

## PERSONAL GUARANTEE

**BY GIVING THIS GUARANTEE YOU WILL BECOME LIABLE INSTEAD OF OR AS WELL AS THE BORROWER FOR THE DEBTS OF THE BORROWER REFERRED TO BELOW. PLEASE READ IT CAREFULLY AND MAKE SURE YOU UNDERSTAND WHAT THE EFFECT IS OF GIVING THIS GUARANTEE.**

**YOU MUST SEEK INDEPENDENT LEGAL ADVICE BEFORE ENTERING INTO THIS GUARANTEE AND INDEMNITY.**

**THIS GUARANTEE AND INDEMNITY is made on [ \_\_\_\_\_ ]**

### **BETWEEN**

- (1) [ \_\_\_\_\_ ] whose address for service is at [ \_\_\_\_\_ ] ("**you**" "**your**")
- (2) The Mortgage Lender Limited (or any person or company to whom we assign or transfer any of our rights under this Guarantee and Indemnity) ("**us**", "**we**", "**our**").
- (3)
1. **GUARANTEE**
- 1.1 In consideration of us providing a mortgage loan to [ \_\_\_\_\_ ] (the "**Borrower**") secured over [ \_\_\_\_\_ ] (the "**Property**") under an offer letter dated [ \_\_\_\_\_ ] (the "**Offer**" which term includes any variation or supplement to the terms of this offer, or replacement of the same) you have agreed to guarantee the Liabilities (as defined in **clause 1.2** below).
- 1.2 You irrevocably guarantee to pay us on demand all liabilities of the Borrower to us in respect of the facilities provided under the agreement for the same between us and the Borrower (the "**Mortgage Agreement**") comprised of the Offer , any legal mortgage or standard security (as applicable) (the "**Mortgage Deed**") over the Property and any terms and conditions or other documents incorporated into these, as each is in effect from time to time , whenever and however incurred, whether now or in the future, and including without limit all principal, interest, costs, charges and expenses (together, the "**Liabilities**") subject to the limit in **clause 1.5**.
- 1.3 As a separate and independent obligation from your obligations under **clause 1.2**, you irrevocably agree to pay us in full on demand the amount of all losses, costs and expenses suffered or incurred by us arising from or in connection with us making available facilities to the Borrower under the Mortgage Agreement subject to the limit in **clause 1.5**.
- 1.4 We may at any time make demand on you under this Guarantee and Indemnity for all or any part of the Liabilities. For example and without limiting this, where the Borrower fails to make any monthly payment due under the Mortgage Agreement, we may demand and recover this from you and the Guarantee and Indemnity will remain in place for your future obligations under it.
- 1.5 The total amount recoverable by us from you under this Guarantee and Indemnity will not exceed the total sum of the mortgage loan set out in the Offer (plus any fees shown in the offer as added to the loan), plus interest, costs and expenses.
- 1.6 If there is more than one of you, your obligations are joint and several so that you may each be liable to us for the full amount under this Guarantee and Indemnity.
- 1.7 Your obligations under this Guarantee and Indemnity are those of primary obligor and not merely of a surety or cautioner. We can enforce this Guarantee and Indemnity without having first to take any action or obtain judgment against the Borrower or any other person.

## **2 OUR PROTECTIONS**

- 2.1 You agree that, subject always to **clause 1.5** this Guarantee and Indemnity is and at all times shall be a continuing security and extends to cover the ultimate balance due at any time from the Borrower to us in respect of the Liabilities.
- 2.2 You agree that your liabilities under this Guarantee and Indemnity will not be reduced, discharged or otherwise adversely affected by:
- 2.2.1 any variation or amendment of any agreement between us and the Borrower or any other person;
- 2.2.2 any time, indulgence or other concession granted by us to the Borrower or any other person;
- 2.2.3 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which we may now or hereafter have from or against the Borrower or any other person;
- 2.2.4 any other act or omission by us or any other person in taking, perfecting or enforcing any security or guarantee from or against any person;
- 2.2.5 the administration, insolvency, bankruptcy, sequestration, liquidation, winding-up, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name and style of the Borrower or any other person;
- 2.2.6 the death of the Borrower, any Guarantor or any other person; or
- 2.2.7 any act, omission or circumstances which but for this provision might operate to exonerate or discharge you or otherwise reduce or extinguish your liability under this Guarantee and Indemnity.
- 2.3 Without prejudice to **clause 2.2** above, the provision of any other guarantee now or future from you to us will in no way affect this Guarantee and Indemnity unless we have specifically agreed in writing to the contrary.

