



## **MORTGAGE CONDITIONS 2014**

FOR MORTGAGES OF FREEHOLD, COMMONHOLD  
OR LEASEHOLD PROPERTY SITUATED IN ENGLAND OR WALES

These Conditions have been prescribed under the Rules of  
Monmouthshire Building Society

### **DEFINITIONS**

1. Wherever the context allows:

- (a) In these Conditions "the Mortgage" means the particular mortgage or legal charge into which these Conditions are incorporated
- (b) In these Conditions and in the Mortgage the following expressions have the following meanings:

<b>Expression</b>	<b>Meaning</b>
"Advance"	The sum specified in the Offer of Mortgage as the amount of the loan or other lending to be provided by the Society to the Borrower
"Borrower"	The person or persons to whom the Advance is made and any person (other than a guarantor) who takes over the obligations of the Borrower under these Conditions
"Business Day"	A day other than Saturday and Sunday or a public holiday in England and Wales
"Charged Property"	The property, assets, debts, rights and undertaking charged to the Society by the Mortgage and includes any part of them or interest in them
"Company"	Includes any body corporate
"Early Repayment Charge"	The amount payable if part or all of the Advance is repaid before expiry of the Initial Repayment Period specified in the Offer of Mortgage
"GAAP"	Generally accepted accounting principles in the United Kingdom

"Guarantor"	Any person who has provided a guarantee or security to the Society for the Advance
"Initial Repayment Period"	The period specified in the Offer of Mortgage as the period during which any special terms apply
"Insured Risks"	Fire, explosion, collision, impact, storm, flood, lightening, landslip, subsidence, burst pipes and such other risks as the Society may from time to time require (including, without limitation, terrorist acts, where the Property is used for business purposes)
"Interest Rate"	The rate of interest specified in the Offer of Mortgage or any variation of it made in accordance with these Conditions
"Material Adverse Effect"	<p>Any effect which in the Society's opinion might:</p> <ul style="list-style-type: none"> <li>(i) affect the Borrower's ability to comply with its payment obligations under the Offer of Mortgage</li> <li>(ii) materially adversely affect the Borrower's business, assets or financial condition or</li> <li>(iii) result in the Mortgage or any other security given to the Society for the Advance not being legal, valid, and binding on, and enforceable substantially in accordance with its terms against any party to that security or not providing the Society with enforceable security over the assets covered by it</li> </ul>
"Month"	A calendar month
"Monthly Payment"	The monthly sum specified in the Offer of Mortgage or any variation of it made in accordance with these Conditions
"Mortgage Exit Administration Fees"	The cost of administration services which the Society incurs when the Borrower repays the Mortgage, as specified in the Tariff of Charges or any variation of it made in accordance with these Conditions. Such costs would include, without limitation, deed and endowment policy release fees, mortgage discharge and sealing fees, and third party fees (for example Land Registry fees and Companies House fees).
"Mortgage Term"	The period of time specified in the Offer of Mortgage over which the Advance is to be repaid
"Mortgagor"	The person or persons who granted the Mortgage (whether or not being also the Borrower) and any person (other than the Guarantor) who takes over the obligations of the Mortgagor under these Conditions

"Offer of Mortgage"	The written notice described as the Offer of Mortgage or Offer of Further Advance stating that the Society is prepared to make the Advance (including any variation of that notice) and any other agreement the Society makes with the Borrower in connection with the Mortgage such as an offset facility
"Plan"	Any savings or other investment scheme in form and substance satisfactory to the Society
"Policy"	A policy of endowment assurance, a policy of term assurance or a pension policy in form and substance satisfactory to the Society
"Potential Enforcement Event"	Any event which, with the giving of notice or any certificate or the lapse of time or the making of any determination or the satisfaction of any other condition (or any other combination of such circumstances), will or is likely to constitute an event set out in Condition 13
"Property"	The leasehold, commonhold or freehold property described in the Mortgage and any part or parts of it and including all rights attached or appurtenant to it and all buildings, fixtures, fittings, plant and machinery from time to time situated on it and belonging to the Mortgagor
"Receiver"	A receiver appointed under the Mortgage
"Redemption Money"	The aggregate of the moneys outstanding for the time being and secured by the Mortgage
"Repayment Method"	The way to repay the Advance which will be specified in the Offer of Mortgage
"Rules"	The rules of the Society in force from time to time including rules adopted and amendments made after the date of the Mortgage
"Society"	Monmouthshire Building Society and any person who takes over Monmouthshire Building Society's rights or liabilities under these Conditions
"Tariff of Charges"	Those fees and charges made by the Society for mortgage services as published from time to time
"Year"	The financial year of the Society

(c) In these Conditions, the Mortgage and the Offer of Mortgage obligations of more than one person are joint and several obligations. This means that all the Mortgagors and Borrowers (as relevant) are responsible for all promises made to the Society under these Conditions, the Mortgage and the Offer of Mortgage not just a part or a proportion of them

(d) In these Conditions, the Mortgage and the Offer of Mortgage every reference to the

Borrower or the Mortgagor shall be a reference to the persons comprised in those definitions taken together and a reference to each of those persons separately

- (e) In these Conditions
  - (i) references to any provisions of these Conditions or to any other document or agreement are references to those provisions or that document or agreement as is in force for the time being and as amended, varied, supplemented, substituted, replaced or novated from time to time
  - (ii) words in the singular are to include the plural and words in the plural are to include the singular
  - (iii) references to a person include references to a corporation, firm, company, partnership, joint venture, unincorporated body of persons, individual or any state or any agency of a state, whether or not a separate legal entity
  - (iv) references to any person include any person who takes over any of the original person's rights or liabilities under these Conditions
  - (v) references to any statutory provision include that statutory provision as amended, supplemented, re-enacted or replaced from time to time (whether before or after the date of these Conditions)

