

# **COMMERCIAL MORTGAGE CONDITIONS 2014.**

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# COMMERCIAL MORTGAGE CONDITIONS 2014 (THE CONDITIONS).

If you take out a mortgage it will be with Yorkshire Building Society trading as Norwich & Peterborough Building Society. Norwich & Peterborough Building Society is operated under its own brand with its own products.

## 1. Interpretation & Definitions

- a) In these Conditions the following words have the following meanings:

**"Additional Security Document"** means any Floating Charge, debenture, Deed of Postponement, Assignment, assignment of rent, Deposit or Guarantee.

**"Agreement"** means the entire agreement regarding the Loan including:

- the terms set out in any Facility Offer
- these Conditions
- the Mortgage
- any Additional Security Document.

**"Assignment"** means any assignment of life assurance (whether or not by way of Deposit) as security for (inter alia) the Loan and includes the Life Assurance Policy.

**"Assured"** means the Borrower (or if there is more than one person comprising the Borrower whichever of them is the life assured under the Life Assurance Policy) or such other person as may be defined as the Assured in the Facility Offer.

**"Borrower"** means the person or persons named as Borrower in the Mortgage or the Facility Offer and includes any successor in title of the Borrower.

**"Borrowings"** means the total amount outstanding at any time of all the Loans.

**"Deed of Postponement"** means the particular deed (if any) which is expressed to regulate the priority of the Mortgage, the Floating Charge or any debenture and is executed in favour of the Society.

**"Default Interest"** means a rate of interest of up to 2% above the Interest Rate from time to time.

**"Deposit"** means any deposit of a Life Assurance Policy as security for (amongst other things) the Loan.

**"Environmental laws"** means any law or regulation relating to:

- (a) the pollution, conservation or protection of the environment (both natural and built)
- (b) the creation, storage, handling and

disposal of industrial waste and hazardous substances

- (c) health and safety at work and elsewhere.

**"Event of Default"** means an event set out in Condition 15.

**"Facility Offer"** means the offer of advance by the Society or (as the case may be) offer of further advance to the Borrower which results in a Loan or further Loan being made.

**"Floating Charge"** means (where applicable) the particular floating charge contained in a debenture (if any) which is expressed to incorporate these Conditions and is security for (amongst other things) the Loan and is executed by the Mortgage in favour of the Society.

**"Guarantee"** means any guarantee given by the Guarantor.

**"Guarantor"** means any person (whether body corporate or individual) that guarantees any obligation of the Borrower to the Society.

**"Interest Rate"** means the rate(s) of interest (from time to time) payable on the Loan (or different parts of the Loan) under the Agreement.

**"Licences"** include (but is not limited to) (i) premises licences, club premises certificates and other licences under the Licensing Act 2003(ii)certificates of registration in respect of a nursing home or a residential home and (iii) gambling licences.

**"Life Assurance Policy"** means any policy of life assurance referred to in the Agreement and assigned, charged or deposited (or agreed to be assigned charged or deposited) to the Society by way of security and includes any life assurance replacing or representing the same.

**"Loan"** means the total principal amount (including without limitation any further advance) which the Society lends to the Borrower as set out in a Facility Offer on the security of the Property. This may include, for example, any additional borrowing and any other money the Borrower owes to the Society at any time such as interest and unpaid fees and charges. The Borrower may have more than one Loan.

**"Loan Account"** means the account or accounts which holds the Loan. There may be more than one Loan Account.

**"Material Adverse Effect"** means any effect which, in the reasonable opinion of the Society, is likely to

- (a) materially and adversely affect the ability of the Borrower or the Mortgagor to perform or comply with the Mortgagor's obligations under the Agreement
- (b) materially and adversely affect the business, assets or financial condition of the Borrower or the Mortgagor; or
- (c) result in the Agreement or any part of it not being legal, valid or enforceable against any party to the Agreement or result in the Mortgage or Additional Security Document not providing the Society with enforceable security over the assets comprised in the Mortgage or Additional Security Document.

**"Month"** and **"Monthly"** mean "calendar month" and "calendar monthly".

**"Monthly Payment"** means the monthly payment (subject to variation in accordance with this Agreement) from time to time assessed by the Society and notified to the Borrower whether in the Agreement or by subsequent notice.

**"Mortgage"** means the first fixed legal mortgage or other security document over the Property which is expressed to incorporate these Conditions and is security for (inter alia) the Loan and is executed by the Mortgagor in favour of the Society.

**"Mortgagor"** means the Borrower if the Borrower is providing the security but if not then the person who is providing the security (whether or not being or including the Borrower) and includes any successor in title to the Mortgagor.

**"Payment Date"** means the date notified to the Borrower as the date on which the first Monthly Payment is to be made and the corresponding day (or the last day if earlier) of each month after that.

**"Planning Acts"** means the primary and subordinate legislation, bye-laws, building regulations and other provisions of the general law for the time being in force relating to town and country planning.

**"Planning Permissions"** means all permissions and consents required under the Planning Acts in relation to the Property.

**"Potential Event of Default"** means any event or circumstance which with the passage of time, the happening of an event or the determination by any third party would be an Event of Default.

**"Property"** means all freehold and leasehold property (or other interest in land or buildings) charged to the Society by the Mortgagor under the Mortgage as security for the Borrowings and includes any part or parts of the Property.

**"Repay"** includes "pay" and vice versa.

**"Rules"** means the Rules of the Society from time to time in force including any adopted or altered after the date of the Loan.

**"Society", "we", "us", "our"** and any related expressions mean Yorkshire Building Society trading as Norwich & Peterborough Building Society and includes any person or persons who take over the Society's business or the Mortgage (whether by outright transfer and whether in relation to all or part of the Borrowings) (or any such person as is referred to in Condition 22 and may at any time mean more than one of them).

**"Society's Guide to Commercial Mortgage Fees and Charges"** means the booklet which contains the level of fees and charges which apply to the Loan Account. The current version is sent to the Borrower with the Facility Offer and is subject to change from time to time.

**"Statutes"** means all Acts of Parliament, Statutory Instruments, and all subordinate legislation deriving out of statutes or statutory instruments, and all legislation of a regional or local nature including European Union legislation and directives.

**"Year"** means the twelve month period ending on and including 31st December or such other date as the Society may from time to time determine and notify to the Borrower.

- b) The headings in these Conditions are for ease of reference only and shall not affect construction.
- c) References in the Agreement to statutory provisions are to those provisions as from time to time amended or re-enacted.
- d) References in the Agreement to any agreement or instrument is a reference to that agreement or instrument as amended, novated, supplemented or restated (however fundamental).
- e) All covenants by more than a single person are joint and several covenants, the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.
- f) References to a lease include any leasehold interest whether under lease or other inferior leasehold interest.
- g) References in these Conditions to terms and expressions referred to or defined in the Facility Offer shall have the same meaning in these Conditions as in the Facility Offer. To the extent that there is any inconsistency between the terms of the Facility Offer and the Conditions, the terms of the Facility Offer shall prevail.
- h) If the Borrower or the Mortgagor comprises a trust, the liability of each trustee of that trust to the Society under the Agreement shall be limited to the value of the assets of that trust. The recourse of the Society shall be solely to the assets secured pursuant to the Mortgage and any Additional Security Documents granted by such trustees (and the disposal proceeds thereof). The Society shall have no personal recourse to any trustee or any asset held by a trustee in a capacity other than as trustee of the Borrower or the Mortgagor.

## 2. Rules

If the Borrower is a borrowing member of the Society, in the event of any conflict or inconsistency Between the Rules and the Agreement, the Agreement shall prevail.

## 3. Security and Other Encumbrances

- a) The Mortgage and any Additional Security Document is made for securing the Loan and the Borrowings.
- b) Where the Facility Offer specifies that the Loan or further Loan will be made by way of instalments this does not oblige the Society to make any other further advances.
- c) The security arising under the Mortgage or other security document shall be a continuing security and shall not be satisfied by any intermediate satisfaction of the whole or any part of the Borrowings but shall secure the ultimate balance of the Borrowings.
- d) Nothing in the Agreement shall prejudice the Society's rights under the general law.

