

This is a true copy of the form of Undertaking approved by the Law Society of Ireland named in the Society's Guidelines for Borrowers' Solicitors re Limited Application of Law Society Approved 2010 Edition Commercial Certificate of Title Documentation.

This Undertaking, IF UNAMENDED, complies, in the view of the Law Society, with the provisions of S.I. No. 366 of 2010. The Law Society will not review any other proposed form of wording or indicate a view as to whether any such amended form complies with the statutory instrument.



**COMMERCIAL MORTGAGE LENDING  
SOLICITOR'S UNDERTAKING PERMITTED UNDER "DE MINIMIS" PROVISIONS OF  
PARAGRAPH 4(b)(i) OF S.I. NO. 366 OF 2010**

**LAW SOCIETY APPROVED FORM (2010 EDITION)**

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

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

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

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

**BEING**

**Registered Title**

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

**Unregistered Title**

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

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

**LOAN AMOUNT** € \_\_\_\_\_  
("the Loan Amount")

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

## **1. Good Title**

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

## **2. Execution of Security Documents**

To ensure, prior to submitting this Undertaking to the Lender that:

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

so that on completion of registration the Mortgage ranks as a first / second / other (specify) \_\_\_\_\_ legal mortgage/charge on the Property (Note (iii)).

## **3. In Funds**

To ensure, prior to submitting this Undertaking to the Lender that I am/we are in funds to discharge all stamp duty and registration fees.

## **4. Loan Proceeds in Trust**

Pending compliance with Clauses 1, 2 and 3 above, subject to the payment through me/us of the loan cheque(s) or the loan proceeds, to hold the loan proceeds in trust for the Lender.

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

### **A. Stamping**

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

## **B. Registration**

As soon as practicable to lodge the purchase deed/transfer and the Mortgage in the appropriate Registry so as to ensure that the Lender obtains a first / second / other (specify) \_\_\_\_\_ legal mortgage/ charge on the Property.

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

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

- (i) my/our Certificate of Title in the Law Society's standard form for commercial mortgage lending (2010 edition) permitted by the "de minimis" provisions of paragraph 4 (b) (i) of S.I. No. 366 of 2010,
- (ii) all deeds and documents to the Property, stamped and registered as appropriate,
- (iii) the original Mortgage or, if Land Registry title, the counterpart Mortgage (if available) and an up-to-date copy folio of the Property showing the Mortgage registered as a burden thereon, and
- (iv) any deed of confirmation which I/we have had executed pursuant to Clause 2 hereof.

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

## **6. Holding Documents in Trust**

Pending compliance with Clause 5 to hold all title documents of the Property in trust for the Lender.

### **Authority**

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

### **Extent of Undertaking**

My/Our liability whether direct indirect or consequential and howsoever arising under this Undertaking shall not exceed €75,000.

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

**SCHEDULE**

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

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

SIGNATURE \_\_\_\_\_

NAME OF SOLICITOR SIGNING \_\_\_\_\_

(Note (iv))

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

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

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

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

Tick
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Initial
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Name & Address of Bank \_\_\_\_\_

Bank Sort Code \_\_\_\_\_

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

Solicitor's Client Account Number \_\_\_\_\_

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

## NOTES :

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

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

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

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

**CLIENT(S) RETAINER AND AUTHORITY**

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

of \_\_\_\_\_

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

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

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

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

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

\_\_\_\_\_

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

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**FAMILY HOME PROTECTION ACT CONSENT**

I, \_\_\_\_\_ the lawful spouse of the above named Borrower

**DO HEREBY GIVE MY PRIOR IRREVOCABLE CONSENT** for the purposes of the Family Home Protection Act, 1976 (as amended) to the foregoing retainer and authority of my said spouse and to the within undertaking to be given by my spouse’s solicitor(s).

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

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

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

**Signature of Spouse** \_\_\_\_\_

**Spouse’s name in BLOCK CAPITALS** \_\_\_\_\_

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

**(Solicitor)**

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

\_\_\_\_\_