
MODEL DEED OF GUARANTEE AND INDEMNITY

Prepared by
The Steering Committee of the Project on
Standardization of Mortgage Origination Documents in Hong Kong

Convened by
The Hong Kong Mortgage Corporation Limited



Project on Standardization of Mortgage Origination Documents in Hong Kong

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Hong Kong Bar Association

Hong Kong Monetary Authority

The Land Registry

The Law Faculty of The University of Hong Kong

The Law Society of Hong Kong

Planning and Lands Bureau

The Steering Committee of the Project on Standardization of Mortgage Origination Documents in Hong Kong

July 2001

Project on Standardization of Mortgage Origination Documents in Hong Kong (the “Project”)

Guidance Notes to the Deed of Guarantee and Indemnity (the “Guarantee”)

1. The Guarantee is a standard form of guarantee and indemnity prepared by the Steering Committee of the Project.
2. **Each member of the Steering Committee of the Project expressly disclaims any liability to the fullest extent possible for the contents of the Guarantee, any loss, damage or claim suffered or incurred by any mortgage lender or any other person in connection with, arising from or in reliance on, the whole or any part of the Guarantee. Any mortgage lender or any other person proposing to use the Guarantee must seek its own legal advice as to the suitability of the Guarantee for its intended purposes.**
3. The Guarantee is only a recommended form of guarantee and indemnity. It is voluntary and not mandatory for the mortgage lender and the guarantor to adopt the Guarantee. In deciding whether to adopt the Guarantee, the mortgage lender should consider whether the Guarantee is compatible with its operational procedures and the complexity of the loan transaction.
4. If any mortgage lender wishes to adopt the Guarantee, it should adopt the Guarantee in whole. Any modification or amendment made to the Guarantee should be drawn to the attention of the guarantor, and it should be made clear to the guarantor that the modified or amended form used is not the standard form of the Guarantee as approved by the Steering Committee.
5. The Guarantee provides a guarantee and indemnity in respect of mortgage loan(s) granted by the mortgage lender by way of offer letter(s) and secured by a charge over the mortgaged property (details of the offer letter(s) and the mortgaged property are set out in the Schedule to the Guarantee). However, one distinctive feature of the Guarantee is that the guarantor’s liability is limited to the specified amount of the mortgage loan plus interest, costs and expenses. If the mortgage lender wishes to extend the guarantor’s liability to cover additional loans, any banking, credit, other facilities or accommodation which may be offered by the mortgage lender to the borrower from time to time, **it must seek the written consent of the guarantor in respect of any such additional loans, or banking, credit or other facilities or accommodation.**
6. The Guarantee is a form which can be executed by either an individual or a corporate guarantor.
7. The name(s) and other details of the mortgage lender and the guarantor should be completed in the appropriate blanks on page 4 of the Guarantee.
8. The Schedule to the Guarantee contains a number of blank spaces for filling in the details of the mortgaged property, the borrower, brief terms of the offer letter(s), the interest rate for unpaid costs and expenses incurred in connection with the Guarantee and contact details of the parties.
9. As default interest is already chargeable, pursuant to the relevant offer letter(s) or mortgage deed, on the outstanding debt and liabilities guaranteed under the Guarantee, default interest is not charged under the Guarantee so as to avoid double charging of default interest.
10. Interest will be charged on any unpaid costs and expenses incurred in connection with the Guarantee, and the interest rate should be specified in the Schedule to the Guarantee.

11. In order to comply with the Personal Data (Privacy) Ordinance, the mortgage lender should (to the extent not already done so):
 - (a) supply the guarantor with a leaflet containing the latest data privacy statement adopted by the mortgage lender before the guarantor signs the Guarantee; or
 - (b) take the guarantor through the latest data privacy statement adopted by the mortgage lender before the guarantor signs the Guarantee.
12. **Before the guarantor signs the Guarantee**, the mortgage lender or its solicitors should advise the guarantor to read through the Guarantee and the **Important Notice** on the front page of the Guarantee. The mortgage lender should advise the guarantor that he/she is entitled to seek independent legal advice from solicitors of his/her choice if he/she wishes to understand the legal commitments he/she will assume by signing the Guarantee.
13. The guarantor should only sign on the execution page of the completed English version of the Guarantee, and not on the Chinese translation which is not a document for signing and is only intended to provide the guarantor with a translation of the terms and contents of the Guarantee.

**The Steering Committee of the Project on
Standardization of Mortgage Origination Documents in Hong Kong**

July 2001

DEED OF GUARANTEE AND INDEMNITY

Important Notice:

This Guarantee is an important legal document. Before signing this Guarantee, you should read this Guarantee carefully. You have the right to seek independent legal advice from solicitors of your own choice to make sure you understand your commitment and the full consequences of your signing this Guarantee.

This Guarantee is a legally binding document. You should sign this Guarantee only if you agree to be legally bound by its terms.

If you sign this Guarantee, you will become liable instead of, or as well as, the Borrower under the Mortgage. Your liability under this Guarantee will be limited to:

- (a) the amount of the Loan owing by the Borrower;
- (b) the amount of any Additional Loan we have lent the Borrower with your written consent;
- (c) all costs and expenses payable by the Borrower under the Mortgage;
- (d) the Expenses payable by you under this Guarantee; and
- (e) all interest, default interest, late charges and other charges charged on any of the above sums.

You will be required to pay immediately under this Guarantee on written demand from us. You acknowledge that before signing this Guarantee you have been advised to seek independent legal advice on the terms of this Guarantee. You also acknowledge that you have been provided with a copy of the Mortgage, the Mortgage Conditions and any agreement in relation to the Loan.

You may give us one (1) month's notice in writing to terminate this Guarantee. On the expiry of such notice, your liability will be limited to such amount for which you are actually or contingently liable under this Guarantee as at the date of expiry together with any further costs, expenses, interest, default interest, late charges and other charges payable by the Borrower up to the date of actual payment and the Expenses payable by you, regardless whether we have made a demand for payment against you prior to such expiry. Your liability under this Guarantee will only extinguish when you have fully paid us all such amounts due under this Guarantee.

The Hong Kong Mortgage Corporation Limited consents to the use, reproduction and distribution to the general public of this Guarantee in its entirety by any person on a not-for-profit basis. Sale or distribution otherwise than in accordance with the above conditions is strictly prohibited. The Hong Kong Mortgage Corporation Limited and each member of the Steering Committee of the Project on Standardization of Mortgage Origination Documents in Hong Kong expressly disclaim any liability to the fullest extent possible for the contents of this Guarantee, any loss, damage or claim suffered or incurred by any mortgage lender or any other person in connection with, arising from or in reliance on, the whole or any part of this Guarantee. Any mortgage lender or any other person proposing to use this Guarantee must seek its own legal advice as to the suitability of this Guarantee for its intended purpose.

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CONTENTS

Clause	Page No.
1. Definitions	4
2. Consideration	6
3. Guarantee	6
4. Indemnity	6
5. Limit of your liability.....	6
6. Guarantee and indemnity independent of any other guarantee or security	6
7. Postponement of your rights	7
8. Deductions from other credit balances and lien.....	7
9. Our claim against the Borrower	7
10. Continuing guarantee and indemnity	8
11. Suspense account	8
12. Our actions or omissions not affecting your liability	9
13. Effects of bankruptcy or insolvency laws.....	9
14. Payments without deduction	9
15. Application of payments	9
16. Binding effect of signing this Guarantee	10
17. Change of our organization structure	10
18. Joint and several liability.....	10
19. Evidence of the Borrower Liability and the Guarantor Liability	10
20. Interest on Expenses.....	10
21. Your provision of correct information	11
22. Notices and demands	11
23. Other general matters	11
24. Disclosure of your information	12
25. Assignment or transfer of rights and obligations.....	12
26. Severability	12

Clause	Page No.
27. Termination	12
28. Payment in other currencies	12
29. Governing law and jurisdiction	13
30. Language	13
The Schedule	14

THIS DEED OF GUARANTEE AND INDEMNITY is made on []

Between

you: [Name of the guarantor] of *Hong Kong identity card number⁽¹⁾/passport number⁽¹⁾/business registration number⁽²⁾/company number⁽²⁾: [], with *home address⁽¹⁾/registered office in Hong Kong⁽²⁾/principal place of business in Hong Kong⁽²⁾ at [].

we: [Name of the bank] with *registered office in Hong Kong/principal place of business in Hong Kong at [].

