**THE HIGH COURT**

**Circuit No. 1776/2016**

**County of [Insert Circuit Court]**

**Between**

**[Insert name of lender]**

**Respondent/Plaintiff**

**-V-**

**[Insert name of borrower]**

**Applicant/Defendant**

**GROUNDING AFFIDAVIT**

I, [inset name], **[Agent insert occupation]** of[insert address] aged 21 years and upwards, do **MAKE OATH** and say as follows:

1. I am the applicant in these proceedings and I make this affidavit on my behalf from facts within my own knowledge save where otherwise appears and where so appears I believe same to be true.
2. I refer to the pleadings already had herein when produced.
3. [insert summary of borrowings, default and outstanding debt]
4. At all material times I was a consumer under the European Communities (Unfair Terms in Consumer Regulations) 1995 implementing EU Directive 93/13 on unfair terms in consumer contracts.
5. [set out reasons for default].
6. [Set out the details of the order made by the Circuit Court judge].
7. I have been advised by my legal advisors that since I was a consumer that there is a long standing obligation under EU law for the court to carry out an assessment of its own motion of the terms of this loan and mortgage for fairness under Directive and Regulations.
8. I have been advised by my legal advisors that this obligation was referred to in the recent High Court case of *AIB v Counihan* [2016] IEHC 752. No such assessment was carried by the Circuit Court judge.
9. In addition we have been advised by our legal advisors that the Circuit Court judge should have assessed the proportionality of the repossession order in the context of our rights to a home under the Charter of Fundamental Rights and the European Convention on Fundamental Rights and the Land and Conveyancing Law Reform (Amendment) Act 2019. No such assessment was carried out.
10. It was always my intention to appeal the decision of the Circuit Court but [set out reason why the appeal was not made in time]
11. Given that we formed the intention to appeal with the prescribed time limit, [insert reason why appeal was not lodged in time] that we have a strong ground for appeal I would ask the court to extent the time for appeal. I refer to a copy of the Notice of Appeal in draft form upon which I have marked my initials “xx 2” prior to swearing this affidavit.
12. We are currently not making repayments on the loan [**please confirm**] but I undertake to commence immediate repayments of [**insert amount**].

Sworn by the said [insert name]

1. who is personally known to me; or
2. who has been personally identified to me by  
   who is personally known to me and who has certified to me his/her personal knowledge of the Deponent; or
3. the identity of the Deponent has been established by me by reference to a  
      
   containing a photograph of the Deponent.

This day of October 2017  
at

Deponent Practising Solicitor/Commissioner for Oaths

**THE HIGH COURT**

**[Insert county] CIRCUIT**

**RECORD NO [insert record number]**

**[insert name of lender]**

**Respondent/Plaintiff**

**AND**

**[insert name of borrower]**

**Applicant/Defendant**

**Notice of Appeal**

**[insert name of solicitor]**