

THIRTEENTH SCHEDULE

RIGHT TO BUY SHARING AGREEMENT

THIS AGREEMENT is made the day of 2007

BETWEEN:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF TOWER HAMLETS** of The Town Hall, Mulberry Place, 5 Clove Crescent, London E14 2BG (the "Council") and
- (2) **POPLAR HOUSING AND REGENERATION COMMUNITY ASSOCIATION LIMITED** whose registered office is situated at 167A East India Dock Road, London E14 0EA (the "Company")

WHEREAS:

- (A) By an Agreement (the "Principal Agreement") of even date herewith and made between the same parties as the parties hereto the Council has agreed in consideration (inter alia) of the Company entering into this Deed to transfer the Property to the Company.
- (B) It is a term of the Principal Agreement that the parties shall enter into this agreement relating to the proceeds of sale of Dwellings within the Property on the terms and conditions following.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

1.1 In this Agreement, where the context so admits:

1.1.1 the following words and phrases shall have the following meanings:

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|-------------------|--|
| "Auditor" | shall mean the auditor appointed by the Company as auditor from time to time pursuant to the rules of the Company, provided that the auditor shall at all times be a member of an appropriate professional body; |
| "Base Rate" | shall mean the Base Rate from time to time of the Barclays Bank PLC or (if the said bank shall cease to exist) of such other London clearing bank as the Council (acting reasonably) shall nominate; |
| "Council" | shall have the same meaning as in the Principal Agreement; |
| "Dwelling" | shall mean a residential unit of accommodation forming part of the Property as at the date hereof and briefly described in the First Schedule to the Principal Agreement; |
| "Flat" | shall mean a Dwelling which is a flat as defined in Section 183 of the Housing Act 1985; |
| "Increase in RPI" | shall mean the factor the numerical fraction of which shall have as a numerator the figure for RPI published |

in the mid month of the Relevant Half Year (being December and June respectively) of the Relevant Financial Year and as a denominator the figure for RPI in December 2007 **PROVIDED THAT** if the numerator shall be less than the denominator in the relevant Financial Year then the factor shall nevertheless be deemed to be 1;

"Loan Agreement" shall have the same meaning as defined in the Principal Agreement;

"PRTB" shall mean the right to purchase a Dwelling conferred on former tenants of the Council by Sections 171A to 171H of the Housing Act 1985 (as amended) and the regulations made thereunder and on their successors and set out in their new Tenancy Agreement with the Company the form of which is set out at Part I of the Tenth Schedule of the Principal Agreement;

"Principal Agreement" shall mean the agreement of even date herewith made between the Council (1) and the Company (2) whereby the Council agreed to transfer the Property and other assets to the Company;

"Qualifying Tenant" shall mean a secure tenant within the meaning of Section 79 of the Housing Act 1985 or an introductory tenant within the meaning of Part V of the Housing Act 1996 of any Dwelling as at the Completion Date in respect of whom there is in force no outstanding order of the Court for possession of his Dwelling and no subsisting valid notice of intention to seek possession or no subsisting valid notice to terminate **PROVIDED THAT** any secure or introductory tenant of any Dwelling who is not a Qualifying Tenant as at the Completion Date shall if he has the possession order discharged or the notice of intention to seek possession withdrawn subsequently qualify to be a Qualifying Tenant and in such circumstances such qualification shall be retroactive to the Completion Date;

"Refinancing Agreement" shall have the same meaning as defined in the Principal Agreement;

"Relevant Financial Year" shall mean each of the periods of a year commencing on 1st day of April in one year and ending on 31st day of March in the following year **PROVIDED THAT** the first such period shall commence on 4th day of December 2012 and the last such period shall end on 31st day of March 2037;

"Relevant Half Year" shall mean each of the periods of six months commencing on the first day of April and 1st day of October in each Relevant Financial Year **PROVIDED THAT** the first such period shall commence on the 4th day of December 2012 and the last said period shall end on the 31st day of March 2037;

