

Report to the District Development Control Committee



**Epping Forest
District Council**

Date of meeting: 17 April 2007

**Subject: Planning Application EPF/1680/06 – White Lodge/The Limes,
Sewardstone Road, Waltham Abbey**

Recommendation

That the Committee notes progress with finalising the Heads of Terms of the section 106 agreement and authorises officers to proceed to the preparation of the final document, reporting back to this Committee only in the event that the current Heads of Terms fail to be concluded.

Report:

1. At the meeting of this Committee on 6 February 2007, it was resolved to grant permission for the erection of 119 dwellings with ancillary facilities at the above site, subject to various conditions and to a s106 legal agreement, but most importantly, subject to referral to the Secretary of State at the Government Office for the East of England. Details of the application have recently been referred to that Office and a reply should be received by 12 April 2007, though the Government Office can require an extension of time. The latest position on this will be reported to the Committee orally.
2. The Committee also resolved that the final details of the section 106 agreement should be approved by a subsequent meeting of this Committee, and that is the purpose of this report.
3. Since the meeting in February numerous draft and revisions of the Heads of Terms (HofT) have been prepared. The most recent draft, dated 4 April 2007, is appended to this report. It is stated by the applicants that it now covers all matters that officers have requested and this will be confirmed (or otherwise) orally at the Committee meeting. The Heads of Terms document is significantly more detailed than normally for such a document in order to satisfy the Council that any concerns over final wording have been addressed.
4. The previous report and the minute of the meeting stated that the agreement would seek to achieve 10 points. These are listed below together with comments on the wording agreed thus far:
 - a. 80% of the number of dwellings would be affordable housing, 60% of which would be for rent and 40% for shared equity – *this is the most fundamental part of the agreement. The HofT specifically state this requirement together with definitions of what constitutes affordable dwellings, how rents and value are established, the choice of a suitable Registered Social Landlord (RSL) and the signing of an*

accompanying Deed of Nomination which enables the Council to have 100% nomination rights over initial and future tenants of the rented accommodation. The key covenant is the prohibition of occupation of the market housing before the Affordable Housing has been constructed, in this case no more than 50% of the market housing can be occupied before 50% of the affordable housing is constructed and transferred to the RSL, and no more than 75% of the market housing occupied before all affordable housing constructed and transferred to an RSL.

- b. Commitment to sustainable housing design to achieve the new 6 star rating from the Code to Sustainable Homes – paragraph 4 of the HofT sets out in detail a number of measures to be adopted but point ix reverts to an “excellent” rating because the new Code has not yet been adopted. However, should the code be adopted nationally provision is included for the equivalent to “excellent” being sought.*
- c. Compliance with an approved Landscape Management Plan – this wording is not contentious and secures compliance satisfactorily.*
- d. The transfer of an area of woodland to the Conservators of Epping Forest – the applicants have accepted that the City of London Corporation (the managing body of the Conservators) needs to be a signatory to this agreement and this is included on the first page. The covenants will secure satisfactory compliance so long as the Corporation act reasonably in accepting the transfer. The applicants have extended the period for securing this matter to 12 months which should prove adequate. If however the Corporation fail to accept transfer within this period, the woodland is still protected and will be managed appropriately.*
- e. The widening and improvement of the nearby bridleway – this is dealt with in the same way as the woodland. The bridleway is to be improved by the dedication of additional land to the Corporation for its widening and appropriate management.*
- f. Commitment to a socially inclusive housing mix and layout – there are no reservations over these clauses which have been amended to fully secure a mix that would meet the Council’s requirements.*
- g. Provision of a community facility and shop with details of management – once again secured by a clause preventing occupation of more than 50% of the dwellings before the community facility is constructed. This is intended to provide community facilities but managed on a business-like footing.*
- h. Some off-site highway improvements – these are secured by a covenant not to occupy any part of the development before completing these works. This part of the agreement would require the County Council as Highway Authority to be a signatory and, although they have not commented on the draft submitted, the wording of these clauses will be to their standard requirements.*
- i. Measures to promote alternatives to the car – satisfactorily secured by standard worded clauses.*

- j. An education contribution to Essex County Council in accordance with their standard formula – no objections have been made to this standard requirement including the securing of the contribution prior to commencing the development.*
- 5. Further comments will be made at the committee meeting about any details still under discussion but at the time of compiling this report it would appear that all the Council's concerns have been addressed.
- 6. It should be pointed out that this latest version follows extensive discussion and negotiation on a number of points. As usual with negotiations, some of the provisions are not necessarily in accordance with officers' first wishes but they are acceptable. Similarly, the applicant has made a number of concessions at the request of officers. The nomination rights of 100% is a particular benefit that officers are pleased to obtain and that the committee focussed upon at its last meeting.

