



# **Residential Mortgage Conditions**

## **October 2016**

England & Wales

### **IMPORTANT:**

- 1. You must carefully read these Mortgage Conditions and all other documents provided in relation to your mortgage. If you do not understand anything, ask your legal advisor to explain before you sign.**
- 2. The Lender is not advising you on the value or condition of the property, and is not responsible or liable to you for the contents of the valuation prepared for it.**
- 3. The Lender is not advising you whether to enter the mortgage, and is not responsible or liable to you for advice from any third party you appoint such as a mortgage adviser.**

**YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON YOUR MORTGAGE**

## SUMMARY OF KEY OBLIGATIONS AND LIABILITIES UNDER THE MORTGAGE CONDITIONS

### THE BORROWER AGREES TO:

- pay back all money owed under the Mortgage Agreement
- charge the Property as security to the Lender for the repayment of the Loan Advance, interest, Charges, Expenses and all other sums owed at any time under the Mortgage Agreement
- make all payments due under the Mortgage Agreement on time including capital repayments, interest, charges and expenses
- comply with all the terms of the Property's buildings insurance policy at all times
- maintain the Property in good repair
- in the case of an Owner-Occupier Mortgage, live at the Property
- maintain the existing structure of the Property unless the Borrower has the Lender's permission to change it
- comply with all obligations relating to the Property, including any under any lease (e.g. to pay service charge and ground rent)
- comply with all planning and building regulations

### THE LENDER IS ENTITLED TO:

- if the Borrower does not comply with the conditions of the Mortgage Agreement
  - o repossess and sell the Property
  - o appoint a receiver to manage and sell the Property
  - o claim the full balance owing under the Mortgage Agreement from the Borrower personally, before or after the Property has been repossessed and/or sold
- refuse to release any other mortgage the Borrower has given the Lender, until the sums secured by the Mortgage Deed are repaid
- arrange buildings insurance if the Borrower fails to adequately insure the Property
- require the Borrower to cover with interest the Lender's costs and expenses of exercising and enforcing its rights and protecting its security (such as legal enforcement costs, costs of paying service charge and ground rent under a lease and costs of paying buildings insurance premiums which the Borrower has failed to pay)
- transfer its rights and powers under the Mortgage Agreement to a third party

### WHERE THERE IS MORE THAN ONE BORROWER:

- if any Monthly Payments or any other sums due under the Mortgage Agreement are not made, the Lender may approach any individual Borrower to recover the unpaid sum
- the conditions of the Mortgage Agreement apply to each individual named as a Borrower in the Mortgage Deed

### TO NOTE:

- the interest rate may increase or decrease, unless a fixed rate applies
- the Borrower can request additional sums by way of a Further Advance, but the Lender may refuse such a request

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### How to read the Mortgage Conditions:

- **Start with Parts A and B.**
- **Then read Part C for details relating to Owner-Occupier Mortgages.**

## MORTGAGE CONDITIONS – OCTOBER 2016

### PART A - INTRODUCTION

#### I. DEFINITIONS

I.1 The terms below have the meaning shown beside them:

- I.1.1 “Act” means the Law of Property Act 1925, which contains laws relating to mortgages and the sale and purchase of properties.
- I.1.2 “Additional Amounts” means all sums, other than the Amount Owed, which are or may become payable by the Borrower to the Lender now or in the future under any existing or future agreement which is secured on land other than the Property (excluding any sums payable under regulated agreements, as defined in the Consumer Credit Act 1974).
- I.1.3 “Amount Owed” means the Loan Advance, interest, Charges, Expenses and all other sums which are or may become payable by the Borrower to the Lender under the Mortgage Agreement.
- I.1.4 “Bankruptcy Order” means an order of Court containing the terms of an individual’s bankruptcy.
- I.1.5 “Base Rate” means the variable rate of interest set by the Bank of England as the Official Bank Rate from time to time (or should the Base Rate cease to exist any successor rate, or if no successor rate exists, such replacement rate as the Lender reasonably selects).
- I.1.6 “Borrower” means the person(s) named in the Mortgage Agreement as the borrower(s) (see also condition 2.1(a) below).
- I.1.7 “Borrower’s Family” means the Borrower’s parent, grandparent, sibling, child, grandchild, husband, wife, civil partner and any other person (of whatever sex) whose relationship with the Borrower has the characteristics of a husband wife relationship.
- I.1.38 “Business Day” means a day between Monday to Friday inclusive on which London banks are normally open for business.
- I.1.8 “Charges” has the meaning given by condition 13.1.
- I.1.9 “Completion” means the legal completion of the Loan Advance and the Mortgage Deed.
- I.1.10 “Deed of Consent” means the document supplied by the Lender signed by any person(s) occupying the Property who agree to postpone their interest (if any) in the Property to that of the Lender.
- I.1.11 “Expenses” has the meaning given by condition 13.1.
- I.1.12 “Further Advance” means any further sums the Lender subsequently advances the Borrower secured by the Mortgage Deed after the first loan advance secured by the Mortgage Deed.
- I.1.13 “Interest Only” means the Monthly Payments only cover the interest on the Loan Advance rather than the interest and the capital borrowed, on the understanding that the Borrower will pay back the capital borrowed at the end of the Mortgage Term rather than as part of the Monthly Payment.
- I.1.14 “Interest Rate” means a rate of interest as set out in the Mortgage Offer as varied in accordance with condition 7.
- I.1.15 “Lender” means Mars Capital Finance Limited trading as Magellan Homeloans (see also condition 2.1(c) below).

