

CARE ACT 2014
DEFERRED PAYMENT AGREEMENT

THE COUNTY COUNCIL OF DURHAM

and

PROPERTY:

Ref: CAS/008900/ACH

This Agreement is made between

- (1) **THE COUNTY COUNCIL OF DURHAM** (“the Council”) of County Hall Durham DH1 5UL and
- (2) (“you”, “the borrower”), of

1. Interpretation

1.1 In this agreement, the following words have the following meanings:

- Accommodation:** the care home identified in the Schedule, as it may be amended in accordance with term 2.7 below;
- Agreement:** the terms set out in this document and numbered 1 to 15 and the Schedule;
- Care Charges:** those charges for care and/or support which are specified by description and weekly amount in the Schedule, as they may be amended in accordance with any of terms of this agreement.;
- Costs:** the Council’s reasonable administrative costs reasonably incurred in respect of this Agreement, which are payable under term 4 below;
- Debt:** the balance from time to time of the Loan which has not yet been repaid, together with any interest and Costs already charged and not yet paid;
- Loan:** the total amount, at any time, which has been lent under this Agreement to pay Care Charges and the words “lend”, “lending” and “lent” are used in this Agreement to describe the act of lending any amount to pay a Care Charge or Care Charges to the Care Provider
- Lending Limit:** the limit on lending as set out in the Schedule (see also term 2.2);
- Property:** the property and any other assets identified on page 1 of this Agreement;

Rate of Interest: the rate of interest stated in the Schedule, as it may be varied under term 3.4.

- 1.2 Where a reference is made in this Agreement to any legislation or legislative provision, it includes reference to that statute or statutory provision as it may from time to time be amended, extended or re-enacted.
- 1.3 Where the context allows or requires, words in the singular include the plural and words in the plural include the singular.
- 1.4 Where a reference is made in this Agreement to your income, it means your income as calculated in accordance with regulations made under section 17 of the Care Act 2014.

2. How the Loan will be made

- 2.1 The Council agrees, subject to the Lending Limit and to the limits related to income, as set out in 2.8 and 2.10 below, to lend amounts to you, the borrower. Each amount will be subject to a maximum of the weekly Care Charge specified in the Schedule or, if less, the weekly care charge which is actually payable and which meets the Description of Care Charges in the Schedule. The Loan will be made by lending you the amounts payable in care charges by paying those amounts directly to you: lending you the amounts payable in Care Charges to pay to your care provider at the times when they become payable. The details of the Accommodation and the Care Charges are set out in the Schedule at the end of this Agreement, together with the Lending Limit.
- 2.2 If the Loan would exceed the Lending Limit as a result of the Council lending an amount that it would otherwise be due to lend for Care Charges, the Council will not lend that amount. This means, for example, that if 90% of the value of the Property, less the amount of any indebtedness secured over the Property by a charge with priority over the Council's security and less £14,250, is £70,000, and your loan is already a total of £70,000, you will not be lent any more unless or until the value of the Property increases. However, where, due to a fall in the value of the Property, the Loan comes to exceed the Lending Limit on a date which falls after the date on which the Council last lent an amount in respect of Care Charges and on or before the date on which it is next due to lend an amount

in respect of Care Charges, the Council will lend on that next occasion even though lending on that occasion will result in the Loan further exceeding the Lending Limit. After that, the Council will not lend any further amount unless or until the value of the Property increases.

- 2.3 The Council will pay the amount of the Care Charges to you, the borrower, provided always that in the event that the Council discovers that any amount lent under this Agreement has not been used to pay for Care Charges, the Council may become entitled to demand immediate repayment of that amount from you under term 5.2, together with interest on that amount, calculated in accordance with term 3 below.
- 2.4 If there is any change in the frequency of the Care Charges or any change in the amount of the charges which the care provider is charging you for care, you must inform the Council as soon as reasonably practicable (unless the charges are charges payable to the Council itself) giving advance notice of any such change to the Council whenever you have advance notice of the change.
- 2.5 You may, at any time, pay the Care Charges, or part of the Care Charges, yourself, when they become payable, in which case you must give advance notice to the Council of the amount you are going to pay separately (“your contribution”), specifying whether your contribution is to be made on only one occasion or on a specified number of occasions or on each occasion when a Care Charge becomes payable until further notice.
- 2.6 The Council will not be required to change the frequency with which, or the amounts in which, it lends under this Agreement any sooner than the fourteenth day after the Council receives notice of any change in the frequency with which or the amounts which, as applicable, you are charged, or which you require the Council to lend under this Agreement.
- 2.7 If you move from the Accommodation into another care home or other supported living accommodation, that new accommodation will be substituted as the Accommodation, and the care charges payable in respect of the new Accommodation (or if less that part of those new care charges which are equal to the existing Care Charges) will be substituted as the Care Charges if they meet the description which is given of the Care Charges in the Schedule or,

where they do not meet that description, if the Council is either required under the Care Act 2014 to agree to lend in respect of those care charges or permitted to do so under the Care Act 2014 and willing to do so. The times for payment of the Care Charges will be substituted for the times shown in the Schedule once at least fourteen days' notice of those times has been given to the Council.

