

Appendix 2: NUE Top Up Loan agreement 2017

Kent Empty Property Initiative Top-up Loan Agreement

THIS AGREEMENT is made the day of 2017

BETWEEN:

- (1) **THE KENT COUNTY COUNCIL** of Sessions House County Hall Maidstone Kent ME14 1XQ ("**KCC**"); and
- (2) **DOVER DISTRICT COUNCIL** of White Cliffs Business Park, Dover, Kent, CT16 3PJ ("**Dover**")

(together "**the Parties**")

WHEREAS:

1. KCC has agreed with Dover that KCC will bring a number of empty private sector properties in the Dover District Council administrative area back into use as accommodation under the county wide Kent Empty Property Initiative ("**KEPI**").
2. KCC has powers to do this under section 25 of the Local Government Act 1988.
3. Dover has the authority to make a grant or loan under section 24 of the Local Government Act 1988 "...to provide financial assistance to any person for the purposes of, or in connection with... construction, conversion...improvement, maintenance...of any property which is to or is intended to be privately let as housing accommodation". In addition, Dover has the authority under the Regulatory Reform (Housing Assistance) (England & Wales) Order 2002, subject to adopting a policy for the provision of assistance and having given public notice of the adoption of the policy.

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4. Dover will pay a sum of money to KCC referred to in clause 1 below (“the Top-up Sum”) which KCC will then add to its own loans to successful applicants in the administrative area of Dover District Council to the No Use Empty Scheme.
5. This Agreement shall remain in force until 31 March 2021.

IT IS AGREED as follows:

1. Dover shall pay the Top-up Sum to KCC in accordance with clause 4 below.
The Top-up Sum shall be in aggregate a maximum sum of not more than £300,000.00 and KCC shall spend the Top-up Sum in accordance with the obligations set out in this Agreement and for no other purpose.
2. KCC shall approve qualifying loans in connection with the No Use Empty Scheme in its usual manner and shall recommend to Dover that a payment from the Top-up Sum be used (where applicable) to increase the size of the loan or to provide funding for additional or new units of accommodation where there is a shortfall in the amount that is required for the property to be converted, improved or maintained (“the Top-Up Loan”).
3. The Top-up Loan given to successful applicants shall be free of interest and the loan shall be repaid by the applicant to KCC at the end of the loan period (more specifically identified in the Loan Facility Agreement due to be entered into between KCC and the applicant, a copy of which is attached in Schedule 1). Any Top-up Loans that are repaid earlier than expected will be added to the Top-up Sum and used to make further Top-up Loans.
4. Dover shall make payments of the Top-up Sum in instalments

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subject on each occasion to Dover being in receipt of a Loan Approval Sheet submitted in writing by KCC, and approved by Dover. Within seven days the Private Sector Housing Manager will authorise the agreed amount of funds to be transferred to KCC and used by them to pay the relevant developer for implementation of the KEPI within the administrative area of Dover.

5. Subject to Dover having agreed to KCC making the payment of the Top-up Loan by completion and return of the loan approval form to KCC, signed by Dover's appropriate officer, the borrower will be paid the KCC and Dover loans, as one amount, once KCC has placed a Legal Charge in KCC's favour on the property for the full amount in accordance with the Loan Facility Agreement in the form attached at Schedule 1 and the Legal Charge in the form attached at Schedule 2 or such other form of Loan Facility Agreement and Legal Charge as may be agreed with Dover. KCC undertakes to Dover that the period of every Loan Facility Agreement with each borrower for every Top-up Loan shall not be for a period of more than 36 months, unless otherwise agreed in writing by Dover.
6. Unless otherwise agreed between the Parties, KCC shall hold meetings with Dover at least six weekly to present and discuss all financial information including, loan applications received, loans approved using their monies, monies paid out, repayment dates and any repayment or recycling of loans pertinent to the Top-up Loans. On 31 March 2021, KCC shall provide a final report to Dover detailing monies still outstanding, expected due dates for such monies, how much will be repaid to Dover and whether there are any bad

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debts. KCC will repay the Top-up Loan to Dover within 28 days of its being in receipt of the relevant sums (or part thereof) from the relevant borrower. The Parties' representatives for this Agreement shall be the Strategic Programme Manager for KCC (currently Steve Grimshaw) and the Private Sector Housing Manager for Dover.

7. Dover will not be able to require that any Top-up Sum is repaid to Dover until the amount to be repaid has been received by KCC from the relevant borrower. KCC undertakes that KCC shall always use best endeavours to ensure the return of the Top-up Loan from each borrower on every occasion and will inform Dover immediately in the event of failure (or anticipated failure) by any borrower to repay the relevant Top-up Loan.
8. Each of the Parties agrees to indemnify the other in respect of any bad debts that may arise from the Top-up Loans.
9. Dover agrees to pay KCC for administering the Top-up Loans—an administration fee of £850.00 per application which shall be paid by Dover on receipt of an invoice for such sum from KCC.
10. Unless otherwise agreed between the Parties, no press releases or other forms of publicity relating to or in the exercise of all or any part of this Agreement shall be issued without the prior consent of the Parties, such consent not to be unreasonably withheld, PROVIDED ALWAYS that the Parties shall be entitled to make public such details about the Agreement as may be required by Law.
11. If at any time any of the provisions of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law or resolution of any

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jurisdiction neither the legality, validity and enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction shall be in any way affected or impaired as a result.

12. This Agreement shall be for the benefit of and be binding on the respective successors in title and permitted assignees of either party.

