

# MORTGAGE CONDITIONS 2011

(Scotland)



51-55 Duke Street Barrow-in-Furness

Cumbria LA14 1RT

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## **FURNESS BUILDING SOCIETY MORTGAGE CONDITIONS 2011 - SCOTLAND**

We, Furness Building Society having our Head Office at 51-55 Duke Street, Barrow-in-Furness, Cumbria LA14 1RT CONSIDERING that we intend to make loans to be secured by standard securities over heritable properties in Scotland HEREBY DECLARE that the following conditions may be imported, by reference to this deed, into such standard securities in our favour and the Standard Conditions shall be varied and supplemented as follows:-

### Definitions and Interpretation

- (1) These Conditions means the Conditions contained in this deed.
- (2) In these Conditions the Mortgage means the Standard Security into which these Conditions have been incorporated.
- (3) In these Conditions and in the Mortgage the following expressions have the following meanings;

<u>Expression</u>	<u>Meaning</u>
<b>Business Day</b>	A day on which the Society's Principal Office is open for business other than a Saturday or Sunday or bank or public holiday
<b>Costs</b>	Has the meaning set out in Condition 6
<b>Further Loan</b>	The amount of your additional loan which is shown in the Mortgage Offer and subject to the Mortgage
<b>Guarantor</b>	The person or persons named as Guarantor in the Mortgage and his or their personal representatives or assignee
<b>Highways Acts</b>	The primary and subordinate legislation and bye-laws and other provisions of the general law for the time being in force relating to roads, highways and rights of way
<b>Interest-only Loan</b>	A Loan where your Monthly Payments are made of only interest and you repay capital at the end of the Term
<b>Interest Rate</b>	The rate of interest which applies for the time being to the Loan or any part of the Loan, as described in the Mortgage Offer. This may be changed in accordance with Condition 4
<b>Lease</b>	A lease (including a tenancy and an agreement for lease) and any other enforceable agreement to occupy or share occupation of the Property and references to "leasing" shall be construed accordingly
<b>Loan</b>	The amount stated in the Mortgage Offer as the advance (or loan) and shall also include any Further Loan or re-advance which we may at any time while the Mortgage is subsisting make to you
<b>Month/monthly</b>	Calendar month
<b>Monthly Payments</b>	The amount you will have to pay to us each month calculated and

notified to you in the Mortgage Offer

<b>Mortgage Offer</b>	The written offer received by you prior to the Mortgage whereby we offered to make a loan to you on the security of the Property (with or without other security) and any written variation or amendment of such offer
<b>Mortgagor</b>	The person or persons by whom the Property is secured to us by the Standard Security (whether or not he is also the Borrower) his or their personal representatives and the person or persons deriving title under or through him or them to the Property
<b>Payment Date</b>	The first day of the month after the date of the Mortgage (or on such other date as we may specify) and each subsequent month (or if there is no such day then the last day in every month)
<b>Planning Acts</b>	The primary and subordinate legislation, bye-laws, building regulations and other provisions of the general law for the time being in force in Scotland relating to Town and Country planning
<b>Policy</b>	An investment plan or policy of life assurance approved by us
<b>Property</b>	The property described in the Mortgage and includes each and every part of the Property and all fixtures and fittings
<b>Related Rights</b>	Includes: <ul style="list-style-type: none"><li>(a) the benefit of any obligation or security for making, providing, improving or paying for any roads, sewers, drains, walls or other services or amenities affecting or concerning the Property</li><li>(b) sums which (under any statute or law or insurance or contract and whether as of right or ex-gratia or otherwise) may be or become payable in respect of the Property or any damage or injury to the Property or depreciation of the Property</li><li>(c) the benefit of any other obligation, security, right or indemnity affecting or concerning the Property</li></ul>
<b>Repayment Loan</b>	A Loan where you repay the Whole Debt over the Term so that your Monthly Payment comprises both a capital repayment and an interest payment
<b>Rules</b>	The rules of the Society for the time being in force
<b>Standard Conditions</b>	The Standard Conditions set out in Schedule 3 to the 1970 Act, as varied by these Conditions.
<b>Standard Security</b>	The standard security over the Property that the Mortgagor signs at any time in our favour as security for the Whole Debt and any changes to that standard security.

<b>Term</b>	The time period set out in the Mortgage Offer and in which (subject to Conditions 3(3) and 10(1)) you will have to repay the Loan
<b>the 1970 Act</b>	The Conveyancing and Feudal Reform (Scotland) Act 1970
<b>the Acts</b>	The 1970 Act, the Mortgage Rights (Scotland) Act 2001 and the Home Owner and Debtor Protection (Scotland) Act 2010
<b>we/us/Society</b>	The Furness Building Society and any body which may succeed us in the future whether or not also being a building society
<b>Whole Debt</b>	All the money (including interest added to the Loan and Costs) which you owe to us at any time
<b>Year</b>	The period from 1 <sup>st</sup> January to 31 <sup>st</sup> December (inclusive)
<b>You/the Borrower</b>	The person or persons named as the borrower in the Mortgage, his, her or their personal representatives and the person or persons deriving title under or through him or them to the Property

