

## Loan Agreement

**DATED** 2019

**Between**

- (1) **Wiltshire Council** of County Hall, Bythesea Rd, Trowbridge BA14 8JN (the “**Lender**”); and
- (2) **Stone Circle (Housing Company)** incorporated and registered in England and Wales with company number [REDACTED] whose registered office is at County Hall, Bythesea Rd, Trowbridge BA14 8JN (the “**Borrower**”).

### WHEREAS

- A. The Lender has agreed to offer to place at the disposal of and make available to the Borrower a loan of up to £[REDACTED] on the following terms and conditions (the “**Facility**”).
- B. The Loan under this Agreement is made in compliance with the European Commission's Decision of 20 December 2011 concerning public service compensation granted for Services of General Economic Interest (2012/21/EU).

### I. Definitions

- 1.1 In this Agreement, the following expressions shall, except where the context otherwise requires, bear the meanings attributed to them respectively:

“**Arrangement Fee**” means a sum equivalent to 0.025% of the Facility being [£REDACTED], payable to the Lender on the day of the first drawdown;

“**Assets**” means the properties purchased by the Borrower for the agreed Purpose;

“**Business Day**” means a day (other than Saturday and Sunday) on which banks are open for normal banking business in London;

**“Business Plan”** means the most current business plan approved in accordance with the Shareholder Agreement;

**“Event of Default”** means any one of the events specified in paragraph 5 of this Agreement;

**“Incompatible State Aid” means (as the case may be):**

- (a) State Aid which has been granted in contravention of Article 107(1) of the Treaty of the Functioning of the European Union (TFEU) and which does not qualify for an exemption pursuant to any of the provisions of the TFEU or any of its subsidiary instruments or a decision of the Commission of the European Union;
- (b) State Aid which has been granted after the United Kingdom ceases to be a Member State of the European Union to the extent that the same is granted contrary to or is an infringement of any United Kingdom Competition Requirement;

**“Indebtedness”** means the Loan together with all interest (if any) thereon and all other sums owing from time to time under this Agreement from the Borrower to the Lender;

**“Legal Charge”** means each legal charge entered into between the Borrower and the Lender from time to time in the form approved by the Lender in respect of the relevant Assets;

**“Loan”** means the aggregate principal amount for the time being advanced and outstanding under this Agreement;

**“Purpose”** means pursuant to the SGEI Decision, the purchase of properties (approved by the Lender) to be utilised as affordable housing to house those in housing need including homeless people and individuals with specialist needs in the county of Wiltshire in accordance with the Business Plan approved by the Lender;

**“Repayment Date”** means the date falling ten (10) years from the date of this Agreement unless extended by the Lender at its discretion, which for the avoidance of doubt is permissible up to eight (8) times each for a period of up to five (5) years;

“**Security**” means a Legal Charge and any other charge requested in accordance with paragraph 2.4;

“**Shareholder Agreement**” means the shareholder agreement entered into between the Borrower and the Lender dated [REDACTED];

“**SGEI Decision**” means European Commission's Decision of 20 December 2011 concerning public service compensation granted for Services of General Economic Interest (2012/21/EU);

“**State Aid**” means (as the case may be):

- (a) any aid granted by a Member State of the European Union or through the resources of such Member State in any form whatsoever which distorts or threatens to distort competition by favouring a particular undertaking or the production of certain goods insofar as such aid affects trade between Member States of the European Union;
- (b) any aid benefit or advantage (which includes but is not limited to assets, rates, funds and land) granted by or through a public sector body which is subject to any United Kingdom Competition Requirement; and

“**United Kingdom Competition Requirement**” means any legislation which:

- (a) is in force and/or in effect and/or applies (in England) on or after the date the United Kingdom ceases to be a Member State of the European Union; and
- (b) which regulates any aid funding assets or advantage granted or directed by a public sector body to the extent that the same has the ability to threaten to or actually distort either competition or an economic market in the United Kingdom and/or in any part of the European Economic Area and/or in any other country or countries (as the case may be).

- 1.2 The headings in this Agreement are inserted for convenience only and shall be ignored in construing this Agreement.
- 1.3 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted or consolidated and to all statutory instruments or orders made pursuant to it.
- 1.4 Words denoting the singular number only shall include the plural and vice versa. Words denoting any gender include all the genders and wording denoting persons shall include legal and natural persons.

