THE MACFARLANE TRUST

EQUITY SHARING MORTGAGE

PURCHASE OF PROPERTY

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These notes are designed to be helpful and informative, and contain the terms and conditions upon which an offer of an Equity Sharing Mortgage would be made by the Macfarlane Trust. They do not in themselves constitute an offer or create any rights. They should be read carefully and kept for future reference. Each applicant should also seek independent legal advice.

1. ELIGIBILITY

To be eligible to apply to the Macfarlane Trust for an equity sharing mortgage a person must be suffering from haemophilia, be HIV positive, and registered with the Macfarlane Trust. Such a person must be proven to the satisfaction of the Trustees to be in a position of financial hardship as a direct consequence of being HIV positive, though not exclusively so and, when no other accommodation is available, in need of financial assistance for the purchase of private accommodation as a residence for the borrower and (if applicable), a dependant spouse, any dependant child, and (where circumstances demand) any other person approved by the Trust. Such first mentioned person is described herein as the 'borrower'.

In exceptional cases the Trust may be prepared to make a loan for the benefit of a person described above who, by reason of age, is a minor. The loan would be made to the parent as Trustee who has the care and custody of the minor, which Trustee would assume the responsibility for observing the covenants and conditions of the loan, for and on behalf of the minor as borrower. For the avoidance of doubt, it should be understood that the loan would be repayable upon the minor ceasing to occupy the property for whatever reason. Paragraph 7A is modified accordingly.

2. EQUITY SHARE

The key feature of the Trust's policy in granting a mortgage loan is the Trust's right (in return for not charging interest) to participate in the value of the property. Equity sharing means that upon the occurrence of certain events (see below) the Trust will be entitled to a return of its money plus a share of any appreciation in the capital value of the property, which share will be the same proportion as the loan made by the Trust bears to the total of the original funding. For example, if the property cost £40,000 of which half ie. £20,000 was provided by way of loan from the Trust, and the property was sold for £60,000, the capital repayment to the Trust would be £20,000 (the original loan) plus £10,000 (half the increase in value), a total of £30,000. The remaining £30,000 would be available to the borrower. By way of further and exceptional example, if the Trust had provided the whole of the finance to purchase a property and it was sold the Trust would, on sale, expect to be given the whole of the proceeds.

In the event that upon redemption of the Trust's investment the property is valued or sold for less than it cost, the Trustees will share the loss in the same proportion as the Trust would have shared a capital appreciation, provided such loss is not attributable to wilful neglect. Hence the Trust will insist, at the time of making an advance, and if appropriate at the time of redemption, that a valuation is made by a Chartered Surveyor appointed by the Trust, and that proper insurance and care is at all times maintained on the property.

In the mortgage deed (legal charge) the capital sum due to the Trust on redemption will be defined as the 'Equity share'. It will comprise the cash value of the original loan and an additional sum (if the property has appreciated in value) which together represent a percentage share in the value of the preperty at the time of redemption the same as that extablished at the time the mortgage loan was made (unless subsequently adjusted by agreement between the Trust and the borrower as provided herein). It will be expressed in the Legal Charge. In the first example given above the Equity share due to the Trust on redemption would be 50% of the sale price (i.e. 30,000).

3. THE LOAN

The Trustees will consider granting an equity sharing mortgage loan on property which the Trustees consider suitable to meet the need of the borrower. Such mortgage finance is available only for the purchase of a property.

The property in respect of which the advance is to be made should be within the means of the borrower to maintain (including the payment of rates, property insurance and general maintenance), and an advance may not be made if, in the opinion of the Trustees, the outgoings on the property are not within the means of the borrower or are likely to be in excess of the income of the borrower.

It is also the wish of the Trust that ownership of the property should be shared with the borrower to establish an equity interest on the part of the borrower. Accordingly, any loan made available by the Trust will not, save in an exceptional case, exceed 80% (eighty per cent) of a valuation given by a Chartered Surveyor appointed by the Trust, and the minimum capital sum that the borrower will be required to provide by way of investment in the property will be the greater of:-

A) £5,000 (Five thousand pounds)

B) 20% (twenty percent) of the purchase price

C) The purchase price less 80% of the Trust's Surveyor's valuation.

4. INTEREST

No interest is payable on the loan, in consideration of which the borrower will grant to the Trust the equity share in the property referred to above.