## **THE RULES**

- 2. The Borrower is a member of the Society and will observe perform and be bound by the Rules

## **PAYMENTS**

- 3. (a) All payments to the Society shall be in pounds Sterling (or its successor) in immediately available funds. The Borrower will pay to the Society the Monthly Payment in every Month until the Advance and all further advances on the security of the Mortgage with interest and all other moneys to be paid to the Society by the Borrower have been fully paid and satisfied
- (b) The first full payment under this Condition shall be made in the Month after the date of the Mortgage and subsequent payments at successive intervals of one Month after that and in addition a proportionate part payment of the Monthly Payment shall be made before the end of the Month in which the Advance is first made
- (c) The Borrower shall make each payment due under the Mortgage without (and free and clear of any deduction for) set-off or counterclaim, unless a deduction is required by law
- (d) If the Redemption Money is not fully repaid on the discharge or realisation of the Society's security the Borrower is to pay the shortfall to the Society and interest will be charged on the shortfall together with any administration fees, legal or other costs, until it is paid
- (e) Where the Society makes a further advance to the Borrower, the Monthly Payment will be increased to reflect the further advance

- (f) The Society shall apply payments received from the Borrower in the following priority:
- costs under Condition 26
  - insurance related to the Charged Property
  - interest due on the Advance or under the Mortgage
  - capital due by the Borrower to the Society

#### **MONTHLY PAYMENTS**

4. (a) Notwithstanding the provisions of Condition 3 the Society will not require repayment of principal to be made under that Condition for any amount covered by a subsisting Policy or Plan and by means of which at maturity the amount is intended to be repaid provided always that the Society is satisfied that the Policy or Plan is reasonably likely to provide sufficient capital to pay the Redemption Money (and the Society reserves the right to review the suitability of a Policy or Plan from time to time). The Society makes and gives no warranty that the Policy or Plan will repay any part of the capital and the Borrower should check regularly the performance of the Policy or Plan to see whether it is likely to be adequate to repay the Redemption Money at the end of the Mortgage Term
- (b) If the making of Monthly Payments shall be suspended either by the operation of paragraph (a) of this Condition or otherwise by permission of the Society, the Borrower will pay such interest and reduced monthly installments (if any) as the Society may require as a condition of the suspension and on the suspension coming to an end the Borrower will resume or begin and complete the making of Monthly Payments or pay such other monthly amounts as shall be necessary to discharge the Redemption Money within the Mortgage Term
- (c) The Repayment Method for a mortgage may be changed by agreement between the Borrower and the Society. If the Repayment Method is "Interest only" and one of the events set out in Condition 13 happens then the Society may change the Repayment Method to "Capital" and "Interest". This is in addition to any other rights the Society have under these Conditions

#### **VARIATION OF MONTHLY PAYMENT**

5. (a) Where the Borrower receives notice under Condition 6 (d) of an increase in the Interest Rate, the Borrower must, subject to the specific terms and conditions of the Offer of Mortgage, increase the Monthly Payment to the amount which is sufficient to discharge the Mortgage within the Mortgage Term.
- (b) Where the Borrower receives notice under Condition 6 (d) of a decrease in the Interest Rate, the Borrower may, subject to the specific terms and conditions of the Offer of Mortgage decrease the Monthly Payment to the amount which is sufficient to discharge the Mortgage within the Mortgage Term
- (c) Notwithstanding anything contained in this Condition the Monthly Payment may be varied at any time by agreement between the Society and the Borrower

#### **INTEREST AND FEES**

6. (a) The Borrower agrees:

- (i) to pay interest from the date of completion at the Interest Rate on the day to day balance of the Redemption Money
  - (ii) to the debit of interest to the Borrower's account on the last day of each Month and on the date of redemption
  - (iii) that (without affecting the Society's right to require payment), interest debited to the Borrower's account and remaining unpaid is part of the Redemption Money so that the Borrower must pay interest on it which will in turn be debited to the Borrower's account in accordance with Conditions 6 (a) (i) and (ii).
  - (iv) that if the Society obtains a judgment against the Borrower, interest will continue to be charged at the Interest Rate and calculated as above until the Society receives payment in full
- (b) If such interest for any Year shall exceed the interest element of the Monthly Payments payable in that Year the excess shall be an additional sum payable by the Borrower in that Year
- (c) Where any part of an intended Advance has been made interest shall not be charged on more principal money than has actually been advanced
- (d) Subject to any special conditions of the Offer of Mortgage to the contrary, the Society may at any time vary the rate of interest applicable to the Advance, or any part of it, and specify the day from which the new rate is to take effect. The Society may only make such variation:
- (i) if it is reasonable to vary the rate to reflect changes which have occurred, or which the Society reasonably expect to occur, in interest rates generally or in the residential mortgage market
  - (ii) to enable the Society to maintain the competitiveness of interest rates paid to its investors or the providers of funds to the Society
  - (iii) to manage margins between interest rates paid to the Society's investors or the providers of funds to the Society, and interest rates charged to borrowers from the Society, in the interests of the Society's business as a whole
  - (iv) to reflect changes in costs incurred by the Society
  - (v) to reflect any increased or reduced risk to the Society following a change in the way the Property is used or occupied
  - (vi) if it is permitted following any breach by the Borrower of any of the terms of the Offer of Mortgage or the Mortgage or
  - (vii) if it is reasonable to make the change following a decision or recommendation made by a court, regulatory body, ombudsman or other official body or as a result of a change (or anticipated change) in the law or the interpretation of the law.
- (e) The Society will notify the Borrower of any such variation under Condition 6 (d) either

before or, if it is to the Borrower's advantage, as soon as reasonably practicable after such variation is to take effect. Such notice will be given by post or other method of direct personal communication at the Society's discretion. Where the Interest Rate is to be increased the increased Interest Rate shall only take effect 10 days from the date of such notification to the Borrower.

