

## UCB HOME LOANS CORPORATION LIMITED MORTGAGE TERMS & CONDITIONS 2009 (SCOTLAND)

### 1. PURPOSE OF THESE CONDITIONS

These **conditions** form part of, and are to be read together with, any **offer document** and **standard security** which states that they are included.

### 2. MEANING OF WORDS AND EXPRESSIONS

2.1 In these **conditions** and any Special Conditions appearing in the **offer document**:

(i) the following words and expressions have the following meanings when appearing in bold print in these **conditions**:

“ <b>benefit period</b> ”	the period of time specified in <b>your offer document</b> from the date of completion of <b>your mortgage</b> to the end of the same <b>month</b> in which <b>you</b> took the <b>loan</b> ;
“ <b>conditions</b> ”	the <b>UCB Home Loans</b> Corporation Limited Mortgage Terms and <b>Conditions</b> 2009 (Scotland);
“ <b>debt</b> ”	the total amount of money outstanding under the <b>loan</b> and these <b>conditions</b> , including any unpaid interest, fees and costs;
“ <b>drawdown amount</b> ”	the difference between the agreed amount of <b>loan</b> and the amount actually borrowed at inception. This amount can be drawn down up to three years from inception;
“ <b>loan</b> ”	the amount of money <b>we</b> lend <b>you</b> under an <b>offer document</b> ;
“ <b>month</b> ”	a calendar <b>month</b> ;
“ <b>monthly payment</b> ”	the <b>monthly payment</b> which is payable under the <b>offer document</b> , as varied from time to time under these <b>conditions</b> ;
“ <b>mortgage</b> ”	<b>your mortgage</b> account with <b>us</b> ;
“ <b>offer document</b> ”	the <b>mortgage</b> offer or offer to grant additional borrowing by which <b>we</b> offer to make <b>you</b> a <b>loan</b> under these <b>conditions</b> ;
“ <b>overpayment reserve</b> ”	the amount of the credit arrears balance which <b>you</b> can request the return of;

“ <b>property</b> ”	all or any part of the <b>property</b> comprising <b>our</b> security under the <b>standard security</b> ;
“ <b>property rights</b> ”	(a) <b>your</b> rights under any agreement, option, assurance policy or guarantee which concerns: <ul style="list-style-type: none"> <li>• the <b>property</b>;</li> <li>• the way the <b>property</b> is built; or</li> <li>• the condition of the <b>property</b>;</li> </ul> <p>(b) any shares or other membership rights which <b>you</b> hold in a management company or residents association by virtue of owning the <b>property</b>;</p> <p>(c) any rights <b>you</b> have to any statutory compensation concerning the <b>property</b>;</p> <p>(d) all rights and remedies <b>you</b> have concerning the <b>property</b> (including any which arise from damage to it or a drop in its value);</p>
“ <b>rebuilding cost</b> ”	the full cost of rebuilding the <b>property</b> to its original form (or as close to it as possible), including site clearance, all professional fees and the cost of meeting planning and local authority requirements;
“ <b>standard security</b> ”	the legal document which <b>you</b> sign to grant <b>us</b> security over the <b>property</b> for the <b>loan</b> ;
“ <b>term</b> ”	the period of time stated in the <b>offer document</b> for the repayment of the <b>loan</b> , or any changed <b>term</b> as varied under these <b>conditions</b> ;
“ <b>UCBHL/we/us/our/ourselves</b> ”	<b>UCB Home Loans</b> Corporation Limited and its successors;
“ <b>year</b> ”	a <b>year</b> ending on 31 December;
“ <b>you/your/yourself</b> ”	the person named as the borrower in the <b>standard security</b> and <b>offer document</b> and that person’s successors; and

(ii) the singular includes the plural and vice versa.

- 2.2 If there are more than one of **you** these **conditions** apply to all of **you** together and to each of **you** on **your** own.
- 2.3 References to a provision in a statute include any changes which are made to it and to any provision which replaces it.
- 2.4 If these **conditions** and the terms of the **offer document** are not consistent, the **offer document** will take priority.
- 2.5 Any change to **your offer document** and these **conditions** will only be effective if it is in writing.
- 2.6 Any party introducing **you** to **us** is not **our** agent and has no authority to make representations on **our** behalf.

