



# **Mortgage Conditions**

## **July 2013**

England & Wales

## SUMMARY OF OBLIGATIONS

Please read these Mortgage Conditions and all other documents provided to you in relation to your Mortgage Agreement very carefully. This summary should not be relied upon as it is a summary only. If there is anything you do not understand please ask your legal advisor to explain.

If you do not understand any part of the Mortgage Agreement, please do not sign anything until you are satisfied that it has been explained to you.

We would recommend that you keep this document in a safe place in case you want to refer back to it.

### THE BORROWER AGREES TO:-

- pay back all of the money owed under the Mortgage Agreement
- pay all fees incurred by the Lender in preparing for the issue of the Loan Advance
- charge the Property as security to the Lender for the repayment of the Loan Advance
- make all payments due under the Mortgage Agreement on time including capital repayments, interest and policy premiums
- comply with all the terms of the Borrower's buildings insurance policy at all times
- maintain the Property in good repair
- live at the Property and not part with possession of it nor create any charges or rights over it without the Lender's permission
- maintain the existing structure and residential use of the Property unless the Borrower has the Lender's consent to change this
- comply with any restrictions on the Property in the title deeds
- comply with all planning and building regulations.

### THE LENDER IS ENTITLED TO DO THE FOLLOWING:-

- take possession and sell the Property if the Borrower does not comply with the conditions of the Mortgage Agreement
- appoint a receiver to manage and sell the Property if the Borrower does not comply with the conditions of the Mortgage Agreement
- arrange the buildings insurance of the Property if the Borrower does not do so
- if the Lender sells the Property for less than the amount the Borrower owes, the Lender may claim the balance owing from the Borrower as a debt.

**WHERE THERE IS MORE THAN ONE BORROWER:-**

- each Borrower is both jointly and individually responsible under the Mortgage Agreement for ensuring that the Monthly Payments are made. 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.

**MISCELLANEOUS:-**

- please note that interest on the Loan Advance may increase or decrease in accordance with the Mortgage Conditions unless it is fixed in the Mortgage Agreement
- the Borrower can at any time request additional sums by way of a Further Advance, although the Lender may refuse such a request.

**MORTGAGE ADVICE FROM MORTGAGE ADVISORS**

THE LENDER DOES NOT PROVIDE THE BORROWER WITH ANY ADVICE IN RELATION TO THE MORTGAGE AGREEMENT AND IS NOT RESPONSIBLE FOR ANY ADVICE PROVIDED BY ANY THIRD PARTY INCLUDING ANY THIRD PARTY MORTGAGE ADVISOR APPOINTED BY THE BORROWER.

THE BORROWER SHOULD ENSURE THAT THEY WILL STILL BE ABLE TO MAKE THE MONTHLY PAYMENTS IN THE EVENT THEY SUFFER ILLNESS, INJURY OR UNEMPLOYMENT.

## MORTGAGE CONDITIONS 2013

### I. Definitions and Interpretation

#### I.1 Definitions

Certain terms have a special meaning these are set out below;

