DATED 20[ ]

(1)

and

(2) **[NAMES OF SPECIAL GUARDIANS]**

legal charge (sPECIAL GUARDIANS)

Relating to financial assistance agreement for [PROPERTY ADDRESS]



The Nottinghamshire County Council

Legal Services

County Hall

West Bridgford,

NG2 7QP

Ref: [ ]

**THIS LEGAL CHARGE** is made the day of 201[ ]

**BETWEEN:**

(1) **NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall, West Bridgford, Nottingham NG2 7QP (the "Council"); and

(2) **[NAMES]** of [ADDRESS] (the "Special Guardians");

1. **DEFINITIONS**

In this charge the following words and expressions have the following meanings:

|  |  |  |
| --- | --- | --- |
|  | **“Financial Assistance Agreement”** | the agreement dated [DATE] made between the Council and the Special Guardians |
|  | **"Principal Sum"** | [AMOUNT WORDS] POUNDS (£[AMOUNT FIGURES]) |
|  | **"Property"** | All that property known as [ADDRESS] [registered at the Land Registry with absolute freehold title under title number [TITLE NUMBER]] |
|  | **"Prior Charge[*s*]"** | a charge on the Property dated [DATE OF CHARGE] in favour of [NAME OF BANK] and referred to in the charges register of title number [TITLE NUMBER] |

1. **INTERPRETATION**

In this charge:

* 1. obligations by any party which comprises more than one person will be deemed to be joint and several;
  2. words importing persons will include firms and companies and vice versa and, where expressed in the singular, will include the plural and vice versa;
  3. words of one gender will include the other gender;
  4. references to statutes bye-laws regulations orders and delegated legislation will include any statutes bye-laws regulations orders or delegated legislation modifying re-enacting extending or made pursuant to them
  5. headings are for ease of reference only and will not affect its construction; and
  6. the expressions the "Special Guardians" and the "Council" include (where the context requires) the persons deriving title under the Special Guardians and the Council respectively;

1. **PAYMENT OF PRINCIPAL SUM AND INTEREST**

The Special Guardians covenant with the Council that they will pay the Principal Sum to the Council immediately on demand in accordance with the terms of the Financial Assistance Agreement.

1. **LEGAL CHARGE**

The Special Guardians charge by way of legal mortgage and with full title guarantee all the Property to the Council with the payment (in accordance with the covenants contained in this charge) of the Principal Sum and other money covenanted in this charge to be paid by the Special Guardians.

1. **SPECIAL GUARDIAN’S COVENANTS**

The Special Guardians covenants with the Council as follows:

* 1. **INSURANCE**
     1. To keep the Property insured with an endorsement on the policy of the Council’s interest against loss or damage caused by fire and against such other risks as the Council reasonably requires to its full reinstatement value with a reputable insurance office or underwriters and (when required by the Council) to deliver to it the insurance policy or policies and the receipt for the last premium payable.
     2. To apply all insurance proceeds received by the Special Guardians in making good the loss or damage for which they were received or (if requested by the Council, acting reasonably) to pay the insurance proceeds to the Council to be applied in or towards the discharge of the Principal Sum.
  2. **SUBSEQUENT ENCUMBRANCES**

Not to create (or allow to be created) any mortgages, pledges, charges, liens or other encumbrances over the Property (other than this charge and the Prior Charges) without the prior written consent of the Council.

* 1. **COSTS**

To pay to the Council on demand all costs, charges and expenses incurred by the Council (or any receiver appointed by it) in (or in connection with):

* + 1. the exercise of any powers conferred by this charge or by statute;
    2. the recovery (or attempted recovery) of the Principal Sum or the preservation (or attempted preservation) of this security; and
    3. the remuneration of any receiver.
  1. **STATUTORY OBLIGATIONS**

To comply with all statutes, orders, regulations, bye-laws and delegated legislation relating to the Special Guardians’ use and occupation of the Property.

* 1. **TITLE OBLIGATIONS**

To observe and perform all the exceptions, reservations, covenants and conditions contained, mentioned or referred to in the registers of title number [TITLE NUMBER].

