

# Avant Money Solicitor Pack

**June 2026**

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**IT IS RECOMMENDED THAT YOU TAKE LEGAL ADVICE BEFORE  
SIGNING THIS DOCUMENT**

**DEED OF ASSIGNMENT**

**THIS ASSIGNMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ two thousand and \_\_\_\_\_ **BETWEEN** \_\_\_\_\_ and **BANKINTER S.A. trading as Avant Money** (the “Lender” whose expression includes its successors and assigns)

**WITNESSES** as follows:

**1. COVENANT TO PAY**

The Assignor covenants with the Lender that the Assignor will pay and discharge on demand all monies obligations and liabilities whether certain or contingent which now are or at any time hereafter may be due owing or incurred by the Assignor (or where there is more than one person included in such expression any one or more of them) to the Lender anywhere in any manner whatever whether alone or jointly or jointly and severally with any other person or persons and whether as principal or surety or otherwise (which monies, obligations and liabilities are hereinafter called the “Secured Liabilities”).

**2. CHARGING CLAUSE**

As continuing security for the payment and discharge of the Secured Liabilities the Assignor as beneficial owner hereby assigns to the Lender the full benefit of the policy(ies) of assurance described in the Schedule hereto (the “Policy” which expression shall include any policy(ies) substituted or exchanged therefore in accordance with the terms of this Assignment and any additional policy effected pursuant to clause 4 below) and all monies including all bonuses, additions and returns of premiums payable under or in respect of the Policy and the benefit of all options and rights devolving upon the Assignor under or pursuant to the Policy to hold the same unto the Lender absolutely; Provided that on final payment and discharge of the Secured Liabilities the Lender will at the request and cost of the Assignor reassign the Policy to the Assignor or as he shall direct.

### 3. ASSIGNOR'S WARRANTIES AND COVENANTS

3.1 The Assignor warrants to and covenants with the Lender that:

- 3.1.1 the Policy is valid and in force and that the Assignor will not do or omit to do any act which may cause the policy to become void or voidable;
  - 3.1.2 the Assignor is solely and absolutely legally and beneficially entitled to the Policy free from any mortgage, charge, pledge, lien, or other security interest or encumbrance and free of interests, rights or claims of third parties of any kind (except the rights of the Lender under this Assignment);
  - 3.1.3 the Assignor will punctually pay all premiums for keeping the policy on foot and to deliver receipts paid to the Lender within seven days of being requested to do so;
  - 3.1.4 if the Policy becomes void or lapses the Assignor will at his own costs effect a new one for a sum not less (and having a surrender value and death benefit not less) than the sum assured by the earlier policy and the new policy shall be subject in all respects to this Assignment and all the covenants and provisions of this Assignment shall apply;
  - 3.1.5 the Assignor has not borrowed from the assurers issuing the policy or any other person pursuant to any privilege conferred by the Policy;
  - 3.1.6 the Assignor will not (i) assign or otherwise dispose of the Policy or (ii) create or permit to subsist any mortgage, charge, pledge, lien, or other security interest or encumbrance or any interest, right or claim of third parties of any kind on, over, with respect to or otherwise affecting the Policy (except the rights of the Lender under this Assignment);
  - 3.1.7 whilst any of the Secured Liabilities remain outstanding, not to compete with the Lender in claiming any money payable under the Policy;
  - 3.1.8 the Assignor shall immediately on request by the Lender execute such documents and take or not take such action as the Lender may require, to perfect or otherwise give full effect to the security intended to be constituted by this Assignment;
  - 3.1.9 if so requested by the Lender the Assignor will forthwith, give notice of this Assignment to the assurance company issuing the Policy in such form as the Lender may reasonably require and procure that the assurance company acknowledges to the Lender receipt of same; and
  - 3.1.10 the Assignor will reimburse the Lender for all charges and expenses incurred by the Lender in or in connection with the enforcement of or preservation of any rights under this Assignment.
- 3.2 In case of default by the Assignor in the performance of any of the Assignor's obligations under this Assignment, it shall be lawful, but not obligatory, for the Lender to do whatever it may deem necessary or expedient to make good such default and any expenses incurred by the Lender in that behalf with interest at the rate from time to time payable by the Assignor on any loan by the Lender to the Assignor and then outstanding and if there is more than one such rate the highest thereof.

#### **4. ADEQUACY OF POLICY**

The Lender shall be entitled at any time to request the assurance company which has issued the Policy to estimate the sum payable on maturity of the Policy on the basis of premiums then paid and on the assumption that the premiums required to keep the Policy on foot will continue to be paid. If the sum thus estimated to be payable is less than the sum which at the date of the Policy was taken out was estimated to be payable on its maturity or less than the amount it was intended to secure or repay, the Assignor shall, at the request of the Lender, either increase the premiums or effect a new policy with the same or another assurance company approved by the Lender to the intent that such premiums (if duly paid) or the new policy (if duly kept on foot) will be sufficient to produce an estimated sum payable on maturity at least equal to the estimated shortfall.

#### **5. CONTINUING SECURITY**

- 5.1 This Assignment shall be a continuing security, shall extend to the ultimate balance of the Secured Liabilities and shall continue in force notwithstanding any intermediate payment or discharge in whole or in part of the Secured Liabilities.
- 5.2 If the Lender receives or is deemed to be affected by notice (actual or constructive) of any subsequent mortgage, charge or other encumbrance or interest affecting the Policy or if for any reason this Assignment ceases to be a continuing security, the Lender may open one or more accounts for the Assignor in its books or continue any existing account(s) for the Assignor in its books but in either case, the liability of the Assignor in respect of the Secured Liabilities at the date of such cessation or at the time when the Lender received or was deemed to receive notice (as the case may be) shall remain regardless of any payments in or out of any such account.

## 6. DEFAULT

6.1 If:

- 6.1.1 any of the Secured Liabilities are not paid or discharged when due to be paid or discharged;  
or
  - 6.1.2 the Assignor defaults in complying with any of the terms hereof or of any facility from the Lender; or
  - 6.1.3 any event (whether described as an event of default or otherwise) occurs by virtue of which any of the Secured Liabilities becomes due to be paid or discharged before the date on which it would otherwise be due to be paid or discharged; or
  - 6.1.4 any warranty herein is or becomes incorrect in any respect; or
  - 6.1.5 the Assignor commits an act of bankruptcy, becomes of unsound mind or dies, then the security constituted by this Assignment shall become immediately enforceable.
- 6.2 At any time after the security hereby constituted has become enforceable the Lender may surrender the Policy to the assurance company liable on the Policy or exchange the Policy for a paid-up policy or obtain a refund of premiums or sell the Policy by public auction or private contract or otherwise without being liable for loss or diminution in the price obtained and exercise all other rights, remedies and powers of enforcement conferred by statute or otherwise on the Lender as the Lender sees fit.
- 6.3 No person (including a purchaser) dealing with the Lender or his agents will be concerned to enquire:
- 6.3.1 whether any of the Secured Liabilities have become payable or remain due; or
  - 6.3.2 whether due notice has been given to any person; or
  - 6.3.3 whether any power which the Lender or any Receiver is purporting to exercise has become exercisable or has been or is being properly exercised; or
  - 6.3.4 whether the Receiver is authorised to act; or
  - 6.3.5 how any money paid to the Lender or to any Receiver is to be applied,
- 6.4 The receipt by any officer or employee of the Lender for any money which may be or become payable or for any policy which may be or become deliverable for or in respect of or in exchange for the Policy (whether on a sale or surrender or otherwise) shall effectually discharge the person or persons paying or delivering such money or policy from liability for

such payment or delivery and from being concerned to see to the application or being answerable for the misapplication of such money or policy and such person or persons shall not be bound or concerned to see or inquire whether at the time of such payment or delivery any money remains owing upon this Assignment.

## **7. POWER OF ATTORNEY**

- 7.1 The Assignor hereby irrevocably and by way of security appoints the Lender and its delegates and sub-delegates severally the attorney of the Assignor for the Assignor and in his name and on his behalf and as his act and deed or otherwise to execute, seal, deliver and otherwise perfect or do any deed, assurance, agreement, instrument and act which may be required or may be deemed proper for perfecting the Lender's title to the Policy or for vesting the Policy in it or any purchaser or for the exercise of any of the powers, rights or remedies hereby conferred on the Lender.
- 7.2 In the event that details of the Policy have not been inserted or fully inserted in the Schedule of this Assignment at the time the Assignor executes this Assignment, the Assignor hereby irrevocably and by way of security appoints the Lender and its delegates and sub-delegates severally the attorney of the Assignor to insert the particulars of the Policy in such schedule.
- 7.3 The Assignor ratifies and confirms whatever any attorney does or purports to lawfully do pursuant to its appointment under this clause.

## **8. MISCELLANEOUS**

- 8.1 All monies received, recovered or realised by the Lender under this Assignment may in the sole discretion of the Lender be credited to any suspense or impersonal account and may be held in such account for so long as the Lender may think fit pending their application from time to time (as the Lender shall be entitled to do at its sole discretion) in or towards the discharge of the Secured Liabilities
- 8.2 Nothing contained in this Assignment shall operate so as to merge or otherwise prejudice, affect or exclude any other security, guarantee or lien which the Lender may now or hereafter hold for the Secured Liabilities.
- 8.3 If there are two or more persons included in the expression the "Assignor" their liabilities hereunder shall be joint and several and the act or default of any of them shall be deemed to be the act or default of all of them. The Lender shall be at liberty to release or discharge any one or more of them from any liability under this Assignment or in respect of his or their interest in the Policy or to take any composition from or make any other arrangements or variation with any one or more of them without thereby releasing or discharging any other

or others of them or otherwise prejudicing its rights or remedies against any other or others of them or the Policy.

- 8.4 In this Assignment the singular shall include the plural and vice versa and reference to any gender shall include all genders and headings are for reference purposes only and shall not affect the interpretation of this Assignment.
- 8.5 The Assignor shall not be entitled to assign or transfer any of his rights, benefits or obligations hereunder. The Lender may assign or transfer all or any of its rights and obligations hereunder and shall be entitled to impart any information concerning the Assignor to any actual or proposed assignee or transferee.
- 8.6 Any notice or demand requiring to be served on the Assignor by the Lender hereunder may be served on the Assignor personally or by being left at or posted to the last address of the Assignor known to the Lender. Any such notice or demand shall be deemed to be served
- (i) when left at any address mentioned above (if left at such address); or
  - (ii) when served (if served on the Assignor) or
  - (iii) two days after posting (if served by post) and in proving service of any such notice or demand sent by post it shall be sufficient to show that the notice or demand was properly addressed and posted and such proof of service shall be effective notwithstanding that it was in fact not delivered or was returned undelivered.
- 8.7 This Assignment shall be governed by and construed in accordance with the Laws of Ireland.
- 8.8 The Assignor hereby agrees for the benefit of the Lender, and without prejudice to the right of the Lender to take proceedings in relation hereto before any other court of competent jurisdiction, that the courts of Ireland shall have jurisdiction to hear and determine any suit, action or proceeding that may arise out of or in connection with this Assignment and for such purposes irrevocably submits to the jurisdiction of such courts.

**SCHEDULE**


**IN WITNESS** whereof this Assignment has been duly executed as a deed on the date shown above.

**SIGNATURE BORROWER 1:** \_\_\_\_\_

**SIGNED AND DELIVERED** as a deed by in the presence of:

Signature of witness: \_\_\_\_\_

Full name of witness: \_\_\_\_\_

Address of witness: \_\_\_\_\_

Occupation of witness \_\_\_\_\_

**SIGNATURE BORROWER 2:** \_\_\_\_\_

**SIGNED AND DELIVERED** as a deed by in the presence of:

Signature of witness: \_\_\_\_\_

Full name of witness: \_\_\_\_\_

Address of witness: \_\_\_\_\_

Occupation of witness \_\_\_\_\_

**BANKING & PAYMENTS FEDERATION  
IRELAND**

**GENERAL HOUSING LOAN MORTGAGE  
CONDITIONS**

**VERSION 1.2 2018**

BKILHO-600-0326

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## 1 BACKGROUND

- 1.1 The Mortgagor has agreed to provide the Mortgage to secure such of the Mortgagor's present and future obligations to the Secured Party and its Associates as the Mortgagor may from time to time agree.
- 1.2 These Conditions are supplemental to and form part of the Mortgage.

## 2 DEFINITIONS

Unless it is clear that the intent is otherwise, in these Conditions (including the background clause above):

**"Act"** means the Land and Conveyancing Law Reform Act 2009;

**"Ancillary Rights"** means all covenants, agreements, undertakings, warranties, bonds, guarantees, indemnities and other agreements the benefit of which is now or hereafter vested in the Mortgagor in respect of the design, construction, fit out or maintenance of any building, structure or erection now or hereafter on the Mortgaged Property or of any roads, footpaths or utilities for services now or hereafter abutting or serving the Mortgaged Property or the taking in charge thereof or the paying of any charge or levy in respect thereof and all guarantees and indemnities in respect of any lessee's or licensee's obligations under any lease or licence of the Mortgaged Property;

**"Associate"** means, subject to clause 5.2, any holding company or subsidiary (within the meaning given to such expressions by Sections 7 and 8 of the Companies Act 2014) from time to time of the Secured Party or any subsidiary from time to time of any such holding company and any reference to an Associate shall include its successors and assigns (whether immediate or derivative);

**"Conditions"** means these general housing loan mortgage conditions;

**"Compensation Rights"** means all present and future rights of the Mortgagor to be paid or to receive compensation by reason of any compulsory acquisition, requisitioning or exercise of other compulsory powers in relation to the Secured Assets or any refusal, withdrawal or modification of planning permission or approval relative thereto or any control or limitation imposed upon or affecting the use of the Secured Assets;

**"Enforcement Event"** means any of the events or circumstances specified in clause 12.2;

**"Environmental Laws"** means all laws, directions and regulations concerning the protection of the environment or human health including, without limitation, the conservation of natural resources, the production, storage, transportation, treatment, recycling or disposal of any waste or any noxious, offensive or dangerous substance or the liability of any person whether civil or criminal for any damage to or pollution of the environment or the rectification thereof or any related matters;

**"Insurances"** means all insurance policies (other than the Life Policy) now or at any time hereafter taken out by the Mortgagor in respect of the Secured Assets (whether pursuant to the covenants contained in these Conditions or otherwise) and all monies including returns of premium

from time to time payable in respect of the same and the benefit of all options and rights devolving thereunder or pursuant thereto;

**“Life Policy”** means any policy or policies of life assurance or mortgage protection insurance which the Mortgagor is obliged to effect in accordance with any Secured Document as cover for the Secured Liabilities or any of them and all policies substituted therefor or additional thereto and all monies, including all bonuses, additions and returns of premium, from time to time payable in respect thereof and the benefit of all options and rights devolving thereunder or pursuant thereto;

**“Mortgage”** means the mortgage which incorporates these Conditions;

**“Mortgaged Property”** means the property or properties specified as such in the Mortgage;

**“Mortgagor”** means the person or persons named as “Mortgagor” in the Mortgage and includes the personal representatives, successors and permitted assigns (whether immediate or derivative) of each such person;

**“Occupational Leases”** means all leases, licences, agreements for lease or licence and other agreements for the occupation, possession or use of the whole or any part or parts of the Mortgaged Property subject to which the interest of the Mortgagor in the Mortgaged Property is now or from time to time hereafter held and **“Occupational Lease”** means any of them;

**“Planning Acts”** means the Planning and Development Acts 2000 to 2017 and the Building Control Acts 1990 and 2014 and any other legislation of a similar nature;

**“Receiver”** has the meaning given in clause 13.1;

**“Rent”** means all rent and other monies now or hereafter payable to or for the benefit of the Mortgagor under, pursuant to or in connection with any Occupational Lease;

**“Secured Assets”** means the Mortgaged Property and all other assets of the Mortgagor which are, or are expressed to be, the subject of any security created, constituted or evidenced or expressed or intended to be created, constituted or evidenced by the Mortgage and these Conditions;

**“Secured Documents”** means any and all facility letters, other agreements and documents which evidence or create the terms and conditions applicable to any of the Secured Liabilities or otherwise relate to the Secured Liabilities;

**“Secured Liabilities”** means:

- (a) all monies, obligations and liabilities, whether in respect of principal, interest, discount, commission, fees or expenses or otherwise in whatever currency, that are now or shall from time to time hereafter be due, owing or incurred by the Mortgagor (or, where the Mortgagor comprises more than one person, by any one or more of them) to the Secured Party or any Associate under, pursuant to or in connection with:
  - (i) any loan or other facility now or hereafter made to the Mortgagor (or, where the Mortgagor comprises more than one person, to any one or more of them), whether alone or jointly with any other persons or persons, by the Secured Party or any Associate; and/or

- (ii) any other liability or obligation now or hereafter incurred by the Mortgagor (or, where the Mortgagor comprises more than one person, by any one or more of them) to the Secured Party or any Associate, whether actually or contingently, whether alone or jointly with any other person or persons, as principal debtor, surety or in any other manner,

where it is expressly provided in the facility letter or other agreement relating to such loan, facility, liability or obligation (or any amendment, extension, restatement or replacement thereof or supplement thereto) or where it is or has been otherwise agreed in writing signed by or on behalf of the Mortgagor that such loan, facility, liability or obligation is, or is to be, secured by the Mortgaged Property; and

- (b) all monies now or hereafter due, owing or incurred by the Mortgagor (or, where the Mortgagor comprises more than one person, by any one or more of them) to the Secured Party or any Associate under, pursuant to or in connection with the Mortgage or these Conditions;

**“Secured Party”** means the financial institution or other person to which or to whom the Mortgagor has given the Mortgage and includes the personal representatives, successors and assigns (whether immediate or derivative) of such financial institution or person who shall be entitled to enforce and proceed upon the Mortgage and these Conditions and exercise all powers and discretions of the Secured Party as if named in the Mortgage in place of or, in accordance with its interest, alongside the Secured Party;

**“Security Interest”** means any mortgage, charge, pledge, lien or other security interest and any agreement or arrangement having substantially the same economic effect; and

**“Specified Rate”** means the rate specified in the Secured Documents as the Specified Rate for the purposes of these Conditions (where more than one rate is so specified, the highest rate will apply) or, if no such rate is so specified, three per cent per annum above the cost to the Secured Party as certified by the Secured Party (without proof or evidence of actual cost) if it were to fund the relevant amount on the eurozone or other appropriate interbank market for such period or periods as the Secured Party may in its absolute discretion select.

