

Bernie McCann, 11 Ardeevin Drive, Lucan

and

IRISH WATER

DEED OF EASEMENT

DEED OF EASEMENT

THIS DEED OF EASEMENT is made the 2nd day of Oct Twenty One. Two Thousand and ~~Nineteen~~

BETWEEN [Bernie McCann¹ (Company No. [Not Applicable – Property is private dwelling]²) whose registered office is at [11 Ardeevin drive, Lucan, County Dublin]³ (hereinafter called the "Grantor" which expression where the context so admits or requires shall include all Executors, Administrators, Successors and Assigns) of the One Part and IRISH WATER, a designated activity company, limited by shares, incorporated in Ireland (Company No. 530363), whose registered office is at Colvill House, 24-26 Talbot Street, Dublin 1 (hereinafter called "IW" which expression where the context so admits or requires shall include its successors and assigns) of the Other Part

WHEREAS

A. In this Deed and in the several Schedules unless the context otherwise requires the following words and expressions shall have the following meanings:

- (i) "Accessories" has the same meaning as in the Acts.
- (ii) "The Acts" means the Water Services Acts 2007 to 2014.
- (iii) "Water Services" has the same meaning as in the Acts.
- (iv) "The Land" means the land of the Grantor specified in the First Schedule hereto.
- (v) "The Pipeline" means any water main or water mains, sewer or sewers as defined in the Acts or Pipe or Pipes referred to in Clause 1 hereof which have been laid or are to be laid in the Strip and includes part of any such water main sewer or Pipe or any apparatus equipment or other thing (or part thereof) which is ancillary to any of them whether moveable or permanent or which assists in the inspection placement maintenance repair replacement rendering unusable or servicing of any water main or sewer or Pipe or any of them and which are required for Water Services.
- (vi) "Pipe" has the same meaning as in the Acts.
- (vii) "The Strip" means the strip of land more particularly delineated and described on the plan hereto annexed and thereon coloured yellow and forming part of the Land
- (viii) Reference to any enactment (including the Acts) includes reference to any statutory modification thereof whether by way of amendment, addition, deletion or repeal and re-enactment with or without amendment
- (ix) The singular of any word in these definitions or elsewhere in this Deed includes the plural and the masculine gender includes the feminine and neuter genders and where two or more persons together constitute the Grantor the covenants by such a person shall be deemed to be joint and several covenants by both or everyone of such persons.

B The Grantor is seized and possessed of the Land for the tenure mentioned in the First

¹ Insert Developer/Grantor name in CAPTALS and bold

² Insert Company Number from www.cro.ie

³ Insert registered office address from www.cro.ie

Schedule hereto.

- C IW is a designated activity company limited by shares and registered under the Companies Acts, 1963 to 2014, pursuant to Section 4 of the Water Services Act 2013 and is a water services Authority for the purposes of the Acts.
- D. The Grantor has agreed with IW to grant to it for the purposes of its functions the rights easements and irrevocable licenses hereinafter set forth and upon treaty for such grant it was agreed that IW and the Grantor would give to the other of them the several covenants hereinafter contained on the part of each of them IW and the Grantor to the intent that the said covenants would be binding on their respective successors in title.

NOW THIS INDENTURE WITNESSETH as follows:-

1. In pursuance of the said Agreement and in consideration of the sum of one Euro (€1)¹ paid by IW to the Grantor (the receipt whereof the Grantor doth hereby acknowledge) the Grantor as beneficial owner HEREBY GRANTS unto IW ALL AND SINGULAR the full free and sufficient wayleaves rights easements licenses and liberties to lay, keep, construct use inspect maintain repair replace remove or render unusable any mains Pipes, Accessories or any other materials connected with or facilitating the exercise or performance by IW of any of its functions or powers in connection with Water Services together with the right to introduce and place all necessary apparatus ancillary thereto on over or beneath the surface of that part of the Land that consists of the Strip together with the full and free right and liberty of IW its officers and servants and all persons authorised by IW to pass and repass over the Strip at all times by day and by night times on foot and with or without vehicles equipment machinery and apparatus for any of the purposes aforesaid and for the purposes of any similar works of IW contiguous to the Pipeline or the Strip and the Grantor further Grants as beneficial owner grants to IW its officers and servants and all persons authorised by IW full right and liberty to pass and repass over the Land of the Grantor for the purpose of accessing the Strip for any of the purposes aforesaid TO HOLD the said rights easements and licenses unto IW in fee simple or for such lesser interest as the Grantor may have as appearing in the First Schedule hereto (subject to the provision for surrender as specified in Clause 2 (iii) hereof) as rights easements and licenses appurtenant to all and every or any lands of IW used for the provision of Water Services and appurtenant to the rights which Irish Water have or will have over lands of other Landowners for the provision of Water Services.
2. IW (to the intent so as to bind the rights easements and licenses hereby granted into whatsoever hands the same may come and with the intent to benefit and protect the Land and every part thereof) hereby covenants with the Grantor as follows:
 - (i) In exercising the rights easements and licences hereby granted to take all reasonable precautions to avoid obstruction or interference with the user of the Land and damage and injury thereto.
 - (ii) So far as is reasonably practicable and with all practicable speed to make good all damage or injury to the Land caused by the exercise by IW of the rights easements and licences hereby granted.
 - (iii) So far as is reasonably practicable and so long as the Pipeline is used for or in connection with IW's Water Services functions to keep the Pipeline in proper repair and condition, and upon permanent abandonment of the Pipeline or any part thereof (notification whereof shall be given to the Grantor by IW):