- I.1.1 “Act” means the Law of Property Act 1925 which contains laws relating to properties and the sale and purchase of properties in England & Wales.
- I.1.2 “Amount Owed” means the Loan Advance, any Further Advances, interest, charges, costs, expenses, premiums and all other sums which are or may become payable by the Borrower to the Lender under the Mortgage Agreement and any reasonable costs or expenses the Lender incurs in order to protect or enforce its security or recover all or any part of the sums owed by the Borrower (including but not limited to costs incurred in anticipation of, preparing for or defending any court action).
- I.1.3 “Bankruptcy Order” means an order of Court containing the terms of an individual’s bankruptcy.
- I.1.4 “Base Rate” means the variable rate of interest set by the Bank of England as its Base Rate from time to time (or any equivalent rate or successor authority that takes over responsibility for setting such a rate).
- I.1.5 “Borrower” means the person/s named in the Mortgage Agreement as the borrower/s.
- I.1.6 “Completion” means the legal completion of the Loan Advance and the Mortgage Deed, and the completion of any subsequent Further Advances.
- I.1.7 “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.1.8 "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 in addition to any other sums under the Amount Owed by the end of the Mortgage Period rather than as part of the Monthly Payment.
- I.1.9 “Interest Rate” means a rate of interest as set out in the Mortgage Offer as varied in accordance with conditions 4.
- I.1.10 “Issue Date” means the day on which the Lender releases the Loan Advance to its or the Borrowers solicitors, or any Further Advance to the Borrower, by whatever means.
- I.1.11 "Further Advance" means any further sums the Lender subsequently lends the Borrower under the Mortgage Deed after the first Loan Advance as set out in the Mortgage Offer.
- I.1.12 “Land Registration Act” means the Land Registration Act 2002 which contains laws about the registration of land in England & Wales.
- I.1.13 “Lender” means Magellan Homeloans which is a trading name of Mars Capital Finance Limited. Mars Capital Finance Limited is authorised and regulated by the Financial Conduct Authority (FCA register number 459016). Registered in England & Wales No. 5859881. Registered office: Ashcombe House, 5 The Crescent, Leatherhead, Surrey, KT22 8DY.
- I.1.14 “LIBOR” means the London Inter-Bank Offered Rate, being the index compiled for the British Bankers Association giving an average rate at which a leading bank can obtain unsecured funding for a given period in a given currency in the London market (or any equivalent rate or successor authority that takes over responsibility for setting such a rate or if no such authority, the Lender may set a rate it reasonably considers appropriate taking into account current market conditions and competitor rates).
- I.1.15 “LIBOR Application Date” means where the Interest Rate tracks LIBOR plus a margin the date in each month from which the Interest Rate will be applied in calculating the interest charged to the Borrower.

- I.1.16 “Loan Advance” means the sum sent to the Borrower’s solicitor to complete the purchase as set out in the Mortgage Offer and any Further Advances, which includes such other sums of whatever nature owed by the Borrower to the Lender on or before the Issue Date such as interest, charges, costs, expenses and premiums.
- I.1.17 “Life Policy” means each and every policy or policies of life assurance or term assurance which may be deposited or lodged with the Lender by way of further security for the Amount Owed.
- I.1.18 “Monthly Payment” means the monthly payment set out in the Mortgage Offer which the Borrower pays the Lender each month, as varied in accordance with condition 5.
- I.1.19 “Monthly Payment Date” means the day of the month on which the Borrower makes the Monthly Payment as varied in accordance with condition 5.
- I.1.20 “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 Special Conditions, the Mortgage Conditions, the Mortgage Deed and any other document entered into between the Lender and the Borrower relating to this and any subsequent Loan Advance by the Lender.
- I.1.21 “Mortgage Conditions” means the Lender's Mortgage Conditions 2013 (England and Wales) as set out in this document.
- I.1.22 “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. The Mortgage Deed shall include any subsequent deed that varies, amends or supplements the Mortgage Deed.
- I.1.23 “Mortgage Offer” means the written offer(s) of a Loan Advance and any Further Advances setting out the terms on which the Lender is prepared to lend to the Borrower including any changes to or replacement of existing offers and any other documents incorporated into the Mortgage Offer.
- I.1.24 “Mortgage Period” means the time period set out in the Mortgage Offer in which the Amount Owed must be repaid, starting on the date the Lender releases the Loan Advance monies to the Borrower or their legal advisor.
- I.1.25 “Pension Policy” means any pension policy which may be deposited or lodged with the Lender by way of further security for the Amount Owed.
- I.1.26 “Policy Owner” means the person or persons who are the beneficiaries of any Pension Policy or Life Policy.
- I.1.27 “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.
- I.1.28 “Reference Banks” means a clearing bank which is a shareholder in CHAPS Clearing Co Limited.
- I.1.29 “Security Documents” means the Mortgage Deed and all other documents creating or intending to creating a Security Interest in favour of the Lender.
- I.1.30 “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.
- I.1.31 “Special Conditions” means the additional conditions set out in the Mortgage Offer, and where applicable, the Special Conditions for the Grant of Assured Shorthold Tenancies document.
- I.1.32 “Tariff of Charges” means the Lender's list of charges that apply to the Mortgage Agreement which may be varied in accordance with condition 9. A copy of the Tariff of Charges is sent to the Borrower annually.
- I.1.33 “Working Day” means a day between Monday to Friday inclusive on which London banks are normally open for the transaction of business.