### 3 INTERPRETATION

#### 3.1 In these Conditions:

- 3.1.1 any reference to a person shall be construed as a reference to any person, firm, company, corporation, government, state or agency of any government or state or any association or partnership (whether or not having separate legal personality) of any two or more of the foregoing;
- 3.1.2 any reference to any statutory provision, order or regulation includes reference to any extension, modification, replacement or re-enactment thereof from time to time in force and all regulations and orders from time to time made thereunder and any analogous provision or rule under any applicable law for the time being in force;
- 3.1.3 any reference to any agreement or other instrument (including, without limitation, the Mortgage and these Conditions) shall be deemed to be a reference to such agreement or instrument as amended, extended, restated or replaced from time to time and all agreements or other instruments supplemental thereto;

- 3.1.4 words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- 3.1.5 any reference to “now” or like expressions is a reference to the date of the Mortgage and any reference to “hereafter” or like expressions is a reference to any time after the date of the Mortgage; and
- 3.1.6 any reference to a clause is, unless otherwise stated, a reference to a clause of these Conditions.
- 3.2 The index and headings are for reference purposes only and cannot be used to interpret these Conditions or the Mortgage.
- 3.3 These Conditions are supplemental to, and form part of, and are to be construed as one with, the Mortgage. If there is any conflict between the Mortgage and these Conditions, the Mortgage shall prevail.
- 3.4 These Conditions may only be amended in writing signed by the Mortgagor and signed by or on behalf of the Secured Party.

#### 4 JOINT AND SEVERAL LIABILITY

If the expression “**Mortgagor**” consists of two or more persons:

- 4.1 such expression shall mean and include such two or more persons and each of them or (as the case may require) any of them;
- 4.2 the expression “**Secured Liabilities**” shall be construed so as to include, and the security constituted by the Mortgage and these Conditions shall be security for, all Secured Liabilities now or hereafter due, owing or incurred by any one or more of such persons to the Secured Party and/or any Associate, whether solely or jointly or jointly and severally with any other(s) of them or with any other person(s);
- 4.3 all agreements, obligations, covenants, undertakings, warranties, representations, mortgages and charges which are expressed or implied on the part of the Mortgagor in the Mortgage or these Conditions shall be deemed to be made or undertaken by such persons jointly and severally and the act or default of any one of such persons shall be deemed to be the act or default of all of them;
- 4.4 none of such persons shall as against the Secured Party or any Associate be entitled to any of the rights or remedies legal or equitable of a surety as regards the indebtedness, obligations or liabilities of any of the other of them or be entitled in competition with or priority to the Secured Party or any Associate to claim or exercise any of the rights (in the nature of contribution or otherwise) of one joint (or joint and several) debtor against another;
- 4.5 each shall be bound even if any of the others of them or any other person intended or expressed to be bound by the Mortgage shall not be so bound; and
- 4.6 the Secured Party and/or any Associate may release or discharge any one or more of them from any liability under the Mortgage and these Conditions or in respect of his, her or their interest in the Secured Assets or to take any composition from or make any other

arrangements or variation with any one or more of them without thereby releasing or discharging any other or others of them or otherwise prejudicing its rights or remedies against any other or others of them or the Secured Assets.

## **5 SECURITY IN FAVOUR OF ASSOCIATES**

- 5.1 The security constituted by the Mortgage and these Conditions is given to the Secured Party as agent and trustee for itself and each Associate and the Secured Party shall be entitled to proceed upon and enforce the Mortgage and these Conditions on behalf of any Associate to which any part of the Secured Liabilities are due, owing or incurred. As between the Secured Party and each Associate the security constituted by the Mortgage and these Conditions in their respective favours will, subject as provided in clause 5.3, have such priority as they may from time to time agree (in default of agreement the security in favour of the Secured Party will have priority) and to the extent permitted by law all rights of the Mortgagor to appropriate payments and realisations in any particular manner are excluded. All duties and liabilities arising from the Secured Party acting as trustee for each Associate are excluded.
- 5.2 If at any time the Mortgage secures Secured Liabilities which are due, owing or incurred to an Associate, the Mortgage and these Conditions will, unless otherwise expressly agreed in writing by that Associate, continue to secure those Secured Liabilities notwithstanding that such Associate ceases to be a subsidiary or holding company of the Secured Party or a subsidiary of such a holding company. An Associate may at any time transfer, dispose of, mortgage, assign, charge or otherwise deal with all or any of its rights, interests, benefits and/or obligations in the Secured Liabilities, Mortgage, other related security and these Conditions as provided for in clause 23 or as otherwise permitted by law, including (without limitation) to or in favour of a person which is not a subsidiary or holding company of the Secured Party or a subsidiary of such holding company. Where the Secured Party transfers, assigns, disposes of, mortgages, charges or otherwise deals with all or any of its interests, rights, benefits and/or obligations in the Secured Liabilities, the Mortgage, any other related security and these Conditions as provided for in clause 23 or as otherwise permitted by law, it may do so to or in favour of a person which is not a subsidiary or holding company of that Secured Party or a subsidiary of such holding company and in that event, any Associate of that Secured Party may or may not transfer, assign, dispose of, mortgage, charge, or otherwise deal with its rights, benefits, interests and/or obligations as provided for in clause 23 or as otherwise permitted by law.
- 5.3 This clause 5.3 applies where the Secured Party is a designated mortgage credit institution within the meaning of the Asset Covered Securities Act 2001 and an Associate is a subsidiary or holding company of the Secured Party or a subsidiary of such holding company. In that case, as between the Secured Party and that Associate to which all or any part of the Secured Liabilities are due, owing or incurred and with respect to recourse to the security constituted by the Mortgage, other related security and these Conditions, any Secured Liabilities due, owing or incurred to the Secured Party for its own benefit shall at all times until they are discharged in full rank in priority in all respects to Secured Liabilities due, owing or incurred to that Associate. This clause 5.3 reflects the requirements of section 27(6) of the Asset Covered Securities Act 2001.

## **6 PAYMENT PROVISIONS**

### **6.1 Covenant to pay**

The Mortgagor hereby covenants with the Secured Party to pay and discharge on demand the Secured Liabilities when the same are due to be paid and discharged. If the Mortgagor and the

Secured Party or (as applicable) the relevant Associate have not agreed in writing a specific time for payment or discharge of any part of the Secured Liabilities, the Mortgagor agrees to pay and discharge such of the Secured Liabilities on demand.

## 6.2 **Gross up**

6.2.1 All sums payable by the Mortgagor under the Mortgage or these Conditions shall be paid without set off or counterclaim on any account whatsoever and without any deduction or withholding whether in respect of taxes, levies, imposts, duties or otherwise howsoever, except to the extent that the Mortgagor is required by law to make payment subject to any deduction or withholding. If any deduction or withholding must be made from any amount payable by the Mortgagor, the Mortgagor shall pay such additional amount as may be necessary to ensure that the Secured Party receives a net amount equal to the full amount which it would have received had no such deduction or withholding been required.

6.2.2 If the Secured Party receives the benefit of a tax credit or an allowance resulting from a payment which includes an additional amount paid by the Mortgagor pursuant to this clause, it shall on request pay to the Mortgagor such part of that benefit as will leave the Secured Party (after such payment) in no more and no less favourable a position than it would have been if no such withholding had been made and no such additional amount had been required to be paid.

## 6.3 **Appropriation**

To the extent permitted by law, the Mortgagor hereby irrevocably waives any right to appropriate any amount paid to or recovered or held by the Secured Party in or towards the discharge of any particular part of the Secured Liabilities and agrees that the Secured Party shall have the exclusive and unfettered right to appropriate any such payment or other sum in or towards the discharge of such part(s) of the Secured Liabilities as the Secured Party sees fit.

## 6.4 **Interest**

The Mortgagor hereby covenants with the Secured Party to pay interest (as well after as before any demand or judgment) on the Secured Liabilities at the rates and upon the terms from time to time agreed with the Secured Party (or in the absence of agreement at the Specified Rate) upon such days as the Secured Party may from time to time determine and such interest shall be compounded in the event of it not being punctually paid with monthly (or other agreed) rests in accordance with the usual practice of the Secured Party but without prejudice to the right of the Secured Party to require payment of such interest when due.

# 7 **CREATION OF ADDITIONAL SECURITY**

## 7.1 **Creation of security**

By executing the Mortgage the Mortgagor as security for the payment and discharge of the Secured Liabilities shall, in addition to the security expressed to be created by the Mortgage, also be deemed as beneficial owner to:

### 7.1.1 **Security assignments**

assign in favour of the Secured Party the full benefit of:

(a) the Ancillary Rights,

- (b) the Compensation Rights,
- (c) the Life Policy (if any),
- (d) the Rent (if any), and
- (e) the Insurances,

to hold the same unto the Secured Party absolutely; and

#### 7.1.2 **Fixed charges**

charge in favour of the Secured Party by way of fixed charge:

- (a) any estate or interest which the Mortgagor may from time to time hereafter acquire in the Mortgaged Property, and
- (b) the Mortgagor's entitlement to (and interest in) any share or shares in any service or management company relating to the Mortgaged Property and all rights and benefits accruing to such share or shares,

subject in each case to the Mortgagor's right to redeem all such security contained in clause 8.

#### 7.2 **Security to extend to beneficial interests and proceeds of sale**

The security constituted by the Mortgage and these Conditions extends to all beneficial interests in the Secured Assets and (without prejudice to the fixed nature of such security or the covenants contained in these Conditions) to all proceeds of sale or other realisation.

#### 7.3 **Insurances**

To the extent that the Insurances are not assignable, the assignment which clause 7.1.1(e) purports to effect shall operate as an assignment of all present and future rights and claims of the Mortgagor to any proceeds of such Insurances.

#### 7.4 **Assent to registration**

The Mortgagor hereby assents to the registration of all or any of the foregoing security as a burden on the property thereby affected.

#### 7.5 **No obligation on the Secured Party**

Nothing in this clause 7 shall impose any obligation or liability on the Secured Party in respect of any of the Secured Assets.

### 8 **COVENANT TO RELEASE**

#### 8.1 **Covenant to release**

If all the Secured Liabilities have been finally and indefeasibly paid and discharged in full and all facilities which might give rise to Secured Liabilities have been terminated, the Secured Party will at the cost and request of the Mortgagor on a without recourse or warranty basis release and discharge the security constituted by the Mortgage and these Conditions.

## 8.2 **Release conditional**

Any such release or discharge as is referred to in clause 8.1 shall be deemed to be made subject to the condition that it will be void if any payment or discharge of the Secured Liabilities is set aside under any applicable law or proves to have been for any reason invalid or void.

## 8.3 **Release may be executed by Secured Party alone**

A release or discharge of the Secured Assets or any of them from the security constituted by the Mortgage and these Conditions and a receipt for the Secured Liabilities may be executed by the Secured Party alone and any such release, discharge or receipt shall be as effective as if the Secured Party and all of the Associates had executed it.

## 8.4 **Preservation of liability if redemption amount understated**

The execution by the Secured Party of a release or discharge as referred to in clause 8.1 shall not discharge the Mortgagor from personal liability if it is subsequently found that on redemption of the Mortgage the amount of the Secured Liabilities was by mistake understated.

# 9 **CONTINUING SECURITY**

9.1 The security constituted by the Mortgage and these Conditions shall be a continuing security, shall extend to the ultimate balance of the Secured Liabilities and shall continue in force notwithstanding any intermediate payment or discharge in whole or in part of the Secured Liabilities.

9.2 If:

9.2.1 the Secured Party or any Associate to whom any part of the Secured Liabilities are due, owing or incurred receives or is deemed to be affected by notice (actual or constructive) of any subsequent Security Interest affecting the Secured Assets or any of them; or

9.2.2 for any other reason the security constituted by the Mortgage and these Conditions ceases to be a continuing security,

the Secured Party (and any such Associate) may open one or more new accounts with or continue any existing account(s) with the Mortgagor but in either case, the liability of the Mortgagor in respect of the Secured Liabilities at the date of such cessation or at the time the Secured Party (or any such Associate) received or was deemed to receive such notice (as the case may be) shall remain regardless of any payments in or out of any such account.

# 10 **WARRANTIES**

10.1 The Mortgagor hereby warrants, represents and undertakes to the Secured Party that:

## 10.1.1 **Status**

the Mortgagor is aged 18 or over, is of sound mind and has not been adjudged a bankrupt or made a ward of court and has not had an enduring power of attorney registered in respect of him or her;

### 10.1.2 **Ownership**

except for the interest of any person who has completed a deed of confirmation in the Banking and Payments Federation Ireland standard form or other form acceptable to the Secured Party, the Mortgagor is and will at all times during the subsistence of the security constituted by the Mortgage and these Conditions be the sole lawful and beneficial owner of the Secured Assets;

### 10.1.3 **No breach**

neither the execution of the Mortgage nor the creation of the security expressed to be created or evidenced by the Mortgage and these Conditions nor the performance of the Mortgagor's obligations under the Mortgage or these Conditions contravenes or will at any time contravene:

- (a) any applicable law or regulation; or
- (b) any agreement or document to which the Mortgagor is a party or which is binding upon the Mortgagor or the Secured Assets;

### 10.1.4 **Approvals and registrations**

the Mortgagor holds or will, within any applicable time limit, obtain or make and keep in full force and effect and comply with all approvals, authorisations, consents, licences, registrations, filings and exemptions necessary for the creation or validity of the security expressed to be created or evidenced by the Mortgage and these Conditions and for the Mortgagor to perform the Mortgagor's obligations under the Mortgage and these Conditions;

### 10.1.5 **Enforceability**

on the date of the Mortgage and on each date thereafter until released by the Secured Party, the security constituted by the Mortgage and these Conditions constitutes a first priority Security Interest over the Secured Assets enforceable in accordance with their terms against the Mortgagor, the Mortgagor's creditors and any trustee or assignee in bankruptcy appointed to the Mortgagor; and

### 10.1.6 **Compliance with planning requirements**

save as may have been disclosed to the Secured Party in writing prior to the date of the Mortgage, the Mortgagor has not, prior to the date of the Mortgage carried out or permitted to be carried out any development within the meaning of the Planning Acts upon the Mortgaged Property in respect of which any requisite permission has not been obtained and that all conditions subject to which such permissions have been granted have been duly complied with.

## 11 **COVENANTS**

The Mortgagor hereby covenants with the Secured Party that until the Mortgage is discharged, the Mortgagor will:

**11.1 Comply with the Secured Documents**

comply with and observe all terms and conditions of the Secured Documents and of all other contracts, agreements and security to which it is a party relating to the Secured Liabilities;

**11.2 Assist Secured Party**

at the cost of the Mortgagor, give to the Secured Party and its agents all information concerning the Secured Assets as the Secured Party may from time to time request and give the Secured Party and its agents all reasonable assistance required by the Secured Party or its agents to preserve the security constituted or intended to be constituted by the Mortgage and these Conditions and to enforce all or any rights, powers and remedies under or pursuant to or in connection with the Mortgage and these Conditions;

**11.3 Further assurance**

at the cost of the Mortgagor, execute and do all such assurances and things as the Secured Party may reasonably require for perfecting the security intended to be constituted by the Mortgage and these Conditions and for enforcing all or any of the Secured Party's rights, powers and remedies under, pursuant to or in connection with the Mortgage and these Conditions or otherwise in or in respect of all or any of the Secured Assets;

**11.4 Negative pledge**

not without the prior written permission of the Secured Party:

11.4.1 create or permit to subsist any Security Interest over the Secured Assets or any of them; or

11.4.2 part with, sell, transfer, lend, lease or otherwise dispose of, whether by means of one or of a number of transactions related or not and whether at one time or over a period of time, the whole or any part of the Secured Assets;

**11.5 Not jeopardise Secured Assets**

not do or cause or permit to be done anything which may in any way depreciate or otherwise prejudice the value (whether monetary or otherwise) to the Secured Party of the Secured Assets or any of them;

**11.6 Repair**

keep the Secured Assets in good and substantial repair and condition and in good working order;

**11.7 Inspection**

permit any person authorised by the Secured Party free access at all reasonable times to view the state and condition of the Secured Assets without becoming liable to account as mortgagee in possession;

**11.8 Insure**

11.8.1 insure and keep insured all parts of the Secured Assets as are of an insurable nature in accordance with the requirements of the Secured Documents or, if there are no such requirements, with such insurer as the Secured Party may approve against:

- (a) loss or damage by fire, storm, lighting, terrorist attack, explosion, earthquake, riot, civil commotion, malicious damage, impact, flood, escape of water or oil, subsidence, heave and landslip, aircraft and other aerial devices or articles dropped therefrom;
- (b) other risks normally insured against in accordance with prudent practice; and
- (c) such other risks as the Secured Party shall from time to time reasonably require,

in a sum equal to the replacement or reinstatement value thereof from time to time together with, where the Mortgaged Property is a tenanted property, three years loss of rent and including, where applicable, the cost of demolition and site clearance, architects', surveyors' and other professional fees and incidental expenses in connection with the replacement or reinstatement and value added tax;

11.8.2 without prejudice to the foregoing requirements of the Secured Party, the Mortgagor shall be responsible during the subsistence of the Mortgage for ensuring the adequacy and scope of the insurance cover. In the event of an insurance claim the Secured Party shall not be liable to the Mortgagor if the sum insured does not cover the full reinstatement cost of the Secured Assets (the Mortgagor making up any shortfall out of the Mortgagor's own monies);

11.8.3 not do anything, or permit anything to be done in or upon or relating to the Secured Assets or any part thereof, which may make void or voidable any insurance in connection therewith;