- (1) Expressions defined in the Rules shall, unless the context otherwise requires, also bear the same meaning in these Conditions.
- (2) In these Conditions the masculine shall include the feminine or neuter and the singular shall include the plural, the vice versa.
- (3) Where more than one person is included the expression you, or the Borrower, or the Mortgagor, or the Guarantor, any event referred to in these Conditions shall be deemed to have happened if it happens in relation to any one of those persons and the obligations undertaken by such persons shall be joint and several obligations. This means all the terms apply to all of you together and each of you on your own. Each of you can be held fully responsible for any liability that you may have.
- (4) The headings in these Conditions are inserted for convenience only and will have no legal effect.
- (5) References in these Conditions to statutory provisions are to those provisions as from time to time amended or re-enacted.
- (6) In these Conditions, where our consent is required, such consent must always be obtained in advance AND in writing.
- (7) Only you and we may enforce the terms of the Mortgage. No rights are given to any third party by the Mortgage. This means that a person who is not in party of these documents cannot enforce their terms.

## Membership of the Society and the Rules

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- (a) If you are not already a member of the Society, and if you are an Individual (as defined by the Rules) you automatically become a member when the Loan is made to you.
- (b) As a member of the Society you agree to be bound by the Rules. In the event of any conflict between the Rules, the Mortgage Offer, the Mortgage, the Standard Conditions and these Conditions, the following order of priority will prevail:
  - (i) the Mortgage Offer;
  - (ii) these Conditions;
  - (iii) the Mortgage;
  - (iv) the Standard Conditions; and
  - (v) the Rules.
- (c) If you are a member of the Society only because you hold a Mortgage with us your membership may be cancelled if we transfer your Mortgage to another lender under Condition 15.

## Repayment by instalments and calling in of the Loan

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- (1)
  - (a) Subject to Condition 3(3), if your Loan is a Repayment Loan, you will repay the loan with interest by Monthly Payments on each Payment Date until the Whole Debt payable by you to us has been paid in full. If your Loan is an Interest-only Loan, your Monthly Payments will consist of interest payments only.
  - (b) The amount of the first Monthly Payment shall be increased to cover the interest accruing on the Loan from the date of release calculated in accordance with Condition 4(1)(a) until the end of the calendar month. We shall notify you as soon as practicable after the completion of the Loan advance of the amount of such additional interest.
- (2) You agree that you will punctually pay to us:
  - (a) on the Payment Date, your Monthly Payments; and
  - (b) all Costs, immediately if we require you to do so; and
  - (c) interest on Costs at the Interest Rate from the date the Costs arise until they are paid, this interest is to be paid on demand by us.
- (3) We may at any time require you on the expiry of 3 months' written notice (or without notice if the Property is compulsorily purchased) to repay the Whole Debt. Except in the case of compulsory acquisition we will only exercise this power:

- (a) if we have a good reason to believe that you have been involved in fraudulent or serious criminal behaviour; or
  - (b) if we have a good reason to believe that the relationship between you and us has irretrievably broken down, such as physical, threatening or abusive behaviour to either the Society or our staff; or
  - (c) if we need to ask you to repay the Whole Debt due to regulatory or taxation reasons. We would not seek to rely on this provision without reference to and acceptance by our regulator.
- (4) If we enforce the Mortgage and the net proceeds of sale of the Property are not enough to pay off the Whole Debt you will immediately pay us any shortfall with interest at the Interest Rate until payment of the Whole Debt has been made to us.
  - (5) All payments to us shall be made in sterling (or such other lawful currency of the United Kingdom as may replace sterling) in immediately available funds. If any sum falls due for payment on a day which is not a Business Day it shall be made on the immediately preceding Business Day. All sums payable by the Mortgagor or the Guarantor shall be paid in full without any set off, retention or counterclaim and (except as may otherwise be required by law) free and clear of and without any deduction or withholding whatsoever. If the Mortgagor or the Guarantor is at any time required by law to make any deduction or withholding from any payment to us, then the Mortgagor or the Guarantor (as the case may be) will immediately pay to us such additional amount or amounts as will result in us receiving the full amount we would have received had no such deduction or withholding been required.
  - (6) Prompt payment is an important term of the Mortgage and you must make sure your payments are made on the correct Payment Date each month.
  - (7) If your Loan is an Interest-only Loan, we may change your Loan to a Repayment Loan if you are in serious or persistent breach of any of your obligations under these Conditions. We will give you written notice if we do so. We will also tell you the amount of the revised Monthly Payment and Condition 4 will apply to the interest rate payable.
  - (8) Amounts repaid to us from time to time will not be available for redrawing.
  - (9) Where we receive any payment which is insufficient to pay in full what you owe us, no part shall be treated as repayment of the principal until all Costs, arrears and interest have been paid.
  - (10) Where the Mortgage Offer provides that the Loan may be repaid in whole or in part from our of the proceeds of a Policy, the Monthly Payment will only be applicable so long as the Policy is in full force and effect and is deposited and charged to us under Condition 16 and you meet all of your material obligations in relation to the Policy.

### **Interest**

4

- (1)
  - (a) Interest at the Interest Rate shall be charged and calculated on the full amount of the Loan or on so much of the Loan as has actually been released

to you as from the date or dates of the cheque or transfer by which it was released or advanced to you.

