

East Kent Empty Property Initiative Loan Facility Agreement

Parties: This is an agreement made between:

(1) Us, (*Insert name and address of Kent County Council*)

and

(2) You, Surname: \_\_\_\_\_ First Names: \_\_\_\_\_ of  
\_\_\_\_\_ address

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

Loan agreement number .....

Term Loan

We are pleased to offer you a term loan facility on the following terms and conditions.

**1** **Loan Amount**

The loan amount is £[insert loan amount] (the "Loan").

**2** **Purpose**

The Loan shall be used to assist with various works approved by us in respect of the conversion and/or renovation of the Property to provide residential accommodation and to be carried out in accordance with the specification of works issued by us and set out in Appendix 1 "the Schedule of Works" and other plans "the Works", and for no other purpose.

**3** **Term**

**3.1** **Loan to Sell.**

Where the Loan is obtained in relation to a property that is to be sold on completion of the Works ("Loan to Sell") the Term shall be, subject to the terms and conditions of this agreement,

3.1.1 the period of time from the date of our signing this Agreement until the Disposal (meaning transfer, lease for a term of seven years or more, or other disposition of property registrable at HM Land Registry ("Disposal")) of the Property, or where the Property is to be converted into more than one unit, the Disposal of a sufficient number of such units to obtain sale proceeds on such Disposal amounting to or in excess of the amounts outstanding of the Loan; or

3.1.2 24 months from the date of our signing this Agreement,

whichever is the shorter period

**3.2** **Loan to Let.**

Where the Loan is obtained in relation to a property that is to be let on completion of the Works ("Loan to Let") the Term shall be, subject to the terms and conditions of this agreement,

3.2.1 the period of time from the date of our signing this Agreement until the Disposal of the Property or where the Property is to be converted into more than one unit, the Disposal of a sufficient number of such units to obtain sale proceeds on such Disposal amounting to or in excess of the amounts outstanding of the Loan; or

3.2.2 *(insert time in months)* from the date of our signing this Agreement;

Whichever is the shorter period.

#### 4. **Drawdown**

4.1 Subject to the terms and conditions of this Agreement, the Loan will be made available to you on receipt of a correctly signed legal charge document, duplicate loan agreement document and Form AP1 – "an application to change the register" .

4.2 A retention, equating to 10% of the Loan, will be retained by us, which will be paid to you on completion of the works subject to us receiving: -

4.2.1 A signed request for payment form from you that confirms acceptance and satisfaction of the completed works;

4.2.2 An invoice or receipt for payment for the works or fees which is acceptable to us. The invoice must include full details of the builder / surveyor employed including VAT registration details;

4.2.3 Notification from the relevant District Council that the works have been completed to a satisfactory standard and in accordance with the loan offer and estimates, current Building Regulations and in accordance with the specification of works issued by us;

Copies of specified guarantees and test certificates requested as part of the agreed schedule of works

4.2.5 Confirmation from you that the repair and renovation of the Property complies with the "Decent Homes Standard".

4.2.6 To comply with the Decent Home Standard, the Property must:

4.2.6.1 Be free from any category one hazards determined under the Housing Health and Safety Rating System;

4.2.6.2 Be in a reasonable state of repair. The Property is likely to fail this criterion if:

(a) One or more of the key building components are old and, because of their condition, need replacing or major repair.

(b) Two or more of the other building components are old and, because of their condition, need replacing or major repair.

4.2.6.3 Have reasonably modern facilities and services. The Property is

likely to fail this criterion if it lacks three or more of the following:

- (a) A kitchen which is less than twenty years old.
- (b) A kitchen with adequate layout and space.
- (c) A bathroom which is less than thirty years old.
- (d) An appropriately located bathroom and / or WC.
- (e) Adequate insulation against external noise, where external noise is a problem.
- (f) Adequate size and layout of common areas where the Property is a block of flats or similar.

4.2.6.4. Provide a reasonable degree of thermal comfort. To satisfy this criterion the Property must have adequate provision for heating throughout and effective insulation. This does not include, however, double-glazing.

4.3 If the retention referred to in clause 4.2 has not been drawn down by the date for repayment provided under clause 6 then, we will no longer be liable to you for payment of the retention.

## **5. Interest**

5.1 The Loan will be, subject to this clause 5, interest free.

5.2 If an event of default (as defined in clause 11.1) occurs you will be liable to pay interest on all sums due under this Agreement from the date of default to the date of payment in full of those sums at the rate of 4% per annum above Bank of England base rate from time to time current or if such rate ceases to exist such alternative rate as the parties shall from time to time agree such agreement not to be unreasonably withheld or delayed, such interest being payable both before and after judgement.

5.3 Interest accruing under clause 5.2 will be calculated daily.

## **6. Repayment**

6.1 Loan to Sell.

You agree to repay the Loan on expiry of the Term referred to in Clause 3.1 above or, on an event of default as referred to in clause 11, whichever occurs sooner.

6.2 Loan to Let.

You agree to repay the Loan either: -

6.2.1 By equal quarterly instalments over the period referred to in Clause 3.2.2 above provided that if there is a Disposal of the Property prior to the expiry of this period (or where the Property has been converted into a number of units, if there is a Disposal of, prior to the expiry of this period, a sufficient number of such units to obtain an amount equal to or in excess of the amounts outstanding of the Loan from the sale proceeds of such Disposal), you agree to repay the Loan on the date

of the Disposal; or

6.2.2 By annual repayments equating to 5% of the total loan to be paid on the first and all subsequent yearly anniversaries during the Term of the loan, with all outstanding monies to be repaid on expiry of the Term referred to in Clause 3.2 above; or

6.2.3 on an event of default if such an event of default occurs before repayment in full has been made under clauses 6.2.1 and 6.2.2.

