

FOURTEENTH SCHEDULE

DEVELOPMENT CLAWBACK AGREEMENT

THIS AGREEMENT is made as a deed on

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") (which expression shall include any statutory successor body or any local authority to which the assets and liabilities of the Council may be transferred upon any reorganisation of local government) and
- (2) **POPLAR HOUSING AND REGENERATION COMMUNITY ASSOCIATION LIMITED** (Company No. 03249344) whose registered office is situated at 167A East India Dock Road, London E14 0EA("the Company") (which expression shall include its successors in title as owners of the Property or any part thereof).

1. DEFINITIONS

In this agreement the following words and phrases shall where the context so admits have the following meanings:

- "Clawback Period" the period of 25 years from the date hereof
- "Clawback Sum" a sum (exclusive of value added tax) equal to 50% of the amount by which the Open Market Value of the Relevant Property exceeds its Current Use Value less the aggregate of the Development Costs
- "Community Benefit" the provision by non profit distributing organisations of community centres sports and recreational and other facilities and/or community services and/or community regeneration initiatives for the benefit of the residents of Tower Hamlets or office space used in connection with the management of the same
- "Consultation Document" has the meaning defined in the principal transfer agreement of even date made between the parties to this deed
- "Current Use Value" the price which the Relevant Property might reasonably be expected to realise as at the Valuation Date upon a sale in the open market at arm's length by a willing seller to a willing buyer for a freehold (or as the case may be) estate with vacant possession on the basis of the use thereof current immediately prior to the Valuation Date (but disregarding any existing or prospective planning consent for a use other than for such purposes) and subject to the covenants exceptions reservations and other matters contained or referred to in the registers of the title at the Land Registry relating to (or including) the Relevant Property in so far as they are still subsisting and relate to or affect the Relevant Property but otherwise free from encumbrances (including the mortgage or charge of any Mortgagee)

- "Development" development as the same is defined in the Town and Country Planning Act 1990
- "Development Costs" all proper and reasonable costs which have been incurred for the purposes of the Implementation of any Relevant Development (to the extent only that such costs are not taken into account in any calculation of Open Market Value) including (without limitation) the costs of:
- (a) obtaining planning permission for the Relevant Development
 - (b) the disposal and marketing of the Relevant Property for the purposes of the Relevant Development
 - (c) decanting and the making of any disturbance or other home loss compensation payments to the tenants of the Relevant Property
- but excluding (for the avoidance of doubt) the cost of carrying out the Relevant Development itself
- "Disposal" either
- (a) the transfer of a freehold interest in; or
 - (b) the grant of a lease for a term exceeding 25 years otherwise than at a rack rental of
- the Property or any part thereof
- "Exempt Disposal" a Disposal:
- (a) effected pursuant to the Right to Buy or to a person with the benefit of the Right to Buy in relation to land which is the subject of such Disposal
 - (b) in exercise of a power of sale by any Mortgagee or by any receiver appointed by any Mortgagee
 - (c) to an owner of a residential property where (i) the land comprised in the Disposal adjoins the property of the residential owner (ii) the land is for use ancillary to the residential use of such residential owner's property and (iii) the consideration for the Disposal does not exceed £5,000 or such greater amount than £5,000 as shall reflect any increase in RPI from the date hereof to the date of such Disposal
 - (d) pursuant to a compulsory purchase order or a voluntary disposal following the commencement of a compulsory purchase procedure

- (e) to a highways authority in respect of works to an existing highway on or adjoining the Property
- (f) of land in exchange for land of equivalent value which is to be used for Social Housing or Community Benefit **PROVIDED THAT** the Company shall if so required by the Council agree that the obligations of the Company shall be extended to include the land acquired by such exchange any building constructed as part of a Permitted Development
- (g) any building constructed as part of a Permitted Development;
- (h) which is
 1. permitted under any general consent under Section 9 of the Housing Act 1996 as published from time to time by the Housing Corporation or any successor body authorised to make general consents under the said Section 9;
 2. not for any future or contingent consideration nor for any non-monetary considerations;
 3. in consideration of the payment of a sum not exceeding £100,000 exclusive of VAT or such greater amount than £100,000 exclusive of VAT or shall reflect any increase in RPI from the date hereof to the date of such Disposal; and
 4. not part of a larger transaction or series of transactions