5. INCOME AND OTHER BORROWING

When an application for a loan is made the Trustees will require, amongst other items, details of the current and anticipated income of the borrower to enable the Trustees to determine if the costs of the maintenance and other charges associated with home ownership are within the means of the borrower.

The Trust will not normally make an advance for the purchase of property if the borrower intends to use, for the same purpose or for improvements, other borrowings which require a charge to be registered against the property. If, for special and exceptional reasons, this condition is waived, the Trust will require the borrower to provide full details of any other borrowing, and reserves the right to discuss with any other lender the arrangements by which the Trust will participate in equity share ownership of the property.

6. OTHER PAYMENTS FROM THE TRUST

In determining the amount of any loan the Trustees may have regard to any other payment made, or being made, by the Trust for the benefit of the borrower or dependants.

7. REPAYMENT OF LOAN

Repayment of the loan (the 'Equity share' will be required upon the occurrence of any one of the following events:

A) On the death of the borrower: PROVIDED that if there is a surviving spouse who was, at the time of death, living with the borrower the Trustees, in their sole discretion and having paid due regard to all the circumstances then prevailing, will normally defer the right of the Trust to receive repayment of the loan for such period as the Trustees alone shall determine so as to enable the surviving spouse, any dependent child, and any other dependent person approved by the Trust, to continue to occupy the property, subject to the proper performance of the covenants contained in the mortgage deed. Any such discretion shown on the part of the Trust shall not in any way invalidate or prejudice the rights of the Trust as expressed in this document or the mortgage deed.

B) Upon sale of the property or foreclosure.

C) Upon any major change in the family circumstances, or change in occupation, such as would arise in the event of separation, divorce, or remarriage of a surviving spouse.

D) Upon destruction of the property by fire, accident or act of God: (against which the Trust requires the property to be insured adequately).

E) Upon compulsory purchase of the property.

F) If the property is occupied as a permanent residence by any person not approved by the Trust.

G) Upon an improvement in the financial means of the borrower and/or dependants in occupation, which, in the opinion of the Trustees, is considered adequate to justify a demand for repayment of the whole or part of the loan, with the object of enabling the Trustees to respond better to the needs of other persons for whose benefit the Trust is established.

H) Upon failure on the part of the borrower to perform the covenants contained in the mortgage deed.

I) If the borrower shall enter into any composition or arrangement with or for the benefit of creditors, or commit any act of bankruptcy.

J) Upon expiry of any leasehold period, if the property is not freehold.

K) Upon a request from the borrower made at any time to repay the whole or a major part of the loan. Any part repayment must be in amounts of not less than 10% (ten per cent) of the value of the property determined by a Chartered Surveyor appointed by the Trust at the time of part repayment and, if greater than 10%, then in multiples of 5% (five per cent) of the said value.

L) Upon demand if, in their sole discretion, the Trustees decide reasonably that the borrower no longer has need of the property.

M) Upon expiry of the period stated in the offer (which will not in any event exceed twenty five years) if none of the foregoing events have occurred.

The Trust must be advised immediately upon the happening of any of the events aforementioned. In the event that the loan (Equity share) is redeemed other than by way of sale of the property, it will be necessary for the borrower and the Trust to agree the current value of the property so that the Trust receives its proper share of the capital appreciation in value of the property to which it is entitled.

8. LEGAL OWNERSHIP (AND OCCUPATION)

The Trust will require the names of all persons who, with the approval of the Trust, are to occupy the property, and the Trust may also require the legal ownership of the property to be registered in the joint names of the borrower and any othe person prescribed by the Trust who is in occupation.

9. THE PROPERTY

The title of the property must be acceptable to the Trust, and free of encumbrances. The borrower must obtain vacant possession and personally reside in the property.

The property may be a house, flat, or bungalow in the United Kingdom of Great Britain and Northern Ireland usually having not more than 3 bedrooms, and normally of conventional brick and block construction which has been well built and maintained. Houses and Bungalows should be freehold. A Flat may be leasehold but must have an unexpired term of not less than 80 years. The grant of a loan will not imply any warranty on the part of the Trust that the purchase price or value of the property is reasonable. Insurance on the property must be maintained in a manner satisfactory to the Trust.

It will be necessary for a comprehensive survey to be carried out on the property by a Chartered Surveyor appointed by the Trust, and a copy of his report forwarded to the Trust. If the surveyor identifies any significant structural, electrical, drainage, or other defects, repairs or maintenance work which requires to be undertaken, it will be a condition of any mortgage advance that all such works be carried out within a year of the date of the loan by the Trust and to a satisfactory standard. Before any building improvement works are carried out the Trust's prior written agreement must be obtained. The cost of all necessary work as mentioned above will be taken into account when determining the amount of the loan that the Trust is prepared to make.

