

DATED

FINANCIAL ASSISTANCE AGREEMENT

between

PORTSMOUTH CITY COUNCIL

and

[NAME OF RECIPIENTS]

RELATING TO

[PROPERTY ADDRESS WITH POSTCODE]

CONTENTS

CLAUSE

1.	Definitions	1
2.	Payment and Repayment of Loan	3
3.	repayment of Loan	3
4.	Termination	4
5.	Amount Repayable	4
6.	Interest	5
7.	Mortgage and Registration of this Deed	6
	6	
8.	Warranties	7
9.	Insurance	7
10.	Duration	7
11.	Assignment.....	8
12.	Waiver	8
13.	MISCELLANEOUS	8
14.	Notices	8
15.	Dispute resolution	9
16.	Contracts (Rights of Third Parties) Act 1999	9
17.	Council as Local Authority Clause.....	9
18.	Governing law	9

SCHEDULE

SCHEDULE 1 THE WORKS	9
----------------------------	---

THIS DEED is dated

2019

PARTIES

- (1) **PORTSMOUTH CITY COUNCIL** of Civic Offices Guildhall Square Portsmouth PO1 2AL (“the **Council**”).
- (2) [NAME OF RECIPIENTs], of [ADDRESS] (“the **Recipient**”).

BACKGROUND

- (A) The Recipient has asked the Council to carry out the Works to the Property in consideration of the Principal Sum.
- (B) The carrying out of the Works to the Recipients' home will improve the provision of foster care by the Recipient.
- (C) The Council will only seek to recover the cost of the Works from the Recipient in certain circumstances.
- (D) This Agreement sets out the terms and conditions on which the Principal Sum may become repayable by the Recipient to the Council.

AGREED TERMS

1 DEFINITIONS

In this Agreement the following terms shall have the following meanings:

Commencement Date: the date of this Agreement.

Costs Incurred To Date: costs incurred in connection with the Works (to include without prejudice to the generality of the foregoing costs incurred by the Council in connection with the preparation of plans, obtaining consents for the Works and carrying out any part of the Works and any other costs incurred by the Council in connection with the Works and / or Loan) and any funds that have been committed to the Works that the Council is obliged to pay.

Default Interest Rate: means five per cent (5%) per annum above the base rate for the time being of Barclays Bank plc or (if not available) such comparable rate of interest as the Council (acting reasonably) shall from time to time determine.

End Date: the fifth anniversary of this Agreement or if earlier the date on which this Agreement is terminated pursuant to clause 4.1 or 4.2.

Expiry Date: [date 5 years from the date of this agreement].

Loan: the amount to be repaid by the Recipient if a Repayment Event occurs or this Agreement is terminated by the Council such amount being as determined by clause 5.

Interest Rate: means 2% per annum.

Legal Mortgage: means the legal mortgage dated 2019 between the Council (1) and [] (2) securing the Loan.

Owner's Interest: means the whole of the freehold interest in the Property registered at Land Registry with freehold title absolute under title number [] in respect of which the Recipient is the sole registered proprietor.

Principal Sum: £[] being the total cost of the Works [inclusive of VAT].

Security Interest: means any charge, pledge, mortgage, lien or other security interest securing any obligations of any person or any other arrangement of any type whatsoever having the effect of conferring security or a similar effect.

Works: the works to the Property described in Schedule 1.

Property: [address] [being all that [freehold] land registered at Land Registry under title number []].

Repayment Date: the earlier of:

- (a) the date on which this Agreement terminates in accordance with clause 4.1 or 4.2; and
- (b) the date on which a Repayment Event occurs.

Repayment Event: shall have the meaning given in clause 3.2.

2. PAYMENT AND REPAYMENT OF LOAN

2.1 The Council is carrying out the Works at the request of the Recipient in consideration of the Principal Sum.

2.2 The Principal Sum shall become due to the Council on the Commencement Date and be payable by the Recipient in accordance with this Agreement.

2.3 Notwithstanding clause 2.2, the Council shall not require payment of the Principal Sum unless and until a Repayment Date occurs before midnight on the Expiry Date.

