

## **TRANSFER OF HOUSING STOCK TO ROCHFORD HOUSING ASSOCIATION**

### **1 SUMMARY**

- 1.1 This report seeks final approval for the transfer of the Council's housing stock to Rochford Housing Association Ltd.
- 1.2 The transfer is due to take place on 2 July 2007.

### **2 BACKGROUND**

- 2.1 Following the positive ballot of the Council's tenants at the end of 2006, negotiations have continued to prepare for the transfer of the Council's housing stock to Rochford Housing Association Ltd. (RHA).
- 2.2 The Council's financial consultant, Dr. Graham Moody, presented a progress report to Council on 27 February 2007 and decisions on the retention of potential development sites and transfer of playspaces associated with housing schemes were made by the Executive Board on 7 June 2007.
- 2.3 The Transfer Members Panel has met on several occasions and been briefed on progress with key issues.
- 2.4 Mr. Keith Jenkins from the Council's appointed LSVT legal consultants, Winckworth Sherwood, and Dr. Moody will be attending the Council meeting.

### **3 TRANSFER AGREEMENT**

- 3.1 The Transfer Agreement is a substantial document that sets out the terms under which the housing assets of the Council are to transfer and the arrangements for the Council to ensure that the promises made to tenants before the ballot are kept.
- 3.2 A report from the Council's LSVT legal consultants is attached at Appendix A. The first 12 pages set out the background and explain the clauses in the Principal Agreement. The remainder of their report then explains the schedules to the agreement and supplementary provisions.
- 3.3 As is normal in housing stock transfer, at the time of writing this report some aspects of the transfer agreement are still being finalised, but a copy of the full draft is being made available in the Members' Library.
- 3.4 In accordance with statutory requirements, public advertisements have been placed concerning the proposed transfer to RHA of certain playspaces which were acquired under Housing Act powers. Any representations which may be received will be reported at the meeting.

**4 TRANSFER PRICE AND ASSOCIATED FINANCIAL MATTERS**

- 4.1. The report of the Council's LSVT financial consultant is attached at Appendix B.
- 4.2. The report explains the basis of the valuation of the stock being transferred, how the Council's housing debt will be dealt with and arrangements for recovery of Value Added Tax (VAT) on the major works that will be carried out to the transferred properties, with arrangements for sharing the recovered VAT between the Council and Rochford Housing Association.

**5 RISKS AND FINANCIAL IMPLICATIONS**

- 5.1 The risks and financial implications are explained in Appendices A and B.

**6 RECOMMENDATION**

- 6.1 It is proposed that the Council **RESOLVES**
- (1) that the Transfer Agreement, to be made between Rochford Housing Association Limited and the Council, and any other agreement, to be entered into pursuant to the Transfer Agreement be approved
  - (2) that the transfer be approved, subject to receipt of the consent of the Secretary of State for Communities and Local Government pursuant to Sections 32-34 and 43 of the Housing Act 1985 for the disposal of the Council's housing stock to the Association
  - (3) that the Chief Executive, in consultation with the Leader of the Council, be authorised to agree any final financial issues and take any other necessary action which must be settled before completion of the transfer

Graham Woolhouse

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**Background Papers:-**

None

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## APPENDIX A

**REPORT ON THE DRAFT AGREEMENT FOR THE TRANSFER  
OF HOUSING STOCK TO ROCHFORD HOUSING ASSOCIATION LIMITED**

This is a Report to Rochford District Council on the current draft of the Agreement for the transfer of housing stock (the “Agreement”) between Rochford District Council (the “Council”) and Rochford Housing Association Limited (the “Association”).

The Report is intended as a summary only of the main points in the Agreement. For further detail, please refer to the Agreement itself. This summary cross refers to the relevant sections in the Agreement.

This Report sets out the background to the transfer agreement, including tenant consultation. It then summarises the contents of the transfer agreement, following the order of the Clauses and Schedules of the draft Agreement (which consists of the Principal Agreement and Schedules containing either supplementary agreements relating to the transfer, or information about the property, staff and other aspects of the transfer).

Please note that the Report may not be circulated, quoted, relied upon or otherwise used by any other person without our prior written consent. We accept no liability to any person other than the addressee of this Report.

**1. BACKGROUND AND TENANT CONSULTATION**

- 1.1 In 2006 the Council consulted its secure tenants on its proposal to transfer its housing stock to Rochford Housing Association Limited, which is an industrial and provident society.
- 1.2 A formal consultation document, prepared in consultation with officers of CLG, was issued to tenants on 7<sup>th</sup> October 2006 in accordance with section 106A and paragraph 3(2) of the Housing Act 1985.
- 1.3 A stage 2 letter, pursuant to section 106A and paragraph 3(3) of the Housing Act 1985 was issued to tenants on 14<sup>th</sup> November 2006.
- 1.4 In a ballot conducted between mid November and mid December 2006 by Electoral Reform Ballot Services, tenants voted in favour of the proposal.
- 1.5 Accordingly, the Council resolved to pursue the transfer, subject to the consent of the Secretary of State.
- 1.6 The consultation document identified works which the Association would carry out to the transferring properties within 5 years, and thereafter (Parts C and F of the consultation document). The Association covenants in the Agreement to carry out these works within the timetable (see paragraph 7.1 under the Fourth Schedule below,

(Schedule 1 to this Report) and the Development Agreement detailed at paragraph 16 under the Sixteenth Schedule below).

- 1.7 The consultation document set out certain information and commitments with regard to tenant participation. These were set out in Part G of the consultation document. The Association covenants in the Agreement to carry out the promises made to tenants in the consultation document (see paragraph 9.2 under the Fourth Schedule below) and in Schedule 1 to this Report).
- 1.8 The consultation document set out for the benefit of tenants a form of assured non-shorthold tenancy agreement to be issued to transferring tenants in substantially the form in the consultation document, and the Association covenants to offer this agreement to transferring tenants (see paragraph 11 under “Principal Agreement” below).
- 1.9 We confirm that this report is an accurate summary of the main provisions of the latest draft Agreement which will be submitted to the CLG in due course as part of the Council’s application for statutory consent to transfer its housing stock.

## **PRINCIPAL AGREEMENT**

### **2. Clause 1 – Definitions**

This clause sets out the principal defined words and phrases which are used subsequently in the Agreement. Most of the definitions are self explanatory but the following specific points should be noted:-

#### **“Allocated Price”**

This definition is linked to the definition of the Price (see below) and is the amount by which the Price is to be adjusted to take account of stock movements (as a result of right to buy sales) occurring since the date of the valuation agreement with the Council. The valuation is currently estimated to be £1.86 million based on rented dwellings and The Council and the Association need to finalise how the Price will be adjusted for stock movements from those currently assumed and this figure (or figures) will be the Allocated Price.

#### **"Price"**

As noted above, the valuation of the stock is currently being finalised between the Council’s lead consultants and the Association’s lead consultants and will be reflected as the Price in the Principal Agreement.

The Council and the Association are proposing to adopt a VAT Savings Scheme to allow the Association to recover VAT payable on certain enhancement works. Under the Scheme, the Price would be increased by the value of the enhancement works (less

VAT) which the Council would covenant to do to the Property. The value of the works comprised in the scheme is currently being calculated. The amount of the increase in the Price would, in turn, be paid to the Association under the enhancement works agreement (the Development Agreement – see paragraph 16 under the Sixteenth Schedule). Because this is the same amount as the amount the Council must pay the Association under the Development Agreement the net effect is that the amount which the Council actually receives on the day of transfer will not be affected by the proposed VAT arrangements.

The Agreement provides that if there are any changes in the number of rented dwellings actually transferred, then the Price will be adjusted by the Allocated Price.

### **"Property"**

The Property is divided into residential property (referred to in Part I of the First Schedule of the transfer agreement) and ancillary property (set out in Part II of the First Schedule of the transfer agreement). The residential property is principally defined by reference to the Council's rent roll, a computer listing of ordinary rented dwellings. The ancillary property will include garages and parking spaces, freehold reversions to right to buy leasehold flats, freehold reversions to electricity sub-stations and amenity and play areas and other assets. The Council has produced plans which show all of the areas of land being purchased by the Association.

### **"Superannuation Scheme"**

The Council's staff are currently admitted to the Essex County Council Pension Scheme. The Association is now finalising an admission agreement with the administrators in order to join the Scheme on the Completion Date.

## **3. Clause 2 - Agreement to Sell**

In consideration of the Association paying the Price to the Council, the Council will transfer the Property to the Association.

## **4. Clause 3 – Incumbrances, Tenancies and Rights**

The Property is sold subject to and with the benefit of various incumbrances (such as existing covenants which affect the legal title to the Property), the Tenancies (which includes the transferring Council tenants and the former Council tenants occupying flats which they have bought) and the Rights (which include rights of way and other matters which affect or benefit the legal title to the Property). The Property is also sold with the benefit of the Development Agreement (see under the Sixteenth Schedule of the transfer agreement for more information about this and the VAT savings scheme).

**5. Clause 4 – The Completion Date and Payment of the Price**

Completion is intended to take place on 2 July 2007. On completion, the Association will purchase all of the Property and pay the Price.

**6. Clause 5 - Covenants for Title**

The Council will (except where specifically stated in the transfers of the Property that only limited title guarantee will be given) sell the Property with Full Title Guarantee. Full Title Guarantee is the strongest covenant which a seller can give, though it is qualified by reference to those incumbrances referred to in the Principal Agreement at clause 3.

**7. Clause 6 - Conditions of Sale and Transfer Documents**

The provisions of this clause incorporate a set of standard conveyancing conditions called the "Standard Conditions of Sale (Fourth Edition)" (which are varied by clause 6).

The provisions of clause 6 require the purchase monies to reach the Council's bank account by 4 pm on the Completion Date. If the monies are not received until after the stated time, then the Association will have to pay interest on the outstanding balance at 2% above HSBC Bank's Base Rate from the Completion Date to the date when the monies are actually received (usually by the following working day). If the time of completion is delayed, it is common for a council to be asked to waive interest payable as long as the funds are remitted by the following day.

The clause also provides for general apportionment of income and outgoings. The Council receives all income from the Property and pays outgoings up to but not including the Completion Date. The Association receives income and pays outgoings on and from the Completion Date.

The Council is responsible for preparing the various transfers, leases and underleases relating to the Property.

**8. Clause 7 – Council's Warranties and Covenants**

This clause obliges the Council to provide warranties in favour of both the Association and its Lenders, and also to provide covenants in favour of the Association. The Warranties provide comfort about the Council's legal title to the Property (among other things) and the covenants are principally to bind the Council to its promises in the formal consultation exercise. The provisions of these documents are referred to in more detail in the Fifth Schedule of the transfer agreement (Schedule 2 of this document).