- I.1.16 “LIBOR” means the means ICE Benchmark Administration Limited’s Interest Settlement Rate for three month sterling deposits quoted at or about 11.00am (London time) on a LIBOR Setting Date (or should LIBOR cease to exist, any successor rate or if no successor rate exists such rate as the Lender reasonably selects).
- I.1.17 “LIBOR Application Date” means the first Business Day of January, April, July and October.
- I.1.18 “LIBOR Setting Date” means:
- (a) the last day of the month preceding each LIBOR Application Date; or
  - (b) if the day referred to in (a) is not a Business Day, the last Business Day before that (e.g. where the 31<sup>st</sup> is a Sunday, the 29<sup>th</sup>).
- I.1.19 “Loan Advance” means the initial Loan Advance and any Further Advance made to the Borrower secured by the Mortgage Deed.
- I.1.20 “Life Policy” means each and every life assurance or term assurance policy deposited or lodged with the Lender by way of further security for the Amount Owed.
- I.1.21 “Monthly Payment” means the monthly payment set out in the Mortgage Offer which the Borrower is required to pay the Lender each month, as varied in accordance with condition 9.
- I.1.22 “Monthly Payment Date” means the day of the month on which the Borrower is obliged to make the Monthly Payment.
- I.1.23 “Mortgage Agreement” means the entire legal agreement between the Lender and the Borrower under which the Lender provides the Loan Advance to the Borrower including: the Mortgage Offer, the Mortgage Illustration, the Special Conditions, the Mortgage Conditions, the Mortgage Deed, the Tariff of Mortgage Charges and any other document entered into between the Lender and the Borrower relating to the Loan Advance.
- I.1.24 “Mortgage Conditions” means the Lender’s Residential Mortgage Conditions October 2016 (England and Wales) as set out in this document.
- I.1.25 “Mortgage Deed” means the legal document signed by the Borrower making the Property part of the Lender’s security for the repayment of the Amount Owed. This includes any subsequent deed that varies, amends, supplements or replaces the existing Mortgage Deed.
- I.1.26 “Mortgage Illustration” means the illustration(s) setting out details such as the Interest Rate and the Monthly Payments in relation to the Loan Advance(s), including any changes to or replacement of existing illustrations.
- I.1.27 “Mortgage Offer” means the written final mortgage offer(s), setting out terms on which the Lender is prepared to lend the Loan Advance to the Borrower including: (a) any changes to or replacement of existing offers; and (b) any other documents incorporated into the Mortgage Offer, other than the Mortgage Illustration and the Mortgage Conditions.
- I.1.28 “Mortgage Term” means the time period(s) set out in the Mortgage Offer(s) in which each Loan Advance must be repaid, starting on the date the Lender releases the Loan Advance.
- I.1.29 “Owner-Occupier Mortgage” a Mortgage Agreement under which the Mortgage Offer requires that the Property be occupied by the Borrower and the Borrower’s Family.
- I.1.30 “Policy Owner” means the person or persons who are the beneficiaries of any Life Policy.
- I.1.31 “Property Rights” means:
- (a) the Borrower’s rights under any agreement, option or guarantee concerning the Property, including its construction and condition;
  - (b) any shares or other membership rights the Borrower holds in a management company, commonhold association or resident’s society by virtue of owning the Property;
  - (c) any statutory rights to compensation in relation to the Property; and
  - (d) any other rights or remedies the Borrower has concerning the Property, including relating to damage to the property or its value.

- 1.1.32 “Property” means the property or any part of it set out in the Mortgage Deed including all fixtures and buildings added now or after Completion.
- 1.1.34 “Security Documents” means the Mortgage Deed and all other documents (other than the Mortgage Conditions) creating or intending to create a Security Interest in favour of the Lender in respect of the Amount Owed or part of the Amount Owed.
- 1.1.35 “Security Interest” means any charge, mortgage, right of set off, guarantee or other security interest in favour of any person or lender including any security interest that arises or is imposed by operation of law.
- 1.1.36 “Special Conditions” means the additional conditions set out in the Mortgage Offer.
- 1.1.37 “Tariff of Mortgage Charges” means the Lender's list of charges that apply to the Mortgage Agreement which may be varied in accordance with condition 13.4. A copy of the Tariff of Mortgage Charges is sent to the Borrower annually.

## 2 INTERPRETATION

- 2.1 References in these Mortgage Conditions to:
- (a) “the Borrower” and “the Policy Owner” include, where applicable, their respective personal representatives, their permitted assignees and other persons deriving title under each of them;
  - (b) “days” are to calendar days (except where the term “Business Day” is used);
  - (c) “the Lender” include its successors, assignees and transferees (whether legal or equitable, and whether by absolute assignment or by way of novation or by way of security only);
  - (d) “months” are to calendar months;
  - (e) legislation shall include any regulations made under that legislation or any amendments to that legislation or any subsequent or overriding legislation.
- 2.2 Where the Borrower or the Policy Owner comprise more than one person the Mortgage Agreement will apply to each person both jointly and individually.
- 2.3 Unless otherwise defined, expressions contained in the Mortgage Deed shall have the same meaning as defined in these Mortgage Conditions.
- 2.4 The headings set out in these Mortgage Conditions shall not affect the meaning of these Mortgage Conditions.
- 2.5 Words which are singular include the plural and vice versa, and words in the masculine form also include the feminine and vice versa.
- 2.6 The Contracts (Rights of Third Parties) Act 1999, which enables third parties to enforce contracts in some cases, does not apply to the Mortgage Agreement.