13. This Agreement shall be governed by and construed in accordance with English Law.

IN WITNESS WHEREOF KCC and Dover have executed this Agreement as a Deed the day and year first before written

The Common Seal of)
The Kent County Council)
was hereunto affixed in)
the presence of;)

Authorised Signatory

The Common Seal of)
Dover District Council)
was hereunto affixed in)
the presence of;)

Authorised Signatory

Schedule 1

DATED _____ **201**

(1) THE KENT COUNTY COUNCIL

AND

(2) ALL_BORROWERS

LOAN FACILITY AGREEMENT

in respect of Property_SingleLineAddress

Ref: LS/DocOwnerLocation/MatterRef/DocOwnerInitials/DocCreatorInitials

Draft No. _____

Dated: _____

Engrossment dated: _____

Invicta Law Ltd. Priory Gate,
29 Union Street, Maidstone, ME14 1PT

DX: 133544 Maidstone

t 03000 416840
e info@invicta.law
w www.invicta.law

Our legal expertise, your peace of mind

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THIS LOAN FACILITY AGREEMENT is made on the
BETWEEN

2015

- (1) **THE KENT COUNTY COUNCIL** of County Hall Maidstone Kent ME14 1XQ (the “Council”); and
- (2) **BORROWER1_FULLNAME** of Borrower1_SingleLineAddress and **BORROWER2_FULLNAME** of Borrower2_SingleLineAddress (the “Borrower”)

1. DEFINITIONS

“ Agreement ”	means this agreement and all appendices and schedules thereto
“ Business Day ”	means a day on which banks are generally open for business in London
“ Completion Date ”	means the date referred to in Clause 11
“ Default Rate of Interest ”	means Interest_Rate% per annum
“ Disposal ”	means a transfer, lease or assured shorthold tenancy for a term of one year or more or any other disposition of the Property registerable at the Land Registry
“ Event of Default ”	means any act of default as referred to in Clause 13.1
“ Legal Charge ”	means the legal charge in the form as is attached to this agreement at Appendix 3
“ Loan ”	has the meaning given in Clause 2
“ Loan Agreement Number ”	Loan_AgreementNo
“ Property ”	means the freehold property known as Property_SingleLineAddress registered under title number Property_TitleNo
“ Term Loan ”	The Council offers and the Borrower accepts a term loan facility on the following terms and conditions
“ Works ”	means the works agreed by the Council and set out in Appendix 1 “Schedule of Works”, Appendix 2 “Decent Homes Standard” and any other conditions referred to in the Agreement

2. LOAN AMOUNT

The loan amount is Loan_Amount.

3. PURPOSE

The Loan shall be used to assist with various works approved by the Council in respect of the conversion and/or renovation of the Property to provide residential accommodation and to be carried out in accordance with the Works and for no other purpose.

4. TERM

The Term shall be, subject to the terms and conditions of this Agreement, the period of time from the date of completion of this Agreement until:

4.1 the date of Disposal of the Property or any part or parts of the Property; or

4.2 Repayment_Date,

whichever is the shorter period.

5. DRAWDOWN

Subject to the terms and conditions of this Agreement, the Loan will be paid by the Council to the Borrower within fourteen working days of receipt by the Council of notification from HM Land Registry that the legal charge document has been registered against the Borrower's Title No. Property_TitleNo.

OR

5.1 Subject to the terms and conditions of this Agreement, the first £_____ of the Loan will be paid by the Council to the Borrower within fourteen working days of receipt by the Council of notification from HM Land Registry that the legal charge document has been registered against the Borrower's Title No Property_TitleNo.

5.2 A retention of £___ of the Loan will be retained by the Council, which will be paid to you in two equal payments of £_____ in accordance with 5.3 and 5.4 below.

5.3 The second payment of £_____ (the "Second Payment") will be paid to you within 20 working days and of the following steps being satisfactorily completed:

5.3.1 the Council receiving a signed request for payment from the Borrower for the Second Payment;

5.3.2 the Council receiving invoices or receipts for payment of the works carried out to the Property in accordance with the Works to the total of or in excess of £_____;

5.3.3 an inspection by the Council's or [] Borough/District Council's employee to certify the Works referred to in 5.3.2 above have been completed to the satisfaction of the Council and in accordance with the terms and conditions of this Agreement and the Legal Charge.

5.4 The Final Payment of £_____ (the "Final Payment") will be paid to you within 20 working days of all the following steps being satisfactorily completed:

5.4.1 the Council receiving a signed request for payment from the Borrower of the Final Payment;

- 5.4.2 the Council receiving invoices or receipts for payment of works carried out to the Property in accordance with the works to the total of or in excess of £_____;
- 5.4.3 an inspection by the Council's or [_____] Borough/District Council's employee to certify the Works referred to in 5.4.2 above have been completed to the satisfaction of the Council and in accordance with the terms and conditions of this Agreement and the Legal Charge.
- 5.5 If the Second Payment and/or Final Payment have not been drawn down within Project_Timescale months of the date of this Agreement then the Council will no longer be liable to the Borrower for payment of the Second Payment and/or Final Payment

6. INTEREST

- 6.1 If there is default under the terms of clause 13 hereof interest at a the Default Rate of Interest will be payable on the Loan by the Borrower to the Council from the date of payment of sums to the Borrower under the Loan until such sums are repaid.
- 6.2 Interest will be calculated daily and will be based on the full amount of the Loan outstanding.
- 6.3 The Council will notify the Borrower in writing at least two weeks prior to a due date for the payment of interest under this Agreement of the amount of interest due on that date.

7. REPAYMENT

- 7.1 The Borrower agrees to repay the Loan on Repayment_Date unless:
- 7.1.1 there is a Disposal of the whole or any part or parts of the Property prior to Repayment_Date, in which case the Borrower agrees to repay the Loan on the date of such Disposal; or
- 7.1.2 an Event of Default occurs before the date on which the Loan is due to have been repaid in full, in which case the Borrower agrees to repay the Loan immediately.
- 7.2 The Borrower may prepay the Loan or any part of the Loan at any time. No amount prepaid may be redrawn.

8. SECURITY

- 8.1 The repayment of all monies at any time owing in respect of the Loan (whether by way of principal, interest, fees or otherwise) will be secured by the security of an all monies legal charge on the Property in the form of the Legal Charge.
- 8.2 The provisions of this Agreement are conditional upon and shall not take effect until the completion of the Legal Charge and if the Legal Charge shall not be completed within 84 days from the date of this Agreement then this Agreement shall forthwith upon the expiry of the said period of 84 days absolutely determine and cease to have effect.