(Unless varied by the Mortgage Offer) interest will be charged and calculated on a monthly basis on the balance owing at the end of the previous month. The balance on any particular date will include capital, unpaid interest, Costs and other debits payable by you to us and secured by the Mortgage less any payments in respect of such sums which have been received by us.

- (b) Any change to the method of charging interest will be subject to the requirements of Condition 4(5).
- (2) If the Mortgage is redeemed during the course of a year, interest in that year shall be charged up to and including the date of actual redemption, unless otherwise varied by our Rules or the Mortgage Offer.
- (3) If in any year a Further Loan or re-advance is made to you, or if you owe us any Costs, interest at the Interest Rate shall be charged on such amounts from the date or dates upon which they were respectively advanced or re-advanced or became owing. Any references to the Loan shall, where applicable, subsequently include any such Further Loan or re-advance or Costs together with interest and shall be calculated and be payable accordingly.
- (4) Interest shall be charged at the Interest Rate specified in the Mortgage Offer. We may charge different rates of interest on different parts of the Loan, for example, a different rate may apply to a Further Loan. Subject to any limitations we have agreed in the Mortgage Offer (for example, in the case of a fixed Interest Rate) we may at any time vary the Interest Rate applicable to the Whole Debt, or any part of it, in accordance with Condition 4(5).
- (5)
  - (a) Subject to Condition 4(6) below, we may reduce any rate of Interest payable under your Mortgage and we may also increase at any time (whether or not with immediate effect) any rate of interest payable under your Mortgage if we reasonably believe that the change is needed for any one or more of the following reasons (which may relate to circumstances existing at the time or which we reasonably expect to apply in the near future):
    - i) to respond, in a proportionate manner, to changes in the Bank of England Base Rate;
    - ii) to respond, in a proportionate manner, to interest rates generally charged by our competitors in the mortgage market;
    - iii) to respond, in a proportionate way, to changes in the cost to us of raising the money we lend to our customers by way of mortgage;
    - iv) to enable us to maintain the competitiveness of interest rates charged to our investors, while having regard to the interests of our borrowers, in the interests of our business as a whole;

- v) to respond, in a proportionate manner, to any increase or reduction in costs reasonably incurred by us in operating our mortgage services;
  - vi) to respond, in a proportionate manner, to changes that have been made or are about to be made, in the law or interpretation of the law, relevant codes of practice, the way we are regulated, or any decision by an ombudsman, court, tribunal, regulator or similar body; or
  - vii) it is necessary to maintain our financial strength in the interests of all our consumer customers.
- (b) We can also change the Interest Rate for any other valid reason (other than those mentioned in (a) above) where we reasonably believe the change is appropriate. If we do so:
- i) we will give you notice of the change by posting or delivering the notice to you under condition 18 before such change is to take effect; and
  - ii) you can within 3 months of our notifying you of the change, without having to give us any notice, repay the Whole Debt without having to pay any early repayment charge; and
  - iii) we will tell you this and that we are increasing the interest rate in accordance with this condition 4(5)(b) when we give you the notice.
- (c) The rate of interest will not be changed for any of the reasons stated in conditions 4(5)(a) or (b) above in a manner which would put customers who have received an incentive in a less advantageous position than a new customer or a customer who is free to redeem their account without loss or repayment of any incentive.
- (6) We will tell you about rate changes before the date the change takes effect by letter or other personal notice, and, subject to these Conditions, any such change shall not take effect on a date earlier than the date specified in your letter or other personal notice.

**Variation of the Monthly Payments**

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- (1) We may from time to time by written notice to you vary the Monthly Payment so as:
- (a) to take account of any increase or reduction in the Interest Rate; or
  - (b) to take account of any partial repayment of a Loan; or
  - (c) to include any additional amount which we may require to be paid in respect of a Further Loan, Costs, interest, arrears or any other sum owed to us; or
  - (d) otherwise to ensure that the Whole Debt is repaid on or immediately before the expiry of the Mortgage Term.
- (2) Without prejudice to Condition 5(1), we may agree with you at any time by agreement in writing to vary the amount of the Monthly Payments and/or the period



or periods for which the Monthly Payments are to be payable and any other provisions relating to repayment of the Loan, but any such agreement shall not affect or prejudice our security under the Mortgage, nor shall any such variation release or discharge any Guarantor from his obligations under the Mortgage or these Conditions;

- (3) Nothing in these Conditions shall affect our right under the Rules to suspend, reduce or waive any repayment of principal or the payment of interest or other payment, either generally or in any particular case, and any such suspension, reduction or waiver shall not release or discharge any Guarantor from his obligations under the Mortgage or these Conditions.

### **Costs**

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- (1) In these Conditions, "Costs" means all fees (including our internal costs) which we charge or incur in connection with the Mortgage including (but not limited to) the examples given in Condition 6(2).

(2)

(a) Where the Cost arises because you ask us to provide a document or service in connection with the Mortgage, whether to you or anyone else, the amount of the Cost we charge you will be as set out from time to time in our tariff of charges. Examples of activities we may charge for under this Condition include (but are not limited to):

- supplying or copying deeds or documents to you or anyone acting for you;
- discharging the Mortgage;
- releasing the Property or the Related Rights from our security (including any new fee introduced by the Registers of Scotland to discharge the Mortgage);
- releasing any title deeds;
- processing your application for any Loan and for any change in the terms of the Mortgage Offer; and
- giving you any assistance or information in connection with the Property, the Mortgage Offer or the Mortgage.