### 3. WHAT YOU HAVE TO PAY

#### Repaying the Debt

- 3.1 **You** agree to repay **us** the **debt** by the end of the **term**. The **term** may be changed by written agreement between **you** and **us**.
- 3.2 **You** agree to pay us the **monthly payments** and abide by these **conditions** until all the **debt** has been paid.

#### Payment Methods

- 3.3 (i) Where the payment method is “repayment”, the **monthly payment** will consist of a combined payment of capital and interest, which **we** will work out so the **debt** is repaid by the end of the **term**.
- (ii) Where the payment method is “interest only”, the **monthly payment** will consist only of interest, and **you** will have to repay the **debt** in a single lump sum at the end of the **term**.
- (iii) Where the payment method is “part interest only, part repayment”, the interest only method will apply to an agreed amount of the **loan** and the repayment method will apply to the balance.
- 3.4 The payment method for any **loan** is as stated in the **offer document** and may be changed by written agreement between **you** and **us**, but neither **you** nor **we** shall be obliged to agree to a change. However, if an event of default has occurred under condition 6, **we** may change the payment method without **your** agreement by giving **you** written notice of the change.
- 3.5 If the payment method requires **you** to repay all or any part of the **debt** in a lump sum at the end of the **term**, **you** must make sure **you** are able to do so. Taking out an endowment policy, pension fund, unit trust or individual savings account (ISA) are examples of ways of saving to do so but it is **your** responsibility to take out and keep in force **your** chosen policy or savings plan.
- 3.6 It is **your** responsibility to take out life assurance cover to repay **your mortgage** should **you** die before the end of the **term**. It is **your** responsibility to ensure the policy is in force before **we** make **you** the **loan**. This includes making sure any application for life cover **you** have made has been accepted. It is **your** responsibility to ensure any policy is kept in force while **you** owe **us** money.

#### Capital Repayment

- 3.7 **You** may repay the whole or any part of the **debt** at any time provided **you** meet any Special Conditions in the **offer document** regarding early repayment, such as paying any early repayment charges.

#### Costs, Losses and Charges

- 3.8 In addition to interest and any sums payable in relation to early repayment as provided in the **mortgage** offer, **we** may charge **you** for services **we** provide, activities **we** carry out and to cover costs and losses **we** may incur. **We** publish a tariff of charges, which forms part of these **conditions** and which **we** can amend at any time in accordance with condition 3.12, unless any charge is stated to be fixed for the **term** in the tariff or offer. The tariff is available on **our** website at [www.ucbhomeloans.co.uk](http://www.ucbhomeloans.co.uk)

- 3.9 **You** will also pay **us** any costs and losses not covered by **our** charges. Costs and losses may include (but are not limited to):
- (i) those incurred in any legal proceedings to recover any part of the **debt** or to recover possession of the **property**;
  - (ii) those incurred in keeping the **property** insured under these **conditions** or protecting **our** security;
  - (iii) those incurred in paying any service charges or rent for the **property**.
- 3.10 **We** may ask **you** to pay any charge before **we** perform the service or carry out the activity for which it is imposed and **we** may ask **you** to pay **us** the amount of any costs or losses which **we** expect to incur before **we** have incurred them. **We** will notify **you** of any amount due. Any charges, costs or losses which **you** have not paid **us** in advance and which are notified to **you** as due will be added to the **debt** and will bear interest at the **mortgage** interest rate from then on. If **you** do not wish to incur such additional interest **you** should pay the amount as soon as it is notified to **you**.
- 3.11 From time to time **we** may provide services and carry out activities on **your mortgage** or **loan** free of charge. However, **we** may introduce charges for those services and activities at any time and they will be added to **our** published tariff.
- 3.12 **We** can amend or introduce a charge for one or more of the following reasons:
- (i) to reflect any changes or anticipated changes in the law, regulations or codes of practice or to respond to a decision by a court, ombudsman or regulator;
  - (ii) to reflect changes which **we** may make in any activity **we** carry out or the services **we** provide or to provide new services;
  - (iii) to reflect general market **conditions**; or
  - (iv) to reflect, in a proportionate manner, changes in the costs which **we** reasonably incur in providing relevant services and carrying out relevant activities.
- 3.13 Before **we** change or introduce a charge for such a reason **we** will notify **you**.
- 3.14 If **we** change or introduce any charge for any other reason **we** will notify **you** personally at least three months in advance and **you** can pay off the **debt** within three months of the notice without the new charge taking effect but subject to payment of any charge that may be payable under the **mortgage** offer, such as early repayment charges.