9. PAYMENTS

- 9.1 All payments to be made by the Borrower under this Agreement shall be made in full without any set off or counterclaim whatsoever and (save as required by law) free and clear of and without deduction for any taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions of any description. If the Borrower is required at any time by any applicable law to make any such deduction from any payment, the sum due from the Borrower in respect of such payment shall be increased by such amount as will result, notwithstanding the making of such deduction, in the Council's receipt on the due date for payment of each amount of a net sum equal to the sum that the Council would have received had no such deduction been required to be made.
- 9.2 If any payment would otherwise be due on a day which is not a Business Day, the next following Business Day shall be substituted.

10. EXPENSES

- 10.1 The Borrower shall promptly pay to the Council on demand all costs and expenses (including legal, administration and out-of-pocket expenses and together with Value Added Tax if any thereon) on a full indemnity basis incurred by the Council in connection with any amendment or extension of and the granting of any waiver or consent under and the discharge of this Agreement and/or the Legal Charge and/or in contemplation of or otherwise in connection with the enforcement of or preservation of any rights under this Agreement and/or the Legal Charge or otherwise in respect of any monies owing under or in respect of the Loan.
- 10.2 The Borrower will pay a Land Registry fee for the registration of the Legal Charge at the Land Registry and any Companies House fee for the registration of the Legal Charge at Companies House, on returning this Agreement and the Legal Charge to the Council.
- 10.3 The Borrower will pay to the Council the sum of £90 upon repayment of the Loan for the costs incurred by the Council in arranging for the Legal Charge to be discharged at the Land Registry and Companies House.

11. COMPLETION OF THE WORKS

- 11.1 The Borrower agrees to complete the Works by:
- 11.1.1 the first day on which Project_Timescale months will have passed since the completion of this Agreement; or
 - 11.1.2 where an alternative date to that set out in sub-clause 11.1.1 is agreed by the Council in accordance with sub-clause 11.2, such date.
- 11.2 The Council may in its absolute discretion and in exceptional circumstances upon receipt of a written application from the Borrower agree to a date by which the Borrower must complete the Works which is later than the date set out in sub-clause 11.1.1. The Council will notify the Borrower of such date in writing.

12. REPRESENTATIONS AND WARRANTIES

The Borrower represents warrants and undertakes to the Council, on the date of the Borrower's acceptance of this Agreement (with reference to the facts and circumstances then existing), as follows:

- 12.1 there are no pending or to the Borrower's knowledge threatened actions or legal proceedings affecting the Borrower which may have a material adverse effect on the Borrower's ability to repay the Loan;
- 12.2 the Borrower is not in breach of or in default under any agreement or obligation relating to (or analogous to) financial indebtedness;
- 12.3 no event or circumstance referred to in clause 13.1 below will occur, or has occurred and is continuing;
- 12.4 all factual information supplied to the Council in contemplation of the Loan was true as at its date and did not omit anything material, no change has occurred since the date of the information already supplied which renders it untrue or misleading and all statements of belief and opinion given by the Borrower to the Council were made in good faith after due and careful enquiry;
- 12.5 each of the representations and warranties shall be continuing.

13. EVENTS OF DEFAULT

- 13.1 An event of default will occur if:
 - 13.1.1 the Borrower fails to pay any sum payable under this Agreement when due; or
 - 13.1.2 the Property is not, [or the units comprising the] Property are not, made available for rent within 12 weeks of the Completion Date; or
 - 13.1.3 the Borrower commits any breach of any undertaking contained in or of any other provision of this Agreement and either such breach is in the Council's opinion not capable of remedy or such breach is in the Council's opinion capable of remedy and is not remedied within 21 days after the date of notice by the Council to the Borrower requiring remedy; or
 - 13.1.4 any representation or warranty made or deemed to be made by the Borrower in or pursuant to this Agreement is or proves to have been untrue or incorrect in any material respect when made or when deemed to be repeated with reference to the facts and circumstances existing at such time; or
 - 13.1.5 this Agreement is or becomes unlawful or unenforceable in any respect; or
 - 13.1.6 any consent referred to above is withdrawn or materially and adversely qualified; or
 - 13.1.7 the Borrower becomes insolvent or is unable to repay his debts; or

- 13.1.8 a receiver or administrative receiver or administrator or trustee in bankruptcy or supervisor shall be appointed over all or any of the Borrower's assets; or
 - 13.1.9 a petition shall be presented, or a resolution passed or proposed, for the winding up of the Borrower or appointment of an administrator or trustee in bankruptcy or supervisor of the Borrower; or
 - 13.1.10 an order shall be made for the winding up of the Borrower or appointment of an administrator or trustee in bankruptcy or supervisor of the Borrower; or
 - 13.1.11 a proposal shall be presented or made for a voluntary arrangement of the Borrower, or a resolution passed or order made in readiness for such a proposal, or the Borrower applies for an interim order for a voluntary arrangement; or
 - 13.1.12 where the Borrower is an individual, he dies; or
 - 13.1.13 where the Borrower is a partnership, the partnership is dissolved.
- 13.2 The Council may (without prejudice to any of its other rights) upon and at any time after the occurrence of an event of default, so long as the same is continuing, by notice to the Borrower:
- 13.2.1 declare that the Council's commitment and any obligation of the Council's to make any advance under this Agreement shall be terminated, whereupon such commitment shall be reduced to zero and such obligation shall be terminated forthwith; and/or
 - 13.2.2 declare that the Loan has become immediately due and payable, and demand that the Borrower shall forthwith repay the same together with all interest accrued and all other sums payable under this Agreement.
- 13.3 The Borrower will notify the Council forthwith in writing of the occurrence of any of the events specified in this clause 13.
- 13.4 The Borrower shall indemnify the Council on demand against any loss, damage or liability incurred by the Council as a consequence of any event of default under clause 13.1 and any acceleration of the repayment of the Loan under clause 13.2.2. The Council's certificate of any amounts due to the Council under this clause 13.4 shall be conclusive unless manifestly incorrect.

