

## **GUARANTEE AND INDEMNITY (INDIVIDUAL GUARANTOR(S))**

**WARNING**

Before signing this Guarantee you are required to get independent legal advice as to your legal liabilities under it. If the Borrower does not perform the Borrower's obligations to the Society YOU MAY HAVE TO PAY INSTEAD and fulfil any other obligations under the Guarantee. Sign this Guarantee only if you agree to be legally bound by its terms.

**DATE****YOU, YOUR, THE  
GUARANTOR****THE BORROWER****WE, US, THE  
SOCIETY**

Yorkshire Building Society (trading as Norwich & Peterborough Building Society) whose principal office at Yorkshire House, Yorkshire Drive, Bradford BD5 8LJ

**THE MORTGAGE**

dated

and made between the Society and the Borrower or mortgagor (*where the mortgage has been granted by another party other than the Borrower*)

**THE MAXIMUM AMOUNT WHICH YOU ARE LIABLE TO PAY UNDER THIS GUARANTEE IS £**

**(the "Maximum Amount") PLUS THE OTHER AMOUNTS SET OUT OR REFERRED TO IN CLAUSE 3.**

### **TERMS AND CONDITIONS**

#### **1. INTERPRETATION**

In this Guarantee:-

- 1.1. "Guaranteed Obligations" means all money and liabilities owing, or becoming in the future owing, to us by the Borrower in whatsoever manner whether actual or contingent, whether incurred alone or jointly with another and whether as principal or surety together with all interest accruing on such money and liabilities and all costs, charges and expenses incurred by the Society in respect of such money and liabilities;
- 1.2. references to this Guarantee include all the indemnities and other provisions of this document;
- 1.3. references to this Guarantee include any variations to it;
- 1.4. the singular includes the plural and the other way around;
- 1.5. references to a person include an individual, company, society, corporation, unincorporated

body or firm;

- 1.6. references to "you", "your", the "Guarantor" include every person liable as Guarantor and the personal representatives of the Guarantor and/or anybody lawfully acting on behalf of the Guarantor. If the Guarantor is two or more persons, then their liability is joint and several. This means that each of you is fully responsible on your own for all of the money and liabilities of the Guarantor under this Guarantee and not just a part or proportion of that money and liabilities;
- 1.7. references to "we", "us", the "Society" include any successor in business or other person to whom we transfer our rights under this Guarantee; and
- 1.8. headings to Clauses have no legal effect.

## **2. GUARANTEE AND INDEMNITY**

- 2.1. In return for our lending, agreeing to lend or continuing to lend money to the Borrower you accept the liabilities set out in this Clause 2. These liabilities are unconditional and you cannot withdraw from them, except as set out in Clause 5.
- 2.2. You agree to be liable to us as if you were a principal debtor. You guarantee:
  - 2.2.1. to pay us, on demand, the Guaranteed Obligations, whenever the Borrower does not pay any of them when due.
  - 2.2.2. that the Borrower will comply with all its obligations under the Guaranteed Obligations and agrees to compensate us in full on demand for all liability resulting from any failure by the Borrower to comply with the Guaranteed Obligations
- 2.3. If the Guaranteed Obligations are not recoverable from the Borrower on the basis of a guarantee because of any illegality, lack of, or exceeding of powers, ineffectiveness of execution or any other reason, you will remain liable under this Guarantee for the Guaranteed Obligations as if you were a principal debtor.
- 2.4. As principal obligor and as a separate and independent obligation and liability from your obligations and liabilities under Clause 2.2, you agree to make good (in full) on demand any losses or expenses that we may incur arising out of, or in connection with, any failure by the Borrower/Mortgagor to pay or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations.
- 2.5. You will also make good (in full) on demand any losses or expenses which we may incur if we take steps to enforce this Guarantee or if we try to do so.

## **3. LIMIT ON THE GUARANTEE**

This Guarantee is a continuing security, and shall cover the ultimate balance from time to time owing to us by the Borrower in respect of the Guaranteed Obligations, despite any intermediate payment to us, or any settlement of account or any other matter whatsoever. However, you will not be liable for more than the amounts as follows:

- 3.1. the Maximum Amount; plus
- 3.2. any interest payable by you under Clause 6; plus
- 3.3. any amounts payable by you under Clause 2.5 and/or Clause 10.

## **4. OUR PROTECTION**

- 4.1. None of your obligations under this Guarantee will be affected by any act, omission, matter or thing which but for this Clause would reduce, release or prejudice any of your obligations under this Guarantee, including, if any of the following happen (even if it would have been if this Clause did not exist):-
  - 4.1.1. we vary (however fundamentally), extend, discharge, compromise, review or otherwise deal with any rights we have or may in future have against the Borrower or any other person in respect of the Guaranteed Obligations;
  - 4.1.2. we take, vary, release or otherwise deal with any security or guarantee in respect of the Guaranteed Obligations;
  - 4.1.3. we enforce, fail to enforce or release any rights under any security or guarantee;
  - 4.1.4. any other guarantee or arrangement intended or expected to secure the Guaranteed

Obligations is never put in place or is (for whatever reason) unenforceable;

- 4.1.5. we terminate or vary any contract, relationship or arrangement with the Borrower or enter into any new contract, relationship or arrangement;
  - 4.1.6. we give the Borrower (or any other person) time to pay or any other waiver or concession;
  - 4.1.7. the Borrower or any other person becomes insolvent, bankrupt or subject to liquidation, winding-up, administration or similar proceedings;
  - 4.1.8. any obligation of the Borrower is or becomes invalid, unenforceable or illegal;
  - 4.1.9. any claim or enforcement of payment is made against the Borrower or any other person;
  - 4.1.10. there are any changes to our, your or the Borrower's name, constitution or membership;
  - 4.1.11. you die or become mentally ill;
  - 4.1.12. the Borrower dies or becomes mentally ill;
  - 4.1.13. we do or fail to do anything else.
- 4.2. Your obligations under this Guarantee are the same as those of the Borrower. We will not be obliged to make any demand on, or take any steps against, the Borrower or any other person before enforcing this Guarantee.
- 4.3. Until all the Guaranteed Obligations are irrevocably paid or satisfied in full, you agree that, whether or not you have made any payment under this Guarantee, you will not do any of the following:-
- 4.3.1. share in any security we hold or any money we receive;
  - 4.3.2. take or receive any money or security from the Borrower or any other person in connection with this Guarantee;
  - 4.3.3. enforce or dispose of, or otherwise deal with, any right or pursue any claim against the Borrower or any other person in respect of the Guaranteed Obligations;
  - 4.3.4. make any claim in the insolvency of the Borrower or any such person which would compete with our claim.
- If, in breach of the above, you do receive any such security, rights or money then you will hold them on trust for us and transfer them to us on demand.
- 4.4. This Guarantee is in addition to, and will not be affected by, any other security or right held by us in respect of the Guaranteed Obligations.
- 4.5. If there is more than one of you, and any of you are for whatever reason not bound by the Guarantee, the rest of you will continue to be bound by it.
- 4.6. If there is more than one of you, we may demand from, proceed against or release any of you without affecting our rights against the rest of you.

## **5. THE PERIOD OF THIS GUARANTEE**

- 5.1. This Guarantee will continue until the Guaranteed Obligations have been irrevocably paid or satisfied in full as the case may be regardless of any intermediate payment or discharge in whole or in part.
- 5.2. Your liability under this Guarantee may be terminated, and such liability crystallized, at the end of one month after receipt by us of written notice signed by you to terminate it. You will remain liable after a notice of termination to the extent of all Guaranteed Obligations as at the close of business on the date on which the notice expires, including any liabilities arising on or after that date pursuant to commitments entered into prior to that date.
- 5.3. If this Guarantee is determined by demand or notice or for any other reason, we may open a fresh account and may continue any existing account with the Borrower. No money paid into any such fresh or existing account shall have the effect of discharging any part of the sums due from the Borrower at the time such determination takes effect.