**9. Clause 8 – Nomination Rights**

This clause provides that the parties will be bound by the form of Nomination Rights Agreement set out in the Second Schedule. The Nomination Rights Agreement allows the Council to nominate persons to certain vacancies occurring in the Association's housing stock. Further detail about this agreement is provided under the Second Schedule of the transfer agreement.

**10. Clause 9 - Rent and Other Associated Charges/Arrears and Prepayments by Tenants**

The Council has agreed to sell various arrears, i.e. the arrears of rent and service charges of existing tenants of the Property and existing leaseholders of the Ancillary Property.

The price to be paid for arrears relating to existing tenants is to be calculated in accordance with the CIPFA age-based formula stated in clause 9. In the case of existing leaseholder arrears, the Association shall pay the full value of the arrears to the Council. Sundry debts and former tenant and former leaseholder arrears will not be transferred to the Association.

The rent arrears will be formally assigned under a Deed of Assignment (see Part I of the Fifteenth Schedule below) which is due to be completed on the earlier of 28 days after the completion date or five days after the Council have notified the Association of the final amount of the arrears (whichever is the earlier). It is important that the formal Deed of Assignment is entered into, as the Courts will require evidence of the assignment of arrears in due course.

The Association is obliged to pay the price of arrears in two equal instalments, comprising 50% three months after the completion date or the date of the assignment of the arrears which ever is later and 50% on the day which is six months after the completion date or the date of the assignment which ever is later.

The Council also agrees (at the Association's expense) to assist in recovering the rent and service charge arrears purchased by the Association. This could include providing further information or taking legal action if the Association encounters difficulty in recovering arrears.

In addition, this clause contains a declaration that any pre-payments made by transferring tenants and leaseholders which relate to any period after Completion, will be paid over by the Council within 20 Business Days after the Completion Date.

The Council warrants that the maximum amount of the arrears at Completion will not exceed a stated figure (which is to be inserted).



**11. Clause 10 - Provisions of New Assured Tenancy Agreement**

This clause requires the Association to issue (within three months of the Completion Date) a Tenancy Agreement in the form appearing in the formal consultation document (a copy of which will be set out in the Eighth Schedule to the Agreement) to all tenants who transfer from the Council on the Completion Date except for any tenants who have a Court Order for possession against them or a Notice of Intention to Seek Possession (“NOSP”) or possession proceedings outstanding. This qualification was set out in the formal Consultation Document.

If a Possession Order is discharged or a NOSP is withdrawn or expires, the relevant tenants are then entitled to a Transferring Tenant’s Tenancy Agreement, effective from the Completion Date.

The clause also states that the Association will give all of the additional rights contained in the Tenancy Agreement to transferring tenants even if they do not sign and return their Tenancy Agreement.

**12. Clause 11 - Services Costs and Apportionments**

Under this clause, the Council agrees to pay for all work done and services provided to the Property for the period up to but not including the Completion Date. On and from the Completion Date the Association assumes responsibility for all such matters.

Any payment required is to be made within 3 months of the Completion Date. This is similar to the provisions of clause 6 of the Agreement where the Council receives all income from the Property up to but not including the Completion Date and the Association is entitled to receive the income from the Property from the Completion Date.

**13. Clause 12 - Contracts Affecting the Property**

This clause provides that contracts relating to the Property will be dealt with in one of two ways:-

- Assigned (in whole or part) to the Association;
- retained by the Council and held on trust for the Association with the Association paying an appropriate proportion of the contract price.

The value of works carried out under the Assigned Contracts and the Retained Contracts will need to be apportioned as at the Completion Date. The Council agrees to pay for all work done up to but not including the Completion Date and the Association agrees to pay for all work carried out thereafter. These valuations need to be organised by the Association’s and the Council’s officers to avoid later disputes.

The Council warrants that all sums due have been paid and that there are no outstanding breaches of the Contracts.

**14. Clause 13 - Destruction of the Property and Insurance**

The Council agrees to reimburse the Association's reasonable costs properly incurred in reinstating any building which is the subject of an insurance claim as at the Completion Date and where the damage suffered falls within a list of insured risks under any insurance policy maintained by the Council. Details of any such damage known to the Council will be set out in the Ninth Schedule.

Clause 13 also obliges the Association to insure the Property for its full reinstatement cost against fire and other usual risks from the Completion Date.

**15. Clause 14 – Staff**

This clause deals with the following matters:

- 15.1 It requires the Council to set out (in Part I of the Third Schedule) the names and other related employment details of the Council's staff who are to transfer to the Association upon completion.
- 15.2 The Association acknowledges and undertakes that it will become the employer of the transferring staff after transfer and that the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") apply to the transfer, as well as the Statement of Practice "Staff Transfers in the Public Sector". The Statement of Practice sets out that Local Authorities should apply TUPE principles even if it is not clear that TUPE applies.
- 15.3 It provides the Association with various warranties (against which the Council may disclose) in relation to the transferring staff's employment with the Council. The staff are deemed to transfer on the same terms and conditions as they enjoyed with the Council and so the Association must be aware of all previous employment history. The Council is responsible for ensuring that all material information about the transferring employees has been provide to the Association, including information relating to:
- Ages, length of service, personnel files etc
  - Terms and conditions of employment
  - Employees with a statutory right to return to work
  - Details of any existing claims, disputes etc.

Any circumstances which do not accord with the terms of the warranties are required to be disclosed in the Third Schedule.

- 15.4 The Council gives the Association an indemnity against losses which may be suffered by the Association as a result of breaches of the warranties, inaccuracies in the information provided by the Council in respect of transferring staff and other matters (such as failure to pay the transferring staff up to the day before the Completion Date). This is based on the principle that the Council retains liability for all employment liabilities which arise pre-transfer and the Association will have liability from the Completion Date.

The Association cannot recover its loss for any individual breach if this amounts to less than £2,500 unless and until the aggregate of all such claims exceeds £15,000 after which all claims become payable by the Council (including those making up the £15,000). Nor can the Association make claims for a breach of these warranties notified to the Council more than two years after the Completion Date.

- 15.5 The Council also agrees to indemnify the Association against any claims made by or in relation to staff retained by the Council. The Association could bring a claim under this indemnity if, for example, the Council fails to include an employee previously working in the Housing Service on the transfer list and that employee is later dismissed by the Council, and makes a claim against the Association. The same limitations on claims apply to this clause as to those referred to in the previous paragraph.

- 15.6 As with other apportionments, the Council agrees to bear all the costs of employment for transferring staff up to but not including the Completion Date. The Association accepts all such costs from the Completion Date.

- 15.7 The Council has included provisions relating to the assignment of car loans.

- 15.8 The Agreement requires the Association to gain entry into the Essex County Council's Pension Fund's superannuation scheme on an equivalent scheme, for the benefit of the transferring employees. This means that the relevant transferring staff should have equivalent pension rights as under the Council's current arrangements. The Council agrees to use reasonable endeavours to assist the Association to gain admission to the scheme.

- 15.9 The Association has agreed to pay any certified pension under funding to the administrators of the Essex County Council Pension Fund. For the avoidance of doubt this under funding relates to under funding in the pension schemes during the period of the employment with the Council.

## **16. Clause 15 – Termination of Support Services Agreements**

Following transfer, the Council will provide a number of services to the Association under agreements set out in Part I of the Tenth Schedule. If one of these agreements

comes to an end, some of the staff engaged in providing these services may have a “deferred” right under TUPE to transfer to the Association. The Council’s position is that no staff will be entitled to transfer to the Association under TUPE after the termination of the support service agreements. Therefore this clause provides protection for the Association by making clear that there will be no staff entitled to transfer to the Association when any support service agreement comes to an end.

**17. Clause 16 - Council’s Obligations**

The Council’s obligations under this clause include the following:-

- 17.1 to deliver to the Association within 28 days of transfer all management records and accounts relating to the property and the tenancies. The Association must retain these records for at least 6 years and make them available to the Council for copying on request. The Council agrees to make further relevant records available during the same 6 year period.
- 17.2 to assign any guarantees and indemnities which relate to the Property or to hold them on trust for the Association and enforce them at the Association’s expense.
- 17.3 to provide and warrant a list of the dwellings which are subject to current right to buy applications. The cut-off date, after which no RTB sales will be completed by the Council has now passed. The Council will continue to accept applications under the RTB until transfer.
- 17.4 to carry out the enhancement works which are the subject of the VAT Shelter Scheme (with the Association actually carrying out those works under the Development Agreement in the Sixteenth Schedule).

**18. Clause 17– Association’s Obligations**

This clause requires the Association to provide a number of covenants for the benefit of the Council. Details of these covenants are set out under the Fourth Schedule below.

The Association also agrees not to sue the Council for failing to carry out the improvements under the VAT Savings Scheme where the default is because the Association has not done the work under its obligations under the Development Agreement.

The Association has also agreed that between 2010 and 2020, it will regularly review the level of demand for sheltered housing units and if it is established that demand for certain units are low, the Association will either use the property to provide housing to

satisfy the Council's housing priorities or pay the Council the open market value of any site that is in low demand.

The Council will also transfer the "Chestnuts" to the Association subject to an obligation to develop within 3 years of the transfer date or pay the Council the full market value.

**19. Clause 18 –VAT and RTB Sharing Agreements**

This clause requires the Council and the Association to be bound by the sharing arrangements in respect of RTB and VAT receipts set out in the Fourteenth Schedule.

**20. Clause 19 - Further Agreements**

This Clause requires the parties to enter into the following supplemental agreements (referred to in the Schedules below):

- 20.1 Council Service Level Agreements
- 20.2 Association Service Level Agreements
- 20.3 Civil Emergency Agreement
- 20.4 Office Licence

**21. Clause 20 – Interest**

This standard contract clause states that (save for otherwise provided at Clause 6 and relating to the Standard Conditions of Sale) where a sum due under the terms of the agreement becomes overdue by 28 days or more this sum shall incur interest calculated on a day to day basis at a rate of 2% above the HSBC base rate. This provision applies equally to the Association and the Council.

**22. Clause 21 – Complete Agreement**

This clause states that this Agreement itself is the sole authoritative document relating to the transaction. Any variation to the Agreement must be recorded in writing and sealed by the two parties. The clause also states that the Association has not relied on any other representations made by the Council in deciding to enter into the Agreement except for the terms of the Agreement and any written responses given to the Association's solicitors by the Council's solicitors.

**23. Clause 22 – Dispute Resolution**

Any disputes between the parties relating to the Agreement are to be dealt with by a dispute resolution procedure. This initially requires disputes to be considered by senior officers within set timescales and thereafter (if the parties agree), disputes will

be considered by an expert. The parties can also propose court action though (under current court rules), the party wishing to go to court will need to demonstrate that they have first tried to settle the dispute through mediation.

**24. Clause 23 - Notices**

This is a standard clause and requires any formal notices to be served by the Association upon the Council's Chief Executive and for the Council to serve any such notices on the Association's Managing Director.

