

Dated _____

[•]
(as Chargor)

[[County/City/Town] Council
(as Council)

CHARGE IN RESPECT OF

[•]¹

[NOTE: This Deed is subject to the terms of an Intercreditor Agreement]²

**Philip Lee
Connaught House
One Burlington Road
Dublin 4**

¹ Insert property description

² In most cases the chargor will have obtained a mortgage in relation to the acquisition/refurbishment of the property which will have priority to the Croi Conaithe grant monies

CONTENTS

| CLAUSE | PAGE |
|--|------|
| 1. Mortgage Assignment and Charge | 1 |
| 2. Covenant to Pay..... | 2 |
| 3. Redemption Of Security | 3 |
| 4. Perfection of Security and Further Assurances | 3 |
| 5. Negative Pledge..... | 3 |
| 6. Statutory Consents | 4 |
| 7. Representations..... | 4 |
| 8. Insurances..... | 6 |
| 9. General Covenants | 7 |
| 10. Power of Sale..... | 9 |
| 11. Power of Leasing | 9 |
| 12. Entry into Possession, Powers and Appointment and Powers of Receiver | 10 |
| 13. Liability of the Council in Possession | 13 |
| 14. Delegation of Powers of the Council | 13 |
| 15. Application of Monies | 13 |
| 16. Protection of Buyers | 14 |
| 17. Power of Attorney | 14 |
| 18. Continuing Security | 15 |
| 19. Avoidance of Payments..... | 15 |
| 20. Set-Off by Council | 15 |
| 21. Subsequent Charges and New Accounts | 15 |
| 22. Currency Indemnity..... | 16 |
| 23. Severability..... | 16 |
| 24. Assignment and Transfer | 16 |
| 25. Certificate of the Council Conclusive | 17 |
| 26. No Waivers, Remedies Cumulative | 17 |
| 27. Costs and Expenses | 17 |

28. Payments Free Of Deduction 17

29. Notices 18

30. The Council’s Discretion 18

31. Counterparts 18

32. Governing Law and Jurisdiction 18

33. Definitions and Interpretation 19

FIRST SCHEDULE (Secured Premises) 26

SIXTH SCHEDULE (Prescribed Form Charge) 28

THIS CHARGE is dated _____ day of _____

BETWEEN:

- (1) [•] of [•] (the “Chargor”); and
- (2) [_____] [County/City/Town] Council whose principal office is at [_____] (the “Council”).

RECITALS:

- (A) The Council has identified a requirement for the refurbishment of vacant properties in designated areas such that they are rendered fit for occupation as principal private residences. Pursuant to the Croi Conaithe (Towns) Fund, the Council has agreed to make available the Croi Conaithe (Towns) Fund Vacant Property Refurbishment Grant (the “Grant”) to the Chargor pursuant to [an agreement dated in or about the date of this Charge], entered into between the Chargor and the Council (the “Croi Conaithe Agreement”).
- (B) The Chargor has been approved by the Council for the Grant subject to the terms and conditions thereof and the Croi Conaithe Agreement.
- (C) It is a condition of the making available by the Council of the Grant pursuant to the Croi Conaithe Agreement that the Grant shall be repayable in the event the Chargor ceases to occupy the Property as its principal private residence within 10 years from the date of the Croi Conaithe Agreement (the “Clawback”). It is further agreed that the Grant advanced by the Council and the Clawback shall be secured by the Chargor granting security in the form of this Charge over the Secured Premises.
- (D) It is one of the conditions to the availability of the Grant that the Chargor executes this Charge and provides the Security to the Council.

THIS CHARGE WITNESSES as follows:

1. Mortgage Assignment and Charge

1.1 Prescribed Form Charge over Registered Land

- (a) The Chargor shall immediately upon the execution of this Charge execute and deliver to the Council one or more charge(s) in the Prescribed Form over so much of the Secured Premises as comprises registered land.
- (b) Each Prescribed Form Charge shall be supplemental to, and shall form part of, this Charge.

1.2 Fixed Charges: The Chargor as beneficial owner, as continuing security for the payment, performance and discharge of the Secured Liabilities, hereby charges to the Council by way of fixed charge:

- (a) all its other estate, right, title or interests in the Secured Premises (whether or not the legal estate is vested in the Chargor or registered in the name of the Chargor), and all future estate, right, title or interests of the Chargor in the Secured Premises and/or the proceeds of sale thereof together in all cases (to the extent the same are not otherwise subject to an effective fixed security hereunder) all fixtures and fittings (including trade fixtures) and all fixed plant and machinery from time to time in or on the Secured Premises with the payment, performance and discharge of the Secured Liabilities;

- (b) other than to the extent already subject to an effective fixed security under this Charge, all present and future Ancillary Rights and Compensation Rights;
- (c) all rights and claims to which the Chargor is now or may hereafter become entitled in relation to or in connection with the Secured Assets including those against any manufacturer, supplier, installer, builder, contractor, professional advisor or Lessee and any guarantor or surety for the obligations of any such person and, to the extent that any of the Secured Assets are now or at any time hereafter hired, leased or rented to any other person, the rights under the hiring, leasing or rental contract and any guarantee, indemnity or security for the performance of the obligation of such person and any other rights and benefits relating thereto; and
- (d) all of its present and future rights, title, interest and benefit in and to the Secured Assets referred to in clause 1.3 (*Assignments*) to the extent that such Secured Assets are not effectively assigned by or otherwise subject to an effective fixed security under that clause.

1.3 **Assignments:** The Chargor as beneficial owner, as continuing security for the payment, performance and discharge of the Secured Liabilities, hereby assigns and agrees to assign absolutely (subject to a proviso for reassignment on redemption) to the Council by way of fixed security³ as a continuing security for the payment, performance and discharge of the Secured Liabilities all its present and future right, title, interest and benefit in and to all Insurances, Insurance Proceeds and all benefits of Insurances (including all claims relating to, and all returns of premium in respect of, Insurances). To the extent that the Insurances or Insurance Proceeds are not assignable, the assignment which that clause purports to effect shall operate as an assignment of all present and future rights and claims of the Chargor to any Insurance Proceeds.

1.4 **Continuing Obligations:** Anything herein to the contrary notwithstanding (i) the Chargor shall remain liable under any contracts, agreements and other documents included in the Secured Assets (to the extent set forth therein) to perform all of its duties and obligations thereunder to the same extent as if this Charge had not been executed, (ii) the exercise by the Council of any of the rights hereunder shall not release the Chargor from any of its duties or obligations under such contracts, agreements and other documents and (iii) the Council shall not have any obligation or liability under any such contracts, agreements or other documents included in the Secured Assets by reason of this Charge, nor shall the Council be obligated to perform any of the obligations or duties of the Chargor thereunder or to take any action to collect or enforce any such contract, agreement or other document.

2. **Covenant to Pay**

2.1 The Chargor hereby covenants that it will on demand by the Council discharge the Secured Liabilities and undertakes to pay to the Council every sum (of principal, interest or otherwise) now or hereafter owing, due or incurred by the Chargor in respect of the Secured Liabilities.

2.2 If any liability referred to in clause 2.1 becomes due (whether upon the making of a demand or otherwise) the Chargor shall pay interest on such sums (after as well as before judgement) from the date of demand until the date of payment calculated on a daily basis at the rate and in the manner agreed in writing between the Chargor and the Council in respect thereof and in the absence of such agreement, at the Default Rate.

³ Sc 1001 TCA notification to Revenue Commissioners requires to be made in respect of a fixed charge created over book debts.