"Implementation"

in relation to any Relevant Development the commencement of any works constituting such Relevant Development excluding

- (a) any works necessary in the course of undertaking a survey of or obtaining soil samples from the Relevant Property;
- (b) any remedial works necessary to prevent the risk of harm to human health or safety;
- (c) works of demolition;
- (d) works of archaeological excavation;
- (e) the erection of hoardings and fences on the Relevant Property;
- (f) works to utilities/utilities provision;
- (g) landscape clearance works; and
- (h) works on internal roads or paths

or where the Relevant Development is a change of use only the commencement of use for the relevant purpose

- "Infrastructure Development" Development for the supply of gas electricity water drainage sewerage telecommunications television data transfer and other services of a similar nature for the benefit of the Property or any part thereof
- "Interest Rate" the base lending rate for the time being of The Royal Bank of Scotland plc or such other London clearing bank as the Council may from time to time nominate
- "Mortgagee" means any mortgagee or chargee from time to time of the Property or any part thereof
- "Open Market Value" the price which the Relevant Property might reasonably be expected to realise as at the Valuation Date upon a sale in the open market at arm's length by a willing seller to a willing buyer for a freehold (or as the case may be) estate with vacant possession upon the assumption that the Relevant Property has the benefit of planning permission for and can be accessed and serviced for the purposes of the Relevant Development constituted by the Implementation and subject to the covenants exceptions reservations and other matters contained or referred to in the registers of the title at the Land Registry relating to (or including) the Relevant Property in so far as they are still subsisting and relate to or affect the Relevant Property but otherwise free from encumbrances (including the mortgage or charge of any Mortgagee) which price shall (for the avoidance of doubt) include an amount representing the Ransom Value of the Relevant Property or any part thereof
- "Permitted Development" the development of residential dwellings (including any garages, sheds, car spaces, etc.), for private sale as permitted as part of the Regeneration Works under Clause 2.26 of the Company's Deed of Covenant set out in the Fifth Schedule of the Principal Agreement and any other use
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- "Property" the property comprised and described in the Transfer
- "Ransom Value" such value as is reasonably attributable to the Relevant Property where the Relevant Property or any part thereof is to be used as a means of access to or providing services to or from adjoining or neighbouring property so as to facilitate any Development on such adjoining or neighbouring property
- "Registered Social Landlord" has the meaning defined in the Housing Act 1996
- "Relevant Development" Development other than
 - (a) Infrastructure Development

- (b) Development for Social Housing or Community Benefit purposes
- (c) Development as set out in the Consultation Document
- (d) Permitted Development
- (e) (subject as provided in Clause 7) RSL Development
- (f) (in the case only of shops) Retail Development
- (g) Development which the Company is obliged to carry out in pursuance of an obligation to or requirement imposed by the Council

"Relevant Property"	the property comprised in or forming part of any Relevant Development
"Retail Development"	any Development or change of use within Classes A1 A2 or A3 of Part A of the schedule to the Town and Country Planning (Use Classes) Order 1987
"Right to Buy"	the preserved right to buy as set out in sections 171A to 171H of the Housing Act 1985 the right to acquire scheme as set out in section 16 of the Housing Act 1996 or any right pursuant to the Leasehold Reform Act 1967 or the Leasehold Reform Housing and Urban Development Act 1993 or any other similar right to buy conferred by statute or a contractual right to buy where the tenant has the benefit of a right to buy conferred by statute or any voluntary scheme which may be operated by the Company which is similar to any statutory right to buy
"RPI"	the United Kingdom General Index of Retail Prices (All Items) or in the event that the basis of calculation of such index shall change (as to which the Council's determination shall be conclusive) or if such index ceases to be published such other published index of retail prices or the value of money as the Company shall propose with the consent of the Council (such consent not to be unreasonably withheld) PROVIDED THAT in the event that agreement cannot be reached within one month of such proposal by the Company the RPI shall be determined in accordance with the provisions of Clause 6 hereof
"RSL Development"	the provision of office accommodation for employees of the Company or any subsidiary or holding company of the Company or any other body providing or managing Community Benefit or Social Housing
"Shops"	those parts of the Property which are used as shops as at the date hereof