14. SEVERANCE

If at any time any of the provisions of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law or resolution of any jurisdiction neither the legality, validity and enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction shall be in any way affected or impaired as a result.

15. WAIVER

No delay or failure by the Council in exercising any right or remedy shall be construed or take effect as a waiver or release of that right or remedy or of any other right or remedy and the Council shall always be entitled to exercise all its

rights and remedies unless the Council shall have expressly waived them in writing.

16. ASSIGNMENT

The Borrower may not assign or transfer all or any of his rights or obligations under this Agreement. The Council may at any time(s) assign or transfer all or any of its rights and obligations under this Agreement without the Borrower's consent.

17. LAW AND JURISDICTION

17.1 This Facility shall be governed by, and construed in accordance with, English law.

17.2 The Borrower irrevocably agrees that the courts of England shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Agreement and for such purposes irrevocably submit to the jurisdiction of such courts.

18. NOTICES

18.1 Every notice or other communication under this Agreement shall be in writing and may be delivered personally or by letter despatched to the Borrower or the Council, as the case may be, at their respective address stated at the head of this Agreement or to such other address as may be notified by either of them to the other for such purpose.

18.2 In the event of a court claim being issued in relation to this contract the claim form may be served by the Council on the Borrower by posting the claim form to the Property or by leaving it at the Property

18.3 Every notice or other communication shall be deemed to have been received (if sent by post) 24 hours after despatch or (if delivered personally or sent by telex or facsimile) at the time of delivery or despatch if during normal business hours and otherwise at the opening of business on the next succeeding working day.

19. GENERAL

19.1 The Council's rights will not be affected by any forbearance as concession made by the Council to the Borrower.

19.2 If the Borrower is more than one person their obligations will be binding on each person separately and all persons jointly.

20. ACCEPTANCE

20.1 This Agreement is accepted by the Borrower signing without amendment this Agreement and the duplicate of it and the Legal Charge and returning them to Steve Grimshaw at Second Floor, Invicta House, Maidstone, Kent ME14 1XX.

20.2 If the Council does not receive such signed Agreement and duplicate and the signed Legal Charge within 12 weeks the Council's offer of the Loan will lapse without any liability or commitment on the Council's part.

21. CONFIRMATION

21.1 The Borrower confirms that he has obtained independent legal advice on the terms of and his obligations under the Agreement and the Legal Charge.

21.2 The Borrower accepts the offer of the Loan on the terms and conditions set out in the Agreement (including the Legal Charge) and agrees to perform all his obligations in respect thereof.

Executed as a Deed and delivered by the parties to it on the date set out above

THE COMMON SEAL of)
THE KENT COUNTY COUNCIL)
was affixed to this Deed in the presence of:-)

Authorised Signatory

A Member of the Kent County Council

SIGNED AS A DEED by the said)
BORROWER1_FULLNAME)
in the presence of:)

Witness signature.....

Name.....

Address.....

.....

.....

Occupation.....

SIGNED AS A DEED by the said)
BORROWER2_FULLNAME)
in the presence of:)

Witness signature.....

Name.....

Address.....

.....

.....

Occupation.....

EXECUTED as a deed by)
BORROWER1_FULLNAME)
Acting by a Director and its Secretary)
or two Directors)

Signed:.....
Director

Signed:.....
Director/Secretary

EXECUTED as a deed by)
BORROWER1_FULLNAME)
acting by a Director, in the presence of:)

Witness signature.....

Name.....

Address.....

.....

.....

Occupation.....

APPENDIX 1

SCHEDULE OF WORKS

[insert here]

APPENDIX 2

DECENT HOMES STANDARD

Criterion a: It meets the current statutory minimum standard for housing

To be decent, a dwelling should be free of category 1 hazards as assessed through the Housing Health and Safety Rating System.

Criterion b: It is in a reasonable state of repair

A dwelling satisfies this criterion unless:

- one or more key building components are old and, because of their condition need replacing or major repair; or
- two or more other building components are old and, because of their condition need replacing or major repair.

A building component can only fail to satisfy this criterion by being old and requiring replacing or repair. A component cannot fail this criterion based on age alone.

Building components

Building components are the structural parts of a dwelling (e.g. wall structure, roof structure), other external elements (e.g. roof covering, chimneys) and internal services and amenities (e.g. kitchens, heating systems).

Key building components are those which, if in poor condition, could have an immediate impact on the integrity of the building and cause further deterioration in other components.

They are the external components plus internal components that have potential safety implications and include:

- external walls;
- roof structure and covering;
- windows/doors;
- chimneys;
- central heating boilers;
- gas fires;
- storage heaters;
- plumbing; and
- electrics.

Lifts are not considered to be a key component unless the lift or the lift shafts have a direct effect upon the integrity of the building.

If any of these components are old and need replacing, or require immediate major repair, then the dwelling is not in a reasonable state of repair.

Other building components are those that have a less immediate impact on the integrity of the dwelling. Their combined effect must therefore be considered, with a dwelling not being in a reasonable state of repair if two or more are old and need replacing or require immediate major repair.

Old and in poor condition

A component is defined as 'old' if it is older than its standard lifetime. Components are in

poor condition if they need major work, either full replacement or major repair.

One or more key components, or two or more other components, must be both old and in poor condition to render the dwelling non-decent on grounds of disrepair.

Components that are old but in good condition or in poor condition but not old would not, in themselves, cause the dwelling to fail the standard.

A building component, which requires replacing before it reaches its expected lifetime has failed early. Under the terms of the definition, this early failure does not render the dwelling non-decent.

Criterion c: It has reasonably modern facilities and services

A dwelling is considered not to meet this criterion if it lacks three or more of the following facilities:

- a kitchen which is 20 years old or less;
- a kitchen with adequate space and layout;
- a bathroom which is 30 years old or less;
- an appropriately located bathroom and WC;
- adequate external noise insulation; and
- adequate size and layout of common entrance areas for blocks of flats.

