Companies House

MR01 (ef)

Registration of a Charge

Company name: **SMS & SONS INVESTMENTS LTD**

Company number: **12515306**

Received for Electronic Filing: **22/12/2020**

X9KEVKLC

Details of Charge

Date of creation: **14/12/2020**

Charge code: **1251 5306 0001**

Persons entitled: **ATOM BANK PLC**

Brief description: **211-215 ECCLES OLD ROAD, SALFORD, M6 8HA REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER MAN255383 AND LA104178 AND 159-161 PLADDER LANE, FARNWORTH, BOLTON, BL4 0BT REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER GM472785 AND GM926485**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.

Certified by: **LUKE PHILPOTT**

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 12515306

Charge code: 1251 5306 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 14th December 2020 and created by SMS & SONS INVESTMENTS LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd December 2020 .

Given at Companies House, Cardiff on 24th December 2020

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006

Companies House

THE OFFICIAL SEAL OF THE REGISTRAR OF COMPANIES

Atom

Dated 14 December 2020

Legal Mortgage between

SMS & Sons Investments Ltd

and

Atom Bank plc

We're breathing new life into banking

Atom is the trading name of Atom Bank plc, a company registered in England and Wales with company number 08632552. Registered office: The Rivergreen Centre, Aykley Heads, Durham DH1 5TS. VAT registration number: 204140372.

Atom is authorised by the Prudential Regulation Authority (PRA) and regulated by the Financial Conduct Authority and the PRA. Full details of the extent of the authorisation from the PRA can be found on the Financial Services Register.

THIS DEED is dated 14 December 2020

PARTIES

(1) SMS & SONS INVESTMENTS LTD incorporated and registered in England and Wales with company number 12515306 whose registered office is at 159-161 Plodder Lane, Farnworth, Bolton, Lancashire, England, BL4 0BT (**Mortgagor**).

(2) ATOM BANK PLC incorporated and registered in England and Wales whose registered office is at The Rivergreen Centre, Aykley Heads, Durham DH1 5TS (**Atom**).

BACKGROUND

(A) The Mortgagor owns the Charged Property.

(B) This deed provides security which the Mortgagor has agreed to give Atom for the loan made or to be made available by Atom.

AGREED TERMS

1. **DEFINITIONS AND INTERPRETATION**

Terms defined in the Terms and Conditions shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed:

Charged Property: the freehold or leasehold property (whether registered or unregistered) owned by the Mortgagor described in Schedule 1.

Expenses: all expenses (on a full indemnity basis) including legal and valuation fees, from time to time paid or incurred by Atom or any Receiver at any time in connection with the Secured Assets or the Secured Liabilities or in taking, perfecting or enforcing the contract or in exercising any right or power under the contract or otherwise together with VAT upon such expenses where appropriate and interest from the date they are incurred.

Insurance Policy: each contract and policy of insurance of whatever nature in connection with a Charged Property or the Secured Assets which is, from time to time, taken out by or with the authority of or on behalf of or for the benefit of the Mortgagor.

Interest: interest at the rate or rates agreed between Atom and the Mortgagor and in the absence of any agreement at the rate of 4% per annum above the base rate of the Bank of England from time to time.

LPA 1925: Law of Property Act 1925.

Property Agreements: the agreements (details of which are set out in Schedule 2), which are assigned by the Mortgagor pursuant to clause 4.2.3.

Receiver: any person appointed as a receiver, receiver and manager or administrative receiver.

Rental Income: all amounts paid or payable to or for the account of the Mortgagor in connection with the letting, licence or grant of other rights of use or occupation of all or any part of the Charged Property.

Secured Assets: all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them).

Secured Liabilities: all present and future monies, obligations and liabilities of the Mortgagor to Atom, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity and whether Atom shall have been an original party to the transaction or not together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities and the Expenses

Security: any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

Terms and Conditions: Atom's standard Business Banking Secured Loan Terms and Conditions as amended from time to time by notification to the Mortgagor.

2. INCORPORATION OF TERMS AND CONDITIONS

2.1 The terms of this deed are supplemented by the Terms and Conditions, which should be read as if they were set out in this deed in full.

2.2 If there is an inconsistency between any of the provisions of this deed and the Terms and Conditions, the provisions of this deed shall prevail.

2.3 For the avoidance of doubt, in those parts of the Terms and Conditions which set out provisions regarding charged property, secured assets or enforcement of security, any reference to "you" includes a reference to the Mortgagor under this deed.

2.4 This legal charge is a security document as referred to in the Terms and Conditions.

3. COVENANT TO PAY

The Mortgagor shall, on demand, pay to Atom and discharge the Secured Liabilities when they become due.

4. GRANT OF SECURITY

4.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Mortgagor with full title guarantee charges to Atom:

4.1.1 by way of first legal mortgage, the Charged Property; and

4.1.2 by way of first fixed charge:

4.1.2.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy;

4.1.2.2 the Rental Income and the benefit of any guarantee or security in respect of the Rental Income;

4.1.2.3 the benefit of each Property Agreement and the benefit of any guarantee or security for the performance of a Property Agreement to the extent not effectively assigned under clause 4.2;

4.1.2.4 the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Property and other documents to which the Mortgagor is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Property or otherwise relating to the Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them); and

4.1.2.5 all authorisations (statutory or otherwise) held or required in connection with the Mortgagor's business carried on at the Charged Property or the use of any Charged Property, and all rights in connection with them.

4.2 As a continuing security for the payment and discharge of the Secured Liabilities, the Mortgagor with full title guarantee assigns to Atom absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

4.2.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy;

4.2.2 the Rental Income together with the benefits of all rights and remedies of the Mortgagor relating to them; and

4.2.3 the benefit of each Property Agreement and the benefit of any guarantee or security for the performance of a Property Agreement, provided that nothing in this clause 4.2 shall constitute Atom as mortgagee in possession.

5. **NEGATIVE PLEDGE**

5.1 The Mortgagor shall not at any time, except with Atom's prior written consent:

5.1.1 create, purport to create or permit to subsist any security on, or in relation to, any Charged Property other than any Security created by this deed;

5.1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property; or

5.1.3 create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

6. MORTGAGOR'S UNDERTAKINGS

The Mortgagor undertakes with Atom to comply with all of the provisions in the Terms and Conditions including, without limitation, those regarding charged property and insurance of secured assets.

7. RENTAL INCOME

7.1 The Mortgagor shall, promptly following the occurrence of a default event (howsoever described) under any agreement or arrangement under which the Secured Liabilities arise, give notice to the relevant tenant, guarantor or surety of the assignment under clause 4 of the Mortgagor's rights and interest to the Rental Income and each guarantee or security in respect of the Rental Income and procure that each addressee of such notice promptly provides an acknowledgement of that notice to Atom.

8. PERFECTION OF SECURITY

8.1 The Mortgagor applies to the Land Registrar for the following restriction to be registered against its title to the Charged Property:

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of ATOM BANK PLC referred to in the charges register."

8.2 Whether or not title to the Charged Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Mortgagor's title to the Charged Property, the Mortgagor shall immediately provide Atom with full particulars of the circumstances relating to such caution or notice. If such caution or notice was registered to protect a purported interest the creation of which is not permitted under this deed, the Mortgagor shall immediately, and at its own expense, take such steps as Atom may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

9. LIABILITY OF THE MORTGAGOR

The Mortgagor waives any right it may have to require Atom to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Mortgagor.

10. **POWERS OF ATOM**

To the extent permitted by law, any right, power or discretion conferred by this deed on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by Atom in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

11. **WHEN SECURITY BECOMES ENFORCEABLE**

11.1 At any time after:

11.1.1 Atom has demanded payment of any of the Secured Liabilities; or

11.1.2 any step or proceeding has been taken for the appointment of an administrator, liquidator or provisional liquidator or with a view to seeking a moratorium or a voluntary arrangement in respect of the Mortgagor or if requested by the Mortgagor;

Atom may appoint by writing, insofar as permitted by law, any person or persons to be a Receiver of all or any of the Secured Assets and the Security created by this deed shall in any of such events become immediately enforceable. The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of Atom under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

11.2 The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise Atom and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Mortgagor, to:

11.2.1 grant a lease or agreement for lease;

11.2.2 accept surrenders of leases; or

11.2.3 grant any option in respect of the whole or any part of the Charged Property with whatever rights relating to other parts of it.

11.3 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed. The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 11.1.

11.4 No purchaser, mortgagee or other person dealing with Atom or any Receiver shall be concerned to enquire:

11.4.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;

11.4.2 whether any power Atom or a Receiver is purporting to exercise has become exercisable or is properly exercisable; or

11.4.3 how any money paid to Atom or any Receiver is to be applied.

11.5 Neither Atom nor any Receiver shall be liable, by reason of entering into possession of any Secured Assets or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

11.6 The receipt of Atom or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, Atom and every Receiver may do so for any consideration, in any manner and on any terms that it or he thinks fit.

11.7 Each Receiver and Atom is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

11.8 If Atom or any Receiver enters into or takes possession of the Secured Assets, it or he may at any time relinquish possession.

11.9 The receipt of Atom or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, Atom and every Receiver may do so for any consideration, in any manner and on any terms that it or he thinks fit.

12. FURTHER PROVISIONS

12.1 The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that Atom may hold for any of the Secured Liabilities at any time. No prior security held by Atom over the whole or any part of the Secured Assets shall merge in the security created by this deed.

12.2 The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until Atom discharges this deed in writing.

12.3 The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

13. **TRANSFER**

13.1 This deed is freely assignable or transferable by Atom.

13.2 The Mortgagor may not assign any of his rights and may not transfer any of its obligations under this deed or enter into any transaction which would result in any of those rights or obligations passing to another person.

14. **SET OFF**

Without obligation to exercise its rights, Atom may at any time set off any liability of the Mortgagor to Atom against any liability of Atom to the Mortgagor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. Any exercise by Atom of its rights under this clause 14 must be promptly notified to the Mortgagor and shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

15. **CERTIFICATES**

A certificate signed by an authorised signatory of Atom as to the amount due or owing from the Mortgagor shall be conclusive evidence against the Mortgagor, except in the case of obvious error.

16. **AMENDMENTS, WAIVERS AND REMEDIES**

16.1 No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, Atom and the Mortgagor.

16.2 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing and signed by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. 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.

16.3 A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by Atom shall be effective unless it is in writing and signed.

16.4 The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

17. **SEVERANCE**

If any provision (or part of a provision) of this deed 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 deed.

18. **THIRD PARTY RIGHTS**

A person who is not a party to this deed 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 deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

19. **COUNTERPARTS**

This deed may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one deed. No counterpart shall be effective until each party has executed at least one counterpart.

20. **NOTICES**

20.1 A notice given to a party under or in connection with this deed must be in writing and be delivered by hand, pre-paid first-class post or another next business day delivery service to the address given in this deed or as otherwise notified in writing to the other party.

20.2 A notice will be deemed to have been received on the next business day after it was (a) hand delivered or (b) sent by pre-paid first-class post or other next business day delivery service. Any notice sent to Atom will not be deemed to be received until actually received by Atom.

21. **GOVERNING LAW**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.

22. **JURISDICTION**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of Atom to take proceedings against the Mortgagor 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 permitted by the law of such other jurisdiction.

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 - Charged Property

Address:	211-215 Eccles Old Road, Salford, M6 8HA
Title Number:	MAN255383 and LA104178
Address:	159-161 Plodder Lane, Farnworth, Bolton, BL4 0BT.
Title Number:	GM472785 and GM926485

Schedule 2 - Property Agreements

This schedule has been left intentionally blank

[redacted]

EXECUTED AS A DEED by SMS & SONS INVESTMENTS LTD [acting by a duly authorised director] in the presence of:-) [redacted]

)

)

Witness' signature [redacted]

Witness' full name DAVE OUS

Witness' address [redacted]

EXECUTED AS A DEED by SMS & SONS INVESTMENTS LTD acting by a director and a director/the company secretary:-)

Director

Director/Company Secretary