## 4. Repayment, etc

- a) The Borrower shall in accordance with the Agreement:
  - i) repay the Loan to the Society;
  - ii) pay interest at the Interest Rate on the Loan (without any deduction whatsoever except any which the Borrower is by law obliged to make);
  - iii) pay all other amounts including Default Interest which may become payable by the Borrower under the Agreement; and
  - iv) comply with all the other conditions and obligations of the Borrower under the Agreement;
- b) Amounts referred to in Condition 4(a) (iii) may without limiting the Society's other rights be appropriated from any payment made by the Borrower or recovered in addition to the Monthly Payment.
- c) The Borrower shall on each Payment Date pay to the Society the Monthly Payment. Save where the Agreement provides for or the Society agrees to accept Monthly Payments of interest only, the Monthly Payments are intended to be a number of regular (albeit variable) monthly payments attributable in part to repayment of the capital amount of the Loan and in part to payment of interest (whether or not on particular occasions the circumstances are such that the Society attributes any payment wholly to payment of interest or wholly to repayment of the Loan).
- d) The Society's determination of the Monthly Payment shall in the absence of manifest error be conclusive and binding on the Borrower.

- e) The Borrower shall, independently of any security provided by the Mortgage, any Additional Security Document and any other obligation in the Agreement to repay the Loan, repay the Borrowings following any sale or realisation of the Property. The Borrower's obligation under this separate agreement arises upon but not before sale or realisation of the Property or upon the expiry of 7 days after a written demand for payment expressed to be made under this Condition 4, whichever is the sooner.
- f) The Borrower will be sent a statement of account in relation to the Loan at the beginning of each calendar year.

## 5. Interest

If the Facility Offer states that interest will be calculated on an annual rest basis, interest will be charged in accordance with paragraph a) of this Condition 5. If the Facility Offer states that interest will be calculated on a daily basis, interest will be charged in accordance with paragraph b) of this Condition 5.

- a) The interest chargeable during the Year in which the Loan completes shall be chargeable (on the full amount of any money advanced to or which becomes owing by the Borrower during that Year as from the date on which it was or was deemed to be advanced or to become owing) at the Interest Rate for the time being until the end of that Year. The interest chargeable during any subsequent Year shall be chargeable at the Interest Rate for the time being on (i) the amount of the Loan at the end of the preceding Year and (ii) on any further amount forming part of the Loan and advanced to or which becomes owing by the Borrower during such subsequent Year as from the date on which it was advanced or became owing. Interest shall be debited to the Loan Account monthly in advance on the first day of every Month. Interest will be charged by the Society after as well as before any judgment.
- b) Interest shall be chargeable at the Interest Rate for the time being on the day to day balance of the Loan. Interest shall be debited to the Loan Account on the last day of each Month and on the date of redemption. Interest debited to the Loan Account and remaining unpaid shall be part of the Loan so that interest will be charged upon it which will, in turn, be debited to the Loan Account. Interest will be charged by the Society after as well as before any judgment.
- c)
  - i) The Society may from time to time reduce the Interest Rate or any element of it and any such reduction may be made without notice or formality from such date as the Society thinks fit.
  - ii) The Interest Rate or any element of it may be increased by notice given by advertisement or otherwise and any such

increase shall (as between the Borrower and the Society) take effect from such date (not being earlier than the date of such notice as aforesaid) as such notice shall specify; and

- iii) Should the Society increase the Interest Rate or any element of it by notice given by advertisement the Society shall select two national newspapers for the purpose of announcing such alteration and the Society may vary its selection from time to time.
- d) Despite any provision of the Agreement and subject to compliance with the procedural requirements in Condition 5(c), the Society may at any time and from time to time during the subsistence of the Agreement increase or reduce the Interest Rate or any element of it at its absolute discretion without any restrictions.
- e) At any time after the occurrence of an Event of Default the Society may at its discretion charge Default Interest (in place of the Interest Rate) on the Loan from the date of the Event of Default (after as well as before any judgment) until the date of the remedy of the Event of Default or payment of the Borrowings.

## 6. LIBOR- Linked Option

This Condition 6 applies, in addition to Condition 5, only when the Facility Offer so states and in those circumstances the following expressions shall have the following meanings:

- a) "Quarter" means a period commencing on the first Working Day in the months of January, April, July and October and expiring on the day preceding the first Working Day of the next Quarter.
- b) "Working Day" means any Monday Tuesday Wednesday Thursday or Friday which is not a national or public holiday in England.
- c) "Screen Rate" means the London Interbank Offered Rate (LIBOR) administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of LIBOR) which is displayed on the appropriate page of the Bloomberg service (or such other information service which publishes LIBOR from time to time).
- d) Subject to paragraph (e) below, "Applicable Rate" means the interest rate specified in the Facility Offer or if no interest rate is specified in that document three per cent per annum above the Screen Rate for sterling deposits for such period as may be specified in the Facility Offer or if no period is specified in that document a period of three months as at 11.00 a.m. on the first Working Day of the Quarter.
- e) If it ceases to be possible to determine the Screen Rate in accordance with paragraphs (c) or (d) above the Society may, acting reasonably,

declare some other comparable rate to be the Screen Rate for all purposes of these Conditions.

- f) Interest will be chargeable at the Applicable Rate in accordance with Condition 5 and references in the Agreement to the Interest Rate shall be deemed to refer to the Applicable Rate. The Applicable Rate (or any element of it) will be subject to variation in accordance with Condition 5 (d).

## 7. Payments

- a) All payments by the Borrower to the Society must be made to the Society at the following address Lynch Wood, Peterborough Business Park, Peterborough PE2 6WZ or to such other address as the Society may notify to the Borrower and by such means as the Society shall direct. Time of payment by the Borrower is of the essence of the Agreement. Payments are sent at the risk of the Borrower and the Society is not responsible for loss of or delay to payments sent by or to the Borrower.
- b) Without prejudice to Condition 4(d) the Society may at any time by written notice to the Borrower increase or reduce the amount or the number of the Monthly Payments remaining to be made if there are changes to Interest Rates or the payment changes for other reasons such as changes in insurance premiums, at the end of a special interest rate period, changes in laws and regulations or to take into account the way the Society (or any person appointed by it) administers the Loan Account. The Society may do this to ensure repayment of the Loan within the term of the Loan set out in the Facility Offer.
- c) Unless the Society in its absolute discretion decides otherwise any payments made by the Borrower or received for the Borrower's Loan Account will be credited to: first, outstanding interest; secondly, any outstanding charges or fees including any charge for early repayment and insurance premiums in respect of the Property; thirdly, in reduction or repayment of the balance of the Loan, the earliest Loan being discharged first.  
  
For the avoidance of doubt, unless the Society receives any payment that will extinguish outstanding interest, it is not obliged to apply any balance of the payment remaining against interest falling due in the future.
- d) All payments payable by the Borrower to the Society under the Agreement shall be made without deduction for or on account of set-off or counter-claim and free of any deduction or withholding of any nature (including tax) unless a deduction or withholding is required to comply with law.
- e) If any amount is required by law to be deducted or withheld by the Borrower under Condition 7(d) (a "Deduction") then the Borrower shall pay to

the Society an additional amount to ensure that after the Deduction the Society still receives and retains a net amount equal to the amount which it should have received had no such Deduction been made.

- f) Without prejudice to the provisions of Condition 7(d) if the Society is required to make any payment on account of tax or otherwise (not being a tax imposed on its overall net income) on or in relation to any sum received or receivable in the Agreement by the Society (including without limitation any sum received or receivable under this Condition 7) or any liability in respect of any such payment is asserted, imposed, levied or assessed against the Society, the Borrower shall upon demand by the Society promptly reimburse the Society against such payment or liability together with any interest, penalties for late payment and expenses payable or incurred in that connection.