**11.9 Note the interest of the Secured Party and contain protection clause**

note the interest of the Secured Party upon all policies of such insurance and procure that each policy of such insurance incorporates a mortgagee protection clause, whereby such insurances will not be invalidated, vitiated or avoided as against a mortgagee in the event of any misrepresentation, act, omission, neglect or failure to disclose on the part of the insured;

**11.10 Pay premiums and produce policies**

promptly pay all premiums and other monies necessary for effecting and keeping up the policies of such insurance and (if the Secured Party so requires) produce to or deposit with the Secured Party all such policies and the receipts for all premiums and other payments necessary for effecting and keeping up such policies;

**11.11 Insurance proceeds**

subject to the terms of any lease of the Mortgaged Property pay all money received under any insurance of any of the Secured Assets to the Secured Party and pending such payment to hold same in trust for the Secured Party to be applied by the Secured Party at

its absolute discretion either in making good the loss or damage in respect of which the money is received or in or towards the discharge of the Secured Liabilities;

**11.12 Observe obligations**

observe and perform (and use best endeavours to ensure the observance and performance by any person at any time occupying the Mortgaged Property or any part or parts thereof) all covenants, stipulations and conditions to which any of the Secured Assets or the user thereof is now or may hereafter be subject and (if the Secured Party so requires) produce to the Secured Party evidence sufficient to satisfy the Secured Party that such covenants, stipulations and conditions have been observed and performed;

**11.13 Onerous obligations, etc.**

not enter into any onerous or restrictive obligations affecting any of the Secured Assets or create or permit to subsist any over-riding interest or right therein or thereover which might adversely affect the value thereof;

**11.14 Not lease**

save as permitted by the Secured Documents or other agreement with the Secured Party, not without first obtaining the written consent of the Secured Party (which consent shall not be unreasonably withheld) give or agree to give any licence or tenancy affecting any part of the Secured Assets nor exercise the powers of leasing or agreeing to lease or of accepting or agreeing to accept surrenders conferred upon a mortgagor by statute or otherwise or enter into or permit any parting with possession or sharing agreement whatsoever in respect of the Secured Assets;

**11.15 Rent**

collect the Rent immediately same becomes due and payable and forthwith pay all proceeds of such collection to the Secured Party and pending such payment hold the same in trust for the Secured Party (and the Secured Party may apply all Rent so received by it in or towards discharge of the Secured Liabilities and pending such application may lodge it to the credit of a suspense account in accordance with clause 15);

**11.16 Pay outgoings**

pay all rents, rates, taxes, levies, assessments, impositions and outgoings whatsoever whether governmental, municipal or otherwise which may be imposed upon or payable in respect of the Secured Assets as and when the same shall become payable and on demand produce the receipt for such payments;

**11.17 Investigate title**

grant, on request, all facilities to enable the Secured Party or its solicitors to carry out (at, to the extent permitted by law, the cost of the Mortgagor) investigations of title to any of the Secured Assets;

**11.18 Observe enactments**

observe any and every enactment (whether now in force or hereafter coming into force) relating to or affecting the Secured Assets;

**11.19 Environmental Laws**

(without prejudice to the generality of the previous clause) properly discharge all duties of care and responsibilities placed upon it by all applicable Environmental Laws and observe and perform all the requirements of all applicable Environmental Laws both in the conduct of its general business and in the management, possession or occupation of all or any part of the Secured Assets and in particular, not without the prior written consent of the Secured Party, place or allow to be placed on any part of the Mortgaged Property any waste or noxious material;

**11.20 Alteration or development of the Mortgaged Property**

not, without obtaining (a) the prior written consent of the Secured Party, and (b) all necessary planning permissions under the Planning Acts, make any structural or material alteration to the Mortgaged Property or any building, structure or erection forming part of the Mortgaged Property or do or permit to be done anything which is "development" or a "change of use" within the meaning of the Planning Acts or any orders or regulations under such Acts;

**11.21 Furnish planning permission**

in the event of obtaining planning permission in relation the Mortgaged Property, produce that permission to the Secured Party within seven days of receipt of it;

**11.22 Carry out works to Secured Party's satisfaction**

in the event of the Secured Party giving consent to commence and proceed with any works to the Mortgaged Property or where the Secured Party agrees that any part of the Secured Liabilities are to be used for such works, without delay, carry out those works to the Secured Party's satisfaction in accordance with the plans and specifications approved of by the Secured Party and the provisions and conditions of all applicable planning permissions under the Planning Acts and otherwise in accordance with all applicable laws and regulations;

**11.23 Provide certificates of compliance**

provide a certificate, in form and substance satisfactory to the Secured Party from an architect or other suitable professional acceptable to the Secured Party, confirming compliance with all applicable planning permissions and building regulations in respect of any works carried out to the Mortgaged Property;

**11.24 Not remove fixtures**

not sever or remove or unfix any fixtures or plant or machinery from the Mortgaged Property except for the purposes of effecting any necessary repairs, or of replacing the same with new and improved models;

**11.25 Provide regulatory notices and notices of claims**

within seven days of receipt thereof, give full particulars to the Secured Party of any notice or order or proposal for a notice or order given, issued or made by any authorised person or of any claim or proceedings which in any way relates to or affects the Mortgaged Property and will, if so required by the Secured Party, produce to it such notice, order or proposal and take all reasonable and proper steps to comply with such order or notice without delay and, at the request of the Secured Party, make or concur with the Secured Party in making any objections or representations against or in respect of any such notice, order or proposal or any appeal against any such notice, order or proposal as the Secured Party may deem expedient;

**11.26 Deposit title documents**

deposit with the Secured Party and permit the Secured Party to retain as part of the security constituted by the Mortgage and these Conditions the documents of title of the Mortgaged Property;

**11.27 Inform Secured Party of additional interests**

forthwith inform the Secured Party upon acquiring any additional estate or interest in the Mortgaged Property and deposit with the Secured Party and permit the Secured Party to retain as part of the security constituted by the Mortgage and these Conditions the documents of title thereof and if required by the Secured Party execute in favour of the Secured Party a mortgage over same in similar form to the Mortgage and these Conditions with any modifications the Secured Party may require;

**11.28 Inform Secured Party of occurrence of an Enforcement Event**

immediately notify the Secured Party in writing of the occurrence of an Enforcement Event or of circumstances which make its occurrence likely;

**11.29 Deposit shares in management company**

deposit transfer forms completed in blank and any share certificates relating to any share or shares in any residents, services or management company relating to the Mortgaged Property; and

**11.30 Transfer shares in management company**

on written request transfer any share or shares in any residents, services or management company relating to the Mortgaged Property to the Secured Party or as the Secured Party may direct.

Provided if the Mortgagor shall fail to perform any of its obligations under this clause 11 the Secured Party may (but shall not be obliged to) perform such obligations and for such purposes may enter upon the Mortgaged Property (without thereby becoming liable as mortgagee in possession) and any monies thereby expended by the Secured Party shall constitute part of the Secured Liabilities.

## 12 ENFORCEMENT

### 12.1 Time for enforcement

The security constituted by the Mortgage and these Conditions shall become enforceable and any of the Secured Liabilities not already payable on demand shall become due and payable on demand immediately upon and at any time after the occurrence, for any reason, whether within or beyond the control of the Mortgagor, of an Enforcement Event. At any time after the security constituted by the Mortgage and these Conditions has become enforceable, but subject to compliance with the Act, the Secured Party may enter into possession of the Secured Assets and exercise the power of sale and the other powers conferred on mortgagees by the Act.

### 12.2 Enforcement Events

The occurrence at any time and for any reason, whether within or beyond the control of the Mortgagor of any of the following events shall constitute an Enforcement Event:

- 12.2.1 if the Mortgagor fails to pay or discharge any of the Secured Liabilities when they ought to be paid or discharged; or
- 12.2.2 if any event (whether described as an event of default or otherwise) occurs by virtue of which any of the Secured Liabilities becomes due to be paid or discharged before the date on which it would otherwise be due to be paid or discharged; or
- 12.2.3 if there is a breach by the Mortgagor of any of the terms and conditions of the Mortgage, these Conditions or of any Secured Document or the Mortgagor fails to perform any of his or her obligations or liabilities to the Secured Party or any Associate or any representation or warranty or undertaking from time to time made to the Secured Party or any Associate by the Mortgagor is or becomes incorrect or misleading in any material respect; or
- 12.2.4 if the Mortgagor defaults under any financial obligation to any person and such default is not remedied by the Mortgagor in accordance with a request to do so from the Secured Party; or
- 12.2.5 if an encumbrancer takes possession or exercises or attempts to exercise any power of sale or a receiver or similar official is appointed over the whole or any part of the Secured Assets; or
- 12.2.6 if any judgment or order made against the Mortgagor is not complied with within seven days or any execution, distress, sequestration or other process is levied or enforced upon or sued out against any part of the Secured Assets; or
- 12.2.7 if the Mortgagor stops payment or declares a moratorium or becomes or is deemed to be insolvent or unable to pay his or her debts as and when they fall due or the Mortgagor proposes or enters into any composition or arrangement with his or her creditors generally or any class of his or her creditors; or
- 12.2.8 if the Mortgagor commits an act of bankruptcy or is adjudicated a bankrupt or becomes of unsound mind is made a ward of court or has an enduring power of attorney registered in respect of him or herself or dies; or

- 12.2.9 if the Secured Assets become subject to an order or process for compulsory purchase or if any building or other structure on the Mortgaged Property is demolished or damaged so as to materially affect the value of the security created by the Mortgage and these Conditions or the Mortgagor surrenders his or her interest in the Mortgaged Property; or
- 12.2.10 if any undertaking given by the Mortgagor's solicitor to the Secured Party or any Associate in relation to the Secured Assets is not complied with in a manner satisfactory to the Secured Party or, as the case may be, the Associate; or
- 12.2.11 if the Mortgage, these Conditions or any guarantee, indemnity or other security for any of the Secured Liabilities fails or ceases in any respect to have full force and effect or to be continuing or is terminated or is disputed or becomes jeopardised, invalid or unenforceable; or
- 12.2.12 if any material adverse change occurs in the affairs of the Mortgagor which in the opinion of the Secured Party gives ground for belief that the Mortgagor may not or may be unable to perform his or her obligations under the Mortgage or these Conditions or under any facility from the Secured Party or any Associate; or
- 12.2.13 if any of the foregoing events occur without the prior consent in writing of the Secured Party in relation to any person who now or hereafter has guaranteed or provided security for or given an indemnity in respect of any of the Secured Liabilities.

### 12.3 **Discretion as to enforcement**

After the security constituted by the Mortgage and these Conditions has become enforceable, the Secured Party may in its absolute discretion, but subject to the provisions of the Act, enforce all or any part of the security in any manner it sees fit.

### 12.4 **Power of leasing and accepting surrenders**

The powers of leasing and accepting surrenders of leases conferred on the Secured Party and any Receiver by the Act shall apply to the Mortgage and these Conditions. The Mortgagor hereby consents, in accordance with section 112(3)(c) of the Act, to the Secured Party, while in possession, or any Receiver, leasing all or any part of the Secured Assets whether for a purpose authorised by sections 112(3)(a) or (b) of the Act or otherwise whatsoever. The Secured Party and any Receiver may exercise the power conferred by the Act to accept surrenders of leases for any purpose that it or he thinks fit and not just for the purpose of granting new leases under section 112 of the Act and any new lease granted by the Secured Party or any Receiver following the acceptance of a surrender need not comply with the requirements of section 114(3) of the Act.

### 12.5 **Contingencies**

If the Secured Party enforces the security constituted by the Mortgage and these Conditions at a time when none of the Secured Liabilities are due but at a time when Secured Liabilities may or will become so due, the Secured Party (or any Receiver) may pay the proceeds of any recoveries effected by it into a suspense account in accordance with clause 15.

**12.6 No liability as mortgagee in possession**

Neither the Secured Party nor any Receiver will be liable, by reason of entering into possession of a Secured Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

**12.7 No liability for loss**

Save as provided for in section 103 of the Act, neither the Secured Party nor any Receiver will be liable for any loss upon a realisation of the security constituted by the Mortgage and these Conditions or upon the exercise of any power, authority, right or discretion of the Secured Party or any Receiver arising under the Mortgage or these Conditions.

**12.8 Secured Party may exercise Receiver's powers**

All or any of the powers, authorities and discretions which are conferred by the Mortgage and these Conditions (either expressly or impliedly) upon a Receiver may be exercised after the security constituted by the Mortgage and these Conditions becomes enforceable by the Secured Party in relation to all or any part of the Secured Assets both before and after the appointment of any Receiver of all or any part of the Secured Assets.

**12.9 Privileges**

Each Receiver and the Secured Party is entitled to all the rights, powers, privileges and immunities conferred by the Act.

**12.10 Protection of third parties**

No person (including a purchaser) dealing with the Secured Party or a Receiver or its or his agents will be concerned to enquire:

12.10.1 whether the Secured Liabilities have become payable or any of them remain due; or

12.10.2 whether any power which the Secured Party or the Receiver is purporting to exercise has become exercisable or is being properly exercised; or

12.10.3 whether due notice has been given to any person or any court order or consent obtained; or

12.10.4 how any money paid to the Secured Party or to the Receiver is to be applied.

**12.11 Redemption of prior Security Interests**

At any time after the security constituted by the Mortgage and these Conditions has become enforceable, the Secured Party may:

12.11.1 redeem any prior Security Interest against any Secured Asset; and/or

12.11.2 procure the transfer of that Security Interest to itself; and/or

12.11.3 settle and pass the accounts of the prior mortgagee, chargee or encumbrancer; any accounts so settled and passed shall be conclusive and binding on the Mortgagor.

All principal monies, interest, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the Mortgagor to the Secured Party on demand and shall form part of the Secured Liabilities.

#### 12.12 **Removal and sale of chattels**

At any time after the security constituted by the Mortgage and these Conditions has become enforceable, the Secured Party or any Receiver may, as agent of the Mortgagor, remove, store and sell, at the expense of the Mortgagor, any chattels found on or about the Mortgaged Property and, in the absence of any charge or other security in favour of the Secured Party thereover (whether created by the Mortgage, these Conditions or otherwise), the net proceeds of sale thereof shall be payable to the Mortgagor on demand. The provisions of this clause shall not be construed or operate to confer on the Secured Party any right to any chattels of the Mortgagor or the proceeds of sale thereof which would constitute the Mortgage or these Conditions a bill of sale within the meaning of the Bills of Sale (Ireland) Acts 1879 and 1883.

### 13 **RECEIVER**

#### 13.1 **Power to appoint a Receiver**

At any time after the Mortgagor so requests or the security constituted by the Mortgage and these Conditions becomes enforceable, but subject to compliance with the Act, the Secured Party may appoint any person or persons to be a receiver or receiver and manager over the Secured Assets or any of them. Any person so appointed is herein called a “**Receiver**” (which expression shall where the context so admits include the plural and any substituted receiver or receivers). Any Receiver may be appointed in writing by a deed or under the hand of any duly authorised officer or employee of the Secured Party.

#### 13.2 **Powers of a Receiver**

A Receiver so appointed shall have and be entitled to exercise all powers conferred by the Act. In addition, pursuant to section 108(3)(c) of the Act, the Mortgagor and the Secured Party hereby delegate the following additional powers to any Receiver:

##### 13.2.1 **Possession**

to take possession of, collect and get in the property in respect of which he is appointed or any part thereof;

##### 13.2.2 **Compromise**

to settle, adjust, submit to arbitration, compromise and arrange any claims, accounts, disputes, questions, demands, with or by any person who is or claims to be a creditor of the Mortgagor relating in any way to the Secured Assets which he or the Secured Party may reasonably think expedient;

##### 13.2.3 **Protect Secured Assets**

(a) to make and effect all repairs and insurances and do all other acts which the Mortgagor might do as well for the protection and for the improvement of the Secured Assets;

- (b) to commence and/or complete any building operations on the Secured Property;  
and
- (c) to apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence,

in each case as he may think fit;

#### 13.2.4 **Appoint advisers, etc.**

to appoint, hire and employ contractors, agents and advisors of all kinds and to discharge any such persons and any such persons appointed, hired or employed by the Mortgagor;

#### 13.2.5 **Redemption of Security Interests**

to redeem any Security Interest (whether or not having priority to the security created by the Mortgage or these Conditions) over the Secured Assets and to settle the accounts of encumbrancers;

#### 13.2.6 **Take indemnity**

to take any indemnity from the Mortgagor from and against all actions, claims, expenses, demands and liabilities whether arising out of contract or out of tort or in any other way incurred by him or by any manager, agent, officer, servant or workman for whose debt, default or miscarriage he may be answerable for anything done or omitted to be done in the exercise or purported exercise of his powers under the Mortgage, these Conditions or under any appointment duly made under the provisions of this clause and if he thinks fit but without prejudice to the foregoing to effect with any insurance company or office or underwriters any policy or policies of insurance either in lieu or satisfaction of or in addition to such indemnity from the Mortgagor;

#### 13.2.7 **Sell**

to sell, exchange, convert into money and realise all or any part of the Secured Assets by public auction or private contract and generally in such manner and on such terms and conditions as he shall think proper. (The consideration for any such transaction may consist of cash, debenture or other obligations, shares, stock or valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit. Fixtures, other than the landlords fixtures, may be severed and sold separately from the property containing them without the consent of the Mortgagor);

#### 13.2.8 **Lease**

to let or license or agree to let or license any Secured Asset for such period and at such rent or licence fee (with or without a premium) and on such terms as he may think proper and accept or agree to accept a surrender of any letting or licence of any Secured Asset on any terms he thinks fit and to issue and serve notices to quit and notices of termination;

#### **13.2.9 Borrow money**

to raise and borrow money either unsecured or on the security of any Secured Asset either in priority to the security constituted by the Mortgage, these Conditions or otherwise and generally on any terms and for whatever purpose which he thinks fit. (No person lending that money shall be concerned to enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed);

#### **13.2.10 Legal actions**

to bring, prosecute, enforce, defend, and abandon all actions, suits and proceedings in relation to any Secured Asset which may seem to him to be expedient;

#### **13.2.11 Receipts**

to give valid and conclusive receipts for all monies and execute all assurances and things which may be proper or desirable for realising the Secured Assets;

#### **13.2.12 Use Mortgagor's name**

to use the name of the Mortgagor for all or any of the purposes aforesaid and in any legal proceedings with full power to convey any property sold in the name of the Mortgagor for all of which purposes the Mortgagor hereby irrevocably and by way of security appoints every such Receiver to be his attorney; and

#### **13.2.13 Other powers**

to do all such other acts or things as he may consider to be incidental or conducive to any of the matters or powers aforesaid and to exercise in relation to the Secured Assets or any of them all such powers, authorities and things as he would be capable of exercising if he were the absolute beneficial owner of the same.