(b) Where we incur a Cost to safeguard our security or because you fail to fulfil an obligation you have under the Mortgage Offer or the Mortgage you must pay us all reasonable Costs which we reasonably incur to protect our position or as a result of your failure. Where we are able to make a genuine pre-estimate of the expenses we are likely to incur, the amount of the Cost we will charge will be set out from time to time in our tariff of charges and will be limited to this amount but otherwise will be unlimited in amount. Examples of activities for which we may make a charge under this Condition include (but are not limited to):

- any legal proceedings relating to the Mortgage (this applies whether or not you are a party to the proceedings);
  - exercising any of the rights or powers given to us by statute or these Conditions;
  - the cost of instructing a debt collector to recover any monies owed from you;
  - recovering any of the Whole Debt;
  - protecting or preserving our security;
  - checking that any insurance of the Property that you have arranged is adequate for our purposes; and
  - insuring the Property.
- (3) We will tell you when you have incurred a Cost and the amount of the Cost. If you do not pay the Cost within 7 days of the date we tell you about it we may add it to the Loan and charge interest on it at the Interest Rate.
- (4) We can abolish or reduce our Costs without having to notify you.
- (5) We can make other changes to our Costs (including increasing or introducing new Costs) if we reasonably believe that the change is needed for any one or more of the following reasons (which may relate to circumstances existing at the time or which we reasonably expect to apply in the near future):
- (a) to respond, in a proportionate manner, to any new or increased cost which we reasonably incur in operating your mortgage account;
  - (b) to respond, in a proportionate manner, to changes which we may reasonably make in the services we provide;
  - (c) to respond, in a proportionate manner, to changes that have been made or are about to be made, in the law or interpretation of the law, relevant codes of practice, the way we are regulated, or any decision by an ombudsman, court, tribunal, regulator or similar body;
  - (d) to make our charges operate more fairly between our consumer customers generally; or
  - (e) to enable us to harmonise, in a reasonable manner, charges following any acquisition of mortgage accounts or any takeover or merger with another mortgage loan provider.
- (6) Where we vary a Cost under Condition 6(5) we will give you notice of the change by posting or delivering the notice to you under Condition 18 before, or as soon as reasonably practicable, after the change is to take effect.

## Property Insurance

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- (1) You (or the Mortgagor where he is not also the Borrower) must insure the Property during the Term against fire and all other usual risks in sufficient amount to meet the Property's restatement cost in the event of total loss, and in accordance with our reasonable requirements.
- (2) We can arrange for this cover for you or the Mortgagor or you or the Mortgagor can arrange your own cover.
- (3) If you or the Mortgagor chooses to arrange your own cover or if it is subject to particular title conditions, special conditions will apply. We will tell you or the Mortgagor what these are, and they may include the following:
  - (a) the Property insurance cover must be in the joint names of you or the Mortgagor and us;
  - (b) we must give our written agreement to your or the Mortgagor's policy, but we will not unreasonably withhold this consent if the policy meets with the minimum cover and conditions we require; and
  - (c) we are under no obligation to ensure that your or the Mortgagor's cover is adequate.
- (4) Subject to any particular title conditions, instead of requiring any insurance payments to be used in making good any loss or damage to the Property we may require such payments to be paid in or towards repaying the Whole Debt. We will not exercise this right in an unreasonable manner or without first seeking to consult with you. If you receive any money arising out of an insurance claim you will hold this separate from your own funds upon trust for us to be used as mentioned above, any surplus being paid to you or any other person entitled to receive it. If there is any shortfall, you will need to cover this from your own resources.
- (5) If we arrange any type of insurance for you or the Mortgagor then any sums we receive (other than money paid out as the result of a claim) whether as commission or otherwise, shall belong to us absolutely and we shall not be required to account to you or the Mortgagor unless required to do so by law.
- (6) You (and the Mortgagor where he is not also the Borrower) will, on demand, produce or arrange for the production to us of every policy of insurance on the Property (other than a policy effected by us) and also such evidence as we may require to establish that such policy is currently in force.
- (7) You (and the Mortgagor where he is not also the Borrower) will notify us promptly of any damage to the Property which may give rise to any claim under any insurance on the Property and we shall have full power to settle and adjust with the insurers all claims in relation to any policy affecting the Property whether such policy has been effected by us or by the Mortgagor or by you.
- (8) If you or the Mortgagor fail to comply with any of your or his obligations under Conditions 7(1) to 7(3) inclusive we may at your expense effect and subsequently maintain such insurance on the Property as we may from time to time think fit, and all

premiums paid and related costs incurred by us shall be immediately repayable to us and until repaid shall be deemed to be Costs for the purposes of these Conditions.

**Assignment of Related Rights**

8 The Mortgagor by his execution of the Standard Security:

- (1) So far as he is able assigns to us (but subject to redemption) the benefit of all Related Rights;
- (2) Appoints us irrevocably, (but subject to redemption), to be his attorney, in his name and on his behalf to claim, assess, enforce, recover and receive any compensation arising from the Related Rights and to exercise any right and to give any notice or counter notice concerning the Property as by or under any statute or otherwise the Mortgagor may be entitled to exercise to give against or to any local or other competent or appropriate authority,

provided that:

- (3) money arising in respect of Related Rights (unless laid out to our satisfaction in restoring or improving the Property) shall be applied by us in reduction of the Whole Debt.