## 8. Illegality

- a) If at any time it is unlawful for the Society to make, fund or allow to remain outstanding all or any of the Loan then the Society shall promptly after becoming aware of the same deliver to the Borrower a certificate to that effect.
- b) If the Society so requires the Borrower shall on such date as the Society shall have reasonably specified (being no earlier than the last day required by law) repay the Loan and all Borrowings under the Agreement.

## 9. Representations

The representations in this Condition shall be deemed to be repeated on the first day of each Month, in each case, by reference to the facts and circumstances then existing.

9.1 The Borrower warrants and represents to the Society that:

- a) if the Borrower is a body corporate, including a Limited Liability Partnership incorporated under the Limited Liability Partnerships Act 2000:
- i) it is incorporated and duly organised under the laws of England and Wales or any other appropriate jurisdiction with power to enter into the Agreement and to exercise its rights and perform its obligations in it and to own its properties and assets and to carry on its business as currently conducted and all corporate and other action required to authorise its execution of the Agreement and the documents constituting the Agreement and its performance of its obligations under it has been duly taken;
- ii) the entry into and performance by it of its obligations under the Agreement and performance by it of the transactions

contemplated by the Agreement do not and will not conflict with any law or regulation or any official or judicial order to which it is subject or (the Borrower being a company) its Memorandum and Articles of Association or (if the Borrower is a Limited Liability Partnership) its incorporation document; and

- iii) it has not taken any action nor have any other steps been taken or legal proceedings been started or (to the best of the Borrower's knowledge and belief) threatened against it for its winding-up dissolution or re-organisation (or similar) or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues.
- b) if the Borrower is a partnership:
- i) it is duly organised under its partnership deed and statutes to enter into the Agreement and to exercise its rights and perform its obligations under it and to own its properties and assets and to carry out its business as currently conducted and all action required to authorise its execution of the Agreement and the documents constituting the Agreement and its performance of its obligations under it has been duly taken;
- ii) the entry into and performance by it of its obligations under the Agreement and performance by it of the transactions contemplated by the Agreement do not and will not conflict with any law or regulation or any official or judicial order to which it is subject or with its partnership deed; and
- iii) it has not taken any action nor have any other steps been taken or legal proceedings been started or (to the best of the Borrower's knowledge and belief) threatened against it for its winding-up dissolution or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues.
- c) if the Borrower is a trustee;
- i) they are duly organised under the relevant trust deed and statutes to enter into the Agreement and to exercise their rights and perform their obligations under it and to own their properties and assets and to carry out their business as currently conducted and all action required to authorise their execution of the Agreement and the documents constituting the Agreement and their performance of their obligations under it have been duly taken;

- ii) the entry into and performance by them of their obligations under the Agreement and performance by them of the transactions contemplated by the Agreement do not and will not conflict with the relevant trust deed or any law or regulation or any official or judicial order to which they are subject; and
- iii) they have not taken any action nor have any other steps been taken or legal proceedings been started or (to the best of the Borrower's knowledge and belief) threatened against them for the termination or re-organisation of the relevant trust deed or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer in relation to the trust or of any or all of the trust's assets or revenues.

9.2 The Borrower also warrants and represents to the Society as follows:

- i) the claims of the Society against the Borrower under the Agreement will rank at least equally with the claims of all its other secured creditors save those whose claims are preferred solely by any bankruptcy insolvency or other similar laws of general application.
- ii) the obligations expressed to be assumed by the Borrower in the Agreement are legal and valid obligations binding on the Borrower.
- iii) the Borrower is not in breach of or in default under any agreement to which the Borrower is a party or which is binding on the Borrower or any of its assets to an extent or in a manner which would have a Material Adverse Effect and by entering into the Agreement the Borrower will not cause a breach or default in respect of any agreement to which the Borrower is a party or which is binding on the Borrower or any of its assets.
- iv) to the best of the Borrower's knowledge and belief no action or administrative proceedings of or before any court or agency has been started or threatened which would have a Material Adverse Effect on the business or financial condition of the Borrower .
- v) all of the written information supplied by the Borrower to the Society in connection with the Agreement is true complete and accurate in all material respects and the Borrower is not aware of any material facts or circumstances that have not been disclosed to the Society and which might if disclosed adversely affect the decision of a person considering whether or not to provide finance to the Borrower on the terms of the Agreement.
- vi) save as disclosed to the Society prior to the date of the Loan no charge or claim other than charges or claims which the Society has agreed may exist over the Property.

- vii) the Borrower has no outstanding liability in respect of any guarantee indemnity or other financial assurance to or for the benefit of any person and has not otherwise assumed directly or indirectly any liability whether actual or contingent in respect of any obligations of any other person.
- viii) since application was made to the Society for the Loan no trade or other fixtures affixed to the Property have been severed or removed except as notified to the Society and except for the purpose of renewing or replacing the same with other fixtures of equal or greater value.
- ix) the Borrower has not relied on any statement made by or on behalf of the Society which does not form part of the documentation comprising the Agreement and the Borrower has made its own decision to enter into the Agreement.
- x) no Event of Default or Potential Event of Default has occurred and is continuing.
- xi) is not aware of any circumstances that have not been disclosed to the Society which might have a Material Adverse Effect.

9.3 The Mortgagor warrants and represents to the Society that the Mortgagor has full legal authority to charge the Property to the Society as security for the indebtedness of the Borrower.

9.4 The Guarantor warrants and represents to the Society on the part of the Guarantor the warranties and representations as set out in Conditions 9.1 and 9.2 of the Agreement as if the word "Guarantor" were substituted for the word "Borrower".

## 10 Obligations - The Mortgagor

The Mortgagor agrees with the Society:

- i) to observe and perform the obligations of the Mortgagor pursuant to the Agreement;
- ii) promptly and in a workmanlike manner to complete any building or structure or extension which is in the course of erection on the Property or any works to the Property which may be permitted by the Society under Condition 10(ix);
- iii) to put and keep the Property and all buildings structures and boundaries thereon in good and substantial repair to the satisfaction of the Society;
- iv) punctually to pay all rents ground rents rent charges rates taxes outgoing and impositions payable in respect of the Property or the occupation of the Property and to reimburse the Society against the same;
- v) to observe and perform all covenants conditions restrictions and obligations affecting the Property (including without limitation all the covenants and provisions binding on the tenant under the lease (if any) under which the Property is held) and to reimburse the Society in respect of the same;