**25. Clause 24 - Non Merger**

This clause states that where any obligations have not been carried out at the Completion Date, they remain outstanding until they are performed.

**26. Clause 25 - VAT**

This clause obliges the receiver of any services (in respect of which VAT is properly chargeable) to pay VAT on the cost of those services to the supplier.

**27. Clause 26 - Data Protection Act**

Under this clause, the Council and the Association acknowledge the application of the Data Protection Act to information provided by either party to the other under the terms of the Agreement. The parties also warrant to each other that they have appropriate registrations under the Data Protection Act in order for them to comply with the provisions of the Agreement. Both parties indemnify the other for any losses arising as a result of the breach of this warranty.

**28. Clause 27 - Confidentiality**

This clause prohibits either party from disclosing information contained in the Agreement save as required by law, to comply with requirements of specified regulators or to funders.

**29. Clause 28 - Law**

This is a standard clause which provides that the Agreement is governed by English law.

**30. Clause 29 - Waiver**

This clause provides that delays by either party in enforcing their rights under the Agreement do not prejudice those rights.

**31. Clause 30 - Rights of Third Parties**

This standard clause dis-applies the Rights of Third Parties Act (which can give persons other than the parties to the Agreement rights directly to enforce its provisions) save where the Agreement states specifically that third party rights are intended to be created.

**32. Clause 31 - Severance**

This clause states that if any part of the Agreement is legally unenforceable, it can be severed from the Agreement to allow the rest of the Agreement to continue.

**33. Clause 32 – Assignment Prohibition**

This clause prohibits the Council from assigning the benefit of the Agreement except to a statutory successor authority.

The Association is limited to assigning the benefit of the Agreement to the Security Trustee (or other finance party) or to another Registered Social Landlord.

The Security Trustee (or other finance party) is able only to assign their interest in the Agreement to another security trustee (or other finance party).

**34. Clause 33 - Mortgagee Exclusion**

This clause states that the Association's funder is not bound by the Association's obligations in the Agreement. This is a standard provision in housing transfer contracts.

**35. Related Documents**

**35.1 Legal Opinion**

In addition to completing the transfer agreement, the Council's head of legal services will be asked to provide a legal opinion to the Funders confirming that the Council has passed all necessary resolutions to authorise entry into the documents and to ensure that they are binding on the Council. This opinion is a condition precedent to the Association's loan agreement and is standard in a housing transfer project.

**35.2 Notice of Charge**

The Council will also be asked to acknowledge a notice of charge (that the Association has mortgaged its properties to the Funder) and agree to pay any monies due to the Association (following a default) to the Funders directly. This is a standard requirement in housing transfer projects.

**36. Conclusion**

This concludes the terms of the Principal Agreement. In general, the issues which

remain to be agreed at this stage accord with market norms and there is no particular reason why the issues will not be resolved by the anticipated Completion Date.

This Report is a summary only of the principal terms of the Agreement between the Council and the Association. Reference should be made to the Agreement itself if further detail is required.



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## SCHEDULES TO THE AGREEMENT

### 1. FIRST SCHEDULE - PROPERTY

This Schedule contains details of the Property being purchased.

#### 1.1 First Schedule, Part I

This part of the First Schedule deals with all of the ordinary rented homes to be purchased by the Association. The actual addresses of those homes are set out in the Council's computer listing forming Annex 1 to the Agreement. The properties will be shown on the Plans which form Annex 3 to the Agreement. The Council's officers have prepared the Plans and have agreed these directly with the Association's officers.

#### 1.2 First Schedule, Part II

This part deals with all ancillary property including garages and garage plots (details of which are set out on a Council computer listing forming Annex 2 to the Agreement); freehold reversions to flats sold under the Right to Buy, electricity substations, garden land, amenity areas, play areas and unadopted roads and footpaths and other properties leased under non-standard leases.

Note that the Council is warranting the accuracy of this information including the rents and charges shown on the rent rolls.

### 2. SECOND SCHEDULE – NOMINATIONS

#### 2.1 Nomination Rights Agreement

The main purpose of the Nomination Rights Agreement is to provide the Council with a means to discharge its statutory duty to secure accommodation for certain homeless and other persons. The agreement allows the Council to nominate persons for housing to a percentage of Dwellings which (in accordance with the provisions of the Agreement) are vacant and available for letting.

The Agreement distinguishes between "General Nominees", "Homeless Nominees" and "Homeless Applicants (being a homeless applicant's who are to be provided with application pending the determination of their application.)."

Under the Agreement, the Council can nominate General Nominees and Homeless Nominees to three out of four of each Dwelling Type which become vacant and available for letting.

The Agreement includes a Temporary Accommodation Nominations Agreement. This agreement provides that the Council will be entitled to nominate to all temporary accommodation dwellings that are set out in the agreement. The purpose of this

agreement is to allow the Council to continue to fulfil its obligations to provide interim accommodation to homeless people pending the determination of their application.

### **3. THIRD SCHEDULE - STAFF MATTERS**

- 3.1 Part I of the Third Schedule lists details and essential employment information about all staff transferring from the Council to the Association on the Completion Date. The TUPE list has been amended by the removal of one individual due to retire on medical grounds prior to transfer.
- 3.2 Part II provides details of disclosures against the warranties contained in Clause 14 of the Principal Agreement.
- 3.3 Part III provides details of any car loans taken out by the transferring staff which are to be taken over by the Association.
- 3.4 Part IV shows details of the Post Entry Training Courses which apply to one member of the transferring staff.

Please note that the Council is warranting the accuracy of this information in these schedules. Any inaccurate information (or insufficient disclosure) could result in the Council incurring liability for breach of warranty.

### **4. FOURTH SCHEDULE – ASSOCIATION’ COVENANTS**

- 4.1 Covenants will be granted by the Association in favour of the Council on the Completion Date.
- 4.2 The agreement obliges the Association to perform the covenants which are set out in Appendix 1 to the Schedule.

If the Association breaches any of the covenants then the Council can serve a notice on the Association asking it to remedy the breach within 28 days (or such other period as the parties may agree). If the Association fails to remedy the breach the Council can claim damages from the Association or seek an injunction to force the Association to comply.

- 4.3 In respect of Rent Increase (Covenant 2), the Consultation Promises to tenants (Covenant 7) and Resident Involvement (Covenant 9.2), the Council cannot enforce a breach of covenant by the Association where by doing so this would or would be likely to occasion an event of default under the Association’s Loan Agreement or any refinancing agreement it enters into pursuant to the Loan Agreement. In such circumstances, the Association needs to consult with tenants about rescheduling timescales for complying with the covenants; agree a revised timetable with the Council and then comply with that revised timetable. This is a standard provision in

housing transfer agreements and reflects the reality that if the Association were to experience financial difficulty, the Council would not want to make this worse by taking legal action.

Wherever possible, the Council agrees to consult with the Association before commencing any action to enforce its rights under the terms of this agreement.

#### 4.4 **The Covenants**

The current draft of the covenants is set out in Schedule 1 to this Report.

The covenants include provisions on the following:

- Application of Surpluses
- Rent Increases
- Housing Corporation Requirements
- Information and Liaison
- Homes
- Compliance with Tenancies
- Consultation Promises
- Security of Tenure
- Consultation
- Right to Buy for Successors
- Constitution
- Amenity Land
- Tenancy Agreement
- Nominate Board Members
- Right to Buys
- Merger/Subsidiary
- Records and Files/Annual Returns
- Provision of Information

- Housing Benefit Overpayment
- Accommodation for Transferring Employees
- Offices
- Disabled Adaptations
- Leaseholders
- Joint Procurement
- Crime and Disorder and Anti Social Behaviour

## **5. FIFTH SCHEDULE - WARRANTIES AND COVENANTS**

The Fifth Schedule contains two sets of Warranties (one in favour of the Lenders and the other in favour of the Association) and Covenants by the Council in favour of the Association.

### **5.1 Part I – Collateral Warranty by the Council in Favour of the Lenders**

The Council has agreed to give certain warranties to the Association and the Lender in order to remove the need for the Association (and its legal team) to investigate title. This simplifies the conveyancing process and reduces costs for the Council and the Association.

The provision of warranties is standard in housing transfer transactions and is primarily a vehicle for allocating risk between the Council and the Association. Unless risks are fully provided for in the valuation assumptions (underlying the valuation agreement between the Council and the Association) they will generally remain with the Council.

The Council accepts that the Lender is agreeing to provide finance for the purchase of the Property in reliance upon the accuracy of each of the warranties contained in this Deed.

If any of the warranties prove to be untrue, misleading or are breached then the Lender may serve a notice on the Council and if the breach is not remedied within a period of 28 days or the Council has not given a satisfactory undertaking to remedy the breach (or the breach is not capable of remedy) then the Lender is entitled to claim damages. The damages are to be equal to the loss suffered by the Lender as a result of the warranty being untrue, misleading or breached.

Claims under the Deed of Warranty must be brought by the Lender within thirty years from the Completion Date.

The Council is seeking to cap its liability under this warranty deed at the Association's maximum borrowing under its Loan Agreement (which is yet to be confirmed by the Association) plus accrued interest and breakage costs. Breakage costs arise in certain circumstances where interest rates have been fixed and the fixing contract is terminated early. The penalties could be significant.

The warranties are set out in an Appendix to the Schedule (which is reproduced in Schedule 2 to this Report) and include warranties in respect of the matters summarised below:-

- **Statements** - that the Council has disclosed all material information which ought to be disclosed to a prudent mortgagee.
- **Title** - that the Council has good and marketable title to the Property.
- **Encumbrances**- that the property is free from any mortgage and is not subject to other adverse matters which may materially affect its value.
- **Planning Matters**- that all the property has appropriate planning permission for its current use.
- **Statutory Obligations** - that no action could be taken against the Council in respect of its compliance with all appropriate statutory and bye-law requirements relating to the Property.
- **Adverse Orders** -that the Property is not subject to any compulsory purchase notices or other similar matters.
- **Tenancies** -that the Property has the benefit of all the tenancies and the gross weekly rent information provided by the Council is accurate.

- **Information and Statistics Supplied** - that information supplied by the Council is accurate
- **Sales Off** - that the terms of the sales off are appropriate and in particular that the Association can recover its future costs of repairs, improvements etc.
- **Disputes and Litigation** -that there are no ongoing disputes which affect the Property.
- **Environmental Pollution** - that the Property complies with all current environmental laws and that there is no environmental contamination or dangerous substance at, on, or under any of the Property.
- **Vires** - that the Council has power to enter into the Agreement.
- **Absence of Adverse Replies** - that if the Association had submitted various standard conveyancing searches in respect of the Property, no adverse replies would have been revealed.
- **Wayleaves** -that the Property is not subject to any wayleave which is of an onerous or unusual nature.
- **Telecommunications Equipment** -that there is no telecommunications or security equipment on the Property belonging to any third party other than that belonging to tenants.

