

draft

MINUTE OF AGREEMENT

between

ARGYLL AND BUTE COUNCIL

and

ARGYLL COMMUNITY HOUSING ASSOCIATION LIMITED

2006]

Relative to Large Scale Voluntary
Transfer of Properties in Argyll and Bute

LEDINGHAM

CHALMERS

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MINUTE OF AGREEMENT

between

ARGYLL AND BUTE COUNCIL, incorporated by and acting under the Local Government etc. (Scotland) Act 1994, and having its Principal Office at Kilmory Castle, Lochgilphead, Argyll, PA31 8RT (hereinafter referred to as “the Council”)

and

ARGYLL COMMUNITY HOUSING ASSOCIATION LIMITED, registered under the Industrial and Provident Societies Act 1965 (Registered Number 2661R(S)) and having its registered office at Dalriada House, Lochnell Street, Lochgilphead, PA31 8ST. (hereinafter referred to as “the Association”)

WHEREAS the Council hereby agrees to transfer to the Association and the Association agrees to acquire all the property, assets and rights of the Council used in the conduct of its business in relation to the Assets subject to the terms and conditions of the Agreement which, unless otherwise stated, shall subsist until the Termination Date; THEREFORE it is contracted and agreed between the Parties as follows:

1. DEFINITIONS

In the Agreement including the Schedule the following words and expressions have the following meanings unless they are inconsistent with the context:

- “Access” means pedestrian and vehicular access as enjoyed by the Properties as at the Completion Date;
- “Access to Housing and Homelessness Agreement” means the agreement in the form of the draft which forms Part 18 of the Schedule;
- “Acquired Land” means [];
- “Act” means the Land Registration (Scotland) Act 1979;
- “Agreed Form” means in a form agreed by the Parties prior to the Completion Date;
- “Agreed Rate” means four per centum per annum above the Bank of Scotland base lending rate;

“Agreement”	means this agreement;
“Argyll and Bute Area”	means the local government area for which the Council is the local authority for the purposes of the Local Government etc (Scotland) Act 1994 as at the Completion Date;
[“Arrears Assignment”	means an assignation in the form of the draft which forms Part 19 of the Schedule;]
“Assets”	means the Properties, the Continuing Contract(s) [and] the Moveables, [and the Office Accommodation];
“Association’s Solicitors”	means Messrs Brechin Tindal Oatts, 48 St Vincent Street, Glasgow G2 5HS;
[“Assignment(s)”	means the assignation(s) of the Continuing Contract(s);]
“Branch Connections”	means, in relation to any House or group of Houses, branch pipes and / or connections within the curtilage of such Houses, which connects them to the Media serving the same;
	means those Indemnity Statements set out in Part 11C of the Schedule;
“Business Indemnity Statements”	means the leases of Commercial Properties, brief particulars of which are set out Part 1A of the Schedule;
“Commercial Leases”	means the commercial properties, brief particulars of which are set out in Part 1B of the Schedule;
“Commercial Properties”	means those tenants under the Commercial Leases, brief particulars of which are set out in Part 1C of the Schedule;
“Commercial Tenants”	means those parts of the Properties which do not exclusively pertain to any of the Houses [and/or the Garages] [and/or the Commercial Properties] including, without limitation, any amenity areas, areas of soft or hard landscaping, roads, footpaths, walls, lighting, drains and all service media and others which form part of the Properties and which on a non-exclusive basis serve or are used in connection with the Houses [and/or the Garages] [and/or the Commercial Properties];
“Common Parts”	means Communities Scotland, an executive agency of the Scottish Ministers;