- vi) to comply with all proper requirements and regulations of the local or other competent authority affecting the Property and to make all applications necessary or desirable for its protection;
- vii) to comply with any laws which affect the Property and in particular comply in all respects with the requirements of the Planning Acts;
- viii) except with the prior written consent of the Society (which shall not be unreasonably withheld) not to apply for an improvement grant;
- ix) not without the prior written consent of the Society (which shall not be unreasonably withheld) to make or allow any structural alteration or addition to the Property or any demolition or damage to it or change of use or development to the Property within the meaning of the Planning Acts or otherwise allow the Property to be used for any other purpose than that for which it was used at the date of the Mortgage or permit the Property to suffer depreciation by neglect or mismanagement;
- x) to comply with any special conditions set out in the Agreement and to carry out any works of maintenance repair or improvement required and within the time specified in those special conditions whether or not there has been a retention of the whole or any part of the Loan;
- xi) to pay promptly to the Society all premiums for insurance effected by the Society in accordance with the Agreement and duly and promptly enforce any claim which may arise;
- xii) to hold in trust for the Society all monies received under any insurance arising in respect of any loss or damage caused to the Property;
- xiii) not without the prior written consent of the Society to create any tenancy lease or licence over or part with or share the possession or actual occupation of the Property. Where consent is granted in accordance with this Condition, no changes to the tenancy agreement can be made without the Society's prior written consent being obtained to such change. The powers of leasing and agreeing to lease and of accepting surrenders of leases conferred on a mortgagee in possession by the Law of Property Act 1925 shall not apply to the Agreement;
- xiv) not without the prior written consent of the Society (which will not be unreasonably withheld) to serve or permit to be served upon any former tenant of the Property or upon any guarantor of such a tenant any default notice pursuant to section 17 of the Landlord and Tenant (Covenants) Act 1995;
- xv) notwithstanding Condition 10 xiv) above to notify the Society immediately should any former tenant or guarantor of such tenant claim an overriding lease of the premises pursuant to section 19 of the Landlord and Tenant (Covenants) Act 1995;
- xvi) not without the prior written consent of the Society to surrender or vary any lease under which the Property is held or agree or purport to do so;
- xvii) within seven days after receipt of any claim notice of proceedings or other notice affecting the Property including any landlord's notice (other than an ordinary first demand for rent or other money due under the lease) and any notice under the Planning Acts to send a copy of such notice to the Society;
- xviii) not without prior written consent of the Society to create or permit to exist (other than in favour of the Society) any mortgage charge (whether fixed or floating) rent charge covenant or other encumbrance over the Property or any interest or any disposition in respect of the Property or any part of it;
- xix) to comply at all times with the recommendations and requirements of the local Fire Officer and also the Regulatory Reform (Fire Safety) Order 2005;
- xx) to comply at all times with all legislation affecting the Property and in particular to comply with all regulations and legislation relating to environmental protection; to take all necessary steps to prevent the Property from being registered in any contaminated land register and in the event of such registration to take all necessary steps as the Society may require to prevent or minimise pollution and/or environmental damage;
- xxi) to comply at all times with the recommendations or requirements of the insurers of the Property;
- xxii) not to sever or remove from the Property any trade or other fixtures affixed to the Property at the date of the Mortgage or which afterwards become affixed to the Property except for the purpose of renewing or replacing the same by other fixtures of equal or greater value;
- xxiii) to furnish the Society on demand but in any case at least once in every Year with a duly certified balance sheet and profit and loss account showing the true position of any business carried on at the Property;
- xxiv) to furnish the Society within a reasonable time of being requested to do so (and at the expense of the Mortgagor) with a comprehensive environmental audit report carried out by a specialist surveyor or consultant and, in the event of such audit report containing recommendations to carry out such works as are necessary, to implement such recommendations as soon as practically possible;
- xxv) to allow the Society and its employees, representatives and agents acting on its behalf to enter the Property on giving reasonable prior notice (save in an emergency when no notice

shall be required) and subject to the rights of any occupier of the Property to carry out a valuation of the Property;

- xxvi) to obtain the Society's prior written consent (such consent not to be unreasonably withheld) to any proposed change in its shareholding or the identity of (if it is a Limited Liability Partnership) its designated members or members or (if it is a company) its directors or in the shareholding or identity of the directors of any associated tenant which is a corporate body and to notify the Society immediately of any such change(s) occurring by operation of law. In deciding whether to grant consent to the proposed change in the identity of one or more the Mortgagor's directors or designated members or members the Society may:
- search the record of the person(s) who it is proposed to become a director, designated member or member (as the case may be) at a credit reference agency/agencies; and
  - require all relevant and appropriate documents of identity in relation to such person(s) in order to satisfy the requirements of the Money Laundering Regulations 2007 and any other legal or regulatory requirements.

## 11 Obligations - The Borrower

The Borrower agrees with the Society:

- i) to observe and perform the terms of the Agreement (except Condition 10 where the Borrower has not provided the security and in such case the Borrower shall procure the observance and performance of the terms set out in Condition 10 by the Mortgagor);
- ii) at all times to comply with any requirements of a financial nature set out in the Facility Offer;
- iii) to comply with any general or special conditions set out in the Agreement;
- iv) in the case of a body corporate (and in any other case if specified in the Facility Offer) as soon as the same become available but in any event within two hundred and seventy days after the end of each of its financial years to deliver to the Society its financial statements for such financial year;
- v) from time to time on the request of the Society to furnish to the Society such information about the Property and any business carried out by, and the financial condition of, the Borrower or the Mortgagor as the Society may reasonably require or in the case of a limited company whether Borrower or Mortgagor information relating to the shareholdings in such company (including, but without limitation, any change of control of the Borrower) or in the case of a Limited Liability Partnership whether Borrower or Mortgagor information relating

to the member's interests in such Partnership (including, but without limitation, any change of control of the Borrower);

- vi) to ensure that each set of financial statements delivered pursuant to Condition 11) iv);
  - aa) is prepared in accordance with accounting principles and practices generally accepted in the United Kingdom at the time of preparation and consistently applied;
  - bb) gives a true and fair view of its financial condition as at the end of the period to which those financial statements relate and of the results of its operations during such period (where required to be so) has been audited (if such is a legal requirement) by the persons who are at the date of the Agreement the auditors of the Borrower or such other persons as may be approved by the Society and is accompanied by a report of such auditors which is not subject to any qualification (other than qualifications which have been approved by the Society);
- vii) to obtain and comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations approvals licences and consents required to enable the Borrower lawfully to enter into and perform its obligations under the Agreement;
- viii) promptly to inform the Society of the occurrence of an Event of Default;
- ix) to ensure that at all times the claims of the Society against the Borrower under this Agreement rank at least equally with the claims of all the Borrower's other secured creditors save those whose claims are preferred solely by any bankruptcy insolvency or other similar laws of general application;
- x) to obey all laws which affect the Property and any business or lawful activity carried on at the Property and not to violate any law rule or regulation and to obtain and maintain and as and when necessary so to do to renew all consents licences and authorisations or exemptions from and registrations with all governmental and other regulatory authorities if and to the extent that such violation or the failure to obtain maintain or renew any such consents licences authorisations exemptions or registrations would have a Material Adverse Effect;
- xi) to furnish the Society within a reasonable time of being requested to do so, but in any case no later than one hundred and eighty days after the end of each of the Borrower's financial years, with a duly certified balance sheet and profit and loss account showing the true position of any business carried on at the Property;
- xii) in the case of a body corporate to give notice to the Society of any change in the structure of the Borrower whether resulting from merger

take over share acquisition or other such as to constitute the Borrower a different financial or business entity or of a change of control of the Borrower from that prevalent at the time of the issue of the Facility Offer;

- xiii) If the Borrower is a partnership (including a Limited Liability Partnership), the Borrower shall notify the Society in writing immediately of any change in the members of the partnership. Wherever possible, such notification shall be given in advance of such change;
- xiv) If the Borrower comprises one or more trustees the Borrower shall give to the Society not less than 28 days prior written notice of the proposed retirement of any trustee or the appointment of any new trustee (which shall not be effected without the prior written consent of the Society) and shall notify the Society in writing immediately upon the death of any trustee or the dissolution of any firm or corporation acting as trustee;
- xv) to obtain the Society's prior written consent (such consent not to be unreasonably withheld) to any proposed change in its shareholding or the identity of (if it is a Limited Liability Partnership) its designated members or members or (if it is a company) its directors or in the shareholding or identity of the directors of any associated tenant which is a corporate body and to notify the Society immediately of any such change(s) occurring by operation of law. In deciding whether to grant consent to the proposed change in the identity of one or more the Borrower's Directors or designated members or members the Society may:
  - search the record of the person(s) who it is proposed to become a director, designated member or member (as the case may be) at a credit reference agency/agencies; and
  - require all relevant and appropriate documents of identity in relation to such person(s) in order to satisfy the requirements of the Money Laundering Regulations 2007 and any other legal or regulatory requirements.

If the Property is let or to be let to a person who is associated with the Borrower, the Borrower must obtain the Society's prior consent (such consent not to be unreasonably withheld) to any proposed or material change in the relationship between the Borrower and the tenant or the relationship ceasing.

