

SCHEDULE 24

NORTH PROSPECT COVENANT

North Prospect Covenants

For the purposes of this covenant, the following definitions also apply:-

- “Community Engagement Steering Group”** means the group responsible for engaging with the local community in relation to the Master Plan and in particular (but not limited to) those aspects set out in paragraph 3.1.1;
- “Disposal”** means the transfer of or grant or creation of any interest in any part of the North Prospect Site to any person or body before completion of the Redevelopment other than pursuant to an agreed overarching marketing and disposal strategy for any non-Social Housing New Dwellings on the North Prospect Site (and references to “Dispose” or “Disposes” shall be construed accordingly);
- “First Phase”** means the first phase of the Project as described in paragraph 2.1.1;
- “HCA”** means the Homes and Communities Agency or any statutory successor body thereto;
- “Infrastructure Works”** means the highway improvement works (including improvements to existing highways and the construction and adoption of new roads and/or footpaths), the provision and installation of all services and supplies including gas, electricity, water and telephone services so as to enable the Dwellings to be supplied with such services, the creation of any open spaces and any other environmental works required to be undertaken in connection with the Development;

"Land Acquisition Strategy"	means that part of the Master Plan which documents the strategy agreed by the Parties to identify and subsequently acquire or extinguish all or any Third Party Rights
"Master Plan"	means the master plan for the Project to be devised by the Parties (and updated from time to time) in accordance with paragraph 3;
"New Dwelling"	means a dwelling to be constructed on the North Prospect Site as part of the Redevelopment including any apartments, flats, houses or maisonettes;
"Nomination Rights"	means the nomination rights set out in Schedule 2 of this Agreement;
"North Prospect Redevelopment Study"	means the study commissioned by the Council and carried out by Levitte Bernstein scoping the regeneration of the North Prospect Site dated 23 April 2009 (revised 30 April 2009 and updated in July 2009) incorporated at Annex 9;
"Planning Permission(s)"	means all outline and/or detailed planning permissions (including reserved matters approvals) considered by the Association to be necessary or desirable in order to undertake the Redevelopment;
"Project"	means the First Phase and the Second Phase together;
"Project Board"	means the project board formed and operated in accordance with paragraph 3.5;
"Redevelopment"	means the regeneration and redevelopment of the North Prospect Site in accordance with the Master Plan including design, site preparation and works and references to "the Redevelopment" include the whole or any part of the Redevelopment;
"Second Phase"	means the second phase if the Project as

“Third Party Rights”

described in paragraph 2.1.2;

means the interest and rights of third parties in relation to the North Prospect Site and Third Party Right shall be construed accordingly.

1. **AGREED OUTCOMES AND CO-OPERATION**

1.1 The Parties have agreed that the key outcome in relation to the Project is the comprehensive master planning and redevelopment of the North Prospect Site through the provision, re-provision or renovation of dwellings, amenities and associated Infrastructure Works, as set out in this Schedule 24.

1.2 This Schedule records the Parties' intention to co-operate to procure the Redevelopment and sets out the manner in which this will take place.

2. **NOMINATIONS**

2.1 Throughout the Redevelopment the Association shall offer New Dwellings for rent to tenants of the North Prospect Site who vacate their current homes to enable the Redevelopment to take place ("Returning Tenants").

2.2 If the New Dwellings are not required by Returning Tenants within 28 days of the New Dwellings being released for occupation by the relevant developer, they shall be regarded as vacant and available for letting under the Choice Based Lettings Arrangements.

2.3 If the Choice Based Lettings Arrangements are no longer in operation, the Association grants to the Council Nomination Rights in respect of the Dwellings situated on the North Prospect Site as at the Completion Date, and any New Dwellings, as set out in Schedule 2.

2.4 For the avoidance of doubt, the Association is under no obligation to offer New Dwellings to any residents of the North Prospect Site other than Returning Tenants.

3. **THE PROJECT**

3.1 The Parties intend that the Project shall be carried out in two phases:

3.1.1 the First Phase shall comprise the development of a Master Plan to be carried out in the manner described in paragraph 4; and

3.1.2 the Second Phase shall comprise the Redevelopment to be undertaken in accordance with the Master Plan, to be carried out in the manner described in paragraph 5.