## 3. APPLICATION

- 3.1 If there is an inconsistency between the terms of the Mortgage Deed, Mortgage Offer, Mortgage Illustration Special Conditions and/or Mortgage Conditions, the following order of priority applies:
- (a) the Mortgage Offer (excluding the Special Conditions); then
  - (b) the Mortgage Illustration; then
  - (b) the Special Conditions; then
  - (c) the Mortgage Conditions; then
  - (d) the Security Documents.

## **PART B – GENERAL CONDITIONS**

### **4. THE MORTGAGE OFFER**

#### **4.1 Right of withdrawal and expiry of the Mortgage Offer**

4.1.1 The Lender may withdraw the Mortgage Offer at any time prior to Completion (whether or not the Borrower has accepted it) for any of the following reasons:

- (a) the Lender reasonably believes the Mortgage Offer has been obtained or will be used in connection with fraudulent activity (whether by the Borrower or a third party);
- (b) the Borrower, or anyone acting for the Borrower, negligently or deliberately provided inaccurate, false or incomplete information which the Lender relied on when deciding whether to make the Mortgage Offer;
- (c) the solicitors acting on behalf of the Lender have advised the Lender that they cannot comply with the Instruction to Solicitors or cannot confirm that the title to the Property is satisfactory;
- (d) the Borrower fails to comply with one or more of the Special Conditions;
- (e) there is a significant change for the worse in the condition, value or title of the Property after the Mortgage Offer is made;
- (f) there is a change in the Borrower's circumstances after the Mortgage Offer is made which is likely to have a significant negative impact upon the Borrower's ability to afford to comply with the terms of the Mortgage Offer.

4.1.2 Where the validity period of the Mortgage Offer expires prior to it being accepted by the Borrower, the Borrower will no longer be able to accept that Mortgage Offer.

#### **4.2 Application and valuation fee**

The application and valuation fee set out in the Mortgage Illustration which is payable to the Lender when the Borrower applies for a Loan Advance is non-refundable. Accordingly, this Charge will not be refunded where no Mortgage Offer is made, or the Mortgage Offer is withdrawn or expires under conditions 4.1.1 or 4.1.2.

#### **4.3 Release of the Loan Advance**

The Loan Advance will not be sent to the solicitor acting for the Lender or other third party payees as set out in the Mortgage Offer until the Lender has received confirmation the Special Conditions have been complied with.

#### **4.4 Mortgage Deed**

4.4.1 The Loan Advance must constitute a first legal charge over the Property at all times in the form of the Mortgage Deed. On Completion the Property must not be subject to any other charge, restriction or interest of any kind (whether legal, equitable or otherwise) which takes priority over the Lender's first legal charge, other than those matters the Borrower has disclosed to the Lender in the course of applying for the Mortgage Offer.

4.4.2 Where there is more than one Borrower each Borrower must sign the Mortgage Deed.

#### **4.5 Property valuation and advice**

4.5.1 If the Lender gives the Borrower a copy of the valuation obtained by it prior to making the Loan Advance or passes on any of its contents, this is for information only. The Lender is not responsible or liable to the Borrower in respect of the valuer's inspection and report.

4.5.2 The Lender has not advised the Borrower whether to enter the Mortgage Agreement, and is not responsible or liable to the Borrower for any advice provided in relation to the Mortgage Agreement by any third party including any mortgage adviser appointed by the Borrower.

## 5. OBLIGATION TO PAY

- 5.1 The Borrower agrees to pay to the Lender the Amount Owed in accordance with the Mortgage Agreement. The Borrower further agrees to pay to the Lender the Monthly Payment which shall be due on each Monthly Payment Date until the Amount Owed has been repaid in full.
- 5.2 On or shortly after the Lender releases the Loan Advance to the solicitor acting for the Borrower, the Lender will send the Borrower a “Welcome Letter” or “Summary of Account”, which will state when the first Monthly Payment Date falls due and the amount of that first payment.
- 5.3 The Borrower must make the Monthly Payment: by Direct Debit from a United Kingdom bank account; or by such other means of payment consented to by the Lender (such consent not to be unreasonably withheld). Where a Direct Debit payment is refused, or a payment fails to clear, the Lender reserves the right make a Charge for this in accordance with the Tariff of Mortgage Charges.
- 5.4 If a sale of the Property does not produce sufficient proceeds to pay the Amount Owed in full, the Borrower must pay the remainder of the Amount Owed immediately with interest.
- 5.5 All payments by the Borrower shall be made in full without deduction and will reduce the Amount Owed on the day of receipt by the Lender of cleared funds.

## 6. INTEREST CHARGING

- 6.1 Interest will be charged and the Borrower will pay interest on the Amount Owed, monthly in advance, at the Interest Rate as varied in accordance with the Mortgage Offer and condition 7.
- 6.2 Unless otherwise specified in the Mortgage Offer, interest will be calculated by applying the Interest Rate on a daily basis against the Amount Owed until it is repaid in full (before and after any judgment and/or the end of the Mortgage Term).
- 6.3 Unless otherwise specified in the Mortgage Offer, interest will be charged as follows:
- 6.3.1 Subject to conditions 6.3.2 and 6.3.3, interest will be charged for the whole of each month on the Amount Owed on the first day of that month. This means that the Borrower will be charged interest on any interest forming part of the Amount Owed – the Borrower can avoid paying interest on interest by making payments on time.
- 6.3.2 In a month in which any Loan Advance is made by the Lender, interest will be charged on the Loan Advance from the day on which it is advanced until the end of that month.
- 6.3.3 In a month in which any payment is made to the Lender, the Lender will credit back any interest charged on the amount of that payment from the date it is received until the end of the month.
- 6.4 Whilst the Lender is legally entitled under this Condition 6 to charge interest on unpaid Charges, its current practice is to not charge such interest. The Lender reserves the right to start charging interest on unpaid Charges in the future, but will notify the Borrower in writing at least 30 days’ before it does so.