### **Monthly Payments**

- 3.15 **We** may set and vary from time to time the **monthly payments** to reflect:
- (i) the current interest rate applicable to the **debt**;
  - (ii) the **debt**;
  - (iii) the current payment method;
  - (iv) the **term**;
  - (v) **your** chosen **monthly payment** date.

- 3.16 Any change in **monthly payments** will be notified to **you** giving **you** three days written notice of **our** intention to do so. Alternatively, **you** and **we** may agree that **your monthly payments** will be reviewed and (if appropriate) changed periodically, for example annually, in which case any notice of change in **your monthly payments** will be sent to **you** a reasonable time before the start of each period.
- 3.17 **You** may choose to make **your monthly payments** on any day in the **month** (from 1-28).
- 3.18 The **monthly payment we** request will assume that **you** make payments on the 1st day of every **month** (unless stated otherwise).
- 3.19 All payments for the credit of **your mortgage** will be applied in the following order:
- (i) fees, costs and charges applied to the account;
  - (ii) interest;
  - (iii) capital.
- 3.20 **You** should read the Special Conditions in the **offer document** before making a payment of more than **your monthly payment** to check to see whether **you** will be liable to pay an early repayment charge.
- 3.21 All **monthly payments** or other regular payments made by **you** are to be made by Direct Debit.

#### **4 INTEREST**

- 4.1 The interest rate **we** will charge **you** will be the rate **we** have told **you** in the **offer document**. Apart from any initial fixed rate under the **offer document** the rate may change under condition 5.
- 4.2 The **loan** (or any instalment of it) will bear interest from the following time:
- (i) where **we** transfer the money electronically, the day on which **we** transfer the money;
  - (ii) where **we** pay the money by cheque, two days after the date of the cheque.

Interest which accrues between that day and the next **month**-end must be paid with the **monthly payment** due in the following **month** or (if earlier) by the **year**-end.

- 4.3 **We** calculate interest on a Daily Method described below:

**We** calculate interest on the **debt** outstanding at the last **year**-end and on each occasion when capital is repaid during the **year**, at the rate applicable to the **loan**. Interest accrues each day and is payable through **your monthly payment**. Payments of capital included in **your** regular **monthly payment** will reduce the amount on which **we** charge interest from the day after payment.

- 4.4 Interest will continue to be charged at the rate applicable to the **debt** even if a court makes an order for possession.
- 4.5 Any unpaid interest may be added to the **loan** at the end of the **year** in which it accrued.

#### **5 CHANGES IN INTEREST RATE**

- 5.1 **We** may change the interest rate applicable to the **debt** at any time except during any fixed rate period under the **offer document** giving **you** three days written notice of **our** intention to do so.

- 5.2 **We** will only change the interest rate for one or more of the following reasons:
- (i) to reflect changes in general interest rates, including the interest rates or terms on which similar accounts are offered by other providers of financial services;
  - (ii) to reflect any changes or anticipated changes in the law, regulations or codes of practice or to respond to a decision by a court, ombudsman or regulator;
  - (iii) to reflect changes to **our** costs, including administrative costs, costs involved in providing services or facilities or changes in the costs to **us** of borrowing funds;
  - (iv) to reflect a change in the way the **property** is used or occupied; or
  - (v) to reflect a change in the credit risk relating to the **loan**.
- 5.3 If **we** increase the interest rate applicable to **your mortgage**, **you** can pay off the **debt** within three months of the rate change notice without the increase taking effect but subject to payment of any charge that may be payable under the **mortgage offer**, such as early repayment charges. However, to avoid the increase taking effect, **you** must tell **us** in writing of **your** intention to pay off the **debt** within one **month** of the rate change notice.