A kitchen failing on adequate space and layout would be one that was too small to contain all the required items (sink, cupboards cooker space, worktops etc) appropriate to the size of the dwelling;

An inappropriately located bathroom and WC is one where the main bathroom or WC is located in a bedroom or accessed through a bedroom (unless the bedroom is not used or the dwelling is for a single person). A dwelling would also fail if the main WC is external or located on a different floor to the nearest wash hand basin, or if a WC without a wash hand basin opens on to a kitchen in an inappropriate area, for example next to the food preparation area;

Inadequate insulation from external airborne noise would be where there are problems with, for example, traffic (rail, road and aeroplanes) or factory noise.

Inadequate size and layout of common entrance areas for blocks of flats would be one with insufficient room to manoeuvre easily for example where there are narrow access ways with awkward corners and turnings, steep staircases, inadequate landings, absence of handrails, low headroom etc.

In some instances there may be factors which may make the improvements required to meet the Decent Homes standards' challenging, or impossible, factors such as physical or planning restrictions. Where such limiting factors occur the property should be assessed to determine the most satisfactory course of action in consultation with the relevant body or agency so as to determine the best solution. The outcome may determine that some improvements may be possible even if all are not.

A dwelling would not fail this criterion, where it is impossible to make the required improvements to components for physical or planning reasons.

Criterion d: It provides a reasonable degree of thermal comfort

The definition requires a dwelling to have both efficient heating; and effective insulation.

Efficient heating is defined as any gas or oil programmable central heating; or

- electric storage heaters; or
- warm air systems; or
- underfloor systems; or

- programmable LPG/solid fuel central heating; or
- similarly efficient heating systems which are developed in the future.

The primary heating system must have a distribution system sufficient to provide heat to two or more rooms of the home. There may be storage heaters in two or more rooms, or other heaters that use the same fuel in two or more rooms. Even if the central heating system covers most of the house making a dwelling decent, under the HHSRS the home should be warm enough for the occupant.

Heating sources, which provide less energy efficient options fail the Decent Homes standard.

Programmable heating is where the timing and the temperature of the heating can be controlled by the occupants.

Because of the differences in efficiency between gas/oil heating systems and the other heating systems listed, the level of insulation that is appropriate also differs:

For dwellings with gas/oil programmable heating, cavity wall insulation (if there are cavity walls that can be insulated effectively) and at least 50mm loft insulation (if there is loft space) is an effective package of insulation.

For dwellings heated by electric storage heaters/LPG/programmable solid fuel central heating a higher specification of insulation is required: at least 200mm of loft insulation (if there is a loft) and cavity wall insulation (if there are cavity walls that can be insulated effectively).

A SAP rating of less than 35 (using the 2001 SAP methodology) has been established as a proxy for the likely presence of a Category 1 hazard from excess cold.

APPENDIX 3

FORM OF LEGAL CHARGE

[insert here]

Schedule 2

DATED _____ **2015**

(1) THE KENT COUNTY COUNCIL

AND

(2) ALL_BORROWERS

LEGAL CHARGE

in respect of Property_SingleLineAddress

Kent Legal Services
Kent County Council
County Hall
Maidstone
ME14 1XQ

www.kent.gov.uk/legal

Ref: LS/DocOwnerLocation/MatterRef/DocOwnerInitials/DocCreatorInitials

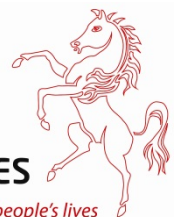
Draft No.

Dated:

Engrossment dated:

KENT LEGAL SERVICES

Let our knowledge help you transform people's lives



THIS LEGAL CHARGE is made on the 2015
BETWEEN

- (1) **THE KENT COUNTY COUNCIL** of Sessions House, County Hall, Maidstone, Kent, ME14 1XQ (the "Council"); and
- (2) **BORROWER1_FULLNAME** of Borrower1_SingleLineAddress and **BORROWER2_FULLNAME** of Borrower2_SingleLineAddress [Company Registration No: Borrower1_CRN] (the "Owner").

WHEREAS

- (A) The Owner is the estate owner of the Property.
- (B) The Council has agreed to make available the Loan Facility Amount to the Owner, repayable in accordance with the Loan Facility Agreement and by the Redemption Date.
- (C) The Owner has applied to the Council to exercise its powers under Section 2 of the Local Government Act 2000 and Section 24 of the Local Government Act 1988 as amended by the General Consents under Section 25 of the Local Government Act (Local Authority Assistance for Privately Let Housing) 2010 General Consent C by granting the Loan Facility Amount to the Owner for the purpose of financing the Works and the Ancillary Costs and the Council has accordingly agreed to advance the Loan Facility Amount subject to the Owner entering into the obligations and conditions contained below and of the Loan Facility Agreement.
- (D) The Owner has agreed to grant such security to the Council as is hereinafter mentioned as well as for monies (if any) now owing as for any monies which may hereafter and during the continuance of this security become owing by the Owner to the Council as described below.

THIS DEED WITNESSES as follows:-

1. **Definitions**

1.1 In this Deed:

"Ancillary Costs"	means costs previously approved in writing by the Council in the nature of proper and reasonable professional fees and other fees charges and disbursements incidental to the preparation supervision and carrying out of the Works and the preparation settlement completion and registration of this Deed
"Disposal"	means transfer, lease or assured shorthold tenancy for a term of one year or more, or any other disposition of property registrable at the Land Registry
"Equipment"	means any moveable plant, machinery, furniture, goods and equipment
"Interest Rate"	Interest_Rate%, or such other rate as the Council may notify the Owner in accordance with the Loan Facility Agreement
"Loan Agreement Number"	Loan_AgreementNo
"Loan Facility Agreement"	means the agreement made between the Owner and the Council setting out the terms of the payment of the Loan Facility and made on or

around the date of this Legal Charge

“Loan Facility Amount”

means the sum of Loan_Amount

“Legal Charge”

means this Legal Charge and all appendices and schedules thereto

“Property”

means the Property_FreeholdLeasehold property known as Property_SingleLineAddress registered under title number Property_TitleNo

“Redemption Date”

means the date by which the Loan Facility must be repaid in accordance with the Loan Facility Agreement and is:

- (a) the Repayment_Date; or
- (b) the date of the Disposal of the whole or any part or parts of the Property; or
- (c) the date of an event of default as set out in the Loan Facility Agreement;

whichever is the earlier.

