

CERTIFICATE OF CONFIRMATION OF ADVICE

Corporate Borrower (Scotland)

Certificate of confirmation of advice to Guarantor

A term appearing in bold type in this certificate has the meaning given to it in the schedule.

Schedule

Borrower: means <i>(Limited company / LLP name)</i>	Limited/LLP
Property: means <i>(Address of the property to be mortgaged)</i>	Postcode
Guarantor: means <i>(Full name of Guarantor)</i>	
Of <i>(Guarantor address)</i>	Postcode

Background

You have been approached by the **Guarantor** to give certain advice.

Paragon Bank PLC (we, us, our) are proposing to make a mortgage loan to the **Borrower**.

The loan is to be secured by, amongst other things, a Standard Security on the **Property**, a Floating Charge (where required) over all of the assets of the **Borrower** and a guarantee from the **Guarantor** and certain other guarantors. The guarantee will be in the form annexed ("the Guarantee"). The **Guarantor** has been given a copy of our mortgage offer detailing the transaction.

Before making the loan we must be satisfied that the **Guarantor** is advised as to the consequences of giving the Guarantee. Advice must be given by an impartial solicitor.

In giving advice you act for the **Guarantor**. You must be satisfied that you can act for the **Guarantor** under the Solicitors Code of Conduct and other practice rules if you have any connection with us, the **Borrower** or the transaction in general.

Any fee for giving advice should be paid by the **Guarantor** or the **Borrower**, but in any event will not be paid by us.

Once you have given the advice, please sign this certificate and hand it to the **Guarantor**.

Certificate

To: Paragon Bank PLC and any person deriving any legal or equitable rights under or through you.

I confirm that I am a solicitor holding a current practising certificate and I have interviewed the **Guarantor** (in the absence of any other person connected with the proposed mortgage transaction) and advised the **Guarantor**:

1. of the nature of the proposed mortgage transaction and the risks involved for the **Guarantor**;
2. that the purpose of many of the provisions of the Guarantee is to negative rights and protections which the **Guarantor** might otherwise have enjoyed under the law so that in effect the **Guarantor** is put as closely as possible in the position of being equally liable for the **Borrower's** obligations to you; and
3. in addition to the general advice given under 1 and 2:
 - (a) of the amount of the loan;
 - (b) that all moneys due to you from the **Borrower** under or in connection with the loan, the Standard Security and the Bond and Floating Charge (where required) will be covered by the Guarantee including any further advance and costs;
 - (c) that there is no cap on the **Guarantor's** liability and that there is no option to terminate liability;
 - (d) that if the **Guarantor** is giving the Guarantee on the assumption that other guarantors will be giving, and be bound by, the Guarantee the **Guarantor** will still be liable for the full debt due from the **Borrower** even if the other guarantors do not enter into the Guarantee or, if they do, they are not bound or are released by you;
 - (e) that if there are other guarantors, the **Guarantor** will be jointly and severally liable with those other guarantors and that you have an absolute discretion in deciding which of these you pursue, when and for what amounts;
 - (f) that you do not have to exhaust your remedies against the **Borrower** or any other guarantors before claiming against the **Guarantor** under the Guarantee and that whilst money is outstanding to you from the **Borrower**, the **Guarantor** cannot take or enforce any security from or against the **Borrower**;
 - (g) that the Guarantee includes an indemnity so that the **Guarantor's** obligations are valid even if the **Borrower's** are not;
 - (h) that the Guarantee will bind the **Guarantor's** estate.

So far as I could tell the Guarantor understood the advice given

Full name of solicitor giving advice

Date advice was given

Solicitor signature

Full name and address of solicitor firm

I confirm I have been given, and understood, the advice above

Date advice was received

Guarantor signature

THIS GUARANTEE AND INDEMNITY is made in favour of PARAGON BANK PLC incorporated and registered in England and Wales with company number 05390593 whose registered office is at 51 Homer Road, Solihull, West Midlands B91 3QJ (**Lender**) and is delivered;

Dated / Delivered on
(delete as necessary)

(this deed must be dated on or about the same date as the standard security)

By the persons whose respective names and addresses are set out in the Schedule (each a "**Guarantor**" and collectively the "**Guarantors**") in respect of

Borrower
(insert name of borrower)

Limited company / LLP
(delete as necessary)

Background

- (a) The Lender has agreed to provide the Borrower with finance facilities on the terms set out in the Finance Documents.
- (b) As a condition precedent to the availability of facilities under the Finance Documents, the Guarantors have agreed to enter into this Guarantee for the purpose of providing credit support to the Lender for the Borrower's obligations under the Finance Documents.

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Guarantee.

Borrower: the company or limited liability partnership named above.

Business Day: a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London.

Finance Documents: any Offer and the Security Documents and any amendment, supplement or restatement of any of them.

