

## DEFERRED PAYMENTS AGREEMENT

[\*see notes attached at **Appendix A** which form part of this Agreement\*]

### **PART A**

**THIS IS AN AGREEMENT which starts on**

.....**20..**

**And is made between:**

- (1) ..... ("the Resident") and
- (2) CHESHIRE EAST BOROUGH COUNCIL ... ("the Council") and
- (3) ..... ("the Mortgagee") and **[Optional]**
- (4) ..... ("the Co-owner") **[Optional]**

for the purpose of deferring residential care payments owed by the Resident to the Council and IT IS AGREED between the parties (which expression includes All Representatives of the Resident) that the arrangements and/or obligations as are set out and/or contained in the Agreement came into effect on the **day of** from which day all obligations have commenced.

### **1. RESIDENT'S AGREEMENT**

#### **1.1 The Property**

The Resident used to live in the following property as his/her only or main residence:

.....  
..... ("the Property") [and which is registered at the Land Registry with Title Absolute under Title Number [.....].]

The Resident has a beneficial interest in the Property [subject to a Legal Charge in favour of the Mortgagee] [and which is subject also to the beneficial interest of the Co-owner]. **Optional – delete items in square brackets if not applicable.**

## 1.2 The Care Home

The Resident has agreed for the Council to make arrangements for his/her residential accommodation, and for the Council, on the Resident's behalf, to enter into a contract with an appropriate care home to this effect under section 21 of the National Assistance Act 1948.

## 1.3 Delaying Payment of some of the Fees

The Resident understands that he/she is responsible for paying the care home's fees. However, the Resident cannot afford to pay the full fees now because his/her current income is insufficient. The Resident would like to pay some of the fees from now on and the rest of the fees in the future. Fee's include an initial advanced administrative fee of £400 to cover the Council's costs in setting up this agreement. This fee may form part of the deferred payment subject to individual circumstances.

## 1.4 Who pays what?

The Resident will pay his/her contribution to the Care Home fees from available income, as assessed by the Council.

The Council will pay the balance of the weekly charge to the Care Home.

The amounts payable under this Agreement will vary from time to time, as notified to the Resident by the Council.

The Resident will pay his/her administrative fee to Cheshire East Council from disregarded capital below the lower capital limit.

## 1.5 Ending the Agreement and Repaying the Council

The Resident understands that he/she can bring this Agreement to an end by giving notice to the Council at any time, in which case he/she will state the day on which the Agreement ends. The Resident will then repay the total amount that he/she

owes the Council up to that date. If the Resident does not, he/she agrees that the Council can charge interest at a rate of 5% per annum above the Bank of England's base rate, subject to base rate remaining below 7.5%. Should base rate increase to 7.5% interest will be charged at Bank of England's base rate plus 1% per annum.

The Resident understands that this Agreement will also end upon the date of his/her death, in which case he/she agrees that his/her estate will pay the total amount that he/she owes the Council up to that date within 56 days of his/her death. If the Resident's estate does not, he/she agrees that the Council can charge interest at a rate of 5% per annum above the Bank of England's base rate from the 57<sup>th</sup> day after the Resident's death, subject to base rate remaining below 7.5%. Should base rate increase to 7.5% interest will be charged at Bank of England's base rate plus 1% per annum..

#### 1.6 Placing a Legal Charge on the Property

The Resident agrees that the Council can place a Legal Charge on the Property as security for the money that the Council pays for him/her under this Agreement. The Resident agrees to the form of Legal Charge in Part B of this Agreement. The Resident has made evidence of his/her ownership of the Property available to the Council.

#### 1.7 No Other Beneficial Interest

The Resident confirms that there is no other beneficial interest whether by way of mortgage or otherwise affecting the property which will require the consent of any other third party to the creation of the Legal Charge which will be created by this Agreement. **[Optional – If this clause is applicable than the optional sections below entitled Mortgagee and Co-owners can be deleted]**

### 1.8 Independent Advice

The Resident has been advised by the Council to seek independent legal and financial advice before signing this Agreement.