- (f) If full payment of the Redemption Money takes place before expiry of the Initial Repayment Period an Early Repayment Charge may be payable as stipulated in the Offer of Mortgage. Any Early Repayment Charge will reflect the costs incurred by the Society in setting up the Advance which the Society would have recovered over the Mortgage Term.
- (g) Upon redemption of the Mortgage the Borrower shall pay the Mortgage Exit Administration Fees to the Society
- (h) The Mortgage Exit Administration Fees are the fees set out in the Tariff of Charges, as varied in accordance with Condition 6 (i)
- (i) The Society may increase the level of the Mortgage Exit Administration Fees from time to time by notice in writing to the Borrower to reflect changes in the costs of the administration services which the Society incurs upon redemption of the Mortgage. Any increase shall take effect from the date specified in the notice which shall be not less than 30 days from the date of the notice
- (j) The Mortgage will, in addition to those specific to the selected mortgage product which are detailed in the Offer of Mortgage, be subject to those fees and charges published from time to time by the Society in the Tariff of Charges. The fees and charges can be varied and new fees introduced by the Society at any time by giving 30 days prior written notice to the Borrower unless the Offer of Mortgage states otherwise. The fees and charges will be varied and new fees introduced for the following reasons:
  - to reflect the increased cost to the Society of providing the service
  - to reflect the current market conditions
  - to reflect any increased or reduced risk to the Society following a change in the way the Property is used or occupied
  - to reflect new additional costs due to legislation, regulation or market forces
  - to reflect new services or features

## **OTHER COVENANTS**

- 7. The Borrower and the Mortgagor (if other than the Borrower) covenant so long as the Mortgage is outstanding that, unless the prior written consent of the Society is obtained (such consent not to be unreasonably withheld under Conditions 7 (h), (i), (j), (m), (u) and (aa))
  - (a) all covenants (restrictive or otherwise) statutory requirements and stipulations for the time being affecting the Charged Property or its use or enjoyment shall be observed and performed

- (b) all rents, rates, taxes, outgoings and impositions payable for the Charged Property shall be paid punctually
- (c) the Charged Property shall be put and kept in good and substantial repair and condition
- (d) all the lawful requirements and regulations of the local and other competent authorities concerning the Charged Property shall be observed and performed and the Borrower and the Mortgagor will comply with the terms of all applicable laws and regulations including (without limitation) all environmental laws, legislation relating to public health, town and country planning, control and handling of hazardous substances or waste, fire precautions and health and safety at work.
- (e) on giving any notice of the desire of the Mortgagor to have an extended lease of the Property or the acquisition of a superior title to the Property, the Mortgagor will send a copy of such notice to the Society and obtain the Society's consent to the form of the extended lease or transfer deed. Within one month of the execution of any extended lease of the Property or the acquisition of the superior title by the Mortgagor, the Mortgagor will deliver such lease or the transfer deed to the Society and (if so required) execute a fresh charge by way of legal mortgage to the Society of all the estate of the Mortgagor in the Property under and by virtue of such lease or transfer document
- (f) the Society shall be fully and effectively reimbursed for all actions, proceedings, claims, costs and damages occasioned by any breach of any covenant or stipulation or the non-payment of any outgoings by the Borrower and the Mortgagor
- (g) where the Advance is paid in installments as works proceed, the works shall be proceeded with and completed without delay and within such time and subject to such conditions as the Society reasonably requires and the Mortgagor shall transfer all rights to the Society (so far as the Mortgagor has capacity to do so) in any plans or specifications for any such works
- (h) no construction works shall be carried out on any part of the Property and no alteration shall be made to or in the use of the Property
- (i) the statutory powers of leasing or agreeing to lease and of accepting surrenders of leases shall not apply to the Mortgage and the Mortgagor will not otherwise create any tenancy or lease or license or part with or share the occupation or possession of the Property. Where the Society consents to a letting, the Borrower will be charged a fee for this as set out in the Tariff of Charges
- (j) the Mortgagor will not sell, transfer, grant any charge, mortgage or other security interest in or over or otherwise dispose of the whole or any part of the Charged Property. Where the Society consents to such security or release of part of the Charged Property the Borrower will be charged a fee for this as set out in the Tariff of Charges
- (k) there shall not be done on the Property anything which may prejudicially affect the insurance of the Property or which may increase the premium payable for any such insurance
- (l) any condition imposed by the Society on giving its consent under any of the paragraphs of this Condition will be duly complied with

- (m) they will not allow anyone other than the Mortgagor to become the registered proprietor of the Property
- (n) they will notify the Society if the Property is unoccupied for a period of one month or more
- (o) (if the Property is leasehold) they will comply with the terms of the lease on which the Property is held
- (p) they will forward to the Society promptly upon receipt copies of any notice or information received concerning any matter which might materially affect the Charged Property or its value and (at the cost of the Mortgagor) to take any action in connection with it as the Society may reasonably require
- (q) they will provide to the Society such information on their financial affairs and the Property as the Society will from time to time reasonably request
- (r) if the Property is leasehold and the lease requires the Mortgagor to be a member of a management company, the Mortgagor shall deposit with the Society on the date of the Mortgage its share certificate or other certificate of membership of such management company and the Mortgagor appoints the Society as its attorney and in its name to execute a transfer of such share or membership to any person to whom the Society may convey, transfer or assign the Property under its powers under these Conditions
- (s) if the Property is commonhold the Mortgagor will:
  - (i) not vote in favour of a winding up of the commonhold association without obtaining the Society's consent
  - (ii) immediately notify the Society in writing prior to any vote to wind up the commonhold association
  - (iii) immediately supply the Society with any notices served or received in accordance with the terms of the commonhold community statement
  - (iv) not to vote to vary the memorandum and articles of association for the commonhold association or the commonhold community statement without the written consent of the Society
- (t) not to do or allow to be done anything which may significantly reduce the value of the Charged Property
- (u) (if the Borrower or the Mortgagor is a company or a limited liability partnership) neither the Borrower nor the Mortgagor as relevant will enter into any amalgamation, de-merger, merger or reconstruction or any joint venture or partnership agreement
- (v) not to deal with any claim for compensation, however arising, for all or part of the Charged Property other than in accordance with the requirements of the Society, and if required by the Society to pay to the Society in reduction of the Redemption Money all or part of such compensation