## **3 MONEYS RECEIVED**

- 3.1 We may apply any monies received under or in connection with this Guarantee and Indemnity in or towards satisfaction of the Liabilities as we, from time to time, determine. Without limiting our rights under the previous sentence, we may place any such monies to the credit of a suspense account in order to preserve our full claims against the Borrower and apply any such monies in such suspense account in such manner as we, in our absolute discretion, determine.

## **4 CONDITIONAL DISCHARGE**

- 4.1 Any release, discharge or settlement between you and us relating to this Guarantee and Indemnity is conditional upon no right, security, disposition or payment made or granted to us by you, the Borrower or any other person being void, set aside or ordered to be refunded under any law. If any such thing is void, so set aside or ordered to be refunded, we can enforce this Guarantee and Indemnity as if the same had not occurred.

## **5 DEFERRAL OF RIGHTS**

- 5.1 You agree that you will not exercise any rights to:
- 5.1.1 recover moneys from the Borrower, any other one of you, or any other person;
- 5.1.2 be indemnified by the Borrower, any other one of you or any other person; or
- 5.1.3 to take any benefit in whole or in part (by way of subrogation or otherwise) of any of our rights under any document or however arising,
- until we inform you in writing that in each case all moneys and liabilities which now or any time hereafter have been advanced to, become due, owing or incurred by the Borrower to us from time to time whether on the Borrower's own account or jointly with any other person, whenever and however incurred, whether now or in the future, and including without limit all principal, interest, costs, charges and expenses have been irrevocably paid in full.

## **6 PAYMENTS AND CERTIFICATES**

- 6.1 All sums payable by you under this Guarantee and Indemnity will be paid to us in full without any set-off, condition or counterclaim whatsoever and free and clear of any deduction or withholding except for any required by law. If any deduction or withholding is required by law

the relevant sum payable by you will be increased so that, after making the deduction or withholding required, you pay and we receive and can retain a net sum at least equal to that which we would have received had no such deduction or withholding been made.

- 6.2 Any demand, notification or certificate given by us specifying amounts due and payable under or in connection with this Guarantee and Indemnity will, save for manifest errors, be conclusive and binding on you.

## **7 COSTS AND INTEREST**

- 7.1 You will on demand pay us all reasonable costs and expenses (together with any Value Added Tax on the same) which we incur under or in connection with this Guarantee and Indemnity. This includes (without limiting it) all costs and expenses incurred in connection with preserving or enforcing our rights under this Guarantee and Indemnity.
- 7.2 Interest at the rate payable by the Borrower under the Mortgage Agreement will also be charged on all sums you owe us under this Guarantee and Indemnity from their due date until the date of payment, and will be charged after as well as before any judgment.

## **8 SET-OFF**

- 8.1 We may, without notice to you, apply any amounts which are at any time payable by us to you on any account in or towards satisfaction of any sum then due and payable from you under this Guarantee and Indemnity.

## **9 GENERAL**

- 9.1 Any demand or notice under this Guarantee and Indemnity will be in writing signed by one or more of our officers. It may be served on you personally or by post, either by delivering it to you at any place or by despatching it addressed to you at (i) the address stated above or (ii) such other address as you may from time to time notify us for this purpose; or (iii) your address last known to us. Any such demand or notice delivered personally will be deemed to have been received immediately upon delivery. Any such demand or notice sent by post will be deemed to have been received at the opening of business in the intended places of receipt on the day after the day on which it was posted, even if returned undelivered.
- 9.2 We can assign or transfer our rights under this Guarantee and Indemnity or in respect of our rights against the Borrower. We can disclose to any person connected with us and/or any person to whom we are proposing to transfer or assign or sub-participate or have transferred or assigned or sub-participated any of our rights under this Guarantee and Indemnity (or any advisors) any information about you or any party connected or associated with you. You may not assign or transfer your rights or obligations.
- 9.3 No delay or omission by us in exercising any right or remedy under this Guarantee and Indemnity will impair that right or remedy or operate as a waiver of it. No partial or defective exercise of any such right or remedy will prevent any other exercise under this Guarantee and Indemnity of that or any other right or remedy.
- 9.4 Any waiver, consent or approval given by us will only be effective if in writing.
- 9.5 If any one or more of the provisions of this Guarantee and Indemnity is or becomes illegal, invalid or unenforceable in any respect, neither the legality, validity and enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will be in any way affected or impaired as a result.
- 9.6 We will only communicate with you in English in respect of this Guarantee and Indemnity.

