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**Title:** Loan Agreement

**Report of:** TGHC Head of Corporate Services

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### **Purpose of Report**

1. To seek approval from the Board of the terms and conditions of a loan agreement between Gateshead Council and Keelman Homes to provide funding for the Company's current and proposed projects.

### **Background**

2. Keelman Homes received part of the funding for the Kibblesworth development via a loan from Gateshead Council. The Board were advised of the terms and conditions of the Kibblesworth loan agreement in January 2010. The total loan drawn down was £4.5 million, which is repayable over a period of 50 years.
3. Keelman Homes have since received additional loan funding from Gateshead Council to fund its more recent projects. £1.7 million was received in October 2014 and a further £1.5 million was received in April 2015.
4. It is now necessary to formalise the loan agreement between Keelman Homes and Gateshead Council, to cover the most recent loans received and also future loans.

### **Loan Agreement**

5. The draft loan agreement is attached as an Appendix to this report.
6. This agreement has been drafted by Gateshead Council's legal team and an independent solicitor has been working on behalf of Keelman Homes.
7. The loan agreement allows Keelman Homes to draw down a loan or loans up to a maximum value of £7 million, for the purpose of developing affordable housing in Gateshead. The minimum amount that can be drawn down on each occasion is £500,000.
8. The £7 million is based on an original £4.5 million agreed in principle with the Council for the first phase of the new build programme and then the potential for the additional £2.5m that was identified as part of the second phase to deliver schemes included within the 2015-18 HCA programme. This reflects the position within the Council's Capital Programme.

9. To date Keelman Homes have already drawn down £3.2 million, meaning there is a remaining balance of £3.8 million that can still be drawn down in the future.
10. The loan facility is subject to a number of conditions before the Council authorise the drawdown of funds, which include the provision of minutes, financial statements and scheme development documents.
11. The amount of interest to be paid and the repayment terms will be agreed in advance of each individual drawdown. The loan agreement indicates that the interest is likely to be at a fixed rate which is equal to the rate currently charged to the Council for its consolidated borrowings and that repayment terms will be by way of six-monthly instalments, however there is no guarantee that these terms will be offered for every drawdown.

### **Impact on tenants**

12. Whilst this report does not impact on tenants directly, appropriate financial monitoring and control will ensure efficiencies are maximised and redirected to services that directly impact on tenants.

### **Risk Management Implications**

13. The signing of the loan agreement will assist in ensuring that the risk of insufficient available financial resources is effectively managed.
14. The risk of interest rate fluctuations has been removed by the fixing of the interest rate when each loan drawn down is taken out.

### **Financial Implications**

15. Each project is assessed for financial viability and, where a loan draw down is required, the financial viability must demonstrate that the cost of the project including loan repayments can be covered by income received.

### **Equality and Diversity Implications**

16. There are no equality and diversity implications arising from this report.

### **Value for Money implications**

17. The loan terms and conditions represent value for money for Keelman Homes. Our ability to obtain a loan on the open market, in the current economic climate, with our lack of track record, makes any other option at the present time not viable.
18. The interest payable on the loan will be set at a rate equivalent to the Council's consolidated rate of interest.

### **Health Implications**

19. There are no health implications arising from this report.

### **Environmental implications**

20. There are no environmental implications arising from this report.

### **Consultation carried out**

21. No consultation has been carried out whilst developing this loan agreement.

### **Recommendations**

22. It is recommended that the Board approve the terms and conditions of the loan agreement with Gateshead Council.

DATED

2016

THE BOROUGH COUNCIL OF GATESHEAD

and

KEELMAN HOMES LIMITED

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**LOAN FACILITY AGREEMENT**

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Legal & Corporate Services,  
Borough Council of Gateshead  
Civic Centre,  
Gateshead  
NE8 1HH

**THIS AGREEMENT** is made the                      day of                      2016

BETWEEN

**THE BOROUGH COUNCIL OF GATESHEAD** of Civic Centre, Gateshead NE8 1HH (“the Council”) and

**KEELMAN HOMES LIMITED**, a charity and company limited by guarantee (CRN:06972673) of Civic Centre, Regent Street, Gateshead NE8 1JN (“the Borrower”)

## **BACKGROUND**

- (1) The Borrower is Keelman Homes Ltd, a registered provider of affordable housing, whose primary place of business is within the Borough of Gateshead.
- (2) The Council has agreed to provide a loan facility to the Borrower in order to help fund the development, construction and conversion of properties, with a view to increasing the amount of affordable housing located in the Borough of Gateshead.

It is agreed as follows:

## **DEFINITIONS AND INTERPRETATION**

### Definitions:

In this agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

**Business Days:** a day other than a Saturday, Sunday or public holiday in England when banks are open for business.

**Drawdown Date:** the date on which a Loan is made, or is to be made.

**Drawdown Request:** a drawdown request, substantially in the form set out in Schedule 1

**Effective Date:** 1<sup>st</sup> October 2014

**Event of Default:** any event or circumstance listed in clauses 9.1.1 to 9.1.4

**Facility:** the term loan facility made available under this agreement.

**Interest Rate:** the rate of interest payable by the Borrower as specified in the relevant Drawdown Request

**Loan:** a loan made or to be made by the Council to the Borrower under this agreement

**Repayment Date:** the date(s) specified in the relevant Drawdown Request for repayment of the Loan.

**Security:** any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**Trustees:** The directors of the Borrower being the persons who have the general control and management of its administration.

Interpretation:

- (a) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (b) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (c) clause, Schedule and paragraph headings shall not affect the interpretation of this agreement;
- (d) a reference to a document in agreed form is to that document in the form agreed by the Council and the Borrower and initialled by or on their behalf for identification.

## **1. LOAN FACILITY**

The Council grants the Borrower a loan facility of a total principal amount not exceeding the sum of £7,000,000 (seven million pounds), subject to the terms and conditions of this agreement. This Agreement shall take effect from the Effective Date.

## **2. PURPOSE**

- 2.1 The Borrower shall use all money borrowed by it under this agreement for the development of housing within the Borough of Gateshead.
- 2.2 The Council is not obliged to monitor or verify how any amount borrowed under this agreement is used.

## **3. CONDITIONS PRECEDENT**

- 3.1 The Borrower shall be entitled to drawdown from the Facility from the Council subject to the provision of the following documents and evidence, in a form satisfactory to the Council:
  - 3.1.1 copies of the minutes from the relevant board and/or Trustees meeting of the Borrower, agreeing to the provision of the Loan and any associated Security;
  - 3.1.2 evidence from the Borrower that the Trustees have obtained and considered appropriate independent written financial advice regarding provision of the Loan and any associated Security, in accordance with the requirements of s124 of the Charities Act 2011;
  - 3.1.3 copies of a detailed development appraisal relating to the scheme of development which the drawdown of a Loan is due to finance;

- 3.1.4 copies of up to date constitutional documents of the Borrower;
  - 3.1.5 a copy of the Borrower's latest available audited financial statements;
  - 3.1.5 all ancillary information as reasonably requested by the Council in relation to the provision of the Loan.
- 3.2 The Council's obligation to provide a Loan is subject to the further conditions precedent, that on both the date of the Drawdown Request and the Drawdown Date:
- 3.2.1 all the commercial parameters of the Loan, including but not limited to the interest rate, the repayment date, and any applicable Security have been agreed between the Council and the Borrower, and are accurately set out in the Drawdown Request,
  - 3.2.2 the representations and warranties set out in the Drawdown Request are true and correct in all material respects and will be true and correct in all material respects immediately after the Council has made the proposed Loan; and
  - 3.2.3 no Event of Default or potential Event of Default is continuing or would result from the proposed Loan.
  - 3.2.4 the Council is satisfied in its complete discretion that the Loan can be provided in a manner which is compliant with state aid rules.
- 3.3 The conditions specified in this clause 3 are inserted solely for the Council's benefit. The Council may waive them, in whole or in part and with or without conditions, without prejudicing the Council's right to require subsequent fulfilment of such conditions.

#### **4. DRAWDOWN**

- 4.1 From the Effective Date, the Borrower shall be able to draw down funds from the Council up to the maximum amount of the Facility, subject to the following provisions:
- 4.1.1 The Borrower may request a Loan by delivering a completed Drawdown Request no less than 30 days prior to the proposed Drawdown Date
  - 4.1.2 The Borrower shall only be entitled to draw down funds within a period of 5 years from the date when the Borrower is in receipt of funds from the initial drawdown (the Availability Period).
  - 4.1.3 If any amount of the Facility is not drawn during the Availability Period, that undrawn amount shall be cancelled automatically at the end of the Availability Period.
  - 4.1.4 The amount of each drawing shall not be less than £500,000 (five hundred thousand pounds).

## **5. INTEREST**

- 5.1 The Borrower shall pay interest on the Loan at the rate and in such manner as agreed by the parties and set out in the Drawdown Request.
- 5.2 If at any time the Interest Rate applied to any Loan made under this agreement is determined to constitute an interest rate subsidy, and an aid to the Borrower which the Council is required to recover, then the Borrower is required to repay any aid element to the Council on demand, with such amount recoverable as a debt. The Council shall not be liable to the Borrower for any loss, expense, claim or proceedings consequent upon the Council exercising its rights under this clause of the agreement.

## **6. REPAYMENT**

The Borrower shall repay the Loans on the terms set out in the relevant Drawdown Request.

## **7. SECURITY**

- 7.1 By way of security for the discharge of its obligations under this agreement, and the repayment of any Loan, the Borrower shall provide the Council with such Security as specifically set out in the Drawdown Request to which the Loan relates.
- 7.2 The Borrower shall not, whilst any part of the Loan is outstanding, create or permit to subsist any mortgage, charge, or any other security interest over any part of its undertaking or assets, present or future without the prior written consent of the Council.

