent or incapable of managing his affairs;
- (f) any other act, omission or means whereby the liabilities of the Guarantor would not have been discharged if he had been a principal debtor or any other dealing between the Lender and the Borrower or the Borrower's successors in title occurs;
- (g) any amendment to the Mortgage Agreement providing this does not materially alter the Mortgage agreement and the Guaranteed Amount does not increase.

5 Reinstatement

5.1 If any payment by the Borrower or the Guarantor or any discharge given by the Lender whether in respect of the obligations of the Borrower or the Guarantor or any security for those obligations or otherwise is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of the Guarantor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Lender shall be entitled to recover the value or amount of that Security or payment from the Guarantor, as if the payment, discharge, avoidance or reduction had not occurred.

6 The Lender's rights under this Deed of Guarantee

6.1 This Deed of Guarantee is independent of and additional to any other security, guarantee or similar obligation of which the Lender may have the benefit in connection with the Obligations under the Mortgage Agreement. The Lender may decide whether or not to exercise its rights under these documents and the order in which it does so but does not have to do so before it exercises its rights under this Deed of Guarantee.

- 6.2 No failure or delay by the Lender in exercising its rights under this Deed of Guarantee, or any partial exercise of those rights, will prevent any further or full exercise of those rights by the Lender.
- 6.3 This Deed of Guarantee is and will remain the property of the Lender.
- 6.4 The Lender may hold any monies it receives under this Deed of Guarantee in a separate suspense account.

7 Restrictions on the Guarantor

- 7.1 While any of the Obligations remain outstanding, the Guarantor will not enforce against the Borrower any legal right which the Guarantor may have or acquire if the Guarantor pays any sum to the Lender instead of or on behalf of the Borrower.
- 7.2 If the Guarantor receives any payment, benefit or distribution in relation to the rights in clause 7.1 he shall hold that benefit, payment or distribution on trust for the Lender and shall promptly pay or transfer the same to the Lender for application towards the obligations.
- 7.3 The Guarantor confirms that the Guarantor does not hold and, for as long as the Obligations remain outstanding, will not hold, any security from the Borrower in relation to the Obligations under this Deed of Guarantee.
- 7.4 If the Guarantor makes a payment under this Deed of Guarantee, the Guarantor will not be entitled to claim any benefit of or any share in any security guarantee or other similar obligation which the Lender holds in relation to the Obligations until the Lender has received full repayment of the Obligations.

8 Notices

- 8.1 Any notice to be given by the Lender will be deemed to be served on the Guarantor if it is in writing and if:
- (a) it is left at the Guarantor's address stated in this Deed of Guarantee or at the place of business or abode of the Guarantor last known to the Lender; or
 - (b) if it is sent by first-class pre-paid post addressed to the Guarantor at the address described in clause 8.1(a) above,

and any notice posted in accordance with this clause shall be deemed to have been received by the Guarantor two working days after the notice has been posted by the Lender unless the notice is returned to the Lender by the Post Office undelivered.

- 8.2 Any notice to be given by the Guarantor to the Lender may be left at or sent by post to the Registered Office of the Lender: Ashcombe House, 5 The Crescent, Leatherhead, Surrey, KT22 8DY. All notices served by the Guarantor on the Lender will have no effect unless the notice contains the mortgage account number of the Borrower stated in this Deed of Guarantee.
- 8.3 Any notice served on the Lender by the Guarantor will be deemed to be served at the time at which the notice is actually received by the Lender.

9 The Lender's right to transfer the Mortgage Deed

- 9.1 The Lender may at any time transfer all or any of its rights under the Mortgage Deed, and the benefit of this Deed of Guarantee in support of the same, to any person without the consent of the Guarantor in accordance with the Mortgage Conditions.

9.2 The Guarantor agrees that the Guarantor's liability under this Deed of Guarantee will be unaffected by any transfer by the Lender of all or any of its rights under the Mortgage Deed, and the benefit of this Deed of Guarantee in support of the same.

10 Invalidity

10.1 If at any time any one or more of the provisions of this Deed of Guarantee becomes illegal, invalid or unenforceable, this will not impair or affect the legality, validity or enforceability of the remaining provisions.

11 Jurisdiction

11.1 This Deed of Guarantee and any non-contractual obligations arising out of it or in connection with it shall be governed by and construed in accordance with the laws of England & Wales and the courts of England & Wales shall have non-exclusive jurisdiction to settle any disputes which may arise in connection with this Deed of Guarantee.

Declaration

I confirm that prior to my executing the Deed of Guarantee in favour of the Lender:

- 1 I was given full opportunity to read the Lender's Mortgage Conditions, Mortgage Offer and Mortgage Deed at a private meeting with a Solicitor acting for me.
- 2 I was told that if at any time the Borrower fails to pay to the Lender the full amount of their Obligations (as defined in the Deed of Guarantee) under the Advance, then I may become liable for those Obligations up to the Guaranteed Amount plus 3 months' interest and Costs.
- 3 I took independent legal advice from a solicitor of my own choice.
- 4 I acknowledge receipt of a copy of the Mortgage Conditions, Mortgage Offer and Mortgage Deed

Signed and delivered as a deed by the Guarantor in the presence of))
Signature of witness	
Name	
Address	

Acknowledgement

I confirm that before this Deed of Guarantee was approved:

1. I interviewed the Guarantor without the Borrower being present.
2. I explained to the Guarantor the full nature of this Deed of Guarantee and the practical implications of signing it.
3. I confirm the Guarantor appeared to understand the issues and signed this Guarantee in my presence.

Signature of **Solicitor/Legal Executive**:

Date:

Name of Solicitor/Legal Executive:

Name of Firm:

Address of Firm:
