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**Solicitors**

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25 January 2012

Dear Anthony

**Chain Mender Limited's ("the Company's") Non-Recourse Finance Product**

1. **Product**

- 1.1 The Company is proposing to offer members of the public ("Customers") a product ("the Product") under which Customers have the ability to access a fall back price for their existing home ("the Property") should they be unable to sell their Property for more than the fall back price. The fall back price will be non-recourse finance ("the Finance"). The Customer does not have to draw down the Finance. If the Customer chooses to draw down the Finance during its availability period they must grant the Company a first legal mortgage over the Property as a condition precedent to draw down. The Property must be vacant at the time the legal mortgage is granted. In this way the legal mortgage will not be a Regulated Mortgage Contract for the purposes of the Financial Services and Markets Act 2000.
- 1.2 The Customer will not be personally liable for repaying the Finance, the Finance will be repaid from the sale proceeds of the Property. The Customer will authorise the Company to sell the Property in the Customer's name and on its behalf. Where the sale proceeds of the Property are insufficient to repay the Finance, the Customer will not be responsible for any shortfall. Where the sale proceeds of the Property exceed the amount of the Finance, the Customer will be entitled to a share of the surplus proceeds after deducting the Company's sale costs.
- 1.3 The Customer will have the ability to voluntarily prepay the Finance at any time without penalty.
- 1.4 The Product will be available via selected Estate Agents. The Company and the Estate Agents will provide information to Customers on the Product but will not recommend that a Customer enters into the Product.

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- 1.5 The documentation for the Product has not yet been finalised. One possibility is that the Finance will be Shari'a compliant bridging finance in which case the documents will have to be reviewed and approved by the Company's Shari'a advisory board.

2. **Confirmation Required**

- 2.1 You have asked me to confirm that:

- (a) the Finance as outlined above will not be successfully challenged under the Unfair Terms in Consumer Contracts Regulations 1999 ("the Regulations"); and
- (b) the Product as outlined above will not be successfully challenged on the basis that it has been mis-sold in that the Company or the Estate Agents will have misrepresented or misled Customers about the characteristics of the Product.

3. **The Regulations**

- 3.1 The Regulations apply to standard terms (i.e. those which have not been individually negotiated) ("the Standard Terms") in contracts with consumers (i.e. non-corporate persons acting for purposes outside their business). The Regulations require that the Standard Terms are in plain, intelligible language.
- 3.2 A Standard Term which is "unfair" is not binding on a Customer. A Standard Term is unfair if "*contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer*".
- 3.3 There are some exceptions to the fairness test notably core terms that set the price or describe the main subject matter of the contract (such as the goods or services to be supplied). The Regulations do not apply to such core terms provided they are in plain, intelligible language. The Courts will interpret such core terms narrowly.
- 3.4 Schedule 2 to the Regulations (copy attached) sets out a "grey list" of terms that might be regarded as unfair. This list is not exhaustive, nor is it conclusive. The terms in Schedule 2 are generally those that take away rights which the consumer would otherwise have under the general law or give rights against the consumer that the supplier would not otherwise have under the general law.
- 3.5 From Court decisions and FSA guidance "good faith" includes expressing terms fully, clearly, legibly and proportionately. So, for example, terms that are disadvantageous to the consumer should not be given less prominence than those that appear advantageous to the consumer. "Plain, intelligible language" means intelligible to ordinary members of the public.
- 3.6 Under the Regulations the fairness of a contractual term shall be assessed taking into account the nature of the goods or services for which the contract was concluded, all circumstances surrounding the conclusion of the contract and all other terms of the contract. Ultimately it will be for a Court to determine whether or not a Standard Term is unfair.

#### 4. **Applying the Regulations**

- 4.1 As mentioned above the documentation for the Product has not been finalised. Accordingly I can only consider if in principle the Finance as outlined above would be unfair under the Regulations.
- 4.2 The Finance is unlikely to be a core term within the Regulations and accordingly would be subject to the unfairness test. It is not intended that the Finance would take away rights which the Customer would otherwise have under the general law or give rights against the Customer that the Company would not otherwise have under the general law.
- 4.3 Subject to the assumptions in Point 4.4 below, and given the following key features of the Finance I don't believe the Finance would "*contrary to the requirement of good faith, cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the*" Customer;
- (a) the purpose of the Product is to assist the Customer in accessing the Finance, the Company is not lending with the view of owning the Property;
  - (b) the Customer has the choice of whether or not to draw down the Finance;
  - (c) where the sale proceeds of the Property are insufficient to repay the Finance the Customer will not be responsible for any shortfall; and
  - (d) where the sale proceeds of the Property exceed the amount of the Finance, the Customer will be entitled to a share of the surplus proceeds after deducting the Company's sale costs.
- 4.4 I am assuming that in the final documentation for the Product will be expressed in plain intelligible language and will be expressed fully, clearly, legibly and properly.

#### 5. **Mis-selling**

- 5.1 Neither the Company nor the Estate Agents will recommend the Product to Customers, they will only provide information to Customers on the Product. Assuming that this information is based on documents which accurately reflect the Product, I don't believe the Product will be capable of being successfully challenged as having been mis-sold.

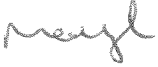
#### 6. **Limitations**

- 6.1 This confirmation is
- (a) based on the Product and Finance detail envisaged at the date of this letter set out in Point 1 above;
  - (b) is confined to matters of English law in force at the date of this Letter: and

- (c) given for the sole benefit of the Company and can not be relied on by anyone else.

Regards

Yours sincerely

A handwritten signature in cursive script, appearing to read "meryl".

Meryl Morgan, Partner  
**on behalf of Morgan Cole LLP**

Email: [meryl.morgan@morgan-cole.com](mailto:meryl.morgan@morgan-cole.com)

**SCHEDULE 2****INDICATIVE AND NON-EXHAUSTIVE LIST OF TERMS WHICH MAY BE REGARDED AS UNFAIR****Regulation 5(5)****1**

Terms which have the object or effect of—

- (a) excluding or limiting the legal liability of a seller or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller or supplier;
- (b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him;
- (c) making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realisation depends on his own will alone;
- (d) permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract;
- (e) requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation;
- (f) authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract;
- (g) enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;
- (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express his desire not to extend the contract is unreasonably early;
- (i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
- (j) enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract;
- (k) enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided;
- (l) providing for the price of goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;
- (m) giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract;

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- (n) limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality;
- (o) obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his;
- (p) giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement;
- (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

## 2

### Scope of paragraphs 1(g), (j) and (l)

- (a) Paragraph 1(g) is without hindrance to terms by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof immediately.
- (b) Paragraph 1(j) is without hindrance to terms under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately.  
  
Paragraph 1(j) is also without hindrance to terms under which a seller or supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

- (c) Paragraphs 1(g), (j) and (l) do not apply to:

- transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the seller or supplier does not control;

- contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency.

- (d) Paragraph 1(1) is without hindrance to price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.

## NOTES

### Initial Commencement

#### ***Specified date***

Specified date: 1 October 1999: see reg 1.

Source  [UK Parliament SIs 1990-1999]

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