“Communities Scotland”	means [];
“Completion”	means [];
“Completion Date”	means [];
“Consents”	means [];
“Consultants”	means [];
“Consultants' Letters”	means the Stage 1 Notice and the Stage 2 Notice;
“Consultation Documents”	means the contracts, agreements, engagements, orders and / or arrangements insofar as they relate to the Properties of which brief particulars are set out in Part 3 of the Schedule;
“Continuing Contract(s)”	means (a) the Dispositions, (b) the Standard Securities and (c) any land registration application forms relative to the Dispositions and/or the Standard Securities, which items (a), (b) and (c) have been completed in reliance upon the information provided by or on behalf of the Council to the Association or its solicitors and as are necessary (i) to convey or otherwise transfer title to the Association of the Properties and (ii) to create valid standard securities by the Association in favour of the Lender over the Properties;
“Core Documentation”	means Ledingham Chalmers, Princes Exchange, 1 Earl Grey Street, Edinburgh, EH3 9BN;
“Council’s Solicitors”	means leases in favour of the Council of the properties which are listed in Part 2A of the Schedule;
“Council Special Lettings”	means the use to which the Properties and any part thereof are put as at the Completion Date, but declaring that the use of the Houses will be held to be for Social Letting or Special Letting;
“Current Use”	means any natural or artificial substance (whether in the form of a solid liquid gas or vapour) the existence, presence, generation, transportation, storage treatment use or disposal of which (whether alone or in combination with any other substance) gives rise to a risk of causing harm to man or any other living organism or causing damage to the Environment or public health or welfare and includes but is not limited to any controlled special hazardous toxic radioactive or dangerous waste;
“Dangerous Substance”	

	means all sums due by the Existing Tenants to the Council as at the Completion Date;
“Debts”	means the items set out in Part [] of the Schedule;
“Deliverable Items”	means the disclosures of exceptions to the Indemnity Statements set out in Part 12 of the Schedule;
“Disclosures”	means the agreement in the form of the draft which forms Part 4 of the Schedule;
“Disposal Clawback Agreement”	means the [] dispositions as agreed between the Council and the Association’s Solicitors conveying the Properties, under exception of the Excluded Houses [and Excluded Assets], to the Association;
“Dispositions”	means the passage of sewage and foul water and other similar matter from the Properties as enjoyed by the Properties as at the Completion Date;
“Drainage”	means the environment as defined in Section 1(2) of the Environmental Protection Act 1990;
“Environment”	means all licences authorisations consents or permits of any kind relating to Environmental Law;
“Environmental Approvals”	means any claim by any person in respect of losses or liabilities suffered or incurred by that person as a result of or in connection with any violation of Environmental Law or exposure to Dangerous Substances or giving rise to any remedy or penalty (whether interim or final) that may be enforced or assessed by private or public legal action or administrative order or proceedings as a result of Environmental Contamination or any application for any interim or final judicial or administrative decree injunction cease and desist order abatement order compliance order consent order clean-up order remediation notice or enforcement notice stop notice improvement notice prohibition notice remediation notice or revocation order in respect of Environmental Contamination or any other remedial action or action to comply pursuant to Environmental Law in respect of Environmental Contamination;
“Environmental Claims”	means the following and the consequences thereof:

“Environmental Contamination”	<p>(a) any presence storage deposit transport release leakage or spillage at or from all or any part of the Properties into any part of the Environment or exposure of any person to any toxic poisonous noxious or polluting matter or hazardous detrimental or Dangerous Substance or thing including but not limited to noise dust or odour and the like; and/or</p> <p>(b) any accident fire explosion or sudden event which affects the Environment and which is attributable to the operations management or control of any of the Properties;</p> <p>means those Indemnity Statements which are set out in Part 11B of the Schedule;</p>
“Environmental Indemnity Statements”	means all common law statutory law bylaws regulations or directives orders Codes of Practice, notices circulars or guidance and the like issued by the government or statutory authorities relating to the Environment the protection of human health, the workplace or any Dangerous Substance (including Part IIA of the Environmental Protection Act 1990) enacted at the date of this Agreement;
“Environmental Law”	means the employees of the Council whose names and other particulars are set out in Part 20 of the Schedule;
“Employees”	means the assets excluded from the transfer to the Association and listed in Part 5 of the Schedule;]
[“Excluded Assets”	means the houses in respect of which in terms of the RTB Legislation either (a) the Council has received an RTB Application but no offer has been issued by the Council to the purchasing tenant (which Houses are listed in Part 6 A of the Schedule, or (b) the Council has received an RTB Application and has issued an offer to sell pursuant thereto (which Houses are listed in Part 6 B of the Schedule) or (c) a contract has been concluded by the Council for the sale thereof and in terms of that contract the date of entry falls after the Completion Date (which Houses are listed in Part 6C of the Schedule);
“Excluded Houses”	means an assignation in the form of the draft which forms Part 7 of the Schedule;
“Excluded Houses Assignation”	means the tenants listed in Column B of Part 8 of the Schedule who are the tenants of the Council as at the Completion Date (other than Special Letting Tenants);
“Existing Tenants”	means the factor of the Factored Houses as described in the