IT IS HEREBY AGREED as follows:

1. Definitions

1.1 In this Guarantee, the following words or expressions shall have the following meanings:

Additional Loan means the principal amount of any money subsequently advanced to or any liabilities subsequently incurred by and owing by the Borrower in addition to the Loan;

Borrower means the party denoted as “Borrower” in the Schedule and includes the Borrower’s successors and assigns;

Borrower Liability means all the money and liabilities due, owing or incurred by the Borrower to us;

Debt means the aggregate of the outstanding amounts from time to time of the following:

- (a) the Loan;
- (b) all costs and expenses payable by the Borrower under the Mortgage;
- (c) any Additional Loan which we have granted to the Borrower with your written consent; and
- (d) all interest, default interest, late charges and other charges charged on any of (a), (b) and (c),

and includes any part of the Debt;

Expenses means any reasonable costs and expenses (including legal costs) which we incur under or in connection with this Guarantee and includes interest charged on the Expenses;

Guarantee means this Guarantee and Indemnity entered into between yourself(ves) and ourselves;

* Delete as appropriate.

⁽¹⁾ Only applicable where the guarantor is an individual person.

⁽²⁾ Only applicable where the guarantor is a corporation or firm.

Guarantor Liability	means all of the liabilities under this Guarantee (i.e., your liability in respect of the Debt and the Expenses under this Guarantee) due, owing or incurred by you to us from time to time;
Hong Kong	means the Hong Kong Special Administrative Region of the People’s Republic of China;
Loan	means the banking, credit, or other facilities or accommodation which we have advanced or will advance to the Borrower pursuant to the terms of the offer letter(s) briefly summarized in the Schedule and which are secured by the Mortgage;
Mortgage	means a mortgage or charge over the Property executed in our favour and securing repayment of the Debt and other money and liabilities due, owing or incurred by the Borrower to us;
Mortgage Conditions	means the Mortgage Conditions (2001 Edition) incorporated into the Mortgage;
person	means any individual, company, corporation, trust, partnership, or firm and includes successors and assigns;
Property	means the property charged under the Mortgage as more particularly described in the Schedule;
security	means any instrument or collateral given to secure payment/repayment of any debt, liability or obligation and includes, but is not limited to, any charge, mortgage, guarantee, pledge and lien;
we	means the party denoted as “we” to this Guarantee and includes successors and assigns; and us, our, ourselves and ours shall be construed accordingly;
you	means the party denoted as “you” to this Guarantee and includes successors and assigns; and your, yours and yourself(ves) shall be construed accordingly.

1.2 In this Guarantee:

- (a) “he” shall include “she” and “it”, and “his” shall include “her” and “its”;
- (b) the singular shall include the plural, and the plural shall include the singular;
- (c) headings shall be for ease of reference only and shall not form part of this Guarantee;
- (d) unless otherwise expressly stated, any reference to a numbered clause or schedule shall be a reference to the clause or the schedule with that number in this Guarantee;
- (e) all references to time and date shall be the time and date in Hong Kong;
- (f) any reference to a document shall include that document as amended, supplemented or replaced from time to time; and

- (g) references to any statutory provision shall be deemed also to refer to any statutory modification, supplement or re-enactment of such statutory provision or to any statutory instrument, order or regulation made under any of them.

2. Consideration

- 2.1 You request us to grant or to continue to grant the Loan to the Borrower.
- 2.2 In consideration of our agreeing to grant or continuing to grant the Loan to the Borrower, you agree to provide us with a guarantee and an indemnity under this Guarantee.

3. Guarantee

- 3.1 You guarantee that the Debt shall be paid when it becomes due and payable by the Borrower under the Mortgage.
- 3.2 You undertake to pay the Debt immediately on written demand from us when it has become due and payable by the Borrower. Once a demand is made, you shall be liable to pay the amount of the Debt from time to time outstanding.
- 3.3 You undertake to pay the Expenses immediately on written demand from us.
- 3.4 You agree that before we demand payment of the Debt or the Expenses from you, we do not need to demand payment from the Borrower first or to take any other action to obtain payment (such as selling the Property or any other security we hold).

4. Indemnity

- 4.1 You agree to be liable to us as if you were the principal debtor for the whole amount of the Debt. This means that you shall have a primary and direct obligation to pay the Debt even if you will not be liable to do so as a guarantor. It is irrelevant whether we know, before or after your giving this Guarantee, of any reason why the Debt cannot be recovered from you under the guarantee given in clause 3.
- 4.2 Your obligation under clause 4.1 is separate from and independent of, and in addition to, the guarantee given in clause 3, and you undertake to pay the whole amount of the Debt immediately on written demand from us.

5. Limit of your liability

- 5.1 This Guarantee shall be a guarantee and an indemnity of the full amount of the Debt and the Expenses. However, you will not be liable to us under this Guarantee in relation to any Additional Loan unless you have given your prior written consent to the Additional Loan being made, or unless you later agree in writing to be liable for it.
- 5.2 If you do not however consent in writing to the Additional Loan being made, you shall not be entitled to prevent us from making the Additional Loan to the Borrower.
- 5.3 If we make the Additional Loan without your written consent, this shall not affect your liability to repay the Debt (less that Additional Loan) to us.

6. Guarantee and indemnity independent of any other guarantee or security

- 6.1 This Guarantee shall be independent of, and in addition to, any other security (including the Mortgage) which we presently hold or may in the future hold in relation to the Debt.

- 6.2 If we have any other security in relation to the Debt, we shall be entitled to choose which security we wish to enforce and the order of enforcement.
- 6.3 We shall not be obliged to enforce any other security or to take any other steps or proceedings before we enforce this Guarantee.

7. Postponement of your rights

- 7.1 Until the Guarantor Liability has been paid in full, you shall not, without our prior written consent, be entitled to:
- (a) exercise or enforce any rights (including any right of set-off) against the Borrower, any co-guarantor or any other security provider for the Borrower Liability;
 - (b) pursue any claim against the Borrower, any co-guarantor or any other security provider for the Borrower Liability;
 - (c) make a claim in competition with us in the bankruptcy or insolvency of the Borrower, any co-guarantor or any other security provider for the Borrower Liability; or
 - (d) have the benefit of any payment, distribution or security from the Borrower, any co-guarantor or any other security provider for the Borrower Liability, and you must pay us any money you receive in breach of the above and in the meantime shall hold it on trust for us.
- 7.2 Unless we give our prior written consent, you shall not hold any security for the Guarantor Liability from the Borrower, any co-guarantor or any other security provider for the Borrower Liability. You shall give us the benefit of any security held by you in breach of this clause 7.2, and pay us all money you receive in respect of such breach and in the meantime shall hold it on trust for us.