Guaranteed Obligations: the Mortgage Debt and all present and future payment obligations and liabilities of the Borrower due, owing or incurred under the Finance Documents to the Lender (including, without limitation, under any amendment, supplement or restatement of the Finance Documents, or in relation to any further or increased advances or utilisations).

Mortgage Conditions: the Deed of Variation of Standard Conditions made by the Lender dated Sixth November Two Thousand and Eighteen and registered in the Books of Council and Session on Twentieth November Two Thousand and Eighteen, the terms defined and/or constructed therein having the same meaning and/or construction in this Multiple Guarantee.

Mortgage Debt: all moneys now or at any time or times hereafter due, owing or incurred to the Lender by the Borrower on any account, including all further advances which may from time to time be made by the Lender to the Borrower with interest at the rate or rates fixed from time to time by the Lender in accordance with the Mortgage Conditions.

Offer: has the meaning given to it in the Security Documents.

Property: the property set out in the Schedule.

Rights: any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise.

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

Security Documents:

- a) The standard security over the Property dated on or about the same date as this Guarantee and given by the Borrower in favour of the Lender.
- b) Where required, the floating charge dated on or about the same date as this Guarantee and given by the Borrower in favour of the Lender.

Tax: all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction and any penalty, fine, surcharge, interest, charges or costs relating to them.

- 1.2 Clause and schedule headings do not affect the interpretation of this Guarantee.
- 1.3 A person includes a corporate or unincorporated body (whether or not having a separate legal personality).
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to one gender shall include a reference to the other genders.
- 1.6 A reference to this Guarantee (or any specified provision of it) or any other document shall be construed as a reference to this Deed of Guarantee, that provision or that document as in force for the time being and as amended, varied, supplemented or novated from time to time.

- 1.7 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it and any former statute or statutory provision which it amends or re-enacts.
- 1.8 A reference to writing or written includes faxes but not emails.
- 1.9 References to clauses and schedules are to the clauses and schedules of this Guarantee.
- 1.10 Unless the context requires otherwise, the expression the Lender shall include any person claiming any right, estate or interest from or through it.
- 1.11 The obligations of the Guarantors under the Guarantee shall be joint and several.

2. Guarantee and indemnity

- 2.1 In consideration of the Lender entering into the Finance Documents, each Guarantor guarantees to the Lender to pay on demand the Guaranteed Obligations.
- 2.2 If any of the Guaranteed Obligations are not recoverable from the Borrower by reason of illegality, incapacity, lack or exceeding of powers, ineffectiveness of execution or any other reason, each Guarantor shall remain liable under this Guarantee for the Guaranteed Obligations as if they were a principal debtor.
- 2.3 Each Guarantor as principal obligor and as a separate and independent obligation and liability from his obligations and liabilities under clause 2.1 agrees to indemnify and keep indemnified the Lender in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Lender arising out of, or in connection with, any failure of the Borrower to perform or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations.
- 2.4 The guarantee and the indemnity in this clause 2 are given by each Guarantor severally and also jointly with every other Guarantor.

3. Lender protections

- 3.1 This Guarantee is and shall at all times be a continuing security and shall cover the ultimate balance from time to time owing to the Lender by the Borrower in respect of the Guaranteed Obligations.
- 3.2 The liability of Guarantors under this Guarantee shall not be reduced, discharged or otherwise adversely affected by:
 - (a) any intermediate payment, settlement of account or discharge in whole or in part of the Guaranteed Obligations; or
 - (b) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Lender may now or after the date of this Guarantee have from or against any of the Borrower, a co-guarantor and any other person in connection with the Guaranteed Obligations; or
 - (c) any act or omission by the Lender or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Borrower, a co-guarantor or any other person; or
 - (d) any termination, amendment, variation, novation or supplement of or to any of the Guaranteed Obligations; or
 - (e) any grant of time, indulgence, waiver or concession to the Borrower, a co-guarantor or any other person; or
 - (f) any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Borrower, a co-guarantor or any other person; or
 - (g) any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Borrower, a co-guarantor or any other person in connection with the Guaranteed Obligations; or
 - (h) any claim or enforcement of payment from the Borrower, a co-guarantor or any other person; or
 - (i) any act or omission which would not have discharged or affected the liability of the Guarantors had they been principal debtors instead of guarantors or indemnifiers or by anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Guarantors or otherwise reduce or extinguish their liability under this Guarantee.
- 3.3 The Lender shall not be obliged before taking steps to enforce any of its rights and remedies under this Guarantee against a Guarantor:
 - (a) to take any action or obtain judgment in any court against the Borrower, another Guarantor or any other person; or
 - (b) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Borrower, another Guarantor or any other person; or
 - (c) to make demand, enforce or seek to enforce any claim, right or remedy against the Borrower, another Guarantor or any other person.
- 3.4 The Guarantors jointly and severally warrant to the Lender that none of them has taken or received, and undertake to procure that none of them shall take, exercise or receive, the benefit of any Rights from or against the Borrower, its liquidator, an administrator, co-guarantor or any other person in connection with any liability of, or payment by, any Guarantor under this Guarantee but:
 - (a) if any of the Rights are taken, exercised or received by any of the Guarantors, those Rights and all moneys at any time received or held in respect of those Rights shall be held by the Guarantor concerned on trust for the Lender for application in or towards the discharge of the Guaranteed Obligations under this Guarantee; and
 - (b) on demand by the Lender, the Guarantor concerned shall promptly transfer, assign or pay to the Lender all other Rights and all moneys from time to time held on trust by them under this clause 3.4.