	title of each of the Factored Houses;]
["Factor"	means the houses listed in Part 9 of the Schedule;]
	means [];]
["Factored Houses"	
["Factoring Deed Appointment"	of means, unless otherwise stated in the Agreement, the year to 31 st March in each year subsequent to the Completion Date;
"Financial Year"	means the garages, garage site and lock ups respectively listed in Part 10 A, 10B and 10C of the Schedule;
"Garages"	means those tenants of the Garages who are listed in Part 10 A, 10B and 10C of the Schedule;
"Garage Tenants"	means the houses listed in Column A of Part 8 of the Schedule;
"Houses"	means the conditions, burdens, restrictions and other matters contained or referred to in the title deeds and documents relating to the Properties so far as the same are valid, subsisting and applicable thereto;
"Incumbrances"	
	means the Business Indemnity Statements, the Environmental Indemnity Statements and the Title Indemnity Statements which are set out in Part 11A, 11B and 11C of the Schedule;
"Indemnity Statements"	means [];]
"Lender"	means [];]
"Lender's Solicitors"	means the [] letters of obligation as agreed between the Council and the Association's Solicitors;
"Letters of Obligation"	means all costs, losses, expenses, liabilities, claims, demands or penalties actually incurred or suffered by the Association;
"Loss"	means all drains, channels, sewers, flues, conduits, ducts, pipes, wires, cables, watercourses, gutters, culverts, soakaways and other similar transmission media and installations and all fixings, louvres, cowls, covers and other ancillary apparatus, and references to Media being in or on include Media in or under, over or through;
"Media"	
	means the items listed in Part 21 of the Schedule;

“Moveables”	means persons who become tenants of the Houses after the Completion Date;
“New Tenants”	means [];
“Office Accommodation”	means the Association and the Council;
“Parties”	means the performance standards jointly published by Communities Scotland and the Scottish Federation of Housing Associations as best practice standards to be adhered to or achieved by Registered Social Landlords;
“Performance Standards”	means the [] plans forming Part 13 of the Schedule;
“Plans”	means maintaining and repairing the Properties or any part thereof in a state of good tenantable condition and repair;
“Properly Maintaining”	means the Houses, Garages, [the Commercial Properties], and the Common Parts together with the Rights and the heritable fixtures and fittings therein and thereon (and where the context so permits, the Properties shall include any part or parts thereof) and the Council’s whole right, title and interest therein and thereto, all as particularly described in the Dispositions and relative Plans;
“Properties”	means the General Register of Sasines and the Land Register of Scotland;
“Public Records”	means the Leases of (a) parts of the Properties to be owned by the Association and leased back to the Council and (b) parts of properties to be retained by the Council and leased to the Association, all as more particularly detailed in Part 14 of the Schedule, and which Leases will be completed in terms of the draft Lease(s) in the Agreed Form;
“Reciprocal Leases”	means a landlord registered in terms of Section 57 of the 2001 Act;
“Registered Social Landlord”	means the Transfer of Undertakings (Protection of Employment) Regulations 1981 and E.C. Directive 77/187;
“1981 Regulations”	means the Housing (Scotland) Act 1987;
“1987 Act”	means the Data Protection Act 1998;
“1998 Act”	means the Housing (Scotland) Act 2001;