3. **Redemption Of Security**

Subject to clause 19 (*Avoidance of Payments*), upon and subject to the Chargor ceasing to have any liability (whether actual or contingent) to the Council in respect of the Secured Liabilities and the Council ceasing to be under any commitment to advance any amounts to the Chargor, promptly thereafter and at the request and cost of the Chargor, the Council shall (but subject to the rights and claims of any person having prior rights thereto) reassign the property and assets assigned to the Council by or pursuant to this Charge and release or otherwise discharge the Security.

4. **Perfection of Security and Further Assurances**

4.1 In addition, the Chargor shall, from time to time at the request of the Council, do any act or execute such other notices (and procure the delivery to the Council of an acknowledgement of receipt of any such notice which may be specified by the Council) and such legal or other assignments, transfers, mortgages, charges or encumbrances or other documents as in each case the Council shall reasonably stipulate, in such form as the Council may reasonably require, for or in connection with the improvement, perfection, protection or maintenance of the Security.

4.2 Without prejudice to the generality of the foregoing provisions, the Chargor shall, if so requested by the Council, do any act or execute any document which may be necessary or desirable under the laws of any jurisdiction in which any property or assets may be located in order to confer on the Council security over such property or assets equivalent or similar to the Security or to facilitate the realisation thereof or the exercise of any or all of the powers, authorities and discretions conferred on the Council or any Receiver by or pursuant to this Charge.

4.3 The Chargor shall take all such action as is available to it:

- (a) to perfect, protect and maintain the Security; and
- (b) to make all such filings and registrations and to take all such other steps as may be necessary in connection with the creation, perfection, protection or maintenance of the Security and any other security which it may, or may be required to, create in connection herewith.

5. **Negative Pledge⁴**

5.1 The Chargor undertakes that at no time during the Security Period will it, other than:

- (a) the Security;
- (b) the Permitted Security;
- (c) in the Council's favour; or
- (d) with the Council's prior written consent,

create, grant, extend or permit to subsist or arise any encumbrance on or over all or any part of the Secured Assets.

⁴ TBD the extent to which there are to be restrictions on the homeowner topping up or refinancing the property to protect equity in the property for the purposes of repaying the Grant

5.2 The Chargor undertakes that at no time during the Security Period will it, except with the prior written consent of the Council, sell, convey, transfer, assign or otherwise dispose of all or any part of the Secured Assets or agree to do any of the foregoing.

5.3 The foregoing provisions of this clause 5 shall not be construed as limiting any powers exercisable by any Receiver appointed by the Council under or pursuant to this Charge.

6. **Statutory Consents**

6.1 The Chargor hereby assents to the registration as burdens on the folio of any registered land of which it is the registered owner or, as applicable, the person entitled to be registered as registered owner as well as on the folio of any further registered lands of which it may from time to time become the registered owner or, as applicable, the person entitled to be registered as registered owner, of:

- (a) the fixed mortgage and charge created by this Charge on the said land; and
- (b) the power of any Receiver appointed under this Charge to charge the said land.

7. **Representations**

7.1 The Chargor hereby represents and warrants to the Council that:

- (a) the Chargor 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 it;
- (b) the Chargor is and will at all times during the subsistence of the security constituted by this Charge be the sole lawful and beneficial owner of the Secured Assets
- (c) all approvals, authorisations, consents, licences, permissions and registrations which are necessary or advisable for the Chargor to obtain from any governmental or other authority (or without limitation any third party) for the purpose of or relating to the Secured Premises have been obtained and are in force, and all relevant provisions and conditions have been complied with;
- (d) this Charge constitutes, or will when executed and delivered by it, constitute legal, valid and binding obligations of it;
- (e) the execution and delivery by it of this Charge, and the performance and observance by it of its obligations hereunder and thereunder and the creation by it of any security constituted or to be constituted by this Charge do not and will not violate or result in a breach of, or exceed any power granted to it under:
 - (i) any law, rule or regulation to or by which it or any of its property or assets is subject or bound;
 - (ii) any judgment, order, injunction, determination, award or ruling of any court or arbitrator or any judicial, administrative or governmental authority to or by which it is subject or bound; or
 - (iii) any deed, agreement, franchise, concession, licence, treaty or other instrument to which it is a party or which may be binding upon it or which may materially affect it or any of its properties or assets;

- (f) the execution and delivery by it of this Charge, and the performance and observance by it of its obligations hereunder and thereunder will not result in the existence of nor oblige it to create any security over all or any of its present or future revenues or assets except as provided for or permitted herein or therein;
- (g) every consent, licence, approval or authorisation of, exemption from any registration, recording or filing with any person required in connection with the execution and delivery by it of this Charge, or the creation of any security thereby contemplated or to make the same admissible in evidence has been (or will be within any prescribed period in the case of any registration, recording or filing) obtained or made and is in full force and effect and all necessary fees required in connection therewith have been (or, as the case may be, will be) paid. It is, and will at all times during the Security Period be, the sole, lawful and beneficial owner of all of the Secured Assets charged, mortgaged or, as the case may be, assigned, by it hereunder, free from any encumbrance (other than an encumbrance permitted pursuant to clause 5.1 (*Negative Pledge*));
- (h) except as otherwise agreed in writing by the Council, it has not sold or granted any rights of pre-emption over or agreed to sell or grant any right of pre-emption over or granted or agreed to grant any lease or tenancy of or otherwise disposed of or agreed to dispose of the benefit of all or any of its right, title and interest in and to all or any part of the Secured Assets;
- (i) it has, and will at all times during the Security Period have, the necessary power and existence to enable it to enter into and perform the obligations expressed to be assumed by it under this Charge;
- (j) it has obtained, and will at all times during the Security Period obtain, all consents including, without prejudice to the generality of the foregoing, the consent of any landlord or superior landlord (where necessary) under any lease or agreement for lease under which the Secured Assets is held, necessary to ensure that no other party to any agreement or arrangement entered into by the Chargor (including such landlord or superior landlord) becomes entitled to terminate such agreement or arrangement as a consequence of the Chargor entering into this Charge;
- (k) all actions, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary consents or the like) in order:
 - (i) to enable it lawfully to enter into and perform and comply with its obligations under or pursuant to this Charge, and to ensure that those obligations are valid, legally binding and enforceable;
 - (ii) to enable it to create the Security and to ensure that (subject to all necessary registrations thereof being made) the Security is valid, legally binding and enforceable and has and will have the ranking which it is expressed to have; and
 - (iii) to make this Charge, admissible in evidence in the courts of Ireland and each other applicable jurisdiction,have been taken, fulfilled and done;
- (l) the Charge (subject to the Intercreditor Agreement) does and will continue, during the Security Period to constitute security over the Secured Assets effective in accordance with its terms;

- (m) it has not taken any corporate action nor have any other steps been taken or legal proceedings been started or, to the best of its knowledge and belief, threatened against it for its winding-up, liquidation, examinership, dissolution, re-organisation or similar or for the appointment of a receiver, examiner, trustee or similar officer of any or all of its assets or revenues;
- (n) all material covenants, restrictions and stipulations affecting the Secured Assets have been observed and performed and the Chargor has not suffered or committed or caused any breach of any such material covenant, restriction or stipulation;
- (o) nothing has been done on or in relation to any of the Real Property which constitutes a “**development**” within the meaning of the Planning Acts without any requisite permission having been obtained and no situation exists in relation to any of the Real Property in respect of which a warning notice or an enforcement notice has been or may be made;
- (p) it is in compliance with all Environmental Laws and it has obtained, and will at all times during the subsistence of the Security obtain, and is in compliance with, all Environmental Permits; and
- (q) there are no circumstances (of which it is aware, having made due and careful enquiries) relating to any of the Secured Assets which have led, or could lead, to a competent authority or a third party taking any action or making a claim under any Environmental Laws including the requirement to clean up any contaminated land or the revocation, suspension, variation or non-renewal of any Environmental Permits or to the Chargor having to take action to avert the possibility of any such action or claim where such action or claim could have an adverse effect on the value of any of the Secured Assets or on the ability of the Chargor to conduct any of its business or to perform its obligations under this Charge.