## **I.2 INTERPRETATION**

- 1.2.1 References to "you", "your", "yours", etc mean the Borrower and references to "us", "our", etc mean the Lender.
- 1.2.2 References to "the Borrower" and "the Policy Owner" include their respective personal representatives and where applicable their permitted assignees and other persons deriving title under each of them.
- 1.2.3 References to "the Lender" include its successors, assignees and transferees (whether legal or equitable or whether by absolute assignment or by way of novation or by way of security only).
- 1.2.4 Any reference to legislation shall include any regulations made under that legislation or any amendments to that legislation or any subsequent or overriding legislation.
- 1.2.5 Where the Borrower or the Policy Holder comprise more than one person these conditions will apply to each person jointly and to each person individually.
- 1.2.6 Unless otherwise defined, expressions contained in the Mortgage Deed shall have the same meaning as defined in these Mortgage Conditions.
- 1.2.7 If there is an inconsistency between the terms of the Mortgage Deed, Mortgage Offer, Special Conditions and Mortgage Conditions, the following order of priority applies:
- (a) the Mortgage Offer; then
  - (b) the Special Conditions (including the Special Conditions for the Grant of Assured Shorthold Tenancies document); then
  - (c) the Mortgage Conditions; then
  - (d) the Security Documents.
- 1.2.8 The headings set out in these Conditions shall not affect the meaning of these Mortgage Conditions.
- 1.2.9 Words which are singular shall imply the plural and vice versa and words in the masculine form also include the feminine and vice versa.

## **2. THE MORTGAGE OFFER**

### **2.1 RIGHT OF WITHDRAWAL**

The Lender may withdraw the Mortgage Offer at any time prior to Completion where:

- (i) there is actual or suspected fraud, misrepresentation or a non-disclosure of material information by Borrower or guarantor;
- (ii) the solicitors acting on behalf of the Lender advise the Lender that they cannot comply with the Instruction to Solicitors or cannot confirm that the title to the Property is satisfactory;
- (iii) Completion does not take place within 3 months of the date of the Mortgage Offer;
- (iv) any other matter comes to light which adversely affects the value of the Property as security for the Loan Advance or is inconsistent with the basis on which the Mortgage Offer is made;
- (v) if the Borrower is unable to meet the conditions of this Mortgage Agreement.

### **2.2 RELEASE OF THE LOAN ADVANCE**

- 2.2.1 The Borrower agrees that by making a mortgage application he will be responsible irrespective of whether Completion occurs for the costs and expenses of his valuer and any solicitor instructed by the Lender.
- 2.2.2 The Loan Advance will not be sent to the solicitor acting for the Lender until the Lender has received confirmation that these Conditions, the Special Conditions and any other conditions under this Mortgage Agreement have been complied with.

### **2.3 FIRST MORTGAGE**

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 matter which may affect its value.

## **2.4 CAPACITY**

Where there is more than one Borrower each Borrower must sign the Mortgage Deed. Where there is a non-owning Borrower they will be required to sign a Deed of Guarantee as Guarantor before a solicitor independent of the Borrower's and the lender's solicitors. The non-owning Borrower must also execute a Deed of Consent.

## **2.5 VACANT POSSESSION AND OCCUPANCY**

The Property must be obtained by the Borrower with vacant possession i.e. no persons, such as tenants, living in the Property. The Lender requires that full vacant possession of the Property is obtained on Completion. Any occupant at the Property aged 17 or over must (unless named as a Mortgagor) sign a Deed of Consent.