## **2. The Loan**

- 2.1 The Lender will (in consideration of the Borrower agreeing to pay the Arrangement Fee, provide the required Security and repay the Loan on the terms of this Agreement) advance up to the amount of [XXXX (£xxx)] in instalments to the Borrower for the agreed Purpose as set out in this Agreement.
- 2.2 The Borrower may request an instalment of the Loan is made prior to the first anniversary of this Agreement by delivering a written notice to the Lender a minimum of 3 Business Days prior to the proposed drawdown date.
- 2.3 The Lender shall not be obliged to make the Loan to the Borrower: (a) where an Event of Default under paragraph 5 has occurred and is continuing, or will occur or continue following or as a result of the making of the Loan; and (b) where the purpose of the Loan is the purchase of new property, until such time as the Borrower has delivered to the Lender a Legal Charge in a form approved by the Lender or an undertaking to deliver the same within a reasonable period.
- 2.4 The Lender reserves the right to require and register a charge (of whatever nature it considers appropriate) over such assets of the Borrower as it considers necessary in its absolute discretion in order to secure the Loan.

## **3. Repayment of indebtedness**

- 3.1 The Borrower shall repay the Loan together with all Indebtedness without deduction or set off by the Repayment Date.
- 3.2 The Borrower shall repay all or part of the Loan together with all Indebtedness immediately upon request by the Lender.
- 3.2 The Borrower may repay or prepay the Loan and/or the Indebtedness (or any part of it) early, provided that at least 3 Business Days written notice of such intention is given to the Lender.

## **4. Interest and default interest**

- 4.1 The principal amount of the Loan outstanding shall carry interest at a rate equivalent to the [49.5 to 50] year PWLB maturity rate as at the date of drawdown (or the closest working day) [plus x%], which will be applied to the outstanding principal balance on a daily basis.
- 4.2 All unpaid interest shall be compounded on the last business day of each month.
- 4.3 Interest (including interest compounded in accordance with paragraph 4.2 above) is payable by the Borrower on an annual basis within one (1) month of notification of the amount due. The first interest payment is due on [31 March 2020].

- 4.3 On the repayment of the Loan in accordance with paragraphs 3.1 or 3.2, all accrued interest shall be paid unless otherwise agreed by the parties.
- 4.4 For the avoidance of doubt, any sum paid to the Lender shall be applied firstly in settlement of any interest due under this Agreement, secondly in settlement of the principal sum due thirdly in prepayment of any other sums due under this Agreement.
- 4.5 Following the occurrence of an Event of Default interest shall accrue on all outstanding amounts at the rate set out in paragraph 4.1 above plus an additional 1%.

## **5. Events of default**

- 5.1 The Lender shall be entitled at any time after the occurrence of an Event of Default by notice in writing to the Borrower to declare that the Indebtedness has become immediately due and payable whereupon the same shall become immediately due and payable and the Borrower shall immediately pay the same to the Lender.
- 5.2 An Event of Default occurs if:
- (a) the Borrower commits a material breach of any of the terms of this Agreement; or
  - (b) performance against the Business Plan has repeatedly not been achieved; or
  - (c) any distress, execution or other process is levied upon any of the assets of the Borrower; or
  - (d) the Borrower has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller; or
  - (e) the Borrower ceases or threatens to cease to carry on its business.
- 5.3 In the event that the Loan shall be declared immediately due and payable as stated above, the Borrower will reimburse the Lender for all losses and expenses incurred by the Lender as a consequence of the Event of Default. The certificate of the Lender as to the amount of such losses and expenses shall, in the absence of manifest error, be conclusive.

## **6. Costs**

The Borrowers shall pay any stamp, documentary and other similar duties and taxes to which the Security may be subject, or give rise and shall indemnify the Lender against any losses or liabilities that it may incur as a result of any delay or omission by the Borrower in paying any such duties or taxes. The parties shall otherwise bear their own costs associated with the preparation and enforcement of this Agreement.

## **7. Compensation**

7.1 The Borrower shall co-operate with the Lender at its own cost to review the level of compensation paid to it under this Agreement to ensure that no overcompensation has or will be provided under the terms of the SGEI Decision.

7.2 If the Lender decides that the Borrower has been overcompensated under the terms of the SGEI Decision then it may recover from the Borrower such overpayment together with interest at the statutory rate. The Borrower shall repay such sum within 20 Business Days of receipt of a request from the Lender to do so.

## **8. Currency and payments**

8.1 All payments to be made under this Agreement shall be made without deduction or offset in pounds sterling, in immediately available funds during normal banking hours to such bank account as the Lender shall specify.