#### 5.1.1 **Appendix 2 - Disclosures**

The Council's disclosures against the warranties (that is, where the warranty is known to be inaccurate) will be set out in this Appendix. Where a matter is disclosed the beneficiary of the Warranty (being, as appropriate, the Lender or the Association) cannot sue for losses arising out of that matter. The disclosures will be considered by the Funders who will have regard to any liabilities which may be passed to the Association and whether these are provided for financially in the valuation agreement underlying the Price. If the Council seeks to disclose matters which have not been provided in the Price, the Association may request an indemnity from the Council in relation to such matters. In particular, as is usual in housing transfer contracts, the Warranties will contain indemnities in relation to the costs of dealing with asbestos works at the properties if these exceed the amounts provided for in the valuation agreement and in relation to any related personal injury claims which may be brought in the future.

#### 5.2 **Fifth Schedule, Part II - Warranties by the Council in Favour of the Association**

The form of this document is similar to the Council's warranty in favour of the Lenders and the statements (warranties) given are identical to the Lender's warranties.

As with the Lender's Warranty, the Council acknowledges that the Association has entered into the Agreement to purchase the Property, amongst other things, in reliance upon the accuracy of each of the warranties contained within this agreement. Again, as with the Lender's Warranty, if any warranty is untrue, misleading or breached, the Association may in the event of any warranty being untrue, misleading or breached, serve notice on the Council and if the breach is not remedied within 28 days or if the Council has not given a satisfactory undertaking to remedy the breach (or the breach is otherwise not remediable) the Association is entitled to claim damages for loss suffered.

The principal differences between the Warranties by the Council in favour of the Association and those in favour of the Lender are that the Association's rights to claim are limited in the following ways (the main limitations only are listed):-

- 5.2.1 claims for breach of any of the warranties may only be brought within a specified number of years (currently proposed at 12 years) from the Completion Date ;
- 5.2.2 it is proposed that claims for less than £2,500 cannot be brought until they exceed (in the aggregate) £15,000;
- 5.2.3 claims (other than in respect of environmental claims) in respect of each dwelling forming part of the Property or other part of the Property affected by the breach of warranty are limited to the Net Rental Income Forgone from the RTB Sharing Agreement (see below);
- 5.2.4 the limit on environmental claims is proposed at £5million;
- 5.2.5 if, within 3 months after making a claim, the breach is remedied by the Council to the Association's satisfaction then amounts paid by the Council in respect of the breach are repayable less a deduction for costs incurred;
- 5.2.6 if the Lender subsequently makes a claim in respect of the same matter for which the Association has claimed, the Association is to repay the amounts received less a deduction for costs incurred
- 5.2.7 there are provisions which are designed to ensure that, if claims arising out of the same facts and circumstances are made both by the Association and its Lenders, the Council will only be required to meet the claim to the Lenders.

The terms of these limitations remain to be agreed with the Association and the Funders.

The imposition of limitations on the Association is standard in housing transfer contracts. The two principal reasons for these limitations are:-

- the Association is purchasing the properties on the basis of their tenanted market value as opposed to their open market value and therefore the Association's losses should generally be limited to loss of income stream (Net Income Foregone); and
- the Association's officers will have had dealings with the properties for some considerable time before transfer and any fundamental defects should (if they existed) be known by now.

The Council will include the same disclosures in the Association's Warranties as with the Funders.

### 5.3 **Fifth Schedule, Part III - Covenants by the Council in Favour of the Association**

This Schedule contains the Council's covenants in favour of the Association.

If the Council breaches any of the covenants then the Association can serve a notice on the Council asking it to remedy the breach within 28 days. If the Council fails to remedy the breach (or it cannot be remedied) the Association can claim damages from the Council.

In recognition of the fact that money damages may not properly compensate the Association for any breach of the covenants, the Association is also entitled to seek injunctive relief or other equitable relief compelling specific performance of and other compliance with the terms of such covenants.

The covenants include the following and are reproduced at Appendix 1 of Schedule 3 to this Report:-

- Enabling Role
- Open Space and Amenity Land
- HMLR Requisitions
- Enforcement of Rights
- General Assistance
- Joint Procurement
- Licence for Work Sites
- Rights of First Refusal
- Housing Benefit
- Consultation in relation to Redevelopment of Shops



**6. SIXTH SCHEDULE - CONTRACTS**

This Schedule contains details of contracts which are to be either assigned from the Council to the Association or retained by the Council on trust for the Association.

**7. SEVENTH SCHEDULE - FORM OF TRANSFER FOR THE PROPERTY**

7.1 The Seventh Schedule sets out the form of Transfer which is the form of legal document transferring ownership in the Property to the Association.

7.1.1 The form of transfer contains the following provisions:-

- the Association takes the Property subject to and with the benefit of any existing rights, encumbrances and tenancies/leases which affect the Property;
- various additional rights are granted to the Association over land retained by the Council and the Association will grant to the Council certain rights over the Property purchased;
- the Association agrees to abide by all of the covenants which currently affect the title to the Property and indemnifies the Council against any future breach;
- the Association covenants not to dispose of any of the Property without the Consent of the Secretary of State (which for the time being is the Secretary of State for Communities and Local Government) unless the proposed disposal is an exempt disposal. Exempt disposals include granting residential tenancies, mortgaging the Property and sales under the Right to Buy.

7.1.2 The Council has also included clawback provisions in the transfer. There is a disposal clawback which applies to the disposal of any significant interest (typically the grant of a long lease or a freehold interest where the purpose of the disposal is not for social housing purpose. There is also a development clawback which allow the Council a share in capital proceeds which arise on certain types of (commercial) development in the future. These provisions are still being negotiated but the basic principal is accepted by the Association.

The purpose of this clawback agreement is to ensure that if the Association or subsequent landowner undertakes certain types of commercial development that produce a profit (bearing in mind that the Association is only paying tenanted market value for the property) then the Council shall share in the profits that the development creates. The Council receives 50% of the uplift in value (after deducting reasonable costs and expenses). The reason for such an agreement is that the Tenanted Market Value mechanism does not take account of windfall gains arising on non social housing development of the transferred property. Certain types of development are excluded from clawback including social housing development and (in the case of shops) retail development.

When considering any development, the Association (or successor in title) will need to calculate the clawback due to the Council before considering whether to proceed. In practice, as a charity, the Association is more likely to pass development risk to a developer and so the clawback may impact on the price payable by a purchaser.

In the case of a disposal which is not for social housing purposes, where the Association provides alternative social housing in the District then there will be no clawback. Where the Association does not provide alternative social housing there Association will have to pay the open market value of the disposal less any reasonable disposal costs.

The provisions of this clawback arrangement are not binding on any mortgagee (i.e. the Lenders). They also do not apply following certain disposals including right to buy sales and certain low value disposals.

Clawback is only payable once and following payment, the relevant part of the property is released from the clawback provisions.

## **8. EIGHTH SCHEDULE – TENANCY AGREEMENTS**

This Schedule contains a copy of the Association's Tenancy Agreement for Transferring Tenants. This document formed part of the formal consultation document.

## **9. NINTH SCHEDULE – INSURANCE CLAIMS AFFECTING THE PROPERTY**

In this Schedule, the Council discloses details of any current damage which affects the transferred properties.

## **10. TENTH SCHEDULE - SUPPORT SERVICES AGREEMENTS**

### **10.1 Part I – Council Provided Services**

This Schedule obliges the Council to use reasonable endeavours to provide certain services to the Association. The fees for each service are specified in the individual service specifications. The service specifications (including fees) and the duration are being negotiated between Council and Association staff. Any of the services could be renewed by agreement between the parties when they expire.

### **10.2 Part II – Association Provided Services**

This Schedule also contains agreements by the Association for the provision of various services by the Association to assist the Council following transfer.

Each agreement consists of a framework under which the Council and/or the Association is obliged to provide the various services for a specified period and schedules which set out the service specifications and the agreed price. Detailed specifications for each of the services to be provided are in the process of being finalised by officers of the Association and the Council. These arrangements cover the following:

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**11. ELEVENTH SCHEDULE – RIGHT TO BUY TENANTS AND DWELLINGS**

The Eleventh Schedule contains a list of current Right to Buy applications in progress.

**12. TWELFTH SCHEDULE – TRANSFER OF EQUIPMENT AND FURNITURE**

The Twelfth Schedule contains lists of furniture, plant and equipment which are to be transferred to the Association, as follows:-

Part I- Furniture, fittings and equipment;

Part II - Vehicles

The extent to which the other assets listed above will transfer will be agreed between Council and Association staff.

**13. THIRTEENTH SCHEDULE**

The Thirteenth Schedule is not used.

**14. FOURTEENTH SCHEDULE**

**14.1 Right to Buy and Shared Ownership Sharing Agreement**

This agreement is needed because the price the Association is paying for the housing stock does not include an element for capital receipts which arise on future RTB sales or, in the case of shared ownership properties, on the initial and sale of part of the equity and subsequent sales of a percentage of the equitable interest.

Therefore this Schedule provides that the Council is to share in any capital receipts arising on preserved right to buy sales or initial and subsequent sale of equity in shared ownership sales.

The sharing agreement provides that any capital receipts arising on Preserved Right to Buy (and Shared Ownership) sales for an agreed number of years after the Completion Date are to be apportioned between the Council and the Association in accordance with an agreed formula set out in the Schedule. The agreement also extends to voluntary sales on similar schemes introduced by the Association to the Preserved

Right to Buy, but does not apply to sales under the Right to Acquire because Government regulations require these to be applied in a certain way. The agreement provides that if future changes in law allow the Association to grant future shared equity schemes, the principles of the sharing agreement will apply to any proceeds generated by the introduction of any new scheme.

The formula relating to right to buy sales provides for the Association to retain from each sale an amount which reflects its lost income from the property sold (the Net Income Foregone) together with an agreed sum in respect of the Association's administration, legal and valuation costs. The amount by which a sale price exceeds the amount which the Association can retain is to be paid to the Council.

The calculation for shared ownership sales applies a similar formula.

The figures for the RTB Sharing Agreement have been agreed between the Council's financial consultants and the Association's financial consultants.

#### 14.2 **VAT Sharing Agreement**

The VAT sharing agreement provides that where input VAT is recoverable, through the VAT savings scheme, in relation to the carrying out of certain enhancement works, referred to as the Qualifying Works and described in the Development Agreement, the Council shall be entitled to receive from the Association 50% of the VAT received by the Association from Customs under the VAT savings scheme for an agreed number of years from the Completion Date.

If Customs subsequently seek repayment of any input VAT the Council's share shall be recalculated accordingly and where appropriate the Council will be required to pay back to the Association (pro-rata) any overpayments arising following this recalculation.

The Association's deductible administration costs have been capped at £8,000 per financial year before calculating the Council's 50% share.