8. Deductions from other credit balances and lien

You agree that if you fail to pay any part of the Guarantor Liability, we shall be entitled to do the following things without giving prior notice to you or any other person:

- (a) use any credit balance in any of your accounts (whether in your own name or in joint names) with us to pay such unpaid sum to us;
- (b) off set such unpaid sum against any debt or liability we owe you now or in the future;
- (c) have a lien on all of your property held by us; and
- (d) sell any of your assets held by us at such price and in such manner at our sole discretion, and use the proceeds to pay such unpaid sum.

9. Our claim against the Borrower

If the Borrower becomes bankrupt or enters into an arrangement with his creditors or is wound up or has a receiver appointed over his business or assets, we shall be entitled to make a claim against the Borrower's assets for the full amount of the Borrower Liability even if you have already made a part payment of the Debt to us under this Guarantee. Any dividends or payments which we may receive from the Borrower or his estate or any other person shall not affect our right to recover the remaining balance of the Guarantor Liability from you under this Guarantee.

10. Continuing guarantee and indemnity

This Guarantee shall continue until the full payment of the Guarantor Liability. This means that your obligations under this Guarantee shall not be discharged or affected by the occurrence of any of the following events:

- (a) you have paid part of the Guarantor Liability outstanding from time to time;
- (b) if the Borrower is a partnership or any other organization, there is any change in the name or membership or constitution of the partnership or organization (in such case, this Guarantee shall continue to apply to the Debt owed to us by those persons who make up the partnership or the organization as so constituted for the time being);
- (c) the Borrower's death, mental incapacity, bankruptcy, insolvency or liquidation (where applicable) (in such case, you shall be liable for the Debt as if none of such events had ever happened);
- (d) the Borrower being taken over by or merged with any other organization or having a receiver appointed over his business or assets (in such case, you shall be liable for all of the Debt outstanding when we come to know of any such events);
- (e) your death, mental incapacity, bankruptcy, insolvency or liquidation (where applicable) or change of name;
- (f) your being taken over by or merged with any other person or having a receiver appointed over your business or assets;
- (g) the sale of the Property or any other security we hold;
- (h) the Borrower Liability becoming for any reason not recoverable from the Borrower; or
- (i) any act, omission, event or circumstance which will or may operate to prejudice, affect or discharge this Guarantee or the Guarantor Liability had this clause 10 not existed.

11. Suspense account

- 11.1 When the Debt has become due and payable by the Borrower under the Mortgage and until the Guarantor Liability has been paid in full, we shall be entitled to hold any money we receive under this Guarantee (other than such amount as shall wholly satisfy the Guarantor Liability) in a suspense account in order to preserve the full amount of our claims against you, the Borrower, any co-guarantor or any other security provider for the Borrower Liability.
- 11.2 If we have not already done so pursuant to clause 11.1 at the time when we receive notice or become aware that this Guarantee has been terminated or ceased to be binding as a continuing guarantee, as from that time, all money we receive under this Guarantee shall be treated as having been credited to a suspense account in order to preserve the full amount of our claims against you, the Borrower, any co-guarantor or any other security provider for the Borrower Liability, and shall not operate to reduce the amount of the Borrower Liability.
- 11.3 Amounts standing to the credit of a suspense account pursuant to clause 11.1 or a deemed suspense account pursuant to clause 11.2 shall bear interest at our prevailing rate for deposit accounts with a similar credit balance from time to time.

12. Our actions or omissions not affecting your liability

From time to time, we may:

- (a) give the Borrower, any co-guarantor or any other security provider more time to pay money due and payable;
- (b) vary, extend, release, reduce, exchange, increase, accelerate, renew or discharge any obligations or liabilities of the Borrower, any co-guarantor or any other security provider;
- (c) make any other arrangement, compromise or settlement with the Borrower, any co-guarantor or any other security provider;
- (d) take or deal with any security or legal commitment for the Borrower Liability; or
- (e) fail to take any security or legal commitment for the Borrower Liability, neglect, release, enforce or choose not to enforce our rights under the Mortgage, this Guarantee or any other security or legal commitment for the Borrower Liability.

If we do carry out any of the above acts in this clause 12 or do or fail to do anything else, this shall not affect our rights or your liability under this Guarantee, even if it would have done so had this clause 12 not existed.

13. Effects of bankruptcy or insolvency laws

- 13.1 If we receive any payment or security in respect of the Borrower Liability or the Guarantor Liability from you or the Borrower or any other person, and are later obliged under any bankruptcy or insolvency laws to restore our position to what it would have been if no such payment or security had been received, then you shall be liable under this Guarantee as if we had never received such payment or security.
- 13.2 We shall be entitled, before any order under those bankruptcy or insolvency laws is made against us in respect of the Borrower Liability, to agree or settle any claim arising under those laws on any terms as we think fit and without your prior consent.
- 13.3 If we do agree or settle a claim pursuant to clause 13.2, you shall be liable under this Guarantee as if a court order had been made containing the terms we have agreed in relation to that claim.

14. Payments without deduction

- 14.1 Each payment made by you under this Guarantee shall be made without any deduction of any tax or similar charge unless you are obliged by law to make such deduction. If you need to make such deduction, you shall pay us such extra sum as necessary to ensure that we receive the full amount due from you under this Guarantee.
- 14.2 Each payment made by you under this Guarantee shall be made without any deduction of any sum we owe you, and you shall pay us such amount as demanded by us from time to time.

15. Application of payments

Any payment received by us under this Guarantee shall, subject to clause 11, be applied in the following order towards payment of:

- (a) first, the Expenses;

- (b) secondly, outstanding accrued interest on the Loan and any applicable Additional Loan;
- (c) thirdly, default interest on the Loan and any applicable Additional Loan;
- (d) fourthly, late charges and other charges on the Loan and any applicable Additional Loan; and
- (e) fifthly, principal amounts of the Loan and any applicable Additional Loan.

16. Binding effect of signing this Guarantee

You shall be bound by this Guarantee even if:

- (a) someone else was supposed to, but did not, sign or execute this Guarantee or become effectively bound by the terms of this Guarantee; or
- (b) any security or other legal commitment given by any person in respect of the Borrower Liability is invalid, illegal or unenforceable.

17. Change of our organization structure

Your obligations under this Guarantee shall not be affected by:

- (a) any change in the name or constitution of ourselves or our successors or assigns;
- (b) the takeover of ourselves by, our absorption of, or our merger with, any other bank or institution; or
- (c) any assignment of the Borrower Liability, any transfer of the Mortgage or this Guarantee, or any declaration of trust or other acts affecting our rights in respect of the Borrower Liability, the Mortgage or this Guarantee.

18. Joint and several liability

18.1 If there is more than one of you, this Guarantee shall bind all of you jointly and each of you. We shall be entitled to discharge or come to an arrangement with any of you on any terms as we may agree without affecting our rights and remedies against the others.

18.2 If there is more than one of you, each of you shall be bound by this Guarantee separately even if it is unenforceable against all or any of you.

19. Evidence of the Borrower Liability and the Guarantor Liability

A certificate duly signed by our officer as to the amount of the Borrower Liability or the Guarantor Liability or any interest rate is conclusive evidence against you for all purposes in the absence of obvious error or fraud.

20. Interest on Expenses

If you fail to pay any Expenses on our written demand, you shall pay us interest at such rate as specified in the Schedule on the unpaid amount from the date(s) on which the Expenses were incurred until the date of actual repayment.

21. Your provision of correct information

- 21.1 You confirm that to the best of your knowledge all the information (including your personal data and financial information) you have given us in connection with this Guarantee is true, accurate and complete.
- 21.2 You shall inform us as soon as possible in writing of any changes to any information you have given us in connection with this Guarantee.