6.3 You may prepay the Loan or any part of the Loan at any time. No amount prepaid may be redrawn.

## 7. **Security**

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 (the "Legal Charge") on the Property in such form as is attached to this Agreement.

## 8. **Payments**

8.1 All payments to be made by you 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 you are required at any time by any applicable law to make any such deduction from any payment, the sum due from you in respect of such payment shall be increased by such amount as will result, notwithstanding the making of such deduction, in our receipt on the due date for payment of each amount of a net sum equal to the sum that we would have received had no such deduction been required to be made.

8.2 If any payment would otherwise be due on a day which is not a day on which banks are generally open for business in London ("a business day"), the next following business day shall be substituted.

## 9. **Expenses**

9.1 You will pay to us on demand all expenses (including legal and out-of-pocket expenses and together with Value Added Tax if any thereon) on a full indemnity basis incurred by us 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.

9.2 You will pay a £40.00 Land Registry fee for the registration of the Legal Charge at the Land Registry, or the current fee as may be, which will be added to the Loan upon return of the signed Legal Charge to us.

## 10. **Representations and Warranties**

10.1 You represent warrant and undertake to us, on the date of your acceptance of this Agreement (with reference to the facts and circumstances then existing), as follows:

- 10.1.1 There are no pending or to your knowledge threatened actions or legal proceedings affecting you which may have a material adverse effect on your ability to repay the Loan;
- 10.1.2 You are not in breach of or in default under any agreement or obligation relating to (or analogous to) financial indebtedness;
- 10.1.3 No event or circumstance referred to in Clause 11 below will occur, or has occurred and is continuing;
- 10.1.4 All factual information supplied to us 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 you to us were made in good faith after due and careful enquiry;
- 10.1.5 Each of the representations and warranties shall be continuing and deemed to be repeated when applying for drawdown of the retention.

## **11 Events of Default**

- 11.1 An event of default will occur if:
  - 11.1.1 You fail to pay any sum payable under this Agreement when due; or
  - 11.1.2 In the case of a Loan to Sell, the Property is, or the units comprising the Property are, not made available for sale within 12 weeks of completion of the Works; or
  - 11.1.3 In the case of a Loan to Let the Property is not, or the units comprising the Property are, not made available for rent within 12 weeks of completion of the Works; or
  - 11.1.4 You commit any breach of any undertaking contained in or of any other provision of this Agreement and either such breach is in our opinion not capable of remedy or such breach is in our opinion capable of remedy and is not remedied within 21 days after the date of notice by us to you requiring remedy; or
  - 11.1.5 Any representation or warranty made or deemed to be made by you 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
  - 11.1.6 This Agreement is or becomes unlawful or unenforceable in any respect; or
  - 11.1.7 Any consent referred to above is withdrawn or materially and adversely qualified; or
  - 11.1.8 You become bankrupt or are unable to repay your debts or if you apply for an interim order for a voluntary arrangement or if a proposal for a voluntary arrangement relating to you is presented or made.
- 11.2 We may (without prejudice to any of our 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 you:
  - 11.2.1 Declare that our commitment and any obligation of ours 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

11.2.2 Declare that the Loan has become immediately due and payable, and demand that you shall forthwith repay the same together with all interest accrued and all other sums payable under this Agreement.

11.3 You will notify us forthwith in writing of the occurrence of any of the events specified in this clause 11.

11.4 You shall indemnify us on demand against any loss, damage or liability incurred by us as a consequence of any event of default under clause 11.1 and any acceleration of the repayment of the Loan under clause 11.2.2. Our certificate of any amounts due to us under this clause 11.4 shall be conclusive unless manifestly incorrect.

## 12. **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.

## 13. **Waiver**

No delay or failure by us 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 we shall always be entitled to exercise all our rights and remedies unless we shall have expressly waived them in writing.

## 14. **Assignment**

You may not assign or transfer all or any of your rights or obligations under this Agreement. We may at any time(s) assign or transfer all or any of our rights and obligations under this Agreement without your consent.

## 15. **Law and Jurisdiction**

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

15.2 You irrevocably agree 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.

## 16. **Notices**

16.1 Every notice or other communication under this Agreement shall be in writing and may be delivered personally or by letter despatched to you or us, as the case may be, at our respective address stated at the head of this Agreement or to such other address as may

be notified by either of us to the other for such purpose.

16.2 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.

17. **General**

17.1 Our rights will not be affected by any forbearance as concession made by us to you.

17.2 If you are more than one person your obligations will be binding on each person separately and all persons jointly.

18. **Acceptance**

18.1 The Agreement may be accepted by you signing without amendment the duplicate of this letter including the Legal Charge and returning it to Mrs L Gilbert, Project Co-ordinator East Kent Empty Property Initiative, Second Floor, Invicta House, County Hall, Maidstone, ME14 1XX.

18.2 If we do not receive such signed duplicate within 12 weeks of the date of our signing this Agreement our offer of the Loan will lapse without any liability or commitment on our part.

Yours faithfully

For and on behalf of

**KENT COUNTY COUNCIL**

**Date of signature on behalf of Kent County Council: [Insert date of Council's signature]**

**SCHEDULE OF WORKS**

**FORM OF ACCEPTANCE - Type on duplicate**

We accept the offer of the Loan on the terms and conditions set out in the Agreement (including the Legal Charge) of which this is a true copy and agree to perform all our obligations in respect thereof.

Dated this ..... day of.....200 (which is the date of this Agreement)

..... and .....