### **13.3 Order of application**

All monies received by any Receiver shall be applied by him in accordance with section 109 of the Act.

### **13.4 Remuneration and expenses of a Receiver**

The Secured Party may fix the remuneration and commission of any Receiver appointed by it without, to the extent permitted by law, being limited to any maximum rate prescribed under section 108(7) of the Act. The Mortgagor shall pay all the remuneration and commission and costs and expenses of any Receiver.

### **13.5 Receiver is agent of the Mortgagor**

Each Receiver is deemed to be the agent of the Mortgagor for all purposes and the Mortgagor alone shall be responsible for his remuneration, contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him and the Secured Party shall not incur any liability (either to the Mortgagor or to any other person) by reason of the Secured Party making his appointment as a Receiver or for any other reason.

### 13.6 **Removal of Receiver**

The Secured Party may in writing (under seal or under the hand of any authorised officer or employee of the Secured Party):

13.6.1 remove any Receiver appointed hereunder; and

13.6.2 appoint another person or persons as Receiver either in the place of a Receiver whose appointment has for any reason terminated or in addition to any Receiver already appointed.

### 13.7 **Joint Receivers**

If at any time there is more than one Receiver of all or any part of the Secured Assets, each such Receiver may (unless otherwise stated in any appointment document) exercise all of the powers conferred on a Receiver under the Mortgage and these Conditions individually and to the exclusion of each other Receiver.

## 14 **POWER OF ATTORNEY**

14.1 The Mortgagor by executing the Mortgage irrevocably and by way of security appoints the Secured Party and separately any Receiver as the attorney of the Mortgagor with power in the name or on behalf of, and as the act and deed or otherwise of, the Mortgagor:

14.1.1 to complete, amend, execute and deliver and otherwise perfect any agreement, assurance, deed, instrument or document; and

14.1.2 to perform any act,

which may be required or may be deemed proper for perfecting the Secured Party's or any Receiver's title to any of the Secured Assets or for vesting any of the Secured Assets in it or him or any purchaser or for the exercise of any of the powers, rights or remedies conferred on the Secured Party and/or a Receiver by the Mortgage and these Conditions or for procuring the fulfilment of anything which the Mortgagor has undertaken to the Secured Party and/or any Associate to do.

14.2 The Mortgagor ratifies and confirms and agrees to ratify and confirm whatever any attorney does or purports to lawfully do pursuant to its or his appointment under this clause.

14.3 Each of the Secured Party and any Receiver shall have full power to delegate the power conferred on it or him by this clause 14 but no such delegation shall preclude the subsequent exercise of such power by the Secured Party or the Receiver itself or himself or preclude the Secured Party or the Receiver from making a subsequent delegation thereof to some other person; any such delegation may be revoked by the Secured Party or the Receiver at any time.

## 15 **SUSPENSE ACCOUNT**

All monies paid to or recovered by the Secured Party may in the sole discretion of the Secured Party be credited to an interest bearing suspense account and may be held in such account for so long as the Secured Party may think fit pending their application from time to time (as the Secured Party shall be entitled to do at its discretion) in or towards the discharge of the Secured Liabilities.

## 16 CURRENCY CLAUSE

### 16.1 Conversion of currencies

For the purpose of, or pending, payment or discharge of the Secured Liabilities, the Secured Party may convert any amount paid to or recovered by the Secured Party from its existing currency into such other currency as the Secured Party may think fit and any such conversion shall be effected at the Secured Party's exchange rate applicable at the time.

### 16.2 Currency indemnity

If any amount payable by the Mortgagor is paid to or recovered by the Secured Party in a currency other than that in which it is required to be paid (the "**contractual currency**") and, when converted into the contractual currency at the Secured Party's exchange rate applicable at the time, leaves the Secured Party with less than the amount payable in the contractual currency, the Mortgagor must make good the amount of the shortfall on demand.

## 17 COSTS

The Mortgagor shall pay on an indemnity basis all costs, expenses and liabilities (including professional fees and disbursements) incurred by the Secured Party or a Receiver in connection with:

- 17.1 to the extent permitted by law, the preparation, negotiation, execution and delivery of the Mortgage;
- 17.2 any registration of the Mortgage and these Conditions;
- 17.3 any release of the security constituted by the Mortgage and these Conditions;
- 17.4 the perfection, stamping and registration of title to the Secured Assets; and
- 17.5 the preservation or exercise (or attempted preservation or exercise) of any rights under or in connection with and the enforcement (or attempted enforcement) of the security constituted by the Mortgage and these Conditions.

All monies payable under this provision shall be payable on demand and constitute part of the Secured Liabilities and be debited by the Secured Party to any account of the Mortgagor with the Secured Party.

## 18 INDEMNITY

The Secured Party and any Receiver, attorney, agent or other person appointed by the Secured Party or any Receiver under the Mortgage or these Conditions and the Secured Party's and any Receiver's officers and employees (each an "**Indemnified Party**") shall be entitled to be indemnified out of the Secured Assets in respect of all costs, losses, actions, claims, expenses, demands or liabilities whether in contract, tort, delict or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against any of them (or by or against any manager, agent, officer or employee for whose liability, act or omission any of them may be answerable) at any time relating to or arising directly or indirectly out of or as a consequence of:

- (a) anything done or omitted in the exercise or purported exercise of the powers contained in the Mortgage or these Conditions; or
- (b) any breach by the Mortgagor of any of its obligations under the Mortgage or these Conditions; or
- (c) any claim for environmental liability being made or asserted against an Indemnified Party which would not have arisen if the Mortgage had not been executed and which was not caused by the willful default of the relevant Indemnified Party,

and independently of (and in addition to any right to be indemnified from the Secured Assets) the Mortgagor shall indemnify on demand each Indemnified Party against all such matters.

## 19 SET-OFF

In addition to any right of set off or other similar right to which the Secured Party or any Associate may be otherwise entitled, the Secured Party or, as the case may be, an Associate may (but shall not be obliged) at any time and without notice to the Mortgagor set off any monies whatsoever which the Secured Party or, as the case may be, the Associate may at any time hold for the account of the Mortgagor (whether or not matured and regardless of where they are held and of the currency of same) against any of the Secured Liabilities. If the monies so held and the Secured Liabilities are in different currencies, the Secured Party or, as the case may be, the Associate may convert either of them at a market rate of exchange in its usual course of business for the purpose of the set off. If the relevant Secured Liabilities are unliquidated or unascertained, the Secured Party or, as the case may be, the Associate may set off in an amount estimated by it in good faith to be the amount of those liabilities.

## 20 TITLE DOCUMENTS

- 20.1 The Secured Party hereby undertakes with the Mortgagor for the safe custody of such of the documents of title relating to the Mortgaged Property of which it retains possession or control.
- 20.2 The Mortgagor agrees that in the event of the loss or destruction of, or injury to, the documents of title relating to the Mortgaged Property, the Secured Party shall have no liability to the Mortgagor:
  - 20.2.1 if the loss, destruction or injury occurred:
    - (a) prior to actual receipt of the documents of title in question by the Secured Party from the Mortgagor or the Mortgagor's solicitor; or
    - (b) after the documents of title in question have been given by the Secured Party to some other person at the request of the Mortgagor and before the documents have been received back by the Secured Party, or
  - 20.2.2 for any damages suffered by the Mortgagor as a result of the loss or destruction of, or injury to, the documents of title in question where such damages do not directly and naturally result from such loss, destruction or injury and in no circumstances will the Secured Party be liable to the Mortgagor for any indirect, incidental or consequential loss or loss of profit the Mortgagor may suffer or incur arising out of or in connection with any such loss destruction or injury.

## 21 MISCELLANEOUS

### 21.1 Security is additional

The security constituted by the Mortgage and these Conditions shall be in addition to and shall not be affected by or merge in the security created by any other Security Interest or other security or guarantee or indemnity which the Secured Party or any Associate may at any time hold for any of the Secured Liabilities.

### 21.2 Rights are cumulative

The rights of the Secured Party and any Receiver under the Mortgage and these Conditions are cumulative. Nothing in the Mortgage or these Conditions excludes or restricts any right which the Secured Party, each Associate or any Receiver would have, apart from the Mortgage and these Conditions, under the general law or under any other document or agreement.

### 21.3 No waiver

No failure or delay by the Secured Party in exercising any power, right or remedy shall operate as a waiver thereof nor shall any single or any partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

### 21.4 Severance

21.4.1 Each of the provisions of the Mortgage and these Conditions is severable and distinct from the others and if at any time, any such provision is or becomes invalid, illegal or unenforceable in any jurisdiction such occurrence shall not affect the validity, legality and enforceability of the remaining such provisions or affect the validity, legality or enforceability of such provision in any other jurisdiction.

21.4.2 Without prejudice to the foregoing, if at any time any liability in relation to the Secured Liabilities is or becomes invalid, illegal or unenforceable then, such occurrence shall not prejudice the continuing effectiveness of the security created by or pursuant to the Mortgage and these Conditions for any liability in relation to the Secured Liabilities which is not so affected.

21.4.3 For the purposes of this clause, the word "provisions" shall, without limiting the meaning of such word, include each clause and sub-clause of the Mortgage and these Conditions and each part of each such clause and sub-clause which is capable of being applied as a distinct provision.

## 22 NOTICES

### 22.1 Mode of service

Any notice, demand or other communication to be served on the Mortgagor by the Secured Party under or in connection with the Mortgage and these Conditions may be served on the Mortgagor personally or by being left at the last address of the Mortgagor known to the Secured Party or by posting the same by letter addressed to the Mortgagor at such address or by transmitting same by facsimile to the facsimile number of the Mortgagor last known to the Secured Party.

## 22.2 **Electronic communication**

22.2.1 Any notice, demand or other communication to be made between the Secured Party and the Mortgagor under or in connection with the Mortgage and these Conditions may be made by electronic mail, text message to a mobile telephone or other electronic device or other electronic means, if the Secured Party and the Mortgagor:

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) notify each other in writing of their electronic mail address, mobile telephone number and/or any other information required to enable the sending and receipt of information by that means; and
- (c) notify each other of any change to their address or any other such information supplied by them.

22.2.2 Any electronic communication made between the Secured Party and the Mortgagor will be effective only when actually received in readable form and in the case of any electronic communication made by the Mortgagor to the Secured Party only if it is addressed in such a manner as the Secured Party shall specify for this purpose.

22.2.3 Where the Secured Party and the Mortgagor agree that electronic mail, text message and other electronic means are an accepted form of communication, each of the Secured Party and the Mortgagor shall thereby be deemed to acknowledge that the nature of communications by electronic means is such that neither party can guarantee the privacy or confidentiality of any information passing by such methods or that such communications will be free from interference by third parties. Without prejudice to that position, each of the Secured Party and the Mortgagor shall use reasonable endeavours to protect the confidentiality of information communicated by electronic mail or other electronic means.

## 22.3 **Time of service**

Any such notice or demand served on the Mortgagor shall be deemed to be served:

22.3.1 when despatched (if served by facsimile or by text message, electronic mail or other electronic means); or

22.3.2 when left at any address mentioned above (if left at such address); or

22.3.3 when served (if served on the Mortgagor personally); or

22.3.4 one day after posting (if served by post) and in proving service of any such notice or demand sent by post it shall be sufficient to show that the notice or demand was properly addressed and posted and such proof of service shall be effective notwithstanding that it was in fact not delivered or was returned undelivered.

## 22.4 **Two or more Mortgagors**

Where there are two or more persons included in the expression "Mortgagor" any demand or notice served on one of them (or deemed to have been so served) shall be regarded as effectively served on the other or others of them.

## 22.5 **Death of the Mortgagor**

In the case of death of the Mortgagor (or where the expression “Mortgagor” includes two or more persons of one or more of them) and until the Secured Party receives notice in writing of the grant of probate of the will or letters of administration in respect of the estate of the deceased and, in each such case, an address of communication for his or her personal representative(s), any notice or demand or other communication by the Secured Party sent as aforesaid and addressed to the deceased shall for all purposes be deemed sufficient notice or demand by the Secured Party to the deceased and his or her personal representatives and shall be as effective as if the deceased were still living.

## 22.6 **Effectiveness of demand**

Any demand for payment made by the Secured Party shall be valid and effective for all purposes of the Mortgage and these Conditions notwithstanding that the demand contains no statement of the relevant liabilities or that it inadvertently contains an inaccurate or incomplete statement of them, but if there is an inaccuracy the Mortgagor shall only be liable for the correct amount of such liabilities.

## 23 **TRANSFERS AND DEALINGS WITH THE MORTGAGE**

### 23.1 **Mortgagor may not dispose**

The Mortgagor shall not be entitled to assign, transfer or otherwise dispose of the benefit or the burden of the Mortgage or these Conditions.

### 23.2 **Secured Party / any Associate may dispose and deal**

The Mortgagor hereby irrevocably and unconditionally agrees that the Secured Party and each Associate may (without the need for any further consent from, or notice to, the Mortgagor) assign, transfer, mortgage, charge, sub-mortgage, sub-charge, declare a trust over or otherwise grant interests in, or dispose of, or otherwise vest in any person the whole or any part of the benefit of the Secured Liabilities, the Mortgage, any other related security and these Conditions and the whole or any part of its interest, rights and/or obligations in, under, over and to the Secured Liabilities, the Mortgage, any other related security and these Conditions.

### 23.3 **Examples of permitted disposals and other dealings by the Secured Party / any Associate**

Without prejudice to the generality of clause 23.2, the Secured Party and any Associate may at any time (without the need for any further consent from, or notice to, the Mortgagor) engage or participate, directly or indirectly, in:

23.3.1 a securitisation scheme. A “**securitisation scheme**” means a scheme where all or any interests, rights, benefits and/or obligations (“**scheme interests**”) of the Secured Party and/or, as applicable, the relevant Associate, in the whole or any part of the Secured Liabilities, the Mortgage, these Conditions and/or any other related security are by any available legal means transferred, assigned or disposed to, or secured in favour of, a person or trust and, in turn, that person or trust uses those scheme interests as security or collateral or by way of sale, security or other transfer to raise finance from investors, purchasers or lenders;

23.3.2 a mortgage backed promissory note facility. A “**mortgage backed promissory note facility**” involves the Secured Party and/or, as applicable, the relevant Associate granting a charge or other security over the whole or any part of the Secured Liabilities, the Mortgage, these Conditions and other related security to secure the raising of finance by the issue of promissory notes; and/or

23.3.3 a transfer, assignment (absolutely or by way of security), charge or security interest of in, under or over all or any interests, rights, benefits and/or obligations in respect of the whole or any part of the Secured Liabilities, the Mortgage, these Conditions and/or other related security from:

- (a) the Secured Party to or in favour of an Associate (which is a subsidiary or holding company of the Secured Party or a subsidiary of such holding company) or from such an Associate to or in favour of another such Associate or the Secured Party as part of an intra-group reorganisation or financing arrangement; or
- (b) the Secured Party or an Associate (which is a subsidiary or holding company of the Secured Party or a subsidiary of such holding company) to or in favour of a person who is not such an Associate or the Secured Party.

The examples of transfers and other dealings referred to in this clause 23.3 are not exhaustive and do not in any way limit or restrict the rights of the Secured Party or any Associate under clause 23.2 or otherwise.

#### 23.4 **References to the Secured Party**

Any reference to the Secured Party in the Mortgage and these Conditions shall include any assignee, transferee, mortgagee, chargee, sub-mortgagee, sub-chargee, trustee or other grantee or disposee or successor (whether immediate or derivative) of the Secured Party who shall be entitled (to the extent of such assignment, transfer, mortgage, charge, sub-mortgage, sub-charge or other grant or disposal or succession) to enforce and proceed upon and exercise all rights, powers and discretions of the Secured Party under the Mortgage and these Conditions (including, but not limited to, the setting of the interest rates and the handling of arrears in respect of the Secured Liabilities) in the same manner as if named in the Mortgage and these Conditions in place of or, in accordance with its interest, alongside the Secured Party.

#### 23.5 **Liabilities secured following a transfer**

For the avoidance of any doubt if the person who is for the time being the Secured Party (the “**existing Secured Party**”) assigns, transfers or otherwise disposes (otherwise than by a mortgage, charge or other Security Interest) of the benefit of the Mortgage and these Conditions to another person (the “**new Secured Party**”) the Mortgage and these Conditions will secure:

23.5.1 unless otherwise agreed by the existing Secured Party or, as applicable the relevant Associate, all the Secured Liabilities, if any, which remain due owing or incurred by the Mortgagor to the existing Secured Party or any of its Associates; and

23.5.2 all the Secured Liabilities, if any, which were originally due owing or incurred by the Mortgagor to the existing Secured Party or any of its Associates the benefit of which the existing Secured Party or any of its Associates has assigned, transferred or otherwise disposed of, to the new Secured Party; and

23.5.3 all monies, obligations and liabilities, whether in respect of principal, interest, discount, commission, fees or expenses or otherwise in whatever currency, that are now or shall from time to time hereafter be due, owing or incurred by the Mortgagor (or, where the Mortgagor comprises more than one person, by any one or more of them) to the new Secured Party or any of its Associates under, pursuant to or in connection with:

- (i) any loan or other facility now or hereafter made to the Mortgagor (or, where the Mortgagor comprises more than one person, to any one or more of them), whether alone or jointly with any other persons or persons, by the new Secured Party or any of its Associates; and/or
- (ii) any other liability or obligation now or hereafter incurred by the Mortgagor (or, where the Mortgagor comprises more than one person, by any one or more of them) to the new Secured Party or any of its Associates, whether actually or contingently, whether alone or jointly with any other person or persons, as principal debtor, surety or in any other manner,

where it is expressly provided in the facility letter or other agreement relating to such loan, facility, liability or obligation (or any amendment, extension, restatement or replacement thereof or supplement thereto) or where it is or has been otherwise agreed in writing signed by or on behalf of the Mortgagor that such loan, facility, liability or obligation is, or is to be, secured by the Mortgaged Property; and

23.5.4 all monies now or hereafter due, owing or incurred by the Mortgagor (or, where the Mortgagor comprises more than one person, by any one or more of them) to the new Secured Party or any of its Associates under, pursuant to or in connection with the Mortgage or these Conditions,

as if in each case the new Secured Party was named in the Mortgage in place of or, in accordance with its interest, alongside the existing Secured Party.