22. Notices and demands

- 22.1 Any notice or demand to be given under this Guarantee shall be in writing and shall be given to the relevant party in any one or more of the following ways:
- (a) by serving the notice or demand in a way which is prescribed by law;
 - (b) by sending the notice or demand by post to the address of the relevant party set out in the Schedule (or the last address provided to the sender). In this case, the notice or demand shall be treated as given on the second business day after the posting date;
 - (c) by delivering the notice or demand by hand to the address of the relevant party set out in the Schedule (or the last address provided to the sender). In this case, the notice or demand shall be treated as given at the time of delivery; or
 - (d) by sending the notice or demand by fax to the fax number of the relevant party set out in the Schedule (or the last fax number provided to the sender). In this case, the notice or demand shall be treated as given at the time of dispatch.
- 22.2 If there is more than one of you, a notice or demand served by us on any one of you shall be a sufficient notice or demand on all of you.
- 22.3 Any notice or demand served after your death in accordance with this clause 22 shall be deemed to be a sufficient notice or demand to your personal representative(s).

23. Other general matters

- 23.1 Our rights under this Guarantee may be exercised as often as we think fit.
- 23.2 Exercising or failing to exercise a right under this Guarantee shall not prevent us from exercising any other right under this Guarantee.
- 23.3 Exercising part of a right under this Guarantee shall not prevent us from subsequently exercising that right to its fullest extent.
- 23.4 A delay in exercising a right or the non-exercise of a right under this Guarantee shall not prevent us from exercising that right subsequently.
- 23.5 Our rights under this Guarantee shall be in addition to any other rights which we may have under the law.
- 23.6 This Guarantee shall belong to us and we shall be entitled to keep this Guarantee even if you no longer have any liability under it.
- 23.7 We shall be entitled to employ debt collecting agent(s) to collect any sum due but unpaid by you under this Guarantee.
- 23.8 Any amendment of any provision of this Guarantee shall be in writing and signed by you and us.

24. Disclosure of your information

You agree to allow us to disclose your information subject, in the case of personal information, to the provisions of Personal Data (Privacy) Ordinance Cap.486, to those persons or for those purposes as expressly stated in our data privacy statement published from time to time relating to the above ordinance, a copy of which has been made available to you.

25. Assignment or transfer of rights and obligations

- 25.1 We shall be entitled to assign or transfer at any time all or any of our rights or obligations under this Guarantee to any person without your consent.
- 25.2 You shall not assign or transfer any of your rights or obligations under this Guarantee without our prior written consent.
- 25.3 You shall sign any document and do any thing as we require for effecting any assignment or transfer of our rights or obligations under this Guarantee.
- 25.4 Once the assignment or transfer of our rights or obligations under this Guarantee has become effective, any person who takes over our rights or (as the case may be) obligations under this Guarantee shall have exactly the same rights or (as the case may be) obligations as we had under this Guarantee before that assignment or transfer and we shall be released from those rights or (as the case may be) obligations.

26. Severability

If at any time, any provision of this Guarantee is or becomes invalid, illegal or unenforceable under the law of any jurisdiction, this shall not affect its validity, legality or enforceability under the law of any other jurisdiction nor the validity, legality or enforceability of any other provision of this Guarantee.

27. Termination

You may give us one (1) month's notice in writing to terminate this Guarantee. On the expiry of such notice, your liability will be limited to such amount for which you are actually or contingently liable under this Guarantee as at the date of expiry together with any further costs, expenses, interest, default interest, late charges and other charges payable by the Borrower up to the date of actual payment and the Expenses payable by you, regardless whether we have made a demand for payment against you prior to such expiry. Your liability under this Guarantee will only extinguish when you have fully paid us all such amounts due under this Guarantee.

28. Payment in other currencies

- 28.1 The Guarantor Liability shall not be treated as fully paid unless it is fully paid in the currency in which it was incurred.
- 28.2 If the Guarantor Liability is not paid in a currency in which it was incurred (the "**Original Currency**"), we shall be entitled to convert such currency into the Original Currency within a reasonable period at such exchange rate as we reasonably determine. If there is any shortfall between the Original Currency and the currency in which the Guarantor Liability is actually paid (whether the currency conversion takes place or not), you shall remain liable under this Guarantee for the amount of the shortfall calculated as at the date of currency conversion, or if there is no such currency conversion, as at the date of actual payment.

29. Governing law and jurisdiction

29.1 This Guarantee shall be governed by, and construed in accordance with, Hong Kong law.

29.2 You agree that any proceedings relating to this Guarantee shall only be brought by you in a court of competent jurisdiction in Hong Kong. However, we shall be entitled to take legal proceedings under this Guarantee in any country where you or your assets may be located.

30. Language

This Guarantee is written in English and accompanied by its Chinese translation. The Chinese translation is for reference purposes and only the English version is intended to have legal effect.

The Schedule

Clause 1

The Borrower: [Name of the Borrower] of *Hong Kong identity card number⁽¹⁾/passport number⁽¹⁾/business registration number⁽²⁾/company number⁽²⁾: [], with *home address⁽¹⁾/registered office in Hong Kong⁽²⁾/principal place of business in Hong Kong⁽²⁾ at [].

Brief terms of offer letter(s):

- | | | | |
|-----|---------------------------------|---|---|
| (a) | Date: | [|] |
| (b) | Loan amount: | [|] |
| (c) | Interest rate: | [|] |
| (d) | Repayment period: | [|] |
| (e) | Default interest rate: | [|] |
| (f) | Late charges and other charges: | [|] |

Details of the Property: []

Clause 20

Interest rate for unpaid Expenses: []

Clause 22

Your contact details:

- | | | | |
|-----|-------------|---|---|
| (a) | Address: | [|] |
| (b) | Fax number: | [|] |

You may change your contact details at any time by giving us a notice in writing.

Our contact details:

- | | | | |
|-----|-------------|---|---|
| (a) | Address: | [|] |
| (b) | Fax number: | [|] |

We may change our contact details at any time by giving you a notice in writing.

* Delete as appropriate.

⁽¹⁾ Only applicable where the Borrower is an individual person.

⁽²⁾ Only applicable where the Borrower is a corporation or a firm.

Your Declaration

You acknowledge that before signing this Guarantee, your attention has been drawn to the “Important Notice” on the front page and, in particular, to the statement that you should seek independent legal advice on the terms of this Guarantee before signing this Guarantee.

⁽³⁾SIGNED SEALED and DELIVERED by [name of the guarantor] in the presence of a *witness/solicitor:

Your signature:

L.S.

Your name:

*Witness's/Witnessing solicitor's signature:

*Witness's/Witnessing solicitor's name:

*Witness's/Witnessing solicitor's address:

* Delete as appropriate.

⁽³⁾ Only applicable where the guarantor is an individual person.