“2001 Act”	means the Secure Tenants (Compensation for Improvements) Regulations 2002 (SSI 2002 No. 312);
“2002 Regulations”	
“Retail Prices Index or RPI”	means the General Index of Retail Prices (All Items) (January 1987 = 100) published by the Office of National Statistics or in the event that the basis of calculation of such Index shall change (as to which the Council’s reasonable decision will be conclusive) or if such Index ceases to be published, such other published Index of retail prices or the value of money as the Council and the Association may agree as being most comparable thereto, provided that in the event that agreement cannot be reached within twenty eight days of such decision by the Council or the Index ceasing to be published the RPI may be determined by an arbiter appointed in accordance with the provisions of Clause 25;
“Retained Land”	means [] (to include Excluded Assets, if any and if relevant)
“Rights”	means all heritable rights, including rights of common property, exceptions, reservations, servitudes, wayleaves and other matters necessary for the full and proper use and enjoyment of the Properties for their Current Use;
“RTB Agreement”	means the agreement in the form of the draft which forms Part 15 of the Schedule;
“RTB Application”	means an application made by a tenant of the Council to purchase that tenant’s house under the RTB Legislation;
“RTB Implementation Work”	means any remedial conveyancing work which requires to be carried out or payment which requires to be made in order to settle or avoid a claim by a person exercising his right to buy after Completion on the grounds that the Association cannot implement its obligations to such person under the RTB Legislation as a result of an RTB Title Defect;
“RTB Legislation”	means section 61 of the 1987 Act as amended by the 2001 Act;
“RTB Remediation Work”	means any remedial conveyancing work which requires to be carried out or payment which requires to be made in order to settle or avoid a claim by a person who acquired a House under the RTB Legislation prior to Completion or a successor in title to that person on the grounds that the deed conveying

	the RTB Split Off in their favour contained an RTB Title Defect;
“RTB Split Off”	means a title in respect of a House which the Council or its statutory predecessors have sold under the RTB Legislation;
“RTB Title Defect”	means a provision or provisions in an RTB Split Off or any other title conveyed by the Council or lease granted by the Council prior to Completion which results in there being a breach of RTB Legislation as a result of the RTB Split Off and which the Association is required by RTB Legislation to remedy;
“Schedule”	means the schedule to the Agreement;
“Social Housing Purposes”	means purposes associated with Social Letting and/or Special Letting;
“Social Letting”	means a Scottish Secure Tenancy or a Short Scottish Secure Tenancy granted to an Existing Tenant or New Tenant at a rent fixed in accordance with Clause 8, in terms of the drafts which form Part 16 of the Schedule;
“Special Letting”	means Houses let or to be let to charitable, educational and public utility organisations rather than individuals for the purpose of education, homelessness, care in the community or supported accommodation or some similar purpose;
“Special Letting Tenants”	means those tenants listed in Part 2B of the Schedule;
“Stage 1 Notice”	means the formal notice issued by the Council to its tenants as at [], 2005 for the purposes of paragraph 3 (2) of Schedule 9 to the 2001 Act;
“Stage 2 Notice”	means the formal notice issued by the Council to its tenants as at [], 2005 for the purposes of paragraph 3 (3) of Schedule 9 to the 2001 Act;
“Standard Securities”	means the standard securities over the Properties to be granted by the Association in favour of the Lender at or around Completion;
“Standard Securities”	means any entity from time to time exercising functions designated or conferred by legislation, order, statutory