### 15. **FIFTEENTH SCHEDULE**

#### 15.1 **Deed of Assignment of Rent and Service Charge Arrears**

Under this deed, the rent arrears which are to be purchased by the Association are assigned. The deed requires payment for the arrears to be made in two equal instalments. The Council is also obliged to account to the Association for any arrears received by it after completion.

#### 15.2 **Civil Emergency Agreement**

This agreement contains details of the assistance which the Association is to provide in the event of a civil emergency.

**16. SIXTEENTH SCHEDULE – DEVELOPMENT AGREEMENT**

Under the terms of this agreement, the Association agrees to undertake certain works listed in a Schedule to the Development Agreement. The effect of the development works is to enhance the value of the transferred properties and broadly corresponds to the programme of improvement works detailed in the Consultation Document. This agreement is intended to enable the Association to recover VAT incurred on sub-contractor's invoices when carrying out the various enhancement works set out in the Schedule.

The Council is able to share in VAT recovered by the Association under the VAT shelter scheme (see paragraph 14.2 above).

In case tax rules change in the future in a way which may lead to adverse consequences for the Association in respect of its liability to pay Corporation Tax, the Council and the Association have agreed a mechanism whereby the VAT shelter scheme arrangements may be unwound or varied (whilst preserving the obligation of the Association to complete the works programme as specified in the promises in the Consultation Document). The mechanism for doing this involves the parties entering into one of the two alternative deeds contained in the Seventeenth Schedule.

**17. SEVENTEENTH SCHEDULE – DEEDS OF VARIATION**

As mentioned above, this Schedule contains two Deeds which can be used to vary the VAT shelter scheme arrangements. The arrangements can either be unwound in part (pursuant to the Deed appearing in Part I) or in full (pursuant to the Deed appearing in Part II). In each case, the obligation of the Association to complete the works programme in accordance with the Consultation Document is preserved through the Deed.

**18. ANNEXES**

18.1 The agreement includes the following Annexes:

**Annex 1** – The Council's Rent Roll;

**Annex 2** – The Rent Roll for Garages;

**Annex 3** - The Plans of the Property;

**Annex 4** - Copies of the consultation document issued to tenants;

**Annex 5** – Specimen forms of RTB Conveyance and Transfers;

**Annex 6** – Specimen form of RTB Lease and Shared Ownership Lease;

**Annex 7** - Form of Council's Tenancy Agreement for Dwellings

**Annex 8** - Specimen forms of Car Loan Agreement;

**Annex 9** - Association's Allocation Policy;

**Winckworth Sherwood**

**June 2007**

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**SCHEDULE 1****Covenants by the Association in Favour of the Council****1. Application of Surpluses**

Subject to any statutory requirement affecting the Association and the requirements of the [Security Trustee and/or any Beneficiary and/or any Finance Party] or other lender and the obligations of the Association in connection with any debenture loan agreement or refinancing agreement, and the Association's obligations to the [Security Trustee and/or any Beneficiary and/or any Finance Party] for the payment of capital, interest and all other fees and expenses or other sums under the Loan Agreement and/or any Finance Documents and/or any Relevant Documents and/or any Refinancing Agreement to use all rental income and all receipts from the Property including any sales of any part thereof (except as otherwise provided in the Agreement) in the management, maintenance, repair, modernisation and improvement of the Property and to pay all other proper and reasonable expenses relating to the Property including the payment of interest and the repayment of capital borrowed to acquire and/or improve the Property and otherwise for the provision of social housing and other related purposes as may from time to time be permitted in accordance with the Rules of the Association primarily in the District of Rochford PROVIDED THAT nothing in this paragraph shall prevent the Association from using the Property either alone or in conjunction with other property as security to facilitate its permitted objects.

**2. Rent Increases**

- 2.1 To comply with the Government's Rent Restructuring policy (as explained in Part B of the Consultation Document) in relation to the setting of rents for Dwellings and without prejudice to the generality of the foregoing not to increase the rent payable by Tenants before 1 April 2008 provided that this obligation shall not restrict any increases which may after the Completion Date be permitted under any revised Government rent policy.

**3. Housing Corporation Requirements**

- 3.1 *Not to do or omit to do any act or thing which is likely to result in the cancellation or withdrawal of the Association's registration by the Housing Corporation and to comply with all reasonable or mandatory requirements of the Housing Corporation.*
- 3.2 *To observe and comply with the standards of service and rights for tenants and leaseholders set out in the Housing Corporation's Regulatory Code and Guidance and the Residents' Charter published from time to time (including any replacement publications) and will comply with all reasonable or mandatory requirements of the Housing Corporation, made now or in the future.*

**4. Information and Liaison**

For an initial period of five years from the Completion Date to attend quarterly liaison meetings with the Council and provide sufficient and necessary information reasonably required by the Council to satisfy itself that the Association is fulfilling its obligations under the Agreement and the Schedules and Appendices thereto PROVIDED THAT the Association shall not be required to disclose any such information where despite using reasonable endeavours to obtain any applicable authorisations it is under a legal or contractual confidentiality duty not to disclose such information AND the Association agrees that (without prejudice to the generality of the foregoing) it will annually report to the Council in writing as to how the Association is implementing the promises to the Council's secure and introductory tenants contained in the Consultation Document and obligations under the Agreement including this Schedule.

**5. Homes**

To participate in the Housing Organisations Mobility and Exchange Scheme (H.O.M.E.S), the HOMESWAP Scheme or any replacement scheme of a similar nature.

**6. Compliance with Tenancies**

To observe and in all respects comply with the covenants and conditions contained or implied by statute in the Tenancies of the Property. .

**7. Consultation Promises**

7.1 Subject to the proviso in Paragraph 2.3 of Schedule 4 and save and except for the commitment to carry out the Qualifying Works (where the Association's obligations are set out in the Development Agreement), to carry out the programme of repairs and improvements referred to in Parts C and F of the Consultation Document within the respective timescales referred to in the Consultation Document.

7.2 To comply with all promises and commitments made by the Council to Qualifying Tenants of the Council occupying the Property as set out in the Consultation Document PROVIDED THAT in assessing compliance with this paragraph regard shall be had as to whether any such promises were expressed **to be absolute or merely aspirational in nature in the Consultation Document.**

**8. Security of Tenure**

8.1 The Association shall not seek to gain possession of any of the Dwellings occupied by Qualifying Tenants on any grounds other than those set out in the Tenancy Agreement notwithstanding that it may have a legal right to use other grounds for possession under the Housing Act 1988 (as amended by the Housing Act 1996), nor will it seek to gain possession



in relation to the succession by any person who has a right of succession under the Tenancy Agreement or who would have had such right if the Tenancy Agreement had not been varied save to the extent that possession proceedings are necessary to ensure the succession of such persons.

- 8.2 In the event that the Council receives notification from a Tenant that the Association is or is proposing to take proceedings for possession of the Tenant's Dwelling in breach of the Association's obligations the Council having made all necessary enquiries and on being satisfied that this is the case shall immediately serve written notice upon the Association which notice shall ask the Association to confirm that it will withdraw any notices that have already been served or proceedings which have already commenced and that it will abide by its obligation contained in this Paragraph. The notice shall give the Association 21 days in which to respond or where proceedings are imminent such shorter period as appears reasonable to the Council. If the Tenant's allegation that the Association is in breach is justified and the Association does not give the undertakings required by the Council's notice within the period set out in that notice the Association shall (without prejudice to any other remedies available to the Council):-
- 8.2.1 pay to the Council a sum equal to any reasonable losses suffered by the Tenant as a result of the breach of its obligation;
- 8.2.2 pay to the Council a sum equal to the costs and expenses reasonably and properly incurred by the Council in enforcing the obligations of the Association; and
- 8.2.3 in the event that the Tenant has already been evicted from the Tenant's Dwelling immediately make accommodation available to the Tenant which accommodation shall in so far as its size amenities and locality and the terms and conditions on which it is held be so far as possible the same as the Dwelling from which the Tenant was evicted.
- 8.3 The Council shall hold any monies recovered under Paragraph 8.2.1 above upon trust for the Tenant absolutely.
- 9. Consultation**
- 9.1 The Association covenants for the benefit of each Tenant that it will consult with each Tenant on any changes in matters of housing management as if Section 105 Housing Act 1985 applied to the Tenancy Agreement.
- 9.2 The Association covenants to use its reasonable endeavours to encourage the development of resident involvement in housing management and to provide a reasonable level of financial and other support to enable residents' groups to represent effectively the views of tenants across the District of Rochford.

**10. Right to Buy for Successors**

The Association shall permit a tenant who has succeeded to the tenancy of a Tenant's Dwelling whether by statute or under the terms of the Tenancy Agreement to exercise a right to buy the Dwelling on such terms and in such manner as would apply if such Tenant had the preserved right to buy of a successor as defined by Section 171B(4)(a) of the Housing Act 1985 whether or not the tenant is in fact such a successor.

**11. Constitution**

Not to change the Rules of the Association so far as they relate to the Association's objects and powers, to local authority or tenant representation without the Council's prior consent in writing, such consent not to be withheld or delayed, having regard to all reasonable advice issued by the Housing Corporation concerning the governance of all or classes of registered social landlords.

**12. Amenity Land**

- 12.1 To maintain all the amenity areas, play areas and grounds within the Property, ownership of which is the Association's and in particular (but without limitation) will ensure that the grass thereon is kept cut and in a tidy condition (to a standard to be determined from time to time by the Association which shall not be lower than the standard applied by the Council at the Completion Date to other similar amenity areas within the vicinity of the Property) and that unless developed or put to some other proper use such areas are available for access and enjoyment at all times.
- 12.2 To maintain and keep in repair all private roads, parking places, footpaths and ways within the Property and serving any adjoining or adjacent properties owned by the Council and the kerbs, pavements, street lighting, signposting and notices thereon which are used for the benefit of the Property;
- 12.3 To maintain and keep in repair all drains, sewers, culverts, ditches and ponds and all water and gas pipes and electricity cables owned by the Association within the Property and which serve any adjoining or adjacent properties owned by the Council.
- 12.4 To permit local residents and occupiers and any other person with the consent of the Association to use and enjoy any of the amenities referred to in this Paragraph 12 until they are rendered unavailable by reason of any subsequent development or change of use subject in the case of access and services to the Association providing at its own cost suitable alternatives.

**13. Tenancy Agreement**

- 13.1 Not to increase the rent payable by Qualifying Tenants other than in accordance with the Tenancy Agreement or where a Qualifying Tenant consents in writing to such increase.

- 13.2 Without prejudice to the generality of the foregoing, not to seek to make a general variation (save as to rent and to service charge) to the Tenancy Agreement without first:-
- (i) Giving the Council at least 28 days notice of any proposed change and the reasons for it; and
  - (ii) Responding in writing to any representations the Council may make in respect of the proposed change giving reasons why the Association does not accept the Council's views if that be the case.