## **2.6 PROPERTY VALUATION**

The valuation is prepared for the Lender solely for it to assess the adequacy of the Property as security for the Loan Advance and the Borrower shall not be entitled to rely upon it.

## **3. OBLIGATION TO PAY**

**3.1** 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.

**3.2** The First Monthly Payment will be due on the Monthly Payment Date falling in the month following Completion. The First Monthly Payment will include interest accrued from the date of Completion to the end of the month of Completion unless stated otherwise in the Mortgage Offer.

**3.3** Where the Amount Owed is not repaid one month after the date of the Mortgage Deed, the Lender shall accept the payment of the Amount Owed by Monthly Payments when they fall due subject to the performance by the Borrower of all relevant conditions of this Mortgage Agreement and in accordance with the Mortgage Deed. Provided always that:

**3.3.1** there has been no implied or express breach of the Life Policy or Pension Policy by the Policy Owner;

**3.3.2** the Lender's power of sale under this Mortgage Agreement has not become exercisable.

**3.4** The Borrower must make the Monthly Payment by Direct Debit from a bank account held in England, Wales, Scotland or Northern Ireland or any other means of payment acceptable to the Lender from time to time. 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 Charges.

**3.5** If the Property once sold 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 unless otherwise specified by the Lender.

**3.6** All payments by the Borrower shall be made in full without deduction and will reduce the Amount Owed on the day of receipt of cleared funds.

## **4. INTEREST CHARGING**

**4.1** 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 this condition 4.

**4.2** Interest will be calculated by applying the Interest Rate on a daily basis against the Amount Owed (before and after any judgment), unless otherwise specified in the Mortgage Offer.

- 4.3** Interest will be charged on a daily basis on any costs or fees due from the date on which the cost or fee arises unless otherwise determined by the Lender.
- 4.4** Unless the Interest Rate is fixed, the Interest Rate is variable in accordance with the Mortgage Offer.
- 4.5** If the Interest Rate tracks Base Rate plus a margin in accordance with the Mortgage Offer, changes to the Base Rate will be applied 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 provide notice to the Borrower in accordance with condition 5.
- 4.6** If the Interest Rate tracks LIBOR plus a margin in accordance with the Mortgage Offer, the LIBOR Application Date will initially be the first day of the month after the day on which a change in LIBOR is determined by the Lender. The Lender may change the LIBOR Application Date 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 provide notice to the Borrower in accordance with condition 5.
- 4.7** If the Interest Rate is a variable rate set by the Lender, the Lender can vary the Interest Rate where it is to the Borrower's advantage or for any of the following reasons (which may relate to circumstances existing at the time or those which are reasonably expected to apply in the near future):
- 4.7.1 to reflect proportionately changes in the Base Rate or any other specified market rates or indices or tax rates;
  - 4.7.2 to respond proportionately to changes in the law, industry guidance, codes of practice, or decisions of a Court or Ombudsman;
  - 4.7.3 to meet regulatory requirements;
  - 4.7.4 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. However, the Lender may not notify the Borrower of a reduction in the Interest Rate.
- 4.8** If the Borrower does not accept the increase to the Interest Rate under this condition 4, the Borrower is free to repay the Amount Owed subject to paying any early repayment charges and mortgage exit administration charges detailed in the Mortgage Offer.

## **5. MONTHLY PAYMENT AND CHANGE TO THE MONTHLY PAYMENT**

- 5.1** The Borrower agrees to pay each Monthly Payment in full on the Monthly Payment Date or on any other date acceptable to the Lender and to repay the total Amount Owed by the end of the Mortgage Period. Each Monthly Payment shall relate to a calendar month. The Monthly Payment shall be calculated in advance and applied to the account on the first day of each month. The Lender may, acting reasonably, change the calculation of the Monthly Payment to be in arrears and applied to the account on a day other than the first day of the month subject to the Lender notifying the Borrower of the change at least 30 days before the change is due to take effect, providing the change is for one of the following reasons:
- 5.1.1 to respond proportionately to changes in the law, industry guidance, codes of practice, or decisions of a Court or Ombudsman;
  - 5.1.2 to meet regulatory requirements;
  - 5.1.3 to reflect proportionately legitimate changes in the costs incurred by the Lender in providing the Loan Advance including the costs of funding;
  - 5.1.4 to reflect any changes in technology or in the Lender's systems;
- 5.2** Each Monthly Payment shall consist of the total of:

- 5.2.1 the interest accrued in the month to which the Monthly Payment relates plus in the case of the First Monthly Payment all interest accrued during the month of Completion; and
- 5.2.2 the sum of any capital due in the month to which the Monthly Payment relates; and
- 5.2.3 any fees, insurance premiums, or reasonable costs or expenses due in the month to which such Monthly Payment relates or any other date set out independently by the Lender to the Borrower.
- 5.3 We will apply any payments you make to us under the Loan Advance in the following order: First, towards paying any unpaid Monthly Payment for the preceding Month(capital first and then interest), then towards paying any arrears, then any outstanding costs, expenses or fees, then we will use any balance to pay off any interest you owe. Any remaining balance will be used to reduce the Amount Owed.
- 5.4 The Lender may change the Monthly Payment in accordance with this condition 5 by giving the Borrower reasonable prior written notice stating the new payment and when it will fall due.
- 5.5 Changes to the Monthly Payment may be made as a result of the following reasons:
- 5.5.1 any change in the Interest Rate;
- 5.5.2 to account for any change in insurance premiums;
- 5.5.3 to account for the repayment of the Loan Advance made to the Borrower by the Lender;
- 5.5.4 to reflect unpaid any capital, interest, costs, charges or expenses;
- 5.5.5 to reasonably take into account any other matter necessary to ensure the repayment of the Amount Owed by the end of the Mortgage Period;
- 5.5.6 to provide for any change in the Mortgage Period agreed between the Lender and the Borrower;
- 5.5.7 to account for any other change agreed between the Borrower and the Lender under the Mortgage Agreement and in respect of which interest will be payable;
- 5.5.8 if this is required to comply with a change in the law or regulatory requirements.
- 5.6 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 Period repay 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 Period. The Borrower should check this at least annually.
- 5.7 The Lender may request during the Mortgage Period evidence of how the Borrower intends to repay the Amount Owed at the end of the Mortgage Period including evidence that any repayment vehicle is performing satisfactorily in order to repay the Amount Owed at the end of the Mortgage Period. If the Lender is not reasonably satisfied with the evidence received or does not receive a response, and it reasonably considers that the Amount Owed may not be repaid in full by the end of the Mortgage Period, then the Lender may require the Borrower to make payments of both capital and interest in such sums and for such period as it may reasonably consider necessary to ensure the Amount Owed is repaid before the end of the Mortgage period. Where the Lender changes the Monthly Payments from Interest Only to a capital and interest repayment, it will give the Borrower at least 6 months written notice prior to making the change and it will tell the Borrower what the increased Monthly Payment will be.

## 6. 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.

## 7. OBLIGATIONS OF THE BORROWER

- 7.1 The Borrower agrees:

- 7.1.1 to comply at all times and in all material respects with the conditions of the Mortgage Agreement;
- 7.1.2 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 except where a further Security Interest is in favour of the Lender;
- 7.1.3 not to allow the registration of any other proprietor of the Property at the Land Registry except for the Borrower;
- 7.1.4 not to dispose of any part or the whole of the Property by way of 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;
- 7.1.5 to inform the Lender by way of written notice of any claim made for compensation arising as a result of a compulsory purchase, loss or damage to or decrease in the Property's value. Subsequent to any such notice, the Lender may direct the Borrower to act in accordance with the Lender's reasonable instruction and the Borrower must comply;
- 7.1.6 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 and not to make any structural alterations or additions to the Property without the prior written consent of the Lender;
- 7.1.7 not to use the Property for any illegal purpose or cause or allow the same to take place;
- 7.1.8 to reside at the Property as the Borrower's principal place of residence only and not to carry out any other use there save as agreed by the Lender in written notice to the Borrower or as specified in the Mortgage Offer;
- 7.1.9 to inform the Lender in writing if the Property is to be vacant for 28 days or more or if the Borrower is to reside elsewhere leaving the Property unoccupied for 30 days or more;
- 7.1.10 only with the prior written consent of the Lender to apply for or obtain a grant for improvement of the Property or any other grant;
- 7.1.11 not to cause or permit by act or omission a statutory charge to become fixed or binding on either the Property or the Lender;
- 7.1.12 to inform the Lender immediately of 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 to act as the Lender may in its discretion reasonably direct;
- 7.1.13 to ensure that the Property and 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, the Lender may carry out the repairs and the Borrower agrees to pay the Lender reasonable costs and expenses incurred in respect of the repairs;
- 7.1.14 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;
- 7.1.15 to perform and observe all statutory and other requirements stipulated from time to time by a competent authority concerning the Property;
- 7.1.16 to make payment within a reasonable timescale of all taxes, rates, insurance premiums, service charges, ground rent and other outgoings relating to the Property;
- 7.1.17 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;
- 7.1.18 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;

- 7.1.19 to ensure where the Borrower obtains renewal or increased term in the Property or a superior title to the Property that the Lender takes a first ranking legal charge;
  - 7.1.20 to pay the Monthly Payment by Direct Debit unless the Lender has provided its prior written consent to another payment method;
  - 7.1.21 not to agree to any change to any Life Policy or Pension Policy terms without the prior written consent of the Lender;
  - 7.1.22 not to allow anyone else to live in, use or obtain an interest in the Property or share occupation or grant or vary any licence, tenancy or lease in the Property or any part therefore or surrender any rights or serve notices in relation to such rights without the prior written consent of the Lender;
  - 7.1.23 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.
- 7.2** The Lender will have the right to (acting reasonably) consider and enforce the appropriate remedy be it by way of performing the Borrower's obligations on their behalf or otherwise in the event that the Borrower does not comply with the conditions of this Mortgage Agreement. If the Lender does not enforce compliance of the conditions by the Borrower this does not mean that they will not be able to do so in the future.

## **8. INSURANCE**

- 8.1** The Borrower must insure the Property subject to this condition 8.
- 8.1.1 The Property must be insured for the total rebuilding cost as reasonably specified by the Lender either:
- (a) by way of a block policy specified by the Lender as may be available from time to time; or
  - (b) 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.
- 8.1.2 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.
- 8.1.3 The policy must be in the joint names of the Borrower and Lender or the Lender's interest must be noted on the policy.
- 8.1.4 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.
- 8.1.5 Irrespective of whoever insures the Property, the Borrower must not do anything to invalidate the policy or increase the level of premiums payable.
- 8.1.6 If the Borrower receives any money under the policy, it must inform the Lender and hold these monies on trust for the Lender. These monies are to be used to replace or repair the Property or to repay the Amount Owed.
- 8.2** Where under any Lease of the Property, a third party is obliged to insure the Property:
- (a) The policy must contain a note of the Lender and Borrower's interest;
  - (b) A copy of the policy and sufficient evidence of payment of the premium must be provided to the Lender if requested;
  - (c) The Property must be insured for the full rebuilding cost including site clearance and other professional fees and cover all risks as specified by the Lender.

**8.3** If the Lender reasonably decides the Property is inadequately insured, the Lender may take out insurance on the Borrower's behalf, in accordance with the requirements of this condition 8, 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 and interest will be charged in accordance with the Mortgage Agreement.