#### 23.6 **Use of Secured Liabilities / Mortgage as security for Irish covered bonds**

Where the Secured Party or an Associate is a designated mortgage credit institution, its rights, benefits and interests in the Secured Liabilities, the Mortgage and other related security may, in accordance with the Asset Covered Securities Acts 2001 and 2007 (the “**ACS Acts**”), at any time constitute cover assets, be comprised in its cover assets pool and thereby secure mortgage covered securities that it issues. Under the ACS Acts, set-off may not be exercised by any person (which would include the Mortgagor) in respect of Secured Liabilities constituting cover assets and comprised in the cover assets pool, until all claims of preferred creditors (which include holders of mortgage covered securities) have been discharged in full. In addition, under the ACS Acts, preferred creditors of the designated mortgage credit institution have a statutory preference over cover assets comprised in a cover assets pool. For the above purposes, “**cover assets**”, “**cover assets pool**”, “**designated mortgage credit institution**”, “**mortgage covered securities**” and “**preferred creditors**” have the meaning given to them under the ACS Acts. This clause 23.6 does not in any way limit or restrict the rights of the Secured Party or any Associate under clause 23.2 or otherwise.

#### 23.7 **Where Danske Bank (including its Irish branch, which trades as National Irish Bank) is Secured Party/Associate**

- 23.7.1 This clause 23.7 applies where the Secured Party or an Associate is Danske Bank and without limiting any other provision of the Mortgage or these Conditions (including, without limitation clauses 6.2.1 and 23.2) or other rights of the Secured Party or Associates.
- 23.7.2 Danske Bank may use the Secured Liabilities, the Mortgage and related security for the purposes of the Danish covered bond scheme operated by Danske Bank in Denmark under Danish covered bond legislation. If so used, the Secured Liabilities, the Mortgage and other related security will, under that legislation, secure the holders of Danish covered bonds issued by Danske Bank at the date of the Mortgage or thereafter and certain other creditors recognised by that legislation. At any time and from time to time, the Secured Liabilities, the Mortgage and other related security may (i) be included by Danske Bank in the pool of assets which secures the Danish covered bonds issued by Danske Bank from time to time under Danish covered bond legislation and certain other obligations recognised by that legislation, and (ii) be entered in the register or other records of that pool. The Secured Liabilities, the Mortgage and other related security may be removed from that pool from time to time. Without limiting clause 23.2, the Secured Liabilities, the Mortgage and other related security may be transferred, disposed of or dealt with as permitted or required by Danish covered bond legislation.
- 23.7.3 The Mortgagor irrevocably and unconditionally waives any right to exercise as against the Secured Liabilities any set-off with respect to any debt existing now or hereafter that the Mortgagor may have against Danske Bank. For these purposes, “**set-off**” means any contractual right of set-off, any right of set-off recognised at law or in equity under court proceedings, any right of set-off arising in relation to Danske Bank’s insolvency, bankruptcy, liquidation, administration, winding-up or similar insolvency related measures (each an “**Insolvency Related Measure**”) or any other rights of set-off howsoever arising and whether under Irish law, Danish law or any other applicable law, in each case, which the Mortgagor has now or hereafter in respect of the Secured Liabilities against Danske Bank. This waiver of set-off rights shall continue to apply even if Danske Bank becomes subject to an Insolvency Related Measure in Denmark, Ireland or in any other country or if the Secured Liabilities are assigned, transferred or otherwise disposed of as provided in this clause 23 or otherwise dealt with under the Danish covered bond scheme.
- 23.7.4 In this clause 23.7, “**Danske Bank**” means Danske Bank A/S which is incorporated in Denmark with an Irish branch which trades as National Irish Bank, and includes its successors.

## 24 DISCLOSURE OF INFORMATION

- 24.1 The Mortgagor hereby acknowledges that the Secured Party and each Associate may use the information (including any personal data within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679) (the “**GDPR**”)) which it or they obtain and hold about the Mortgagor and the Secured Liabilities (“**Information**”) for purposes including but not limited to:
- 24.1.1 servicing the Mortgage and the Secured Liabilities;
  - 24.1.2 credit checks, which may involve automated credit scoring;
  - 24.1.3 debt collection;
  - 24.1.4 group reporting and management purposes;
  - 24.1.5 prevention of money-laundering, financing of terrorism and fraud, and otherwise complying with their legal and regulatory obligations;

- 24.1.6 any transfers or other dealings with the Secured Liabilities, the Mortgage and these Conditions; and
  - 24.1.7 any other purposes to which the Mortgagor has consented.
- 24.2 The Secured Party and each Associate may share the Information, for the purposes set out in this clause 24, with:
- 24.2.1 any (or any proposed) assignee, transferee, mortgagee, chargee, sub-mortgagee, sub-chargee, trustee or other grantee or disposee or successor and their respective officers, employees, agents and advisers;
  - 24.2.2 any other person directly or indirectly participating in or promoting or underwriting or managing or auditing (or proposing to do so) any transfer, assignment, disposal, mortgage, charge, sub-mortgage, sub-charge, trust, securitisation scheme, mortgage backed promissory note facility or other transaction or arrangement relating to or involving the Mortgage and these Conditions;
  - 24.2.3 credit reference agencies (who will add details of the search, and information as to how the Mortgage and any other credit agreements (if any) between the Mortgagor and the Secured Party or any Associate operate, to the Mortgagor's records, and who may disclose this information to third parties for credit assessment purposes);
  - 24.2.4 any Associate and the Secured Party and their respective officers, employees, agents and advisers;
  - 24.2.5 any person with whom the Secured Party or any Associate has entered or proposes to enter into contractual relations in relation to the Secured Liabilities and/or the Mortgage or who provides or proposes to provide services to the Secured Party or any Associate in connection with the Secured Liabilities and/or the Mortgage and its officers, employees, agents and advisers;
  - 24.2.6 regulatory bodies, law enforcement agencies and other public bodies to whom they are obliged by law to disclose the Information;
  - 24.2.7 any third party which introduced the Mortgagor to the Secured Party;
  - 24.2.8 (if there is more than one person included in the expression Mortgagor) the other(s) of them and their respective advisers; and
  - 24.2.9 any other party to whom the Mortgagor has agreed they may disclose his or her Information,
- each of whom may in turn use that Information for the above and other purposes which have been disclosed to the Mortgagor.
- 24.3 The Secured Party and each Associate may (without the need for consent from or notice to the Mortgagor) make such enquiries about the Mortgagor as the Secured Party from time to time consider appropriate.
- 24.4 The use and disclosure of the Information in accordance with this clause 24 may in certain circumstances involve the transfer of Information to countries outside Ireland, including countries

both within and outside the European Economic Area, and including countries which may not afford the same level of protection to personal data as applies under Irish law. Transfers to other countries will only be carried out:

24.4.1 for the purposes specified in this clause 24; or

24.4.2 in accordance with the Mortgagor's instructions and/or for purposes to which the Mortgagor has otherwise consented; or

24.4.3 as otherwise required by law or regulation.

The Secured Party and each Associate will use all reasonable endeavours to ensure that any transfer of the Information is to a country whose laws offer adequate protection for personal information, or alternatively that the third party to whom the Information is transferred provides adequate assurances as to the level of protection which will be given to the Information.

24.5 The Mortgagor agrees to notify the Secured Party without delay in the event of any change in its personal circumstances, to enable the Secured Party to comply with its obligations to keep Information up to date.

24.6 Where the Mortgagor provides to the Secured Party personal data relating to individuals (which for these purposes shall include, without limitation, any employees, agents, spouses, partners and personal representatives of the persons included in the expression 'Mortgagor'), the Mortgagor warrants that he or she is acting in accordance with the requirements of the GDPR in providing that information to the Secured Party for the purposes set out in this clause and for such other purposes as have been disclosed to the Mortgagor by the Secured Party prior to the Mortgagor providing such personal data to the Secured Party.

24.7 The Mortgagor acknowledges that the Secured Party and its Associates shall process any personal data of the Mortgagor (which for these purposes shall include, without limitation, any employees, agents, spouses, partners and personal representatives of the persons included in the expression 'Mortgagor') in accordance with the data protection notice / privacy statement of the Secured Party and its Associates, a copy of which has been provided to the Mortgagor and is available on the Secured Party's website or such other information in relation to use of personal data as may be made available to the Mortgagor by the Secured Party. In the event of any conflict or ambiguity between these Conditions on the one hand and the data protection notice / privacy statement or additional information on the other hand, the data protection notice / privacy statement or additional information shall take precedence.

## 25 **GOVERNING LAW**

The Mortgage and these Conditions shall be governed by and construed in accordance with the laws of Ireland.

## 26 **JURISDICTION**

### 26.1 **Submission to Jurisdiction**

It is irrevocably agreed for the benefit of the Secured Party that the courts of Ireland are to have jurisdiction to settle any disputes which may arise out of or in connection with the Mortgage and these Conditions and that accordingly any suit, action or proceeding arising out of or in connection

with the Mortgage and/or these Conditions (in this clause referred to as “**Proceedings**”) may be brought in such courts.

26.2 **Submission is not exclusive**

Nothing in this clause shall limit the right of the Secured Party to take Proceedings against the Mortgagor in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction, whether concurrently or not.

27 **PROCESS AGENT**

27.1 **Appointment of Process Agent**

If there is a process agent (the “**Specified Process Agent**”) specified in the Secured Documents in respect of any person included in the expression the “Mortgagor” that person (the “**Appointer**”) hereby irrevocably authorises and appoints the Specified Process Agent as the Appointer’s process agent to accept service of all legal process arising out of or connected with the Mortgage and these Conditions and service on the Specified Process Agent (or any substitute process agent appointed in accordance with this clause) shall be deemed to be service on the Appointer.

27.2 **Replacement of Process Agent**

If for any reason the Specified Process Agent (or any substitute process agent appointed in accordance with this clause) ceases to be able to act as process agent or no longer has an address in Ireland the Appointer irrevocably undertakes to appoint a substitute process agent resident in Ireland and advise the Secured Party thereof. Failing such appointment the Appointer hereby authorises the Secured Party to appoint a process agent on the Appointer’s behalf.

27.3 **Other methods of service**

Nothing in this clause 27 shall affect the right to serve legal process in any other manner permitted by law.

**FORM 51  
LAND REGISTRY  
MORTGAGE**

Date:

Secured Party:

Mortgagor:

Mortgaged Property:

The property comprised in Folio  County

ALL THAT the property known as

(Use a continuation sheet if necessary)

**General Mortgage Conditions:**

This Mortgage incorporates the Banking & Payments Federation Ireland General Housing Loan Mortgage Conditions (version 1.2 2018) (the “Conditions”) as if they were set out in this Mortgage in full and the Mortgagor acknowledges that the Mortgagor has been given a copy of the Conditions and has read them and agrees to be bound by them. The term “Secured Liabilities” has the meaning given in the Conditions.

**Mortgage:**

As security for the payment and discharge of the Secured Liabilities, the Mortgagor as beneficial owner (and also in the case of registered land as registered owner or as the person entitled to be registered as registered owner) **hereby charges** in favour of the Secured Party the Mortgaged Property with payment of the Secured Liabilities, and **assents** to the registration of this charge for present and future advances as a burden on the Mortgaged Property.

The Mortgagor acknowledges that by signing this Mortgage the Mortgagor also creates the other security that is expressed to be created by clause 7 of the Conditions.

**This is an important legal document. You are strongly recommended to seek independent legal advice before signing it.**

Signed and delivered as a deed: .....	Signed and delivered as a deed: .....
Signature of witness: .....	Signature of witness: .....
Name of witness: .....	Name of witness: .....
Address of witness: .....	Address of witness: .....
Occupation of witness: .....	Occupation of witness: .....
	(Use a continuation sheet for additional signatories)

## CONSENT OF SPOUSE OR CIVIL PARTNER

(under the Family Home Protection Act 1976 / Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010)

I, \_\_\_\_\_ of \_\_\_\_\_ hereby confirm and acknowledge that:

1. Terms defined in the attached Mortgage (the "Mortgage") have the same meaning in this Consent.
2. I am the lawful spouse / civil partner\* of the Mortgagor (or of one of the persons comprising the Mortgagor).
3. I have been advised in regard to the provisions of the Family Home Protection Act 1976 / Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010\* (the "Act") as they affect me in relation to the Mortgaged Property and I confirm that the Mortgaged Property is my 'family home' / 'shared home'\* within the meaning of the Act. I am aware that by virtue of the provisions of the Act, the Mortgaged Property cannot be mortgaged without my prior consent in writing.
4. I am aware that it is intended that the Mortgage will be security not only for the Mortgagor's present obligations to the Secured Party and or its Associates but also for such future obligations of the Mortgagor to the Secured Party and / or its Associates as the Mortgagor may agree (in each case whether alone or with others and whether actual or contingent and whether as principal or surety or otherwise).
5. I understand that my 'family home' / 'shared home'\* is at risk and that the Secured Party may repossess and sell my 'family home' / 'shared home'\* if payments due to the Secured Party or any of its Associates are not kept up.
6. I hereby fully and freely and irrevocably consent for the purposes of the Act to the Mortgage and confirm that this consent is given by me prior to the execution of the Mortgage by the Mortgagor.
7. I irrevocably undertake to sign a confirmation in the Banking & Payments Federation Ireland standard form in order to confirm the Mortgage and to collaterally mortgage to the Secured Party and its Associates any beneficial estate or interest that I may have in the Mortgaged Property. If I do not sign such a confirmation I shall be deemed to confirm to the Secured Party that I do not have, and will not claim, any such estate or interest.

**This is an important legal document. You are strongly recommended to seek independent legal advice before signing it.**

Date: \_\_\_\_\_(dd/mm/yyyy)

Signature of Spouse / Civil Partner\*:

Signature of Witnessing Solicitor:

Name of Witnessing Solicitor:

Principal/Partner:

Name of firm:

Address:

\* Please choose appropriate option by deleting inappropriate one.

This is a true copy of the form of Undertaking agreed by the Law Society of Ireland with the Lending Institutions named in the Guidelines and Agreement (2011 Edition)



**RESIDENTIAL MORTGAGE LENDING SOLICITOR'S  
UNDERTAKING**

**LAW SOCIETY APPROVED FORM (2011 EDITION)**

To: \_\_\_\_\_  
("the Lender" its transferees, successors and assigns)

**MY/OUR CLIENT(S)** \_\_\_\_\_  
("the Borrower")

**ADDRESS(ES)** \_\_\_\_\_  
\_\_\_\_\_

**PROPERTY (Note (i))** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
("the Property")

**BEING**

**Registered Title**

- All of the lands in Folio \_\_\_\_\_ County
- Part of the lands in Folio \_\_\_\_\_ County

**Unregistered Title**

- All of the lands described in Deed dated \_\_\_\_\_ made in favour of \_\_\_\_\_  
(e.g. the current owner) registered in the Registry of Deeds on
- Part of the lands described in Deed dated \_\_\_\_\_ made in favour of \_\_\_\_\_  
(e.g. the current owner) registered in the Registry of Deeds on

**YOUR REF/ACCOUNT NO.** \_\_\_\_\_

In consideration of the Lender agreeing to the drawdown of a loan facility in respect of the Property before the Lender's mortgage security has been perfected and subject to the payment through me/us of the loan cheque(s) or the loan proceeds I/we, the undersigned solicitor(s) for the Borrower, **HEREBY UNDERTAKE** with the Lender as follows:

**1. Good Title**

Save for any qualification on title as agreed in writing with the Lender as set out in the Schedule hereto, to ensure, where the Borrower is acquiring the Property, that the Borrower will acquire good marketable title to it, or, where the Borrower already owns the Property, to satisfy myself/ourselves that such Borrower has good marketable title to it. (Note (ii)).

**2. Execution of Security Documents**

To ensure, prior to completion (Note (iii)) that:

- a) the Borrower has executed a mortgage deed/charge in the Lender's standard form as produced by the Lender (the "Mortgage") over the Property (and, if required by the Lender, that any non-owning Borrower has joined in the Mortgage),
- b) a deed of confirmation is executed by all necessary parties where the circumstances render such a deed appropriate, and
- c) all the provisions of the Family Home Protection Act, 1976, the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 and any Act amending, extending or replacing those Acts are complied with in respect of the Mortgage and any such deed of confirmation,

so that on completion the Mortgage ranks as a first legal mortgage/charge on the Property (Note (iv)) AND (if applicable)

- d) the Borrower has executed the Lender's standard form of life policy assignment, if specified in the facility letter/letter of offer (the "Letter of Offer") provided that the standard form is furnished to me/us by the Lender in the form in which it is to be signed prior to the drawdown of the loan
- e) a guarantee in the Lender's standard form is executed, if specified in the Letter of Offer and if furnished by the Lender to me/us prior to the drawdown of the loan.

**3. In Funds**

To ensure, prior to negotiating the loan cheque(s) or the proceeds thereof that I am/we are in funds to discharge all stamp duty and registration fees.

**4. Loan Proceeds in Trust**

Pending compliance with Clauses 1, 2 and 3 above, to hold the loan proceeds in trust for the Lender.

## **5. Stamping, Registration & Furnishing Deeds to the Lender**

### **A. Stamping**

Within the time prescribed by law to lodge the purchase deed/transfer for stamping and to deal expeditiously with all related queries and issues raised by the Revenue Commissioners.