## 6 PAYMENT ON DEMAND

- 6.1 If an event of default occurs **we** may demand in writing payment of the **debt**, in which case **you** must pay **us** immediately. In the event that **we** call for early repayment of the **debt**, these **conditions**, **your offer document** and the **standard security** signed by **you** shall continue to apply at all times until the **debt** has been repaid in full. They shall continue to apply even if Judgment in favour of **UCBHL** has been granted in respect of any sum due.
- 6.2 An event of default occurs for one or more of the following reasons:
- (i) **you** gave **us** wrong or incomplete information when **you** applied for the **loan**; or
  - (ii) **you** are more than one **month** late in payment of any money due; or
  - (iii) there is a breach of any material **term** of the **offer document** or these **conditions**;  
or
  - (iv) a bankruptcy order is made against **you** or **you** enter into a voluntary arrangement, deed of arrangement or other arrangement with **your** creditors; or
  - (v) the **property** is compulsorily purchased or requisitioned; or
  - (vi) **you** abandon the **property**.

## 7 WHAT THE STANDARD SECURITY COVERS

- 7.1 The **standard security** secures the **debt** owing to **us** under these **conditions** and any other money **you** owe **us** at any time and which **you** agree can be secured by the **standard security** (this may include any sums that remain outstanding on another **mortgage** account **you** hold or have held with **us**).
- 7.2 **We** shall not be obliged to release any **property** as security except where the **debt** or other money owing has been paid in full, or where **we** have agreed to take alternative security.

## 8 THE PROPERTY AS SECURITY

- 8.1 The **property** comprises **our** security under the **standard security**. In taking security over the **property** **we** give no assurances that the **property** is free from defects or worth a particular amount. **You** must satisfy **yourself** on these matters, in particular any **mortgage** valuation report **we** obtain is for **our** purposes only (even if **you** or someone else receives a copy) and **you** are advised to obtain **your** own valuation report or structural survey.

- 8.2 **We** shall not be obliged to take any particular **property** as security, but **we** may agree:
- (i) to take additional **property** as security, for example in connection with an additional **loan**; or
  - (ii) to take alternative **property** as security, for example on moving house.
- 8.3 Where **we** agree to take additional or alternative **property** as security, or where **you** acquire additional **property** used in connection with the **property**, or where **you** acquire an interest in, over or through neighbouring or adjoining land, **you** must grant a **standard security** to **us** over that **property** or interest.
- 8.4 **We** may refuse to release any **loan**, instalment or further money to **you** unless any existing **standard security** or charge in favour of another lender is discharged or postponed.
- 8.5 Before making a **loan**, **we** may require anyone (other than **you**) who is aged 17 or over and who is or will be in occupation of the **property** to confirm to **us** in writing, in a form approved by **us**, that they agree to **us** making the **loan** and to any rights which they may have in the **property** being charged in **our** favour and/or postponed to **our** rights under the **standard security**. This is to protect **our** rights and remedies over the **property** under the terms of the **standard security**.
- 8.6 **Our** security includes any of the following interests which **you** acquire:
- (i) a new or extended lease of the **property**;
  - (ii) an interest in the freehold of the **property** or in the freehold of any building which includes the **property**;
  - (iii) an interest over or through neighbouring or adjoining land.
- 8.7 If **you** acquire an interest under condition 8.5, no later than one **month** after doing so, **you** must:
- (i) give **us** the title deeds and documents relating to that interest;
  - (ii) if asked, give **us** security over that interest in a form approved by **us**.

## **9 CARE OF THE PROPERTY**

- 9.1 **You** must:
- (i) put and keep the **property** in good repair;
  - (ii) allow **us** to inspect the **property** at any reasonable time if **we** give **you** notice beforehand and to carry out or complete any building or improvement work required for the good repair of the **property** which **you** have failed to do (and if **we** enter the **property** under this condition, it does not mean **we** have accepted the legal responsibilities of a mortgagee in possession);
  - (iii) not carry out any structural alterations or additions to the **property** or change its use without **our** written consent and all other necessary consents;
  - (iv) ensure that any building or improvement work is properly carried out in accordance with all necessary consents and without delay;
  - (v) not do anything at the **property** which would enable the insurer to avoid its liability for insurance of the **property** or to increase the cost of insurance;
  - (vi) comply with all restrictions and obligations affecting the **property** or its owner or occupier;

- (vii) not convert the **property** to commercial use or change the way the **property** is used or occupied. If the **property** is converted to commercial use or the use or occupation is changed then the **loan** will be transferred to a variable rate and a higher interest rate that reflects the change in the way the **property** is used or occupied may be charged. Limited commercial use, such as the use of one room as an office, is allowed provided this involves no substantial or permanent alterations to the **property**.