For the purpose of this Condition, "associated" means that the Borrower is a shareholder or director or designated member or member of the tenant or a close relative of a shareholder or director or designated member or member of the tenant, or that the tenant is a shareholder, director, or designated member or member, relative, spouse or civil partner of the Borrower or there is otherwise a close connection between the Borrower and the tenant.

## 12. Licensed Premises Nursing Homes and Residential Homes

- a) In the event that the business carried on at the Property requires any Licences the Borrower and or the Mortgagor (as the case may be) covenant with the Society –
  - i) to preserve and maintain and as often as may be necessary to renew the Licences for the Property in the name of the Borrower (or any of them if more than one) or such other person as the Society may approve in writing (such approval not to be unreasonably withheld) and to pay all sums and execute and do all instruments and things necessary or proper for the purpose and also on demand from time to time to produce or deliver to the Society any or all of the Licences relating to the Property and all renewals of the Licences and at all times at his own cost to execute and do all such assurances instruments and things as shall be requisite for transferring and vesting the Licences or any of them to and in the nominee or nominees of the Society or as the Society shall direct;
  - ii) not to permit or suffer any act which means the Licences held in connection with the Property or any of them may become void or voidable or which means that the renewal of the Licences may be jeopardised and to renew all the Licences as and when the same become renewable in the name of the Borrower (or any of them if more than one) or such other person as the Society may approve in writing (such approval not to be unreasonably withheld) and pay all costs and expenses necessary to obtain such renewal and at all times to conduct the business carried on upon the Property in a lawful orderly and proper manner and not at any time to commit or suffer to be committed any offence against or refuse or neglect to comply with any of the provisions of any Act of Parliament for the time being in force relating to the sale of intoxicating liquors and not to do or suffer to be done anything whatever which may mean that the Licences respectively may be curtailed forfeited suspended or destroyed or their renewal withheld or which may mean that the business or its goodwill may in any way be or be liable to be prejudicially affected or which may render or tend to render the Borrower liable in respect of the Property to the payment of a penalty or which may disqualify him from receiving or holding the Licences for any period;
  - iii) to pay all charges which may be imposed in respect of the Licences or any of them

- by virtue of the Licensing Act 2003 or otherwise and in default the Society may pay all such costs charges and expenses and the Mortgagor will repay the same including Default Interest. If the Borrower fails to make such repayment within 14 days of being asked, the costs, charges and expenses incurred will be added to the Loan;
- iv) to maintain loss of licence insurance in such sums as the Society may require in respect of the Licences;
- b) In the event that the business carried on at the Property is that of a nursing home or a residential home the Borrower covenants with the Society;
- i) not to commit any act or omission or suffer or permit any act or omission to be committed which may lead to the withdrawal of the certificate of registration for the Property or a reduction in the numbers of persons for which the Property is certified;
  - ii) to comply with all the provisions of the Care Standards Act 2000 (and all Regulations made under that Act) as the same may be amended from time to time and the requirements of the Care Quality Commission, the relevant NHS Health Trust or NHS Foundation Trust and the County Council (or any equivalent successor bodies exercising similar functions);
  - iii) to maintain loss of registration insurance in such sums as the Society may require;
- iv) be in the joint names of the Mortgagor and the Society or the Society's interest endorsed or noted on it or in such names or with such interest noted as the Society may require;
  - v) where the Property is leasehold, it must be a term of the lease that the landlord or a management company insures the whole building in which Property is situated; and
  - vi) the insurance cover will be index-linked to the Royal Institution of Chartered Surveyor's House Rebuilding Cost Index and adjusted annually in accordance with the movement of that Index.
- b) The Society shall have full power to settle and adjust the amount payable by and the liability of the insurer.
  - c) The Society shall be under no obligation to the Mortgagor to see to the adequacy or existence of any such insurance and shall not be accountable for any commission earned or received by the Society in respect of any such insurance effected through the agency of the Society.
  - d) The Mortgagor shall pay all premiums payable in respect of any insurance of the Property and the Licences effected by him on or before their due date and shall produce to the Society promptly the receipt for every such premium and also will deliver to the Society promptly such evidence of the existence of such insurance as the Society shall require.
  - e) If the Mortgagor shall at any time be in breach of the Mortgagor's obligations under this Condition 13 the Society shall be entitled (but not bound) to effect insurance of the Property and/ or the Licences and/or to pay any premium in respect of such insurance. All premiums and other expenses incurred by the Society in connection with the insurance of the Property and/or the Licences shall be paid or reimbursed by the Mortgagor to the Society immediately after they are paid or incurred by the Society otherwise those premiums and expenses shall be added to the Loan and shall bear Default Interest until payment by the Mortgagor.

### 13. Insurance

- a) The Mortgagor agrees to insure the Property and/or the Licences at the Mortgagor's expense with such insurers and in such manner as the Mortgagor may choose subject to the consent of the Society (such consent not to be unreasonably withheld). Such insurance must:
  - i) be approved by the Society (such approval not to be unreasonably withheld);
  - ii) the cover provided must be for at least the amount stated in the Facility Offer;
  - iii) be against all risks which the Society may from time to time reasonably specify including (without limitation) fire, explosion, earthquake, storm, flood, escape of water or oil, subsidence, heave, landslip and malicious damage; and for the cost of rebuilding from time to time on an index-linked basis (including clearing the site and paying all fees and expenses). In addition, terrorism cover must be provided, where necessary, for the full sum insured;
- f) The Mortgagor shall not, except at the request and with the consent of the Society, effect or maintain any other or additional insurance in respect of the Property and if any other or additional insurance shall be effected by the Mortgagor (whether after application to or with the consent of the Society or not and whether in the sole name of the Mortgagor or jointly with others) the Mortgagor shall hold all monies received in respect of the same or in respect of any other insurance on the Property being in the name of or in the control of the Mortgagor in trust for the Society to be paid to it or at the option of the Society the monies may be received by the Society.

- g) The Society shall have full power to settle and adjust with the insurers all queries or claims with respect to the amount of any liability of the insurers and by executing the Mortgage the Mortgagor irrevocably (but subject to redemption) appoints the Society by way of security as the attorney of the Mortgagor on behalf of the Mortgagor and in the name of the Mortgagor to receive and give a good discharge for any monies arising in respect of the Property under any insurance to which the Mortgagor is a party and whether effected by the Society or not.
- h) Any monies receivable by the Society or the Mortgagor on any insurance of the Property and/ or the Licences whether effected by the Society the Mortgagor or any other person shall be applied at the option of the Society either in or towards making good the loss or damage in respect of which the monies are received in or towards payment of the Borrowings.
- i) The Mortgagor shall not do, omit or permit any thing which may make void or voidable or which may adversely affect such insurance or which may increase the premium payable.

#### 14. Power to Inspect Repair and Charge

- a) The Mortgagor shall permit the Society and its employees representatives and agents acting on its behalf to enter the Property on giving reasonable prior notice (or immediately in an emergency) at any time to view its condition and state of repair or to revalue the Property or part of it or to check compliance with the Planning Acts or for any of the other purposes of the Agreement.
- b) Following default by the Mortgagor or the Borrower in performing any of the Mortgagor's or Borrower's obligations under the Agreement the Society shall be entitled (but shall not be obliged) to perform such obligations (whether or not on behalf of the Borrower or the Mortgagor) and by its officers, employees, agents and representatives to enter the Property for that purpose.  
The Society in acting under this Condition 14(b) shall not be deemed to be a mortgagee in possession and shall not be accountable as such.
- c) Any costs expenses (including for the avoidance of doubt administrative expenses and the cost of legal proceedings of the Society) and liabilities reasonably and properly incurred by or on behalf of the Society in exercising its rights under Condition 14(b) or generally in respect of the Agreement shall be reimbursed by the Borrower to the Society promptly.
- d) If the Mortgagor or Borrower (or his representative) shall request the Society to produce the documents of title or any ancillary documents relating to the Property or to supply extracts from or copies of such documents to

the Mortgagor (or borrower as the case may be) then the Mortgagor shall pay to the Society such fee as it may charge from time to time for or alternatively the expense incurred by the Society in responding to such request. The Mortgagor or Borrower shall also comply with such conditions as the Society shall specify when supplying such documents to the Mortgagor (or his representative).