The Resident acknowledges that before signing this Agreement **[he/she]** received independent legal advice from -----of ----- as to the terms and effects of this Agreement as set out in Schedule 1

## 2. MORTGAGEE'S AGREEMENT

The Mortgagee acknowledges and consents to the Resident entering into the terms of this Agreement and consents to the registration [at the Land Registry] [of a Land Charge at the HM Land Charges Registry in respect] of the Legal Charge will be created under the terms of this Agreement. **[Optional section – delete if no mortgagee]**

## 3. CO-OWNER'S AGREEMENT

**The Co-owner consents to the Resident entering into the terms of this Agreement. The Co-owner agrees that he/she will join as a party to the creation of the Legal Charge which will be created under the terms of this agreement. The Co-owner agrees that he/she will do all things necessary and sign all forms of consent appropriate to securing the registration of the Legal Charge in favour of the Council under the terms of this Agreement.**

**The Co-owner has been advised by the Council to seek independent legal and financial advice before signing this Agreement and in this context**

**'independent advice' means advice from an advisor who is neither related to nor acting on behalf of the Resident.**

**The Co-owner acknowledges that before signing this Agreement [he/she] received independent legal advice from -----of ----- as to the terms and effects of this Agreement as set out at Schedule 2**

**[Optional section – delete if no co-owner]**

#### **SCHEDULE 1**

#### **ADVISER'S CERTIFICATE – RESIDENT/RESIDENT'S AUTHORISED ATTORNEY/RECEIVER**

I confirm that:

1. I am a relevant independent legal and financial adviser as defined in the Acts (as defined in Appendix A which forms part of the Agreement between **[ insert name of resident]** ( The Resident) and ) and **[ insert name of co-owner or ( the Co-owner)]** and Cheshire East Borough Council to which this Certificate is annexed).
2. The **[Resident/ The Resident's authorised attorney/receiver]** has capacity to enter into this agreement
3. I have advised the **[Resident/ The Resident's authorised attorney/receiver]** of the terms and the effect of the Agreement

Adviser's signature .....

Adviser's name .....  
(*capitals*)

Title .....

Adviser's business address

## **SCHEDULE 2**

### **ADVISER'S CERTIFICATE – CO-OWNER/CO-OWNER'S AUTHORISED ATTORNEY/RECIVER**

I confirm that:

1. I am a relevant independent legal and financial adviser as defined in the Acts (as defined in Appendix A which forms part of the Agreement between [ **insert name of resident**]  
( The Resident) and [ **insert name of co-owner or ( the Co-owner)**]and Cheshire East Borough Council to which this Certificate is annexed).
2. [Co-Owner / The co-owner's authorised attorney/receiver] has capacity to enter into this agreement

3. I have advised the **[Co-Owner / The co-owner's authorised attorney/receiver]** of the terms and the effect of the Agreement

Adviser's signature .....

Adviser's name .....  
(*capitals*)

Title .....

Adviser's business address

**Signed:**.....

**Name:**.....

Resident or their authorised

Representative (attorney/receiver)\*

\*[Please state which].....

**Signed:**.....

**Name:**.....

Authorised Representative of the  
Mortgagee

**Signed:**.....

**Name:**.....

The Co-owner

**SIGNED by THE AUTHORISED SIGNATORY ]**  
**for on behalf of ]**





## **APPENDIX A**

### **\*Accompanying Notes to the Deferred Payments Agreement**

#### Legal Basis for this Agreement

The Council has made arrangements under section 21 of the National Assistance Act 1948 ("the 1948 Act") for the provision of residential accommodation for the Resident. The Resident's liability to pay has been assessed in accordance with sections 22 or 26 of the 1948 Act.

The Council considers that it is appropriate to enter into this agreement with the Resident in accordance with section 55 of the Health and Social Care Act 2001 ("the 2001 Act").

#### Section 1.1

If the Resident has a beneficial interest in any property (usually where they used to live before entering permanent residential care), the value of this will be taken into account when calculating how much the Resident must pay towards the cost of their care. By signing this Agreement and the attached form of Legal Charge, the deferred payments will be secured on the Property until the deferred payments are repaid to the Council.