標準擔保和彌償 保證契據

由香港按揭文件標準化計劃統籌委員會制定

由香港按揭證券有限公司召集



香港按揭文件標準化計劃

統籌委員會會員

召集人

香港按揭證券有限公司

代表人

彭醒棠先生
總裁(統籌委員會主席)

張秀芬律師
首席法律顧問及公司秘書

李詠賢律師
法律顧問(統籌委員會秘書)

會員

美國運通銀行

周秉樑先生
零售信貸業務總監

美國亞洲銀行

冼超風先生
副總裁

中國銀行

錢麗顏女士
放款部經理

東亞銀行

張經瑜律師
法律顧問

浙江第一銀行

鄭景開律師
副總經理兼首席法律顧問

道亨銀行

沈銘誠先生
法律部高級經理

第一太平銀行

蔡承業先生
高級副總裁

惠譽國際評級有限公司

Mr. Ben McCarthy
董事

恒生保險有限公司

曾婉儀女士
高級經理

香港大律師公會

湯家驊大律師
資深大律師

香港上海滙豐銀行有限公司

侯瑞芸律師
法律顧問

香港大學法律系

詩鴻屏律師
前副教授

香港律師會

夏向能律師
的近律師行合夥人

穆迪亞太有限公司

葉敏先生
結構融資部董事總經理

渣打銀行

馬卓筠律師
法律及監察顧問

United Guaranty Mortgage Indemnity
Company

關綺蕙女士
Associate Director of Insurance Operations

草擬副委員會會員

香港按揭證券有限公司

第一太平銀行

香港大律師公會

香港上海滙豐銀行有限公司

香港大學法律系

香港律師會

渣打銀行

代表人

張秀芬律師
首席法律顧問及公司秘書
(草擬副委員會主席)

李詠賢律師
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的近律師行合夥人

馬卓筠律師
法律及監察顧問

謹此鳴謝下列各人士及機構對按揭契據及擔保及彌償保證契據(下稱「標準文件」)所付出的重大努力和寶貴時間：

烈顯倫法官，GBM，對標準文件提出寶貴意見。

律政司法律草擬科及其代表嚴元浩先生，SBS，JP(法律草擬專員)，對標準文件的中文譯本作出詳細審閱。

高偉紳律師行及其代表鄧鳳雯律師(合夥人)，提供協助草擬標準文件的中文譯本。

我們亦感謝下列諮詢機構對標準文件提出寶貴意見和建議：

消費者委員會

律政司

香港銀行公會

香港有限牌照銀行及接受存款公司公會

香港大律師公會

香港金融管理局

土地註冊處

香港大學法律系

香港律師會

規劃地政局

香港按揭文件標準化計劃統籌委員會

2001年7月

香港按揭文件標準化計劃 (下稱「計劃」)

擔保及彌償保證契據(「擔保」)指導說明

1. 本擔保是由計劃統籌委員會制定的擔保及彌償保證的標準格式文書。
2. 計劃統籌委員會的每一位成員在可能的範圍內最大程度地明確排除對本擔保的內容以及對任何按揭貸款人或其他人因與本擔保之全部或任何一部分有關的、因其產生的或因以其為依據而蒙受或招致的任何損失、損害或申索的任何責任。任何意圖使用本擔保的按揭貸款人或其他人必須就本擔保對其擬採用的目的的合適性自己尋求法律意見。
3. 本擔保僅為一份擔保及彌償保證的建議格式。按揭貸款人和擔保人採用本擔保與否純屬自願性，而非硬性規定的。在決定是否採用本擔保時，按揭貸款人應考慮本擔保是否與按揭貸款人本身之運作程序及貸款交易之複雜性配合。
4. 如有任何按揭貸款人希望採用此擔保，應予完整採用。對本擔保所作的任何變動或修改，均應促使擔保人注意，並應向擔保人清楚說明，所使用的經變動或修改的格式文本，並非由統籌委員會所通過的本擔保的標準格式文本。
5. 本擔保為按揭貸款人藉要約文件、並以按揭物業的押記作抵押的按揭貸款而提供的擔保和彌償保證(要約文件和按揭物業的詳情列於本擔保的附表中)。但是，本擔保的一個顯著特點是，擔保人所擔保的責任限於指定款額的按揭貸款，另加利息、費用及開支。如果按揭貸款人希望將擔保人的責任擴大至覆蓋按揭貸款人不時提供給借款人的新增貸款、任何銀行、信貸或其它融資或通融，**必須徵得擔保人對任何該等新增貸款、銀行、信貸或其它融資或通融的書面同意。**
6. 本擔保是一份可由個人擔保人簽立，也可由法團擔保人簽立的格式文書。
7. 按揭貸款人和擔保人的姓名和其他詳情應填寫在本擔保的第四頁中的相應空格內。
8. 本擔保的附表中包含若干空格，用於填寫按揭物業、借款人、要約文件的主要條款、關乎本擔保而招致及尚未繳付的費用及開支的息率的詳情及立約各方的詳細資料。
9. 由於根據相關的要約文件或按揭契據，本擔保所擔保的尚欠債項及法律責任已須付違約利息，所以不再在本擔保項下加收違約利息，以避免出現雙重徵收違約利息的情況。
10. 所有與本擔保有關而招致但尚未繳付的費用及開支均收取利息，其息率列於本擔保的附表中。

11. 為了遵守《個人資料(私隱)條例》的規定，按揭貸款人如未作以下安排，則應該：
 - (a) 在擔保人簽署本擔保之前，向擔保人提供一份為按揭貸款人所採用的最新資料私隱聲明小冊子；或
 - (b) 在擔保人簽署本擔保之前，向擔保人通讀按揭貸款人所採用的最新資料私隱聲明。
12. **擔保人簽署本擔保之前**，按揭貸款人或其代表律師應請擔保人通讀本擔保及其封面上的**重要通告**。按揭貸款人應告知擔保人，假若他／她希望了解簽署本擔保後須承擔的各項法律承諾，他／她有權向其自己選定的律師徵詢獨立法律意見。
13. 擔保人只應在本擔保經填妥的英文版簽名頁上簽署姓名，而不應簽署在本擔保的中文譯本上。中文譯本並非用作簽署的文件，乃是用作向擔保人提供本擔保條款和內容的翻譯。

香港按揭文件標準化計劃統籌委員會

2001年7月

擔保和彌償保證契據

重要通知：

本擔保是一份重要的法律文件。在簽署本擔保之前，務請你小心閱讀本擔保。你有權向你自己選定的律師徵詢獨立的法律意見，以確保你明白你所作的承諾和你簽署本擔保的全部後果。

本擔保是具有法律約束力的文件。只有在你同意受本擔保條款約束的情況下，你始須簽署本擔保。

如你簽署本擔保，你將取代借款人承擔按揭下的法律責任或與借款人一起承擔按揭下的法律責任。你在本擔保下的法律責任將限於：

- (a) 借款人欠下的貸款款額；
- (b) 經你書面同意我們貸予借款人的任何額外貸款；
- (c) 借款人根據按揭須繳付的全部費用及開支；
- (d) 根據本擔保你須繳付的各項開支；和
- (e) 就上述任何款項所徵收的全部利息、違約利息、逾期付款收費和其他收費。

你須在我們的書面要求下根據本擔保立即付款。你確認在簽署本擔保之前我們已建議你就本擔保的條款徵詢獨立的法律意見。你亦確認已獲得按揭、按揭條件和關乎有關貸款的協議的文本。

你可藉給予我們不少於一(1)個月的書面通知而終止本擔保。在通知期滿時，你根據本擔保須負的法律責任將限於在該通知期滿當日根據本擔保你須實際或待確定地負責的款額，外加截至實際支付之日借款人應支付的所有進一步費用、開支、利息、違約利息、逾期付款收費和其他收費，以及所有你應付的開支，無論在該通知期滿前，我們有否向你提出過付款要求。當你全數將該等根據本擔保到期的款項繳付給我們後，你根據本擔保須負上的法律責任才會終止。

香港按揭證券有限公司同意任何人以不牟利性質使用、複製及向公眾分發本擔保的全文。任何人絕對不得違反以上條件出售或分發本擔保。香港按揭證券有限公司及香港按揭文件標準化計劃統籌委員會的每一位成員在可能的範圍內最大程度地明確排除任何對本擔保的內容以及對任何按揭貸款人或任何其他因與本擔保之全部或任何一部分有關的、因其產生的或因其為依據而蒙受或招致的任何損失、損害或申索的任何責任。任何意圖使用本擔保的按揭貸款人或任何其他人士必須就本擔保對其擬採用的目的的合適性自己尋求法律意見。

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目錄

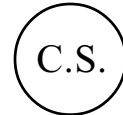
條文	頁次
1. 定義	4
2. 代價	6
3. 擔保	6
4. 彌償保證	6
5. 你的法律責任上限	6
6. 擔保和彌償保證獨立於任何其他擔保或抵押品	6
7. 你的權利的延後	7
8. 自其他貸方餘額扣減款項和留置權	7
9. 我們對借款人的申索	7
10. 持續擔保和彌償保證	8
11. 臨時帳戶	8
12. 我們的作為或不作為並不影響你的法律責任	9
13. 破產或無力償債法律的影響	9
14. 不得從付款中扣減款項	9
15. 所得付款的運用	9
16. 簽署本擔保的約束力	10
17. 我們組織架構的變動	10
18. 共同及各別法律責任	10
19. 借款人債務和擔保人債務的證據	10
20. 開支的利息	10
21. 你提供正確資料	11
22. 通知和要求	11
23. 其他一般事項	11
24. 你的資料的披露	12
25. 權利和責任的轉讓	12
26. 可劃分性	12

Your Declaration

You acknowledge that before signing this Guarantee, your attention has been drawn to the “Important Notice” on the front page and, in particular, to the statement that you should seek independent legal advice on the terms of this Guarantee before signing this Guarantee.