- (w) not to do or allow to be done or omit to do on the Property anything which might lead either to the Mortgagor incurring any liabilities or committing any offence under environmental law or incur any other liability as a result of the pollution of the Property or to the Property being entered upon any registers of land which may have been put to a contaminative use under such law and further to send copies to the Society of any notice received in connection with environmental matters for the Property
- (x) if the Property has the benefit of any rights under any agreement with the National House-Building Council or other similar body or under any arrangement giving similar rights, not to deal with any claim under such agreement other than in accordance with the reasonable requirements of the Society, and if required by the Society either to pay to the Society in reduction of the Redemption Money the proceeds of any such claim or to use such proceeds in reinstatement of the Property
- (y) if the Borrower or the Mortgagor or if any employee or agent of the Borrower or the Mortgagor at any time while the Mortgage is in force holds any premises licence and/or any personal licence for the Property and allowing intoxicating liquors to be sold from the Property
  - (i) to obtain, renew and maintain or procure that there is obtained, renewed and maintained the relevant proper licence in a form acceptable to the Society and, if requested by the Society, to produce a copy of such licence or certificate to the Society
  - (ii) not to do or omit or allow anything to be done which may prejudice the continued existence or renewal of such licence
  - (iii) to inform the Society as soon as the Borrower or the Mortgagor becomes aware of anything which is likely to affect the continued existence of such licence or to result in the conditions to such licence being varied
  - (iv) to insure, and to keep such licence insured, against loss, termination or non-renewal in the joint names of the Society and as relevant the Borrower or the Mortgagor in such sum and upon such terms as the Society may from time to time in writing require and the provisions of Condition 8 shall apply to such insurance as if they were now repeated
  - (v) at any time after the Society has demanded repayment of the Redemption Money, the Mortgagor will upon the request of either the Society or the Receiver do anything or sign any documents or procure that all relevant action is taken or documents signed which the Society or the Receiver requests to assist in the transfer of all such licences to any other person
- (z) they will maintain all other licences and procure all renewals of licences necessary or desirable for carrying on the trade or business carried on by the Borrower or the Mortgagor at the Property
- (aa) the Mortgagor will not make an option to tax land and/or buildings comprising the Property or will not revoke any option made prior to the date of the Mortgage

- (bb) they will notify the Society of the occurrence of any event set out in Condition 13 or of any Potential Enforcement Event

## INSURANCE

8. (a) The Mortgagor
- (i) will, subject to Condition 8 (a) (ii), insure the Charged Property with a United Kingdom insurance company acceptable to the Society against loss or damage by any of the Insured Risks in a sum equal to the full reinstatement value of the Charged Property for the time being and upon an index-linked basis (including:
- architects', surveyors' and other professional fees
  - expenses of demolition and site clearance
  - where the Property is let, an amount equal to the loss of rent under the lease for three years or such longer period as the Society may reasonably require and
  - Value Added Tax (if any) which may become due on such amounts)
- with the interest of the Society as Mortgagee noted on the insurance policy
- (ii) will not be required to put in place separate insurance for the Property where the Property is insured by a prior chargee or some other third party provided the Mortgagor uses its best endeavours to ensure that such insurance complies with the provisions of Condition 8 (a) (i) and is on terms reasonably satisfactory to the Society
- (iii) will produce to the Society on demand particulars of the terms of the insurance and evidence that the insurance is in force
- (b) The Borrower and the Mortgagor will promptly notify the Society of any damage to the Charged Property which may give rise to a claim under the insurance of the Charged Property
- (c) The Borrower and the Mortgagor will not do or permit or suffer to be done anything whereby any insurance on the Charged Property may be cancelled, become unenforceable, may lapse or become impaired or is altered without the consent of the Society or which would cause any increase in premium
- (d) The Mortgagor will hold all moneys receivable by it or under its control for such insurance in trust for the Society to be paid to it or at the option of the Society it may as its agent on his behalf and in its name receive and give a good discharge for such moneys
- (e) If the Mortgagor does not insure or keep insured the Charged Property or if there is a breach or failure to comply with any of the foregoing paragraphs then unless some other person has covenanted to do so the Society may insure the Charged Property against the Insured Risks for such sums as it may from time to time think fit and money expended for that purpose will be recoverable from the Borrower on demand and until repaid will carry

interest at the Interest Rate and form part of the Redemption Money

- (f) If any insurance monies are due to the Mortgagor under the terms of a lease of the Property it will immediately claim all such monies and hold them in trust for the Society to be paid to it or at the option of the Society it may as its agent on its behalf and in its name receive and give good discharge for such monies
- (g) The Society shall have full power to settle and adjust with the insurers provided that the Society acts reasonably in the conduct of such claims
- (h) Any moneys receivable by the Society, the Borrower or the Mortgagor on any insurance of the Charged Property shall be applied, subject to the rights of any prior chargee or where the Property is held by the Mortgagor under a lease, the rights of any landlord of the Property (collectively "the Third Parties") in or towards the payment of the Redemption Money if the assets the subject of the insurance claim cannot be lawfully or economically repaired or if an event set out in Condition 13 has occurred and is continuing. In all other circumstances, all moneys received under any policy or policies of insurance shall be applied, at the Mortgagor's option, but subject to the rights of any Third Parties, either in making good to the Society's satisfaction the loss or damage to the assets the subject of the insurance claim (any deficiency being made good by the Mortgagor) or towards the payment of the Redemption Money