8.2 All sums payable by the Borrower under this Agreement shall be paid in full without any set off or counterclaim and (save insofar as required by law to the contrary) free and clear of and without any deduction or withholding from any payment to the Lender then the Borrower will immediately pay to the Lender such additional amounts as will result in the Lender receiving the full amount it would have received had no such deduction or withholding been required and will simultaneously provide the Lender with a certificate of deduction or withholding in respect of the amount deducted or withheld together with evidence satisfactory to the Lender that the amount so deducted or withheld has been paid over to the relevant authorities as and when due.

## **9. Notices**

9.1 Any notice or service to the Lender or Borrower under this Agreement shall be addressed and delivered to the Lender or Borrower at the address stated above.

9.2 Any notice or communication under this Agreement shall be given by first class prepaid post addressed to the relevant party.

## 10. Assignment

Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) unless it is the Lender to its successors in title.

## 11. Miscellaneous

- 11.1 Any decision made or opinion held by the Lender concerning the provisions of this Agreement shall be made in its absolute discretion and shall (in the absence of manifest error) be final and binding on the Borrower.
- 11.2 Any calculation made by the Lender as to the amount of any Indebtedness shall be conclusive and binding in the absence of manifest error.
- 11.3 **Waiver:** No failure or delay by the Lender in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. No waiver, compromise agreement or other dealing with one person jointly and severally liable shall affect or reduce the liability of any other such person.
- 11.4 **Cumulative Remedies:** The rights and remedies provide in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 11.5 **Entire Agreement:** This Agreement and documents referred to in it shall prevail in the event of any conflict between them and any previous agreement between the parties in relation to the Loan.
- 11.6 **Borrower Constitution:** No change shall be affected to the constitution, ownership or Purpose of the Borrower during the life of the Facility except with the prior written consent of the Lender.
- 11.7 **Modifications:** This Agreement may be amended or modified in whole or in part at any time by an agreement in writing executed in the same manner and by the same persons as this Agreement.
- 11.8 **Record:** The Lender shall maintain a record of the amount of all principal, interest and other sums due or to become due from the Borrower under this Agreement. In any legal action or proceeding arising out of or in connection with this Agreement, the entries made in the accounts or records maintained by the Lender in connection with this Agreement shall be prima facie evidence of the existence and amounts of the obligation of the Borrower expressed in this Agreement.
- 11.9 **Interpretation:** Unless the context otherwise requires, words importing the singular shall include the plural and vice versa; word importing the masculine gender shall

include the feminine gender and vice versa; reference to persons shall include bodies of persons whether corporate or incorporate.

- 11.10 **Further Assurance:** At any time after the date of this Agreement, the Borrower, shall, at the request and cost of the Lender, execute or procure the execution of such documents and do or procure the doing of such acts and things the Lender requires or may require for the purpose of giving the Lender the full benefit of all the provisions of this Agreement.
- 11.11 **Third Party Borrowing:** The Borrower shall not enter into any other borrowing facility without the prior written consent of the Lender.
- 11.12 **Third Party Rights:** Unless otherwise expressly provided a person which is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy which exists or is available part from that Act.
- 11.13 **Information:** The Borrower shall provide to the Lender during the term of this Agreement:
- (a) reports setting out financial and operational performance against the Business Plan when requested by the Lender;
  - (b) an annual confirmation that, based on the current information available, the funding under this Agreement together with all revenue generated in providing the SGEI shall not exceed the net costs permitted under the SGEI Decision; and
  - (c) such other information about the Borrower which the Lender may reasonably request from time to time.
- 11.14 **Illegality:** If, in any applicable jurisdiction, it becomes unlawful for the Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain the Loan upon the Lender notifying the Borrower, the Loan shall become immediately repayable in accordance with paragraph 5.3 of this Agreement.
- 11.15 **State Aid Law:** If the Loan is found to constitute Incompatible State Aid (or is under investigation or subject to judicial proceedings in relation to State Aid compliance) then and is not capable of being restructured so as to be compliant then the Borrower must repay any sum of Incompatible State Aid plus such interest as is prescribed by State Aid law within 20 Business Days of the Lender issuing it with a written demand for payment, or a longer period with agreement of the Lender.

## 12. Law

This Agreement and the contract arising out of the Borrower's acceptance of the loan facility on the terms and conditions set out in this Agreement shall be governed by and construed in all respects in accordance with the laws of England. The parties submit to the exclusive jurisdiction of the English courts.



**In Witness hereof the parties have cause these presents to be duly Executed but not delivered until the date hereof**

**Executed by  
Stone Circle (Housing Company) Limited  
acting by**

.....

Director

**The Common Seal of Wiltshire Council was hereunto affixed in the presence of:**

.....

Authorised Signatory