"Social Housing"	the provision of dwellings for letting at affordable or below market rents (including the sale of dwellings on shared ownership or other equity sharing terms) to persons in housing need which includes the provision of accommodation for wardens and other support staff in hostels or sheltered schemes and the provision of accommodation for students workers in key public services and asylum seekers as contracted by the Home Office
"Transfer"	the transfer of even date made between the Council (1) and the Company (2) effecting the voluntary transfer by the Council of its housing stock and other property on the East India Estate, Tower Hamlets
"Valuation Date"	the date of the Implementation of any Relevant Development

2. CLAWBACK PAYMENT

- 2.1 The Company for itself and its successors in title **HEREBY COVENANTS** with the Council that on the Implementation of any Relevant Development of the Property or any part thereof at any time before the expiry of the Clawback Period the Company shall pay to the Council the Clawback Sum (together with any value added tax which may be payable thereon) calculated pursuant to the provisions of this agreement
- 2.2 During the period of one month commencing on the relevant Valuation Date the parties shall consult together and endeavour to agree the Open Market Value and the Current Use Value of the Relevant Property
- 2.3 If the parties fail to agree within the period specified in Clause 2.2 then the Open Market Value or the Current Use Value or both of them (as the case may be) shall be determined in accordance with the provisions of Clause 6 at the election of either party by service of written notice upon the other at any time after the expiration of such period
- 2.4 Immediately following agreement upon or determination of the Open Market Value and the Current Use Value in accordance with the provisions of Clauses 2.2 and 2.3 the Clawback Sum shall be calculated
- 2.5 The Clawback Sum (together with interest thereon for the period commencing on the Valuation Date and ending on the date of actual payment calculated on a daily basis but compounded with quarterly rests) shall become payable on a date being twenty-one days from the date of calculation of the Clawback Sum pursuant to Clause 2.4
- 2.6 Interest under Clause 2.5 shall be due at the Interest Rate until the Clawback Sum becomes payable and thereafter at a rate of 2% above the Interest Rate
- 2.7 The payment of the Clawback Sum in respect of any Relevant Development which is for residential purposes shall effect the release of the Relevant Property from the provisions of this Deed
- 2.8 Upon payment of the Clawback Sum in the circumstances set out in Clause 2.7 the Council shall if so required by the Company (and at the cost of the Company) certify the release of the Relevant Property aforesaid in such terms as the Company shall reasonably require in accordance with the requirements of the Land Registry

3. NOTIFICATION OF DISPOSALS

The Company shall give notice to the Council of any contract for or document or deed giving effect to a Disposal of the Property or any part thereof (other than an Exempt Disposal) forthwith after the occurrence of any such event together with a copy of any such contract or document or deed **PROVIDED THAT** the Council shall have the option exercisable within one month of the receipt of such notice to require the transferee or lessee on such Disposal to enter into a direct covenant with the Council in such form as the Council shall reasonably require to observe and perform the provisions of this Deed

4. EXEMPT DISPOSALS

4.1 The provisions of this deed and the obligations of the Company hereunder shall upon completion of any Exempt Disposal cease to apply to any part of the Property comprised in such Exempt Disposal and any entry relating to the provisions of this deed on the title to the land comprised in such Exempt Disposal shall be removed

4.2 The certificate of the Company's solicitor (or where relevant a Mortgagee's solicitor) that any Disposal is an Exempt Disposal shall for the purposes of the Land Registry and in favour of any person to whom any Disposal is made be conclusive as to the operation of the provisions of Clause 4.1

5. PERSONAL TO THE COUNCIL

5.1 The benefit of the provisions of this deed shall be personal to the Council and the Council shall not assign or otherwise deal with its interest rights or entitlement hereunder