## **INVESTIGATIONS**

- 9. (a) If any event under Condition 13 occurs then (while it is continuing unwaived) the Society shall be entitled to initiate an investigation of, and/or instruct any report (accounting, legal, valuation or other) on the business and affairs of the Borrower which the Society considers necessary to ascertain the financial position of the Borrower, all fees and expenses incurred by the Society in so doing being payable by the Borrower
- (b) The Borrower consents to the provision by the Society of all information on the Borrower which the Society provides to any person producing any report referred to in Condition 9(a)

## **VALUATIONS**

- 10. The Society shall be entitled, at the Borrower's expense, to have a valuation of the Property carried out by an independent surveyor or valuer (to be appointed at the Society's sole discretion) once in every five years and also at any time following the occurrence of any event under Condition 13 (while it is continuing unwaived) and the Mortgagor agrees to provide such access and other assistance as may reasonably be required by the Society for such purposes. The Mortgagor shall ensure that any tenant or other occupier of the Property shall ensure that access and assistance is provided for such purposes.

## **SOCIETY'S RIGHTS AND POWERS**

- 11. In case of breach or non-performance of any of these Conditions concerning the Charged Property, the Society at its discretion may remedy the breach or non performance and all moneys expended by the Society for such purpose shall be recoverable from the Borrower on demand and until paid by it shall carry interest at the Interest Rate and form part of the Redemption Money
- 12. While the Mortgage is outstanding the Society may enter and inspect the Property at any reasonable

time and on giving reasonable notice (except in emergency) and it may also enter and do any work which the Mortgagor has failed to do and any expenses so incurred shall be payable by the Borrower on demand and until paid by the Borrower shall carry interest at the Interest Rate and form part of the Redemption Money

13. The Redemption Money shall become immediately payable to the Society on the occurrence of any of the following events
- (a) if the Borrower or the Mortgagor is late in paying any money under the Mortgage, the Offer of Mortgage or these Conditions and the amount unpaid is at least equal to two Monthly Payments and the Borrower or the Mortgagor (as relevant) has failed to remedy the breach within a Month of the Society requesting it to do so
  - (b) if there is a breach by the Borrower or the Mortgagor of any other obligation relating to the Charged Property contained in the Offer of Mortgage, or under Conditions 7, 8, 10 or 39 (not being an obligation purely for the payment of money) and either such breach is in the opinion of the Society not capable of remedy or such breach is in the opinion of the Society capable of remedy and is not remedied within a Month after the earlier of the date of notice by the Society requiring such remedy or the date on which the Mortgagor or the Borrower first becomes aware of the breach
  - (c) if any petition is presented by any person or any order is made by any court or any resolution is passed by the Borrower or the Mortgagor for its bankruptcy, winding-up or dissolution or for the appointment of a liquidator or administrator of the Borrower or the Mortgagor (except for the purpose of an amalgamation or reconstruction on terms and conditions which shall have first been approved by the Society)
  - (d) if the Borrower or the Mortgagor is, or is adjudicated or found to be, bankrupt, insolvent or suspends payment of its debts or is (or is deemed to be) unable to or admits inability to pay its debts as they fall due or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or proceedings are commenced in relation to the Borrower or the Mortgagor under any law, regulation or procedure relating to reconstruction or adjustment of debts
  - (e) if the Borrower or the Mortgagor shall have a receiver appointed over the whole or any substantial part of its assets or if an administrator of the Borrower or the Mortgagor is appointed or an application is made for the appointment of an administrator of the Borrower or the Mortgagor or notice of intention to appoint an administrator of the Borrower or the Mortgagor is served
  - (f) if the Property or any material part of it is sold or is compulsorily purchased
  - (g) if another lender takes possession of the Charged Property or any material part of it or a receiver is appointed over the Charged Property or any material part of it
  - (h) if the Borrower or the Mortgagor dies or becomes incapable of managing its affairs by reason of mental incapacity or where there is more than one Borrower or Mortgagor the last surviving Borrower or Mortgagor dies or becomes incapable of managing its affairs by reason of mental incapacity
  - (i) if there is a material breach of representation or warranty made by the Borrower or the

Mortgagor in the Offer of Mortgage, the Mortgage, or these Conditions

- (j) if it becomes apparent that the Mortgage is not binding on the Charged Property or any material part of it
  - (k) if the Charged Property or any material part of it is damaged so as to depreciate the value of the Society's security to a material extent
  - (l) (if the Borrower or the Mortgagor is a company) a person either alone or acting with one or more others, not having control of the Borrower or the Mortgagor at the date of the Mortgage, obtains control of the Borrower or the Mortgagor. Control in this Condition 13 (l) means holding more than 50% of the issued share capital of the Borrower or the Mortgagor
  - (m) any attachment, distress, execution or other process affects any part of the Charged Property and any such action is not lifted or discharged within 14 days
  - (n) any judgement or order is made that may require the Mortgagor to give up possession of any part of the Charged Property
  - (o) it is or becomes illegal for the Borrower to allow the Redemption Money or any part of it to remain outstanding
  - (p) if the Borrower ceases to carry on the whole or a substantial part of its business
  - (q) on the happening of any of the above events or any analogous event in relation to any Guarantor or if any Guarantor gives notice to the Society to determine or revoke any guarantee or security given to the Society for the Advance
  - (r) if any other event or circumstance occurs or arises which will have a Material Adverse Effect
14. At any time after the Redemption Money has become immediately payable, the Society may without any previous notice to or concurrence on the part of the Borrower or the Mortgagor
- (a) take possession of the Charged Property
  - (b) exercise all the powers conferred on mortgagees by the Law of Property Act 1925 but so that the power of sale may be exercised whether the Society shall be in possession or not of the Charged Property and without the restrictions imposed by Section 103 of that Act (which regulates the Society's power of sale of the Charged Property)
  - (c) lease the Property for such tenancy or term of years at such rent and generally upon such terms as the Society at its absolute discretion shall think fit
  - (d) exercise in relation to the Charged Property all the powers of an absolute beneficial owner of the Charged Property free from encumbrances
  - (e) apply any credit balance (whether or not then due) which is at any time held by the Society for the account of the Borrower, or the Mortgagor or in or towards satisfaction of the Redemption Money or any of it