2.8 The amount of the weekly Care Charge for which the Council is to lend, as set out in the Schedule, takes into account the fact that your income exceeds £144 per week and the fact that the Council requires you to contribute to the payment of each weekly care charge, as it falls due, the amount by at least the amount by which your income exceeds £144 in that week. The weekly Care Charge for which the Council will lend will be increased by an amount which is equivalent to any reduction in your income up to the maximum of the weekly care charge which is actually payable and which meets the Description of Care Charges in the Schedule, and subject to the Lending Limit.

2.9 The Council may, upon giving you at least 30 days' written notice within 30 days after:

(a) It comes to the attention of the Council that your income has exceeded £144 in any week while this Agreement is subsisting, or

(b) Where, at or since the date of this Agreement, your income has already exceeded £144 per week, it comes to the attention of the Council that your income has further exceeded £144 in any week while this Agreement is subsisting,

require you to repay the amount, if any, by which that part of the Loan already provided under this Agreement for Care Charges in respect of that week exceeded the difference between the care charges actually payable and the amount by which your income exceeded £144 in that week.

2.10 The Council may, upon giving you at least 30 days' written notice within 30 days after it comes to the attention of the Council that your income is to exceed,

or further exceed, £144 in any week while this Agreement is subsisting, reduce the amount that it will lend in respect of the care charges for each subsequent week that your income is so to exceed £144 by the amount by which your income is so to exceed £144 in that week and the amount of the Care Charge specified in the Schedule will be amended accordingly.

2.11 The Council will not lend any further amount under this Agreement, even where the total amount of the Loan already provided is less than the Lending Limit, at any time when:

2.11.1 you are no longer receiving care and support in a care home or in supported living accommodation;

2.11.2 in the reasonable view of the Council your needs should no longer be met by the provision of care and support in a care home or in supported living accommodation;

2.11.3 you have failed to notify the Council as soon as reasonably practicable of any increase in your income;

2.11.4 you fail to provide the Council with evidence that the Property is adequately insured;

2.11.5 the Property can no longer be insured against all usual risks, unless there are reasonable grounds for concluding that the site value of the Property, disregarding any building on the Property, is adequate security for the Debt, together with such further lending as is to be provided.

2.11.6 you fail to maintain the Property in a reasonable condition to preserve the Property's value

2.12 The Council will give you at least 30 days' written notice of the date on which the Lending Limit will be reached unless it is not reasonably practicable to do so because, for example, the Lending Limit is reached by reason of a fall in the value of the Property.

2.13 Where the Council is to make the Loan by making payments to you to enable you to pay Care Charges to another care provider, you must pay the whole of the care charges that are payable by you to that care provider, including those Care Charges for which the Loan is to be made, and the Council's agreement to

make the Loan is conditional upon you paying those care charges when they fall due.

3. Interest

- 3.1 Interest will be charged daily at the daily equivalent of the Rate of Interest.
- 3.2 Interest will be paid in accordance with the Schedule, unless or until you give the Council at least 14 days' written notice that you wish to have the interest added to the Debt instead of paying it. If you do so, you may return to paying interest at any time by giving the Council at least 14 days' written notice that you wish to do so.
- 3.3 Interest will be added to the Debt daily, on the date when an amount is lent to you for Care Charges, unless the interest is paid before that date.
- 3.4 The Council may vary the Rate of Interest in accordance with the maximum rate which the Council is permitted to charge by regulations made under the Care Act 2014,

4. Costs and Interest on Costs

- 4.1 You must pay the Costs, estimates for some of which are set out in the Schedule.
- 4.2 A copy of the Council's current tariff of charges has been provided to you prior to this Agreement. The Council will give you notice of any changes to the tariff of charges by sending you a copy of the tariff whenever it is changed, and you may obtain a copy of the current tariff of charges on request at any time.
- 4.3 The Council will give you notice of any Costs incurred by the Council and if you do not reimburse the amount of those costs to the Council within 28 days after such notice is given, the amount of those costs will be added to the Debt and interest will be charged on the amount of those costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the costs was given to you until payment to the Council.