⁽⁴⁾SEALED with the COMMON SEAL of [name of the guarantor] AND SIGNED by [name(s) of the authorized signatory(ies) of the guarantor] for and on behalf of [name of the guarantor] in the presence of a *witness/solicitor:

Signature of the authorized signatory(ies):



Name and title of the authorized signatory(ies):

*Witness's/Witnessing solicitor's signature:

*Witness's/Witnessing solicitor's name:

*Witness's/Witnessing solicitor's address:

* Delete as appropriate.

⁽⁴⁾ Only applicable where the guarantor is a corporation.

條文	頁次
27. 終止	12
28. 以其他貨幣付款	12
29. 管轄法律和司法管轄權	13
30. 語言	13
附表	14

本擔保和彌償保證契據於〔 〕年〔 〕月〔 〕日
由以下各方訂立

你：〔擔保人姓名〕，*香港身份證號碼⁽¹⁾／護照號碼⁽¹⁾／商業登記號碼⁽²⁾／公司號碼⁽²⁾〔 〕，*住址⁽¹⁾／在香港的註冊辦事處⁽²⁾／在香港的主要營業地點⁽²⁾位於〔 〕；及

我們：〔銀行名稱〕，*在香港的註冊地址／在香港的主要營業地點位於〔 〕。

各方達成以下協議：

1. 定義

1.1 在本擔保內，下列詞語具有下列涵義：

額外貸款	指在貸款以外，其後向借款人貸出而借款人尚欠的任何款項或其後借款人招致的任何法律責任的本金；
借款人	指於附表中以「借款人」表明的一方，包括借款人的繼承人和受讓人；
借款人債務	指借款人到期未付、欠下或招致我們的全部款項和法律責任；
債項	指不時尚未清還的下列款項的總額； (a) 貸款； (b) 根據按揭借款人須繳付的全部費用和開支； (c) 我們經你書面同意而批給借款人的任何額外貸款；和 (d) 就(a)、(b)及(c)任何一項徵收的全部利息、違約利息、逾期付款收費和其他收費， 並包括債項的任何部分；
開支	指我們根據或就本擔保所招致的任何合理費用和開支(包括法律費用)，包括就開支所徵收的利息；
擔保	指你(你們)與我們簽訂的本擔保和彌償保證契據；

* 刪去不適用者。

⁽¹⁾ 只適用於屬個人的擔保人。

⁽²⁾ 只適用於屬法團或商行的擔保人。

擔保人債務	指根據本擔保你不時到期未付、欠下或招致我們的全部法律責任(即根據本擔保你就債項和開支須負的法律責任)；
香港	指中華人民共和國香港特別行政區；
貸款	指我們依據於附表中概述的要約文件條款已放貸或將會放貸予借款人並以按揭作抵押的銀行融資、信貸融資或其他融資或通融；
按揭	指以我們為受惠人而簽署、用以抵押償還債項和借款人其他到期未付、欠下或招致我們的款項及法律責任的物業按揭或押記文件；
按揭條件	指按揭收納的按揭條件(2001年版)；
人	指個人、公司、法團、信託、合夥或商號，包括其繼承人和受讓人；
物業	指根據按揭予以押記的物業，詳情述於附表；
抵押品	指為抵押繳付／償還任何債項、法律責任或責任而作出的文據或抵押品，包括但不限於任何押記、按揭、擔保、質押和留置權；
我們	指本擔保中用「 我們 」表明的一方，並包括繼承人和受讓人；
你	指本擔保中用「 你 」或「 你們 」表明的一方，並包括繼承人和受讓人。

1.2 在本擔保中：

- (a) 「他」包括「她」和「它」，而「他的」亦包括「她的」和「它的」；
- (b) 所有詞語同時具有單數詞和複數詞的涵義；
- (c) 標題僅為方便參考而設，不得作為本擔保的一部分；
- (d) 除非明文另有所指，否則凡以編號提述某條或某附表，即為提述本擔保中標上該編號的條或附表；
- (e) 凡提述時間及日期，即指香港時間及日期；
- (f) 凡提述某份文件，即包括提述對該文件不時作出的修訂、補充或取代；和

- (g) 凡提述任何法定條文時，應視為也提述該等法定條文的修改或重新制訂，以及根據該等法定條文的修改、補充或重新制訂而制訂的從屬法例、命令或規例。

2. 代價

- 2.1 你要求我們向借款人批給或繼續批給貸款。
- 2.2 作為我們同意向借款人批給貸款或繼續批給貸款的代價，你同意根據本擔保向我們提供擔保和彌償保證。

3. 擔保

- 3.1 你擔保當債項根據按揭成為借款人到期應付時，債項將得以繳付。
- 3.2 你承諾當債項成為借款人到期應付時，你將應我們的書面要求立即繳付債項。一旦向你發出要求，你即有法律責任繳付不時尚欠的債項款項。
- 3.3 你承諾會應我們的書面要求立即繳付開支。
- 3.4 你同意我們要求你繳付債項或開支前，毋須首先要求借款人付款或採取其他行動取得付款（例如出售物業或出售我們持有的其他抵押品）。

4. 彌償保證

- 4.1 你同意對我們負責整筆債項，猶如你是主要債務人一樣。即你具有首要和直接責任繳付債項，儘管你作為擔保人並無此法律責任亦然。這項彌償保證與我們是否在你作出此項擔保之前或之後知悉為何不能根據第3條作出的擔保向你追討債項一事無關。
- 4.2 你根據第4.1條必須履行的責任是獨立於和附加於第3條中作出的擔保。你承諾將應我們的書面要求立即繳付全部債項款項。

5. 你的法律責任上限

- 5.1 本擔保乃債項和開支全部款項的擔保和彌償保證。但是，除非你已就提供任何額外貸款給予事先書面同意或其後書面同意就其負上法律責任，否則你根據本擔保毋須向我們對任何額外貸款負上法律責任。
- 5.2 即使你就我們提供的額外貸款並無給予書面同意，你亦無權阻止我們向借款人提供額外貸款。
- 5.3 如我們未經你書面同意提供額外貸款，亦不會影響你向我們償還債項（減去該額外貸款）的法律責任。

6. 擔保和彌償保證獨立於任何其他擔保或抵押品

- 6.1 本擔保是獨立於和附加於我們現時或將來可能就債項持有的任何其他抵押品（包括按揭）。

- 6.2 當我們就債項獲得其他抵押品時，我們有權選擇強制執行哪一項抵押品及執行的先後次序。
- 6.3 在強制執行本擔保之前，我們毋須強制執行其他抵押品或採取任何步驟，亦毋須提出任何法律程序。