7.2 The representations and warranties of the Chargor set out in clause 7.1 shall survive the execution of this Charge and shall be correct and complied with in all respects and at all times during the continuance of the Security Period as if repeated therein by reference to the then existing circumstances.

8. **Insurances**

8.1 The Chargor shall at all times during the continuance of the Security Period:

- (a) comply with all obligations with respect to insurance of or relating to any part of the Secured Assets imposed by the terms of any lease, agreement for lease or tenancy under which the Chargor derives its estate or interest therein and, at the request of the Council, produce evidence satisfactory to the Council of such compliance;
- (b) notwithstanding and without prejudice to clause 8.1(a), cause all buildings, trade and other fixtures, fixed and other plant and machinery and other assets of an insurable nature forming part of the Secured Assets to be insured and kept insured:
 - (i) in an insurance office or with underwriters acceptable to the Council;
 - (ii) against loss or damage by fire and all such other risks as are customarily insured against in relation to assets of such nature by prudent companies carrying on businesses comparable (having regard to the nature of the Chargor’s business) to that of the Chargor and such other risks as may from time to time be specified in writing by the Council at least to the full reinstatement or replacement value thereof (with adequate provision also

being made for forward inflation, the cost of clearing the site and architects', engineers', surveyors' and other professional fees incidental thereto and loss of rents or prospective rents for a period of not less than three years) and including insurance against consequential loss and liability to third parties and employees; and

- (iii) [with an endorsement on the policy or policies of Insurance relating thereto of a note of the interest of the Council therein specified as an interested party (mortgagee) in respect of all its Insurances [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 the Council in the event of any misrepresentation, act, omission, neglect or failure to disclose on the part of the insured]⁵
 - (c) duly and punctually pay all premiums and other monies payable under all such policies of Insurance and promptly upon request by the Council produce to the Council a copy or sufficient extract of every such policy together with the premium receipts or other evidence of the payment thereof; and
 - (d) if so required by the Council but subject to the provisions of any lease of any part of the Secured Assets, deposit all policies of Insurance with the Council or produce the same to the Council for inspection.
- 8.2 If the Chargor fails to comply with any of the provisions of clause 8.1, the Council may (but shall not be obliged to) effect or renew any such Insurance as is mentioned in that clause either in its own name or in its name and that of the Chargor jointly or in the name of the Chargor with an endorsement of the Council's interest subject to the requirements contained in Section 110(2) of the Act. All monies expended by the Council in so effecting or renewing any such Insurance shall be reimbursed by the Chargor to the Council on demand.
- 8.3 All monies received or receivable under any Insurance shall (subject to the rights and claims of any person having prior rights thereto or any lessor or landlord of any part of the Secured Assets) be applied in accordance with clause 15 (*Application of Monies*) or, if the Council shall so require, in repairing, replacing, restoring or rebuilding the property or assets damaged or destroyed. If any such monies shall be received by the Chargor, it shall (subject to the rights and claims of any person as aforesaid) hold such monies upon trust for the Council pending payment to the Council for application in accordance with clause 15 (*Application of Monies*) or, as the case may be, application by the Chargor in repairing, replacing, restoring or rebuilding the property or assets damaged or destroyed.
- 9. General Covenants**
- 9.1 The Chargor hereby covenants with the Council that at all times during the continuance of the Security Period it shall:
- (a) perform and observe the covenants and conditions contained or comprised in any agreement from time to time made between any debtor of the Chargor and the Chargor and promptly inform the Council of any event as soon as it becomes aware of same, or of the receipt of any notice (including any notice issued under Section 1002 of the Taxes Consolidation Act 1997) which may adversely affect the fulfilment by the Chargor of any of its covenants or obligations hereunder or the Security;
 - (b) observe and perform all covenants and stipulations from time to time affecting the Real Property or the mode of user or enjoyment of the same and not without the prior

⁵ PL: TBC

consent in writing of the Council enter into any onerous or restrictive obligations affecting the Real Property or any part thereof or create or permit to arise any overriding interest or any easement or right whatsoever in or on the Real Property or any part thereof which might adversely affect the value thereof or do or suffer to be done on the Real Property or any part thereof anything which is a “**development**” as defined in the Planning Acts as from time to time amended otherwise than in accordance with the provisions of the Planning Acts nor do or suffer or omit to be done any act, matter or thing whereby any provision of any Act of the Oireachtas, order or regulation from time to time in force affecting the Real Property or any part thereof is infringed;

- (c) keep all buildings, structures, fixtures and fittings (including trade fixtures and fittings), plant, and, to the extent reasonably appropriate, machinery, in good and substantial repair and in good working order and condition (fair wear and tear excepted) and not pull down or remove or sell or otherwise dispose of any of the same without the prior consent in writing of the Council except in the ordinary course of use, repair, maintenance or improvement;
- (d) not make any structural alterations, or additions to the Real Property or any part thereof without the prior written consent of the Council;
- (e) pay, as and when the same must be paid, all taxes, rates, duties, charges, assessments and outgoings whatsoever and of any description which shall be assessed, charged or imposed upon or payable in respect of any of the Real Property (save to the extent that payment of the same is being contested in good faith);
- (f) pay (if the lessee or fee farm grantee) the rents reserved by and (in any event) keep all of the Real Property of the Chargor in good and substantial repair and perform and observe all the covenants, agreements and stipulations on the part of the Chargor contained in any fee farm grant or lease comprised within the Real Property and not do or suffer to be done any act or thing whereby any such lease is likely to become liable to forfeiture or otherwise be unilaterally determined by the landlord;
- (g) not (other than without the prior consent in writing of the Council) grant or agree to grant (whether in exercise or independently of any statutory power) any lease or tenancy of the Real Property or any material part thereof;
- (h) notify the Council of any notice received in relation to the Real Property (or any part thereof) which might reasonably be expected to affect the value of the Real Property or such part thereof, or the Security therein, adversely and within thirty days after receipt by the Chargor of any application, requirement, order or notice served or given by any public or local or any other authority with respect to all the Secured Assets (or any material part thereof), give written notice thereof to the Council and also (within seven days after demand) produce the same or a copy thereof to the Council and inform it of the steps taken or proposed to be taken to comply with any such requirement thereby made or implicit therein;
- (i) duly and punctually perform and observe all its obligations in connection with the Secured Assets under any present or future statute or any regulation, order or notice made or given thereunder;
- (j) otherwise than as permitted herein not do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice, to an extent which in the opinion of the Council is material, the value to the Council of the Security;

- (k) furnish to the Council from time to time, and at such intervals as the Council may from time to time require, such information regarding the Chargor as the Council may require including, without prejudice to the generality of the foregoing, copies of all and any statements or invoices in respect of the Secured Premises and the Grant as the Council may reasonably require;
- (l) comply with all Environmental Laws and Environmental Permits applicable from time to time to the Secured Assets or any part thereof and not allow any circumstances to arise which could lead to a competent authority or a third party taking action or making a claim under any Environmental Laws including the requirement to clean up any contaminated land or the renovation, suspension, variation or non-renewal of any Environmental Permits or to the Chargor having to take action to avert the possibility of any such claim where such action or claim could have an adverse effect on the value of any of the Secured Assets or on the ability of the Chargor to perform its obligations under this Charge;
- (m) within seven days of the receipt of notice of the same, give full particulars (and if requested, a copy of any written particulars received by the Chargor) to the Council of any notice, order, direction, designation, resolution or proposal having application to all or any part of the Secured Assets or to the area in which it is situate, given or made by any planning authority or other public body or authority whatsoever under or by virtue of planning legislation or Environmental Laws or any other statutory power whatsoever or in pursuance of the powers conferred by any other statute whatsoever; and if so required by the Council, without delay and at the cost of the Chargor, take all reasonable or necessary steps to comply with any such notice or order and at the request of the Council, without delay and at the cost of the Chargor, make or join with the Council in making such objections or representations against or in respect of any proposal for such notice or order as the Council shall deem expedient; and

9.2 In the case of default by the Chargor in the performance of any of the covenants contained in clause 9.1 it shall constitute an Event of Default and be lawful for (but not obligatory upon) the Council to do whatever may in the Council's opinion be necessary to make good such default, and all sums expended by the Council in that behalf shall be added to the monies hereby secured and bear interest accordingly.