“Regulated Agreement”

means any agreement entered into on before or after the execution hereof which for the time being is a regulated agreement within the meaning of the Consumer Credit Act 1974 or any modification replacement or re-enactment thereof

“Works”

means the works as agreed by the Council and set out in the Loan Facility Agreement

1.2 In this Deed where the context so admits:

- (a) the Owner includes any person deriving title under it or him (but shall not include any other chargee or encumbrancer of the Property)
- (b) Words importing the masculine gender only include the feminine and words importing the singular only include the plural and vice versa.

2. The Owner with full title guarantee hereby charges the Property by way of legal mortgage and any equitable interest therein by way of equitable mortgage with payment to the Council pursuant to the terms on which each sum was or sums were advanced or in the absence of any such terms upon demand (but subject as hereinafter appears) of all and every sum or sums of money for which these presents are declared to be a security.

3. These presents shall be a security to the Council for the payment to the Council and discharge of all monies owed and due by the Owner to the Council under the Loan Facility Agreement, the Legal Charge, and any other agreement expressed to be secured by the Legal Charge.

4. This Legal Charge shall be a continuing security notwithstanding any payment or the settlement of any account or any other matter or thing. If the Council receives notice

(actual or constructive) of any charge mortgage or any other encumbrance affecting the Property other than previously notified or any part thereof then as from and after the date on which the Council receives or is deemed to receive such notice (the "date of notice") any payment by the Owner to the Council shall (notwithstanding any legal or equitable rule or presumption to the contrary) be deemed to have been placed to the credit of a new or separate account deemed to have been opened by the Owner with the Council (unless such payment has in fact been placed to a new or separate account) and shall not go in the reduction of the amount owing by the Owner to the Council at the date of notice.

5. The Owner hereby applies to the Chief Land Registrar to enter on registration of this Legal Charge in the register a restriction that (except under an Order of the Registrar):

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the Charge dated 20 in favour of The Kent County Council referred to in the charges register or their conveyancer."

6. The Owner covenants duly and punctually to pay and discharge to the Council (when they become due for payment) all monies which now are or shall at any time hereafter be due owing or incurred by the Owner to the Council under this Legal Charge, the Loan Facility Agreement and any other agreement expressed to be secured by this Legal Charge, on any account or in any manner whatsoever whether actually or contingently and whether solely or jointly with any other person firm or company and whether due from the Owner as guarantor indemnifier or principal debtor including but without limitation any costs, charges and expenses owed to, or incurred directly or indirectly by, the Council under this Legal Charge, the Loan Facility Agreement and any other agreement expressed to be secured by this Legal Charge, including costs incurred in respect of action taken by the Council with respect to a stranger to this security, or any agreement providing security for all or any part of the sums secured by this Legal Charge or owed under the Loan Facility Agreement or other agreement expressed to be secured by this Legal Charge and all costs in relation to the enforcement of any such security, all such costs, charges and expenses to be calculated and paid on a full and unlimited indemnity basis, and all interest, commissions, fees and bank and discount charges payable in respect of any of the foregoing; and all such payments shall be made in accordance with the terms of this Legal Charge and the Loan Facility Agreement and any other agreements expressed to be secured by this Legal Charge.

7. The Owner hereby covenants with the Council as follows:-

- 7.1 [At all times during the continuance of this security to keep all buildings erected or in the course of erection upon the Property including all fixtures and additions thereto in good and substantial repair and condition to the satisfaction of the Council and to permit the Council or its agents with or without workmen and others at all reasonable times to enter into or upon the Property and any building on the Property and examine the state and condition thereof and forthwith to repair and make good all defects and wants of reparation of which notice in writing shall be given to the Owner by the Council and in case of default to permit the Council to enter thereon and effect such repairs and making good as the Council may consider necessary and so that all monies expended by the Council in effecting such repairs and making good shall be deemed to be costs charges and expenses properly incurred by the Council hereunder and shall be reimbursed to the Council by the Owner forthwith on demand together with interest at the Interest Rate from the date such monies were expended until reimbursement thereof and until reimbursed such monies and interest shall be charged upon the Property;

7.2 As long as any monies remain owing on this security to insure and keep insured all buildings on the Property in the joint names of the Owner and the Council (or with a note of the Council's interest endorsed on the policy or policies of insurance) against loss or damage caused by fire flood explosion lightning impact or aircraft and such other perils or risks as shall be required by the Council in its full reinstatement value with some insurance office or underwriters approved by the Council (such approval not to be unreasonably withheld) and to make all payments required for the purpose as and when the same shall become due and when required by the Council to deliver up to it the policy or policies of such insurance and the receipt for each such payment AND if the Owner shall fail to perform any of his (or their) obligations under this clause and if the Council shall thereupon insure (as it shall be entitled so to do) the said buildings or any of them the Owner will on demand reimburse to the Council all payments made by it for that purpose together with interest at the Interest Rate from the date on which such payments were made until reimbursement and all such monies and interest shall be charged upon the Property PROVIDED that the Council may require any monies received by virtue of such insurance to be applied in or towards making good the loss or damage in respect of which the said monies are received or in or towards the discharge of any principal money or interest secured hereby and the Owner shall hold any such monies received from such insurance in trust for the Council;]

[OR FOR LEASEHOLD]

7.3 [At all times during the continuance of this security to comply with its obligations under a Lease dated _____ made between (1) (the "Landlord") and (2) _____ (the "Lease") and to enforce the obligations of the Landlord contained in the Lease and to permit the Council or its agents with or without workmen and others at all reasonable times to enter into or upon the Property and any building on the Property and examine the state and condition thereof and forthwith to repair and make good all defects and wants of reparation of which notice in writing shall be given to the Owner by the Council and subject to the terms of the Lease in case of default to permit the Council to enter thereon and effect such repairs and making good as the Council may consider necessary and so that all monies expended by the Council in effecting such repairs and making good shall be deemed to be costs charges and expenses properly incurred by the Council hereunder and shall be reimbursed to the Council by the Owner forthwith on demand together with interest at the Interest Rate from the date such monies were expended until reimbursement thereof and until reimbursed such monies and interest shall be charged upon the Property;