## 7. CHANGES TO THE INTEREST RATE

- 7.1 Unless the Interest Rate is fixed, the Interest Rate is variable in accordance with the Mortgage Offer.
- 7.2 If the Interest Rate tracks Base Rate plus a margin in accordance with the Mortgage Offer, changes to the Base Rate will be applied to the Interest Rate on the first day of the month following the announcement by the Bank of England of a change to Base Rate. The Interest Rate will not go below any floor detailed in the Mortgage Offer. The Lender may reduce the margin at any time and will notify the Borrower in writing at least 14 calendar days before the reduction takes effect.

- 7.3** If the Interest Rate tracks LIBOR plus a margin in accordance with the Mortgage Offer, changes to LIBOR will be applied to the Interest Rate on each LIBOR Application Date by reference to LIBOR on the preceding LIBOR Setting Date. The Lender may change the LIBOR Application Date for any of the reasons set out at conditions 7.4.2 to 7.4.4 and will notify the Borrower in writing at least 14 days before any change to the LIBOR Application Date. The Interest Rate will not go below any floor detailed in the Mortgage Offer. The Lender may reduce the margin at any time and will notify the Borrower in writing at least 14 days before the reduction takes effect.
- 7.4** If the Interest Rate is a variable rate set by the Lender, the Lender can increase or reduce the Interest Rate for any of the following reasons:
- 7.4.1 to reflect proportionately changes in the Base Rate or LIBOR;
  - 7.4.2 to respond proportionately to changes in the law or decisions of a Court or Ombudsman;
  - 7.4.3 to meet regulatory requirements;
  - 7.4.4 to reflect new or updated industry guidance or codes of practice which raise standards of consumer protection;
  - 7.4.5 to reflect proportionately legitimate changes in the costs incurred by the Lender in providing the Loan Advance including the costs of funding;

and the Lender will notify the Borrower in writing at least 14 days before the change takes effect.

## **8. MONTHLY PAYMENT AND INTEREST ONLY PAYMENTS**

- 8.1** The Borrower agrees to pay each Monthly Payment in full on the Monthly Payment Date and to repay the total Amount Owed by the end of the Mortgage Term. Each Monthly Payment shall relate to a calendar month. The Monthly Payment shall be calculated in advance and becomes payable from the first day of each month.
- 8.2** Each Monthly Payment shall consist of the total of:
- 8.2.1 the interest accrued in the month to which the Monthly Payment relates (the position as regards the first Monthly Payment in respect of a Loan Advance is explained in the Mortgage Offer);
  - 8.2.2 (save in the case of an Interest-Only Monthly Payment) the sum of any capital due in the month to which the Monthly Payment relates; and
  - 8.2.3 any Expenses, Charges or other sums forming part of the Amount Owed which the Lender has determined under condition 9.1 or agreed with the Borrower should be included in that Monthly Payment.
- 8.3** The Lender will apply any payments the Borrower makes in the following order:
- 8.3.1 first, towards paying the most recent unpaid Monthly Payment;
  - 8.3.2 then towards paying any remaining arrears in unpaid Monthly Payments and interest on unpaid Monthly Payments;
  - 8.3.3 then towards paying the remaining elements of the Amount Owed in such order as the Lender reasonably decides, which will comply with any rules set by the Lender's regulators.
- 8.4** If the Lender allows the Borrower to pay the Loan Advance (or any part of it) on an Interest Only basis, the Borrower must at the end of the Mortgage Term repay the remainder of the Amount Owed. It is the Borrower's responsibility to make certain that they have adequate capital available to pay the Amount Owed at the end of the Mortgage Term. The Borrower should check this at least annually.
- 8.5** The Lender may request during the Mortgage Term evidence of how the Borrower intends to repay the Amount Owed at the end of the Mortgage Term including evidence that any repayment vehicle is performing satisfactorily in order to repay the Amount Owed at the end of the Mortgage Term.

## 9. CHANGES TO THE MONTHLY PAYMENT

**9.1** The Lender may change the amount of the Monthly Payment for any one or more of the reasons set out at condition 9.2 below by giving the Borrower written notice of the new payment amount at least 15 days before the change takes effect.

**9.2** Changes to the Monthly Payment may be made:

- 9.2.1 to reflect any change in the Interest Rate;
- 9.2.2 to account for any new or changed insurance premiums under condition 12.3;
- 9.2.3 to account for any repayment of the Amount Owed;
- 9.2.4 to reflect unpaid capital, interest, Charges or Expenses;
- 9.2.5 to reasonably take into account any other matter necessary to ensure the repayment of the Amount Owed by the end of the Mortgage Term;
- 9.2.6 to provide for any change in the Mortgage Term agreed between the Lender and the Borrower;
- 9.2.7 to provide for any change to the amount of the Mortgage Payment agreed between the Lender and the Borrower, for example, where the Borrower has fallen into arrears with the Monthly Payments or owes unpaid Fees or Expenses and agrees the change to repay those sums;
- 9.2.8 if required to comply with a change in the law or to meet regulatory requirements.