15. The Society upon entering into possession of the Charged Property shall (but only for the matters referred to in this Condition) become and be the agent of the Mortgagor with authority at its expense (recoverable from the Borrower on demand, together with interest from the date incurred at the Interest Rate) to remove, store, preserve, sell or otherwise dispose of any furniture or goods which the Mortgagor shall fail to remove
16. The Society shall out of the moneys to arise from any exercise of the powers referred to in Condition 14 firstly retain and pay all costs, charges and expenses properly incurred by it as incidental to the sale or previously attempted sale, secondly retain the Redemption Money and thirdly pay the surplus (if any) to the person entitled to it
17. (a) The Society may transfer or otherwise deal with the benefit of the Mortgage to any person at any time and for this purpose the Society may disclose to any proposed transferee all information that it may hold about the Borrower, the Mortgagor, or the Charged Property  
  
(b) If the Mortgage is transferred under this Condition
  - (i) references in these Conditions to the Rules will cease to have effect from the date of the transfer
  - (ii) subject to (a) above and to any contrary provision in the transfer, the transferee will become entitled to all the Society's rights, powers and remedies under these Conditions
18. The Mortgagor irrevocably and by way of security appoints the Society its attorney with full power in its name and on its behalf to receive any money payable to the Mortgagor under the provisions of any agreement, insurance or guarantee for the repair or the rectification of defects in or to the title to the Property and any money receivable by the Society under this Condition shall be applied as in paragraph (h) of Condition 8
19. The Society's powers contained in the Mortgage or these Conditions are in addition to all other powers and remedies of the Society under the Rules or granted by statute

## **BORROWERS' RIGHTS**

20. The Borrower or the Mortgagor may repay the Redemption Money or any part of it at any time and without previous notice. An Early Repayment Charge may be payable as stipulated in the Offer of Mortgage
21. The Mortgagor may hold and enjoy the Property and receive the rents and profits from it until the Redemption Money shall become immediately payable to the Society
22. Where a retention is made by the Society from the Advance or where the Advance is paid in installments as works proceed, the Society will pay the balance of the Advance to the Borrower by such installments and at such time as the Society shall determine having regard to any conditions upon which the Advance was made PROVIDED ALWAYS that the Society shall not be bound to pay the balance of the Advance or any part of it unless the Borrower and the Mortgagor shall have performed and observed the covenants and obligations contained in these Conditions

## **OTHER CONDITIONS**

23. Every receipt of the Society for any money paid by virtue of the Mortgage shall effectually discharge the payer from its obligation to make the payment and from being concerned to see to its application
24. The Mortgage shall be security not only for the moneys primarily provided for by it but also for all moneys which may be or become owing by the Borrower to the Society including any further advances on any account and at the discretion of the Society no property held by the Society as security for indebtedness of the Borrower shall be released until all moneys owing by the Borrower to the Society have been paid
25. The Borrower agrees and consents to the Society providing to any Guarantor details of the conduct of the Mortgage account and all transactions on such account upon request of the Guarantor or where the Society deems it necessary

### **COSTS**

26. (a) All reasonable costs, charges and expenses properly incurred (including costs of legal proceedings) by the Society in connection with the Offer of Mortgage, the Mortgage, these Conditions and the Redemption Money shall be fully and effectually reimbursed by the Borrower to the Society on demand and until reimbursed shall carry interest at the Interest Rate, both before and after judgment and be secured on the Charged Property. The Society will notify the Mortgagor of such costs, charges and expenses and provide the Mortgagor with the opportunity to pay them before they attract interest.
- (b) The Society and every Receiver, attorney or other person appointed by the Society under the Mortgage and their respective employees shall be entitled to be fully and effectually reimbursed out of the Charged Property for all liabilities and reasonable expenses properly incurred by any of them in or directly or indirectly as a result of the exercise or purported exercise of any of the powers, authorities or discretions vested in them under the Mortgage and against all actions, proceedings, losses, costs, claims and demands for any matter or thing done or omitted in any way connected to the Charged Property and the Society and any such Receiver may retain and pay all sums for such matters out of the monies received under the powers conferred by this Mortgage

### **ERRORS AND OMISSIONS**

27. (a) The Society's security shall not be prejudicially affected by any error or omission contained in any statement or information made or supplied by the Society to the Borrower during the continuation of the Mortgage or after its discharge relating to any account of the Borrower or repayment of the Redemption Money
- (b) The execution and delivery by the Society of an instrument of discharge for the Mortgage shall not discharge the Borrower from personal liability if it is subsequently found that on redemption the amount required for redemption was under-calculated or under-stated by mistake but (subject to Condition 27 (c)) the Society will not rely on this Condition to maintain a claim against the Borrower unless the claim is made in writing within three months of the delivery of the instrument
- (c) No time limit shall apply under Condition 27 (b) where the Borrower was party or had knowledge of the mistake

- (d) The Society may withdraw or amend its Offer of Mortgage before completion of the Mortgage without liability in the following circumstance
  - (i) It is found that the Borrower has failed to disclose all material facts or has provided inaccurate information
  - (ii) Fraud on the part of the Borrower, Guarantor, solicitor, valuer or other party connected to the Mortgage
  - (iii) There is a defect in the title to the Property
  - (iv) Any other matter arises which adversely affects the value of the Property as security for the Advance or is inconsistent with the basis on which the Offer of Mortgage was made