### **B. Registration**

- (i) As soon as practicable, but in any event within four months (or such longer period as may be agreed in writing by the Lender, such agreement not to be unreasonably withheld) following receipt of the purchase deed/transfer duly stamped:
  - (a) To lodge the purchase deed/transfer and the Mortgage in the appropriate Registry so as to ensure that the Lender obtains a first legal mortgage/charge on the Property; and
  - (b) To furnish the Lender with the Land Registry dealing number (and consent to inspect the dealing if requested) and/or to confirm to the Lender in writing the date of lodgement in the Registry of Deeds.
- (ii) To ensure, where the Borrower already owns the property, that Clause 5 B(i) above is complied with in respect of the Mortgage within four months of completion.

### **C. Furnishing Deeds to the Lender**

As soon as practicable following registration to furnish to the Lender the following:

- (i) my/our Certificate of Title in the Law Society's standard form,
- (ii) all deeds and documents to the Property, stamped and registered as appropriate,
- (iii) the original Mortgage or, if Land Registry title, the counterpart Mortgage (if available) and an up-to-date copy folio of the Property showing the Mortgage registered as a burden thereon, and
- (iv) any deed of confirmation or life policy assignment which I/we have had executed and any guarantee which I/we have obtained pursuant to Clause 2 hereof.

To the extent to which the Lender has indicated that it will attend to stamping and registration or any work referred to above this part of the Undertaking shall be deemed to be amended accordingly.

## **6. Holding Documents in Trust and Other Requirements**

Pending compliance with Clause 5:

- a) to hold all title documents of the Property in trust for the Lender;
- b) to advise in writing, if requested by the Lender, on progress concerning the stamping and registration of the purchase deed/transfer and the Mortgage.

## **7. Certified Copy Mortgage**

If Clause 5 has not been complied with within the time therein specified, to furnish the Lender with a certified copy of the executed Mortgage within 5 working days of receipt of the Lender's written request.

### **Authority**

I/We confirm that I/we have the Borrower's irrevocable authority to give this Undertaking and, where applicable, the prior consent of the Borrower's spouse or civil partner to give this Undertaking.

### **Extent of Undertaking**

This Undertaking is given by me/us in my/our sole capacity as solicitor(s) for the Borrower and not as solicitor(s) for or as agent/quasi agent of the Lender. It relates to Matters of Title and represents the sum of my/our obligations to the Lender in relation to this loan transaction. I/We have no responsibility for any matter of a non-title nature except insofar as any of the matters set out in this Undertaking may be deemed to be matters of a non-title nature.

## **SCHEDULE**

### **Qualifications on Title (if any) agreed in writing with the Lender**

Dated this \_\_\_\_\_ day of \_\_\_\_\_

SIGNATURE \_\_\_\_\_

NAME OF SOLICITOR SIGNING \_\_\_\_\_  
(Note (v))

STATE WHETHER PRINCIPAL/PARTNER  
OR AUTHORISED SOLICITOR \_\_\_\_\_

NAME OF FIRM \_\_\_\_\_

ADDRESS OF FIRM \_\_\_\_\_

\* Where it has been specifically agreed with the Lender that the funds shall issue by way of electronic funds transfer direct to the client account of the Borrower's solicitor(s), please tick (and initial) the boxes and insert the details of that account

Tick
------

Initial
---------

Name & Address of Bank \_\_\_\_\_

BIC \_\_\_\_\_

Solicitor's Client Account Name \_\_\_\_\_

Solicitor's Client Account IBAN \_\_\_\_\_

My/Our agreement to electronic funds transfer is subject to the Lender providing to my/our Bank sufficient detail and information to allow me/us to identify the Borrower.

**NOTES :**

- (i) The description of the Property should be taken from the Letter of Offer and must accurately identify the Property to enable the Lender to identify it by reference to the description in the Letter of Offer.
- (ii) In this Undertaking “**good marketable title**” means a title of a quality commensurate with prudent standards of current conveyancing practice in Ireland. The latter entails, where the Property is being acquired, that the purchase was effected on foot of the current Law Society’s Conditions of Sale and/or Building Agreement. It also entails that the investigation of the title to the Property was made in accordance with the current Law Society Requisitions on Title together with any additional Requisitions appropriate to the Property and that satisfactory replies have been received. When the Property is already owned by the Borrower, the title shall be so investigated that if the said Requisitions had been raised, satisfactory replies would have been obtained.

In this Undertaking “**Matters of Title**” means only such matters as relate to the title to the Property in the context of a conveyancing transaction and does not include any matters relating to the condition of the Property, the suitability or otherwise of the Borrower or any other matter (including the form or efficacy of the Mortgage).

Any dispute as to the quality of any title or as to whether or not any matter constitutes a Matter of Title (within the foregoing definitions) may be referred for a ruling to the Conveyancing Committee of the Law Society of Ireland, but without prejudice to the right of either party to seek a determination by the Court on the issue.

- (iii) In this Undertaking “**completion**” means the payment of the loan proceeds (including by way of negotiation of the loan cheque) in or towards the discharge of the purchase price of the Property or in or towards the discharge of any encumbrance on the Property.

For the avoidance of doubt, completion shall not be deemed to have occurred for the purposes of this Undertaking for so long as the loan cheque or loan proceeds are held in trust for the Lender.

- (iv) Where the Lender is a Building Society within the meaning of the Building Societies Act, 1989 and any Act amending, extending or replacing that Act, any prior mortgage or charge must be redeemed prior to or contemporaneously with the creation of the Mortgage.
- (v) The Undertaking must be signed by a **Partner** or, in the case of a sole practitioner, by the **Principal** or other solicitor duly authorised in writing on behalf of the firm by either of the foregoing.  
**(Note:** Where signed by the latter, the original of the written authority in question **MUST** be attached to this Undertaking or a copy certified by a solicitor other than the solicitor so authorised).

**CLIENT(S) RETAINER AND AUTHORITY**

To \_\_\_\_\_ Solicitor(s)

of \_\_\_\_\_

I/We irrevocably authorise and direct you to give an undertaking in the form and containing the information set out overleaf (including an undertaking to lodge with the Lender the title deeds of the Property) to

(Name of Lender) \_\_\_\_\_

and in consideration of your giving the foregoing undertaking, I/we hereby undertake that I/we will not discharge your retainer as my/our solicitor(s) in connection with the foregoing matter unless and until I/we have procured from the Lender your effective release from the obligations imposed by such undertaking and I/we hereby indemnify you and all your partners and your and their executors, administrators and assigns against any loss arising from my/our act or default. I/we irrevocably authorise the Lender to make my/our loan cheque payable to you or to transfer the proceeds of this loan to you by electronic funds transfer.

**Dated the \_\_\_\_\_ day of \_\_\_\_\_**

**Signed by the Borrower** \_\_\_\_\_

**in the presence of** \_\_\_\_\_

---

**CONSENT PURSUANT TO FAMILY HOME PROTECTION ACT 1976 OR CIVIL PARTNERSHIP AND CERTAIN RIGHTS AND OBLIGATIONS OF COHABITANTS ACT 2010**

I, \_\_\_\_\_ the lawful spouse/civil partner of the above named Borrower

**DO HEREBY GIVE MY PRIOR IRREVOCABLE CONSENT** for the purposes of the Family Home Protection Act, 1976 (as amended) or the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 to the foregoing retainer and authority of my said spouse/civil partner and to the within undertaking to be given by my spouse's/civil partner's solicitor(s).

I acknowledge that it has been recommended to me that I should obtain independent legal advice with regard to the legal implications of giving this irrevocable consent. Where I have chosen not to take such advice, I declare that I did so voluntarily.

The Property is not adversely affected by section 5 of the Family Law Act, 1981, the provisions of the Judicial Separation and Family Law Reform Act, 1989, the Family Law Act, 1995, the Family Law (Divorce) Act, 1996, or the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010.

**Dated the \_\_\_\_\_ day of \_\_\_\_\_**

**Signature of Spouse or Civil Partner** \_\_\_\_\_

**Name of Spouse or Civil Partner in BLOCK CAPITALS** \_\_\_\_\_

**Witness** \_\_\_\_\_

**(Solicitor)**

**Address of Witness** \_\_\_\_\_

## Power of Attorney

Given by Mortgagors to Discharge Queries in the Perfection of a Security.

**WHEREAS** by Deed of Charge dated \_\_\_\_\_ and made **BETWEEN**

\_\_\_\_\_, (hereinafter called "the Mortgagor") of the one part and **Bankinter S.A. trading as Avant Money** (hereinafter called "the Lender") of the other part the Mortgagor charges the premises known as \_\_\_\_\_ to the Lender in consideration of the Secured Liabilities.

I/we, \_\_\_\_\_ hereby appoint  
\_\_\_\_\_ the firm of \_\_\_\_\_ Solicitors, of  
\_\_\_\_\_, jointly and severally my/our true and lawful Attorney for me/us and in my/our name to do and execute all the following acts, deeds and things or any of them that is to say: -

1. To rectify, alter, amend or sign and as my/our act and deed deliver or re-sign and as my/our act and deed re-deliver any deed or instrument in writing and to do every other thing whatsoever which may be necessary or proper for the perfection and registration of the Deed of Charge in favour of the Lender.
2. To rectify, alter, amend or to sign and as my/our act and deed re-deliver or re-sign and as my/our act and deed re-deliver any deed or instrument in writing and to do every other thing whatsoever which may be necessary or proper for the perfection and registration of the deed of Transfer/Conveyance/ Assignment of the premises to my/our name(s).
3. To make application to any authority of any kind for any Assent or Licence relating to the said property or Deed of Charge to enable the Lender to perfect its security.

And I/we hereby declare that all of every deed, matter and thing which shall be by my/our said Attorney given and made executed or done for the aforesaid purposes shall be good, valid and effectual to all intents and purposes whatsoever as if the same had been signed and delivered given or made or done by me/us in my own proper person.

I/we hereby declare this power to be irrevocable until such time as the Security in favour of the Lender has been perfected.

Signed and Delivered by the said \_\_\_\_\_

in the presence of: \_\_\_\_\_

Signed and Delivered by the said \_\_\_\_\_

in the presence of: \_\_\_\_\_



**LAW SOCIETY APPROVED GUIDELINES AND AGREEMENT (2011 EDITION)**

**GUIDELINES AND AGREEMENT TO BE FOLLOWED BY SOLICITORS AND LENDERS WHEN COMPLYING WITH SOLICITOR'S UNDERTAKING, COMPLETING CERTIFICATE OF TITLE AND ADMINISTERING THE AGREED CERTIFICATE OF TITLE SYSTEM (LAW SOCIETY APPROVED FORMS (2011 EDITION))**

**The following matters are agreed between the Law Society of Ireland and the Lending Institutions listed herein.**

**Operative Date of new 2011 Edition of Agreed Documents**

1. The new 2011 edition of the agreed forms of Solicitor's Undertaking (the "Undertaking"), Certificate of Title (the "Certificate of Title") and these Guidelines and Agreement (the "Guidelines") shall be used for all residential property mortgage loan transactions approved on or after 2nd April 2012 and the Guidelines shall apply in respect of such transactions. The 2011 edition of the Undertaking, Certificate of Title and the Guidelines are collectively referred to herein as the "Agreed Documents".

**Agreement not to Alter**

2. (a) It is agreed that the Lenders will use the Agreed Documents only as a suite of documents and will not change the content or format of the documents so that solicitors will not be obliged to check if any change has been made. To emphasise this aspect it has been agreed that each of the Agreed Documents will be headed with the statement that "This is a true copy of the form of Undertaking/Certificate of Title/Guidelines and Agreement (as appropriate) (2011 Edition) agreed by the Law Society of Ireland with the Lending Institutions named in the Guidelines and Agreement (2011 Edition)".
- (b) It is agreed that any alterations to or revisions of the Agreed Documents necessitated either by future legislation or changes in conveyancing practice shall be introduced only by the Conveyancing Committee of the Law Society in consultation with the Lenders.
- (c) No solicitor shall modify the Undertaking or the Certificate of Title without the prior written approval of the Lender to the modification.

**Roles and Responsibilities**

3. (a) The responsibility of the certifying solicitor is limited to Matters of Title only. The solicitor should ensure that there will be compliance with any requirements specified in the conditions in the Lender's Letter of Offer (the "Letter of Offer") insofar as they relate to Matters of Title.
- (b) Borrowers' solicitors do not act for Lenders.
- (c) All matters which are not related to title shall be the responsibility of the Lenders. These matters include but are not limited to:
  - credit worthiness of Borrowers,
  - loan repayment arrangements,
  - property valuations, and
  - all insurance matters.
- (d) It is a matter for the Borrower to comply with all conditions in the Letter of Offer before the loan cheque is requisitioned. The Borrower will be instructed by the Lender to contact the Lender directly regarding insurance, valuation and any other matter not of a title nature.
- (e) While the Guidelines acknowledge that the Borrower's solicitor has no responsibility to the Lender to explain the conditions of the Letter of Offer to the Borrower this does not affect the solicitor's duty to his/her client in that regard. In those cases where it is a Lender's practice to furnish the Letter of Offer directly to the solicitor or to the client with a

recommendation that it be completed in the solicitor's presence, it is acknowledged by the Lender that the solicitor shall have no responsibility to the Lender to explain the conditions to his/her client. This however does not affect the solicitor's duty to his/her client to explain the said conditions.

- (f) In general terms, the Agreed Documents require that the certifying solicitor will, *inter alia*,
- carry out proper investigation of title to the Borrower's property,
  - attend to the execution of the relevant purchase and mortgage documentation including, where applicable, deeds of confirmation and assignments of Life Policies,
  - stamp and register the Borrower's purchase deed(s) and register the Mortgage, and
  - furnish to the Lender a duly completed Certificate of Title together with all relevant documents fully scheduled as soon as practicable.
- (g) Practitioners should read the Agreed Documents carefully as they set out requirements, *inter alia*, in relation to non-owning spouses or civil partners, deeds of confirmation and rights of residence. Practitioners particularly should note that because of the nature of an exclusive right of residence, a deed of release will be required prior to execution of the Mortgage (but the exclusive right of residence may be reconstituted thereafter).

#### **Deeds on Accountable Trust Receipt**

4. Where a Borrower's title deeds are required on accountable trust receipt for a purpose (to be stated by the requesting solicitor):
- (a) If a Lender is in possession of the title deeds, the Lender agrees to make the deeds available to the requesting solicitor within 10 working days of the receipt of the request.
- (b) If a Lender is in control but not in possession of a Borrower's title deeds, e.g. because the title deeds are held by another solicitor on accountable trust receipt, the Lender shall call for the immediate return of the title deeds to the Lender and the Lender agrees to make the deeds available to the requesting solicitor within 10 working days of the title deeds coming into its possession.
- (c) The solicitor's request for the title deeds on accountable trust receipt shall be in writing and contain sufficient detail to enable the Lender identify the Property.
- (d) It is the responsibility of the solicitor to obtain the Borrower's irrevocable retainer and authority to take up the title deeds on accountable trust. Lenders may require evidence of the retainer and authority and the solicitor should produce a copy if requested. Where this is a requirement of the Lender (and provided that the request is made within the time period specified in sub-paragraph 4(a) above), time under sub-paragraph 4(a) above will not run against the Lender until evidence of the retainer and authority has been produced.

#### **Redemption Figures**

5. Where a Borrower is selling or re-mortgaging his/her property and the Borrower's solicitor requests redemption figures, it is agreed that:
- (a) the request shall be in writing and shall contain sufficient detail to enable the Lender identify the relevant property and to furnish the redemption figures;
- (b) the redemption figures shall be furnished to the requesting solicitor as soon as practicable and in any event no later than 10 working days of the request being made;
- (c) in answering a request for such redemption figures the Lenders shall furnish redemption figures for all loans that are secured by the relevant property;
- (d) if, after completion, the redemption sum quoted by the Lender is found to be inadequate to redeem the loan(s) the Lender shall not withhold the release/discharge/vacate (see paragraph 23 below) but shall be free to pursue any other remedies against the Borrower that are available to the Lender.

#### **Signature of Undertaking**

6. (a) The Undertaking must be signed either by a partner or principal. In exceptional circumstances and without prejudice to paragraph 26 hereof, if a partner or principal is temporarily unavailable it may be signed by a solicitor duly authorised in writing by a partner or principal to sign such Undertakings.

- (b) Such signature by an authorised solicitor shall bind the partners or principal only.
- (c) The foregoing has been agreed with the Lenders to facilitate instances where the partner or principal is temporarily unavailable. Neither partners nor a principal should appoint an authorised solicitor to sign Undertakings other than to facilitate temporary unavailability of partners or a principal.
- (d) Before signing the Undertaking, the solicitor should ensure that the Borrower(s) sign(s) the form of Retainer and Authority endorsed on such Undertaking and obtain the prior consent of a spouse or civil partner to the giving of the Retainer and Authority when applicable.

#### Title

- 7. (a) The title must be Freehold, or Leasehold with an unexpired term of at least 70 years, unless the solicitor is satisfied that the lessee has a statutory right to purchase the fee simple under the Ground Rents legislation. If Land Registry title, it must be either absolute or good leasehold.
- (b) The Property must be free from encumbrances to ensure that the Lender shall have a first legal Mortgage/Charge.
- (c) The solicitor must insert a description of the Property on page 1 of the Undertaking. The description of the Property must accurately identify the Property to enable the Lender to identify the Property by reference to the description in the Letter of Offer. The solicitor should also indicate whether title to the Property is registered or unregistered. Where registered, the folio number should be included.