## 10. CHARGES FOR EARLY REPAYMENT

The Amount Owed may be repaid by the Borrower at any time in full or in part subject to paying any early repayment charges or mortgage exit administration fees in accordance with the Mortgage Offer and the latest Tariff of Mortgage Charges.

## 11. OBLIGATIONS OF THE BORROWER

**11.1** The Borrower agrees:

- 11.1.1 to comply at all times with the terms of the Mortgage Agreement;
- 11.1.2 not to allow a further Security Interest to be registered against the Property at the Land Registry or otherwise cause a further Security Interest to exist on the Property without the prior written consent of the Lender (which will not be unreasonably withheld), except where this further Security Interest is in favour of the Lender;
- 11.1.3 not to allow the registration of any proprietor of the Property at the Land Registry except for the Borrower;
- 11.1.4 not to dispose of any part or the whole of the Property by way of tenancy, lease, assignment or other interest nor grant any right affecting the Property nor to accept the surrender of any lease of the whole or part of the Property without the prior written consent of the Lender (which will not be unreasonably withheld);
- 11.1.5 not to cause or allow any change to the Property's use, nor apply to any planning authority for consent to such change of use, without the prior written consent of the Lender (which will not be unreasonably withheld);
- 11.1.6 not to cause or allow any structural alterations or additions to the Property (including conversion to flats or demolition) without the prior written consent of the Lender (which will not be unreasonably withheld);
- 11.1.7 not to use the Property for any illegal purpose or cause or allow the same to take place;

- 11.1.8 only with the prior written consent of the Lender (which will not be unreasonably withheld) to apply for or obtain a grant for improvement of the Property or any other grant relating to the Property;
  - 11.1.9 not to cause or permit by act or omission a statutory charge to become fixed or binding on either the Property or the Lender;
  - 11.1.10 to inform the Lender immediately of (a) any notice received by the Borrower setting out proposals for a compulsory purchase of the Property or any other matter which may affect the value of the Property and (b) any claim made for compensation arising as a result of a compulsory purchase, loss or damage to or decrease in the Property's value. The Borrower must then follow the Lender's reasonable directions in respect of the notice or claim and any subsequent legal process;
  - 11.1.11 to ensure that the Property (including any gardens) are placed and maintained in good repair, decoration and condition, and replace as appropriate fixtures, fittings, sewers, pipes, drains, watercourses and other conducting media. The Lender may require the Borrower to complete repairs reasonably required or if the Borrower fails to carry out such repairs, then Lender may carry out the repairs pursuant to condition 11.2 and the Borrower agrees to pay the Lender reasonable Expenses incurred in respect of the repairs;
  - 11.1.12 to ensure compliance by the Borrower and any others residing at the Property with all obligations, regulations, stipulations or other agreements affecting the Property including the performance and obligations of any lease, licence or other document concerning the Property;
  - 11.1.13 to perform and observe all statutory and other requirements stipulated from time to time by a competent authority concerning the Property;
  - 11.1.14 to make prompt payment of all taxes, rates, insurance premiums, service charges, ground rent and other outgoings relating to the Property;
  - 11.1.15 to permit access by the Lender and its representatives onto the Property on reasonable notice at reasonable times (unless in case of an emergency) for the purposes of inspection, survey and the carrying out of repairs where the Borrower has omitted to do so themselves;
  - 11.1.16 where the Lender has made a retention from the Loan Advance pending the carrying out of works by the Borrower at the Property, the Borrower will carry out these works within the period specified in the Mortgage Offer to the Lender's valuer's satisfaction and the Borrower will be responsible for the cost of re-inspection by the Lender's valuer and the consequent report;
  - 11.1.17 to ensure where the Borrower obtains a renewal or an increased term in the Property or a superior title to the Property that the Lender takes a first ranking legal charge;
  - 11.1.18 not to agree to any change to any Life Policy terms without the prior written consent of the Lender (which will not be unreasonably withheld);
  - 11.1.19 not to allow any other person to obtain an interest in the Property or grant or vary any licence, tenancy or lease in the Property (or any part of it) or surrender any rights or serve notices in relation to such rights without the prior written consent of the Lender (which will not be unreasonably withheld);
  - 11.1.20 promptly sign any documents and provide the Lender with any information about the Property or the Borrower's financial circumstances which the Lender may reasonably request to protect its security in the Property.
- 11.2** Where it is reasonable to do so and the Borrower is given reasonable prior written notice, the Lender may at the Borrower's expense perform the Borrower's obligations on their behalf in the event that the Borrower does not comply with the terms of the Mortgage Agreement. Expenses thereby incurred by the Lender will be added to the Amount Owed and interest will be charged in accordance with the Mortgage Agreement.
- 11.3** If at any time the Lender does not enforce terms of, or exercise their rights under, the Mortgage Agreement, this does not mean that they will not be able to do so in the future.

## 12. INSURANCE

### 12.1 The Borrower must insure the Property as follows:

- 12.1.1 The Property must be insured for the total rebuilding cost as reasonably specified by the Lender either:
- (a) by the Borrower with an insurer of his choice subject to the conditions stipulated in 12.1.2 to 12.1.7; or
  - (b) by way of a block policy specified by the Lender as may be available from time to time; or
  - (c) such other policy as specified and approved by the Lender to be index linked to the House Rebuilding Cost Index as set by the Royal Institute of Chartered Surveyors from time to time or another index as chosen by the Lender.
- 12.1.2 The sum insured must also cover site clearance, demolition and all professional fees under a comprehensive policy which covers all risks reasonably required by the Lender.
- 12.1.3 The policy must be in the joint names of the Borrower and Lender or the Lender's interest must be noted on the policy.
- 12.1.4 The Borrower must keep the policy in force and pay all insurance premiums on time and give the Lender a copy of the policy if asked to do so.
- 12.1.5 Irrespective of who insures the Property, the Borrower must not do anything to invalidate the policy or increase the level of premiums payable.
- 12.1.6 If the Borrower receives any money under the policy, it must inform the Lender and will hold these monies on trust for the Lender.
- 12.1.7 Monies received by the Lender or the Borrower in respect of the policy are to be used to replace or repair the Property or (if this is not reasonably practicable) to reduce or repay the Amount Owed.