¹ Where relevant lands have been acquired by CPO, please conform appropriate consideration with Legal

- (a) to render the Pipeline permanently safe and
- (b) surrender back the rights easements and licences granted hereby to the Grantor
- (iv) To indemnify and keep indemnified the Grantor his servants, agents, licencees and invitees against all sums in respect of loss or damage, claims, demands, costs and expenses which the Grantor shall become legally liable to pay as compensation for accidental bodily injury or accidental loss of or damage to property where such injury or damage directly attributable to any default or negligence on the part of IW in the laying, construction, maintenance, repair, replacement, or removal of the Pipeline other than in consequence of the breach by the Grantor of any of the Grantor's covenants set out in Clause 3 below or in consequence of any malicious act or omission of the Grantor or any person for whom the Grantor is responsible in law.
- (v) To pay all rates and taxes which may be imposed in respect of the Pipeline or the easements and licences hereby granted and any increased rates, taxes or insurance premiums which may be imposed on the Grantor in respect of adjoining land by virtue of the existence of the Pipeline.
- (vi) If any interference with or disturbance of the functioning of any drain or drainage system in or under the Land can be shown by the Grantor to have been caused by the laying of any main Pipe or thing in the exercise of the rights easements and licences hereby granted, then with all practicable speed so far as is reasonably practicable to make good any damage or injury thereby occasioned and to make full compensation to the Grantor in respect thereof and in so far as the same shall not have been made good as aforesaid.
- (vii) To compensate the Grantor his servants, agents, licencees and invitees in respect of any bodily injury or loss or damage to material property suffered by him or them where the same is caused by or arises from the Pipeline, other than in consequence of the breach by the Grantor of any of the Grantor's covenants set out in Clause 3 below or in consequence of any malicious or criminally reckless act or omission of the Grantor or any person for whom the Grantor is responsible in law and except in so far as the same has been made good by IW without loss to the Grantor.

PROVIDED that the Grantor shall (i) as soon as reasonably practicable give notice in writing to IW of any claim or action brought or threatened against the Grantor and (ii) not admit liability in respect of, nor settle or compromise, such action or claim as is referred to in sub-clause (iv) of this clause without the prior written consent of IW. IW may at its own expenses defend any such action or claim in the name of the Grantor.

3. The Grantor (to the intent so as to bind the Land and every part thereof into whatsoever hands the same may come and with the intent to benefit and protect the rights easements and licences hereby granted) hereby covenants with IW as follows:-
- (i) Not to do or cause deliberately or recklessly permit or suffer to be done on the Land anything calculated or likely to cause damage or injury to the Pipeline or interfere with the exercise by IW of the rights hereby granted, including the planting of trees or shrubs that would interfere with the Pipeline or its operation.
 - (ii) Not without the prior consent in writing of IW (such consent not to be unreasonably withheld) to excavate under or alter the level of the ground over or under the Strip or to make or cause or recklessly permit or suffer to be made any material alteration to or any deposit of anything upon any part of the Strip so as to interfere with or obstruct the access thereto or to the Pipeline by IW or so as to lessen or in any way

interfere with the support afforded to the Pipeline by the surrounding soil including minerals or so as materially to reduce the depth of soil above or under the Pipeline.