**Other Obligations of the Mortgagor**

9 The Mortgagor shall:

- (1) put and at all times keep the Property in good repair and condition and will not without our consent make or cause or permit to be made any alteration in the Property, or in its use, and in the case of any approved alterations, shall comply strictly with the terms, if any, upon which our approval may be given, and in particular, complete to our satisfaction, and with all reasonable speed and diligence, any uncompleted buildings or alterations;
- (2) without prejudice to Condition 9(1), strictly comply and within the time, (if any), so specified with all conditions or undertakings required or specified in the Mortgage Offer and on your part or that of the Mortgagor to be observed or performed;
- (3) if the Loan is paid, or is to be payable, in instalments as building or other work on the Property proceeds, apply the Loan in or towards the payment of the cost of such work, and ensure that all such work is carried out in a good and workmanlike manner with property materials of good quality and strictly in accordance with all statutory and other requirements and ensure that in the case of the erection of a dwelling house a certificate and guarantee in relation to such building or other work is issued by the National House Building Council or other body approved by us;
- (4) observe and perform all title conditions, restrictions and obligations affecting the Property or any part or parts of it;
- (5) promptly pay all rents, service charges, rates, taxes and outgoings whatsoever payable in respect of the Property or the occupation of the Property and comply fully with all lawful requirements of any local, public or statutory or other competent authority or body relating to the Property or its use or occupation;

- (6) inform us immediately of any notice received or given by the Mortgagor or you in relation to the Property or affecting his estate or interest in the Property and provide us with a true copy of such notice, and if required by us, to join with us in any objection or challenge to such notice;
- (7) permit us to enter upon the Property, (without becoming liable as a heritable creditor in possession), and to examine its state and condition and to provide us with such information relating to the Property or to anything done or not done in relation to it as we may from time to time require, and further, if required by us, to carry out immediately, in a good and workmanlike manner and at the cost of the Mortgagor, such work on or in relation to the Property, as required by us from time to time;
- (8) not do or omit to be done anything on the Property which may prejudicially affect the insurance of the Property or which may increase the premium payable for any such insurance;
- (9) not, without our consent, to create any Lease or part with possession or share the occupation of the whole or any part of the Property or cause or permit any other person to be registered or recorded at the Registers of Scotland as proprietor of the Property;
- (10) at all times to comply with the Planning Acts and any requirements of the Planning Authority of the Property or by the landlord of the Mortgagor;
- (11) not without our consent, to create any mortgage, charge, pledge, lien, encumbrance or security interest of any kind over the whole or any part of the Property;
- (12) properly manage any agricultural land comprised within the Property in accordance with the principles of good husbandry and to comply with the provisions of the Agricultural Holdings (Scotland) Act 1991, the Agricultural Holdings (Scotland) Act 2003 and any similar legislation and to indemnify us against any charge arising by virtue of such Acts;
- (13) inform us without delay of any defect, incompleteness, damage, injury or depreciation giving rise to a right to or claim for damages, compensation or indemnity (whether as of right or ex-gratia or otherwise);
- (14) not without our prior written consent (we will not refuse a reasonable request) to apply under the Housing (Scotland) Act 1985 or Housing (Scotland) Act 2006 or any similar legislation for an improvement grant or loan in respect of the Property;
- (15) to pay to us immediately on demand all Costs we may incur in connection with any application by you for a consent required under these Conditions whether or not such consent is given or taken up;
- (16) (if the Property is held under long lease), to give notice to the landlord of the Mortgage;
- (17) in the event of the Mortgage Offer specifying, or it being subsequently agreed by us with you, that additional interest shall be payable on redemption of this Mortgage within a certain period, or otherwise, to pay to us such additional interest;
- (18) (if and when required by us), to execute such further standard securities, charges or assignations in our favour as we shall from time to time require over all or any of the

Property, and all rights and remedies relating to the Property, both present and future, to secure the Whole Debt or to facilitate the realisation of the Property, or the exercise of the powers conferred on us such further standard securities, charges or assignments to be prepared by or on our behalf at your cost and to contain an immediate power of sale without notice and such other clauses for our benefit as we may reasonably require.

### **Repayment of the Loan in whole or in part**

10

- (1) In addition to the circumstances specified in the 1970 Act, the Whole Debt, (or the outstanding balance), shall become immediately due and payable in full in any of the following events:
- (a) at the expiration of the period specified in any notice given by us under Condition 3(3);
  - (b) acting reasonably we consider you have been involved in fraudulent behaviour in relation to your mortgage account;
  - (c) if you default in the making of a monthly repayment under Condition 3(1);
  - (d) if there is a material breach of any other obligation contained or implied in the Mortgage, or these Conditions, or in the Standard Conditions or in the Rules or otherwise on your part or that of the Mortgagor to be observed or performed;
  - (e) if we discover that any information supplied in connection with your application for the Loan is incorrect or misleading in a material way;
  - (f) if the Property is compulsorily purchased or requisitioned;
  - (g) if you surrender possession of the Property to us;
  - (h) if you or the Mortgagor or the Guarantor (being an individual) propose to enter into any arrangement with or sign a trust deed for your creditors, or are sequestrated or become bankrupt or (being a company) has an order made or passes a resolution for winding up or has a receiver or administrative receiver or administrator appointed in respect of any part of its undertaking or enters into any form of arrangement or composition with its creditors;
  - (i) if you are the sole surviving Borrower and you die; or
  - (j) if the Mortgage becomes void, voidable or unenforceable.
- (2) You may repay all or part of the Whole Debt before the end of the Term. In the case of a repayment in full, you shall pay to us all sums owing in respect of the Mortgage including:
- (a) Interest calculated up to the date of repayment;
  - (b) our Costs in connection with the repayment; and