### 12.2 Where under any lease of the Property, a third party is obliged to insure the Property:

- 12.2.1 the policy must contain a note of the Lender and Borrower's interest;
- 12.2.2 a copy of the policy and sufficient evidence of payment of the premium must be provided to the Lender if requested;
- 12.2.3 the Property must be insured for the full rebuilding cost including site clearance, demolition and all professional fees under a comprehensive policy which covers all risks reasonably specified by the Lender.

### 12.3 If the Lender reasonably decides the Property is not adequately insured, the Lender may take out insurance on the Borrower's behalf, in accordance with the requirements of this condition 12, at the Borrower's expense and the Borrower will be responsible for paying the insurance premiums. If the Borrower fails to pay these, they will be added to the Amount Owed as Expenses and interest will be charged in accordance with the Mortgage Agreement.

### 12.4 If a claim is made under any insurance policy in respect of the Property, the Lender may negotiate and settle any claims with the insurers.

## 13. EXPENSES AND CHARGES

### 13.1 The Borrower agrees to pay to the Lender:

- 13.1.1 all charges or fees whose amount is specified in the Lender's Tariff of Mortgage Charges (as amended from time to time pursuant to condition 13.4), the Mortgage Illustration and/or the Mortgage Offer (referred to together in these Mortgage Conditions as "Charges"); and
- 13.1.2 all reasonable expenses, including legal costs, which the Lender has to pay to third parties in connection with the matters set out at condition 13.2 below (referred to in these Mortgage Conditions as "Expenses").

- 13.2** The matters referred to in condition 13.1.2 are:
- 13.2.1 creating and/or protecting the Lender's security in respect of the Amount Owed (including by paying outstanding ground rent or service charge owed by the Borrower in respect of the Property);
  - 13.2.2 administering the mortgage account relating to the Mortgage Agreement;
  - 13.2.3 dealing with any request the Borrower makes of the Lender in connection with the Mortgage Agreement, the mortgage account relating to the Mortgage Agreement or the Property;
  - 13.2.4 insuring the property under condition 12.3;
  - 13.2.5 performing the Borrower's obligations under condition 11.2;
  - 13.2.6 exercising any of the Lender's rights and powers under the Mortgage Agreement and/or the law which applies to the Mortgage Agreement and/or the Property;
  - 13.2.7 recovering the Amount Owed or any part of it;
  - 13.2.8 bringing or defending legal proceedings relating to the Mortgage Agreement and/or the Property (whether or not the Borrower is a party to those proceedings);
  - 13.2.9 dealing with the final repayment of the Amount Owed and/or the discharge of the Lender's security in respect of the Amount Owed.
- 13.3** Any amount that becomes payable under condition 13.1 shall be added to the Amount Owed on the date on which it is incurred (in the case of Charges falling within condition 13.1.1) or is paid by the Lender (in the case of Expenses falling within condition 13.1.2). Interest will be charged on unpaid Expenses which have been added to the Amount Owed at the Interest Rate. The Lender also reserves the right to charge interest on unpaid Charges which have been added to the Amount Owed, but as explained in Condition 6.4, it is not the Lender's current practice to do so.
- 13.4** The Lender can change those Charges whose amount is specified in the Tariff of Mortgage Charges or introduce new Charges into the Tariff of Mortgage Charges where it is to the Borrower's advantage or is needed for one of the following reasons:
- 13.4.1 to respond proportionately to changes in the law or decisions of a Court or Ombudsman;
  - 13.4.2 to meet regulatory requirements;
  - 13.4.3 to reflect new or updated industry guidance or codes of practice which raise standards of consumer protection;
  - 13.4.4 to reflect proportionately legitimate changes in the costs incurred by the Lender in relation to the activity to which the Charge relates.
- 13.5** Where the Lender introduces new Charges or changes existing Charges, the Lender will notify the Borrower in writing not less than 14 days before the change takes effect. The Lender will send the Borrower a copy of the Tariff of Mortgage Charges at least once a year.

## **14. DEFAULT AND POWERS OF THE LENDER AND RECEIVER**

- 14.1** The Borrower must immediately repay the Amount Owed on the written demand of the Lender in any of the following ten circumstances.
- 14.1.1 If:
    - (a) a sum equal in amount to at least two Monthly Payments is due and payable by the Borrower; and
    - (b) that sum remains outstanding 14 days after a written demand by the Lender for payment is sent.
  - 14.1.2 If:
    - (a) the Borrower breaches the Mortgage Agreement in any other respect;

- (b) that breach is not remedied by the Borrower within 14 days of being notified in writing of it; and
- (c) the Lender reasonably considers the breach creates a new or increased risk of harm to its security and/or that it would suffer loss if it were to realise its security in respect of the Amount Owed.

14.1.3 If the Borrower, or anyone acting for the Borrower, negligently or deliberately provided inaccurate, false or incomplete information which the Lender relied on when deciding whether to make the Loan Advance.