#### Stage Payment Loans

- 8. The Law Society has already advised solicitors that stage payment transactions are undesirable in view of the potential difficulties they create for both purchasers and their solicitors. Practitioners are reminded of the terms of the various practice notes issued by the Conveyancing Committee expressing its disapproval of such form of house purchases. If, however, despite this advice, the Borrower is willing to make such payments to a builder/developer who is registered with HomeBond, Premier or such alternative or additional scheme as may be approved by a Lender as appropriate in advance of title vesting in the Borrower, and the Lender has specifically agreed to advance funds for the purpose of making such stage payments, the following qualification should be inserted in the Schedule to the Undertaking:

**“The Property is being purchased by stage payments. Stage payments up to the limits covered by the HomeBond, Premier [or specify an alternative Lender-approved scheme as appropriate] are to be released in advance of title vesting in the Borrower and the Supplemental Stage Payments Undertaking set out in the LAW SOCIETY APPROVED GUIDELINES AND AGREEMENT (2011 EDITION) shall be deemed to be incorporated in this Undertaking”.**

The Supplemental Stage Payments Undertaking reads as follows:

**“Property being Acquired - Stage Payments to Builder/Developer**

Where stage payments are being paid to the builder/developer, to ensure:

- (a) that a valid and enforceable fixed price contract has been exchanged to obtain good marketable title to the Property upon completion of the construction thereof and the completion of the purchase formalities
- (b) that the Property is registered with HomeBond, Premier or such alternative or additional scheme as may be approved by a Lender as appropriate and
- (c) that prior to payment of any stage payment which the Lender may agree to lend in excess of the amount covered by HomeBond, Premier or such alternative or additional scheme as may be approved by a Lender as appropriate, title to the Property (including the right to immediate possession) is unconditionally vested in the Borrower and that there is compliance with all the requirements of clause 2 of the SOLICITOR'S UNDERTAKING LAW SOCIETY APPROVED FORM (2011 EDITION)”

**N.B. Not all Lenders will advance stage payments on the basis of the foregoing. Solicitors are cautioned to check with the individual Lender.**

#### Consideration

- 9. Where the consideration is expressed in the Letter of Offer, the same consideration should be expressed in the purchase deed/building agreement. If there is any discrepancy, this must be brought to the attention of the Lender prior to drawing down the loan cheque. The amount of the loan may be reduced in the event of such a discrepancy.

## **Mortgage**

10. (a) There must be no restrictions on mortgaging the Property. Any necessary consent from a housing authority, for example, must be obtained and compliance with any condition procured.
- (b) The Borrower's signature on the Mortgage (including any non-owning spouse or civil partner or other person who may be required to join in the Mortgage) and (subject to paragraph 15 hereof) any other security documents must be made in the presence of and witnessed by a solicitor.

## **Declaration of Identity**

11. For "once off" properties or those not forming part of a housing estate, there must be with the title a declaration of identity declaring that the Property and its essential services (e.g. septic tank and well etc.) are entirely within the boundaries of the lands the subject matter of the Lender's security. If any such services are not within the boundaries of such lands, then a grant of easement must be furnished unless a prescriptive right thereto is established and this is verified by an appropriate statutory declaration.

## **Qualifications on Title**

12. Any intended qualification of the Certificate of Title must be specifically agreed in writing with the Lender prior to furnishing the Undertaking and should be set out in the Schedule to the Undertaking. It may or may not be acceptable to the Lender. Where the Lender agrees to accept any qualification it shall be understood that the responsibility for explaining the nature of the subject matter of the qualification to the Borrower rests with the solicitor and the acceptance of the qualification shall not be taken to imply any responsibility or liability to the Borrower on the part of the Lender.

## **Family Home/Shared Home**

13. If title to the Property vests in the sole name of one spouse or civil partner, and if the Family Home Protection Act, 1976 or the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 applies, a prior consent to the Mortgage must be completed, signed and dated by the Borrower's spouse or civil partner.

(Note: Even if the Property will not become a family home or a shared home vesting in sole name until immediately after completion it is, nonetheless, recommended that the prior consent is signed by the relevant spouse or civil partner as possession may have been taken informally or partially beforehand. To avoid doubt, it is prudent to get the consent completed in any such case).

## **Other Interests / Deed of Confirmation**

14. (a) There must be no person other than the Borrower with any estate or interest, beneficial or otherwise, in the Property and this must be confirmed by a statutory declaration of the Borrower. (Some Lenders may require such a declaration prior to drawdown).
- (b) If there is any such person with any such estate or interest by reason of making a contribution to the purchase price or otherwise howsoever, that person should, after the Borrower signs the Mortgage, execute a Deed of Confirmation so as to supplementally mortgage any such estate or interest to the Lender. (The confirmation is non-recourse i.e. it does not of itself impose a liability on the beneficiary to repay). Where appropriate the beneficiary's spouse or civil partner should sign his/her prior consent to the Deed of Confirmation.
- (c) If there is a right of residence the person entitled thereto must sign a Deed of Confirmation except in the event of such right being an exclusive right - in which event the right of residence must be released prior to the execution of the Mortgage (but such right may be reconstituted thereafter).
- (d) It should be noted that a sole Borrower's spouse or civil partner, although signing the prior consent under the Family Home Protection Act, 1976 or the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 may be a beneficiary nonetheless because of e.g. direct or indirect financial contribution(s). If there is any doubt in this respect, the beneficiary should, after the Mortgagor signs the Mortgage, execute a Deed of Confirmation so as to supplementally mortgage any such estate or interest to the Lender. (The confirmation is non-recourse i.e. it does not of itself impose personal liability on a beneficiary to repay).
- (e) Without prejudice to the foregoing paragraph 14(d), if the Lender requires that the non-owning spouse or civil partner joins in the Mortgage there should be compliance with this requirement provided that the Lender notifies this requirement in advance of drawdown of the loan.

## **Assignments of Life Policy and Guarantees**

15. (a) Some Lenders may furnish Borrower's solicitors with deeds of assignment of life policy for execution at completion. Where this is done, the solicitor should ensure each relevant document is executed, witnessed and dated in order to comply with clause 2(d) of the Undertaking.

- (b) It is the responsibility of the Lender to furnish the Borrower's solicitor prior to completion with the assignment of life policy in the form in which they wish to have it executed and with the relevant policy details inserted. Borrowers' solicitors are not obliged to insert the details of the life policy in the schedule to the life policy assignment.
- (c) If a guarantee is furnished to the Borrower's solicitor, the solicitor should ensure the relevant document is executed on its face in order to comply with clause 2(e) of the Undertaking but shall not advise the guarantor on the effect of the guarantee and shall not witness it.

#### **Independent Legal Advice**

16. Any
- (i) spouse signing the Family Home Protection Act, 1976 Consent or any civil partner signing a consent pursuant to the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010; or
  - (ii) non-owning spouse or civil partner joining in the Mortgage; or
  - (iii) person signing the Deed of Confirmation or consent thereto;

must (a) receive independent legal advice and furnish written confirmation that such independent legal advice has been given or (b) after receiving legal advice from the Borrower's solicitor of the serious implication of not taking such advice and subject to the requirements of the Lender if specified in the Letter of Offer sign an explicit waiver of the right to be so advised in the form produced by the Lender. A copy of such confirmation or waiver should be placed with the title deeds.

#### **Searches**

17. Searches must include those against the Borrower and, when a purchase is completed in advance of the Mortgage, searches must be updated to the date of the Mortgage.

#### **Before Releasing Loan Proceeds**

18. Before releasing the loan proceeds the solicitor shall
- ensure that all security documents have been executed; and
  - be in funds to discharge all stamp duty and registration outlays in connection with the purchase and mortgage transaction; and
  - be satisfied that he or she will be in a position to issue the Certificate of Title to the Lender without qualification (save for any qualification agreed by the Lender in writing prior to completion); and
  - be satisfied that his or her Professional Indemnity insurance cover exceeds the amount of the loan and, if a solicitor intends to have the Undertaking signed by an authorised signatory, he or she should ensure that the Professional Indemnity insurance cover provides for this.

#### **Electronic Funds Transfer**

19. It should be noted that some Lenders may offer an Electronic Funds Transfer facility for payment of the loan funds. In such cases the Lender will include the approved wording in its pre-printed form of Undertaking requiring the insertion of the relevant solicitor's client account details. Where an Electronic Funds Transfer is agreed the Lender shall provide same day written confirmation to the solicitor's bank containing sufficient detail and information so as to identify the Borrower to the solicitor.

#### **Lodging the Purchase Deed/Transfer and the Mortgage with the Property Registration Authority**

20. The purchase deed/transfer (when stamped) and the Mortgage/Charge must be lodged for registration in the Land Registry or Registry of Deeds (as appropriate) within the time frame set out in the Undertaking. It is recognised that there may be legitimate reasons for delays in lodging such deeds for registration. If these arise, the solicitor should explain the cause of delay to the Lender.

#### **Furnishing of Title Deeds and Certificate of Title to the Lender**

21. (a) When the stamping and registration of the purchase deed/transfer and the Mortgage/Charge has been completed, the solicitor should furnish to the Lender the documents set out in clause 5(c) of the Undertaking within the time frame set out in the Undertaking.
- (b) All Certificates of Title shall be signed by a partner or principal.
  - (c) All documents accompanying the Certificate of Title should be fully scheduled in the interest of efficiency and a quick response from the Lender.
  - (d) Upon compliance by the solicitor with clause 5 of the Undertaking, the Lender shall release the solicitor from the Undertaking in writing within 10 working days.

### **Resolving Delays in Complying with the Undertaking**

22. (a) If a solicitor needs an extension of time for the completion of any action he or she had undertaken to carry out in the Undertaking, he or she should write to the Lender setting out the reason for the delay. The Lender shall not unreasonably disallow a reason given for delay.
- (b) A Lender concerned that the solicitor has not met the time limits set out in the Undertaking for the completion of certain actions by the solicitor should, in the first instance, write to the solicitor drawing his/her attention to the overdue actions. The solicitor should respond within 10 working days to such letter in writing either by confirming that the outstanding actions are completed or by specifying a good reason or reasons preventing the completion of the action. The Lender shall not unreasonably disallow a reason given for delay.
- (c) Where a solicitor does not resolve such delays to the satisfaction of the Lender and arising from that the Lender intends to complain to the Law Society, the Lender will notify the solicitor of its intention to do so and shall, before making such a complaint, afford the solicitor at least 10 working days to complete the outstanding actions or to furnish an explanation as to why he/she cannot complete them.
- (d) Complaints by Lenders to the Law Society will be made on the authority of a manager of the Lender not below the rank of Senior Manager or equivalent.
- (e) Nothing in the Guidelines shall be interpreted as restricting or postponing any remedy the Lender may have against a solicitor where the Lender reasonably believes that a breach by a solicitor of the Undertaking may result in financial loss to the Lender or to the security it relies on or the priority of such security being adversely affected.

### **Releases, Discharges and Vacates**

23. It is acknowledged that delays in lodging completed Certificates of Title with title deeds on behalf of a Borrower may occur due to delays in obtaining a vacate of the Borrower's previous mortgage or a vacate of a mortgage on title belonging to a previous owner of the relevant property. In order to eliminate this possible source of delay, the Lenders agree that:
- (a) on payment of the sum requested to redeem a Borrower's outstanding mortgage and a written request to release the Mortgage, a release/discharge/vacate (as appropriate) will be furnished to the requesting solicitor within one month of receipt of payment or the request whichever is later;
- (b) if the Mortgage to be released or discharged covers other property not being released or if the Lender does not wish to release the Borrower's covenant to repay the loan, the Lender will execute a deed of partial release or a partial discharge, provided a draft of such partial release or partial discharge (with map as appropriate) satisfactory to the Lender is provided by the Borrower's solicitor.

### **Resolving Delays on the Part of Lenders**

24. (a) A solicitor concerned that a Lender has not met the time limits set out in paragraphs 4, 5, 21(d) or 23 of the Guidelines for the provision to him or her of any of the items described therein should, in the first instance, write to the Lender drawing its attention to the fact that the items are overdue. The Lender shall respond within 10 working days to such letter either by furnishing the outstanding item or by specifying in writing a good reason or reasons for the delay in the provision by the Lender of the item. The solicitor shall not unreasonably reject a reason given by a Lender for such delay.
- (b) Where a Lender does not furnish the outstanding item or provide an explanation for delay to the satisfaction of the solicitor and, arising from that, the solicitor intends to make a complaint to the Lender, the solicitor will notify the Lender of his/her intention to do so and shall, before making such a complaint, afford the Lender at least 10 working days to furnish the outstanding item or such explanation.
- (c) A complaint made by a solicitor to a Lender under this paragraph 24 will be treated by the Lender as a customer complaint to which, at a minimum, the procedure set out in Provision 10.9 of the 2012 Consumer Protection Code issued by the Central Bank of Ireland <http://www.centralbank.ie/regulation/processes/consumer-protection-code/Documents/Consumer%20Protection%20Code%202012.pdf> ("Provision 10.9") will apply.
- (d) A solicitor shall not refer the matter giving rise to complaint to the Financial Services Ombudsman unless the complaint has not been resolved as provided for in paragraph d) of Provision 10.9.
- (e) Nothing in the Guidelines shall be interpreted as restricting or postponing any remedy a solicitor or a client of a solicitor may have against a Lender where the solicitor or the client reasonably believes that the failure of the Lender to furnish an item described in paragraphs 4, 5, 21(d) or 23 of the Guidelines may result in financial loss to the solicitor or the client or which may affect the ability of either of them to fulfil their contractual obligations to any third party in respect of the property to which the outstanding item relates.

### **Frequency of Reminders**

25. (a) Lenders should not send solicitors requests for reports on progress as to stamping, registration of title and security at unreasonably close intervals.
- (b) For normal cases, the solicitor should not expect a reminder from the Lender to provide confirmation of lodgement for registration in the appropriate registr(y) (ies) of the purchase deed/transfer and Mortgage until a date occurring 6 months after completion or thereabouts.
- (c) If the solicitor lodges the purchase deed/transfer and Mortgage for registration and provides the dealing number or confirmation of lodgement in the Registry of Deeds (as appropriate) to the Lender within 6 months of completion, the solicitor should not (for normal cases) expect a reminder from the Lender to furnish an up-date on the progress of registration until a date occurring 6 months or thereabouts after such confirmation of lodgement.
- (d) The Lender may need to correspond with the Borrower's solicitor more frequently in exceptional cases. Such exceptional cases include (i) where the Borrower is in default of its obligations to the Lender under the loan; (ii) where the Lender anticipates it may incur a financial loss in connection with the loan; (iii) where the Lender considers the security or its priority in respect of the security to be adversely affected or likely to be so; (iv) where the solicitor has been in serious breach of any Undertaking given by him or her to the Lender; or (v) where the solicitor has not responded to requests for information from the Lender or has furnished unsatisfactory responses to the Lender. The Guidelines should not be interpreted as limiting the Lender's rights and remedies in these and other exceptional cases.
- (e) Solicitors should respond promptly and fully to such requests from Lenders for reports on stamping and registration of title and security provided they are made in accordance with this paragraph 25.

### **Accepting Undertakings**

26. (a) A Lender shall not refuse to accept an Undertaking or accountable trust receipt for title deeds from a solicitor without good objective reason.
- (b) It is the solicitor's responsibility to obtain the Borrower's irrevocable retainer and authority in respect of any undertaking.
- (c) Lenders may have policies concerning the acceptance of Undertakings from solicitors where there is a perceived conflict of interest.

### **Participating Lenders**

The following Lending Institutions (referred to throughout the Guidelines as "the Lenders" and each a "Lender" which expression shall include any other financial institution which uses the Agreed Documents) have agreed to the matters contained herein in respect of utilising the 2011 edition of the Agreed Documents in relation to residential mortgage lending:

1. ACC Bank
2. A.I.B. Bank
3. Bank of Ireland
4. Bank of Scotland plc (including the former Bank of Scotland (Ireland) Limited).
5. EBS Limited
6. ICS Building Society
7. Irish Bank Resolution Corporation (including the former Irish Nationwide Building Society)
8. KBC Bank
9. National Irish Bank
10. Permanent TSB
11. Ulster Bank Ireland Limited (including the former First Active plc).

**Dated the 2nd day of April 2012**

## COMPLAINTS RESOLUTION

- 10.8 When a *regulated entity* receives an oral *complaint*, it must offer the *consumer* the opportunity to have this handled in accordance with the *regulated entity*'s *complaints* process.
- 10.9 A *regulated entity* must have in place a written procedure for the proper handling of *complaints*. This procedure need not apply where the *complaint* has been resolved to the complainant's satisfaction within five *business days*, provided however that a *record* of this fact is maintained. At a minimum this procedure must provide that:
- a) the *regulated entity* must acknowledge each *complaint* on paper or on another *durable medium* within five *business days* of the *complaint* being received;
  - b) the *regulated entity* must provide the complainant with the name of one or more individuals appointed by the *regulated entity* to be the complainant's point of contact in relation to the *complaint* until the *complaint* is resolved or cannot be progressed any further;
  - c) the *regulated entity* must provide the complainant with a regular update, on paper or on another *durable medium*, on the progress of the investigation of the *complaint* at intervals of not greater than 20 *business days*, starting from the date on which the *complaint* was made;
  - d) the *regulated entity* must attempt to investigate and resolve a *complaint* within 40 *business days* of having received the *complaint*; where the 40 *business days* have elapsed and the *complaint* is not resolved, the *regulated entity* must inform the complainant of the anticipated timeframe within which the *regulated entity* hopes to resolve the *complaint* and must inform the *consumer* that they can refer the matter to the relevant Ombudsman, and must provide the *consumer* with the contact details of such Ombudsman; and
  - e) within five *business days* of the completion of the investigation, the *regulated entity* must advise the *consumer* on paper or on another *durable medium* of:
    - i) the outcome of the investigation;
    - ii) where applicable, the terms of any offer or settlement being made;
    - iii) that the *consumer* can refer the matter to the relevant Ombudsman, and
    - iv) the contact details of such Ombudsman.
- 10.10 A *regulated entity* must maintain an up-to-date log of all *complaints* from *consumers* subject to the *complaints* procedure. This log must contain:
- a) details of each *complaint*;
  - b) the date the *complaint* was received;
  - c) a summary of the *regulated entity*'s response(s) including dates;
  - d) details of any other relevant correspondence or *records*;
  - e) the action taken to resolve each *complaint*;
  - f) the date the *complaint* was resolved; and
  - g) where relevant, the current status of the *complaint* which has been referred to the relevant Ombudsman.