10. **Power of Sale**

10.1 On or at any time after the occurrence of an Event of Default, subject to compliance with the Act, the Council may exercise without further notice to the Chargor subject to any restrictions contained in the Act and whether or not it shall have appointed a Receiver, all the powers and rights conferred on mortgagees by the common law and the Act as varied or extended by this Charge and all the powers and discretions hereby conferred either expressly or by reference on a Receiver.

11. **Power of Leasing**

11.1 The power of leasing conferred upon a mortgagor in possession by Section 112 of the Act and the power of accepting the surrender of leases conferred upon a mortgagor in possession by Section 114 of the Act and any other powers of leasing, surrendering or accepting surrenders of leases vested in the Chargor shall not be exercisable without the prior consent in writing of the Council nor shall the Chargor, without the prior consent in writing of the Council, confer on any person any contractual licence to occupy or any other right or interest in any freehold or leasehold or other immovable property hereby charged or grant any licence or consent to assign, undertake or part with possession or occupation thereof.

11.2 In accordance with Section 112(3)(c) of the Act, the Chargor hereby consents to the Council, while in possession, or any Receiver, leasing all or any part of the Secured Assets, including any part of the Secured Assets consisting of land.

12. Entry into Possession, Powers and Appointment and Powers of Receiver

12.1 On or at any time after the occurrence of an Event of Default, the Council may, subject to the Act, and subject always to the Intercreditor Agreement, take possession of and hold all or any part of the Secured Assets and the Council may, without first appointing a Receiver, exercise all or any of the powers and rights conferred on mortgagees by the Act as varied or extended by this Charge and all the powers, authorities and discretions conferred by this Charge expressly or by implication on any Receiver or otherwise conferred by statute or common law on mortgagees or receivers.

12.2 On or at any time after the occurrence of an Event of Default or if requested by the Chargor, the Council may, without notice to the Chargor, in writing under its common seal or under the hand of any officer or manager or any other nominated person of the Council, appoint any person to be a Receiver of all or any part of the Secured Assets and may, except as otherwise required by statute, remove any such Receiver and appoint another in his place or appoint another person to act jointly with any such Receiver.

12.3 Such an appointment over part only of the Secured Assets shall not preclude the Council from making any subsequent appointment of the same or another Receiver over any part of the Secured Assets over which an appointment has not been previously made.

12.4 Where more than one Receiver is appointed they shall have power to act severally unless the Council shall in the appointment specify to the contrary.

12.5 A Receiver shall be deemed at all times and for all purposes to be the agent of the Chargor in respect of which he is appointed and the Chargor shall be solely responsible for his acts or defaults and for the payment of his remuneration and the Receiver shall at no time act as agent for the Council.

12.6 Neither the Council nor any Receiver shall be liable to account as a mortgagee in possession in respect of all or any part of the Secured Assets or be liable for any loss upon realisation or for any neglect or default of any nature whatsoever in connection with all or any part of the Secured Assets to which a mortgagee in possession might as such be liable.

12.7 A Receiver shall have all the powers conferred from time to time on receivers by statute including the powers conferred by the Act and, in addition, power on behalf and at the cost of the Chargor (notwithstanding insolvency of the Chargor) to do or omit to do anything which the Chargor could do or omit to do in relation to the Secured Assets or any part thereof and in particular (but without limitation) a Receiver shall have the power to do all or any of the following:

- (a) enter upon, take possession of, collect and get in all or any of the Secured Assets, exercise in respect of the Secured Assets all voting or other powers or rights available to a registered holder thereof in such manner as he may think fit and bring, defend or discontinue any proceedings (including proceedings for the winding up of the Chargor) or submit to arbitration in the name of the Chargor or otherwise as may seem expedient to him;
- (b) carry on, manage, develop, reconstruct, amalgamate or diversify any business of the Chargor or any part thereof or concur in so doing, lease or otherwise acquire and develop or improve or demolish properties or other assets without being responsible for loss or damage;

- (c) raise or borrow any money (including money for the completion with or without modification of any building in the course of construction and any development or project in which the Chargor was engaged) from or incur any other liability to the Council or others on such terms with or without security as he may think fit and so that any such security may be or include an encumbrance on the whole or any part of the Secured Assets ranking in priority to this security or otherwise;
- (d) sell by public auction or private contract, let, surrender or accept surrenders, grant licences or otherwise dispose of or deal with all or any of the Secured Assets or concur in so doing in such manner for such consideration and generally on such terms and conditions as he may think fit (including conditions excluding or restricting the personal liability of the Receiver or the Council) with full power to convey, let, surrender, accept surrenders or otherwise transfer or deal with such Secured Assets in the name and on behalf of the Chargor or otherwise and so that the covenants and contractual obligations may be granted and assumed in the name of and so as to bind the Chargor if he shall consider it necessary or expedient so to do; any such sale, lease or disposition may be for cash, debentures or other obligations, shares, stock, securities or other valuable consideration and be payable immediately or by instalments spread over such period as he shall think fit and so that any consideration received or receivable shall ipso facto forthwith be and become charged with the payment of all Secured Liabilities; plant, machinery and fixtures may be severed and sold separately from the premises containing them and the Receiver may apportion any rent and the performance of any obligations affecting the premises sold without the consent of the Chargor;
- (e) promote, procure the formation or otherwise acquire the share capital of any body corporate with a view to such body corporate purchasing, leasing, licensing or otherwise acquiring interests in all or any of the Secured Assets or otherwise, arrange for companies to trade or cease to trade and to purchase, lease, licence or otherwise acquire all or any of the Secured Assets on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit;
- (f) make any arrangement or compromise or enter into or cancel any contracts which he shall think expedient;
- (g) make and effect such repairs, renewals, improvements or other alterations to the Secured Assets or any part thereof as he may think fit;
- (h) demolish all or any part of any buildings, structures or fixtures and fittings in and on any Real Property;
- (i) maintain, renew, take out or increase insurances of whatever type (including indemnity insurance) for such amounts and on such terms as he may think fit;
- (j) appoint managers, agents, officers, and employees for any of such purposes or to guard or protect the Secured Assets at such salaries and commissions and for such periods and on such terms as he may determine and dismiss the same;
- (k) without any consent by or notice to the Chargor, exercise on behalf of the Chargor all the powers and provisions conferred on a landlord or a tenant by any legislation from time to time in force relating to rents or otherwise in respect of any part of the Secured Assets but without any obligation to exercise any of such powers and without any liability in respect of powers so exercised or omitted to be exercised;
- (l) settle, arrange, compromise and submit to arbitration any accounts, claims, questions or disputes whatsoever which may arise in connection with the business of the Chargor

or the Secured Assets or any part thereof or in any way relating to the Security, bring, take, defend, compromise, submit to and discontinue any actions, suits, arbitrations or proceedings whatsoever whether civil or criminal in relation to the matters aforesaid, enter into, complete, disclaim, abandon or disregard, determine or rectify all or any of the outstanding contracts or arrangements of the Chargor in any way relating to or affecting the Secured Assets or any part thereof and allow time for payment of any debts either with or without security as he shall think expedient;