## **6. INTEREST**

- 6.1. You agree to pay us interest (at the rate payable under the Guaranteed Obligations) on all sums demanded under this Guarantee from the date of demand (or, if earlier, the date on which the relevant loss or expense arose) until the date of payment. If we obtain a court order against you,

interest will continue at this rate after the date of the order.

6.2. Any such interest will accrue on a day to day basis.

## **7. SUSPENSE ACCOUNT**

Any amount which we receive under this Guarantee we may hold in a suspense account, in order to protect the full amount of our claims against the Borrower and any other person. We may use any money in this account to reduce the Guaranteed Obligations when, and in the order, we decide.

## **8. APPROPRIATION**

You will not be entitled to direct us how or when to apply any money we receive under this Guarantee.

## **9. PRESERVING OUR RIGHTS**

- 9.1. If we receive any payment or security from you, the Borrower or any other person which is later ordered, under insolvency laws or for any other reason, to be refunded or released, then you will be liable as if we had never received the payment or security.
- 9.2. If any such claim for refund or release is made against us, we may agree or settle the claim on any terms we decide. We do not need your agreement to do so. If we do agree or settle the claim, you will be liable under this Guarantee as if a court order had been made containing the terms we have agreed. You will also be responsible for all costs incurred by us in defending such a claim.

## **10. COSTS**

You will pay all reasonable legal and other costs (including out-of-pocket expenses and VAT) incurred by us in preparing this Guarantee, and in connection with any actual or proposed enforcement, release or variation of it.

## **11. SET-OFF**

We may (but are not obliged to) use any credit balance which we may hold for your account towards payment of any money payable by you under this Guarantee. We may do this without prior notice to you. This right is in addition to any of our other rights.

## **12. SERVING DEMANDS AND NOTICES**

- 12.1. A demand or notice by us under this Guarantee may be made or given by a letter addressed to you and delivered or sent to the last business or home address given by you to us.
- 12.2. A demand addressed to a Guarantor who has died will be a sufficient demand to his or her personal representatives.
- 12.3. A demand or notice will be treated as properly served on you when it is left (if delivered by hand) or (if posted) 48 hours after posting by first class post, even if not actually delivered.

## **13. TRANSFERS**

- 13.1. We may transfer the benefit of this Guarantee to any person.
- 13.2. You may not transfer any of your obligations under this Guarantee.

## **14. GENERAL**

- 14.1. No delay or omission on our part in exercising any right we have under this Guarantee will affect our future use of that or any other right. Using a single right (or part of it) will not prevent us from using that right again or using any other right.
- 14.2. Any release from your obligations or arrangements to which we may agree under this Guarantee will only be effective if we confirm it in writing.
- 14.3. Our rights under this Guarantee are additional to any other rights we may have, and may be used as and when (and as often as) we think fit.
- 14.4. If any condition of this Guarantee becomes invalid or unenforceable, that will not affect the other conditions.

14.5. This Guarantee is governed by English law. You irrevocably agree to accept the non-exclusive jurisdiction of the English Courts.

14.6. If the following details are completed, you irrevocably authorise and appoint the solicitors named below (or such other firm of solicitors in England and Wales that you may nominate by giving notice in writing to us) to accept service of all legal proceedings in connection with this Guarantee (which service will be deemed to be service on you).

Name of firm \_\_\_\_\_

Address \_\_\_\_\_

**15. CERTIFICATE INCLUSIVE**

Any certificate or determination by the Society of a rate or an amount payable under this Guarantee is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

This Guarantee has been executed and is delivered and takes effect as a deed from the date at the beginning of this document.