## 10 INSURANCE

- 10.1 **You** must arrange insurance of the **property** and keep it insured at **your** own expense for its full **rebuilding cost** with an insurer, for the risks and on the terms, **we** approve from time to time. The insurance must be in the joint names of **you** and **us** (even if **you** do not arrange the insurance through **us** ) unless the **property** is leasehold and it is the landlord's responsibility to arrange the insurance (in which case **our** interest should be noted under the policy).
- 10.2 If **you** fail to insure the **property** **we** may but shall not be obliged to do so. **We** may add the cost of such insurance to the **debt** and interest will be charged on this amount.
- 10.3 In the event of an insurance claim being made in respect of the **property** **we** reserve the right to approve the terms of any settlement **you** reach with the insurer. The settlement money shall be used as **you** may decide either to reinstate the **property** or in or towards payment of the **debt** in full. If **you** decide to use the money to reinstate the **property** **we** can keep the money whilst the repairs or rebuilding are being carried out and only release the money by stage payments as the repairs or rebuilding progress. If **you** decide to use the money to pay off the **debt** and there is a surplus after the **debt** has been paid, **we** may forward the surplus to a second chargee of whom **we** are aware.

## 11 LEASES/TENANCIES

- 11.1 Where the **property** is leasehold **you** must comply with all **your** obligations under the lease and not do anything which would allow **your** landlord to forfeit the lease. **You** must immediately inform **us** in writing if **you** receive any notice of breach of **your** obligations from **your** landlord. **We** may rectify the breach on **your** behalf and under these **conditions** any costs and expenses **we** incur in doing so will be added to the **debt** and interest will be charged on this amount.
- 11.2 Where, under any lease under which **you** hold the **property**, it is the landlord's responsibility to arrange insurance of the **property** **you** must do **your** best to ensure that insurance is in force and it meets **our** requirements under condition 10.1.
- 11.3 **You** must not lease, let, license, part with possession or share occupation of the **property** or any part of it or agree to do any of these things without first getting **our** written consent. Nor should any such existing arrangements be renewed, extended or forfeited without first getting **our** written consent. Such consent may have **conditions** or be subject to a fee. **We** will only refuse to give **our** consent if it is reasonable for **us** to do so.

## 12 OUR RIGHTS AND REMEDIES

- 12.1 **Our** power of sale arises on the date of the **standard security**. However, **we** will only exercise **our** power of sale where condition 12.2 applies.
- 12.2 This condition applies at any time after:
  - (i) an event of default has occurred under these **conditions**; and
  - (ii) **we** have written to **you** demanding payment of the **debt**.

Where this condition applies, **we** may do any of the following without notice:

- (iii) take possession of the **property**;
- (iv) sell the **property**;
- (v) appoint a receiver;
- (vi) exercise the other enforcement powers which **we** have under the Conveyancing and Feudal Reform (Scotland) Act 1970 as amended.

If **we** do any of these things interest will continue to be charged on the **debt** or any outstanding **debt** following a sale of the **property**.

12.3 **Our** powers under the Conveyancing and Feudal Reform (Scotland) Act 1970 as amended and under the general law are extended to allow **us** to do any of the following:

- (i) repair or improve the **property**;
- (ii) carry out building work at the **property** and apply for any planning permission or other consents which are needed for that purpose;
- (iii) grant, continue or surrender any leases, tenancies or licenses of the **property**. **We** can also use any income from doing so towards paying off the **debt**;
- (iv) if the **property** is let, **we** can:
  - (a) bring the lease to an end;
  - (b) agree with the tenant to change the terms of the lease;
  - (c) accept a surrender of the lease;
- (v) if **you** hold the **property** on a shared ownership lease, **we** can buy the freehold or further shares in the lease, or accept a further lease or direct that these interests be transferred to any buyer of the **property**.

However, **we** will only exercise the extended powers which **we** have under this condition where it is reasonable for **us** to do so to protect the **property** or to sell it on favourable terms, and **we** may add any costs **we** incur to the **debt**.

12.4 If **we** take possession of the **property** then:

- (i) **we** may as **your** agent remove, store, sell or otherwise deal with any goods or animals which are on or come on to the **property**. Any expense **we** incur in doing this will be added to the **debt**. **We** will not be responsible for any loss or damage caused by **our** doing this unless **we** fail to take reasonable care, nor will **our** doing this give **us** any charge over any goods or animals at the **property**;
- (ii) if the **property** is let, **we** may collect any rent being paid by the tenant and use it towards paying off the **debt**.