#### Sections 1.3 and 1.4

The amount of the fees that can be deferred is:

The difference between

- (a) the payments that the Resident is liable to pay to the Council calculated in accordance with the National Assistance (Assessment of Resources) Regulations 1992 (as amended), and
- (b) the payments that the Resident is liable to pay the Council calculated in accordance with those Regulations but excluding the value of the Resident's beneficial interest in the Property
- (c) Following public consultation in 2010/11, an administrative fee will be introduced to cover the Council's costs in setting up deferred charge agreements, this should be paid at the start of the agreement from disregarded capital below the lower capital limit whenever possible, but may form part of the deferred agreement if the capital is not available to the resident, to be recovered at the end of the contract in accordance with the terms of this agreement.

for any period in which residential accommodation is received by the Resident between the start date of this Agreement and the date when the Agreement ends (see section 1.5).

The contribution referred to may be subject to change if :

- The cost of the placement increases
- The Resident's financial circumstances alter ie in April when the rates of state retirement pension and welfare benefits change.
- The Council review's its administrative charge to account for increased costs.

The Resident will receive an annual statement showing the deferred amount owing to the Council.

#### Section 1.5

The grounds on which a deferred payment agreement can be ended are set out in Section 55(4) of the 2001 Act and must be included in the Agreement. The Council is not allowed to terminate the Agreement, so there is no provision in the Agreement for this.

#### Section 1.6

The charge as Part B of the Agreement needs to be signed so the Council can place the charge on the Property. It is a condition of this Agreement that the Resident signs the Legal Charge to give the Council security for the deferred payments made by it for the Resident's residential accommodation. The charge will be removed when the Council has received the full amount owing to it under the Agreement.

#### Section 1.7

This clause is appropriate to be included in the Agreement when there is no mortgage on the Property and there is no Co-owner.

#### Section 1.8

The Council can provide details of advocacy and representation services through its local Social Services offices. Councils are also able to provide information about legal services available in the local area, ie the Citizens Advice Bureau.

## Section 2

This section should be included where there is a mortgage on the Property. It is essential that the Mortgagee gives consent to the Legal Charge.

## Section 3

This section should be included where the Property is jointly owned. It is essential that the Co-owner joins as a party to the creation of the Legal Charge. It is also very important that the Co-owner is advised to seek legal and financial advice independent to that received by the Resident.

**PART B**

**HM LAND REGISTRY**

[Administration Area: CHESHIRE Title No.: \_\_\_\_\_]

Property: \_\_\_\_\_

Date: \_\_\_\_\_

**IN CONSIDERATION of the Deferred Contributions specified in the  
Deferred Payments Agreement made between the parties and  
dated \_\_\_\_\_ ("the Agreement") receipt of which is  
acknowledged.**

I \_\_\_\_\_ ("the Resident")  
Of \_\_\_\_\_ [Insert current  
address] and formerly of \_\_\_\_\_

I \_\_\_\_\_ ("the Co-Owner")  
Of \_\_\_\_\_  
\_\_\_\_\_ [Insert current address]

with full title guarantee CHARGE by way of legal mortgage the Property (as referred to in the Agreement) [being the land comprised in the title above referred to] with the payment to **CHESHIRE EAST BOROUGH COUNCIL** of [Westfields, Middlewich Road, Sandbach CW11 1HZ ("the Council")] of the total amount of Deferred Contributions owing from time to time by the Resident to the Council with interest at the rate and payable at the times specified in the Agreement.

Signed as a deed by ( ) as attorney for  
in the presence of

Sign here your own name and the name of the  
individual .

as attorney for

Signature of witness

\_\_\_\_\_  
Name In BLOCK CAPITALS

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signed as a deed

by [Insert name of Co-owner]:

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Address:

\_\_\_\_\_  
THE COMMOM SEAL OF )  
**CHESHIRE EAST BOROUGH COUNCIL** )  
was hereunto affixed in the presence of )

**AUTHORISED SIGNATORY**