

**BANKING & PAYMENTS FEDERATION  
IRELAND**

**GENERAL HOUSING LOAN MORTGAGE  
CONDITIONS**

**VERSION 1.2 2018**

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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 of) 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 wilful 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.