Governing Law

- 9.6.1 If this Guarantee and Indemnity is granted in relation to an English law governed legal mortgage, the governing law of this guarantee is the laws of England and Wales and the English courts have non-exclusive jurisdiction.
- 9.6.2 If this Guarantee and Indemnity is granted in relation to a Scots law governed standard security, the governing law of this guarantee is the laws of Scotland and the Scottish courts have non-exclusive jurisdiction.
- 9.6.3 You irrevocably submit to the jurisdiction of the relevant courts.

**In signing this Guarantee and Indemnity you certify and acknowledge to us that, before signing it :**

- **You were informed that, for your own protection, we require a written confirmation from a solicitor/licensed or qualified conveyancer to the effect that, among other things, the solicitor/licensed or qualified conveyancer has fully explained, and advised you as to, the nature, meaning and effect of this Guarantee and Indemnity and its legal and practical implications to you and you instructed the solicitor/licensed or qualified conveyancer named above to advise you accordingly.**
- **You were also informed that a purpose of that requirement is that you should not be able to dispute that you are legally bound by this Guarantee and Indemnity.**
- **You have seen the mortgage offer of loan and associated documents.**

**THIS GUARANTEE AND INDEMNITY** has been executed and delivered as a deed on the date stated at the beginning of this document .

**For use in relation to English-law governed Legal Mortgages**

SIGNED AND DELIVERED AS A DEED BY:

Name  
(Print) \_\_\_\_\_  
Signature \_\_\_\_\_

Name  
(Print) \_\_\_\_\_  
Signature: \_\_\_\_\_

Name  
(Print) \_\_\_\_\_  
Signature \_\_\_\_\_

Name  
(Print) \_\_\_\_\_  
Signature: \_\_\_\_\_

IN THE PRESENCE OF:

Name of  
Witness: \_\_\_\_\_  
Address of  
Witness: \_\_\_\_\_

Signature of  
Witness: \_\_\_\_\_

**Certificate by solicitor / licensed or qualified conveyancer**

By signing this certificate, I, the undersigned, certify to you that:

1. I am either (a) a qualified solicitor in England and Wales and I hold a current practising certificate issued by the Solicitors Regulation Authority, (b) a qualified licensed conveyancer in England and Wales and I hold a current conveyancing licence issued by the Council for Licensed Conveyancers in England and Wales, (c) a qualified solicitor in Scotland and I hold a current practising certificate issued by the Law Society of Scotland or (d) a qualified conveyancer in Scotland and I am currently registered as a conveyancing practitioner with the Law Society of Scotland.
2. I have been instructed by the above named guarantor(s) (referred to below as the “**client**”) to advise them on the nature, meaning and effect of this Guarantee and Indemnity.
3. I have been provided with the Guarantee and Indemnity and any documents referred to in it.
4. I have given to the client such independent advice and taken such steps as I consider appropriate so as to be satisfied that:
  - a) the client fully understands the purpose of this Guarantee and Indemnity, the nature, meaning and effect of this Guarantee and Indemnity, including the extent of the liabilities to be undertaken by the client and the consequences of entering into this Guarantee and Indemnity, and, in particular, that by entering into it the client will become liable for the obligations of the above named Borrower(s) under the mortgage facilities being guaranteed.
  - b) that the client has freely consented to and has entered into this Guarantee and Indemnity without influence or duress or in reliance upon any misrepresentation; and
  - c) the client fully understands the content and effect of this Guarantee and Indemnity, including that this Guarantee and Indemnity extends to the full amount owing and/or to be owing (as applicable) by the Borrower(s) and any further advances, interest, fees, charges and expenses subject to any maximum liability amount stated above; and
  - d) the client fully understands all future correspondence, both written and verbal, would be in English.
5. The client was either seen alone in a face to face meeting or was provided the advice via telephone or video-conference during which they were asked to articulate the circumstances under which this Guarantee and Indemnity was being entered into. There was no evidence of any undue influence or pressure being applied to the client.
6. I sought the client’s understanding of the implications arising, and potentially arising, from this transaction and the client answered positively.
7. I explained that the client has a choice whether or not to enter into this Guarantee and Indemnity and that if the client did enter into this Guarantee and Indemnity, the client would be legally bound by it and that the client would not be able to withdraw.
8. The client either produced reliable evidence to me which establishes the client's identity or otherwise is well known to me.

Signature of solicitor/licensed conveyancer:	Date:	Company/firm address or stamp:
Solicitor/licensed or qualified conveyancer name:	Position:	
Company/firm name:	Contact number:	