* 1. **NOT TO REGISTER**
     1. Not to cause (or permit) any person to be registered under the Land Registration Act 2002 (or any substituted statutory provision) as the proprietor of the Property (or any part of it) nor to dispose of part with or share occupation or possession of the Property (or any part of it) without the consent in writing of the Council (and if the Council enters any caution, restriction or notice against any such registration, the costs incurred by it will be deemed to have been properly incurred as mortgagee).
     2. The Special Guardians covenant with the Council to apply to the Land Registry forthwith following the execution of this deed for an entry to be made in the registers of the title to the Property in the following terms:-

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ ] in favour of the Council referred to in the charges register “

* 1. **PRIOR CHARGE**
     1. To observe all of the Special Guardians’ obligations contained in the Prior Charge.
     2. To procure that a note of the Council’s interest is endorsed on any insurance policy relating to the Property.
     3. All expenses damages and costs incurred by the Council in relation in relation to any such non-payment or breach shall be payable and charged on the Property.

1. **PROVISOS**
   1. The Special Guardians will not be entitled to exercise any powers of leasing (or accepting surrenders of leases) given by any statute except with the consent in writing of the Council.
   2. Sections 93 and 103 of the Law of Property Act 1925 will not apply to this security.
   3. At any time after the money secured by this deed has become due and payable the security pursuant to this deed shall be immediately enforceable and the power of sale (as amended or varied by this deed) shall be immediately exercisable in respect of the whole or any part of the Property without the restrictions contained in the Law of Property Act 1925 as to the giving of notice or otherwise.
   4. If any steps are taken to exercise or to enforce any powers or remedies conferred by the Prior Charge[*s*] against the Property, the Council may redeem the Prior Charge[*s*] or procure the transfer of it to itself and may settle and pass accounts of the chargee under the Prior Charge (and any accounts so settled or passed will be conclusive and binding on the Special Guardians) and all the principal money, interest, costs, charges and expenses of (and incidental to) such redemption or transfer will be paid by the Special Guardians to the Council on demand.
2. **POWER TO APPOINT A RECEIVER**
   1. At any time after this security becomes enforceable or at the request of the Special Guardians the Council may by writing under hand appoint any person or persons to be a receiver of all or any part of the Property.
   2. The Council may at any time and from time to time in like manner remove any receiver so appointed and appoint another in his place or appoint an additional person as receiver.
   3. The Council may either at the time of appointment or at any time subsequently and from time to time fix the remuneration of any receiver so appointed.
   4. None of the restrictions imposed by the Law of Property Act 1925 in relation to the appointment of receivers or as to the giving of notice or otherwise shall apply.
   5. Where more than one receiver is appointed they shall have the power to act severally.
   6. Any receiver so appointed shall be the agent of the Special Guardians for all purposes and the Special Guardians shall be solely responsible for his acts or defaults and for his remuneration.
   7. Any receiver so appointed shall have all the powers conferred on mortgagees or receivers by the Law of Property Act 1925 (but without the restrictions contained in section 103 of that Act) and on administrative receivers by the Insolvency Act 1986 Schedule 1 except to the extent to which those powers are expressly or impliedly excluded by the terms of this deed. In the event of ambiguity or conflict the terms of this deed will prevail.
   8. In addition any receiver so appointed shall have power at his discretion, to such extent and upon such terms as he may in his absolute discretion think fit, and notwithstanding the [administration or liquidation] [bankruptcy, death or insanity] of the Special Guardians, to do or omit to do anything which the Special Guardians could do or omit to do in relation to all or any part of the Property. In particular (but without limitation) any such receiver shall have the power:
      1. to take possession of, collect and get in all or any part of the Property and for that purpose bring any proceedings in the name of the Special Guardians or otherwise;
      2. to sell (whether by public auction, private treaty or otherwise), lease, vary, renew or surrender leases or accept surrenders of leases (without needing to observe the provisions of sections 99 and 100 of the Law of Property Act 1925) or otherwise dispose of or deal with all or any part of the Property or of any rights associated with all or any part of the Property or to concur in so doing whether in the name of or on behalf of the Special Guardians or otherwise;
      3. to settle, arrange, compromise or submit to arbitration any accounts, claims, questions or disputes whatsoever which may arise in connection with the Property or in any way relating to this security;
      4. to bring, take, defend, compromise, submit to arbitration or discontinue any actions, suits or proceedings whatsoever whether civil or criminal in relation to the matters referred to in clause 7.8.3;
      5. to repair, insure, manage, protect, complete or reconstruct or replace all or any part of the Property and to apply for and obtain any appropriate permissions, approvals, consents or licences;
      6. to do (whether in the name of the Special Guardians or otherwise) all such other acts and things as he may consider necessary or desirable for the preservation, management, improvement or realisation of the Property or as he may consider incidental or conducive to any of the above matters and for these purposes the Special Guardians authorises the receiver to elect to waive exemption under the Value Added Tax Act 1994 Schedule 10 paragraph 2(1) on behalf of the Special Guardians in respect of the Property.
3. **PROTECTION OF PERSONS DEALING WITH THE COUNCIL OR A RECEIVER**