- (c) any interest (in lieu of any period of notice) required under the terms of your Mortgage Offer.

Where any partial repayment is made, such payment shall be attributed first, in or towards the repayment of interest and secondly, in or towards the repayment of any sums payable under Condition 6 and any balance shall be applied in redemption of the Loan, but any such application shall not operate to reduce the amount of interest payable in the month in which such partial payment is made.

- (3) We may release from your Mortgage any part of the Property if we are satisfied that the remainder will be adequate security for the balance owing to us.

### Our Remedies and Powers

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- (1) If the Whole Debt has become due and payable in any of the circumstances stated in Condition 10.1, you will be in default in terms of the 1970 Act and we shall have the right to exercise any of the powers given to lenders by the Acts and any other statutes.
- (2) If any of the events specified in Condition 10.1 occur, you undertake to vacate the Property and to give us possession of it after we have given you 7 days' written notice requiring you to remove from the Property and you agree that we (subject to our compliance with the provisions of the Acts) may apply for a court order for your removal from the Property in any Sheriff Court in the area in which the Property is situated at any time after the period of 7 days specified in the notice.
- (3) If the Mortgagor abandons the Property or gives possession of the Property to us or if we enter into possession of the Property, then if the Mortgagor or you shall not within 14 days of abandoning or giving possession or entering into possession of the Property have removed any furniture, goods, domestic pets or livestock of any kind ("moveable property") left in or on the Property, we shall be entitled, at your expense and risk and that of the Mortgagor, (but not so as to give us any security over such items or otherwise to constitute the Mortgage a bill of sale):
- (a) to sell or otherwise deal with such moveable property, or any of them, either separately or with the Property (and if sold with the Property to apportion the total price between the Property and the moveable property);
  - (b) to store such moveable property, or any of them, and pay the storage charges;
  - (c) to allow their use in conjunction with any Lease of the Property entered into by us and we shall be entitled to receive and apply the whole of the rent as if it were rent of the Property and without any need to apportion such rent in respect of such moveable property).
- (4) Any money resulting from the sale of such moveable property (or of the Property) may be used by us to pay any expenses incurred under this paragraph and we shall not be liable to account to the Mortgagor or to you for such money until all the moveable property have been sold, or possession of those not sold has been resumed by the Mortgagor. Both you and the Mortgagor shall at all times keep us

indemnified in respect of all Costs which may be incurred by us in the exercise by us in good faith of our power under this paragraph.

- (5) At any time after entering into possession of the Property, we may give up possession on giving notice to the Mortgagor and we shall not, while not in actual possession of the Property, be accountable as heritable creditor in possession.
- (6) Upon the occurrence of any of the events specified in Condition 10(1), we shall cease to be under any further obligation to you and we may enter into possession of the Property but in such case such action shall not render us liable to account as a heritable creditor in possession.
- (7) At any time after the power of enforcing the Standard Security shall have become exercisable and from time to time, we may, in addition to our statutory powers, and in our absolute discretion:
  - (a) so far as permitted by the 1970 Act grant such Lease and accept such surrender of Leases as we shall in our absolute discretion think fit;
  - (b) effect and carry out all such repairs, alterations and additions to the Property and generally maintain the Property as we shall in our absolute discretion think fit;
  - (c) employ and pay agents (who may or may not be our paid employees), for carrying out such powers at such salary or commission and generally as we shall think fit;
  - (d) retain any money received as provision for any future payment or other money from you;
  - (e) at any time after entering into possession of the Property, or any part of it give up possession on giving notice to you;
  - (f) take such action, at your cost, as we shall deem necessary and appropriate to preserve our and/or the Mortgagor's rights, title, or interest in the Property or any part of the Property.
  - (g) purchase or acquire any land and purchase, acquire or grant any interest in or right over land;
  - (h) carry out on the Property any new works or complete any unfinished works of building, reconstruction, maintenance or equipment;
  - (i) carry into effect and complete any transaction by executing deeds or documents in your name or on your behalf or that of the Mortgagor;
  - (j) take, continue or to defend any proceedings and enter into any arrangements or compromises;
  - (k) insure the Property and any works and effect indemnity insurance or any similar insurance and obtain bonds and give indemnities and security to bondsmen;



- (l) employ advisors, consultants, managers, agents, workmen and others as we in our absolute discretion shall think necessary on such terms as to remuneration or otherwise as we shall think fit;
- (m) give valid receipts for all monies and execute all assurances and things which may be proper or desirable for realising the Property, or any part or parts of it, and to give and receive as your agent any notice in respect of any Lease or other occupancy of the Property, whether created by us pursuant to our powers under these Conditions or by the Mortgagor, as the case may be;
- (n) apply for planning permissions and any other necessary statutory and other consents (or appeal against their refusal), enter into agreements under the Planning Acts and the Highways Acts, enter into and arrange bonds (including road bonds and indemnities and guarantees) and to dedicate land as a public highway in any case as may seem to be necessary or desirable on such terms as we shall consider fit;
- (o) make any other arrangement to take any other action which we may consider to be incidental or conducive to any of our powers, or to the realisation of the Property, or otherwise in our interests.