3.2 The Second Phase shall commence on the completion of the First Phase or at such other time as the Association may determine (after consulting with the Council and formally taking into account (inter alia) the Council's views, the Association's financial standing, market conditions, the availability of HCA funding and the views of the Security Trustee the Beneficiaries and the Finance Parties).

4. **FIRST PHASE**

4.1 The Parties agree that the key outcomes of the First Phase are:-

- 4.1.1 creating a Master Plan building on work already carried out and documented in the North Prospect Redevelopment Study. The Master Plan shall include the proposed uses, design criteria and development framework for dwellings on the North Prospect Site and shall include, but shall not be limited to, details of the:
- dwellings and other properties to be demolished;
 - dwellings to be refurbished;
 - New Dwellings to be provided;
 - the mix of tenure and dwelling type of the New Dwellings (being the mix of social housing, intermediate housing, housing for open market sale, and the mix of Houses and Flats)
 - the design criteria for the New Dwellings
- 4.1.2 identifying the costs required to be incurred in order to achieve the Redevelopment;
- 4.1.3 securing funding for the costs identified pursuant to paragraph 4.1.2 above, including (but not limited to) funding from the HCA and assumptions relating to the sale of dwellings (whether on open market terms or shared equity or similar terms) (such outcome to build on the indicative programme set out in the North Prospect Redevelopment Study;
- 4.1.4 liaising with the Council's planning department and identifying the process for the granting of Planning Permission;
- 4.1.5 identifying any Third Party Rights required to be acquired or extinguished to enable the Redevelopment;
- 4.1.6 establishing the Land Acquisition Strategy.
- 4.2 Both Parties acknowledge that the master planning shall follow the principles set out in the Consultation Document, which states that consultation should take place through Strategic Urban Futures.
- 4.3 It is the intention of both Parties to complete the First Phase within eighteen months of the Completion Date and the Parties shall co-operate fully and use their reasonable endeavours to meet this deadline.
- 4.4 The First Phase shall be undertaken by the Association in co-operation with the Council and in doing so the Association shall formally consider the views of the Council and the Project Board. The Association acknowledges that the decisions it makes regarding the tenure mix, design, development partner and the Redevelopment overall are key to the Council and the Association agrees to fully involve the Council.
- 4.5 The Project Board shall establish a Community Engagement Steering Group in the manner set out in set out in paragraph 4.7. Each Party or its duly appointed

representatives will attend and participate at Project Board meetings and meetings of the Community Engagement Strategy Group.

4.6 The Project Board

- 4.6.1 The Project Board shall be responsible for oversight of the Project on behalf of both Parties, for driving the Project forward and creating the Master Plan. It shall provide a flexible and responsive communication framework for the strategic matters affecting the Project, but shall have no decision making powers. In discharging its duties and responsibilities, the Project Board shall liaise with the Community Engagement Steering Group as and when it deems such liaison to be appropriate and/or necessary.
- 4.6.2 The Project Board will comprise nominated representatives of the Council and nominated representatives of the Association, as well as consultants and/or other persons agreed by the Parties as necessary for the procurement and delivery of the First Phase or any part of it (including the HCA should the HCA require representation). Each Party may change its nominated representatives (or any of them) to the Project Board by written notice to the other at any time.
- 4.6.3 Both Parties shall have regard to the skills required by the Project Board to effectively conduct its business when making their nominations.
- 4.6.4 The quorum for any meeting of the Project Board shall be at least one nominated representative from each Party.
- 4.6.5 Although the Council has an advisory, planning and strategic role to play in the Redevelopment, ultimate responsibility for approval of the Master Plan lies with the Association. If the Association decides not to accept the views of the Project Board in relation to the Master Plan, the Association shall report back to the Project Board on the reasons why it has not accepted the Project Board's views.
- 4.6.6 The Project Board will meet at regular intervals as often as may be necessary or desirable for the despatch of its business.
- 4.6.7 Either Party may convene a Project Board meeting on reasonable notice.
- 4.6.8 Any member of the Project Board may appoint an alternate to represent him at a Project Board Meeting where he is unable to attend provided that reasonable prior notice in writing of the name and details of the alternate is given to the Chair.

4.7 The Community Engagement Steering Group

- 4.7.1 In discharging its duties and responsibilities, the Community Engagement Steering Group shall liaise with the Project Board as and when required by the Project Board.
- 4.7.2 The Community Engagement Steering Group will include group members formally nominated by both Parties, together with representatives from the North Prospect Partnership and constituted residents groups as appropriate. The quorum for any Community Engagement Steering Group meeting shall include at least one nominee from the Council and the Association.