Conclusion

- 7. The committee is asked to note the progress that has been made to secure the community benefits and essential improvements proposed as part of this development. It is not considered a good use of the committee's time nor, indeed, necessary for the committee to analyse and agree the final legal wording of the whole agreement and therefore it is recommended that the committee authorise officers to proceed to conclude the full section 106 agreement based upon these Heads of Terms, but to require a further report if the current Heads of Terms fail to be concluded.

Appendix

LODGE & THE LIMES, SEWARDSTONE PLANNING APPLICATION REF PL/EPF/1680/06

draft Section 106 Heads of Terms

PARTIES

EPPING FOREST DISTRICT COUNCIL (“the **Council**”)

SILVER PROPERTY DEVELOPMENT COMPANY LIMITED (“the **Developer**”)

ESSEX COUNTY COUNCIL (“the **County Council**”)

MAYOR AND BURGESSES OF THE CITY OF LONDON (“the **City**”)

1. RECITALS

To make it clear (to avoid setting a precedent) that the proposals are being approved by the Council because in the particular circumstances, the impact on the openness of the Green Belt of this form of Development in this location will be outweighed by the very special circumstances of the proposals which include the high proportion of affordable housing and the sustainability, environmental and other improvements secured through the Section 106 Agreement and conditions.

2. DEFINITIONS

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| “Affordable Dwellings” | the Rented Affordable Dwellings and the Shared Ownership Affordable Dwellings which are to be provided (but not necessarily constructed) by the RSL and which shall consist of 60% Rented Affordable Dwellings and 40% Shared Ownership Affordable Dwellings or such other mix in tenure as may be agreed in writing between the Developer, the RSL and the Council to satisfy local housing needs; |
| “Affordable Dwellings Land” | the land upon which the Affordable Dwellings shall be constructed within the Site pursuant to the Planning Permission; |
| “Affordable Housing” | housing which is attainable for purchase and/or rental to persons who are unable to rent or buy housing locally on the open market; |
| “Affordable Housing Contract” | a contract or contracts for the sale or lease for not less than 99 years to the RSL of the Affordable Dwellings which is not subject to any provision imposed by the Developer upon the RSL making it impossible for the RSL to own or lease the relevant Affordable Dwellings on the terms set out in this Deed; |
| “Approved Mortgagee” | any mortgagee or chargee of the Affordable Dwellings (or any of them) or any receiver appointed by such mortgagee or chargee of which the Council shall have been given notice in writing; |
| “Bridleway” | [TO BE DEFINED BY REFERENCE TO DRAWING] |
| “Bridleway Improvement Land” | the land to be donated by the Developer to the [Corporation of London] which is immediately adjacent to the current Bridleway and consists of a length of approximately [] metres and width (measured from the nearest end of the Bridleway) of [] metres, shown for identification |