This is a true copy of the form of the Certificate of Title agreed by the Law Society of Ireland with the Lending Institutions named in the Guidelines and Agreement (2011 Edition)



**RESIDENTIAL MORTGAGE LENDING  
CERTIFICATE OF TITLE  
LAW SOCIETY APPROVED FORM (2011 Edition)**

To: \_\_\_\_\_  
("the Lender", its transferees, successors and assigns)

**NAME(S) OF BORROWER(S)** \_\_\_\_\_  
\_\_\_\_\_  
("the Borrower")

**ADDRESS OF PROPERTY** \_\_\_\_\_  
\_\_\_\_\_  
("the Property")

**YOUR REF/ACCOUNT NO.** \_\_\_\_\_

As Solicitor(s) for the Borrower, I/We have investigated the title to the Property and I/We hereby certify that the Borrower has good marketable title to the Property (save as set out in the **First Schedule** hereto), the description of which agrees with that stated in the Lender's Letter of Offer for the tenure specified in the **Second Schedule** hereto, free from any mortgage, charge, lien or incumbrance and any lease or tenancy, except for your Mortgage/Charge which is in the form prescribed by you (the "**Mortgage**").

We hereby certify that the Mortgage ranks as a first Legal Mortgage/Charge over the Property.

All the documents evidencing the Borrower's title to the Property including the Mortgage are properly listed in the **Third Schedule** hereto and are furnished herewith.

My/Our Firm currently holds Professional Indemnity Insurance Cover with a qualified insurer as defined under under Statutory Instrument No. 617 of 2007 (as amended) for a sum which is in excess of the amount being advanced to the Borrower.

I/We as Solicitor(s) for the Borrower, am/are giving this Certificate for the benefit of the Lender, having regard to (1) the current Guidelines and Agreement published by the Law Society, to be followed when completing Certificates of Title for Lenders and (2) the current conveyancing recommendations of the Law Society.

This Certificate is being given by me/us in my/our sole capacity as Solicitor(s) for the Borrower and (other than as specifically set out herein) it relates only to Matters of Title.

This Certificate does not purport to certify anything in relation to the standard contents of the Mortgage executed by the Borrower. In particular, it does not certify that the Mortgage or any other document produced by the Lender in connection with the Loan complies with the requirements of the Consumer Credit Act 1995 or the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995.

**Signature:** \_\_\_\_\_

**Name of Solicitor signing:** \_\_\_\_\_

**State whether Principal/Partner:** \_\_\_\_\_

**Name of Firm:** \_\_\_\_\_

**Address of Firm:** \_\_\_\_\_  
\_\_\_\_\_

**Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_**

In this Certificate of Title “**good marketable title**” shall mean a title of a quality commensurate with prudent standards of current conveyancing practice in Ireland. The latter entails, where the Property is being acquired, that the purchase was effected on foot of the current Law Society’s Conditions of Sale and/or Building Agreement. It also entails that the investigation of the title to the Property was made in accordance with the current Law Society Requisitions on Title, together with any additional requisitions appropriate to the Property and that satisfactory replies have been received. When the Property is already owned by the Borrower, the title shall be so investigated that, if the said requisitions had been raised, satisfactory replies would have been obtained.

In this Certificate, “**Matters of Title**” means only such matters as relate to the title to the Property in the context of a conveyancing transaction and does not include any matters relating to the condition of the Property, the suitability or otherwise of the Borrower or any other matter (including the form or efficacy of the Mortgage).

Any dispute as to the quality of any title or as to whether or not any matter constitutes a Matter of Title (within the foregoing definition) may be referred for a ruling to the Conveyancing Committee of the Law Society of Ireland but without prejudice to the right of either party to seek a determination by the Court on the issue.

**FIRST SCHEDULE**  
**Qualifications on Title (if any)**  
**(as previously agreed in writing with the Lender)**

**SECOND SCHEDULE**  
**Tenure**

**THIRD SCHEDULE**  
**See Schedule of Documents attached hereto.**

<b>Mortgage Funds Requisition Form</b>	
(Please complete in BLOCK CAPITALS)	
Mortgage Application Number:	
My / Our client(s) "The Borrower":	
The Property':	
Offer Letter Date:	--/--/----
Amount of Mortgage:	€
Amount of Mortgage in words:	
Price in Purchase Deed:	€
Drawdown Date:	--/--/----
Amount of stage payment required for this drawdown (if applicable):	€
<p>I / We request you to lodge the amount of €_____ by way of electronic funds transfer, to the firm's client account.</p> <p>State the payment amount required for this drawdown in words:</p>	
<p><b>I / We confirm that the above price in the Purchase Deed is the same as in the loan offer (if applicable).</b></p> <p><b>I / We understand that the submission of this completed form to Avant Money will act as confirmation that I / we are ready to receive the mortgage funds.</b></p>	

<b>I / We request you to lodge the funds by way of electronic funds transfer, to the firm's client account:</b>	
Names of Account Holder(s):	
Name of Bank:	
BIC:	
IBAN:	
Signature:	Sign Here <sup>x</sup>
Name of Solicitor Signing:	
Name of Firm:	
State whether Principal / Partner or Authorised Solicitor:	
Address of Firm:	
Telephone:	
Dated the _____ day of _____ 20_____	

**Important Information:**

- The Mortgage Funds Requisition Form must be submitted to Avant Money by the solicitor via DX (DX Number DX286004) or post.
- On receipt of the final document for drawdown, we will endeavour to release funds, within 5 working days.



Avant Money  
PO Box 13192  
Maynooth  
Co. Kildare  
Phone Number 0818 274 089  
[www.avantmoney.ie](http://www.avantmoney.ie)

- If a Mortgage Funds Requisition Form is submitted, and there is a subsequent change to the date for funds release, a new Funds Requisition Form must be submitted with the updated funds release date. This will be treated as a new request. An amended form will not be accepted.
- Funds will be released through normal bank clearing cycle.

BKIMPS-200-0326

Bankinter S.A., trading as Avant Money, is authorised by the Banco de España in Spain and is regulated by the Central Bank of Ireland for consumer protection rules. Registered in Spain: Madrid Mercantile Register (Registro Mercantil de Madrid), Volume 1857, Folio 220, Page 9643, EUID code ES28065.000002024. Registered office: P. de la Castellana 29, 28046, Madrid, Spain. Registered Irish branch: Dublin Road, Carrick on Shannon, County Leitrim, no: 910258.

## MORTGAGE PROTECTION INSURANCE WAIVER

Name of Borrower(s): \_\_\_\_\_

Application Number: \_\_\_\_\_

Security Address: \_\_\_\_\_

\_\_\_\_\_

**Please select and complete the waiver that is relevant to your situation:**

<p><b>Does not have Cover in Place</b></p> <p><i>I / We do not wish to take out Mortgage Protection Insurance for the following reasons and confirm that I/we understand, fully, the implications of not having this cover:</i></p> <ul style="list-style-type: none"> <li>- <i>I / We would not be acceptable to an Insurer because:</i></li>   <li>- <i>I / We would only be acceptable to an Insurer at a premium significantly higher than that payable by borrowers generally because:</i></li>   <li>- <i>I am / We are over 50 years of age:</i></li> </ul>	<p><b>Yes / Not applicable</b></p>
--	------------------------------------

**Please also read the following section before completing and signing the form.**

- To apply for a Mortgage Protection (life cover) waiver, you must provide Avant Money with evidence of two declined applications for life cover from the insurance providers.
- Avant Money would encourage you to take independent legal or financial advice.
- If this relates to a joint Mortgage application, for each borrower that waives Mortgage Protection the corresponding joint borrower must counter sign the other applicants' signature to acknowledge they understand and accept this. It must also be witnessed by a third party.
- I am / We are joint borrower(s) with the below named and I / We hereby acknowledge that I am / We are aware that the below named borrower does not have mortgage protection cover or already has alternative mortgage protection cover in place.

Signed (Applicant 1): _____ Date: _____	Signed (Applicant 2): _____ Date: _____
Signed (Applicant 3): _____ Date: _____	Signed (Applicant 4): _____ Date: _____
Witness Name: _____ Witness Signature: _____ Date: _____ Address of Witness: _____	

**Joint Mortgage Application: For each borrower that waives Mortgage Protection the corresponding joint borrower must acknowledge same (see below).**

**I am / We are joint borrowers with the above named and I / We hereby acknowledge that I am / We are aware that the above borrower does not have mortgage protection cover or already has alternative mortgage protection cover in place.**

Signed Applicant 2: _____ Date: _____	Signed Applicant 1: _____ Date: _____
Signed Applicant 3: _____ Date: _____	Signed Applicant 4: _____ Date: _____
Witness Name: _____ Witness Signature: _____ Date: _____ Address of Witness: _____	

## Mortgage Protection/Life Cover Shortfall Declaration

(Please complete in BLOCK CAPITALS)

Name of borrower(s): \_\_\_\_\_ (the  
"Borrower(s)")

Security Address: \_\_\_\_\_

I/We hereby acknowledge that I/we have been approved for a mortgage from Bankinter S.A. trading as Avant Money (the "Lender").

I/We confirm that we have presented evidence to the Lender which confirms that I/We hold a life assurance policy/mortgage protection cover which provides, in the event of the death of a Borrower before the mortgage has been repaid, for the payment of a sum in an amount substantially equivalent to the outstanding balance in the year in which the death occurs.

I/We hereby notify the Lender that the life assurance policy/mortgage protection cover contains a minor deficit in cover being either (i) **a shortfall of less than €500 in the amount of cover** or (ii) **a shortfall of up to 3 months or less in the term of cover.**

I/We do not wish to take out a new life assurance policy/mortgage protection cover in an amount or term exactly equal to the mortgage for one of the following reasons (*tick as appropriate*):

- I/We would not currently be acceptable to an insurer.
- I/We would only currently be acceptable to an insurer at a premium significantly higher than that payable by borrowers generally.
- I am/We are over 50 years of age.
- Other (*Exceptional Circumstances*)**, please provide details below, Shortfall must be less than (i) €500 in the amount of cover or (ii) 3 months or less in term of cover

**I/We fully understand that in the event of the death of a Borrower, that the life assurance policy/mortgage protection may not entirely clear the mortgage.**

**Avant Money would encourage you to take independent legal or financial advice.**

Signed Applicant 1:		Dated: __/__/2__
Signed Applicant 2:		Dated: __/__/2__

<b>Mortgage Reference #</b> (to be completed by Avant Money):
---



**IRISH  
BANKING  
FEDERATION**

**This is an important legal document and independent legal advice should be  
taken before signing it**

## **IRISH BANKING FEDERATION**

## **CONFIRMATION OF MORTGAGE**

**VERSION 1.0 2009**

This Confirmation is a limited recourse supplemental third party mortgage and must be executed by any person who has, or may have, a beneficial interest in the Mortgaged Property.

## CONFIRMATION

**THIS CONFIRMATION** is supplemental to the Mortgage and is given on \_\_\_\_\_ 20 to the Secured Party named in the Mortgage by \_\_\_\_\_ of \_\_\_\_\_ (the "**Beneficiary**") and **WITNESSES** as follows:

### DEFINITIONS:

In this Confirmation "Mortgage" means the mortgage dated \_\_\_\_\_-20\_\_\_\_ and made between (1) \_\_\_\_\_ and (2) \_\_\_\_\_  
Relating to (insert brief description of the Mortgaged Property): \_\_\_\_\_

Terms defined in the Mortgage or the General Mortgage Conditions have the same meaning in this Confirmation.

### BACKGROUND:

- A. The Beneficiary may have and/or may hereafter acquire some beneficial interest in or to the Mortgaged Property.
- B. The Beneficiary, at the request of the Mortgagor, has agreed to execute this Confirmation to confirm the security created by the Mortgage and the General Mortgage Conditions and to further assure the Mortgaged Property to the Secured Party as security for the Secured Liabilities.

### NOW THIS CONFIRMATION WITNESSES:

#### 1. MORTGAGE OF BENEFICIAL INTEREST

As continuing security for the payment and discharge of the Secured Liabilities the Beneficiary as beneficial owner as to all (if any) the Beneficiary's present and future beneficial estate, right, title and interest in or to the Mortgaged Property hereby charges and confirms unto the Secured Party as agent and trustee for itself and each Associate the Mortgaged Property with payment of the Secured Liabilities and assents to the registration of such charge as a burden on the property thereby affected.

#### 2. CONFIRMATION OF THE MORTGAGE

In all other respects the Beneficiary hereby confirms and ratifies the Mortgage and the General Mortgage Conditions.

#### 3. RELEASES

The Beneficiary hereby authorises the Secured Party to release the Mortgage and this Confirmation by discharge or vacate in favour of the Mortgagor or as the Mortgagor shall direct and without being obliged to execute a discharge or vacate in favour of the Beneficiary or the person for the time being entitled to such beneficial estate, right, title and interest as the Beneficiary may have in the Mortgaged Property.

#### 4. SECURED PARTY'S RIGHTS AND REMEDIES

The Beneficiary hereby further acknowledges that all powers remedies and rights (express or implied) of the Secured Party under or pursuant to the Mortgage and the General Mortgage Conditions shall be exercisable by the Secured Party without notice to the Beneficiary and notwithstanding anything contained in this Confirmation the Beneficiary shall not be deemed to have any rights of a mortgagor in respect of the Mortgaged Property.

**5. PROTECTIVE CLAUSE**

The Beneficiary shall not be entitled as against the Secured Party to any of the rights or remedies legal or equitable of a surety or (until the Secured Liabilities have been paid or discharged in full) be entitled in competition with or priority to the Secured Party to make or enforce any claim against the Mortgagor or the Mortgaged Property and (without prejudice to the generality of the foregoing) the security hereby constituted shall not be impaired, discharged or affected in any way by any time or other indulgence granted by the Secured Party or any Associate to or by any variation, composition or other arrangement made by the Secured Party or any Associate with the Mortgagor or by any other act, event or omission which but for this provision would or might operate to impair discharge or otherwise affect the security hereby constituted.

**6. POSTPONEMENT OF INTEREST**

The Beneficiary agrees that the Mortgage shall have priority over all the Beneficiary's present and future estate, right, title and interest, if any, in and to the Mortgaged Property. The Beneficiary agrees that any present and future estate, right, title or interest that the Beneficiary may have in or to the Mortgaged Property shall be postponed to, and rank after, the Mortgage and hereby assents to the registration of an entry to that effect with respect the property thereby affected.

**7. ASSIGNMENTS**

The Secured Party may assign, transfer, mortgage, charge, sub-mortgage, sub-charge, declare a trust over or otherwise grant interests in, or dispose of, or otherwise vest in any person the whole or any part of the benefit of this Confirmation and its interest, rights and/or obligations hereunder to any person to whom it may assign, transfer, mortgage, charge, sub-mortgage, sub-charge, declare a trust for or otherwise grant interests in, or dispose of, or otherwise vest in the whole or any part of the benefit of the Mortgage and it may provide any information concerning the Beneficiary and this Confirmation to any person to whom it may provide information about the Mortgagor in accordance with the General Mortgage Conditions or otherwise.

**8. GOVERNING LAW AND JURISDICTION**

This confirmation shall be governed by and construed in accordance with the laws of Ireland. For the benefit of the Secured Party, the Beneficiary hereby agrees that the courts of Ireland are to have jurisdiction to settle any disputes which may arise out of or in connection with this Confirmation and that accordingly any suit, action or proceeding arising out of or in connection with this Confirmation (in this clause referred to as "Proceedings") may be brought in such courts. Nothing in this clause shall limit the right of the Secured Party to take Proceedings against the Beneficiary in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction, whether concurrently or not.

**IN WITNESS** whereof the Beneficiary has duly executed this Confirmation as a deed on the date shown at the beginning of this Confirmation.

**Signatures:**

**This is an important legal document. You are strongly recommended to seek independent legal advice before signing it.**

Signed Sealed* and Delivered as a deed: .....	Signed Sealed* and Delivered as a deed: .....
Signature of witness: .....	Signature of witness: .....
Name of witness: .....	Name of witness: .....
Address of witness: .....	Address of witness: .....
Occupation of witness: .....	Occupation of witness: .....

(please use a continuation sheet for additional signatories)

(\* If executed on or after 1 December 2009 please delete the word "sealed")

**CONSENT OF SPOUSE TO CONFIRMATION**  
**under the Family Home Protection Act 1976**

I, \_\_\_\_\_ of \_\_\_\_\_ hereby acknowledge and confirm that:

1. Terms defined in the attached Confirmation (the “**Confirmation**”) have the same meaning in this Consent.
2. I am the lawful spouse of the Beneficiary (or of one of the persons comprising the Beneficiary).
3. I have been advised in relation to the provisions of the Family Home Protection Act 1976 (the “**Act**”) as they affect me and I confirm that the Mortgaged Property is my ‘family home’ within the meaning of the Act. I am aware that by virtue of Section 3 of the Act the Beneficiary may not mortgage any beneficial interest the Beneficiary has in the Mortgaged Property without my prior consent in writing;
4. I am aware that it is intended that the Mortgage will be security not only for the Mortgagor’s present obligations to the Secured Party but also for such future obligations of the Mortgagor to the Secured Party and / or its to Associates as the Mortgagor may agree (in each case whether alone or with others and whether actual or contingent and whether as principal or surety or otherwise).
5. I understand that my family home is at risk and that the Secured Party may repossess and sell my family home if payments due to the Secured Party or any Associate are not kept up.
6. I hereby fully and freely consent for the purposes of Section 3 of the Act to the Confirmation in relation to such (if any) beneficial interest as the Beneficiary has in the Mortgaged Property and confirm that this consent is given by me prior to the execution by the Beneficiary of the Confirmation.
7. Unless I am the Mortgagor I confirm that I do not, and will not, claim to have any beneficial interest in the Mortgaged Property and any such interest that I may be deemed to have notwithstanding such confirmation I hereby postpone to rank after the Mortgage and the Confirmation.

**This is an important legal document. You are strongly recommended to seek independent legal advice before signing it.**

Date: .....

Signature of Spouse: .....

Signature of Witnessing Solicitor: .....

Name of Witnessing Solicitor: .....

Principal/Partner:.....

Name of firm: .....

Address: .....