SUBORDINATION AGREEMENT

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This Subordination Agreement (the “Agreement”) is effective [DATE],

**BETWEEN: [FIRST PARTY NAME]** (the "Lender"), a company organised and existing under the laws of the [STATE/PROVINCE] of [COUNTRY], with its head office located at:

 [YOUR COMPLETE ADDRESS]

**AND: [SHAREHOLDER NAME]** (the "Shareholder"), an individual residing at:

 [COMPLETE ADDRESS]

**AND: [NAME]** (the "Borrower"), a company organised and existing under the laws of the [STATE/PROVINCE] of [COUNTRY], with its head office located at:

 [COMPLETE ADDRESS]

1. **Defintions:**

“Effective Date” means the date on which this Agreement is to take effect being the date of the Agreement unless otherwise stated in paragraph 2;

“Excluded Liabilities” means Liabilities which are expressed to be and, in the opinion of the Insolvency Officer of the Borrower, do rank junior to the Subordinated Liabilities in any Insolvency of the Borrower;

"Capital Resources" has the meaning given it in the Financial Rules;

“Capital Resources Requirement” has the meaning given it in the Financial Rules;

"Financial Rules" means the rules in MIPRU 4 (Capital resources) of the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries;

“Insolvency” means and includes liquidation, winding up, bankruptcy, administration or dissolution (whichever term may apply to the Borrower) or the equivalent in any other jurisdiction to which the Borrower may be subject;

“Insolvency Officer” means and includes any person duly appointed to administer and distribute assets of the Borrower in the course of the Borrower’s Insolvency;

“Liabilities” means all present and future sums, liabilities and obligations payable or owing by the Borrower [or any Partner \*\*] (whether actual or contingent, jointly or severally or otherwise howsoever);

“Loan” means the indebtedness of the Borrower to the Lender referred to in paragraph 2 as that indebtedness may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

[“Partner” means an individual partner of the Borrower\*\*];

“Rules” means the rules of the FSA from time to time in force;

“Senior Liabilities” means all Liabilities except the Subordinated Liabilities and Excluded Liabilities;

“Subordinated Liabilities” means all Liabilities to the Lender in respect of the Loan and all interest payable thereon.

1. **Loan**

The Borrower hereby acknowledges its indebtedness to the lender in the amount of [AMOUNT] as an unsecured loan and subject to the terms and conditions of this agreement.

1. **Interest**

Subject to the provisions in paragraphs 4 and 5, until full repayment is made, the borrower is obliged to pay the lender interest on the loan or on any parts of it as follows:

[ENTER DETAILS OF INTEREST CALCULATIONS AND MANNER AND TIME OF PAYMENTS]

1. **Repayment of the Loan**

If default is made for a period of 7 days or more in the payment of any principal due in respect of the Loan or for a period of 14 days or more in the payment of any interest due in respect of the Loan the Lender may, in order to enforce payment, at its discretion and after taking such preliminary steps as may be necessary and after notifying the FSCA, institute proceedings for the Insolvency of the Borrower [or the Insolvency of all or any Partners\*\*]. If an order is made or an effective resolution is passed for the winding up of the Borrower, the Loan shall become repayable.

The Lender may at its discretion, subject to the provisions which follow, institute proceedings for the Insolvency of the Borrower [or the Insolvency of all or any Partners\*\*] to enforce any obligation, condition or provision binding on the Borrower [or on all or any Partners\*\*+] under this Agreement (other than any obligation for the payment of principal moneys or interest in respect of the Loan) provided that the borrower [or any Partner\*\*] shall not by virtue of the institution of any such proceedings be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it. The Lender may only institute such proceedings to enforce the obligations referred to above if (i) the default is not remedied to the satisfaction of the Lender within 60 days after notice of such default is not remedied to the satisfaction of the Lender within 60 days after notice of such default has been given to the Borrower by the Lender (with a copy to the FSCA) requiring the default to be remedied and (ii) the Lender has taken all preliminary steps required to be taken by it prior to the institution of such proceedings.

No remedy against the Borrower [or any Partner\*\*] other than as specifically provided by this paragraph shall be available to the Lender whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower [or any Partners\*\*] of any of its obligations under this Agreement.

1. **Subordination**
2. Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment of any amount whether principal (by way of repayment or prepayment), interest or otherwise, of the Subordinated Liabilities is conditional upon:-

(a) (if an order has not been made or an effective resolution passed for the Insolvency of the Borrower) the Borrower being in compliance with its Capital Resources Requirement prevailing at the time of payment by the Borrower; and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that repayment under paragraph 4(2) above is permitted and the Borrower could make such payment and still be in compliance with its Capital Resources Requirement immediately thereafter; and

This document is provided as an example and is not intended to have continuing effect.