10. COVENANTS

The borrower will be required to perform all the covenants contained in the mortgage deed (Legal charge) to safeguard the Trust's capital investment in the property. Among them will be obligations to keep the property in good repair and fully insured. Failure to perform the covenants may cause the Trust to take steps to recover its loan.

11. SUB LETTING

The subletting of property in which the Trust has an equity share is strictly forbidden (unless the prior written consent of the Trust has been obtained).

12. MAINTAINING THE PROPERTY

All the maintenance and redecoration work on the property will be the responsibility of the borrower. As indicated above, there will be a number of covenants in the mortgage deed obligating the borrower to keep the property in good repair. Although the Trustees hope they will never have to use the power, the Trust will be given the right, if the borrower is in default, to enter the property and carry out any necessary work at the borrower's expense.

There may at times be special or abnormal repairs which remain the responsibility of the borrower as owner of the property, but the Trust may be able to suggest other organisations which might offer financial help. However, the borrower must expect that anyone offering grants or loans for this type of work is likely to ask detailed questions about the borrower's financial and health situation before help is offered.

If work of a substantial nature becomes necessary it is essential that the borrower first discusses the matter with the Trust. There may be financial implications that will effect the equity sharing arrangements, and the property may have to be revalued (at the borrower's expense) for the purpose of adjusting the equity share. Failure to do this may result in partial loss of the borrower's share in any sale proceeds. For substantial work the Trust will require the borrower to use the services of a Chartered Surveyor appointed by the Trust and to request that he provides valuations of the property both before and after the works have been carried out. The fee will be payable by the borrower.

13. INSURING THE PROPERTY

An important aspect of home ownership is having adequate insurance protection against loss and destruction by fire and other hazards both for the property and personal possessions. It is prudent practice to ensure that the cover provided by the insurance policy is regularly reviewed and revised. The property and contents are likely to be the borrower's largest insurable asset, and the borrower should be satisfied - in the event of a loss being suffered- that the insurance company will meet the full cost of any claim. Before settlement an insurer will check not only the claim but also the proposal on which cover is based. Factors taken into account include:

a) Has adequate allowance been made for professional fees and costs that will be incurred in the event of serious loss?

b) Does the insured sum represent the estimated full reinstatement value of the property, index-linked to recognise inflation?

As the loan made available by the Trust is provided in the form of an equity sharing mortgage, the Trust will take a close interest in any insurance protection arrangements made for the property itself. The Trust will require the policy to be in the joint names of the borrower and the Trust. The Trust will ask to examine the policy and also require either the borrower or the insurer to provide details of the cover and evidence that the premium has been paid each year. The mortgage deed will contain a number of covenants to give effect to these insurance requirements, including the prompt payment of the premiums due.

14. FEES AND COSTS

The Trust will share with the borrower, in direct proportion to the equity share in the property, legal costs and surveyor's fees arising from the purchase. Upon a sale of the property the Trust will share with the borrower, in direct proportion to the equity share in the property, legal and estate agents fees incurred in the sale. The Trust expects costs to be kept to a minimum.

15. HELP WITH EXPENDITURE

The borrower is reminded that the State provides a number of useful allowances which can be of value. The Trustees also expect that before an application for an Equity sharing mortgage is made, the borrower will first seek any other means of assistance for relief, for which purpose the Trustees will provide help. The borrower is, therefore, urged to make enquiries at the appropriate time.

16. PERIOD FOR COMPLETION

If the mortgage is not completed within a period of six months immediately following the issue of the offer the Trust reserves the right to withdraw. The Trust will be prepared, where necessary, to consider a fresh application in respect of the same transaction.

17. IMPORTANT NOTE

The borrower is strongly advised to seek independent legal advice before proceeding with the loan. It is essential that the borrower and dependants who are to be in occupation clearly understand the terms and conditions of the loan. The borrower is therefore recommended to consult a solicitor. In no circumstances where financial help is required by way of loan from the Trust should an agreement or obligation, written or otherwise, be entered into for the purchase of a property which might be construed as legally or morally binding, without the Trust's prior approval. Neglect of this warning could involve the borrower in personal financial liability if the Trust was unable to grant a loan.

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