- 12.5 If **we** appoint a receiver:
- (i) the receiver will not have to use the money he receives to pay off interest before capital, or otherwise have to pay off the **debt** in any particular order;
  - (ii) the receiver may employ and pay agents to carry out any work on his behalf;
  - (iii) the receiver may exercise any of **our** powers of enforcement (including any extended powers which **we** would be entitled to exercise under condition 12.3).

### **13 PROPERTY RIGHTS**

- 13.1 So far as **you** are able, **you** assign the **property rights** to **us**. **We** will re-assign them to **you** when the **debt** is paid off.
- 13.2 If **you** receive any money under any of the **property rights** you will hold the money on **our** behalf.
- 13.3 Any money which **you** or **we** receive under any of the **property rights** must be used to reduce or pay off the **debt**. This does not apply if the money is paid because of a defect in the **property** or damage to it and **you** decide instead to use the money to put right the defect or damage.
- 13.4 If an event of default occurs under these **conditions** **we** can transfer any of the **property rights** to another person.

### **14 TRANSFER OF RIGHTS**

- 14.1 **We** may transfer some or all of **our** rights under these **conditions** to another person at any time. **We** will only transfer **our** rights if:
- (i) the other person agrees to exercise the transferred rights in accordance with a statement of policy which **we** approve before the transfer; and
  - (ii) **we** reasonably think that the policy described in the statement is no less favourable to **you** than the policy **we** were following before the transfer.
- 14.2 Unless the terms of the transfer state otherwise, a transferee of **our** rights under these **conditions** will be able to exercise all the rights, powers and remedies which **we** could exercise before the transfer.
- 14.3 **You** will be bound by any statement of fact which **we** make in the terms of the transfer unless **we** make the statement without taking reasonable care.

### **15 POWER OF ATTORNEY**

- 15.1 **You** irrevocably appoint **us** and (as a separate appointment) any receiver **we** appoint to be **your** attorney and to do the following in **your** name and on **your** behalf:
- (i) exercise, enforce, defend or dispose of any of the **property rights** and receive any money which becomes payable under them or for them;
  - (ii) give any notice and take any proceedings which are needed to exercise, enforce or defend any of the **property rights**;

- (iii) execute any document and do any other thing which is needed to allow any of **our** rights, powers and remedies under the **standard security** to be effectively exercised, enforced or defended. This would include giving and receiving information with any second mortgagee, housing association or freeholder who has an interest in the **property**;
- (iv) execute any document and do anything needed to remedy any failure by **you** to meet these **conditions**.

## 16 GENERAL

- 16.1 **We** may give **you** notice, or make a demand, under these **conditions** by posting it addressed to **you** by name at the address **you** have given **us**, (in which case **we** can assume that **you** will have received the notice or demand 48 hours after posting.) Any correspondence, demand or written issued by electronic means (facsimile or email) shall be deemed received by **you** on the day it was sent.
- 16.2 The **offer document** and **standard security** shall be governed and interpreted according to the law of Scotland, and are subject to the jurisdiction of the Courts in Scotland. This will not, however, prevent **us** from seeking to enforce the provisions of the **offer document** and **standard security** in the courts of any other competent jurisdiction.
- 16.3 Each provision of the **offer document**, **standard security** and these **conditions** is severable which means that if ever any of them is or becomes invalid, illegal or unenforceable, the others will not be affected and will remain valid.
- 16.4 Any omission, failure or delay on **our** part in exercising any of **our** rights under the **offer document**, **standard security** or these **conditions** shall not prevent **us** from doing so either later or on another occasion.
- 16.5 **We** may record or monitor telephone calls in order to avoid possible misunderstandings and help maintain customer service.
- 16.6 **You** consent to **us** obtaining information contained in file documents held by **your** legal advisor which is relevant to the **standard security**, the **property** or the **mortgage**.
- 16.7 When all the **debt** due under the **mortgage** has been repaid to **us**, the **standard security** representing **our** security will be released.
- 16.8 **You** will not become a member of Nationwide Building Society by taking a **mortgage** from **us**.

In the following Appendix – the debtor means you, the creditor means us, security subjects and subjects means the property.