- 4.7.3 The Community Engagement Steering Group shall have no decision-making powers and any decisions that need to be made shall be referred to the Project Board along with the recommendation of the Community Engagement Steering Group.

5. **SECOND PHASE**

- 5.1 The Parties agree that the key outcome of the Second Phase is the Redevelopment.
- 5.2 The Association shall implement the Redevelopment but shall consult and work closely with the Council as the Redevelopment progresses. Both Parties shall act reasonably and in a spirit of trust, fairness and mutual co operation for the benefit of the Redevelopment within the scope of their respective roles expertise and responsibilities.

6. **THIRD PARTY RIGHTS AND COMPULSORY PURCHASE**

- 6.1 The Council agrees to work with the Association as it acquires or extinguishes any Third Party Rights necessary to allow the Association to undertake the Redevelopment. Further to this:
 - 6.1.1 as soon as reasonably practicable after the Land Acquisition Strategy has been determined, the Council shall as agreed with the Association, and in accordance with the Land Acquisition Strategy, diligently carry out the referencing exercise to determine the Third Party Rights to be compulsory acquired by drafting and serving requisitions for information on any affected parties pursuant to Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 or Section 330 of the Act and also prepare a statement of reasons, notices, certificates and statements and carry out other procedural matters up to and including the preparation of the CPO;
 - 6.1.2 the Council will consult with and, in accordance with the Land Acquisition Strategy, agree with the Association which Third Party Rights are required to carry out the Redevelopment and therefore necessary to be acquired by the Association before commencing the referencing exercise for the Third Party Rights;
 - 6.1.3 the Council shall as soon as it is reasonably practicable (and in any event within 20 Business Days from any request of the Association) consider and respond to a request of the Association to make the CPO and shall, as soon as it is reasonably practicable to do so, consider the use of its compulsory purchase powers to acquire the Third Party Rights;
 - 6.1.4 if the Council resolves to make the CPO, it will, in full consultation with the Association, proceed with due diligence to make the CPO and seek confirmation by the Secretary of State of the CPO;

- 6.1.5 notwithstanding paragraph 6.1.3, the Council shall not be obliged to consider any request from the Association to make a CPO other than in accordance with the Land Acquisition Strategy;
- 6.1.6 the Association shall within 21 days of receiving a demand from time to time in respect thereof pay to the Council, whether or not the CPO proceeds to confirmation, all costs and expenses incurred by it in the preparation making and confirmation of any CPO required under this provision including without prejudice to the generality of the foregoing all costs arising directly or indirectly from any public inquiry, professional fees, taxes and disbursements; and
- 6.1.7 the Association shall meet all costs arising directly or indirectly from the acquisition of the Third Party Rights and shall immediately put the Council in funds when requested to do so to enable the Council to acquire all or any of the Third Party Rights and pay all compensation fees and taxes in connection therewith.

6.2 With regard to the CPO process the Association will ensure:

- 6.2.1 that they consult with the owners of the Third Party Rights throughout the CPO stages as soon as the Third Party Rights have been identified;
- 6.2.2 that they use best endeavours to acquire the Third Party Rights prior to implementation of the CPO processes and in advance of confirmation of the CPO;
- 6.2.3 that they assist the Council in the preparation of any statement of reasons and statements of case and with any public enquiry including acting as witness and providing statements of evidence;
- 6.2.4 that there is a reasonable prospect of the Redevelopment going ahead, that the Redevelopment is financially viable and that funding is in place for the CPO to be confirmed;
- 6.2.5 that the Redevelopment is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account. These include the programming of any infrastructure accommodation works or remedial work which may be required, and any need for planning permission or other consent or licence;
- 6.2.6 where possible, they obtain planning permission for the Redevelopment prior to the CPO being submitted for confirmation; and
- 6.2.7 that where planning permission will be required for the Redevelopment, and has not been granted, there should be no obvious reason why it might be withheld.

7. **PLANNING**

The Association shall be responsible for preparing and submitting all necessary applications for Planning Permissions in connection with the Redevelopment and shall

pursue the same diligently will use all reasonable endeavours to obtain satisfactory Planning Permissions.