**8.4** If a claim is made under the insurance policy, the Lender may negotiate and settle any claims with the insurers.

## **9. EXPENSES AND CHARGES**

**9.1** The Borrower agrees to pay:

9.1.1 all expenses and costs the Lender reasonably incurred in connection with this Mortgage Agreement;

9.1.2 legal fees and all associated administration costs;

9.1.3 any charges payable to the Lender as detailed in the Lender's Tariff of Charges;

9.1.4 valuation fees for the Property.

**9.2** Any amount that becomes payable under condition 9.1 which the Borrower fails to pay when requested shall be added to and become part of the Amount Owed on the dates on which they become due or are paid by the Lender and interest will be charged at the Interest Rate.

**9.3** The Lender will tell the Borrower the current charges in its Tariff of Charges. The Lender can change the charges or introduce new charges where it is to the Borrower's advantage or is needed for one of the following reasons (which may relate to circumstances existing at the time or those which are reasonably expected to apply in the near future):

9.3.1 to respond proportionately to changes in the law, industry guidance, codes of practice, or decisions of a Court or Ombudsman;

9.3.2 to meet regulatory requirements;

9.3.3 to reflect proportionately legitimate changes in the costs incurred by the Lender in providing the relevant mortgage service including the costs of funding.

**9.4** Where the Lender introduces new charges or increases 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 Tariff of Charges once a year.

## **10. POWERS OF LENDER AND RECEIVER**

**10.1** The Borrower must immediately repay the Amount Owed in each of the following circumstances:

(a) the Borrower is at least two Monthly Payments in arrears at any time and such sums remain outstanding following a demand by the Lender for payment;

(b) the Borrower is in material breach of the Mortgage Agreement which is not remedied by the Borrower within 7 days and the Lender reasonably considers that such action is necessary in order to protect its security in the Property;

(c) the Property is compulsorily purchased under any statutory power by Local Authority, Government or other body so empowered;

(d) any Pension Policy or Life Policy becomes invalid;

(e) the Lender discovers that material information given by the Borrower or anyone acting for the Borrower was inaccurate, false or incomplete in connection with the Mortgage Offer which the Lender has relied on when making the Loan Advance;

- (f) a Bankruptcy Order is made against the Borrower or Guarantor;
- (g) the Borrower or Guarantor makes any formal arrangement with their creditors;
- (h) either the Borrower or Guarantor being a company goes into liquidation;
- (i) any Judgement or Order is made against the Borrower that may require the Borrower to give up possession of the Property;
- (j) the Borrower dies or if more than one Borrower, the survivor dies;
- (k) If the Borrower gives the Property to the Lender or abandons it;
- (l) if another 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.

**10.2** 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 entitled to port their Mortgage Agreement to a different property or request a Further Advance.

**10.3** The Lender (or its appointed Receiver) may exercise the statutory power of sale immediately and without any restriction, including any of the restrictions under Section 103 of the Act (the Lender will try to tell the Borrower where it is reasonably practicable) if any of the events in condition 10.1 occur.

**10.4** The Lender's power of sale and such other powers by virtue of Section 101 of the Act will be varied and extended as follows:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) the Lender may sell the Property whether or not the Property has been repossessed;
- (e) 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;
- (f) the Lender may require any tenants, workmen or other persons in possession to leave the Property;
- (g) the Lender may let or manage the Property (at the Borrower's risk) including making any payments in relation to the Property. For the avoidance of doubt, nothing is intended to exclude the Lender's potential liability for breach of its equitable duties as mortgagee in possession;
- (h) the Lender may employ and pay persons for carrying out these powers at a price or fee and upon terms it reasonably considers appropriate.

**10.5** The Lenders statutory powers under Section 99(ii) and 100(ii) of the Act will be varied and extended as follows:

- (a) the Lender may accept any surrender of the Lease;
- (b) the Lender may grant, vary or renew a Lease of the Property.

**10.6** If the Borrower has left any personal possessions at the Property then after taking possession the Lender may:

- (a) remove and store these personal possessions; and

- (b) sell or otherwise dispose of them without being liable to the Borrower for any loss made in connection with the disposal, however;
- (c) the Lender will not exercise such rights before the expiry of 14 days written notice to the Borrower that the Lender intends to exercise these rights.