PROVIDED that the Association may vary the terms of an individual tenant's Tenancy Agreement without first consulting the Council.

#### **14. Nominate Board Members**

- 14.1 To provide the Council the opportunity to nominate its representatives to the Board of the Association in accordance with the Association's Rules.
- 14.2 To allow the Council to appoint and remove its representatives in accordance with the Association's Rules.
- 14.3 The Association shall as soon as reasonably practicable and in any event within one month notify the Council in writing of any vacancies which arise among the Council's nominated representatives.

#### **15. Right to Buys**

The Council shall be entitled to the repayment of any discount arising under Section 155 of the Housing Act 1985 in respect of any property sold or demised by the Council pursuant to the Right to Buy prior to the Completion Date and the Association in its capacity as reversioner under any such leases of flats (details of which are set out in Paragraph B of Part 2 of Schedule 1 to the Agreement) shall notify the Council in writing of any circumstances of which it shall have knowledge that a disposal requiring a repayment of discount may have taken place. The Association shall forward to the Council any sum it shall receive in respect of repayment of such discount within 21 days of its receipt.

#### **16. Merger/Subsidiary**

Upon it being acknowledged by the parties that the Association is a subsidiary of Hereward and Hereward is a subsidiary of Sanctuary, the Association will not merge or amalgamate with, or become the subsidiary of any other body without first giving the Council at least 56 days notice of the change of status and the reasons for it. The Association will give reasonable consideration to any representations the Council may make in respect of the change of status and respond in writing promptly to such representations giving reasons why the Association does not accept the Council's views, if that be the case.

**17 Records and Files etc**

17.1 The Association will use reasonable endeavours to obtain the necessary consents and will (subject to any confidentiality requirements, the provisions of the DPA and the FOIA):

17.1.1 Afford the Council, its agents and external auditors all reasonable and practicable information and assistance including access to records, files and other information as may reasonably be required by the Council to complete its final accounts, subsidy claims and other returns, and for the audit of those accounts and claims for the financial year 2007/08;

17.1.2 Supply such information as is reasonably required by the Council in connection with the recovery of debts owed to it.

**18. Annual Returns**

The Association will (subject to any confidentiality requirements, the provisions of the Data Protection Act (DPA) and the Freedom of Information Act (FOIA) provide to the Council the data reasonably required to enable the Council to:

18.1 Complete its annual Housing Investment Programme (HIP) returns in respect of housing need and wider housing issues;

18.2 Assess housing needs as part of the development of the Council's housing strategy;

18.3 Complete any report in relation to homelessness required to be completed pursuant to the Housing Act 1996, Parts VI and VII.

18.4 Manage insurance claims including (without limitation) providing originals or copies of any of the following as **may have been handed over to the Association on or following the Completion Date:**

- (i) Risk assessments: staff activities, site specific
- (ii) Housing and sheltered accommodation maintenance records (computer database etc.)
- (iii) Estate inspection records
- (iv) Orders and invoices for housing maintenance works
- (v) Complaints and incident report records
- (vi) Works programmes records
- (vii) Individual Tenant records
- (viii) Tenancy agreements
- (ix) Minutes of management meetings where health and safety policy was discussed.

**18. Provision of Information**

The Association shall use reasonable endeavours to make its staff available during business hours to receive and to deal promptly and effectively with any reasonable queries raised by elected members and officers of the Council, the Members of Parliament for the constituent parts of the Council, the Local Government Ombudsman, the Council's auditors, the Best Value Inspectorate or any other Government appointee or inspector.

**19. Housing Benefit Overpayment**

If at any time after the Completion Date the Council makes an overpayment of housing benefit in respect of any of the Association's tenants whose housing benefit is paid at the tenant's request by the Council direct to the Association the Association shall pay such recoverable benefit overpayment in accordance with the requirements of the said Regulations PROVIDED THAT such overpayment is a recoverable overpayment for the purposes of the Housing Benefit (General) Regulations 1987 (as amended from time to time).

**20. Accommodation for Transferring Employees**

Subject to the provisions of Schedule 1 Housing Act 1996 in relation to decision-making and such Transferring Employees being so entitled under the terms of their Contracts of Employment the Association shall:

- 20.1 offer suitable alternative accommodation within the Association's housing stock to all Transferring Employees who are both designated in Part 1 of Schedule 3 of the Agreement as being resident retirement housing scheme managers / resident caretakers and who have a service tenancy as at the date of the Agreement in the event that their employment with the Association shall cease for reasons of retirement; and
- 20.2 offer such persons (subject to all necessary statutory and other consents) a contractual right to buy such alternative accommodation; and
- 20.3 while such persons are housed in such suitable alternative accommodation in accordance with Paragraph 21.1 above not charge a higher level of rent (as applies to new tenants of the Council).

**21. Offices**

To consult with the Council in relation to the siting of the Association's local housing management offices in the event that the Association wishes to locate such offices outside the boundary of the District of Rochford and to submit for formal and reasonable consideration by the Association's Board any representation which the Council may make in relation to the Association's proposals.

**22. Leaseholders**

From the date of the Agreement to observe and perform the landlords covenants under the Leases.

**23. Joint Procurement**

The Association shall give formal and reasonable consideration to proposals from the Council from time to time relating to joint procurement initiatives and other similar schemes for the purchase of works and services where there are opportunities for both parties to achieve cost and efficiency savings including (but not limited to) purchases of diesel fuel, electricity, gas and grounds maintenance.

**24. Crime and Disorder and Anti Social Behaviour**

The Association will join with and use its reasonable endeavours to assist the Council in tackling anti-social behaviour.

**25. Human Rights Act 1998**

Notwithstanding the generality of the foregoing, the Association hereby agrees that it will have due regard to the provisions of the Human Rights Act 1998 in all its dealings with Qualifying Tenants and those seeking assistance from the Association under the Provisions of the Nomination Agreements but only insofar as it is required to by law.

**26. Declaration of Trust**

The Council declares that it holds the benefits of covenants numbered 2, 7, 8, 9, 10 and 13 in trust for each and every Qualifying Tenant with the intent that and subject to clause 2.3 it may (acting reasonably) enforce this undertaking for the benefit of each and every Qualifying Tenant.

**27. Disabled Adaptations**

- 27.1 The Association hereby Acknowledges that it has within its business plan a provision of £114,450 per annum for 30 years from the Completion Date at 2007/08 price levels. This sum is indexed at RPI+2.5% for 2008/09, 2009/10 and 2010/11 and at RPI only thereafter, and this provision is for the Association to fund works of aids and adaptations which qualify for Disabled Facilities Grant to residents of Dwellings in accordance with the criteria applied by the Council from time to time (Qualifying Aids and Adaptations).
- 27.2 The Association agrees that it will fund Qualifying Aids and Adaptations up to the amounts included in its Business Plan as set out in paragraph 28.1 augmented by any underspending from previous years as set out in paragraph 28.3.

- 27.3 The Association hereby agrees that any underspending in any one Financial Year shall be increased by the increase in the Tender Price Index for the January in the Financial Year concerned divided by the Tender Price Index for the January immediately preceding the Financial Year concerned subject to a minimum value of 1, and the increased amount carried forward and added to budget for Qualifying Aids and Adaptations in the next Financial Year.
- 27.4 The Association shall provide to the Council a statement quarterly and when reasonably requested showing the total costs incurred during the relevant Financial Year and any underspend carried forward.

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**SCHEDULE 2****Warranties by The Council in Favour of The Lender****1. Statements**

- 1.1 All material information which is at the date of the Agreement known to the Council or would on reasonable enquiry be known to the Council and which ought to be disclosed to a reasonable and prudent purchaser and/or mortgagee of the Property has been disclosed in Appendix 2.
- 1.2 Save as disclosed in Appendix 2 the statements set out in this Appendix are true and accurate in all material respects at the date of the Agreement.
- 1.3 The particulars set out in Appendix 2 are true and accurate and are so set out and expressed as to ensure that the effect of disclosures being made in relation to the Warranties is clear and not in any way misleading.
- 1.4 The particulars set out in Appendix 3 are true and accurate.

**2. Title**

- 2.1 The Council is the beneficial and legal owner of the Property and is able to convey with full title guarantee and has a good and marketable title thereto and such good and marketable title will pass to the Association on the Completion Date and all deeds and documents necessary to prove title to the Property are in the possession of the Council and will be handed over to the Association on the Completion Date save where the same also relate to any property retained by the Council where the Council will provide an appropriate undertaking for the production and safekeeping and there are no references in any of the titles of the Council to the Property and covenants and/or restrictions and/or conditions details of which were not provided to the Land Registry at the time of first registration.
- 2.2 Where a part of the Property is registered at HM Land Registry the Council is the registered proprietor and that part of the Property is registered with Title Absolute and the registered title is free from any caution inhibition restriction notice or other protective or prohibitive entry or intended application to register any such matters and the Council is not aware of any intention on the part of a third party to register any such matters.
- 2.3 Where a part of the Property is of leasehold tenure the person in whom all superior interests were vested at the date of the grant of such leasehold interests had at such dates good title to grant such leasehold interests and all necessary consents to such grants were obtained.
- 2.4 Where a part of the Property is unregistered freehold land the Council has good legal title thereto with the root of title comprising a Conveyance on sale dated at least fifteen years prior to the date of legal transfer to the Association. The Council has received no notice that the title to any unregistered land is the subject of an intended application at HM Land Registry.



- 2.5 The Property has and will immediately after the Completion Date have all rights and easements (including inter alia rights of light air support and supply of drainage gas electricity water and any other applicable services direct to the mains) necessary for its continued use and enjoyment for its present use and is free of the right of any party to cancel restrict curtail or determine them and the transfers and leases entered into pursuant to the Agreement assign transfer or grant or demise (as the case may be) all such rights and easements as aforesaid. No charges are payable for the exercise of any right of easement herein save for reasonable contributions towards the costs of repair or maintenance of common services.
- 2.6 The means of access to or egress from each of the Dwellings and other premises within the Property is over roads which have been adopted by the local highways authority and are maintainable at the public expense or is over roads and paths and accessways in respect of which there are unrestricted rights free from the right of any other person to cancel restrict curtail or determine them and there is no road charge or other charge payable in respect of gaining or maintaining access to any of the Property including the Dwellings and there will be none immediately after the Completion Date.
- 2.7 All covenants stipulations and restrictions affecting the Property have been properly performed and observed.
- 2.8 Drainage from the Dwellings and other premises within the Property is to sewers which are either adopted and maintainable at the public expense, or where applicable, is via private drainage or sewers in respect of which there are unrestricted rights free from the right of any other person to cancel, restrict, curtail or determine them. There is no drainage charge or other charge payable in respect of the use of such drainage, except maintenance charges or such other costs that may be necessary to ensure continued provision of a similar service in the future.
- 2.9 Pursuant to the Access to Neighbouring Land Act 1992 or otherwise the Council enjoys and the Association will enjoy such rights of entry over adjoining land as may reasonably be required to carry out works of maintenance improvement and repair to the Property and the unadopted services supplying the same.
- 2.10 Forms PSD17 supplied to the Association in relation to the Property are all accurate complete and relate to the entirety of the unregistered land within the Property and only refer to documents original or certified copies of which are annexed thereto save in relation to RTB sales where HM Land Registry has disposed with the requirement to produce original and certified copies.