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- "RPI" shall mean the United Kingdom General Index of Retail Prices (All Items) or in the event that the basis of calculation of such Index shall change or if such Index ceases to be published (as to which the Council's reasonable decision shall be conclusive) such other published index of retail prices or the value of money as the Council and the Company may agree **PROVIDED THAT** in the event that agreement cannot be reached within 28 days of such decision by the Council the RPI shall be determined by an arbitrator appointed in accordance with the provisions of Clause 8;
- "Sale" shall mean the sale of any Dwelling to an occupying tenant who has the benefit of the PRTB whether or not such sale is in fact made pursuant to the PRTB but excluding any sale exercised pursuant to the right to acquire conferred on tenants by the Housing Act 1996;
- "Shared Ownership Disposal" shall mean any transaction by which a Qualifying Tenant (as that term is defined in the Principal Agreement) acquires a share of the equity in his or her Dwelling under the terms of a Shared Ownership Lease pursuant to the terms of any statutory change to the PRTB;
- "Shared Ownership Lease" shall mean a lease entered into between the Company and the Qualifying Tenant which provides the Qualifying Tenant with a leasehold interest in the Dwelling and further provides for the purchase of additional shares in the equity of his or her Dwelling.
- 1.1.2 words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include corporations;
- 1.1.3 reference to any statutory provisions or instruments shall be deemed to include reference to any such provisions or instruments as from time to time amended, varied, replaced, extended or re-enacted and to any orders or regulations under such provisions;
- 1.1.4 references to a Clause or a Schedule shall (unless expressly provided otherwise) be deemed to be references to a clause of or a schedule to this Deed and references to a Sub-clause shall be deemed to be references to a sub-clause of the Clause in which the reference appears;
- 1.1.5 words and expressions defined in the Principal Agreement have the same meaning in this Deed.
- 1.2 In this Deed Clause headings are included for ease of reference only and shall not affect this Deed or the interpretation hereof.

2. CALCULATION IN RESPECT OF PRTB

2.1 In respect of each Relevant Half Year the Company **HEREBY COVENANTS** with the Council to carry out the following calculations and, in the event that the result of such calculations made in accordance with Clause 2.2 shall be a positive amount, hold such amount as is in accordance with the sharing arrangement set out in Clause 2.3.

2.2 The Company shall for each Relevant Half Year calculate the values of the following items in accordance with the following definitions and, where relevant, formulae:

2.2.1 The annual net receipts for any half year will be the gross receipts less the value of foregone rent income and the value of the cost allowance in processing sales.

2.2.2 G = the gross receipts of all Sales of Dwellings in the Relevant Half Year

IF = the agreed rent income foregone for each Sale in the Relevant Half Year (taken from the Net Income Foregone column)

NS = Number of Sales in the Relevant Half Year

R = Increase in RPI

A = Allowance for conveyancing and valuation costs (£1,250)

The half yearly net receipts or ANR will be:

$$\text{ANR} = [G - \{NS \times (IF + A) \times R\}] \div 2$$

2.3 The payment due to the Council as the result of the calculation of ANR (where this is a positive figure) shall be calculated half yearly and payment made to the Council within 28 days following the end of the Relevant Half Year. If ANR is a negative figure such figure shall be carried forward to the next Relevant Half Year.

2.4 At the end of each Relevant Financial Year the Auditor shall certify the calculations made under Clause 2 and supply a copy of such certificate to the Council. If any adjustment to the payments previously made during the Relevant Financial Year is required as a result of such certificate the necessary payment shall be made within six months of the end of the Relevant Financial Year.

3. POTENTIAL SHARED OWNERSHIP DISPOSALS

3.1 In the event that there is a change in law which provides tenants of the Company the right to purchase a share in their property under a form of Shared Ownership Disposal then the Company and the Council will meet within 28 days of the passing of the relevant law and in good faith attempt to agree the impact of such change(s) and in the event that the parties are unable to agree such impact Clause 8 of this Deed shall apply.

4. INTEREST

4.1 Where the value of the Sum ANR shall be a positive amount then for each such amount for each Relevant Half Year to be paid to the Council, the Company shall pay interest thereon of such an amount as shall represent the interest which would have been earned if such sums had been deposited throughout the Relevant Half Year in a deposit account earning interest at Base Rate.