#### 15. Event of Default

- a) The Society will have the power to sell the Property given to it by Section 101 of the Law of Property Act 1925. This power will be available to the Society from the date of the Mortgage but the Society will only use it if any one or more of the events or omissions occur as set out in this Clause 15.
- b) Without prejudice to Condition 16 all Loans and Borrowings will become repayable immediately if:
  - i) the Borrower is in arrears with its Monthly Payment by the amount of two or more months on any Loan or any other Borrowings or other sums are due and the Borrower has not paid them;
  - ii) any condition in the Agreement is not complied with or the Mortgagor or Borrower is in breach of any of the Mortgagor's or Borrower's obligations under the Agreement or any of the Mortgagor's or Borrower's other obligations to the Society;
  - iii) the Guarantor is in breach of any of the Guarantor's obligations to the Society pursuant to the Guarantee and the Society reasonably regards such failure as serious;
  - iv) the Property or any part of it is compulsorily purchased or acquired or any attachment, charging order, distress, execution or legal process is made or levied against the Mortgagor, the Property or any other property of the Mortgagor;
  - v) the Borrower or the Mortgagor or the Guarantor commits any act of bankruptcy or enters into or proposes any composition or arrangement with or for the benefit of the Borrower's creditors generally or the Guarantor's creditors generally as appropriate;
  - vi) in the case of an Agreement comprising an Assignment or Deposit the Assured dies;
  - vii) in the case of an Agreement which is not secured by an Assignment or Deposit the Mortgagor or the Borrower or the Guarantor dies;
  - viii) where the Borrower or the Mortgagor or the Guarantor is a body corporate or unincorporated association a receiver is

- appointed (being either an administrative receiver appointed pursuant to the Insolvency Act 1986 or any other receiver) or the Borrower or the Mortgagor or the Guarantor enters into liquidation or gives advance notice of a proposed winding-up petition or a members' petition for the winding up of the Borrower or the Guarantor or the Mortgagor is presented;
- ix) the Borrower or the Guarantor or the Mortgagor within the meaning of Section 123 (1) (not including Section 123 (1) (a)) or Section 268 (as appropriate) of the Insolvency Act 1986 is unable to pay its debts as they fall due;
  - x) any security created by any of the documents constituting the Agreement becomes for any reason void, voidable or unenforceable;
  - xi) the Mortgagor or the Borrower surrenders possession of the Property to the Society;
  - xii) any representation or statement made by the Borrower and or the Mortgagor pursuant to the Agreement or by any other authorised person in any notice or other document certificate or statement delivered pursuant to the Agreement proves to have been materially incorrect or in a material respect misleading when made or if such misrepresentation or mis-statement being capable of remedy is not remedied within ten business days after the Society has given notice of the misrepresentation or mis-statement to the Borrower and or the Mortgagor requiring the same to be remedied;
  - xiii) the Borrower or the Mortgagor ceases or threatens to cease to carry on business;
  - xiv) the Borrower or the Mortgagor rejects any of the documents constituting the Agreement to which it is a party or does or causes to be done any act or thing evidencing an intention to reject any of the said documents or the Guarantor repudiates the Guarantee or does or causes to be done any act or thing evidencing an intention to repudiate the Guarantee;
  - xv) any steps are taken with a view to the Borrower, the Mortgagor or the Guarantor entering into administration pursuant to the Insolvency Act 1986;
  - xvi) at any time any act condition or thing required to be done fulfilled or performed in order
    - a) to enable the Borrower or the Mortgagor lawfully to enter into exercise its rights under and perform the obligations expressed to be assumed by it in any of the documents constituting the Agreement; or
  - b) to ensure that the obligations expressed to be assumed by the Borrower or the Mortgagor in any of the said documents are legal valid and binding is not done, fulfilled or performed and if such failure (or event) is capable of remedy is not remedied within twenty business days after the Society has given notice to that effect to the Borrower requiring the same to be remedied or
  - xvii) the Society has called for repayment to the Society of the Loan or of the Borrowings on any account whatsoever of the Borrower or the Mortgagor or the Guarantor with the Society or on any account whatsoever of any holding company or subsidiary company of the Borrower or the Mortgagor or the Guarantor or any subsidiary company of any holding company of the Borrower or the Mortgagor or the Guarantor (as defined by Section 1159 of the Companies Act 2006) with the Society or
  - xviii) any other event occurs or circumstances apply which is or are specified as an Event of Default in the Agreement;
  - xix) any other circumstance or event occurs or arises which has or which will have a Material Adverse Effect;
  - xx) if any licence, authority, permit, consent, agreement or contract which is material to the business from time to time of the Borrower or the Mortgagor is terminated, withheld or modified which in the reasonable opinion of the Society will have a Material Adverse Effect; or
  - xxi) if there is a significant drop in the value of the Borrower's or the Mortgagor's business or of the security held by the Society or there is a material adverse change in the financial or trading position of the Borrower or the Mortgagor;
  - c) If an Event of Default shall occur, or the Society has reasonable grounds to think that an Event of Default has occurred or is likely to occur, the Society may call for a revaluation of the Property at any time at the expense of the Borrower.
  - d) If on any revaluation of the Property, the value of the Property shall have reduced in relation to the Borrowings the Society may require the Borrower to provide additional security to restore the original borrowing ratio and in default of such security being provided to the Society the Borrower agrees that it shall constitute an additional Event of Default under this Condition 15.

## 16. Notice to Repay

As an overriding right and notwithstanding any other provision in the Agreement, if the Society shall give to the Borrower not less than three months' prior written notice requiring repayment of the Loan and/or the Borrowings, such Loan and/or Borrowings shall become immediately due and repayable on the expiration of the notice.

## 17. Consolidation and Set Off

- a) The Mortgage shall be security not only for the monies specifically lent to the Borrower in return for the Mortgage but also for all monies which may be or become owing by the Borrower to the Society on any account. Unless the Society agrees otherwise, no property held by the Society as security for the indebtedness of the Borrower shall be released until all monies owing by the Borrower (whether due or not) to the Society have been paid.
- b) The Borrower authorises the Society to use money in any account the Borrower has with the Society to pay any money (whether under a loan, guarantee or otherwise) the Borrower owes to the Society which is due for payment but which has not been paid.
- c) Section 93 of the Law of Property Act 1925 shall not apply.

## 18. Redemption

- a) Subject to Conditions 17 and 18(b) and subject as otherwise may be agreed, the Borrower may at any time redeem the security created by the Mortgage on repayment of the Loan and the Borrowings including interest to the end of the month in which the repayment is made (if the Facility Offer states that interest is chargeable on an annual rest basis) or up to the date of redemption (if the Facility Offer states that interest is chargeable on a daily basis) together with such additional interest, charges or amounts (if any) as may be specified in the Facility Offer.
- b) In the event of the Borrower requesting a redemption in respect of part of the Property the Society shall have the right to call for repayment of such capital sum as the Society may Determine.