- 3.5 This Guarantee is in addition to and shall not affect nor be affected by or merge with any other judgment, Security, right or remedy obtained or held by the Lender from time to time for the discharge and performance by the Borrower of the Guaranteed Obligations.

4. Interest

- 4.1 The Guarantors shall pay interest to the Lender after as well as before judgment at the rate from time to time payable on the Mortgage Debt on all sums demanded under this Guarantee from the date of demand by the Lender or, if earlier, the date on which the relevant damages, losses, costs or expenses arose in respect of which the demand has been made, until, but excluding, the date of actual payment.
- 4.2 Interest under clause 4.1 shall accrue on a day-to-day basis calculated by the Lender upon such terms as the Lender may from time to time determine and shall be compounded on the last Business Day of each month.
- 4.3 The Lender shall not be entitled to recover any amount in respect of interest under both this Guarantee and any arrangements entered into between the Borrower and the Lender in respect of any failure by the Borrower to make any payment in respect of the Guaranteed Obligations.

5. Costs

- 5.1 The Guarantors shall on a full indemnity basis pay to the Lender on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any Valued Added Tax on those costs and expenses) which the Lender incurs in connection with:
- (a) the preparation, negotiation, execution and delivery of this Guarantee;
 - (b) any actual or proposed amendment, variation, supplement, waiver or consent under or in connection with this Guarantee;
 - (c) any discharge or release of this Guarantee;
 - (d) the preservation, or exercise and enforcement, of any rights under or in connection with this Guarantee or any attempt so to do; and
 - (e) any stamping or registration of this Guarantee.

6. Representations and warranties

- 6.1 The Guarantors jointly and severally represent and warrant as at the date of this Guarantee that:-
- (a) each Guarantor that is an individual is a director (or where the Borrower is a limited liability partnership, a member) of the Borrower;
 - (b) there are no directors (or where the Borrower is a limited liability partnership, members) of the Borrower who are not Guarantors;
 - (c) each has the capacity to execute, deliver and perform his obligations under this Guarantee.

7. Accounts

- 7.1 The Lender may place to the credit of a suspense account any moneys received under or in connection with this Guarantee in order to preserve the rights of the Lender to prove for the full amount of all its claims against the Borrower or any other person in respect of the Guaranteed Obligations.
- 7.2 The Lender may at any time and from time to time apply all or any moneys held in any suspense account in or towards satisfaction of any of the moneys, obligations and liabilities the subject of this Guarantee as the Lender in its absolute discretion may conclusively determine.
- 7.3 If this Guarantee ceases for any reason whatsoever to be continuing the Lender may open a new account or accounts in the name of the Borrower.
- 7.4 If the Lender does not open a new account or accounts pursuant to clause 7.3, it shall nevertheless be treated as if it had done so at the time that this Guarantee ceased to be continuing whether by termination, calling in or otherwise, in relation to the Borrower.
- 7.5 As from the time of opening or deemed opening of a new account or accounts, all payments made to the Lender by or on behalf of the Borrower shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount for which this Guarantee is available at that time, nor shall the liability of the Guarantors under this Guarantee in any manner be reduced or affected by any subsequent transactions, receipts or payments.

8. Discharge Conditional

- 8.1 Any release, discharge or settlement between any one or more of the Guarantors and the Lender in relation to this Guarantee shall be conditional on no right, Security, disposition or payment to the Lender by any of the Guarantors, the Borrower or any other person in respect of the Guaranteed Obligations being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason.
- 8.2 If any right, Security, disposition or payment referred to in clause 8.1 is avoided, set aside or ordered to be refunded, the Lender shall be entitled subsequently to enforce this Guarantee as if such release, discharge or settlement had not occurred and any such right, Security, disposition or payment had not been given or made.