14.1.4 If the Borrower dies or (if there is more than one Borrower) all of the Borrowers have died.

14.1.5 If the Borrower gives the Lender possession of the Property or abandons it.

14.1.6 If a Bankruptcy Order is made against the Borrower, the Borrower makes any formal arrangement with their creditors or the Borrower applies for an interim order.

14.1.7 If any Life Policy becomes invalid.

14.1.8 If the Property is compulsory purchased or any Judgment or Order is made against the Borrower that requires the Borrower to give up possession of the Property.

14.1.9 If another mortgage lender gives the Lender notice that they are going to exercise their rights to take possession, appoint a receiver or exercise a power of sale in relation to the Property.

14.1.10 If the Mortgage Term comes to an end and the Amount Owed has not been fully repaid.

**14.2** If the Borrower is in breach of their obligations under the Mortgage Agreement, the Borrower, for so long as they remain in breach of their obligations, will not be permitted to port the Mortgage Agreement to a different property or receive a Further Advance.

**14.3** For the purposes of the Act, the Amount Owed is to be treated as due one month after the date of the Mortgage Deed. The Lender (or any Receiver appointed) may exercise the statutory power of sale if the amount owed becomes immediately repayable under condition 14.1. The Lender's statutory power of sale applies free from the restrictions imposed by section 103 of the Act.

**14.4** The Lender's power of sale and such other powers given by Section 101 of the Act are varied and extended as set out below. Nothing in this condition is intended to exclude the Lender's potential liability for breach of its duties as a mortgagee in possession.

14.4.1 The Lender may acting reasonably sell the Property under any contract and agree to exchange of contracts and grant options to any buyer of its own choosing.

14.4.2 The Lender may insure the Property against such risks as it reasonably considers necessary and shall decide the appropriate amount of cover through a broker, agent or directly with the insurer and shall have the right to retain any commission which the insurers pay the Lender.

14.4.3 The Lender may at its own discretion renew, repair or develop the Property, including applying for appropriate planning consents and licences applicable in order to obtain the best sale price.

14.4.4 The Lender may take possession of the Property and require the Borrower to leave it and take any other legal action necessary to do this.

14.4.5 The Lender may require any tenants, workmen or other persons in possession to leave the Property. However the Lender must abide by the terms of any tenancy agreement which it has consented to.

14.4.6 The Lender may let or manage the Property (at the Borrower's risk) including accepting rent from tenants and making any payments in relation to the Property.

14.4.7 The Lender may employ and pay persons for carrying out these powers at a price or fee and upon terms it reasonably considers appropriate.

**14.5** The Lender's powers under Section 99(ii) and 100(ii) of the Act will be varied and extended as follows:

14.5.1 the Lender may accept any surrender of the Lease;

14.5.2 the Lender may grant, vary or renew a Lease of the Property.

**14.6** If the Borrower has left any personal possessions at the Property, then after taking possession the Lender may remove and store these personal possessions and/or sell or otherwise dispose of them, without being liable to the Borrower for any resulting loss (unless the Lender acts negligently). The Lender will give the Borrower 14 days' prior written notice of its intention to exercise such rights.

**14.7** The Lender may appoint a Receiver to manage, collect income and sell the Property and in doing so:

14.7.1 the Receiver may exercise all the rights of the Lender including all powers extended under these Mortgage Conditions;

14.7.2 the Receiver will have power to sell the Property in the name of the Borrower;

14.7.3 the Receiver will be the agent of the Borrower;

14.7.4 the Receiver may employ agents to carry out any work;

14.7.5 subsection (8) of Section 109 of the Act shall be amended so as to allow a Receiver to pay any money owing by the Borrower in such order of priority as the Lender and the Receiver reasonably agree; and

14.7.6 the Lender has the right to take possession of the Property and remove or replace the Receiver.

## **15. THIRD PARTIES**

Any buyer or other party considering buying the Property from the Lender exercising its powers under the Mortgage Agreement need not raise any enquiry as to whether such powers are exercisable or have arisen.

## **16. POWER OF ATTORNEY**

**16.1** As continuing security the Borrower gives the Lender (and as a separate appointment any Receiver appointed by the Lender) an irrevocable power of attorney authorising it to do anything which it reasonably considers appropriate in connection with any of its powers and to act on the Borrower's behalf to take any action which the Borrower is obliged to take under the Mortgage including but not limited to the following:

16.1.1 to exercise any rights of the Lender under the Mortgage Agreement;

16.1.2 to execute any document required to complete the transfer of the Property to the Borrower;

16.1.3 to exercise any document required to make good the Lender's security;

16.1.4 to transfer the Property to a buyer;

16.1.5 to collect any sums payable under the insurance policy and to fully negotiate and settle any claims arising under it;

16.1.6 to complete any mortgage deed required under the Mortgage Agreement.

**16.2** If the Mortgage Agreement is held in more than one name, the Lender or Receiver will only exercise the powers of attorney contained in this condition 16, after:

16.2.1 the Amount Owed has become immediately repayable under condition 14.1; and

16.2.2 the Lender or Receiver has given the Borrower at least 15 days written notice that it will be exercising the power of attorney.

**16.3** Where condition 16.2 applies, the power of attorney and the powers under it will continue for no more than 12 months from the date the Lender or receiver gave the Borrower notice under condition 16.2.2.

**16.4** The Lender or Receiver shall not be liable for anything done under the power of attorney in this condition 16 if it has used reasonable care in exercising or delegating the power.