3. REPAYMENT OF LOAN

3.1 A Repayment Event shall be the occurrence of any of the following prior to midnight on the Expiry Date:

- (a) the Recipient fails to perform promptly or comply with any of its obligations under this Agreement;
- (b) the Recipient ceases to have an Owner's Interest;
- (c) the Property is no longer occupied as the main or sole residence by the Recipient or any foster child/young adult approved by the council and the Council shall have sole and absolute discretion in assessing whether or not this is the case; and shall have discretion to wave this requirement for any period it sees fit.
- (d) the Recipient obtains duplicate funding from a third party for the Works.
- (e) the Recipient provides the Council with any materially misleading or inaccurate information or the warranties given in clause 9 are no longer correct or misleading when made or deemed to be made ;
- (f) the Recipient has acted dishonestly or negligently at any time in connection with the matters contained in this Agreement or has acted in a manner that is to the detriment of the Works;
- (g) the Recipient has failed to obtain the consent (if required) of any mortgagee of the Property or having been obtained, that consent it is withdrawn.

3.2 On a Repayment Event the amount of the Loan that is repayable shall be the amount determined in accordance with clause [5].

3.3 If a Repayment Date occurs the Council shall serve notice upon the Recipient stating the amount of the Loan that has become repayable and such repayment shall be made to such bank account and by such method as the Council shall direct in writing within 10 days of the Council's notice.

3.4 The Recipient shall, immediately upon becoming aware of the same, give the Council written notice of the occurrence of a Repayment Event.

- 3.5 Any payments due by the Recipient to the Council pursuant to this Agreement shall be made by electronic transfer to such account and by such method as the Council may direct.

4. TERMINATION

- 4.1 If a Repayment Event occurs the Council may by notice to the Recipient terminate this Agreement with immediate effect and require the Recipient to repay the Loan.
- 4.2 Should the Recipient decide not to proceed or continue with the Works and no longer desires the Loan and notifies the Council of this in writing then the Council shall within [] days notify the Recipient of the Costs Incurred to Date. If the Recipient upon notification of such Costs Incurred to Date still wishes to terminate this deed it may do so by serving a second notice on the Council. This deed shall terminate 10 working days after the later of receipt by the Council of that second written notice together with payment of the Costs Incurred to Date.
- 4.3 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled

5. AMOUNT REPAYABLE

- 5.1 For the avoidance of doubt if this Agreement does not terminate pursuant to clause 4.1[default] or 4.2 or if no Repayment Event has occurred prior to midnight on the Expiry Date then no part of the Loan nor Interest shall be repayable.
- 5.2 If this Agreement terminates pursuant to clause 4.2 the amount of the Loan that shall be due shall be the Costs Incurred to Date.
- 5.3 In the event that a Repayment Date occurs prior to the Expiry Date then the amount of the Loan payable by the Recipient to the Council shall be as follows:

Where the Repayment Date occurs:

- (a) in the period from the date of this Agreement to and including the first anniversary of this Agreement: the Principal Sum.

- (b) in the period from and including the first anniversary of this Agreement to and including the day before the second anniversary of this Agreement: 80% of the Principal Sum.
- (c) in the period from and including the second anniversary of this Agreement to and including the day before the third anniversary of this Agreement: 60% of the Principal Sum.
- (d) in the period from and including the third anniversary of this Agreement to and including the day before the fourth anniversary of this Agreement: 40% of the Principal Sum.
- (e) in the period from and including the fourth anniversary of this Agreement to and including the day before the fifth anniversary of this Agreement: 20% of the Principal Sum.

5.4 The Recipient shall repay the amount of the Loan outstanding as calculated in accordance with clause 5.3 by equal monthly payments on the first day of each month within the period from the date the loan becomes repayable to the end date.

6. INTEREST

- 6.1 If any money payable under this Agreement by the Recipient has not been paid by the date it is due, the Recipient shall pay the Council interest at the Default Interest Rate (both before and after any judgment) on that amount for the period from the due date to and including the date of payment.