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| “Commencement of Development” | between the points marked “A” and “B” on [ATTACHED PLAN]; [TO EXCLUDE SITE INVESTIGATIONS, SITE PREPARATION, CONTAMINATION MEASURES, ERECTION OF HOARDINGS ETC] |
| “Deed of Nomination” | [A DEED IN SUBSTANTIALLY THE SAME FORM AS THE COUNCIL’S DISTRICT-WIDE NOMINATIONS AGREEMENT (ATTACHED) BUT WHICH SHALL PROVIDE FOR THE COUNCIL TO HAVE 100% NOMINATION RIGHTS FOR INITIAL LETS AND SUBSEQUENT LETTINGS] |
| “Development” | redevelopment of the site by the demolition of existing buildings and construction of 119 Dwellings (of which not less than 80% will be Affordable Dwellings of a property mix to be agreed with the Council) together with car parking, community facilities, shop, means of access and other ancillary works; |
| “Dispute” | any dispute, difference, issue or claim as between the parties in respect of any matter contained in or arising from or relating to this Deed or the parties’ rights and obligations pursuant to it (other than in respect of any matter of law); |
| “Dwellings” | the Affordable Dwellings and the Market Dwellings; |
| “Expert” | an independent person appointed in accordance with the provisions of Clause 14 to determine a Dispute; |
| “Highway Works” | [IMPROVEMENTS TO A112 TO BE DEFINED BY REFERENCE TO A PLAN] |
| “Housing Corporation” | the organisation of that name or such other body for the time being, having or being entitled to exercise the power to regulate RSLs now conferred on such organisation under the Housing Act 1996; |
| “Indexation” | [ANNUAL INCREASE IN ACCORDANCE WITH THE HOUSING CORPORATION’S GUIDANCE ON RENT LEVELS IN BEING AT THE TIME OF ANY ANNUAL INCREASE] |
| “Landscape Management Plan” | a plan (as varied from time to time with the written agreement of the parties) for the ongoing management and maintenance after completion of the Development of landscaping at the site (but excluding the Woodland if ownership of it is transferred under Clause 6) which is to be approved in writing by the Council which includes the following elements: <ul style="list-style-type: none"> (i) measures to ensure that approximately 95% of the existing trees and hedgerows on site are so far as practicable retained in an undamaged state after the Development is completed; (ii) measures to ensure that public access is not prevented from the Development to the Meadowland and the Woodland; (iii) measures to ensure that the public have access over the open spaces within the Development; (iv) responsibility for the future management and maintenance of landscaping at the site; and (v) a management plan and mitigation strategy to protect and enhance existing nature conservation interests and wild life habitats on the part of the site in |

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| | question; |
| “Market Dwelling” | any dwelling forming part of the Development which is not an Affordable Dwelling; |
| “Meadowland” | [TO BE DEFINED BY REFERENCE TO A PLAN] |
| “Open Market Value” | the market value of the Affordable Dwellings or the Affordable Dwellings Land as appropriate as determined in accordance with the Royal Institution of Chartered Surveyors Appraisal and Valuation Manual Practice Statement 4.2 or other replacement guidance current at the date of valuation provided that the terms within this Deed relating to the provision and use of the Affordable Dwellings shall be disregarded in such determination and in the event of disagreement, the Open Market Value shall be determined by the Expert in accordance with Clause 14; |
| “Planning Permission” | a planning permission (ref []) granted by the Council for the Development substantially in the form of the attached draft; |
| “Preferred RSL Partners” | <ul style="list-style-type: none"> (i) East Thames Housing Association of 3 Tramway Avenue, Stratford London E15 4PN; (ii) Hastoe Housing Association of Marina House, 17 Marina Place, Hampton Wick, Kingston Upon Thames KT1 4BH; (iii) Moat Housing Association of Mariner House, Galleon Boulevard, Crossways, Dartford, Kent DA2 6QE; (iv) L&Q Group of Osborn House, Osborn Terrace, London SE3 9DR; and/or (v) Home Group of Ridley House, Regent Centre, Gosforth, Newcastle upon Tyne NE3 3JE <p>and/or such other RSLs on the Council’s list (as such list may be amended from time to time) of approved RSLs in relation to the provision of Affordable Housing in the Council’s area;</p> |
| “Privately Funded Affordable Dwellings” | any Affordable Dwellings for which no Social Housing Grant is available or which are to be provided by an RSL without any Social Housing Grant, which Affordable Dwellings the Developer will not be obliged to tender in accordance with Clause 8 prior to transfer to an RSL; |
| “Protected Tenant” | any tenant who: <ul style="list-style-type: none"> (i) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling; and/or (ii) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling; |
| “Rented Affordable Dwellings” | the Affordable Dwellings which are to be let on assured (non-shorthold) tenancies (as such tenancies are defined in the Housing Act 1988) or starter tenancies (assured shorthold tenancies granted by the RSL as probationary tenancies in accordance with the Housing Corporation’s good practice guide “A Guide to Starter Tenancies” for RSLs or replacement guide) on periodic rents which comply with Housing Corporation policy on rent setting at that |