## **APPENDIX**

### **Conveyancing and Feudal Reform (Scotland) Act 1970**

#### **(as amended)**

#### **Schedule 3**

#### **The Standard Conditions**

##### **Maintenance and repair**

1. It shall be an obligation on the debtor -
  - (a) to maintain the security subjects in good and sufficient repair to the reasonable satisfaction of the creditor;
  - (b) to permit, after seven clear days notice in writing, the creditor or his agent to enter upon the security subjects at all reasonable times to examine the condition thereof;
  - (c) to make all necessary repairs and make good all defects in pursuance of his obligation under head (a) of this condition within such reasonable period as the creditor may require by notice in writing.

##### **Completion of buildings etc. and prohibition of alterations etc.**

2. It shall be an obligation on the debtor-
  - (a) to complete, as soon as may be practicable, any unfinished buildings and works forming part of the security subjects to the reasonable satisfaction of the creditor;
  - (b) not to demolish, alter or add to any buildings or works forming part of the security subjects, except in accordance with the terms of a prior written consent of the creditor and in compliance with any consent, licence or approval required by law;
  - (c) to exhibit to the creditor at his request evidence of that consent, licence or approval.

##### **Observance of conditions in title, payment of duties, charges, etc., and general compliance with requirements of law relating to security subjects**

3. It shall be an obligation on the debtor-
  - (a) to observe any condition or perform any obligation in respect of the security subjects lawfully binding on him in relation to the security subjects;
  - (b) to make due and punctual payment of any ground burden, teind, stipend, or standard charge, and any rates, taxes and other public burdens, and any other payments exigible in respect of the security subjects;
  - (c) to comply with any requirement imposed upon him in relation to the security subjects by virtue of any enactment.

### **Planning Notices, etc.**

4. It shall be an obligation on the debtor-
- (a) where he has received any notice or order, issued or made by virtue of the Town and Country Planning (Scotland) Acts 1947 to 1969 or any amendment thereof, or any proposal so made for the making or issuing of any such notice or order, or any other notice or document affecting or likely to affect the security subjects, to give to the creditor, within fourteen days of the receipt of that notice, order or proposal, full particulars thereof;
  - (b) to take, as soon as practicable, all reasonable or necessary steps to comply with such a notice or order or, as the case may be, duly to object thereto;
  - (c) in the event of the creditor so requiring, to object or to join with the creditor in objecting to any such notice or order or in making representations against any proposal therefor.

### **Insurance**

5. It shall be an obligation on the debtor-
- (a) to insure the security subjects or, at the option of the creditor, to permit the creditor to insure the security subjects in the names of the creditor and the debtor to the extent of the market value thereof against the risk of fire and such other risks as the creditor may reasonably require;
  - (b) to deposit any policy of insurance effected by the debtor for the aforesaid purpose with the creditor;
  - (c) to pay any premium due in respect of any such policy, and, where the creditor so requests, to exhibit a receipt therefor not later than the fourteenth day after the renewal date of the policy;
  - (d) to intimate to the creditor, within fourteen days of the occurrence, any occurrence which may give rise to a claim under the policy, and to authorise the creditor to negotiate the settlement of the claim;
  - (e) without prejudice to any obligation to the contrary enforceable against him, to comply with any reasonable requirement of the creditor as to the application of any sum received in respect of such a claim;
  - (f) to refrain from any act or omission which would invalidate the policy.

### **Restriction on letting**

6. It shall be an obligation on the debtor not to let, or agree to let, the security subjects, or any part thereof, without the prior consent in writing of the creditor, and "to let" in this condition includes to sub-let.

### **General power of creditor to perform obligations etc. on failure of debtor and power to charge debtor**

- 7.
- (1) The creditor shall be entitled to perform any obligation imposed by the standard conditions on the debtor, which the debtor has failed to perform.
  - (2) Where it is necessary for the performance of any obligation as aforesaid, the creditor may, after giving seven clear days notice in writing to the debtor, enter upon the security subjects at all reasonable times.
  - (3) All expenses and charges (including any interest thereon), reasonably incurred by the creditor in the exercise of a right conferred by this condition, shall be recoverable from the debtor and shall be deemed to be secured by the security subjects under the standard security, and the rate of any such interest shall be the rate in force at the relevant time in respect of advances secured by the security, or, where no such rate is prescribed, shall be the bank rate in force at the relevant time.