- 4.2 If either party shall have failed to make payment to the other party in accordance with the provisions of clause 2.3 or if any payments are required to be made by either party following the issue of the Auditor's certificate referred to in Clause 2.4, the relevant party shall in addition pay interest at 2% above the Seven Day LIBOR prevailing from time to time upon such additional amount for the period from the date such amount is due to the date upon which the additional payment is made.

5. WAIVER

- 5.1 The Council hereby acknowledges that the provisions of this Agreement shall not constitute an encumbrance upon the Company's title to the Property.

- 5.2 The provisions of this Deed are personal to the Council (and any successor) and the Company (and any successor including a successor on any transfer of engagements which is registered under Schedule 1 of the Housing Act 1996 with the Housing Corporation (or any equivalent successor body to the Housing Corporation)) but shall not bind any mortgagee or chargee of the Company or the Property or any receiver appointed by any such mortgagee or chargee or any successors in title of any such mortgagee or chargee or of the Company acting through such receiver and without limiting the foregoing the Council hereby waives any entitlement to any payments under the provisions of this Deed after action has been taken by the Security Trustee or any Agent (as defined in the Loan Agreement) Beneficiary or Finance Party or other lender or funder under any Refinancing Agreement in order to enforce any security over any part of the Property or to recover any funds advanced under the terms of the Loan Agreement or any Refinancing Agreement.

6. RIGHT TO ACQUIRE

For the avoidance of doubt the parties hereto confirm that the provisions of this Deed shall not apply to the proceeds from the exercise of the Right to Acquire pursuant to the provisions of the Housing Act 1996 which shall be for the account of the Company.

7. NOTICES

- 7.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by the Recorded Delivery Service addressed in the case of the Council to the Chief Executive at The Town Hall, Mulberry Place, 5 Clove Crescent, London E14 2BG or in the case of the Company to the Chief Executive at 167A East India Dock Road, London E14 0EA or to such other addresses as either party may from time to time notify to the other in accordance with the provisions of this clause.

8. ARBITRATION

- 8.1 Save as otherwise herein expressly provided any disputes or differences arising between the parties hereto as to their respective rights, duties or obligations or to any other matter or thing in any way arising out of or connected with the subject matter of this Agreement shall be referred in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force to the determination of a single arbitrator to be agreed upon by the parties or failing agreement to be a person nominated by the President for the time being of the Law Society. The decision of the said arbitrator (which shall include the payment of costs) shall be final and binding on the parties hereto.

8.2 For the avoidance of doubt Clause 8.1 shall not apply to any disputes between the Security Trustee and/or any Beneficiary and/or any Finance Party or other lender or mortgagee and the parties hereto.



SCHEDULE
RTB SHARING AGREEMENT
PRTB DISPOSALS – NET INCOME FOREGONE

Year	Net Income Foregone (IF)	Admin Charge Per Sale
1	£19,994	£1,250
2	£24,228	£1,250
3	£28,619	£1,250
4	£33,177	£1,250
5	£37,913	£1,250
6	£40,174	£1,250
7	£39,673	£1,250
8	£39,117	£1,250
9	£38,502	£1,250
10	£37,825	£1,250
11	£37,130	£1,250
12	£36,417	£1,250
13	£33,846	£1,250
14	£34,780	£1,250
15	£33,846	£1,250
16	£32,736	£1,250
17	£31,431	£1,250
18	£30,018	£1,250
19	£28,490	£1,250
20	£26,840	£1,250
21	£25,060	£1,250
22	£23,144	£1,250
23	£21,078	£1,250
24	£18,855	£1,250
25	£16,463	£1,250
26	£13,914	£1,250
27	£11,199	£1,250
28	£8,283	£1,250
29	£5,153	£1,250
30	£1,795	£1,250

IN WITNESS whereof the parties hereto have executed and delivered this document as a Deed the day and year hereinbefore written.

THE COMMON SEAL of THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF TOWER HAMLETS was hereunto affixed by Order of OS Cabinet 06/06/07 in the presence of:

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Authorised Signatory

THE COMMON SEAL of POPLAR HOUSING AND REGENERATION COMMUNITY ASSOCIATION LIMITED was hereunto affixed in the presence of:

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Authorised Signatory

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Authorised Signatory