### **3. Encumbrances**

- 3.1 The Property is free from any mortgage debenture charge rent charge loan or other encumbrance securing the repayment of monies or other obligation or liability of the Council or any other person.
- 3.2 The Property is not (and will not become by reason of any severance of the Property from any land retained by the Council) subject to any outgoing other than water rates sewerage charges and where applicable non-domestic rates empty property rates standard council tax

and in the case of any part of the Property title to which is leasehold rent management and service charges.

- 3.3 Apart from under the RTB the Property is not subject to any option right of pre-emption or right of first refusal or right of enfranchisement.
- 3.4 The Property is not (and will not by reason of severance of the Property from any land retained by the Council become) subject to any covenant restriction burden stipulation easement quasi-easement profit a prendre wayleave licence grant overriding interest or other right (express or implied) which is of an onerous or unusual nature or which conflicts with the Property's present use or materially affects its value.
- 3.5 All covenants stipulations and restrictions affecting the Property have been properly performed and observed and the Council is not aware of and/or has not received notice of any outstanding breach of covenant in respect of the Property.
- 3.6 There are no subsisting entries registered against the Property under the relevant title numbers at HM Land Registry HM Land Charges Registry and/or Local Land Charges Registry or elsewhere which are of an onerous or unusual nature or which conflict with the Property's present use or materially affect its value.
- 3.7 The Council is aware of no matter which is capable of registration against the Property in any manner referred to in Paragraph 3.6 and which would conflict with the Property's present use or materially affect its value.

#### **4. Planning Matters**

- 4.1 The current use of the Property is either in accordance with unconditional and valid consents, unlimited in time under the Planning Acts, or does not contravene the Planning Acts or any law or regulations presently in force and (in either case) accords with any zoning stipulations and requirements.
- 4.2 All necessary consents including planning consents development permits and building regulations and bye-law approvals have been obtained or (where applicable) have been deemed to be granted for the Property (including the construction thereof and any alterations thereto) in respect of its current use and are in force.
- 4.3 There are no circumstances in which enforcement action could be taken in relation to compliance by the Council with the consents referred to in paragraph 4.2 and/or the requirement for any building regulation consents for any development or any alterations or improvements to the Property.
- 4.4 There are no age stipulations as to occupation in any planning consents relating to the Property.
- 4.5 There are no subsisting agreements under Section 52 of the Town and Country Planning Act 1971 or Section 106 of the Town and Country Planning Act 1990 containing obligations enforceable against the Association the Security Trustee any Beneficiary any Finance Party or

any mortgagee or chargee of the Property or any of their successors in title which conflict with the Property's present use or materially affect its value or which will impose any outstanding financial obligation.

## **5. Statutory Obligations**

- 5.1 In so far as the same apply there are no circumstances in which enforcement action could be taken in relation to the compliance by the owner of the Property as at the date hereof (including the Council and the Association) with any applicable statutory or bye-law requirements with respect to the Property and in particular, but without limitation, with the requirements as to fire precautions or under the Public Health Acts the Housing Acts the Highways Acts the Offices Shops and Railway Premises Act 1963 and the Factory Acts.
- 5.2 There is no outstanding and unobserved or unperformed obligation by the Council with respect to the Property necessary to comply with the requirements (whether formal or informal) of any competent authority exercising statutory or delegated powers.

## **6. Adverse Orders**

- 6.1 There are no compulsory purchase notices orders or resolutions affecting the Property.
- 6.2 There are no demolition closure or clearance orders or notices or resolutions affecting the Property.

## **7. Leases**

- 7.1 The terms of the lease under which each leasehold part of the Property is held (each being a Lease) are such as would normally be found in a lease of the same type as the Lease and the Lease contains no provisions for the review of rent nor restrictions on underletting nor erroneous provisions nor is it subject to a right of re-entry on any ground except non-payment of rent or breach of covenant by the tenant.
- 7.2 The Lease has not been varied nor have any licences or consents been issued under it and no collateral assurances or undertakings have been entered into with the reversioner or any third party.
- 7.3 The Council is not aware (having made all reasonable enquiries) of any major item of expenditure already incurred by the landlord of each leasehold part of the Property or expected to be incurred by him within the next 12 months which is recoverable in whole or in part from the tenant of any leasehold part of the Property.
- 7.4 No notices have been given or received under any Lease and there are no subsisting disputes between the Council and the reversioner in relation to any Lease.
- 7.5 The rent and service charge (if any) payable in respect of each leasehold part of the Property set out in Appendix 3 are correct and these amounts have been paid to date.

- 7.6 The service charge (if any) payable under the Lease is fully recoverable from the undertenants under the terms of the relevant Tenancies.
- 7.7 The landlord of the Lease has (where requisite under the terms of the Lease) granted consent in such form as the Lease requires to the assignment of the Lease to the Association and all costs payable by the Council in connection with the grant of such consent have been paid.
- 7.8 No consents are required for the charging of the Lease.

## **8. Tenancies**

- 8.1 The Property is subject to and with the benefit of the Tenancies but otherwise the Council is in possession and occupation of the Property on an exclusive basis and no right of occupation or enjoyment has been acquired or is in the course of being acquired.
- 8.2 The gross weekly rents payable by the secure tenants of the dwellings comprised in the Property are correctly set out in Annex 1 to the Agreement.
- 8.3 There is no material claim and the Council is not aware of any potential material claim against the Council by any of the tenants of the Property.
- 8.4 The tenancies of all the Dwellings comprised in the Property are substantially in the form of one of the specimen drafts set out in Annex 6 to the Agreement (in respect of the RTB leases) and set out in Annex 7 to the Agreement in respect of the remaining tenancies
- 8.5 The Tenancies confer no rights of enfranchisement save for:
- 8.5.1 any Right to Acquire pursuant to the Housing Act 1996;
  - 8.5.2 the Preserved Right to Buy under Part V of the Housing Act 1985 or contractual equivalent conferred by the Association; or
  - 8.5.3 any right of enfranchisement under the Leasehold Reform Housing and Urban Development Act 1993 and the Leasehold Reform Act 1967.
- 8.6 The specimen form of garage tenancies set out in Annex 7 is the only form of garage tenancy which has been used by the Council or its predecessors in title (without material amendment) of garages forming part of the Property.

## **9. Information and Statistics Supplied**

- 9.1 All the information contained in the Schedules 1, 3, 5, 6, 7, 9, 11 and 12 and Annexes 1-3 and 5-8 to the Agreement is correct in all material respects.
- 9.2 The specimen forms of conveyance, transfer and lease set out in Annexes 5 and 6 to the Agreement are the forms of conveyances, transfer and lease which have been used by the

Council or its predecessors in title (without material amendment) in RTB sales, leases of houses and voluntary sales under the Housing Act 1957.

- 9.3 All the information supplied by the Council to King Sturge LLP in respect of the Stock Condition Survey and in connection with their valuation is correct in all material respects.

## **10. Sales Off**

- 10.1 All dwellings (being houses) sold by the Council or its predecessors in title under the RTB prior to the date of the Agreement have been sold by way of transfer or conveyance substantially in the form of one of the specimen transfers or conveyances set out in Annex 5 to the Agreement and contain all appropriate provisions to enable the Council and its successors in title to recover all or an appropriate proportion of the costs of repairing maintaining and renewing all facilities within the Property the use of which is appurtenant to such sold dwellings and all necessary rights and easements (including without limitation rights of access and egress) have been excepted and reserved for the benefit of adjoining and neighbouring Property.
- 10.2 All dwellings (being flats) sold by the Council or its predecessors in title under the RTB prior to the date hereof have been demised by way of a lease substantially in the form of one of the specimen leases set out in Annex 6 to the Agreement and contain all appropriate provisions to enable the landlord to recover a fair and reasonable proportion of its expenditure on repairs improvements insurance and maintenance in respect of such properties and all necessary rights and easements (including without limitation rights of access and egress) have been excepted and reserved for the benefit of adjoining and neighbouring Property.
- 10.3 There have been no dwellings sold by the Council or its predecessors in title on shared ownership terms
- 10.4 The forms of lease set out in Annex 6 to the Agreement permit the landlord thereunder (subject to the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985 (as amended)) fully to recover a fair and reasonable proportion of the costs incurred in performing the landlord's obligations under the said leases including (without prejudice to the generality of the foregoing) the costs of repairing maintaining improving and insuring the structures for which the landlord is responsible under such leases.
- 10.5 All notices served by the Council under Sections 125A and 125B of the Housing Act 1985 within a period of five years preceding the Completion Date contain a full fair and accurate summary of service charge and improvement contributions required from the tenant under the relevant leases during the relevant reference period defined in Section 125C of the said act.
- 10.6 There are no outstanding notices received by the Council from tenants under Section 153A of the Housing Act 1985.

## 11. Disputes and Litigation

Save for the Council's possession proceedings against various tenants, there is no current material action claim demand dispute or liability in respect of the Property outstanding and the Council is not aware of any circumstances which might give rise to any such action claim demand dispute or liability.

## 12. Environmental Pollution

### 12.1 In this paragraph:

- 12.1.1 **Dangerous Substance** means any natural or artificial substance (whether in the form of a solid liquid gas or vapour) the existence generation transportation storage treatment use or disposal of which (whether alone or in combination with any other substance) gives rise to a risk of causing harm to man or any other living organism or causing damage to the Environment or public health or welfare and includes but is not limited to any controlled special hazardous poisonous toxic radioactive dangerous or polluting waste.
- 12.1.2 **Environment** means the environment as defined in Section 1(2) of the Environmental Protection Act 1990.
- 12.1.3 **Environmental Approvals** means all licences authorisations consents or permits or approvals of any kind relating to or required by Environmental Law to which the Property or owner of the Property is subject.
- 12.1.4 **Environmental Claim** means any claim by any person in respect of losses or liabilities suffered or incurred by that person as a result of or in connection with any violation of Environmental Law or exposure to Dangerous Substances or giving rise to any remedy or penalty (whether interim or final) that may be enforced or assessed by private or public legal action or administrative order or proceedings as a result of Environmental Contamination or any application for any interim or final judicial or administrative decree injunction cease and desist order abatement order compliance order consent order clean-up order or enforcement notice remediation notice stop notice improvement notice prohibition notice or revocation order in respect of Environmental Contamination or any other remedial action or action to comply that the owner of the Property is obliged to undertake pursuant to Environmental Law in respect of Environmental Contamination.
- 12.1.5 **Environmental Contamination** means the following and the consequences thereof:
  - (a) any presence release leakage or spillage at or from all or any part of the Property into any part of the Environment of any toxic poisonous noxious or polluting matter or hazardous detrimental or Dangerous Substance or thing; and/or

- (b) any accident fire explosion or sudden event which affects the Environment and which is attributable to the existence operations management or control of any of the Property including (without limitation) the storage handling labelling disposal burial or control of waste or any hazardous toxic poisonous noxious or polluting matter or a Dangerous Substance at in or under the Property.