7. MORTGAGE AND REGISTRATION OF THIS DEED

- 7.1 The Recipient shall enter into the Legal Mortgage on the date of this Agreement.
- 7.2 The Recipient hereby consents to the entry of the following restriction in Standard Form L below against the Recipient's title to the Property at the Land Registry:

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Portsmouth City Council, Legal Services Department, Civic Offices, Guildhall Square, Portsmouth, PO1 2PX that the provisions of a deed dated [

] 2012 made between Portsmouth City Council (1) and [] (2) have been complied with"

7.3 Subject to all payments that are due to be paid by the Recipient (if any) having been paid in full, the Council shall apply to the Land Registry or Local Land Charges as the case may be to remove any entry relating to the existence of this agreement against the title to the Property as soon as reasonably practicable after the earlier of the date this Agreement is terminated pursuant to clause 4.1 or 4.2 or the Expiry Date.

8. WARRANTIES

8.1 The Recipient warrants, undertakes and agrees that:

- (a) the Recipient has an Owner's Interest in the Property;
- (b) the Recipient lives in the Property as their only or main residence at the date of this deed;
- (c) no Security Interest subsists over any of its assets save for [details of any mortgage]; and
- (d) the Recipient is not the subject of any actual, pending or threatened material litigation, arbitration or other court arbitral proceedings which, if adversely determined, might affect the Owner's Interest or might adversely affect the Recipient's ability to perform its obligations under this Agreement.
- (e) We confirm that, on today's date:
 - (i) the representations and warranties made in this Agreement are true and correct, and will be true and correct;.
 - (ii) no Repayment Event is continuing or would result from the proposed Loan.

9. INSURANCE

9.1 The Recipient shall effect and maintain with a reputable insurance company a buildings insurance policy in the full reinstatement cost of the Property assuming the Works have been completed..

9.2 The Recipient shall (on request) supply to the Council a copy of such insurance policies and evidence that the relevant premiums have been paid upon request.

10. DURATION

- 10.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the End Date.
- 10.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

11. ASSIGNMENT

- 11.1 The Recipient may not assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, save to the party named in the Form of Authority for Payment, or except with the prior approval of the Council transfer or pay to any other person any part of the Loan.

12. WAIVER

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

13. MISCELLANEOUS

- 13.1 All sums payable by the Recipient under this Agreement must be paid in full without any set-off or counterclaim and, save in so far as required by law to the contrary, free and clear of and without any deduction or withholding whatsoever. If the Recipient is at any time required by law to make any deduction or withholding from any payment to the Council, then the Recipient must immediately pay to the Council such additional amounts as will result in the Council receiving the full amount it would have received had no such deduction or withholding in respect of the amount deducted or withheld together with evidence satisfactory to the Council that the amount so deducted or withheld has been paid over to the relevant authorities as and when due.

14. NOTICES

- 14.1 All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, or mailed (first class postage prepaid) to the Council marked for Private Sector Housing at Civic Offices Guildhall Square Portsmouth PO1 2PL or to the Recipient at the address of the Property or as otherwise notified in writing.

If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

15. DISPUTE RESOLUTION

- 15.1 In the event of any dispute arising between the Recipient and the third party contractor carrying out the Works the Council will (if requested to do so by the Recipient) assist in mediating between the Recipient and the third party contractor. However, the Recipient acknowledges that the third party contractor has been employed by the Recipient and not the Council and so any disputes or claims should be resolved using the remedies available to the Recipient under the contract between the Recipient and third party contractor.

16. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 16.1 This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

17. COUNCIL AS LOCAL AUTHORITY CLAUSE

- 17.1 For the avoidance of doubt nothing herein contained or implied shall prejudice or affect the Council's rights power duties and obligations in the exercise of its functions as a Local Authority and the rights powers duties and obligations of the Council under all public and private statutes byelaws orders and regulations may be as fully and effectually exercised in relation to the Property as if it was not the owner of the Property and as if this Agreement had not been executed by it.

18. GOVERNING LAW

- 18.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 The Works

[brief description eg. Extension to kitchen area / loft conversion]

The COMMON SEAL of
PORTSMOUTH CITY COUNCIL
was hereunto affixed in pursuance of
a resolution of the Council passed at
a meeting duly convened and held:

Authorised Signatory

SIGNED as a DEED by [REDACTED]
in the presence of:

Witness's signature

Name

Address

.....

.....