## **LAW AND JURISDICTION**

28. The Mortgage and the Offer of Mortgage and any non-contractual obligations arising out of or in connection with either of them shall be governed by English law and the Borrower and the Mortgagor submit to the jurisdiction of the courts of England and Wales. If the correspondence address of the Borrower or the Mortgagor is outside England and Wales, the Borrower and the Mortgagor agree that the Society may serve notice upon them at the Property for the purposes of legal proceedings

## **REPRESENTATIONS AND WARRANTIES**

29. Each of the Borrower and the Mortgagor represent and warrant to the Society (and such representations and warranties shall be deemed to be repeated on each day until all Redemption Money is fully and unconditionally paid or discharged) as follows:
- (a) no event which would cause the Redemption Money to be immediately payable under Condition 13 has occurred and, other than as disclosed in writing to the Society, no litigation or insolvency or administrative proceeding before, or by, any court or governmental authority is pending or (so far as the Borrower and the Mortgagor are aware) threatened against the Borrower or the Mortgagor or any of their respective assets
  - (b) the Mortgagor is and will at all times be the legal and beneficial owner of the Charged Property with good and marketable title, free from encumbrances (except in favour of the Society or to which the Society has provided its prior written consent), restrictions and onerous covenants
  - (c) the Mortgagor's ownership of the Charged Property and the Mortgagor's and the Borrower's entry into and performance of its obligations under the Offer of Mortgage and the Mortgage is not in contravention of any law or regulation or other agreement or instrument to which it is subject and all government or other consents required for such execution, delivery and performance are in full force and effect
  - (d) other than as disclosed in any certificate of title or report on title on the Property provided by solicitors:

- (i) there subsists no breach of any law or regulation which materially and adversely affects or would affect the value of the Property
  - (ii) there are no covenants, agreements, stipulations, reservations, conditions, interests, rights or other matters whatsoever which materially and adversely affect the Property
  - (iii) nothing has arisen or has been created or is subsisting which would be an overriding interest over the Property
  - (iv) no facility necessary for the enjoyment and use of the Property is enjoyed on terms entitling any person to terminate or curtail its use
  - (v) the Mortgagor has not received notice of any adverse claim by any person concerning ownership of the Property or any interest in it, nor has any acknowledgement been given to any person concerning the Property and
  - (vi) to the best of the Mortgagor's knowledge, no waste or noxious, offensive or dangerous substance has been used, disposed of, produced, stored or deposited under, on or in, or emitted from the Property
- (e) the Borrower's and the Mortgagor's obligations under the Offer of Mortgage and the Mortgage are legal, valid, binding and enforceable
  - (f) all information supplied by or on behalf of the Borrower or the Mortgagor to the Society in contemplation of or for the purposes of the Offer of Mortgage and the Mortgage was true and accurate in all material respects as at its date and not misleading and such information did not omit anything, nor since the date of such information has anything occurred, which renders that information untrue or misleading in any material respect or which, if disclosed, might materially affect the decision of a lender considering whether to enter into the Offer of Mortgage and the Mortgage
  - (g) the Borrower's latest audited financial statements have been prepared in accordance with GAAP consistently applied and give a true and fair view of its affairs and fairly present its financial position and its results and operations as at and for the period ended on the date up to which those financial statements were prepared and there has been no material adverse change in its business, assets or financial position since that date.
  - (h) (if the Borrower or the Mortgagor is a company or a limited liability partnership) the Borrower or the Mortgagor (as relevant) is duly incorporated in its place of incorporation, has full power to own its assets, (in the case of the Borrower) has full power to borrow the Advance, (in the case of the Mortgagor) has full power to charge the Charged Property and to enter into and perform its obligations under the Offer of Mortgage and the Mortgage
  - (i) (if the Borrower or the Mortgagor is a company or a limited liability partnership) the Borrower or the Mortgagor (as relevant) has taken all necessary corporate action to authorise its execution and delivery of and the performance of its obligations under the Offer of Mortgage and the Mortgage

**FURTHER ASSURANCE AND POWER OF ATTORNEY**

- 30. (a) The Borrower and the Mortgagor must, at their own expense, take whatever action the

Society or a Receiver may require for creating, perfecting or protecting any security intended to be created by the Mortgage or facilitating the realisation of the Charged Property or the exercise of any right, power or discretion exercisable by the Society or any Receiver in respect of the Charged Property

- (b) The Borrower and the Mortgagor, by way of security, irrevocably and severally appoint the Society and any Receiver to be its attorney to take any action which the Borrower or the Mortgagor is obliged to take under the Mortgage. The Borrower and the Mortgagor ratify and confirm whatever any attorney does or purports to do under its appointment under this Condition

#### **NO LIABILITY AS MORTGAGEE IN POSSESSION**

- 31. Neither the Society nor any Receiver will be liable, by reason of entering into possession of the Charged Property, to account as mortgagee in possession or otherwise for any moneys not actually received unconditionally and irrevocably by it provided it has acted with reasonable care whilst in possession of the Charged Property. Neither the Society nor any Receiver shall be liable to the Mortgagor or any other person for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable

#### **PROTECTION OF THIRD PARTIES**

- 32. No person (including a purchaser) dealing with the Society or any Receiver will be concerned to enquire
  - (a) whether the Redemption Money has become payable and whether any part of it remains outstanding
  - (b) whether any power which the Society or a Receiver is purporting to exercise has become exercisable or is being properly exercised
  - (c) how any money paid to the Society or a Receiver is to be applied