- 12.1.6 **Environmental Law** means any common or statutory law regulation bye laws directives decisions or order formal notices or any code of practice circular guidance note or the like issued by government or statutory authorities relating to the Environment the protection of human health, the work place or any Dangerous Substance in force at the date of the Agreement (including without limitation Part IIA of the Environmental Protection Act) or which were in force at any earlier date, are no longer in force but under which the Council still has obligations and liability or which are in force from time to time after the date of this Deed to the extent that they are not materially or substantially more onerous than those in force at the date of this Deed and in each case which have the force of law.
- 12.2 The Council is and has been in all respects in full compliance with all applicable Environmental Law in relation to its ownership and use of the Property and as far as the Council is aware there are no circumstances which may prevent compliance in the future.
- 12.3 The Council is and has been in all respects in compliance with the terms of all Environmental Approvals in relation to its ownership and use of the Property and as far as the Council is aware there are no circumstances which may prevent compliance in the future.
- 12.4 There is no Environmental Claim which is current or to its knowledge pending or threatened against the Council and there are no past or present acts omissions events or circumstances that could form the basis of any Environmental Claim against the Council and/or the Association in respect of its ownership and use of the Property and/or against the Security Trustee or any of the Beneficiaries or Finance Parties or any mortgagee or chargee of the Property or any of the successors in title or of the Property.
- 12.5 No part of the Property is included on, referred to or could be entered in any register of contaminated land prepared under the Environmental Protection Act 1990 Part IIA or any other record or register prepared by the local authority or any other regulatory authority nor are there any facts or any circumstances which are likely to lead to any such registration in the future nor has the Property or any part thereof been put to a contaminative use.
- 12.6 No Dangerous Substance is present in at on or under any of the Property or may have been or has been present used disposed of generated stored transported dumped released deposited burned buried or emitted in at on or under the Property.
- 12.7 No part of the Property is in such a condition that it would lawfully be designated as contaminated within the meaning of Part IIA of the Environmental Protection Act 1990.
- 12.8 No part of the Property is currently on an Environment Agency flood plain or has been affected by flooding in the period of 10 years before the completion date.

**13. Vires**

The Council has obtained and there continues to subsist in full force and effect all authorisations consents approvals licences registrations and declarations from all legislative bodies government ministries agencies or other authorities or otherwise in order for the Council to enter into and perform its obligations under the Agreement (including the Schedules, Appendices and Annexes thereto) and all such obligations are legally valid binding and enforceable against it.

**14. Absence of Adverse Replies**

14.1 No adverse matters would have been revealed had the Association made in respect of the Property:

14.1.1 local authority land charges searches and local authority enquiries in form Con 29(2002) (Standard Enquiries);

14.1.2 searches of the Public Index Map;

14.1.3 searches of the Register of Common Land and the Register of Town and Village Greens;

14.1.4 searches of the Coal Authority

and the fact that any part of the Property is in a conservation area and/or green belt area and/or area of outstanding natural beauty and/or is a listed building and/or is subject to any tree preservation order and/or any smoke control order shall not be regarded as adverse.

**15. Wayleaves**

15.1 The Property is not subject to any Wayleave which is of an onerous or unusual nature or which conflicts with the Property's present use or materially affects its value.

**16. Telecommunications Equipment**

There is on the Property no telecommunication or security equipment belonging to any third party other than that belonging to tenants of any Dwellings and there are also no third parties with any security of tenure or other similar rights over the Property pursuant to the Telecommunications Act 1984



**17. Electricity Sub-stations**

In respect of the sub-station leases and tenancies listed in [Schedule 1 Part 2];-

- 17.1 The Council as landlord has not entered into any unusual or onerous covenants with the tenants save for a covenant of quiet enjoyment;
- 17.2 The landlord has an express right to forfeit the lease for breach of the tenants' covenants;
- 17.3 The tenant's right to assign the sub-station lease is subject to the consent of the landlord;
- 17.4 The property demised can only be used as an electricity sub-station; and
- 17.5 The leases do not contain any other provision which would or may materially adversely affect the freehold reversions.

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**SCHEDULE 3****Covenants by the Council in Favour of The Association****1 Interpretation**

In this Schedule words and phrases defined in the Agreement shall where the context so admits bear the same meanings.

**2. Covenants**

- 2.1 In consideration of completion by the Association of the transaction contemplated in the Agreement the Council HEREBY COVENANTS with the Association in the terms set out in Appendix 1.
- 2.2 Each of the covenants shall be construed as a separate covenant and shall not be limited or restricted by reference to or inference from the terms of any other covenant or any paragraph of this Schedule or the Agreement.
- 2.3 In the event of any breach of any of the covenants the Association will serve upon the Council notice of the breach and if within a period of twenty-eight days following service of such notice the breach has not been remedied or is not capable of remedy the Association shall be entitled to claim damages for such breach from the Council.
- 2.4 The parties acknowledge that money damages alone may not properly compensate the Association for any breach of the covenants in Appendix 1 hereto and the parties hereby expressly agree that in the event of the breach or threatened breach of any such covenants or agreements in addition to any other rights or remedies the Association may have in law, in equity or otherwise the Association shall be entitled to seek injunctive or other equitable relief compelling specific performance of and other compliance with the terms of such covenants
- 2.5 Whenever practicable the Association shall consult with the Council before commencing any action under the provisions of this Schedule.

**3. Remedies For Breach**

Any remedy conferred on the Association for the breach of any covenant hereunder shall be in addition and without prejudice to all other rights and remedies available to it and the exercise of or failure to exercise any remedy shall not constitute a waiver by the Association of any of its other rights and remedies.

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**APPENDIX 1****Covenants by the Council****1. Enabling Role**

- 1.1 The Council shall give formal and reasonable consideration from time to time to the adoption of joint objectives for housing in the District of Rochford
- 1.2 The Council will use its powers and influence to support partnership arrangements with the Association and other registered social landlords within the District of Rochford to provide new affordable homes in Rochford.

**2. Open Space and Amenity Land**

The Council for itself its successors in title and any successor body for the benefit of the Association its successors in title and the owners and occupiers from time to time of the Property will:-

- 2.1 maintain all the amenity areas, play areas and grounds adjoining or adjacent to the Property, ownership of which is retained by the Council and in particular (but without limitation) will ensure that the grass thereon is kept cut and in a tidy condition (to a standard to be determined from time to time by the Council which shall not be lower than the standard applied by the Council to other similar amenity areas maintained by the Council in the District of Rochford and that unless developed or put to some other proper use such areas are available for access and enjoyment at all times by the Association and its tenants;
- 2.2 maintain and keep in repair all private roads, parking places, footpaths and ways adjoining or adjacent to the Property and serving the same and the kerbs, pavements, street lighting, signposting and notices thereon which are used for the benefit of the Property and ownership of which is retained by the Council;
- 2.3 subject to the Association providing necessary rights of access continue current arrangements for maintaining street lighting on unadopted roads forming part of the Property at no charge to the Association;
- 2.4 maintain and keep in repair all private drains, sewers, culverts, ditches and ponds adjoining or adjacent to the Property and all private water and gas pipes and electricity cables serving the Property ownership of which is retained by the Council; and
- 2.5 permit the Association its successors in title and its tenants and any other person with the consent of the Association or its tenants to use and enjoy any of the amenities referred to in this Paragraph 2 until they are rendered unavailable by reason of any subsequent development or change of use subject in the case of access and services to the Council providing at its own cost suitable alternatives.

**3. Land Registry Requisitions**

The Council will at its own cost promptly answer all requisitions raised by the Land Registry in respect of the title of the Council to the Property to assist the Association to be registered at the Land Registry as proprietor of the Property with Absolute Title save in respect of such parts of the Property to which the Council has only possessory title (if any) as the same are more particularly identified in Schedule 2 to the Collateral Warranty in respect of which the Council will use all reasonable endeavours to enable the Association to be registered as proprietor of such property with Possessory Title and to assist the Association to upgrade the title to Absolute.

**4. Enforcement of Rights**

The Council will for the benefit of the Association (but at the Association's cost) enforce any rights which the Council may have as employer against any contractor or consultant in respect of any building works or any maintenance, repair or modernisation works which may have been substantially completed before the date hereof. The Association shall as soon as practicable give notice of any defects to the Council, and the Council shall (where possible) assign its rights in connection with such matters to the Association. In the event that such assignment shall not be possible the Council will take all such actions and do all such things as may be necessary or desirable in order to enforce the Council's and the Association's rights in relation thereto.

**5. General Assistance**

For three years from the Completion Date the Council shall where it is reasonable and practical to do so assist the Association with any enquiries it may raise relating to the Undertaking.

- 5.1 Without prejudice to any express provision in the Agreement the Council shall, if the Association so request (subject to any such request being reasonable and the Association meeting the Council's reasonable costs thereby incurred) give such reasonable assistance (including taking part in any legal actions, proceedings, inquiries, tribunals to any quasi-legal or informal proceedings) so as to enable the Association or pursue defend or otherwise respond to any matter relevant to the Undertaking.

**6. Joint Procurement**

The Council shall give formal and reasonable consideration to proposals from the Association from time to time relating to joint procurement initiatives and other similar schemes for the purchase of works and services where there are opportunities for both parties to achieve cost and efficiency savings including (but not limited to) purchases of diesel fuel, electricity, gas and grounds maintenance.

**7. Licence for Works Sites**

Without prejudice to the need (if any) for the Association to obtaining planning consent, the Council shall give formal and reasonable consideration to requests from the Association for temporary licences over such parts of the Retained Land as are necessary for the carrying out by the Association of the programme of repairs and improvements referred to in Parts B and F of the Consultation Document and shall not unreasonably withhold its consent to such requests.

**8. Right of First Refusal**

The Council shall nominate the Association as the person to accept an offer made under regulation s6 and 8 of the Housing (Right of First Refusal) (England) Regulations 2005 in respect of any residential houses, maisonettes, bungalows or flats in the District of Rochford.

**9. Housing Benefit**

The Council shall comply with the terms of the Housing Benefit Protocol set out in Part 2 of Schedule 15.

**10. Consultation in relation to Redevelopment of Shops**

The Council shall consult with the Association prior to taking any decisions relating to the redevelopment or planned redevelopment of Council owned shops adjacent to or in the vicinity of the Property.