- (m) redeem any prior encumbrance and settle and agree the accounts of the encumbrancer; any accounts so settled and agreed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed an expense properly incurred by the Receiver;
- (n) generally, at his option, use the name of the Chargor in the exercise of all or any of the powers hereby conferred;
- (o) apply for, seek, negotiate and renew (whether on the same or different terms) any authorisation, consent, approval, permission, resolution, licence, exemption, filing, notarisation or registration (including any planning permissions and retention of planning permission) necessary or desirable in the opinion of the Receiver for the purposes of or in connection with the Secured Assets or the conduct of the Chargor's business or trade;
- (p) transfer all or any part of the Secured Assets to any other company or body corporate, whether or not formed or acquired for the purpose;
- (q) exercise, or permit the Chargor or any nominees of the Chargor to exercise, any powers or rights incidental to the ownership of the Secured Assets or any part thereof in such manner as he may think fit;
- (r) take any and all steps or other action (including legal proceedings) for the purposes of enforcing, protecting or preserving any contractual rights forming part of the Secured Assets;
- (s) sign any document, execute any deed and do all such other acts and things that the Chargor is entitled or permitted (in each case, whether expressly or implicitly) to sign, execute or do by law;
- (t) conduct investigations, sampling, site studies and testing in respect of all or any part of the Secured Assets and take any and all remedial and removal action as he thinks fit or as required by law;
- (u) to the extent permitted by law, and without prejudice to any other right or power conferred on him by this Charge, exercise all or any of the rights and powers conferred on statutory receivers under Schedule 1 of the National Asset Management Agency Act 2009 (as if references therein to NAMA were references to the Council); and
- (v) sign any document, execute any deed and do all such other acts and things as may be considered by him to be incidental or conducive to any of the matters or powers aforesaid or to the realisation of the Security and use the name of the Chargor for all the above purposes.

12.8 A Receiver shall be entitled to remuneration at a rate to be fixed by agreement between him and the Council (or, failing such agreement, to be fixed by the Council) to the extent permitted by law, being limited to any maximum rate prescribed under section 108(7) of the Act. The

Chargor shall pay all the remuneration and commission and costs and expenses of any Receiver.

13. Liability of the Council in Possession

13.1 If the Council or any Receiver appointed by the Council or any such delegate (or sub-delegate) as aforesaid shall enter into possession of the Secured Assets or any part thereof, the Council may, from time to time at pleasure, go out of such possession.

13.2 The Council shall not, in any circumstances either by reason of any entry by it into, or taking by it of possession of, the Secured Assets or any part thereof or for any other reason whatsoever and whether as mortgagee in possession or on any other basis whatsoever, be liable to account to the Chargor for anything except the Council's own actual receipts or be liable to the Chargor for any loss or damage arising from any realisation by the Council of the Secured Assets or any part thereof or from any act, default or omission of the Council in relation to the Secured Assets or any part thereof or from any exercise or non-exercise by the Council of any power, authority or discretion conferred upon it in relation to the Secured Assets or any part thereof by or pursuant to this Charge or by the Act unless such loss or damage shall be caused by the Council's own fraud or gross negligence.

13.3 All the provisions of clause 13.2 shall apply in respect of the liability of any Receiver of the Secured Assets or any part thereof and in respect of the liability of any such delegate (or sub-delegate) as aforesaid in all respects as though every reference in clause 13.2 to the Council were instead a reference to such Receiver or (as the case may be) to such delegate (or sub-delegate).

13.4 The Chargor shall indemnify the Council and every Receiver against all actions, claims, demands, losses, expenses or liabilities of whatever nature now or hereafter incurred by them or by any officer, agent or employee for whose liability act or omission they or any of them may be answerable for anything done or omitted in the exercise or purported exercise of the powers herein contained or occasioned by any breach by the Chargor of any of its covenants or other obligations to the Council unless such loss or damage shall be caused by the Council's or the Receiver's own fraud or wilful neglect or gross negligence.

14. Delegation of Powers of the Council

The Council may, at any time and from time to time, delegate by power of attorney or in any other manner (including under the hand of any officer of the Council) to any person or persons or company or fluctuating body of persons all or any of the powers, authorities and discretions which are, for the time being, exercisable by the Council under this Charge or under the Act subject to the Act in relation to the Secured Assets or any part thereof, and any such delegation may be made upon such terms and conditions (including power to sub-delegate) and subject to such regulations as the Council may think fit, and the Council shall not be in any way liable or responsible to the Chargor for any loss or damage arising from any act, default, omission, or misconduct on the part of any such delegate (or sub-delegate).

15. Application of Monies

15.1 All money arising from the exercise of the powers of enforcement of the Security shall be applied, subject to compliance with section 109 of the Act, after the discharge of all sums, obligations and liabilities having priority thereto, in the following manner and order:

- (a) in or towards payment of all costs, charges and expenses of and incidental to the appointment of any Receiver hereunder and his remuneration;

- (b) in payment and discharge of any liabilities incurred or payable by the Receiver whether on his own account or on behalf of the Chargor in the exercise of any of the powers of the Receiver including the costs of realisation of the Secured Assets or any part thereof in respect of which he was appointed;
 - (c) in or towards payment of all such costs, charges, losses expenses and other sums as are mentioned in clause 27 (*Costs and Expenses*) and interest thereon;
 - (d) in or towards payment or discharge of the Secured Liabilities in such order as the Council in its absolute discretion may from time to time determine (save that the Council may credit the same to a suspense account for so long and in such manner as the Council may from time to time determine and the Receiver may retain the same for such period as he and the Council consider expedient); and
 - (e) in payment of any surplus to the Chargor or other persons entitled thereto.
- 15.2 All monies from time to time received by the Council from the Chargor or any person or persons or company liable to pay the same or from any Receiver or otherwise on the realisation or enforcement of the Security may be applied by the Council either as a whole or in such proportions as the Council shall think fit to any account or item of account or any transaction to which the same may be applicable.

16. Protection of Buyers

- 16.1 No buyer, mortgagee or other person or company dealing with a Receiver or the Council shall be concerned to enquire whether any Event of Default has occurred or whether any power exercised or purported to be exercised by him or it has become exercisable or whether any money is due on the Security or as to the propriety or regularity of any sale by or other dealing with such Receiver or the Council but any such sale or dealing shall be deemed to be within the powers hereby conferred and to be valid and effectual accordingly and all the protection to buyers contained in Sections 104, 105 and 106(1) of the Act shall apply to any person purchasing from or dealing with a Receiver or the Council.
- 16.2 Without prejudice to the generality of clause 16.1 above, the production of this Charge to the authority, body or other person liable to pay Compensations Rights or other payments to the Chargor shall be a sufficient authority to it or him to pay such compensation and/or other monies to the Council.
- 16.3 The receipt of the Council or any Receiver shall be an absolute and conclusive discharge to a buyer and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Council or any Receiver.
- 16.4 In clauses 16.1 and 16.2 “**buyer**” includes any person acquiring for money or money’s worth, any lease of, or encumbrance over, or any other interest or right whatsoever in relation to, the Secured Assets.

17. Power of Attorney

The Chargor hereby by way of security for the performance of its obligations under this Charge irrevocably appoints the Council, each and every person to whom the Council from time to time shall have delegated the exercise of the power of attorney conferred by this clause 17 and any Receiver and each of them jointly and also severally to be the attorney of the Chargor (with full powers of substitution and delegation) and in its name or otherwise and on its behalf and as its act and deed to sign, seal, execute, deliver, perfect and do all deeds, instruments, acts and things which the Chargor may or ought to do under the covenants and provisions contained in this Charge and generally in its name and on its behalf to exercise all or any of the powers,

authorities and discretions conferred by or pursuant to this Charge or by any statute or common law on the Council or any Receiver or which may be required or which the Council or any Receiver shall deem fit for carrying any sale, lease, charge, mortgage or dealing by the Council or by any Receiver into effect or for giving to the Council or any Receiver the full benefit of these presents and generally to use the name of the Chargor in the exercise of all or any of the powers, authorities or discretions conferred on the Council or any Receiver and the Chargor hereby ratifies and confirms and agrees to ratify and confirm whatsoever any such attorney shall do or purport to do by virtue of this clause 17 and all money expended by any such attorney shall be deemed to be expenses incurred by the Council hereunder. The powers granted to the Council in this clause 17 shall only be exercisable following an Event of Default.

