

Model letter by surety to solicitor where charging property

to secure loan to borrower or his/her business

(to be amended as necessary)

From: [name[s] of third party mortgagor[s]]

To: [name of the Solicitors' Firm] (the "Solicitors' Firm")

[Date]

Before I/we executed the mortgage of the Property [and] ("the Security Document(s)") to secure a loan/facility from [name of the mortgagee bank] ("the Lender") to [name of the borrower] (the "Borrower"), I/we attended a meeting with [name of the solicitor/solicitor's representative] at the offices of the Solicitors' Firm. The Solicitors' Firm has acted as my/our solicitors in connection with the Security Document(s). The only persons present at the meeting were [name of the solicitor/solicitor's representative] and myself/ourselves. The Borrower was not present at the meeting. At the meeting [name of the solicitor/solicitor's representative] confirmed the following things to me/us:

- (1) The Lender requires that I am/we are given the advice as stated below so that, if I/we sign the Security Document(s) I/we will not be able to claim afterwards that I am/we are not legally bound by the Security Document(s).
- (2) The main purpose of the meeting was to explain to me/us my/our liability under the Security Document(s) and to obtain my/our confirmation that I/we instruct the Solicitors' Firm to act for me/us in connection with the Security Document(s). I/We have been told that I/we did not have to instruct the Solicitors' Firm to act for me/us. I was/We were free to instruct another firm of solicitors if I/we wished.
- (3) The Property is owned /will on completion of the sale and purchase be owned [in my/our sole name(s)] [in the Borrower's sole name] [in the joint names of

- (i) any further loan or increased facility that the Borrower (individually or jointly with me/us or anyone else) may in future obtain from the Lender while the mortgage remains in existence, even if this is done without my/our knowledge or consent;
 - (ii) any existing loans from the Lender to the Borrower (individually or jointly with me/us or anyone else), even if I/we do not know about them;
 - (iii) any existing or future loans that I/we may obtain (individually or jointly with anyone else) from the Lender while the mortgage remains in existence;
 - (iv) any sums owing to the Lender, at any time while the mortgage remains in existence, by any other person or company if I/we or the Borrower has already given, or shall in future give, a guarantee for those sums to the Lender, and even if the Borrower has given or shall give such a guarantee without my/our knowledge and consent;
 - (v) interest on all such sums as charged by the Lender;
 - (vi) [anything else]
- (b) According to the terms of the loan / facility or facilities, the Lender can demand repayment at [any time,] [on fixed dates,] [by instalments,] [*set out repayment requirements*].
- (c) During the subsistence of the mortgage, [I/we] [the Borrower] must:
- (i) keep the Property insured in accordance with the Lender's requirements;
 - (ii) keep the Property in good repair;

- (iii) not make any structural alterations or changes of use without the Lender's consent;
 - (iv) not let the Property or take in lodgers without the Lender's consent;
 - (v) comply with all covenants and restrictions affecting the Property;
 - (vi) [anything else].
- (d) The mortgage will give the Lender a [first] charge over the Property as security for all the sums mentioned in paragraph 5(a) above. [In addition, the mortgage will contain a covenant by me/us to pay all sums [without limit/up to a maximum of HK\$[] plus interest charged by the Lender] falling within paragraph (a) above if the Borrower fails to pay them. This means that [without limit/up to the level referred to in paragraph (a) above] I/we will be a guarantor for the liabilities of the Borrower to the Lender, I/we will be personally liable for those sums, and I/we could be sued by the Lender for them. I/We could lose the Property [if the Borrower's business does not prosper], or if the Borrower fails to repay the Lender or if the borrowing is increased. This is because, if any loan repayment or interest charge is not paid on time, the Lender would be entitled to enforce the mortgage by taking court proceedings to evict me/us and any other occupiers from the Property and sell the Property in order to obtain repayment. If the value of the Property and my/our other assets is insufficient to meet those sums, I/we could be made bankrupt as well as losing the Property. The Lender could also appoint a receiver to take possession of the Property from me/us and any other occupiers.
- (e) [The Lender reserves the right to transfer the benefit of the mortgage to another lender.]
- (f) [Any other features of the mortgage needing comment?]

- (6) I/We can only be released from our obligations if the Lender consents.
- (7) It is not advisable for me/us to make myself/ourselves liable for an unlimited amount as described in Clause (5)(a) above.
- (8) I/We shall consider whether I/we have the financial ability to repay the Lender taking into account all relevant matters including my/our assets, liabilities and cash flow.
- (9) The above legal advice relates to the effect of the proposed Security Document(s) and the types of risks that may arise. [However, the Solicitors' Firm is not qualified to assess the likelihood of those risks actually materialising. That depends largely on the financial standing and prospects of the Borrower [and his business], although I/we should also consider whether the sums secured could be repaid from the sale value of the Property and my/our other assets. Therefore, before I/we decide whether to agree to sign, [the Security Document(s)], I/we should get help on assessing the risks by taking advice on those important financial aspects from a certified public accountant or other qualified professional financial adviser who should be independent of the Borrower].
- (10) I/We do not have to agree to these arrangements at all if I/we consider that the risks are too great or if I/we think that these arrangements are of no advantage to me/us. If I am/we are generally willing but find particular terms unacceptable, it may be possible to negotiate variations of those terms with the Lender in order to make them acceptable to me/us. These decisions are mine/ours and mine/ours alone.
- (11) The Solicitors' Firm is also acting for the [Borrower] [and also for the Lender in an administrative capacity] but the Solicitors' Firm has given me/us this advice independently. Nevertheless I/we should consider whether I/we want further legal advice from a completely separate solicitor before I/we make a final decision in connection with the Security Document(s).

I/We in signing this letter

- (a) acknowledge that I/we have been given, and have understood, this advice.
- (b) confirm that I/we have decided, of my/our own free will, to enter into the mortgage and to execute the Security Document(s), I/we do not require the Lender to vary any of the terms, [I/we do not require any further legal advice], and I/we agree that the Lender may be told that I/we have received the advice in this letter, and
- (c) confirm to the Lender that I/we have received this advice.

Countersigned by person giving the advice

I confirm that the above contains a comprehensive, correct and contemporaneous record of the meeting which took place between myself and [name of mortgagor[s]].

Signed

[Name of solicitor/solicitor's representative]

at [address of the Solicitors' Firm]