8. **LIAISON**

8.1 The Parties will discuss the progress of the Project at the meetings referred to in Schedule 9 of this Agreement.

9. **EXTENT OF OBLIGATIONS AND FURTHER ASSURANCE**

9.1 Nothing in this Schedule requires:

9.1.1 the Association to act in any way which is inconsistent with its obligations as a charitable RSL; or

9.1.2 the Council to act in any way which is inconsistent with its statutory duties or obligations as a local authority or is to act as a fetter on the Council in the exercise of its statutory duties and obligations, as Planning Authority, highways authority or otherwise.

9.2 The Council acknowledges that the Association may, and is explicitly entitled to, elect to undertake the Redevelopment itself or through a subsidiary (whether incorporated or yet to be incorporated) or either alone or in partnership with a selected development partner. The Association will, however, consult and work closely with the Council on its choice of partner and will seek to join the Plymouth Housing Development Partnership.

10. **NOMINATION TO RELATED SITES**

10.1 The Council intends to transfer land at Carlton Terrace, Paternoster House, South Trelawney School and Lion and Column (the Related Sites) to certain RSLs and to secure nomination rights in relation to dwellings to be developed at the Related Sites.

10.2 The Council hereby agrees with the Association to seek to make available nomination rights procured in relation to the Related Sites in order to allow the Association to decant tenants from existing Dwellings on the North Prospect Site to assist the Redevelopment.

11. **OPTION TO PURCHASE SCHOOL SITE**

As soon as is reasonably and conveniently possible after the Completion Date, the Council will transfer the site of the North Prospect Primary School to the Association for the purposes of providing a mixed use scheme comprising adult learning facilities, a children's centre, community facilities and housing. The transfer will be on such terms as are then agreed between the Parties.

12. **DEFERMENT PROVISIONS**

12.1 The Council agrees that it will not commence any action to enforce the provisions of this Schedule if:

- 12.1.1 circumstances outside of the Association's control prevent the Association complying with the provisions of this Schedule; and/or
 - 12.1.2 to comply with the provisions of this Schedule would have a serious detrimental effect on the financial standing of the Association and/or on its ability to perform its obligations under the Security Trust Deed and/or the Loan Agreement and/or any Finance Document and/or any Relevant Documents and/or any Refinancing Agreement and/or would cause the Association to commit an event of default or potential event of default under the Loan Agreement and/or any Refinancing Agreement.
- 12.2 If any of the circumstances in paragraph 12.1 occur, the Association may delay/defer compliance with this Schedule **PROVIDED THAT** the Association:
- 12.2.1 informs the Council of the reasons for such delay/deferment forthwith;
 - 12.2.2 consults with the Council about its proposals;
 - 12.2.3 consults with any affected tenants about any delay;
 - 12.2.4 agrees with the Council (acting reasonably) a revised programme for compliance with the provisions of this Schedule; and
 - 12.2.5 implements such revised programme thereafter.

13. **DEED OF COVENANT AND MORTGAGEE EXCLUSION**

- 13.1 Any delay by the Council in exercising any remedy for breach of the provisions of this Schedule shall not constitute a waiver by the Council of any of its rights and remedies in relation thereto and the exercise of, or failure to exercise any remedy hereunder shall not constitute a waiver by the Council of any of its other rights and remedies.
- 13.2 Subject to the provisions of paragraph 5.4 if at any time prior to the completion of the Redevelopment the Association (not being in receivership or acting by its mortgagee or chargee) Disposes of the North Prospect Site or any part of it, it shall procure that the party to which it has made such a Disposal shall enter into a covenant or covenants with the Council agreeing to be bound by the covenants given by the Association and contained in this Schedule 24 as though it was named in this Schedule 24 as a party to them.
- 13.3 For the avoidance of doubt, the provisions of Clauses 20 (Covenants) and 21 (Mortgagee Exclusion) of this Agreement shall apply this Schedule 24.

14. **DECENT HOMES STANDARD**

The Council agrees not to enforce the covenants in the Consultation Document (as referred to in Schedule 5, Part 2) where any breach and/or non performance and/or non observance arises as a consequence of the Association's failure to meet the decent homes standard in respect of those parts of the North Prospect Site to be redeveloped pursuant to the provisions of this Schedule.

15. **SUBSOIL**

The Association will transfer back to the Council at nil cost within 28 days of written request such subsoil as is required by the Council in its role as local authority in connection with any road or highways scheme.