18. Continuing Security

The Security shall be a continuing security for the Secured Liabilities and shall not be considered as satisfied or discharged by any intermediate payment or settlement of any part of the Secured Liabilities but shall constitute and be a continuing security for the Secured Liabilities notwithstanding any settlement of account or other matter whatsoever and is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, lien, pledge, encumbrance, bill, note, mortgage or other security (whether created by the deposit of documents or otherwise) now or hereafter held by or available to the Council for or in respect of the Secured Liabilities or any other liabilities whatsoever and shall not be in any way prejudiced or affected thereby or by the invalidity thereof or by the Council now or hereafter dealing with, exchanging, releasing, varying or abstaining from perfecting or enforcing any of the same or any rights which it may now or hereafter have or giving time for payment or indulgence or compounding with any other person liable.

19. Avoidance of Payments

No assurance, security or payment which may be avoided or adjusted under any applicable law, and no release, settlement or discharge given or made by the Council or any Receiver on the faith of any such assurance, security or payment, shall prejudice or affect the right of the Council or any Receiver to recover from the Chargor (including any monies which it may be compelled by due process of law to refund pursuant to the provisions of any law relating to liquidation, bankruptcy, insolvency or creditors' rights generally and any costs payable by it to or otherwise incurred in connection with such process) or to enforce the Security to the full extent of the Secured Liabilities.

20. Set-Off by Council

Following the occurrence of an Event of Default which has not been expressly waived in writing by the Council, the Council may set off any matured obligation due by the Chargor under the Finance Documents to it against any matured obligation owed by the Council to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. The Chargor shall not have an equivalent right of set-off.

21. Subsequent Charges and New Accounts

If the Council shall at any time receive or be deemed to have received notice of any subsequent mortgage or charge affecting the Secured Assets or any part thereof or any assignment or transfer thereof which is prohibited by the terms of this Charge:

- (a) the Council may open a new account or accounts for the Chargor in its books; and
- (b) if the Council does not in fact open such new account, then unless it gives express written notice to the Chargor to the contrary, the Council shall be treated as if it had in

fact opened such account or accounts at the time when it received or was deemed to have received such notice,

and as from such time and when such express written notice shall be given to the Chargor, all payments by or on behalf of the Chargor to the Council shall be credited or treated as having been credited to such new account or accounts and not as having been applied in reduction of the Secured Liabilities at such time.

22. **Currency Indemnity**

22.1 If any sum due from the Chargor under this Charge or any order or judgment given or made in relation hereto has to be converted from the currency (the “**first currency**”) in which the same is payable hereunder or under such order or judgment into another currency (the “**second currency**”) for the purpose of:

- (a) making or filing a claim or proof against the Chargor;
- (b) obtaining an order or judgment in any court or other tribunal;
- (c) enforcing any such order or judgment; or
- (d) applying the same in satisfaction of any part of the Secured Liabilities,

the Chargor agrees to indemnify and hold harmless the Council from and against any loss suffered as a result of any discrepancy between:

- (i) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency; and
- (ii) the rate or rates of exchange at which the Council is able to purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, judgment, claim or proof or for application in satisfaction of the Secured Liabilities.

22.2 The rate or rates of exchange referred to in clause 22.1 shall be determined by the Council in accordance with applicable market practice and the Council’s certificate as to the amount of any such rate shall be conclusive, save in the case of manifest error.

23. **Severability**

If at any time any one or more of the provisions hereof is or becomes invalid, illegal or unenforceable in any respect under any law or regulation, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of the remaining provisions or the effectiveness of any of the remaining security constituted by this Charge under such law.

24. **Assignment and Transfer**

24.1 The Chargor may not assign, transfer or enter into any trust arrangement with any third party in respect of any of the Chargor’s rights or obligations under this Charge unless agreed in writing by the Council.

24.2 The Council will be entitled to assign any of its rights or novate or transfer all or any of its rights and obligations under this Charge, and the Chargor consents to the assignment, novation or transfer by the Council of all or any of its rights and obligations under this Charge to any

third party. The Chargor will at the Council's expense enter into all documents specified by the Council to be necessary to give effect to any such assignment or transfer.

24.3 The Council may upon giving written notice to the Chargor change its lending office at any time.

24.4 This Charge will be binding upon and ensure for the benefit of the Council and the Chargor's respective successors and the Council's assigns and transferees.

25. **Certificate of the Council Conclusive**

A certificate signed by an officer of the Council as to the amount at any time hereby secured or as to any applicable rate of interest shall, as against the Chargor be conclusive evidence as to the amount thereof.

26. **No Waivers, Remedies Cumulative**

No failure on the part of the Council to exercise, nor any delay in exercising any right, remedy, power or privilege under the Croi Conaithe Agreement, this Charge or any other document will operate as a waiver thereof, nor will any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges under this Charge are cumulative and not exclusive of any such right, remedy, power or privilege that may otherwise be available to the Council.

27. **Costs and Expenses**

Each of the Council and the Chargor shall be responsible for their own respective costs and expenses (including legal fees) incurred by them in connection with the negotiation, preparation and execution of this Charge and any other documents referred to in this Charge **PROVIDED THAT** the Chargor shall, within ten Business Days of demand, pay to the Council the amount of all costs and expenses (including legal fees) incurred by the Council in connection with the enforcement of, or the preservation of any rights under, this Charge.

27.1 The Chargor shall pay all stamp, registration and other taxes (save to the extent that it is exempt from the requirement to pay such taxes) to which this Charge or any judgment in connection herewith is or at any time may be subject and shall indemnify the Council against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying such tax.

27.2 The cost of the Chargor complying with any of its obligations under this Charge (including its obligations under clause 1.1 (*Prescribed Form Charge over Registered Land*) and clause 4 (*Perfection of Security and Further Assurances*)) shall be borne by the Chargor.

28. **Payments Free Of Deduction**

All payments to be made under this Charge shall be made free and clear of any deduction for or on account of tax unless the Chargor is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Chargor in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Council receives and retains (free from any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

29. **Notices**

29.1 Any notice or other communication to be given under or for the purposes of this Charge shall be in writing and shall be treated as properly served or given if hand delivered or sent by registered post or email to the relevant person at the address or email address identified below or such other address or email address as that person has designated in writing from time to time to the person giving the notice:

(a) the Council as follows:

Address: []

Email: []

Attention:

(b) the Chargor at the address given in this Charge or at the last address of the Chargor known to the Council.

29.2 Any such notice or other communication shall be deemed to have been received by the recipient:

(a) in the case of a letter which is hand delivered, when actually delivered and, in the case of a letter which is sent by registered post, on the second day after posting (or on actual receipt, if earlier); or

(b) in the case of transmission by email, at the time of transmission,

provided that any communication or document to be made or delivered to the Council shall be effective only when received by the Council and then only if the same is expressly marked for the attention of the department and officer referred to above (or such other department and officer as the Council may from time to time specify for this purpose).

29.3 Each person making a communication under this Charge by email shall promptly confirm by telephone to the person to whom such communication was addressed each communication made by it by email pursuant to this Charge but the absence of such confirmation shall not affect the validity of any such communication.