- (iii) Not to erect or install or cause or recklessly permit or suffer to be erected or installed any building, structure or other erection or any plant or permanent apparatus of any kind whatsoever or permanent apparatus or the carrying out of any works on, over or beneath the surface of the Strip or the making of any material change in the use of the Strip which would be likely to cause damage or injury to the Pipeline.
- (iv) To observe the covenants and stipulations set out in the Third Schedule hereto

PROVIDED that nothing in this clause shall prevent the Grantor from installing any necessary service pipes drains wires or cables under the supervision and with the consent (which consent shall not be unreasonably withheld and for which no charge shall be made) of IW or its agents or the carrying on of normal agricultural operations or acts of good husbandry including fencing hedging and ditching not causing any such interference obstruction or material reduction of the depth of soil above or under the Pipeline.

- 4.1 Any dispute arising under, or in connection with or arising out of Clauses 2 or 3 of this Deed of Easement shall, in default of agreement between the parties, be referred by written notice from either party to the decision of a single arbitrator to be agreed upon between the parties hereto, or failing agreement to be appointed on the application of either party by the President of the Law Society of Ireland. Any such reference to arbitration will be a submission to arbitration within the meaning of the Arbitration Act, 2010, or any Act amending or repealing same and shall be an arbitration conducted in Ireland and in the English language and shall be governed by the Arbitration Act, 2010 subject to the provisions of this Clause 4.
- 4.2 The arbitrator shall on the request of either party hereto, at the sole cost of the requesting party, provide a reasoned award.
- 5. The Grantor hereby acknowledges the right of IW to production of the Deeds and Documents set out in the Second Schedule hereto (possession whereof is retained by the Grantor) and to delivery of copies thereof and hereby undertakes for the safe custody thereof.
- 6. All communications relative to this Deed of Easement shall be addressed to the Grantor at his address given at the commencement of this Deed of Easement and to IW at Colvill House, 24-26 Talbot Street, Dublin 1, or such other address as IW may at any time or from time to time notify to the Grantor.
- 7. The Grantor as registered owner or as the person entitled to be registered as owner hereby assents to the registration of the aforesaid rights easements licenses and covenants as burdens on the property specified in the First Schedule hereto.
- 8. If anyone (hereinafter referred to as "the spouse") of joint Grantors shall have no proprietary interest legal or equitable in or claim to the land specified in the First Schedule hereto and shall have been joined solely for the purpose of satisfying the provisions of the Family Home Protection Act 1976, these presents shall be deemed to have been executed by the spouse solely for the purpose of signifying his or her consent to the within Deed and to payment of the consideration by IW to the other spouse and the spouse shall not by reason only of having executed these presents be liable for the performance by the other spouse of his or her obligations hereunder.

**FIRST SCHEDULE
(Description and Tenure of the Grantors Land)**

The property is a private dwelling at 11 Ardeevin Drive, Lucan, County Dublin. The strip of land in question is to the east of the property basically the boundary line between 11 Ardeevin Drive and 9 Ardeevin Drive. The Wayleave easement for 11 Ardeevin Drive is to facilitate any works needed to the underground pipeline located below the garden in 9 Ardeevin Drive.

**SECOND SCHEDULE
(Documents retained by Grantor)**

**Ordnance Survey Map of the area
9 Ardeevin Drive Planning Submission Drawing - DWG No.1305**

**THIRD SCHEDULE
(Grantor's Covenant Pursuant to Clause 3 (iv))**

1. Not to plant within the Strip any poplar trees, willow trees, ash trees, beech trees, conifers, horse chestnut trees, lime trees, maple trees, sycamore trees, apple trees or pear trees or any other trees of a similar size (whether deciduous or evergreen).
2. Not to allow any shrubs or hedges planted on the Strip to grow to a height exceeding 4 metres.

In this Schedule any stipulation of a negative nature whereby the Grantor is restrained from doing any act or thing shall be read and construed as a covenant on the part of the Grantor not to do or permit or suffer such thing to be done.

IN WITNESS whereof the Grantor and Irish Water have executed and delivered this Deed the day and year first herein written.

GIVEN UNDER the
COMMON SEAL of the GRANTOR
and DELIVERED as a DEED⁵

B. M^c Cann
Director signature

BERNARD M^c CANN
Print Name

Director/Secretary signature

Print Name

⁵ Execution block to be confirmed/amended, as required, depending on status of Grantor (company, individual, etc.). Please liaise with Irish Water, as required.

**GIVEN UNDER the
COMMON SEAL of IRISH WATER
and DELIVERED as a DEED**

Director

Director/Secretary