### **Calling-Up**

8. The creditor shall be entitled, subject to the terms of the security and to any requirement of law, to call-up a standard security in the manner prescribed by section 19 of this Act.

### **Default**

9.
  - (1) The debtor shall be held to be in default in any of the following circumstances, that is to say-
    - (a) where a calling-up notice in respect of the security has been served and has not been complied with;
    - (b) where there has been a failure to comply with any other requirement arising out of the security;
    - (c) where the proprietor of the security subjects has become insolvent.
  - (2) For the purposes of this condition, the proprietor shall be taken to be insolvent if -
    - (a) he has become notour bankrupt, or he has executed a trust deed for behoof of, or has made a composition contract or arrangement with, his creditors;
    - (b) he has died and a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 to divide his insolvent estate among his creditors, or his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986;
    - (c) where the proprietor is a company, a winding up order has been made with respect to it, or a resolution for voluntary winding-up (other than a members' voluntary winding-up) has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.

### **Rights of creditor on default**

10.
  - (1) Where the debtor is in default, the creditor may, without prejudice to his exercising any other remedy arising from the contract to which the standard security relates, exercise, in accordance with the provisions of Part II of this Act and of any other enactment applying to standard securities, such of the remedies specified in the following sub-paragraphs of this standard condition as he may consider appropriate.
  - (2) He may proceed to sell the security subjects or any part thereof.
  - (3) He may enter into possession of the security subjects and may receive or recover feu duties, ground annuals or, as the case may be, the rents of those subjects or any part thereof.
  - (4) Where he has entered into possession as aforesaid, he may let the security subjects or any part thereof.
  - (5) Where he has entered into possession as aforesaid there shall be transferred to him all the rights of the debtor in relation to the granting of leases or rights of occupancy over the security subjects and to the management and maintenance of those subjects.
  - (6) He may effect all such repairs and may make good such defects as are necessary to maintain the security subjects in good and sufficient repair, and may effect such reconstruction, alteration and improvement on the subjects as would be expected of a prudent proprietor to maintain the market value of the subjects, and for the aforesaid purposes may enter on the subjects at all reasonable times.
  - (7) He may apply to the court for a decree of foreclosure.

### **Exercise of right of redemption**

11.

- (1) The debtor shall be entitled to exercise his right (if any) to redeem the security on giving notice of his intention so to do, being a notice in writing (hereinafter referred to as a "notice of redemption").
- (2) Nothing in the provisions of this Act shall preclude a creditor from waiving the necessity for a notice of redemption, or from agreeing to a period of notice of less than that to which he is entitled.
- (3)
- (a) A notice of redemption may be delivered to the creditor or sent by registered post or recorded delivery to him at his last known address, and an acknowledgement signed by the creditor or his agent or a certificate of postage by the person giving the notice accompanied by the postal receipt shall be sufficient evidence of such notice having been given.
- (b) If the address of the creditor not known, or if the packet containing the notice of redemption is returned to the sender with intimation that it could not be delivered, a notice of redemption may be sent to the Extractor of the Court of Session and an acknowledgement of receipt by him shall be sufficient evidence of such notice having been given.
- (c) A notice of redemption sent by post shall be held to have been given on the day next after the day of posting.
- (4) When a notice of redemption states that a specified amount will be repaid, and it is subsequently ascertained that the whole amount due to be repaid is more or less than the amount specified in the notice, the notice shall nevertheless be effective as a notice of repayment of the amount due as subsequently ascertained.
- (5) Where the debtor has exercised a right to redeem, and has made payment of the whole amount due, or has performed the whole obligations of the debtor under the contract to which the security relates, the creditor shall grant a discharge in the terms prescribed in section 17 of this Act.

12. The debtor shall be personally liable to the creditor for the whole expenses of the preparation and execution of the standard security and any variation, restriction and discharge thereof and, where any of those deeds are recorded, the recording thereof, and all expenses reasonably incurred by the creditor in calling-up the security and realising or attempting to realise the security subjects, or any part thereof, and exercising any other powers conferred upon him by the security.

### **Interpretation**

In this Schedule, where the debtor is not the proprietor of the security subjects, "debtor" means "proprietor", except

- (a) in standard conditions 9(1),10(1) and 12, and
- (b) in standard condition 11, where "debtor" includes the proprietor.

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