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

- (a) the Receiver may exercise all the rights of the Lender including all powers extended under these conditions and specifically the Receiver shall have the power to sell the Property in the name of the Borrower;
- (b) the Receiver will be deemed the agent of the Borrower;
- (c) the Receiver may employ agents to carry out any work;
- (d) 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;
- (e) the Lender reserves the right to go back into possession and remove or replace the Receiver at its discretion.

## **11. THIRD PARTIES**

Any buyer or other party considering buying the Property from the Lender exercising its powers under these conditions may raise no enquiry as to whether such powers are exercisable or have arisen

## **12. POWER OF ATTORNEY**

**12.1** 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 are obliged to take under the Mortgage including but not limited to the following:

- (a) to exercise any rights of the Lender under the Mortgage Conditions;
- (b) to execute any document required to complete the transfer of the Property to the Borrower or;
- (c) to exercise any document required to make good the Lenders security;
- (d) to transfer the Property to a buyer;
- (e) to collect any sums payable under the insurance policy and to fully negotiate and settle any claims arising under it;
- (f) to complete any Mortgage Deed required under the Mortgage Conditions.

**12.2** 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 12, after:

12.2.1 one of the events listed in condition 10.1; or

12.2.2 the Lender or receiver has given the Borrower at least 30 days written notice that it will be exercising the power of attorney.

The power of attorney and the powers under it will only continue for no more than 12 months from the date the Lender or receiver gave the Borrower notice. The Lender or receiver shall not be liable for anything done under the power of attorney in this condition 13 if it has used reasonable care in exercising or delegating the power.

## **13. SEPARATE SECURITY**

**13.1** The security under this Mortgage Agreement and any other security is separate to and will not merge with any other security interest document or right of the Lender held now or in the future as regards the Borrower or any other person in respect of the Amount Owed.

**13.2** Section 93 of the Act is excluded from the Mortgage Conditions.

#### **14. NOTICE**

Any Notice required under the Mortgage Conditions or Mortgage Deed must be delivered by hand or sent by pre-paid post.

- (a) If sent by first-class pre paid post deemed served on the second working day after posting.
- (b) If sent by email deemed served on the day of sending providing this is on a Working Day between 9am and 5pm, otherwise it will be deemed served on the next Working Day.
- (c) Be deemed served on both or more than one Borrower (if applicable) if served on both or more than one Borrower living at the same address. If Borrowers have different addresses, the Lender will serve notice to each address.
- (d) If a Borrower lives at the Property be deemed served if sent to the Property.
- (e) Any Notice served by the Lender will be deemed valid if signed by any staff member of the Lender or produced electronically.

#### **15. 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.

#### **16. TRANSFER**

**16.1** The Lender may at its reasonable discretion at any time transfer or assign in whole or in part any of its rights or benefits under the Mortgage Agreement without obtaining the Borrower's prior consent and the Borrower shall continue to be bound to the same extent to any assignee or transferee. This will not reduce the Borrower's rights or any guarantees under the Mortgage Agreement.

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

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

#### **17. VARIATION OF TERMS**

The Lender may vary the Mortgage Conditions and the Mortgage Agreement where it is to the Borrower's advantage or for one of the following reasons (which may relate to circumstances existing at the time or those which are reasonably expected to apply in the near future):

- (a) to amend any error or mistake which does not significantly alter the nature of the Mortgage Agreement;
- (b) to ensure the terms are fairer to the Guarantor and/or the Borrower;
- (c) to make them more understandable;

- (d) to ensure compliance with any law, regulatory requirement or code of practice or any change in the way they are applied or interpreted;
- (e) to reflect an improvement in the Lender's services;
- (f) to reflect any changes in technology or in the Lender's systems

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

## **18. APPLICABLE LAW AND JURISDICTION**

18.1 This Mortgage Agreement shall be governed exclusively by the laws of England and Wales.

18.2 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.

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