## 19. Remedies of the Society

- a) The statutory power of sale applies to the Mortgage and any Additional Security Document free from the restrictions imposed by Section 103 of the Law of Property Act 1925.
- b) If the Borrower fails to perform any of the obligations of the Agreement it shall be lawful for but not obligatory upon the Society to perform the same in whole or in part and to pay

all sums and costs occasioned by such default

- c) All costs incurred by the Society under Conditions 14 and 19(b), and all other costs and expenses properly paid or incurred by the Society including costs of legal proceedings under the Agreement or in relation to the Property, shall be repaid on demand to the Society by the Borrower. If the Borrower fails to repay those costs and expenses within 14 days of being asked they shall be added to the Loan and subject to interest from the date of the costs and expenses being incurred at the Interest Rate
- d) At any time after the Borrowings have become immediately payable the Society may without any previous notice to or agreement on the part of the Mortgagor:
  - i) use its powers of sale and of appointing a receiver;
  - ii) take possession of the Property;
  - iii) appoint any person or persons (whether an officer of the Society or not) to be a receiver and manager (the "Receiver" which expression shall include any substituted receiver and manager) of the Property;
  - iv) exercise all the statutory powers conferred on mortgagees by the Law of Property Act 1925 with all the statutory incidents of such powers and so that the power of sale may be exercised whether the Society shall be in possession or not;
- e) the Society may from time to time determine the remuneration of the Receiver and may remove the Receiver and appoint another in his place;
- f) the Receiver shall be the agent of the Mortgagor and shall be entitled to assume and exercise such of the powers of the Mortgagor as he shall deem necessary or proper and the Mortgagor shall alone be personally liable for his acts defaults and remuneration and the Receiver shall have and be entitled to exercise all powers conferred by the Law of Property Act 1925 in the same way as if the Receiver had been duly appointed thereunder and in particular the Receiver shall have the following powers:
  - i) to take possession of the Property (including taking possession against the Mortgagor by reasonable force) and for that purpose to take any proceedings in the Mortgagor's name or otherwise as he shall think fit;
  - ii) to employ the services of any builder or other contractor or professional adviser in the improvement, repair or construction of the Property;
  - iii) to raise money from the Society or others on the security of the Property;

- iv) to sell, let or arrange the sale or letting and to terminate or accept surrenders of leases or tenancies of the Property or any part of it in such manner and on such terms as he shall think fit and to carry any such transactions into effect in the name of and on behalf of the Mortgagor;
  - v) to make any arrangement or compromise which the Society or he shall think fit;
  - vi) to make and effect all repairs improvements and insurances;
  - vii) to appoint managers officers and agents to carry out any of his powers at such salaries as he may determine;
  - viii) to take any proceedings in relation to the Property in the name of the Mortgagor or otherwise, including proceedings for the collection of any rent in arrears;
  - ix) to operate any rent review clause in relation to the Property, or grant or apply for any new or extended tenancy of the Property;
  - x) to carry on any business carried on by the Mortgagor or the Borrower at the Property;
  - xi) to do all such other acts and things as may be considered to be incidental or conducive to any of the matters or his powers and which he lawfully may do including the power to buy plant and machinery and carry on any business on the Property;
- h) All monies received by any Receiver appointed by the Society shall be applied in the following order:
- i) in the payment of the costs charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration;
  - ii) in the payment or the discharge of any liabilities incurred by the Receiver on the Borrower's or Mortgagor's behalf in the exercise of any powers of the Receiver;
  - iii) in providing for the matters (other than the remuneration of the Receiver) specified in the first three paragraphs of Section 109 (8) of the Law of Property Act 1925 (in or towards any payment of any debts or claims which are by statute payable in preference to the Society but only to the extent to which such debts or claims shall have such preference); and
  - iv) in or towards the satisfaction of the Loan and the Borrowings any surplus being paid to the person next in title
- i) The Society shall not incur any liability in respect of any contracts engagements acts omissions defaults or losses of the Receiver or for liabilities incurred by him or for any misconduct by him or for his remuneration (either to the Borrower or to any other person whatsoever) by reason of its making his appointment as the Receiver or of its having made or given any regulation or direction to the Receiver for any other reason whatsoever.
- j) The Mortgagor irrevocably appoints the Society and the Receiver jointly and also severally as its attorney for it and in its name and on its behalf and as its act and deed or otherwise to seal and deliver and otherwise perfect any deed assurance agreement instrument or act which may be required or deemed proper for any of the purposes in connection with the Agreement.
  - k) At any time after taking possession of the Property or appointing a Receiver the Society may give up possession or remove the Receiver on giving notice to the Mortgagor.
  - l) The Society may appoint joint Receivers, who may act and exercise all their powers separately as well as jointly.

## 20. Society's Powers in Possession

- a) On or after taking possession of the Property the Society may grant or permit to continue any leases, tenancies or licences upon such terms and conditions as the Society may determine and all rents received may be applied towards the repayment of the Loan and the Borrowings.
- b) On or after taking possession of the Property the Society may continue or build out any development or construction work being carried out on the Property and all costs incurred in this respect shall constitute a due and proper expense of the Society in the protection of its security.
- c) On or after taking possession of the Property the Society may carry out any works of improvement, enhancement or repair necessary in order to control or prevent environmental damage or pollution and all costs incurred in this respect shall constitute a due and proper expense of the Society in the protection of its security.
- d) On or after taking possession of the Property the Society may as agent of the Mortgagor or Borrower and at his expense remove store sell let with the Property or otherwise deal with any fittings, furniture, vehicles, goods, livestock, equipment or materials which the Mortgagor or Borrower shall fail to or refuse to remove. The Society shall not be liable for any loss or damage caused by the removal of those items and the net proceeds of any such sale letting or other dealing may at the Society's discretion be applied towards the discharge of the Loan.
- e) If at the time of entry into possession or receipt of any rents or profits of the Property by the Society or by any Receiver appointed by the Society the Property shall be let furnished under a tenancy which is or becomes binding on the Society, or which the Society permits to

continue, then all money received from a tenant of any furnished letting of the Property shall be applied as if it were rent of the Property. Neither the Society nor any receiver shall be required or bound to make any apportionment of such rent in respect of any furniture or chattels comprised in the tenancy.

- f) On or after obtaining possession of the Property the Society may carry on at the Property any business previously carried on at the Property until the Property is sold or leased and carry out all pending contracts if the Society so wishes and all costs and expenses incurred in connection with this Condition shall be added to the Loan.
- g) Nothing in this Condition 20 shall confer on the Society any right in equity to any fittings furniture vehicles goods livestock equipment or materials so as to constitute the Mortgage a bill of sale under the Bills of Sale Act 1882.

## 21. Mistakes and Miscalculations

- 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 term of the Loan or after its repayment concerning the Loan Account.
- b) The execution and delivery by the Society of a statutory receipt or instrument or discharge in respect of the Mortgage any Assignment or any other part of the Agreement shall not discharge the Borrower from personal liability if it shall subsequently be found that on redemption the amount of the Loan was under-calculated or understated by mistake but the Society will not rely on this Condition to sustain a claim against the Borrower unless the claim is made in writing within three months after the date of the receipt or instrument.
- c) No time limit shall apply where the Borrower was party or privy to the mistake.

## 22. Transfers and Assignments

The Society may transfer its interest in the Loan to another party at any time on such terms as it may decide. Unless the terms of the transfer state otherwise, a transferee of the Loan will be able to exercise all rights, powers and remedies which the Society could exercise all rights, powers and remedies which it could exercise before the transfer.

## 23. Joint and Several Liability

If the Mortgagor or Borrower comprises two or more persons their covenants liabilities and obligations under the Agreement are joint and several. This means that the Society can enforce its rights to payment against any or all Borrowers for the whole Borrowings.

## 24. Concessions

Any concession or waiver by the Society exercising its rights under the Agreement shall not be binding on the Society and shall not prevent the Society from subsequently exercising its rights against the Borrower.