“RSL” time;
one or more of the Preferred RSL Partners or such affordable housing provider as may be chosen in accordance with the procedure set out in Clauses 8(f) to (j) below which is registered with the Housing Corporation as a registered social landlord under the Housing Act 1996 or under such statutory regime as may replace it from time to time;

“Shared Ownership Affordable Dwellings” the Affordable Dwellings which are each attainable for purchase by means of a shared ownership lease which is a lease granted:

- (i) on payment of a premium calculated by reference to a percentage of the value of the relevant Shared Ownership Affordable Dwelling and the cost of providing the same and under which the tenant is entitled to acquire a maximum of a 70% interest initially (subject to the aggregate initial interests purchased in all of the Shared Ownership Affordable Dwellings being no more than 50% of the aggregated open market values of all of the Shared Ownership Affordable Dwellings);
- (ii) on the basis that the initial annual rent payable by the tenant in respect of the unsold interest in the relevant Shared Ownership Affordable Dwelling shall be no more than 2.5 % of the open market value of the unsold interest in such Shared Ownership Affordable Dwelling subject to Indexation; and
- (iii) with the entitlement to acquire additional shares up to a maximum of an 80% equity interest (or as otherwise permitted by the Housing Corporation from time to time) in the relevant Shared Ownership Affordable Dwelling, as appropriate;

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| “Site” | the land known as White Lodge and The Limes which is registered at the Land Registry under Title Numbers EX658975 and EX658978 and shown for identification purposes edged red on the plan annexed to this Deed; |
| “Social Housing Grant” | grant provided by the Housing Corporation for the provision of Affordable Housing; |
| “Woodland” | [TO BE DEFINED BY REFERENCE TO A PLAN]. |

2. LEGAL EFFECT

- a. Statutory authority.
- b. Conditionality.
- c. Revocation, modification etc.
- d. Release after parting with title.
- e. 1999 Act release.

3. SUSTAINABLE HOUSING DESIGN

- a. The Developer to submit for the Council’s approval prior to Commencement of Development details of the design of all of the Dwellings within the Development, the design to be based upon the principles set out in the Design and Access Statement submitted with the planning application and to include insofar as practicable:
 - i. A requirement to respect and maintain the existence of the trees and hedges presently on site;
 - ii. Construction methods to ensure reduction in carbon emissions;
 - iii. Inert or low emission construction materials;
 - iv. Rainwater harvesting technology;
 - v. Solar panels;
 - vi. Ground source heat pumps;
 - vii. Water saving devices such as low-flush toilets and aerated type taps;
 - viii. Timber products from known sustainable sources with [50%] of timber and timber products used to come from a known temperate source;
 - ix. The Dwellings to be constructed and completed to achieve an “excellent” EcoHomes rating (or its equivalent should the EcoHomes measure be replaced in due course) and to accord with Lifetime Homes Standards.
- b. The Development shall be designed and constructed to enable household waste to be recycled by means of separated dedicated storage space.

4. LANDSCAPING/IMPACT ON OPENESS

- a. The Developer shall comply in perpetuity with its obligations contained in the Landscape Management Plan except as may otherwise be agreed with the Council.
- b. The Development shall be designed and constructed so as not to prevent access by occupiers of the Dwellings to the Meadowland, the Woodland and to the adjacent Bridleway.

5. DONATION OF WOODLAND AND WIDENING OF BRIDLEWAY

- a. Prohibition against Commencement of Development until the Developer has used its reasonable endeavours to enter into an agreement with the Corporation of London for the transfer at a peppercorn as soon as reasonably practicable after the date of the Section 106 Agreement of the freehold title of:

- i. the Woodland; and
 - ii. the Bridleway Improvement Land.
- b. The covenant above will cease to be of effect in respect of the Woodland and/or the Bridleway Improvement Land (as appropriate) if:
 - i. the Corporation of London notifies the Council or the Developer at any time in writing that it does not wish to accept a transfer of the Woodland and/or Bridleway Improvement Land (as appropriate); or
 - ii. the period of 12 months has expired commencing with the date of this Section 106 Agreement and the relevant transfer agreement has not at that time been completed.
- c. In the circumstances described above (the covenant to transfer to the Corporation of London falling away), the Woodland and Bridleway Improvement Land will be offered to another conservation body or retained and managed appropriately by the Developer.