5.2 For the avoidance of doubt it is hereby agreed that the Council shall be entitled to waive any payment of the Clawback Sum which may otherwise be due or to agree that:

5.2.1 any Disposal may be treated as an Exempt Disposal or

5.2.2 any Development shall not be treated as Relevant Development

5.2.3 any waiver may be subject to conditions as to the use to which any sum waived shall be put

in all cases in the absolute discretion of the Council

6. INDEPENDENT DETERMINATION OF DISPUTES

6.1 Subject as herein provided all disputes differences and questions which arise between the Council and the Company concerning arising out of or connected with this deed shall:

6.1.1 if such dispute difference or questions relates to the rights and liabilities of either of the parties or to the terms or conditions to be embodied in any deed or document appertaining thereto be referred to a solicitor agreed upon by the parties but in default of agreement appointed at the request made at any time of either of the parties by or on behalf of the President for the time being of the Law Society

6.1.2 if such dispute difference or question relates to demolition building or construction works or the value of any interest in property be referred to a chartered surveyor agreed upon by the parties but in default of

agreement appointed at the request made at any time of either of the parties by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors

6.1.3 if such dispute difference or question relates to methods of accounting or otherwise to matters usually and properly within the knowledge of a chartered accountant be referred to a chartered accountant agreed upon by the parties but in default of agreement appointed at the request made at any time of either of the parties by or on behalf of the President for the time being of the Institute of Chartered Accountants in England and Wales

6.2 Any such reference to a solicitor chartered surveyor or chartered accountant shall if the parties so agree in writing be deemed to be a reference to an expert (and not an arbitrator) whose decision shall be final and binding but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996

6.3 If the parties shall fail to agree as to the nature of the dispute difference or question then it shall be referred to a solicitor agreed upon by them but in default of agreement either of them may apply at any time to the President for the time being of the Law Society to appoint a solicitor to decide in relation to any such matter which of the preceding sub-paragraphs of Clause 6.1 is applicable thereto and the decision of such solicitor acting as an expert and not as an arbitrator shall be final and binding

6.4 If any solicitor surveyor or accountant shall act as an expert pursuant to the terms of this clause then either of the parties shall be entitled to submit to him written representations and cross-representations with such supporting written evidence as it shall respectively consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing and the reference to him shall include authority to determine in what manner all the costs of the referral shall be paid

6.5 Where any arbitrator or expert shall die refuse or be unable to act or shall fail to proceed with reasonable speed to discharge his duties the parties may agree that a fresh appointment shall be made in accordance with the foregoing procedure and as often as such appointment shall be necessary

6.6 Any person so appointed to determine a dispute shall be of at least ten years' professional qualification and shall be experienced in relation to property of a similar nature to the Property and shall have knowledge of the values of property used for the current use and the use proposed by virtue of the Relevant Development

7. RSL DEVELOPMENT

RSL Development shall not be deemed to be Relevant Development under this Deed only for so long as the Relevant Property is used primarily in connection with Social Housing and/or Community Benefit PROVIDED THAT the commencement of any use of the Relevant Property for purposes other than in connection with Social Housing and/or Community Benefit shall be deemed to constitute the Implementation of Relevant Development

8. LAND REGISTRY

8.1 The Council and the Company hereby apply to the Chief Land Registrar to enter a notice of this Deed on the Charges Registers of the title to the Property

8.2 Without prejudice to the provisions of Clause 4 it is hereby agreed and declared that the covenants on the part of the Company contained in this deed are given pursuant to section 33 of the Local Government (Miscellaneous Provisions) Act 1982

9. MORTGAGEE EXCLUSION

The provisions of this Deed shall not bind any Mortgagee nor any receiver appointed by any such Mortgagee nor any persons deriving title through such Mortgagee or receiver

10. NOTICES

The provisions of the Law of Property Act 1925 (as amended) as to the service of notices shall apply to any notice or other document required or authorised to be given or served under this deed

IN WITNESS of which this deed has been duly executed by the parties as a deed and delivered on the day and year first above 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:)

.....
Authorised Signatory



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

.....
Authorised signatory

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Authorised signatory