30. **The Council's Discretion**

Any liberty or power which may be exercised or any determination which may be made hereunder by the Council or any Receiver may be exercised or made in its or his absolute or unfettered discretion without any obligation to give reasons therefore.

31. **Counterparts**

This Charge may be executed in any number of counterparts and by the different parties to this Charge on separate counterparts, each of which, when executed and delivered, shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

32. **Governing Law and Jurisdiction**

32.1 This Charge, and all non-contractual disputes arising from or connected with this Charge, shall be governed by and construed in accordance with the laws of Ireland.

32.2 The Chargor hereby agrees for the exclusive benefit of the Council that any legal action or proceeding (“**Proceedings**”) brought against it with respect to this Charge may be brought in the High Court in Ireland or such other competent Court of Ireland as the Council may elect and the Chargor waives any objection to Proceedings in such courts whether on the grounds of venue or on the ground that Proceedings have been brought in an inconvenient forum. The Chargor undertakes to enter an unconditional appearance within 14 days after the completion of any service or process in any Proceedings. The Chargor hereby consents to the service by post of any process issued in that jurisdiction. Nothing herein shall affect the right to serve process in any other manner permitted by law.

33. **Definitions and Interpretation**

33.1 In this Charge (including the Recitals), all terms and expressions shall, unless otherwise defined in this Charge or the context requires otherwise, have the meaning attributed to such terms in the Croi Conaithe Agreement (whether defined expressly therein or by reference to another document).

33.2 In this Charge (including the Recitals), the following expressions shall, unless the context otherwise requires, have the following meanings:

- (a) “**Act**” means the Land and Conveyancing Law Reform Act 2009;
- (b) “**Ancillary Rights**” means all covenants, agreements, charges, indentures, acknowledgements, undertakings, warranties, bonds, guarantees, indemnities, encumbrances, licences, permissions, consents and authorisations (statutory or otherwise) held by the Chargor (or in respect of which the Chargor has the benefit) in connection with the use or the development of the Real Property (or any part thereof) including the full benefit of:
 - (i) any covenant, agreement or undertaking for road making or the provision of services or for the payment of road charges or expenses incurred with or in connection with the provision of services or the like in respect of the Real Property and any indemnity against payment of any such charges or expenses;
 - (ii) any and every licence, warranty, covenant, agreement, guarantee or indemnity in respect of the construction, repair and maintenance of the Real Property or any property enjoyed in the Real Property the benefit of which is enjoyed by the Chargor;
 - (iii) any other covenant, agreement, undertaking, charge, right, remedy, indemnity, warranties or representations in relation to the Real Property;
 - (iv) any lease, any tenancy or licence of all or any part of the Real Property including any guarantees or indemnities, security deposits or other security available to the Chargor in respect of any such leases or occupational leases and any licences or consents to assign or otherwise in relation to such leases, tenancies and licences and any rent payable thereout or charge thereon and any service charges, management charges, fines, insurance and other premiums and any other monies payable out of any lease, tenancy or licence (including all occupational tenancies) of any part of the Real Property, whether such lease, tenancy or licence or occupational tenancy is created prior to or subject to this Charge;
- (c) “**Claims**” means all book and other debts and monetary claims constituting a part of or deriving from the Secured Assets;

- (d) **“Compensation Rights”** means all rights of the Chargor to be paid or receive compensation under any statute or enactment by reason of any compulsory acquisition or other exercise of compulsory or similar powers in relation to all or any part of the Real Property by any local or other authority or government agency or body or any refusal, withdrawal or modification of any planning permission or approval relative thereto or any control or limitation imposed upon or affecting the use of all or any part of the Real Property;
- (e) **“Default Rate”** means the rate per annum determined by the Council from time to time to be two per cent higher than the rate which would have been payable if the overdue amount had, during the period of non-payment constituted a Loan;
- (f) **“Environment”** means the environment generally including all of its physical and ecological aspects including:
 - (i) land including the sea bed and any natural or man-made structures;
 - (ii) water including rivers, lakes (man-made or natural), canals, the ocean (whether within or without territorial waters), ground waters and waters in drains and sewers; and
 - (iii) air including air within buildings and other natural and man-made structures above or below ground;
- (g) **“Environmental Law”** means all and any applicable law, including common law, statute, bye-law and subordinate legislation, customary law, regulations and directives and judgments and decisions, including notices, orders or circulars, of any court or authority competent to make such judgement or decision compliance with which is mandatory for the Chargor in any jurisdiction with regard to Environmental Matters and protection of the Environment and all regulations, bye-laws, orders, decisions and codes made thereunder;
- (h) **“Environmental Matters”** means any matter arising out of, relating to, or resulting from:
 - (i) the pollution or protection of the Environment;
 - (ii) harm to the health of humans, animals or plants including laws relating to public and workers’ health and safety;
 - (iii) emissions, discharges or releases into the Environment of chemicals or any other pollutants or contaminants or industrial, radioactive, dangerous, toxic or hazardous substances or waste (whether in solid, semi-solid, liquid or gaseous form and including noises and genetically modified organisms); or
 - (iv) the manufacture, processing, use treatment, storage, distribution, disposal, transport or handling of the substances or wastes described in (iii) above.
- (i) **“Environmental Permits”** mean all and any permits, licences, consents, approvals, certificates, qualifications, specifications, registrations and other authorisations including any conditions which attach to any of the foregoing and the filing of all notifications, reports and assessments required under Environmental Laws for the operation of any business from or using any of the Secured Assets or the occupation or use of all or any of the freehold, leasehold or immovable property of the Chargor;

- (j) **“Event of Default”** means:⁶
- (i) any breach by the Chargor of its covenants, representations or obligations in the Croi Conaithe Agreement which is not remedied within 10 Business Days;
 - (ii) 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;
 - (iii) if any judgment or order made against the Chargor 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;
 - (iv) if the Chargor stops payment or declares a moratorium or becomes or is deemed to be insolvent or unable to pay its debts as and when they fall due or the Chargor proposes or enters into any composition or arrangement with its creditors generally or any class of its creditors;
 - (v) if the Chargor commits an act of bankruptcy, enters into a personal insolvency arrangement 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;
 - (vi) any other event, howsoever described, specified in the Croi Conaithe Agreement or in this Charge or in any other document or arrangement from time to time entered into by the Chargor and the Council as an event upon the occurrence of which the Council becomes entitled to call for early repayment of all or any part of the Secured Liabilities or to call for the provision of full or partial cash collateral in respect of any of the Secured Liabilities which are at such time contingent; or
 - (vii) any failure by the Chargor to pay or repay on demand all or any part of the Secured Liabilities which are so payable;
- (k) **“Grant”** has the meaning given to that term in Recital (A);
- (l) **“Finance Documents”** means the Croi Conaithe Agreement and this Charge;
- (m) **“Insurances”** means:
- (i) any contracts and/or policies of insurance pertaining to the Secured Assets which are, from time to time, taken out by or on behalf of the Chargor or (to the extent of such interest) in which the Chargor has an interest; and
 - (ii) all contracts or policies of insurance entered into in replacement, renewal or substitution of such contracts or policies of insurance,
- and all claims, Insurance Proceeds and returns of premia of each such contract or policy;
- (n) **“Insurance Proceeds”** means all proceeds of insurance claims other than claims monies payable under any public liability or employer’s liability insurance direct to a third party in or towards discharge of a liability of the Chargor to such third party;