7.4 As long as any monies remain owing on this security to enforce the obligation of the Landlord contained in the Lease to insure the Property and to have a note of the Owner's and Council's interest endorsed on the policy or policies of insurance;]

7.5 Not without the previous consent in writing of the Council to erect make or maintain or suffer to be erected or maintained on the Property or any part thereof any additional building erection or improvement or to demolish all or any part of the Property (save in compliance with any order to that effect by any public authority including the Council) or to make or suffer to be made any material change or addition whatsoever in or to the use of the Property or any part thereof and also if the Council shall consent in writing as aforesaid will duly apply to the local planning authority as defined by the Town and Country Planning Act 1990 for any necessary permission to erect make or maintain such building erection improvement material change or addition on behalf of the Council and all other persons (if any) for the time being interested in the Property and will give to the Council immediate notice of such permission if granted and also at all times to indemnify and keep indemnified the Council against all proceedings costs expenses claims and demands whatsoever in respect of the said application;

7.6 To give full particulars to the Council of any notice or order or proposal for a notice or order served on or issued or made to the Owner by a planning authority or by any other

governmental local or public authority or undertaking in relation to the Property within seven days of receipt of the same and if so required by the Council produce such notice to the Council and without delay to take all reasonable or necessary steps to comply with any such notice or order and also at the request of the Council and at the cost of the Owner to make or join with the Council in making such objection or representation against or in respect of any proposal for such a notice or order as the Council shall deem expedient. Where in any such case a payment must be made by the Owner the Owner will produce to the Council the receipt for payment. If the Owner fails to make any such payment then the Council may discharge it. Any money expended shall accrue interest at the Interest Rate from the time the payment is made by the Council and shall be repayable by the Owner on demand and such money and the interest on it shall be charged on the Property;

- 7.7 Not to do or omit or suffer to be done or omitted any act matter or thing in on or respecting the Property required to be omitted or done by the Town and Country Planning Act 1990 or which shall contravene the provisions thereof or any of them and at all times hereafter to indemnify and keep indemnified the Council against all actions proceedings costs expenses claims and demands in respect of any such act matter or thing contravening the Town and Country Planning Act 1990;
- 7.8 Not without the consent in writing of the Council to create any further charge or encumbrance affecting the Property ranking *pari passu* with or in priority to this Legal Charge;
- 7.9 To observe and perform all the covenants conditions and stipulations contained in any lease of the Property held by the Owner and in any subsisting prior charge to which the Property is subject and to give full particulars of any notice served on the Owner by any lessor mortgagee or chargee within seven days of the receipt of the same;
- 7.10 To pay all taxes charges and other outgoings in respect of the Property;
- 7.11 To notify the Council immediately upon receipt by the Owner of any compensation or similar money in relation to the Property and unless the Council shall otherwise decide apply such money in or towards repayment of the monies secured by this Legal Charge;
- 7.12 To provide the Council on demand with copies of the receipts for expenditure incurred in carrying out the Works;
- 7.13 On completion of the Works to keep the Property in good repair and condition;
- 7.14 To notify the Council immediately as the Redemption Date has occurred.
8. The Owner hereby agrees and declares with the Council as follows:-
 - 8.1 That all costs charges and expenses properly incurred hereunder by the Council expressly including any costs charges or expenses incurred or paid by the Council by virtue of or in connection with any act matter or thing arising under or by virtue of the Town and Country Planning Act 1990 or any statutory modification or re-enactment thereof and any orders regulations directions and notices made or served thereunder whether or not occasioned by any act neglect or default of the Owner shall together with interest thereon at the Interest Rate from the date the same were incurred until the date of payment to the Council be charged on the Property PROVIDED that the charge hereby conferred shall be in addition and without prejudice to any and every other remedy lien or security which the Council may or but for the said charge would have for the monies thereby secured or any part thereof;
 - 8.2 If any building thereon or any system of drainage or public services intended or capable of being used in connection with the Property shall remain unfinished or not connected

the Council may at any time construct make up complete or connect the same and for such purpose the Council shall be at liberty to employ contractors builders workmen and others and purchase all proper materials as it may in its absolute discretion deem fit and any monies expended by the Council in respect of any of the aforesaid matters shall on demand be repaid by the Owner with interest at the Interest Rate from the respective times at which such monies shall have been expended until repayment thereof together with interest as aforesaid and until such repayment such monies and interest shall be a charge on the Property;

9. The statutory power of sale and of appointing a receiver shall apply to this Legal Charge free from the restrictions imposed by Sections 103 and 109(1) of the Law of Property Act 1925 but the Council will not exercise such powers unless:-
 - 9.1 there has been a breach of some provision contained or incorporated in this Legal Charge or the Loan Facility Agreement or implied by statute on the part of the Owner to be observed and performed; or
 - 9.2 any monies payable hereunder or secured hereby shall be or become due and payable and remain unpaid.
 - 9.3 The whole of the monies payable or to become payable hereunder or secured hereby shall immediately become due and payable and the Council shall demand that the Owner shall forthwith repay the same together with all interest accrued and all other sums payable under the Loan Facility Agreement and this Legal Charge:
 - (a) if any of the monies obligations and liabilities secured by this Legal Charge shall not be paid or discharged by the Owner in accordance with clause 6 and the Loan Facility Agreement; or
 - (b) if the Owner shall be in breach of any provision of this Legal Charge or of the Loan Facility Agreement secured by this Legal Charge; or
 - (c) any other event shall take place which in the opinion of the Council puts in jeopardy all or any part of the security created by this Legal Charge.
- 9.4 The provisions of Clause **Error! Reference source not found.** shall be in addition to and not in substitution for any other provisions at any time agreed between the Owner and the Council relating to the payment of money hereby secured.
10. The statutory power of sale is hereby extended so as to authorise the Council to sell the Property or any part thereof subject to a provision that the purchase money or any part thereof shall be payable (with or without interest) by instalments of such amount over such period and at such times as the Council may think proper and so that the contract for sale may contain such provisions permitting the purchaser to enter into possession and for securing the payment of the purchase money and any interest thereon and enable the Council to rescind the contract and to resell and such other provisions (whether of a nature similar to those before mentioned or not) as the Council may think proper.
11. The Owner irrevocably and by way of security appoints the Council to be its Attorney (with full power to appoint substitutes and to sub-delegate including power to authorise the person so appointed to make further appointments in both cases with regard to all or any part of the Property) on behalf of the Owner and in its name or otherwise to execute any document or do any act or thing which the Council (or such substitute or delegate) may in its absolute discretion consider appropriate in connection with the exercise of any of the powers of the Owner or which the Owner is obliged to the Council to execute or do whether hereunder or otherwise.