## **17. NOTICE**

17.1 Any notice required under the Mortgage Agreement must be delivered by hand or sent by pre-paid post.

17.2 If sent by first-class pre-paid post, a notice will be deemed served on the second Business Day after posting.

17.3 If delivered by hand, a notice will be deemed served on the day of sending providing this is on a Business Day between 9am and 5pm, otherwise it will be deemed served on the next Business Day.

17.4 If a Borrower lives at the Property, a notice will be deemed served on that Borrower if sent or delivered to the Property. If a Borrower has confirmed to the Lender that they live at a different address, a notice will be deemed served on that Borrower if sent or delivered to that other address. If a Borrower has failed to provide UK a correspondence address, notice will be deemed served if sent or delivered to the Property.

## **18. MANAGEMENT COMPANY**

If the Borrower holds a share certificate or other certificate of membership in a Management Company or Residents Association, the certificate must be deposited with the Lender who may as Attorney transfer the membership to whoever the Lender may transfer the Property in exercising its power of sale.

## **19. TRANSFER**

**19.1** The Lender may at any time transfer or assign, in law or in equity, and in whole or in part, any of its rights or benefits under the Mortgage Agreement to a third party without obtaining the Borrower's prior consent.

**19.2** Except as provided in this condition 19, the Borrower's legal rights under the Mortgage Agreement will not be altered by the Lender making a transfer or assignment under condition 19.1.

**19.3** The Lender will take reasonable steps to ensure that, where it transfers or assigns its rights or benefits under condition 19.1 in relation to an Owner-Occupier Mortgage, the mortgage account in question will continue to be administered by a person who is authorised and regulated by the Financial Conduct Authority (or any successor regulator).

**19.4** The Lender may without the Borrower's consent and without notice disclose any information relating to the Borrower and the Mortgage Agreement to a potential transferee or assignee and any such matters the Lender reasonably consider appropriate in connection with the transfer or assignment.

**19.5** Unless the terms of the transfer or assignment state otherwise, the person to whom the Lender transfers or assigns rights or benefits under the Mortgage Agreement will be able to exercise all the rights, powers and remedies that the Lender could exercise before the transfer or assignment.

## **20. VARIATION OF TERMS**

**20.1** The Lender may change the terms of the Mortgage Agreement (other than those aspects of Charges, Interest Rate and Monthly Payment which can be changed under conditions 7, 9 and 13.4) where:

20.1.1 the change is not to the Borrower's disadvantage;

20.1.2 to ensure compliance with the law or decisions of a Court or Ombudsman; or

20.1.3 to meet regulatory requirements.

**20.2** Except where condition 20.3 applies, the Lender will notify the Borrower in writing at least 60 days before the change takes effect.

- 20.3** If the Lender is required by law or a regulatory requirement to give less than 60 days' notice before the change takes effect, the Lender will give the Borrower notice in writing as long before the change takes effect as is consistent with its legal or regulatory obligations.
- 20.4** The Lender and the Borrower may also agree to change the terms of the Mortgage Agreement and the date when the agreed change will take effect.

## **21. APPLICABLE LAW AND JURISDICTION**

- 21.1** This Mortgage Agreement shall be governed exclusively by the laws of England and Wales.
- 21.2** All parties to this Mortgage Agreement agree that they will submit to the non-exclusive jurisdiction of the Courts of England and Wales to settle any dispute or claim that arises out of or in connection with the Mortgage Agreement.

## **PART C – OWNER-OCCUPIER CONDITIONS**

### **22. OCCUPATION**

- 22.1** The Property must be occupied as or in connection with a dwelling by the Borrower during the Mortgage Term. The Borrower's Family may also reside at the Property during the Mortgage Term (subject to compliance with conditions 22.4 and 22.5 below).
- 22.2** The Borrower must inform the Lender in writing if the Borrower is to reside or has resided elsewhere for 28 days or more and/or Property is to be or has been vacant for 28 days or more.
- 22.3** Where the Borrower is purchasing the Property when the Loan Advance is made, the Property must be obtained by the Borrower with vacant possession, i.e. with no other persons living in the Property (except any who have signed a Deed of Consent pursuant to condition 22.5 below).
- 22.4** Where the Borrower already owns the Property when the Loan Advance is made, the Property must not be occupied by any third party aged 17 or over (except those who have signed a Deed of Consent pursuant to condition 22.5 below).
- 22.5** Any occupant at the Property aged 17 or over must (unless named as a Borrower) sign a Deed of Consent.

### **23. SECURITY**

- 23.1** The Mortgage Deed secures the Amount Owed.
- 23.2** The Lender will not release the Mortgage Deed until the Borrower has paid the Amount Owed in full.
- 23.3** The Lender will not release any property it holds as security for the Additional Amounts, until the Borrower has repaid all and any parts of the Amount Owed which are due and payable.
- 23.4** The Borrower also assigns the Property Rights to the Lender as security for the Amount Owed. The Lender will reassign the Property Rights to the Borrower when the Mortgage Deed is released.
- 23.5** The Borrower will hold any money received under the Property Rights on trust for the Lender.
- 23.6** Any money the Borrower or Lender receives under the Property Rights must be used to pay off the Amount Owed, unless the Lender gives written consent (which will not be unreasonably withheld) to it being used for some other purpose.
- 23.7** Where the Property is leasehold, the Lender's security includes any new or extended lease the Borrower acquires and any interest in the freehold of the Property or the building in which the Property is located. If the Borrower acquires any such interest, at the Lender's request the Borrower will grant the Lender a mortgage of that interest in a form approved by the Lender.