7. 你的權利的延後

- 7.1 在全數繳付擔保人債務之前，未經我們事先書面同意，你無權作出任何下列事情：
- (a) 針對借款人、共同擔保人或就借款人債務提供抵押品的任何人行使或強制執行任何權利（包括任何抵銷權利）；
 - (b) 向借款人、共同擔保人或就借款人債務提供抵押品的任何人提出申索；
 - (c) 就借款人、共同擔保人或就借款人債務提供抵押品的任何人的破產或無力償債提出與我們對立的申索；或
 - (d) 自借款人、共同擔保人或就借款人債務提供抵押品的任何人收取任何付款或利益分發或抵押品，從而得益。你必須將你因違反上述規定而收取的任何款項支付給我們。在此期間，你須以信託形式為我們持有該等款項。
- 7.2 除非經我們事先書面同意，你不得持有由借款人、共同擔保人或就借款人債務提供抵押品的任何人所提供的抵押品。你須將你因違反本第7.2條而持有的任何抵押品所得的利益給予我們，並向我們支付你就違反本條規定而收取的所有款項，在此期間，你須以信託形式為我們持有該等款項。

8. 自其他貸方餘額扣減款項和留置權

你同意如你沒有繳付擔保人債務的任何部分，我們有權在不給予你或任何人事先通知而作出下列事情：

- (a) 使用你在我們處開設的帳戶（不論以你個人名義或共同名義開設）的貸方餘額支付該筆未付的款項；
- (b) 以我們現在或將來欠下你的任何債項或法律責任抵銷該筆未付的款項；
- (c) 對我們持有屬於你的全部財產具有留置權；和
- (d) 以我們絕對酌情權決定的價格和方式出售我們持有屬於你的任何資產，並將所得利益用以支付未付的款項。

9. 我們對借款人的申索

如借款人破產、與其債權人達成還款安排、清盤或有接管人被委任接管其業務或資產，則儘管你已根據本擔保向我們支付部分債項，我們仍有權就借款人債務的全部款項針對借款人的資產提出申索。我們自借款人或其財產或其他人所收取的任何攤還債款或付款，並不影響我們根據本擔保向你追討擔保人債務餘額的權利。

10. 持續擔保和彌償保證

本擔保須持續有效，直至完全繳付擔保人債務為止。即你根據本擔保下的責任不得因發生下列任何事件而被撤銷或受到影響：

- (a) 你已繳付部分不時尚欠的擔保人債務；
- (b) 如借款人屬合夥或其他組織，該合夥或組織的名稱或成員或組成有任何更改（在該情況下，本擔保繼續適用於當時組成該合夥或組織的人欠下我們的債項）；
- (c) 借款人去世、精神上無行為能力、破產或無力償債（如適用的話）（在該情況下，你須對債項負上法律責任，猶如從未發生任何該等事件一樣）；
- (d) 其他組織收購借款人、借款人與任何其他組織合併或有接管人被委任接管借款人的業務或資產（在該情況下，你必須於我們知悉任何該等事件時就尚未清償的全部債項負上法律責任）；
- (e) 你去世、精神上無行為能力、破產、無力償債或遭清盤（如適用的話）或改名；
- (f) 其他人收購你、你與其他人合併或有接管人被委任接管你的業務或資產；
- (g) 出售物業或出售我們持有的其他抵押品；
- (h) 借款人債務因故變成無法討回；或
- (i) 設若本第10條不存在的話，將會或可能損害、影響或解除本擔保或擔保人債務的任何作為、不作為、事件或情況。

11. 臨時帳戶

- 11.1 當債項根據按揭成為借款人到期應付時，我們有權將我們就本擔保所收到的任何款項（足以全數抵償擔保人債務的款項除外）保存在一個臨時帳戶中，以保留向你、借款人、任何共同擔保人或任何其他就借款人債務提供抵押品的人提出全數申索的權利，直至擔保人債務完全繳付為止。
- 11.2 如我們收到通知或知悉本擔保已終止或停止作為一項具有約束力的持續擔保時並未依據第11.1條行事，則自當時起，我們就本擔保收到的所有款項必須視作已貸記存入一個臨時帳戶，以保留對你、借款人、任何共同擔保人或任何其他就借款人債務提供抵押品的人提出全數申索的權利。
- 11.3 依據第11.1條貸記存入臨時帳戶的貸方或依據第11.2條貸記存入推定臨時帳戶的款項，須按照我們不時提供的給予有相同貸方餘額的存款帳戶通行利率衍生利息。

12. 我們的作為或不作為並不影響你的法律責任

我們可不時：

- (a) 給予借款人、任何共同擔保人或任何其他提供抵押品的人更長時間繳付到期應付的款項；
- (b) 更改、擴大、解除、減少、交換、增加、加速、重訂或撤銷借款人、任何共同擔保人或任何其他提供抵押品的人的責任或法律責任；
- (c) 與借款人、任何共同擔保人或任何其他提供抵押品的人達成任何安排、妥協或和解；
- (d) 接受或處理就借款人債務提供的任何抵押品或法律承諾；
- (e) 不接受就借款人債務所提供的任何抵押品或法律承諾，忽略、解除、強制執行或選擇不強制執行我們根據按揭或本擔保所具有的權利或根據就借款人債務提供的任何抵押品或法律承諾的權利。

我們作出本第12條上述的任何作為或作出或不作出其他事情，並不影響我們根據本擔保所具有的權利或你根據本擔保須負上的法律責任，儘管設若本第12條不存在則會產生上述影響亦然。

13. 破產或無力償債法律的影響

- 13.1 如我們收到你或借款人或任何其他就借款人債務或擔保人債務的付款或抵押品之後，根據任何破產或無力償債法律規定我們有責任回復到猶如未收到該付款或抵押品的狀況，則你必須根據本擔保負上法律責任，猶如我們並未收到該付款或抵押品一樣。
- 13.2 在尚未有命令根據該等破產或無力償債法律就借款人債務針對我們作出之前，我們有權未經你事先同意而按照我們認為合適的條款，就根據該等法律引起的申索達成協議或和解。
- 13.3 如我們依據第13.2條就上述申索達成協議或和解，你須根據本擔保承擔法律責任，猶如法庭已作出一項載有我們就該申索同意的條款的命令一樣。

14. 不得從付款中扣減款項

- 14.1 你根據本擔保作出的每筆付款均不得從中扣減任何稅款或類似的收費，但如根據法律你有責任作出該扣減則除外。如你需作出該扣減，你須向我們繳付額外款項，以確保我們收到根據本擔保你到期應繳付的全部欠款。
- 14.2 你根據本擔保作出每筆付款均不得從中扣減任何我們欠下你的款項，你須繳付我們不時要求你繳付的款項。

15. 所得付款的運用

在符合第11條規定的前提下，我們根據本擔保收到的任何付款須按以下順序運用：

- (a) 第一、開支；

- (b) 第二、已累算於貸款及任何適用的額外貸款但尚欠的利息；
- (c) 第三、貸款及任何適用的額外貸款的違約利息；
- (d) 第四、貸款及任何適用的額外貸款的逾期付款收費和其他收費；和
- (e) 第五、貸款及任何適用的額外貸款的本金款項。

16. 簽署本擔保的約束力

儘管：

- (a) 另一人原應但並沒有簽署或簽立本擔保或原應但並沒有受到本擔保的條款的有效約束；或
- (b) 任何人就借款人債務提供的抵押品或其他法律承諾是無效、不合法或不可強制執行的，