6. SOCIALLY INCLUSIVE HOUSING MIX

- a. The Affordable Dwellings will not be readily identifiable from the Market Dwellings in respect of their quality of design and the use of external materials.
- b. The Affordable Dwellings will accord with the Essential Requirements of Housing Corporation Scheme Development Standards issued by the Housing Corporation and all other funding requirements of the Housing Corporation.
- c. The Affordable Dwellings will be laid out in a socially inclusive manner in locations to be agreed in writing with the Council and the mix of the Affordable Dwellings shall (unless otherwise agreed in writing by the Council) reflect the mix of the Market Dwellings such that the ratio of houses to flats and the proportion of one, two, three and four bedroom Affordable Dwellings is equivalent to the corresponding ratio and proportion for the Market Dwellings Provided That no bedsit or studio flat Affordable Dwelling shall be constructed as part of the Development and all one bedroom Affordable Dwellings shall be of a size which is suitable to reasonably accommodate on a permanent basis two persons who are living together.

7. AFFORDABLE HOUSING

General

- a. A requirement that not less than 80% of all of the Dwellings built pursuant to the Planning Permission will be:
 - i. Affordable Dwellings; and
 - ii. with the mix of tenure of the Affordable Dwellings consisting of 60% Rented Affordable Dwellings and 40% Shared Ownership Affordable Dwellings or such other mix in tenure as may be agreed in writing between the Developer, the RSL and the Council to satisfy local housing needs.

Occupation Restrictions

- b. Prohibition in perpetuity against occupation of:
 - i. the Rented Affordable Dwellings for any purpose other than as Affordable Housing let on a tenancy conforming to Housing Corporation guidelines and letting policy by persons identified in accordance with the procedures contained in the Deed of Nomination; and
 - ii. the Shared Ownership Affordable Dwellings for any purpose other than as Affordable Housing on a shared equity basis

SAVE that the obligations contained in this Clause 8(b) shall not be binding on any Protected Tenant or any mortgagee or chargee of the Protected Tenant

- or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees.
- c. Prohibition against occupation of any Affordable Dwelling other than by a person identified in accordance with the procedures contained in the Deed of Nomination SAVE that the obligations contained in this Clause 8(c) shall not be binding on any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees.
 - d. Prohibition against occupation of more than 50% of the Market Dwellings until:
 - i. the freehold interest or the leasehold interest of not less than 50% of the Affordable Dwellings has been transferred to or granted to the RSL;
 - ii. such transfer or grant (as appropriate) is on terms which accord with the Housing Corporation's relevant funding requirements current at the date of construction of the Affordable Dwellings and on terms which require the RSL to enter into a Deed of Nomination with the Council; and
 - iii. satisfactory evidence of such transfer or grant has been provided to the Council.
 - e. Prohibition against occupation of more than 75% of the Market Dwellings until:
 - i. the freehold interest or the leasehold interest of each of the Affordable Dwellings has been transferred to or granted to the RSL;
 - ii. such transfer or grant (as appropriate) is on terms which accord with the Housing Corporation's relevant funding requirements current at the date of construction of the Affordable Dwellings and on terms which require the RSL to enter into a Deed of Nomination with the Council; and
 - iii. satisfactory evidence of such transfer or grant has been provided to the Council.

Selection of RSL

- f. The parties agree that the Developer may design and construct all or any of the Affordable Dwellings before transferring them to the RSL (subject to meeting all of the Housing Corporation design standards and funding conditions if applicable).
- g. The Developer will tender the provision of those Affordable Dwellings which it anticipates will be funded in whole or in part by Social Housing Grant but will not be required to tender (and this paragraph and the following paragraphs of Clause 8 shall not apply) to any Privately Funded Affordable Dwellings.
- h. The Developer will manage the tender process in a clear and transparent manner and all relevant information relating to the tender process, including copies of all responses received to invitations to tender, will be made available to the Council and the Council will be entitled to attend all relevant meetings during the conduct of the tender process Provided That all information received by the Council in relation to the tender documentation and tender process shall be kept confidential by the Council and shall not be disclosed other than to the Housing Corporation on a confidential basis or to such other person as the Developer may agree in writing or where disclosure is required for the resolution of any Dispute or court proceedings.
- i. The Developer will not invite to tender any person other than the Preferred RSL Partners SAVE that this obligation shall cease to have effect and will not be binding upon the Developer if:

- i. one or more Affordable Housing Contracts (relating to all of the Affordable Dwellings) has not been exchanged with one or more of the Preferred RSL Partners before the expiry of 9 months from the date of the Developer's invitation to tender to the Preferred RSL Partners; and
- ii. the Developer is able to demonstrate that, during such period of 9 months, it has used all reasonable endeavours and proceeded diligently and with all due expedition to negotiate and enter into a binding Affordable Housing Contract on appropriate terms with one or more of the Preferred RSL Partners.
- j. If such circumstances as are described in Clause 8(i) pertain at the expiry of such 9 months period, the Developer shall be at liberty to approach any such other organisation or organisations which is or are registered as a registered social landlord under the Housing Act 1996 (or under such statutory regime as may replace it from time to time) and which the Council has first approved (such approval not to be unreasonably withheld or delayed) with a view to the sale or grant of lease instead to that organisation or organisations of the Affordable Dwellings (or any of them).

8. COMMUNITY FACILITY AND SHOP

- a. Prohibition against occupation of more than 50% of the Dwellings before completion of works to construct the Community Facility and Shop on site.
- b. The Developer will, before the Community Facility is occupied, submit for the Council's approval a Community Use Management Plan to secure its community use and to provide that such use shall remain available for so long as the Community Facility building remains in existence (unless otherwise agreed in writing with the Council) PROVIDED THAT such scheme shall so far as possible include details of a management body, hours of access, charges payable (if any) and the types or identities of user groups envisaged to benefit from the use of the building.

9. OFF-SITE HIGHWAY IMPROVEMENTS

- a. Prohibition against occupation of any part of the Development before completion of the off-site Highway Works [INCLUDING ANY RELEVANT DEDICATION OF LAND UNDER S.38 HIGHWAYS ACT 1980].
- b. Commitments to:
 - i. restrict access to the Development via the northernmost access;
 - ii. take appropriate measures to close off the middle access entirely; and
 - iii. take appropriate measures to ensure that the southernmost access is used by pedestrians and cyclists only
 or to take such alternative measures to achieve safe and suitable access arrangements as may otherwise be agreed in writing with the Council.

10. MEASURES TO PROMOTE ALTERNATIVES TO CAR

- a. Prohibition against occupation of the Development until the Developer has prepared and submitted to the Council for its approval a scheme of measures to promote alternative transport modes to and from the Development to private cars, such scheme to consist of:
 - i. provision at the Developer's cost of a bus pass for each Dwelling for a period of 12 months commencing with the Dwelling's first occupation enabling free travel [between the site/Chingford, the site/Walthamstow, the site/Waltham Abbey and the site/central London][along Bus Routes 215, 505, 379 and 853 between the site/Chingford, the site/Walthamstow and the site/Waltham Abbey];
 or

- ii. provision at the Developer's cost of an allowance (of no less value than the bus pass referred to above) for each Dwelling during the period of 12 months commencing with the Dwelling's first occupation for the purchase of a bicycle.
- b. Promotion of car sharing initiatives.
- c. Provision of information relating to public transport and local pedestrian/cycle links in the Community Facility and on site Shop.

11. EDUCATION CONTRIBUTION

- a. The Developer to pay to the Council an Education Contribution in the sum of [TO BE AGREED IN ACCORDANCE WITH ESSEX COUNTY COUNCIL STANDARD FORMULA WHEN HOUSING MIX KNOWN] on or prior to commencement of development.
- b. Prohibition against Commencement of Development before Education Contribution has been paid.