**WARNING:**

**Before signing this Guarantee you are required to get independent legal advice as to your legal liabilities under it. If the Borrower does not perform the Borrower's Obligations to the Society YOU MAY HAVE TO PAY INSTEAD and fulfil any other obligations under the Guarantee. Sign this Guarantee only if you want to be legally bound by its terms.**

**Where this Guarantee is to be given by more than one of you, it is strongly recommended you each obtain your own, separate, independent legal advice from different solicitors as to your legal liabilities under it. Whether or not each Guarantor obtains independent legal advice separately, we require the Acknowledgement By Guarantor below to be given in respect of each Guarantor.**

**NOT TO SOLICITORS: The Acknowledgement by Guarantor below must be completed and signed by each Guarantor and the Confirmation by Solicitor below must be completed and signed by the solicitor(s) giving the independent legal advice to the Guarantor.**

EXECUTED (but not delivered until \_\_\_\_\_)

the date hereof) AS A DEED by you \_\_\_\_\_)

in the presence of:- \_\_\_\_\_)

Signature of Witness: \_\_\_\_\_

Name of Witness: \_\_\_\_\_

Address: \_\_\_\_\_

EXECUTED (but not delivered until \_\_\_\_\_)

the date hereof) AS A DEED by you \_\_\_\_\_)

in the presence of:- \_\_\_\_\_)

Signature of Witness: \_\_\_\_\_

Name of Witness: \_\_\_\_\_

Address: \_\_\_\_\_

EXECUTED (but not delivered until \_\_\_\_\_)

the date hereof) AS A DEED by you \_\_\_\_\_)

in the presence of:- \_\_\_\_\_)

Signature of Witness: \_\_\_\_\_

Name of Witness: \_\_\_\_\_

Address: \_\_\_\_\_

EXECUTED (but not delivered until \_\_\_\_\_)

the date hereof) AS A DEED by you \_\_\_\_\_)

in the presence of:- \_\_\_\_\_)

Signature of Witness: \_\_\_\_\_

Name of Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**ACKNOWLEDGEMENT BY GUARANTOR**

The Guarantor acknowledges that:

1. this Guarantee has been executed to secure the obligations of the Borrower to the Society; and
2. the Guarantor has read the contents of this Guarantee, agrees to be bound by this Guarantee and enters into it willingly; and
3. the Guarantor has had the opportunity to have explained to them any part of the Guarantee they do not understand; and
4. the Guarantor has taken legal advice from the solicitors mentioned below on the nature and effect of this Guarantee

Name: \_\_\_\_\_ Signed: \_\_\_\_\_

Name: \_\_\_\_\_ Signed: \_\_\_\_\_

Name: \_\_\_\_\_ Signed: \_\_\_\_\_

Name: \_\_\_\_\_ Signed: \_\_\_\_\_

CONFIRMATION BY SOLICITOR (separate confirmation to be given in respect of each guarantor)

I, \_\_\_\_\_ of \_\_\_\_\_ a solicitor, confirm that I have explained to \_\_\_\_\_ the Guarantor under this Deed the contents of this Guarantee and advised the Guarantor on the nature and effect of this Guarantee. In giving that advice I have had due regard to any issues relating to duress or undue influence. The Guarantor has expressed to me that they are fully aware of the nature and effect of the Guarantee and that they are entering into this Guarantee willingly. The Guarantee was executed by the Guarantor in my presence.

SIGNED \_\_\_\_\_

DATE \_\_\_\_\_

I, \_\_\_\_\_ of \_\_\_\_\_ a solicitor, confirm that I have explained to \_\_\_\_\_ the Guarantor under this Deed the contents of this Guarantee and advised the Guarantor on the nature and effect of this Guarantee. In giving that advice I have had due regard to any issues relating to duress or undue influence. The Guarantor has expressed to me that they are fully aware of the nature and effect of the Guarantee and that they are entering into this Guarantee willingly. The Guarantee was executed by the Guarantor in my presence.

SIGNED \_\_\_\_\_

DATE \_\_\_\_\_

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SIGNED \_\_\_\_\_

DATE \_\_\_\_\_

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SIGNED \_\_\_\_\_

DATE \_\_\_\_\_

Norwich & Peterborough Building Society and N&P are trading names of Yorkshire Building Society. Principal office of Yorkshire Building Society: Yorkshire House, Yorkshire Drive, Bradford BD5 8LJ