12. Section 93 of the Law of Property Act 1925 shall not apply to this Legal Charge.
13. If the Council takes possession of the Property the Council is hereby authorised as agent for the Owner if the Council so elects to remove warehouse store sell or otherwise deal with any Equipment which the Owner shall fail or refuse to remove from the Property within seven days of being requested so to do and the Council shall not be liable to the Owner for any loss or damage occasioned thereby. The Owner shall indemnify the Council against all costs and expenses incurred in respect of the Equipment pursuant to the terms hereof and against all liability to any third party in respect of the Equipment and all such costs and expenses shall be charged upon the Property together with interest at the Interest Rate. The Council shall account to the Owner (or to any person with prior entitlement thereto) for the proceeds of any such sale after deducting any selling and other expenses. The Council shall not be liable to the Owner with regard to any such sale or for failure to obtain a proper price provided that the Council acted in good faith. It is hereby agreed and declared that this clause shall not have the effect of creating any charge over the Equipment.
14. All costs including value added tax and disbursements (on an indemnity basis) of any legal proceedings and any other action to enforce the terms of these presents shall be paid by the Owner on demand and such monies with interest at the Interest Rate shall be charged upon the Property.
15. The Owner assigns to the Council (to the extent that the same are assignable and subject to redemption) the benefit of any right agreement indemnity covenant charge remedy or money payable (whether by way of compensation or otherwise) relating to the Property or to the services to it and such benefit shall be freely assignable by the Council to any purchaser from the Council or to any transferee of this Legal Charge.
16. Any notice required or authorised by this Legal Charge or by Statute to be given to or to be served on the Owner shall be in writing and shall be sufficiently served if it is served in any manner in which a notice may be served on a mortgagor under Section 196 of the Law of Property Act 1925 or if it is sent by ordinary prepaid post addressed to the Owner at his last known address and a notice so served shall be deemed to have been served on the day following that on which the letter containing such notice shall have been posted.
17. Any notice required or authorised by this Legal Charge to be given to the Council shall be in writing and shall be sufficiently served if it is posted and addressed to the Council at the address provided at the head of this Legal Charge and the proper postage is prepaid and in every case the notice shall be deemed to be served when correctly delivered.
18. The Legal Charge hereby created is in addition to any other security or securities now or hereafter held by the Council and where this Legal Charge initially takes effect as a collateral or further security then notwithstanding any receipt release or discharge endorsed on or given in respect of the money and liabilities owing under the principal security to which this Legal Charge operates as a collateral or further security this Legal Charge shall in respect of any money which was originally intended to be secured be an independent security for any of such money.
19. Notwithstanding any other provision of this Legal Charge:
 - 19.1 this Legal Charge does not secure the payment or discharge of any monies from time to time owing or payment under any Regulated Agreement or the performance of the obligations from time to time of the debtor or hirer (as the case may be) under any Regulated Agreement;

- 19.2 any monies from time to time owing or payable under any Regulated Agreement are excluded from the monies secured by this Legal Charge;
- 19.3 any covenant or agreement expressed or implied in this Legal Charge by any party hereto to pay or to guarantee the payment of any sum or to provide any indemnity shall not apply to any monies from time to time owing or payable under any Regulated Agreement or to the performance of the obligations from time to time of the debtor or the hirer (as the case may be) under any Regulated Agreement.
20. No variation to this Legal Charge will be effective unless recorded in writing and so executed by both parties.
21. If any provision of this Legal Charge is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or if that is not possible it shall be severed from this Legal Charge and the remaining provisions of this Legal Charge shall remain in full force and effect.
22. No delay or forbearance on the part of the Council in enforcing observance or performance by the Owner or giving of time or indulgence to the Owner shall release or discharge or exonerate or in any way affect the liability of the Owner under this Legal Charge.
23. The Owner warrants to the Council that he has taken independent legal advice on the terms of and his obligations under this Legal Charge.
24. This Legal Charge does not create any rights enforceable by any person not a party to it by reason of the Contracts (Right of Third Parties) Act 1999.
25. This Legal Charge shall be governed by and construed in accordance with English law.

Executed as a Deed and delivered by the parties to it on the date set out above

THE COMMON SEAL of)
THE KENT COUNTY COUNCIL)
was affixed to this Deed in the presence of:-)

Authorised Signatory

A Member of the Kent County Council

SIGNED AS A DEED by the said)
BORROWER1_FULLNAME)
in the presence of:)

Witness signature.....

Name.....

Address.....

.....

.....

Occupation.....

SIGNED AS A DEED by the said)
BORROWER2_FULLNAME)
in the presence of:)

Witness signature.....

Name.....

Address.....

.....

.....

Occupation.....

EXECUTED as a deed by)
BORROWER1_FULLNAME)
Acting by a Director and its Secretary)
or two Directors)

Director

Print Name:

Director/Secretary

Print Name:

EXECUTED as a deed by)
BORROWER1_FULLNAME)
acting by a Director, in the presence of:)

Witness signature.....

Name.....

Address.....

.....

.....

Occupation.....