5. Repayment

- 5.1 The Debt is to be repaid to the Council on the earliest of the following dates:

- 5.1.1 the date of any sale or other disposal of the Property;
- 5.1.2 90 days after your date of death.
- 5.2 If the Council discovers that any part of the Loan has not been used to pay the Care Charges for which it was lent, then, unless the reason why you have not used that part of the Loan to pay the Care Charges is an unintended error which you are able and willing to have promptly corrected, the Council may give not less than 28 days' notice to you:
 - 5.2.1 demanding that you repay that part of the Loan, together with the interest payable on that part of the Loan in accordance with term 3 above; and/or
 - 5.2.2 to cancel the Council's commitment to lend any further amount under this Agreement.
- 5.3 If the Council gives notice to you in accordance with term 5.2.1, the part of the Loan referred to in the notice, together with the interest payable on that part of the Loan in accordance with term 3 above, will become immediately payable by you upon the expiry of the period of not less than 28 days which is stated in the notice.
- 5.4 If the Council gives notice to you in accordance with term 5.2.2, the Council's commitment to provide any further lending under this Agreement will be cancelled upon the expiry of the period of not less than 28 days which is stated in the notice.
- 5.5 If the Council provides any part of the Loan under this Agreement upon the mistaken assumption that it is required to provide that part of the Loan when in fact it is not and when you ought reasonably to realise that the Council is not required to provide that part of the Loan (because, for example, you are no longer living in the Accommodation) that part of the Loan will be immediately repayable to the Council, together with interest calculated in accordance with term 3 above.
- 5.6 If the Council provides any part of the Loan under this Agreement upon the mistaken assumption that it is required to provide that part of the Loan when in fact it is not and when it is not the case that you ought reasonably to realise that the Council is not required to provide that part of the Loan, that part of the Loan will be repayable to the Council, together with interest calculated in accordance

with term 3 above, upon the Council giving you not less than three months' notice to repay it.

6. Security

- 6.1 The Council's rights to repayment and to be paid interest and Costs under this Agreement are to be secured by a legal charge over the Property.

7. Possession and use of the Property

- 7.1 The Property must not be let or occupied by any person without the Council's prior written consent, which will not be unreasonably withheld provided that the Property is to be occupied upon an assured shorthold tenancy which enables an order for possession to be obtained, after the expiry of an initial term of no more than 6 months, upon one month's written notice.

8. Insurance and maintenance of the Property

- 8.1 The Council, or any appropriately qualified person acting on behalf of the Council, may, no more than once a year, and upon giving at least 14 days' notice to you or other owner of the Property, inspect the Property for the purposes of ascertaining whether the Property is being maintained in reasonable condition and/or whether there are works of maintenance and/or repair which should be undertaken to the Property in order to preserve or restore its value.
- 8.2 The Council, or any appropriately qualified person acting on behalf of the Council, may, upon giving not less than 14 days' notice to you, carry out such works of maintenance and/or repair as the Council reasonably considers should be undertaken to the Property in order to preserve or restore its value at or to a value which is adequate security for the Debt, together with a reasonable amount by which it is anticipated that the Debt will increase in the foreseeable future; provided that no more than 56 days and not less than 28 days before, you were given notice by the Council (or any appropriately qualified person acting on behalf of the Council) requesting that you carry out or have those works carried out, and those works have not been carried out to the reasonable satisfaction of the Council or the appropriately qualified person.

- 8.3 In the event that the Council has reasonable grounds to believe that works of maintenance and/or repair are or may be required as a matter of urgency, the notice requirements under 8.1 and 8.2 above are to be replaced with a requirement to take reasonable steps to notify you as soon as reasonably practicable.
- 8.4 The Council will give you notice of any reasonable Costs reasonably incurred by the Council in relation to the maintenance and/or repair of the Property and if you do not reimburse the amount of those Costs to the Council within 28 days after such notice is given, the amount of those Costs will be added to the Debt and interest will be charged on the amount of those Costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the Costs was given to you until payment to the Council.

9. Valuations

- 9.1 If at any time the Council has reasonable grounds for concluding that the Debt exceeds 70% of the value of the Property or 70% of the equity you hold in the Property, the Council may take reasonable steps to ascertain the value of the Property and in particular instruct a suitably qualified valuer to inspect the Property and to provide a report to the Council on the market value of the Property.
- 9.2 The Council will give you notice of any reasonable Costs reasonably incurred by the Council in obtaining a valuation report or otherwise ascertaining the value of the Property and if you do not reimburse the amount of those Costs to the Council within 28 days after such notice is given, the amount of those Costs will be added to the Debt and interest will be charged on the amount of those Costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the Costs was given to you until payment to the Council.