## 25. Notices

Without prejudice to other methods of notice or service:

- a) a notice in relation to the Agreement shall without prejudice to any other mode of effecting the same be deemed to have been properly served on the Mortgagor or Borrower if served on the Mortgagor or Borrower or their personal representatives personally or delivered or sent by first class letter post, by fax or by email to the Mortgagor or Borrower or his personal representatives at their usual or last known place of residence or business or to the usual or last email address notified by the Mortgagor or Borrower to the Society. Any such notice or demand sent by first class letter post shall if posted before the last scheduled collection of letters from the place of posting on any day be deemed to have been served on the addressee at 10 am on the next business day following the day of posting notwithstanding that it be undelivered or returned undelivered and in proving such service it shall be sufficient to prove that the notice or demand was properly addressed and posted. Any notice or demand sent by fax or by email on a business day shall be deemed to have been served at the time of despatch. In the case of death of the Mortgagor or Borrower and until receipt by the Society of notice in writing of the grant of representation to the estate of the deceased any notice or demand by the Society sent by first class letter post, fax or email as aforesaid addressed to the deceased or his personal representatives at the usual or last known place of residence, business or email address of the deceased shall for all purposes be deemed a sufficient service of notice or demand by the Society on the deceased and his personal representatives and shall be as effectual as if the deceased were still living.
- b) where there are joint Borrowers or joint Mortgagors such a notice shall be sufficiently given if it is given to the Borrower or the Mortgagor whose name is entered first in the Society's records.

## 26. Life Assurance

- a) This Condition 26 only applies if the security for the Agreement includes a Life Assurance Policy.
- b) Unless and until the Life Assurance Policy has been legally assigned to the Society the

Society shall have an equitable charge on the Life Assurance Policy and the Borrower shall if so required by the Society procure the assignment by the Assured of the Life Assurance Policy. The Assured by executing the assignment irrevocably (but subject to redemption) appoints the Society by way of security to be the attorney of the Assured in the name of the Assured to assign transfer surrender or otherwise deal with the Life Assurance Policy (so far as the Assured has power to do so) and to collect the monies assured under the Life Assurance Policy.

- c) Each of the Assured and the Borrower covenants with and warrants to the Society:
- i) that the Life Assurance Policy is valid and in force and that the Assured is the absolute owner of it free from charges and encumbrances;
  - ii) not without the prior consent in writing of the Society to do or permit or suffer any act; omission matter or thing in consequence of which payment under the Life Assurance may be avoided or restricted or which means that the Life Assurance Policy may become void or voidable or lapse or which means the Society may be prevented from receiving any money under the Life Assurance Policy;
  - iii) if the Life Assurance Policy shall become voidable to promptly do all things necessary for maintaining or restoring the same or in case the Life Assurance Policy shall lapse or become void also to do everything necessary to enable the Society to effect new life assurance with such insurers as the Society shall select on the life of the Assured in the name of the Society for the amount which would have become payable under the Life Assurance Policy if the Assured had died immediately before it became void or lapsed and if all premiums due up to that time had been duly paid and all conditions of the Life Assurance Policy had been observed and having a surrender value not less than that of the void or lapsed Life Assurance Policy;
  - iv) on or before the due date punctually to pay all sums necessary to keep the Life Assurance Policy maintained and to produce to the Society within seven days of a demand by the Society sufficient evidence of every such payment or to make arrangements satisfactory to the Society for making payments to the Society for onward transmission to the insurer;
  - v) to pay all sums paid and costs and expenses incurred by the Society under paragraph (d) below together with interest as provided by that paragraph;
  - vi) that no monies have been or will be

borrowed from the insurer by the Borrower or the Assured; and

- vii) that no monies have been or will be borrowed from any source by the Borrower or the Assured or any other person pursuant to any option or privilege conferred by or associated with the Life Assurance Policy.
- d) If default is made in payment of any sums required to keep the Life Assurance Policy on foot the Society may pay the same and all sums so paid and all costs and expenses incurred in restoring the Life Assurance Policy or in effecting new life assurance shall be reimbursed immediately by the Borrower to the Society and until such reimbursement the costs and expenses shall be added to the Loan and bear Default Interest.
- e) At any time after the power of sale of the Property conferred by the Agreement has become exercisable the Life Assurance Policy may be sold or surrendered by the Society to the insurers or exchanged for fully paid up life assurance or be made subject to such other arrangements with the insurers as the Society may determine.
- f) Any monies payable under the Life Assurance Policy shall be applied in paying the amounts which the Assignment secures. Any shortfall shall be made good immediately by the Borrower.
- g) Save with the prior consent of the Society no charge or other encumbrance or security interest shall be created on the Life Assurance Policy nor will the Borrower or the Assured create or attempt to create any other charge or security interest in respect of the Life Assurance Policy or its proceeds.
- h) The Assured shall not compete with the Society in claiming any security or money unless and until the Borrowings have been repaid in full.

## 27. Cost Expenses and Fees

- a) The Borrower agrees that the Society may recover from the Borrower:
  - i) all costs and expenses (including the Society's own internal management and administrative costs and legal costs) reasonably and properly incurred by the Society in connection with: the negotiation, preparation, completion of the Loan and the Mortgage and any Additional Security Document or the completion or otherwise, the administration, preservation, protection, realisation or enforcement of its security including the cost of any revaluation, any repair of buildings comprising the Property and the collection of the Loan or to the exercise of the powers of the Society generally in relation to the Property;

- ii) fees and charges in accordance with the Society's "A Guide to Commercial Mortgage Fees and Charges;" information and/or "A Guide to our Limited Company Buy to Let Mortgages Fees and Charges" information and
  - iii) such additional amounts as the Society may certify in a written demand (which shall specify in reasonable detail the calculation and legal origin and justification of such demand) necessary to compensate it for any increased cost or reduction in return to the Society in respect of making or funding the Loan (including any increased costs arising out of capital adequacy, mandatory liquid asset or similar requirements of the Bank of England, the Prudential Regulation Authority or the Financial Conduct Authority or other regulatory authority) as a result of any future regulation or any change to any existing regulation or its official or judicial interpretation after the date of the Agreement.
- b) All such costs expenses and fees shall be payable by the Borrower and shall be recoverable from him on demand and until paid by him shall be added to the Loan and subject to interest from the date of expenditure at the Interest Rate.

## 28. General

- a) Each of the provisions of these Conditions is severable and distinct from the others. If at any time any one or more of the provisions becomes illegal, invalid or unenforceable, this will not affect the legality, validity or enforceability of any of the remaining provisions.
  - b) These Conditions do not affect or exclude any terms and conditions implied by law unless they expressly say so.
  - c) No person other than a party to these Conditions may enforce any rights under these Conditions or under any other agreement made in connection with the Mortgage by virtue of the Contracts (Rights of Third Parties) Act 1999. A party to these Conditions includes anyone the Society transfer its rights to under Condition 22 or anyone the Society appoints as receiver.
- d) The Agreement, together with all other documents to be entered into pursuant to it, sets out the entire agreement and understanding between the Society and the Borrower and supersedes all proposals and prior agreements, discussions, correspondence, arrangements and understandings between the Society and the Borrower relating to its subject matter. The Borrower acknowledges that in entering into the Agreement (and any other document to be entered into pursuant to it) it does not rely on any representation (whether made innocently or negligently), warranty, collateral contract or other assurance of any person (whether a party to the Agreement or not) that is not set out in the Agreement or the documents referred to in it and that it has made its own decision to enter into the Agreement (and any other document to be entered into pursuant to it). The Borrowers agree to waive all rights and remedies which, but for this provision, might otherwise be available to it in respect of any such representation (whether made innocently or negligently), warranty, collateral agreement or other assurance. The only remedy available to the Borrower in respect of any representation (whether made innocently or negligently), warranty, collateral contract or other assurance that is set out in the Agreement (or any document referred to in it) is for breach of contract under the terms of the Agreement (or the relevant document). Nothing in the Agreement shall, however, limit or exclude any liability for fraud or fraudulent misrepresentation.
- e) These Conditions and the Facility Offer are governed by the laws of England and Wales and the parties agree to the exclusive jurisdiction of the England and Wales courts.

Information available in large print, audio and Braille on request; please call for details.

Information correct at time of print.

Norwich & Peterborough Building Society is a trading name of Yorkshire Building Society.

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