(b) (if an order has been made or an effective resolution has been passed for the Insolvency of the Borrower [or if the Borrower shall be dissolved\*\*]) the Borrower being solvent at the time of payment by the Borrower; and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Borrower could make such payment and still be solvent immediately thereafter. For the purposes of this sub-paragraph, the Borrower shall be solvent if it is able to pay its debts in full and in determining whether the Borrower is solvent for the purposes of this sub-paragraph there shall be disregarded obligations which are not payable or capable of being established or determined in the Insolvency of the Borrower.

 (a) No payment of the Subordinated Liabilities (other than in respect of interest) shall be made an any time under sub-paragraph (1) above unless the Borrower has obtained the FSCA’s prior written consent to such payment and that consent has not been withdrawn.

 (b) The Borrower shall give or ensure that there are given to the FSCA such information and auditor’s certificate in relation to the proposed payment as the FSCA may require.

1. Payments of interest at a rate not exceeding the rate provided in paragraph 3 may be made to the extent permitted by sub-paragraph (1) above without prior notification to the FSA.

1. For the purposes of sub-paragraph (1)(b) above a report given at any relevant time as to the solvency of the Borrower by its Insolvency Officer, in form and substance acceptable to the FSA, shall in the absence of proven error be treated and accepted by the FSCA, the Lender and the Borrower as correct and sufficient evidence of the Borrower’s solvency.

1. If the Lender shall receive from the Borrower [or any Partner\*\*] payment of any sum in respect of the Subordinated Liabilities where repayment is prohibited under paragraph 4(2) or when any of the terms and conditions referred to in sub-paragraphs (1) or (2) above is not satisfied the payment of such sum shall be void for all purposes and [any such sum shall be received by the Lender upon trust to return the same to the Borrower+++] [the Lender shall at any time thereafter be bound to return such sum to the Borrower, or, as the case may be, its Insolvency Officer+] (and any sum so returned shall then be treated for the purposes of the Borrower’s obligations under this Agreement as if it had not been paid by the Borrower and its original payment shall be deemed not to have discharged any of the obligations of the Borrower). A request to the Lender for return of any sum under the foregoing provisions of this sub-paragraph (5) shall be in writing and shall be made by or on behalf of the Borrower or, as the case may be, its Insolvency Officer.

1. **Undertakings of the Borrower**

From and after the date of this Agreement (or the Effective Date if earlier), the Borrower will not [and no Partner will\*\*] without the prior written consent of the FSCA:-

 (1) secure all or any part of the Subordinated Liabilities;

 (2) redeem, purchase or otherwise acquire any of the Subordinated Liabilities;

 (3) amend any document evidencing or providing for the Subordinated Liabilities;

 (4) repay any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;

 (5) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected.

1. **Documentation**

This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date of this Agreement and not comprised in it such terms shall be of no further force and effect. No variation of or amendment to this Agreement shall be of any effect unless it is in writing signed by all the parties. Any amendment to this Agreement made or purported to be made without the consent of the FSCA shall be void. For the avoidance of doubt, nothing in this paragraph requires the FSCA to be a party to this agreement.

1. **Undertaking of the Lender**

The Lender will not without the prior written consent of the FSCA:-

(1) assign or purport to assign to any person the whole or any part of the Subordinated Liabilities;

(2) purport to retain or set-off at any time any amount payable by it to the Borrower [or any Partner\*\*] against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Agreement, and the Lender shall immediately pay an amount equal to any retention or setoff in breach of this provision to the Borrower and such retention or set-off shall be deemed not to have occurred;

(3) amend or waive the terms of any document evidencing or providing for the Subordinated Liabilities;

(4) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;

(5) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected;

(6) take or enforce any security, guarantee or indemnity from any person for all or any part of the Subordinated Liabilities, and the Lender shall, upon obtaining security, guarantee or indemnity in breach of this undertaking, hold the same [on trust for +++] [as agent of and for the benefit of ++] the Borrower.

[Note: Before giving its consent to a transaction falling under paragraph 8(6), the FSCA will need to be satisfied that the provider of security has waived his rights of subrogation against the Borrower until all Senior Liabilities of the Borrower have been paid in full.]

9. This Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present partners or [either] [any] of them or the assumption of new Partners or by a change of name it being provided that:-

 (a) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligation contained in it until such time as the Lender and the remaining Partner[s] shall agree in writing to release a retired Partner from such obligations and the FSCA has given its written consent to the release; and

(b) in the event of a new partner being assumed as a Partner of the Borrower the other partners shall procure that the said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum to it as the Lender and the FSCA may consider necessary.

 The obligations and undertakings of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally. \*\*+]

**IN WITNESS WHEREOF**, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

# Lender Shareholder

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

# Borrower

Authorised Signature

Print Name and Title