No person dealing with the Council or any receiver appointed by him shall be concerned bound or entitled to enquire or be affected by notice as to any of the following matters:

* 1. whether this security has become enforceable;
  2. whether any power exercised or purported to be exercised under this mortgage has arisen or become exercisable;
  3. the propriety, regularity or purpose of the exercise or purported exercise of any such power;
  4. whether any money remains due under the security; or
  5. the necessity or expediency of the stipulations and conditions subject to which any disposition shall be made;

and the receipt of the Council or any receiver for any money shall effectually discharge the person paying from such matters and from being concerned to see to the application or being answerable for the loss or misapplication of such money.

1. **REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS**
   1. Any amendment to this agreement shall be in writing and signed by, or on behalf of, each party.
   2. Any waiver of any right or remedy or any consent given under this agreement 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.
   3. No delay or failure to exercise any right or remedy on the part of the Council under this agreement shall operate as a waiver of any such right or remedy.
   4. No single or partial exercise of any right or remedy by the Council under this agreement shall prevent any further or other exercise or the exercise of any other right or remedy under this agreement.
   5. Rights and remedies under this agreement are cumulative and do not exclude any rights or remedies provided by law or otherwise.
2. **RELEASE**

On the expiry of the Clawback Period as defined in the Financial Assistance Agreement or otherwise repayment of the Principal Sum due under Financial Assistance Agreement (but not otherwise), the Council shall, at the request of the Special Guardians, take whatever action is necessary to release the Property from the security constituted by this Legal Charge.

1. **EXECUTION**

This Legal Charge is executed as a deed and delivered on the date stated at the beginning of this Legal Charge.

**EXECUTED** as a **DEED** by affixing )

the common seal of **THE NOTTINGHAMSHIRE COUNTY COUNCIL**)

in the presence of: )

………………………………………….

Authorised Signatory

Print name …………………………….

Position ………………………………..

**SIGNED** as a **DEED** and )

**DELIVERED** by [ ] )

in the presence of: )

Signature: ……..……………..……….

Name: …………………………..……..

Address: …………….…….…………..

Occupation: ……………….…………..

**SIGNED** as a **DEED** and )

**DELIVERED** by [ ] )

in the presence of: )

Signature: ……..……………..……….

Name: …………………………..……..

Address: …………….…….…………..

Occupation: ……………….…………..

**[if have a solicitor] - [I confirm that I am a solicitor/licensed conveyancer/legal executive acting for the Foster Carers and that prior to the execution of this Legal Charge I explained its nature, content and effect and the practical implications of signing it to the Foster Carers and each party confirmed that they wished to proceed with the transaction**

***Signature ………………………………………………***

***Date of signature ……………………………………***

***Name …………………………………………………***

***Firm …………………………………………………***

***Address ………………………………………………..]***

***[if don’t have a solicitor] – [Declaration: We are aware that this charge gives rise to legal obligations and we have been advised to obtain independent legal advice before entering into them.   However, we have chosen not to obtain independent legal advice and confirm that we have read this document before signing and fully understand the implications”.]***