**Other Provisions affecting You and the Mortgagor**

12

- (1) If you wish to pay off your Mortgage in full, we may at the same time require you to pay off any other standard security or charge that we held from you.
- (2) Both you and the Mortgagor shall at all times during the subsistence of the Mortgage observe and comply with the Rules.
- (3) If the Mortgagor (or you) shall at any time hold any share in any management company or residents society (whether incorporated or not) relating to the Property then:
  - (a) the Mortgagor (or you as the case may be) shall deposit with us the share certificate or other evidence of title to such share or shares; and
  - (b) the Mortgagor irrevocably appoints us to be his attorney and in his name to transfer, or cause to be transferred, such share or shares to any person to whom we may sell the Property in exercise of its power of sale and to receive also any consideration payable in respect of the sale or other transfer of such share or shares.
- (4) If, after the Mortgage has been discharged, we discover that the amount of the monies paid to us in redemption was, whether by reason of a mistake or miscalculation on our part in any redemption statement or otherwise, less than the full amount properly payable to us on redemption, we shall be entitled to recover on demand from you and any Guarantor the full amount of any such deficiency, notwithstanding that the Mortgage has been discharged and a vacating receipt or discharge has been given in respect of the full amount of the Loan and other monies secured by the Mortgage.

- (5) In addition to and without affecting any rights which we may be given by the law generally in such a situation, you give us the right at any time when you owe us money but have not paid us such money (for example, unpaid capital or interest in relation to a loan) to take money from any account of any type which you have with us at any branch (for example held by you in a deposit or investment account with us) and to use such money to pay the unpaid money. This right is called "settling off" the money which we owe you because you have a deposit or investment account with us against the unpaid money which you owe us, it is also some times called "combining accounts". You give us this right even if the money which you owe us which is unpaid is in one currency and the money held by us in an account for you is in a different currency. In such a case we will convert the money in your account with us into the same currency as the money you owe us which is unpaid. We will make this conversion at a rate of exchange which we believe reflects market rates generally for such a currency conversion. If the money we hold for you in a deposit or investment account is invested by us for you at a preferential rate which is available because the money is not immediately available we are authorised to forfeit any such preferential rate by obtaining the money back as soon as possible in order to pay off the money which you owe us which is unpaid. You confirm that in such circumstances we will not be liable to you for any loss of any preferential interest rate on money we have invested for you. We will notify you in advance if we intend to use the rights referred to above and give you an opportunity to pay the unpaid money. Whilst money remains unpaid you agree that you will not be entitled to withdraw the money in any such investment or deposit account no matter what the terms of the account may say.

#### **Transfer of the benefit of the Mortgage**

13

- (1) We may at any time without getting your agreement or the agreement of anyone else, transfer to any other person the benefit of all or any part of the Whole Debt, the Mortgage, any related security and all or any legal or other rights under any of the same. Any such transfer will not reduce any of your guarantees under the Mortgage.
- (2) The person or body to whom we make this transfer may not be a building society or a company associated with a building society.
- (3) You acknowledge that, if such a transfer takes place, you will have the same obligations to the body to which we make the transfer as you originally had to the Society. We may also release to the body any information we hold about you, the way you have conducted your account and any related securities.

#### **Obligations of the Guarantor**

14

- (1) The Guarantor shall observe and perform all the obligations on your part and that of the Mortgagor to be observed or performed under or in pursuant to these Conditions and shall, as between himself and us, be liable to us as a principal, and not merely as a Guarantor only, jointly and severally with you and the Mortgagor in respect of any breach or non-observance or non-performance of these Conditions or the Mortgage or the Mortgage Offer.

- (2) The Guarantor shall not be released by time being given to you or to the Mortgagor, nor by any variation or alteration in the provisions contained, implied or incorporated into the Mortgage, (including any alteration in the rate of interest or variation, suspension or waiver in relation to any of the monthly repayments under Condition 5) nor by any other act, omission, matter or thing whatever where a Guarantor, as guarantor only, would, or may otherwise, be released.
- (3) The obligations of the Guarantor under this Condition shall apply also in relation to any Further Loan or re-advance which may be made to you if such Further Loan or re-advance is made either at the written request, or with the written consent, of the Guarantor.
- (4) The Guarantor is advised to seek independent legal advice before entering into the guarantee or third party security.

**Transfer of land subject to Mortgage**

15

- (1) You may, subject in every case to these Conditions and to you having obtained our prior written consent (which may be subject to the payment by you of a transfer fee) and to the terms of your Mortgage (including these Conditions), sell or transfer the Property to a third party ("the Transferee") and in such circumstances the Transferee shall, from the date of the transfer, assume responsibility for all liabilities arising under the Mortgage and the Mortgage Offer.
- (2) No transfer pursuant to condition 15(1) shall be registered by us in our records without the disposition having been approved by us or on our behalf (at your cost) and received by us for placement with the title deeds to the Property.