#### **POWER TO APPOINT RECEIVER**

- 33. At any time after the Redemption Money has become immediately payable or upon the request of the Mortgagor, the Society may appoint any one or more persons, each with power to act alone, to be a Receiver of the Charged Property
- 34. Any Receiver shall be the agent of the Mortgagor, who shall be solely responsible for the acts or omissions of any Receiver and for his remuneration (which may be fixed by the Society)
- 35. The Receiver shall have and be entitled to exercise all powers conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on receivers in the same way as if the Receiver had been duly appointed under such statutes and in particular by way of addition to but without limiting any general powers referred to above (and without prejudice to any of the Society's powers referred to above) the Receiver shall have power in the name of the Mortgagor or otherwise to do the following things namely to:
  - (a) take possession of, collect and get in all or any part of the Charged Property

- (b) commence and/or complete any building operations on the Property and to apply for and obtain any planning permissions, building regulation approvals and any other permissions, consents or licences in each case as he may in his absolute discretion think fit
  - (c) borrow moneys from the Society or others on the security of the Charged Property for the purpose of exercising any of his powers
  - (d) purchase or acquire any land and purchase, acquire and grant any interest in or right over the land or accept surrenders of leases or tenancies of the Property and to carry any such transactions into effect
  - (e) sell, transfer, assign, lease or concur in selling, letting or leasing the Charged Property or any part of it on such terms and conditions and for such consideration and payable at such time as he may in his absolute direction think fit including without limitation the power to dispose of any fixtures separately from the Property
  - (f) take, continue or defend proceedings or make any arrangement or compromise between the Mortgagor and any persons which he may think expedient
  - (g) make and effect all repairs and improvements
  - (h) effect such insurances of or in connection with the Charged Property as he shall in his absolute discretion think fit
  - (i) purchase materials, tools, equipment, goods or supplies
  - (j) carry on any trade or business carried on by the Mortgagor at the Property
  - (k) appoint managers, officers, contractors and agents for the above purposes upon such terms concerning remuneration or otherwise as he may determine or
  - (l) do all such other acts and things as may be considered to be incidental or conducive to any of the above matters or powers and which he lawfully may or can do
36. Any moneys received by the Receiver in the exercise of his powers under this Deed and under general law shall be (so far as the law permits) applied by him firstly in the payment of the costs, charges and expenses of and incidental to his appointment and the exercise of all or any of his powers and in payment of his remuneration and any balance shall be paid to the person or persons entitled to it.

## **NOTICES**

- 37 Every notice, demand or other communication under the Mortgage or Offer of Mortgage shall be in writing and may be delivered personally or by letter dispatched as follows:
- (a) if to the Society, to its address specified at the head of the Mortgage
  - (b) if to the Mortgagor or Borrower, to its address specified at the head of the Mortgage or Offer of Mortgage (as relevant) or where the Mortgagor or Borrower is a company or a limited liability partnership to its registered or principal office for the time being or where the Mortgagor or Borrower is an individual to its usual place of residence

or to such other address and/or facsimile number as may be notified in accordance with this Clause by the relevant party to the other party for such purpose

- 38 Every notice, demand or other communication shall be deemed to have been received (if sent by first class post) on the second Business Day after the date of posting and (if delivered personally or dispatched by facsimile) (subject to receiving confirmation of the facsimile transaction) at the time of delivery or dispatch if during normal business hours in the place of intended receipt on a Business Day in that place and otherwise at the opening of business in that place on the next succeeding such Business Day

## **GENERAL**

- 39 Neither the Borrower nor Mortgagor may transfer any of its obligations under the Offer of Mortgage or the Mortgage or enter into any transaction which would result in any of those obligations passing to another person
40. If at any time any provision of the Mortgage or the Offer of Mortgage is or becomes illegal, invalid or unenforceable in any respect, neither the legality, validity or enforceability of the remaining provisions of it will in any way be affected or impaired
41. The rights and remedies of the Society contained in the Mortgage and Offer of Mortgage are cumulative and not exclusive of any other rights or remedies (whether provided by law or otherwise). Where there is any ambiguity or conflict between the rights conferred by law and those conferred by the Mortgage or Offer of Mortgage, the terms of the Mortgage and Offer of Mortgage shall prevail
42. If the Society or a Receiver fails to exercise or delays exercising any right under the Mortgage, it will not operate as a waiver of that right. Any single or partial exercise of any right will not preclude any other or further exercise of that right or the exercise of any other right
43. A person who is not a party to the Mortgage or Offer of Mortgage may not enforce any part of them
44. (If the Mortgagor is a company) the Mortgagor certifies that the Mortgage does not contravene its memorandum and articles of association
45. If the Borrower or the Mortgagor does not make any payment in full when due, the Society may apply any part payment received in reduction of whatever part of the Redemption Money it wishes and without affecting the Society's rights under Condition 13
46. The Borrower must notify the Society immediately of any change to their contact details including correspondence address, email address and telephone number
- 47 Any certificate or determination of the Society of the amount of the Redemption Money shall in the absence of obvious error, be conclusive and binding on the Borrower and the Mortgagor
- 48 The Mortgage may be executed in more than one part each of which shall constitute an original document

## **VARIATION OF TERMS**

49. The Society retains the right to change these Conditions, the Mortgage and the Offer of Mortgage

and the Borrower and the Mortgagor agree to such changes, in order to:

- (a) correct any error (provided that any correction would not be detrimental to the Borrower's or Mortgagor's rights)
- (b) ensure the terms are fairer to the Borrower and the Mortgagor
- (c) comply with or reflect a change of applicable law or regulation or a decision by an ombudsman
- (d) provide for introduction of new systems, services, changes in technology and products (provided that any change would not be detrimental to the Borrower's or Mortgagor's rights)
- (e) make them more understandable

All variations carried out in accordance with this Condition will be notified in writing to the Borrower and the Mortgagor and shall take effect from the date specified in the notice which shall be not less than 14 days from the date of the notice.