12. MORTGAGEE/TENANT RELEASE

- a. The parties agree that if an Approved Mortgagee seeks to dispose of the Affordable Dwellings or any one of them pursuant to its power of sale or other power or powers within the mortgage:
 - i. it shall give notice to the Council in writing of its intention to dispose ("the **Initial Notice**") and thereafter first seek to dispose of the Affordable Dwellings or any one of them to another RSL provided that if within a period of 3 calendar months from the date of the Initial Notice the Approved Mortgagee is unable to so dispose at the price it may desire it shall offer to transfer its interest to the Council or the Council's nominee ("the **Mortgagee Notice**") and the parties hereto acknowledge that the Approved Mortgagee may serve the Mortgagee Notice simultaneously with the Initial Notice or at any time within 3 months after service of the Initial Notice;
 - ii. the consideration for any such transfer to the Council or the Council's nominee shall be the lesser of (i) the Open Market Value of the Affordable Dwellings and the Affordable Dwellings Land and (ii) the sum of money which will discharge the amount due and outstanding to the Approved Mortgagee under the terms of the relevant mortgage including all accrued interest and the costs and expenses incurred by the Approved Mortgagee in respect thereof and all expenses arising out of its compliance with this clause;
 - iii. if the Council or the Council's nominee and the Approved Mortgagee have not agreed the consideration for the said transfer within 4 weeks

after the Mortgagee Notice then the matter shall be referred to the Expert and the procedure detailed in clause 14 shall apply;

- iv. if within 4 weeks of the Mortgagee Notice given by the Approved Mortgagee under Clause 13(a)(i) the Council fails to agree in writing to take the transfer or fails to nominate a transferee or the Council or its nominee fails to proceed with the transfer within 4 weeks of the consideration for the transfer having been set by the Expert or if earlier within 4 months from the date of Mortgagee Notice, the Approved Mortgagee shall be entitled to dispose of its interest in the Affordable Dwellings to whomsoever it wishes at whatever price free from the obligations and restrictions contained in this Deed

PROVIDED THAT at all times the rights and obligations in this Clause 13 shall not require the mortgagee or chargee or receiver to act contrary to its duties under the charge or mortgage and that the Council shall give full consideration to protecting the interest of the mortgagee, chargee or receiver in respect of monies outstanding under the relevant mortgage or charge.

- b. It is hereby agreed that the provisions of this Deed shall not be binding upon nor enforceable against the following:
 - i. any tenant of an Affordable Dwelling exercising a statutory or voluntary right to buy or right to acquire pursuant to the Housing Act 1985 or the Housing Act 1996 or any statutory amendment modification or re-enactment thereof;
 - ii. any lessee pursuant to a shared ownership lease whether or not such lessee has purchased a 100% interest; or
 - iii. the successors in title to the persons or bodies referred to in paragraphs (i) and (ii) above.

13. DISPUTE RESOLUTION

- a. In the event of any Dispute arising between the parties, the parties will attempt to resolve that Dispute amicably including holding a meeting attended by at least one representative from each party.

- b. If the parties are unable to resolve the Dispute amicably pursuant to Clause 14(a) above, one party may by serving notice on all the other parties (the “**Dispute Notice**”) refer the Dispute to an Expert for determination.
- c. The Dispute Notice must specify:
 - i. the nature, basis and a brief description of the Dispute;
 - ii. the clause or paragraph of this Deed pursuant to which the Dispute has arisen; and
 - iii. the proposed Expert.
- d. In the event that the parties are unable to agree whom should be appointed as the Expert within 10 Working Days after the date of the Dispute Notice then any party may request the President of the Royal Institution of Chartered Surveyors or, if the Dispute primarily concerns a transport matter the President of the Institution of Civil Engineers, to nominate the Expert at their joint expense.
- e. The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding upon the parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares.
- f. The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the Dispute and in any event not more than 28 Working Days from the date of his appointment to act.
- g. The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford each of the said parties an opportunity to make counter submissions within a further 5 Working Days in respect of any submission and material.
- h. Where it is provided in this Deed that a matter is to be agreed by any of the parties or is to be agreed or approved by any of them and a timescale for such

agreement being reached or agreement or approval being given is not provided, then the relevant provision shall be deemed to be subject to a proviso that if agreement is not reached or the matter is not agreed or approved within a period of 30 Working Days, then the matter may be referred to the Expert pursuant to this Clause 14 Provided That this provision shall not prevent a Dispute from being referred to the Expert earlier than the expiry of such period by any party to this Deed where that party is of the view that agreement will not be reached or the matter will not be agreed or approved within the said period.

Speechly Bircham
4 April 2007