9. Payments

- 9.1 All sums payable by the Guarantors under this Guarantee shall be paid in full to the Lender in the currency in which the Guaranteed Obligations are payable:
- (a) without any set-off, condition or counterclaim whatsoever; and
 - (b) free and clear of any deductions or withholdings whatsoever except as may be required by law or regulation which is binding on the Guarantors.
- 9.2 If any deduction or withholding is required by any law or regulation to be made by any of the Guarantors, the amount of the payment due from the Guarantors shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required.
- 9.3 Each Guarantor shall promptly deliver or procure delivery to the Lender of all receipts issued to him evidencing each deduction or withholding which he has made.
- 9.4 The Guarantors shall not and may not direct the application by the Lender of any sums received by the Lender from the Guarantors under, or pursuant to, any of the terms of this Guarantee.

10. Transfer

- 10.1 This Guarantee is freely assignable or transferable by the Lender.
- 10.2 The Guarantors may not assign any of their rights and may not transfer any of their obligations under this Guarantee or enter into any transaction which would result in any of those rights or obligations passing to another person.

11. Set-off

- 11.1 Each Guarantor authorises the Lender to apply any receipt or credit balance (whether or not then due) to which he is at any time beneficially entitled on any account with the Lender in (or towards) satisfaction of any sum then due and payable by the Guarantors to the Lender under this Guarantee but which is unpaid. Where such application of balances requires the conversion of one currency into another the Lender may make such conversion at a market rate of exchange.
- 11.2 The Lender shall not be obliged to exercise any rights given to it under clause 11.1.

12. Evidence of amounts and certificates

- 12.1 Any certificate, determination or notification by the Lender as to a rate or any amount payable under this Guarantee is (in the absence of manifest error) conclusive evidence of the matter to which it relates and shall contain reasonable details of the basis of determination.

13. Remedies, waivers, amendments and consents

- 13.1 Any amendment to this Guarantee shall be in writing and signed by or on behalf of each party.
- 13.2 Any waiver of any right or consent given under this Guarantee is only effective if it is in writing and signed by the waiving or consenting party, and applies only in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 13.3 No delay or failure to exercise any right under this Guarantee shall operate as a waiver of that right.
- 13.4 No single or partial exercise of any right under this Guarantee shall prevent any further exercise of the same or any other right under this Guarantee.
- 13.5 Rights and remedies under this Guarantee are cumulative and not exclusive of any rights or remedies provided by law or otherwise.

14. Severance

- 14.1 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Guarantee under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.
- 14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

15. Consent to Registration

The Guarantor consents to the registration of this Guarantee and each certificate referred to in clause 12 (Evidence of amounts and certificates) above for preservation and execution.

16. Third party rights

- 16.1 Except as provided for in clause 10.1 (Transfer) of this Guarantee, this Guarantee does not confer any person other than the parties any right to enforce or otherwise invoke any term of this Guarantee under the Contract (Third Party Rights) (Scotland) Act 2017 or otherwise.

17. Counterparts

- 17.1 Where executed in counterparts:
- a) This Guarantee shall not take effect until all of the counterparts have been delivered; and
 - b) Delivery will take place when the date of delivery is agreed between the parties after execution of this Guarantee as evidenced by the date inserted at the start of this Guarantee.
- 17.2 Where not executed in counterparts, this Guarantee shall take effect after its execution upon the date agreed between the parties as evidenced by the date inserted at the start of this Guarantee.

18. Notices

- 18.1 Every notice, request, demand, or other communication under this Guarantee shall be:
- (a) in writing, delivered personally or sent by pre-paid first-class letter or fax (confirmed by letter); and
 - (b) sent:
 - (i) to a Guarantor at the address shown in the Schedule;
 - (ii) to the Lender at the address shown at the head of this Guarantee; or
 - (iii) on or to such substitute address notified by one party to the other and acknowledged in writing by the other.
- 18.2 Any notice or other communication given by the Lender shall be deemed to have been received:
- (a) if sent by fax, with a confirmation of transmission, on the day on which it is transmitted;
 - (b) if given by hand, on the day of actual delivery; and
 - (c) if posted, on the second Business Day following the day on which it was dispatched by pre-paid first-class post, provided that a notice given as described in clause 18.2(a) or clause 18.2(b) on a day which is not a Business Day (or after normal business hours in the place of receipt) shall be deemed to have been received on the next Business Day.
- 18.3 Any notice or other communication given to the Lender shall be deemed to have been given only on actual receipt by the Lender.

19. Governing law and jurisdiction

- 19.1 This Guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.
- 19.2 The parties to this Guarantee irrevocably agree that, subject as provided below, the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Guarantee or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Lender to take proceedings against a Guarantor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- 19.3 The Guarantors irrevocably consent to any process in any proceedings under clause 19.2 being served on them in accordance with the provisions of this Guarantee relating to service of notices. Nothing contained in this Guarantee shall affect the right to serve process in any other manner permitted by law.

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