**Endowment Mortgages, Investment Plans and Pension Mortgages**

16

- (1) This condition applies to all Loans where the Mortgage Offer states that the Loan is to be repaid in whole or in part out of the proceeds of a Policy.
- (2) In addition to the security taken over the Property, the repayment of the Whole Debt shall be secured by the Policy.
- (3) The Policy must be taken out in a form and with the relevant institution and for the amount which we specify in the Mortgage Offer or with such other institution as we approve.
- (4) The Policy will be deposited with us.
- (5) You will assign the Policy to us, in a form we reasonably specify, free from all rights and restrictions. The assignment will not affect any right, charge or interest to which we were entitled before the assignment. In relation to this, you irrevocably appoint us to be your attorney and in your name to assign the Policy in accordance with this Condition 16. If the Policy (in accordance with its terms) is to be held in trust for the benefit of any person the assignment we take over the Policy will rank in priority to such other interest and you will ensure that the interest of such a person will take effect subject to our interest.

- (6) It is your responsibility to ensure the Policy remains in full force and effect and to ensure the proceeds of the Policy are sufficient to repay the Loan. You confirm that until the Whole Debt is repaid you will keep the Policy in full force and effect. If it appears to us at anytime during the Term that the proceeds of the Policy will be insufficient to repay the Loan it is your responsibility to ensure that you have other means of repaying the Loan.
- (7) Any amounts received on any surrender or realisation of the Policy may be applied in or towards the discharge or repayment of the Whole Debt.
- (8) If you fail to pay or to procure the payment of any premium or payment payable in respect of the Policy within 7 days of it becoming due we may (but without obligation to do so):
  - make such payment;
  - convert the Policy into a paid up policy; or
  - surrender the Policy.

Our rights under this Condition shall not prejudice any other rights or remedies we have under these Conditions.

- (9) All sums paid by us under this Condition 16, together with all reasonable costs and expenses incurred by us or incidental to keeping the Policy in force or effecting a new Policy are treated as Costs.
- (10) On your death the proceeds of any Policy assigned or charged to us as security for repayment of the Loan shall be applied in or towards the repayment of the Loan and all other sums payable to us under these Conditions.

#### **Production and storage of deeds**

17

- (1) You may request us to give you or your representative the title deeds of your Property or to supply extracts from or copies of such title deeds, subject to any reasonable conditions that we may specify. You may have to pay a fee for this service. The fee will be notified to you in advance. If the fee remains unpaid for a period of 2 months it may be added to your Loan and interest will then be payable on it at the Interest Rate.
- (2) If we specify that we do not require pre-registration title deeds and they are sent to us, we may charge you a fee for providing storage facilities. Payment of this fee is on the same basis as that referred to in paragraph 17(1) above.

#### **Notices**

18

- (1) Any notice to be given to you, or the Mortgagor, or the Guarantor may be given by posting it by first-class post to the addressee's latest address in our records or to the addressee at the Property.

- (2) If you, or the Mortgagor, or the Guarantor is more than one person, any notice shall be well and sufficiently given if posted in accordance with Condition 18(1), addressed to any one of them respectively.
- (3) If you, or the Mortgagor, or the Guarantor (or any one of the persons constituting such a party) dies, any notice may be given by posting it addressed to the personal representative of the deceased, (or to any one of the personal representatives if there are more than one), without naming such representative, at the deceased's latest address in our records, or at the Property, and this provision shall apply both before and after any grant of confirmation, to the estate of the deceased has been made.
- (4) A letter or other personal notice will be deemed duly served 24 hours after posting.
- (5) If we, accidentally, fail to:
  - (a) send to you a communication intended for our borrowers generally or a category of our borrowers of which you are one; or
  - (b) display a notice at our Principal Office or any branch office,this will not make the notice invalid.

#### **Changes to these terms and conditions**

19

- (1) We may make changes to these terms and conditions if we reasonably believe that the change is needed for any one or more of the following reasons (which may relate to circumstances existing at the time or which we reasonably expect to apply in the near future):
  - (a) to respond, in a proportionate manner, to changes that have been made or are about to be made, in the law or interpretation of the law, relevant codes of practice, the way we are regulated, or any decision by an ombudsman, court, tribunal, regulator or similar body; or
  - (b) to reflect changes in the way we administer mortgages;
  - (c) to correct errors, where it is reasonable to do so;
  - (d) to make the conditions clearer or fairer to understand.
- (2) If we change or amend these conditions you will be notified and given reasonable notice before the changes take effect.

**Severance**

- 20 If any or part of these Conditions is found by a competent authority to be invalid, unlawful or unenforceable to any extent, the relevant Condition or part of it shall be deleted from the remaining Conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

**Governing Law**

- 21 The Mortgage Offer, these Conditions and the Mortgage shall be construed in accordance with and subject to the law of Scotland and you submit to the non-exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF this deed consisting of this and the preceding twenty-one pages is subscribed for and on behalf of Furness Building Society:

At Barrow-in-Furness

On 5 July 2011