10. Keeping the Council informed

- 10.1 You must inform the Council as soon as reasonably practicable if any of the following happens:

10.1.1 any increase in your income;

- 10.1.2 there is any change to the amount or frequency of your Care Charges;
 - 10.1.3 you have not paid any Care Charge in full when it has become due (other than any which is payable to the Council or which the Council is to pay on your behalf under this Agreement);
 - 10.1.4 you cease to live in a care home or supported living accommodation;
 - 10.1.5 there is a change to your needs for care and support the effect of which is that you may no longer require your needs to be met by the provision of the Accommodation;
 - 10.1.6 a decision is taken to sell or otherwise dispose of the Property [or any of it].
- 10.2 You must, whenever asked to do so by the Council, provide evidence to the Council, as soon as reasonably practicable, that the Property is adequately insured against all usual risks. The Council will not request the provision of such evidence during a period in respect of which evidence has already been provided to the Council that the Property is adequately covered by an insurance policy, provided that evidence has also been provided to the Council that the premium and insurance premium tax payable for that policy have been paid.
- 10.3 If the Council makes the Loan by making payments to you, you must, whenever asked to do so by the Council, obtain and provide to the Council, as soon as reasonably practicable, evidence that you have made equivalent payments to a care provider in respect of care and support in the Care Home. The Council will not request the provision of such evidence more frequently than every three months.

11. Ending this Agreement

- 11.1 This Agreement has no fixed duration.
- 11.2 You may bring the Agreement to an end at any time by giving reasonable written notice to the Council and paying the whole of the Debt.
- 11.3 If you do not bring the Agreement to an end early under term 11.2 above, the Agreement will come to an end when the Debt is paid in accordance with term 5 above.

12. Statements

12.1 The Council will provide you with a written statement, informing the you of the amount which you would have to pay to the Council if you were to bring the Agreement to an end on the date on which the statement is sent or such later date as has been requested by you, and the amount of interest and Costs which have accrued since the Agreement was made:

12.1.1 on the 31 July and 31 December of each year ;

12.1.2 within 28 days of a request to the Council for such a statement made by you or on your behalf.

13. How notices or statements are to be given

13.1 Any notice or statement which the Council is to give, or may give, to you under this Agreement is to be given by sending the notice by first class prepaid post to you at the Accommodation or to such other person and at such address as has been agreed between the Council and you from time to time.

13.2 Any notice which you give to the Council under this Agreement is to be given by contacting the Financial Services Team or by sending the notice by first class prepaid post to the Financial Services Manager Room G 70 County Hall Durham DH1 5UL.

13.3 Any notice or statement which is sent by first class prepaid post is to be treated as having been served on the second day after it is posted, excluding Sundays and public holidays.

14. Applicable law

14.1 The interpretation, validity and performance of this Agreement shall be governed by the law of England and Wales.

15. Variation

15.1 Any variation to this Agreement must be in writing and signed both by the borrower and on behalf of the Council.

Borrower's signature

Please read this Agreement carefully, including all the terms set out above, the information set out below and the terms and information set out in the Schedule at the end of the Agreement. Only sign below if you understand and accept those terms and information.

Signed by the borrower:

Date of signature by the borrower:

Signed on behalf of the Council:

Name of person signing:

Position of person signing:

Date of signature on behalf of the Council and date of Agreement:

Missing payments

If you do not make payment when it falls due, legal proceedings may be issued against you for a judgment for the amount you owe and/or for possession of the Property. It could also make it more difficult or expensive for you to obtain credit in the future.

Complaints

If you are dissatisfied with any action or omission on the part of the Council under or in connection with this Agreement, in the first instance please write to Customer Services, Durham County Council, County Hall, Durham, DH1 5UQ or telephone 03000 267007. If your complaint is not resolved by the Council to your satisfaction, you may have a right of appeal to the Local Government Ombudsmen

SCHEDULE

Accommodation:

Description of Care Charges:

Charges which the Council considers to be necessary to meet the borrower's needs while the borrower is living in the Accommodation

Weekly Care Charge:

£

The Care Charges specified above are the proportion of the current Care Charges for which the Loan is to be provided by the Council under this Agreement. The total payable for your care and support while the borrower is living in the Accommodation may be more than the Care Charges shown above.

Date when first Care Charge to which this agreement relates will be incurred:

Lending Limit:

The lower of:

- (1) 90% of the market or surrender value or your beneficial interest in the Property less:
 - (a) the total amount of any indebtedness secured on that asset, or those assets, by security which has priority over the Council's security, and
 - (b) £14,250; and
- (2) INSERT MAXIMUM AMOUNT THE COUNCIL HAS AGREED TO LEND

Rate of Interest:

% subject to variation under term 3