⁶ To be considered the individual EOD’s that would trigger enforcement

- (o) **“Intercreditor Agreement”** means [an intercreditor agreement dated on or about the same date as this Deed/to be entered into] and made between (1) the Chargor, (2) the Council and (3) [the Senior Lender].⁷
- (p) **“Leases”** means each occupational lease, agreement to lease, licence or right to occupy, granted by the relevant local authority, to which the Real Property (or any part thereof) may be subject from time to time and **“Lease”** means any of them;
- (q) **“Lessees”** means each lessee, sub-lessee, tenant, licensee or any other party having a right of occupation under a Lease and **“Lessee”** means any of them;
- (r) **“Occupational Lease”** means any lease, agreement for lease, or other tenancy arrangement pursuant to which any person is granted possession of any part of the Real Property;
- (s) **“Permitted Security”** means:
 - (i) the Senior Charge;
 - (ii) this Charge.
- (t) **“Planning Acts”** means the Planning and Development Acts 2000 to 2015 and the Building Control Acts 1990 and 2014 and any regulations issued pursuant thereto;
- (u) **“Prescribed Form”** means the form of charge set out in the Sixth Schedule (or such other form of charge as, in the opinion of the Council, may be required at law to charge registered land);
- (v) **“Prescribed Form Charge”** means a charge in the Prescribed Form entered into or to be entered into by the Chargor in favour of the Council;
- (w) **“Real Property”** means the Secured Premises and all that property referred to in clause 1.1 (*Prescribed Form Charge over Registered Land*) and each and every part thereof;
- (x) **“Receiver”** means any one or more receivers and/or managers appointed by the Council in respect of the Chargor or over all or any part of the Secured Assets;
- (y) [**“Rent”** means the aggregate of present and future amounts payable to or for the benefit of the Chargor in respect of the Secured Premises from time to time;]⁸
- (z) **“Secured Assets”** means the undertaking and assets of the Chargor both present and future charged or mortgaged in favour of, or assigned (whether at law or in equity) to the Council by or pursuant to this Charge (each a **“Secured Asset”**, together the **“Secured Assets”**);
- (aa) **“Secured Liabilities”** means all monies, obligations and liabilities (including in respect of principal, interest, commission, discounts, fees, costs and expenses) which now are or hereafter may be or become due, owing or incurred by the Chargor to the Council in any manner whatever (whether actual or contingent, whether solely or jointly or jointly and severally with one or more persons, under the Croi Conaithe Agreement or otherwise, in whatever style or name and whether as principal or as surety or in some other capacity, whether originally incurred by it or by some other person and whether originally due owing or incurred by the Chargor to the Council or some other

⁷ TBC but likely to be required with a mortgage provider in most cases.

⁸ TBC whether rent to be captured by the charge

- (f) “**value added tax**” shall be construed so as to include any similar tax which may be imposed from time to time; and
 - (g) the “**winding-up**”, “**dissolution**” or “**examinership**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which a company or corporation is incorporated or any jurisdiction in which a company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, examinership, administration, arrangements, adjustment, protection or relief of debtors.
- 33.4 Any reference in any Prescribed Form Charge to:
- (a) the “Mortgage/Charge of even date” shall be construed as a reference to this Charge;
 - (b) the “Mortgage Conditions” shall be construed as a reference to the terms, conditions, covenants and obligations as are set out in to this Charge;
 - (c) the “Mortgaged Property” shall be construed as a reference to that part of the Secured Premises as comprises registered land and which is described in such Prescribed Form Charge;
 - (d) the “Mortgagor” shall be construed as a reference to the Chargor; and
 - (e) the “Secured Party” shall be construed as a reference to the Council.
- 33.5 Any reference in this Charge, or in any other document or agreement (including, without limitation, the Croi Conaithe Agreement), to this Charge shall be construed so as to include each Prescribed Form Charge.
- 33.6 Save where the contrary is indicated, any reference in this Charge:
- (a) to any statute or provision of any statute shall be deemed also to refer to any statutory modification, substitution or re-enactment thereof or any statutory instrument, order, regulation, bye-law, permission or direction made thereunder or under such modification, substitution or re-enactment;
 - (b) to this Charge or to any other agreement or document (including the Croi Conaithe Agreement) shall be construed as a reference to this Charge or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, restated, varied, novated, assigned, substituted, supplemented or otherwise modified from time to time (and so that any reference to this Charge shall include, unless the context otherwise requires, any agreement or document expressed to be supplemental hereto or expressed to be collateral herewith or which is otherwise entered into pursuant to or in accordance with the provisions hereof); and
 - (c) to a “**person**” or “**persons**” include individuals, firms, corporations, government agencies, authorities and other bodies, incorporated or unincorporated and whether having direct legal personality or not.
- 33.7 This Charge is subject to the terms of any Intercreditor Agreement. In the event of any conflict or inconsistency between the terms of this Charge and the Intercreditor Agreement, the terms of the Intercreditor Agreement shall prevail.
- 33.8 Notwithstanding any other provision of this Charge, the parties acknowledge and agree that the Chargor enters into this Charge subject to the Senior Charge (and for the duration of the Security Period (as defined in the Senior Charge)). No Event of Default will occur in respect of

any failure to comply with a provision of this Charge where the Chargor is solely not able to comply with the relevant provision of this Charge due to a provision in the Senior Charge.

- 33.9 Clause and schedule headings are for ease of reference only.
- 33.10 Words denoting the singular number shall include the plural number also and vice versa.
- 33.11 In this Charge, the words “**include**”, “**includes**” and “**including**” shall not be given a restrictive meaning and shall be deemed to be followed, in each case, by the phrase “**without limitation**”.

**FIRST SCHEDULE
(Secured Premises)¹⁰**

[•]

¹⁰ Insert full legal description of the property for PRAI registration purposes

SIXTH SCHEDULE
(Prescribed Form Charge)

FORM 49

Charge for a principal sum (Rules 52 and 105)

LAND REGISTRY

County

Folio

Charge dated the _____ day of _____ 2022.

[_____] (the “**Chargor**”), as beneficial owner and the registered owner, (*or* the person entitled to be registered as owner) in consideration of [_____] euro (€ [INSERT AMOUNT IN WORDS]) paid to him/her by [_____] (the “**Council**”), hereby charges all the property described in folio _____ of the register County _____ with payment to the Council on the _____ day of _____ 2022, of the principal sum of euro (€ _____) (the “**Principal Sum**”) with interest thereon at [_____] per cent per annum which said sum shall be rolled up and capitalised on the Principal Sum , and A.B. hereby covenants for payment of the Principal Sum together with interest thereon and assents to the registration of the charge as a burden on the said property.

This Charge incorporates the Mortgage Conditions in Mortgage/Charge of even date between the parties herein, as if they were set out in this Charge in full.

The Chargor acknowledged that the charge hereby created forms one transaction with the security created in the aforesaid Mortgage/Charge of even date for payment of the Principal Sum.

The address in the State of the Council. for service of notices, and its description are:-
*[[Address] and Local Authority *(give address and description)*

Signed (*or*, Signed, sealed) and delivered
by the Chargor.
in the presence of:-

PRESENT when the seal of
[_____] **COUNCIL**
was affixed hereto:

Cathoirleach
Or

Person nominated pursuant to Section 11
(8) of the Local Government Act 2001

Signatures:

SIGNED AND DELIVERED as a deed by the
MORTGAGOR in the presence of

Signature of witness:

.....

Name of witness:

.....

Address of witness:

.....

Occupation of witness:

.....

Mortgagor

IN WITNESS whereof the parties have executed and delivered this Charge as a deed the day and year first herein written.

THE CHARGOR

SIGNED AND DELIVERED as a deed by the
MORTGAGOR in the presence of

Signature of witness:

.....

Name of witness:

.....

Address of witness:

.....

Occupation of witness:

.....

Mortgagor

THE COUNCIL¹¹

PRESENT when the seal of
[] **COUNCIL**
was affixed hereto:

Cathairleach
Or

Person nominated pursuant to Section 11
(8) of the Local Government Act 2001

¹¹ Execution block modelled on the block proposed for ADPA's - to be confirmed by HA.