你仍須受本擔保約束。

17. 我們組織架構的變動

你根據本擔保中須負的責任不受下列事項的影響：

- (a) 我們或我們的繼承人或受讓人的改名或改組；
- (b) 其他銀行或機構收購我們、我們吸納其他銀行或機構或我們與其他銀行或機構合併；
- (c) 借款人債務的任何轉讓、按揭或本擔保的任何轉讓、有任何信託聲明的設立或影響我們就借款人債務、按揭或本擔保所具有的權利的其他作為。

18. 共同及各別法律責任

- 18.1 如你們多於一人，則本擔保對你們一起具有共同約束力亦對你們每人有約束力。我們有權按照我們同意的任何條款撤銷你們任何一人的法律責任，或與你們任何一人達成安排，而不影響我們對其他人所具有的權利和補救方法。
- 18.2 如你們多於一人，則本擔保將分別對你們每一人具有約束力，儘管本擔保不能針對你們所有人或任何一人強制執行亦然。

19. 借款人債務和擔保人債務的證據

我們的人員就借款人債務或擔保人債務的款額或任何息率妥為簽署的證明書，在沒有明顯錯誤或詐騙的情況下，須為針對你在各方面而言的不可推翻的證據。

20. 開支的利息

如你沒有應我們的書面要求繳付開支，你必須按附表中指定的息率向我們繳付自該等開支招致之日期起至實際還款當日為止期間的利息。

21. 你提供正確資料

- 21.1 你確認你就本擔保向我們提供的全部資料(包括個人資料和財務資料)就你所知均屬真實準確和完整。
- 21.2 如你就本擔保向我們提供的任何資料有改變，你必須盡快書面通知我們。

22. 通知和要求

- 22.1 根據本擔保發出的任何通知或要求必須採用書面形式，並以下列任何一種或多於一種方式給予有關一方：
- (a) 以法律訂明的方式送達通知或要求；
 - (b) 以郵寄方式將通知或要求送交至有關一方列於附表的地址(或向發件方提供的最新地址)。在這情況下，通知或要求即被視作於郵寄當日後第二個營業日送達；
 - (c) 以專人親自將通知或要求送交至有關一方列於附表的地址(或向發件方提供的最新地址)。在這情況下，通知或要求即被視作於送交時送達；或
 - (d) 以傳真方式將通知或要求傳送至有關一方列於附表的傳真號碼(或向發件方提供的最新傳真號碼)。在這情況下，通知或要求即被視作於發件時送達。
- 22.2 如你們多於一人，我們向你們其中一人送達的通知或要求即成為給予你們各人的充分通知或要求。
- 22.3 於你去世後根據本第22條送達的任何通知或要求即被視作給予你的遺產代理人的充分通知或要求。

23. 其他一般事項

- 23.1 我們根據本擔保所具有的權利，可在我們認為適當時經常行使。
- 23.2 行使或不行使本擔保中的一項權利，並不妨礙我們行使根據本擔保所具有的其他權利。
- 23.3 局部行使本擔保中任何權利並不妨礙我們其後完全行使該項權利。
- 23.4 延誤行使或不行使本擔保中的任何權利並不妨礙我們其後行使該項權利。
- 23.5 我們根據本擔保所具有的權利是附加於我們根據法律而具有的任何權利之上。
- 23.6 本擔保屬於我們所有，儘管你不再就本擔保負有任何法律責任，我們仍有權保留本擔保。
- 23.7 我們有權僱用收債代理追收根據本擔保未付的任何款項。
- 23.8 本擔保中的條文如有修改，必須經你及我們以書面簽署同意。

24. 你的資料的披露

你同意容許我們披露你的資料。對於你的個人資料，你同意容許我們在《個人資料(私隱)條例》(第486章)的規限下或向我們就上述條例不時公佈的資料私穩聲明(我們已向你提供其文本)中所提及的人士或目的披露你的資料。

25. 權利和責任的轉讓

- 25.1 我們有權未經你同意隨時將我們根據本擔保所具有或須承擔的全部或任何權利或責任轉讓給任何人。
- 25.2 未經我們事先書面同意，你不得轉讓你根據本擔保中所具有或須承擔的任何權利或責任。
- 25.3 你必須簽署我們所要求的任何文件和作出我們所要求的任何事情，以完成我們在本擔保所具有或須承擔的權利或責任的任何轉讓。
- 25.4 一旦我們根據本擔保所具有或須承擔的權利或責任的轉讓生效後，任何接收該等權利或責任的人須具有或承擔我們在轉讓前根據本擔保所具有或須承擔的相同權利或責任(視屬何情況而定)，而我們所具有或須承擔的該等權利或責任(視屬何情況而定)則予以解除。

26. 可劃分性

如在任何時間本擔保的任何條文根據任何司法管轄區的法律是無效、不合法或不可強制執行或成為無效、不合法或不可強制執行，並不影響該條文根據其他司法管轄區的法律的效力、合法性或可強制執行性，亦不影響本擔保任何其他條文的效力、合法性或可強制執行性。

27. 終止

你可藉給予我們不少於一(1)個月書面通知而終止本擔保。在通知期滿時，你根據本擔保須負的法律責任將限於在該通知期滿當日根據本擔保你須實際或待確定地負上法律責任的款額，外加截至實際支付之日借款人應支付的所有進一步費用、支出、利息、違約利息、逾期付款收費和其他收費，以及所有你應付的開支，無論在該通知期滿前，我們有否向你提出過付款要求。當你全數向我們繳付該等根據本擔保到期的款項後，你根據本擔保須負上的法律責任才會終止。

28. 以其他貨幣付款

- 28.1 擔保人債務必須全數以招致該責任的貨幣(「原貨幣」)繳付，否則不得被視作已全數繳付。
- 28.2 如不以原貨幣繳付擔保人債務，我們有權在合理時段內將該貨幣按照我們合理釐定的滙率轉換為原貨幣。如原貨幣與實際繳付擔保人債務所使用的貨幣(不論是否有進行貨幣轉換)出現差額，你仍然須根據本擔保就貨幣轉換當日或(如無貨幣轉換)實際繳款當日的差額負上法律責任。

29. 管轄法律和司法管轄權

29.1 本擔保受香港法律管限並按照香港法律詮釋。

29.2 你同意與本擔保有關的任何司法程序只能由你向具有司法管轄權的香港法院提出。然而，我們有權在你或你的資產所在的任何國家提出法律程序。

30. 語言

本擔保以英文書寫並附上中文譯本。中文譯本僅作參考之用，只有英文本擬有法律效力。

附表

第1條

借款人： [借款人名稱]*香港身份號碼⁽¹⁾/護照號碼⁽¹⁾/商業登記號碼⁽²⁾/公司號碼⁽²⁾： []*住址⁽¹⁾/在香港的註冊辦事處⁽²⁾/在香港的主要營業地點⁽²⁾[]。

要約文件的條款摘要：

- (a) 日期： []
- (a) 日期： []
- (b) 貸款額： []
- (c) 息率： []
- (d) 還款期限： []
- (e) 違約利息息率： []
- (f) 逾期付款收費和其他收費： []

物業詳情： []

第20條

未付開支的息率： []

第22條

你的聯絡詳情：

- (a) 地址： []
- (b) 傳真號碼： []

你可以隨時向我們發出書面通知更改你的聯絡詳情。

我們的聯絡詳情：

- (a) 地址： []
- (b) 傳真號碼： []

我們可隨時向你發出書面通知更改我們的聯絡詳情。

* 刪去不適用者

⁽¹⁾ 只適用於屬個人的借款人。

⁽²⁾ 只適用於屬法團或商行的借款人。

你的聲明

你確認在簽署本擔保之前，你已留意到首頁的「重要通知」及特別留意到本擔保中建議你徵詢獨立法律意見的陳述。

{此乃中文譯本，請簽署在英文本上}