## **8. CONDITIONS**

- 8.1 The Council shall not be obliged to make any payment to any person other than the Borrower.
- 8.2 The Borrower shall not without the prior written consent of the Council sell, transfer or otherwise dispose of the whole or any substantial part of its business assets.
- 8.3 The Borrower may not assign or transfer any of its rights or obligations under this agreement without the prior written consent of the Council.
- 8.4 The Borrower covenants with the Council that so long as any part of the Loan (or any interest due in respect of the Loan) is outstanding it will keep the Council informed of the progress of its business, and will give the Council any information about its business to the extent and in the form and detail the Council requires.
- 8.5 The Council may at any time set off any liability of the Borrower to the Council against any liability of the Council to the Borrower, whether or not the liability arises under this agreement. Any exercise by the Council of its rights under this clause 8.5 shall not limit or affect any other rights or remedies available to the Council under this agreement or otherwise. If the set off rights under this clause are exercised, the Council shall promptly notify the Borrower of the set-off that has been made.

## **9. DEFAULT**

- 9.1 If any of the circumstances set out at clauses 9.1.1 to 9.1.4 arise (“an Event of Default”) occurs, the Council may by notice to the Borrower cancel any obligation to advance any amount not yet paid and/or declare that all the Loans and all unpaid interest accrued under the Loans which have been drawn under this agreement be immediately payable on demand.
- 9.1.1 the Borrower fails to pay any money due in relation to any Loan on the due date (unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within 14 days of its due date);
- 9.1.2 an order is made or an effective resolution is passed for winding up the Borrower;
- 9.1.3 the Borrower goes into administration, or enters into any agreement on arrangement with its creditors or any group of them;
- 9.1.4 the Borrower commits any breach of this agreement, and in the case of any breach capable of remedy fails to remedy the breach within 14 days of being required in writing by the Council to do so;
- 9.2 The Borrower will reimburse the Council on demand and on a full indemnity basis for all costs and expenses (including legal fees) properly incurred by it in connection with the exercise, preservation and/or enforcement of any of its rights or Security contemplated by this agreement or any proceedings instituted against the Council as a consequence of enforcing such rights.

## **10. MISCELLANEOUS**

- 10.1 Any notice given pursuant to this agreement shall be in writing and shall either delivered personally, sent by pre-paid first class post addressed to that party at the party's registered office, or sent by fax to the fax number of the party concerned as set out in this clause:
- The Council                      fax no. – 0191 433 2103    Attention – Martin Harrison
- The Borrower                    fax no. – 0191 433 5354    Attention – Natalie Porthouse
- 10.2 Any notice given in accordance with clause 10.1 shall be deemed served:
- 10.2.1 if delivered personally, when left at the address referred to above;
- 10.2.2 if sent by pre-paid first class post, two days after posting it;
- 10.2.3 if sent by fax, on the same day on which it were sent.
- 10.3 This agreement shall be governed by and construed in accordance with the law of England and Wales, and both parties agree to submit to the exclusive jurisdiction of the English Courts.

**Signed for and on behalf of THE BOROUGH COUNCIL OF GATESHEAD**

Signature:

Print Name:

Position:

Date:

**Signed for and on behalf of KEELMAN HOMES LIMITED**

Signature:

Print Name:

Position:

Date:

## Schedule 1

### Drawdown Request

To: Gateshead Council  
Attention: [NAME] Department  
Date: [DATE]

#### Keelman Homes Limited

#### **£7,000,000 Facility Agreement dated 2016 between The Borough Council of Gateshead and Keelman Homes Limited**

We refer to the above agreement, and give you notice that we wish to draw down the following Loan on the terms and conditions of the agreement, and subject to the further terms below:

#### Proposal

[Insert details of development / conversion of properties etc. which the proposed loan is due to fund]

#### Amount of Loan:

[tbc]

#### Drawdown Date:

[tbc]

#### Interest Rate:

[To be determined by the Council, but the general position is that a fixed interest rate will be prescribed which is equal to the consolidated rate of interest charged to the Council in respect of its own borrowings, as at the date of the respective drawdown of funds.]

All interest payable pursuant to this Loan will accrue on a daily basis, and shall be paid in accordance with the schedule of repayment annexed to this Drawdown Request

#### Interest Period:

[Six months]

#### Term of Loan and Repayment Date:

The Borrower agrees to make repayments to the Council by instalments in accordance with the schedule of repayment annexed to this Drawdown Request, which shall include repayment of [equal instalments of capital and interest calculated based on the balance outstanding at the beginning of the relevant interest period.]

[The first repayment is to be made six months from the date of the initial drawdown of funds. All future repayments will be made at six monthly intervals.]

Security:

[To be agreed between the Council and the Borrower]

Representations and Warranties:

- The Borrower has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of the Facility Agreement and the obligations associated with the provision of any Loan.
- The Borrower is the sole legal and beneficial owner of, and has good, valid and marketable title to all its assets specified as Security.
- No Event of Default and, or potential Event of Default, is continuing or might reasonably be expected to result from the making of a Loan.

Payment:

The Loan is to be made available by credit to [ACCOUNT DETAILS].

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For and on behalf of  
KEELMAN HOMES LIMITED

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For and on behalf of  
THE BOROUGH COUNCIL OF GATESHEAD

## Annex - Schedule of Repayments