“Statutory Authority”	instrument or bye-law including, without limitation, the Council and the Scottish Environment Protection Agency and their respective successors; means any notice or order served by any Statutory Authority to secure compliance with Environmental Law;
“Statutory Notice”	means [];
“Substitute Lender”	means the tenancy agreements which are in force as at the Completion Date relating to the Houses [and the Garages] between the Council, the Existing Tenants, [the Garage Tenants] and the Special Letting Tenants;
“Tenancy Agreements”	means the date occurring thirty years after the Completion Date;
“Termination Date”	means the whole title deeds of the Properties including, without limitation, a prescriptive progress, including all necessary links in title evidencing the Council’s exclusive ownership of the Properties, all deeds referred to for description, all deeds constituting or setting out burdens, conditions or overriding interests, quick copies, office copies and all property, personal and charges searches or reports in respect of the Properties against all relevant parties for the relevant prescriptive periods and shall, where appropriate, include land certificates in the name of the Council;
“Title Deeds”	means those Indemnity Statements set out in Part 11A of the Schedule;
“Title Indemnity Statements”	means all Media save for Branch Connections used in connection with Drainage which are not taken over by the local authority or other regulated provider;
“Unadopted Drainage Media”	means Unadopted Drainage Media, Unadopted Water Media and Unadopted Utility Media;
“Unadopted Media”	means any Media for the conducting or supply of Utilities which have not been adopted by a statutory undertaker or other regulated provider and maintained at public expense (but excluding Branch Connections);
“Unadopted Utility Media”	means all Media for Water Supply (save for Branch Connections) which have not been adopted by the relevant Water Authority and are not maintained at public expense;

“Unadopted Water Media”	means the undertaking (as defined in the 1981 Regulations) of the Council concerning the management, maintenance and letting of the Properties;
“Undertaking”	means all Media used for the conducting of electricity, gas, telecommunications and other utilities to the Houses comprised within the Properties (but excluding Branch Connections);
“Utilities”	means Value Added Tax at the rate ruling at the tax point of the supply giving rise to the liability to account for the tax;
“VAT”	means the supply of fresh water as enjoyed by the Properties as at the Completion Date;
“Water Supply”	means the protocols in terms of the drafts which form Part 17 of the Schedule.
“Working Protocols”	

2. INTERPRETATION

- 2.1 Unless otherwise stated all references to a statutory provision shall be construed as including references to any statutory modification, consolidation or re-enactment for the time being in force, all statutory instruments or orders made pursuant to it, and any statutory provision of which it is a consolidation, re-enactment or modification.
- 2.2 Except where the context otherwise requires words denoting the singular include the plural and vice versa, words denoting any gender include all genders, words denoting persons include firms and corporations and vice versa.
- 2.3 The clause headings do not form part nor shall they affect the interpretation or construction of the Agreement.
- 2.4 Unless otherwise stated the reference to a clause or a Part of the Schedule is a reference to a clause or a Part of the Schedule of the Agreement.
- 2.5 Any references in this Agreement to the Council shall, where the context so requires or permits, include the statutory predecessors of the Council.
- 2.6 Unless otherwise stated in the Agreement, where any matter requires the consent, approval or other determination of the Council, such consent, approval or other determination shall require to be in writing and obtained prior to any action being taken

by the Association and the same shall not be unreasonably withheld or delayed nor given subject to unreasonable conditions.

3. CONDITIONS PRECEDENT

The Agreement will be of no force and effect unless and until the following shall have occurred:

- 3.1 Prior to the Completion Date the Scottish Ministers having approved the transfer of the Properties by the Council to the Association and the Parties having accepted any conditions which the Scottish Ministers may have attached to such approval.
- 3.2 The Association having completed to its satisfaction its funding arrangements with the Lender. In the event that the said funding arrangements are not completed to the Association's satisfaction on or before the Completion Date, the Association will be entitled to withdraw from the Agreement without penalty being due to or by either of the Parties.
- 3.3 The Association having been registered as a Registered Social Landlord and continuing to be so registered as at the Completion Date.

4. PRICE

- 4.1 There shall be no purchase price for the transfer by the Council of the Properties to the Association.
- 4.2 The Council shall not on or after the Completion Date make an election affecting the Properties in terms of the Value Added Tax Act 1994 Schedule 10 or otherwise waive exemption from VAT.
- 4.2 The price for the sale by the Council to the Association of the Moveables shall be £[] (inclusive of VAT thereon of £[]) and shall be paid by way of telegraphic transfer during normal banking hours to the Council's account with [] Sort Code: [- -], Account Number: [] on the Completion Date.
est on the Price as aforesaid.

5. COMPLETION

- 5.1 Completion of the transfer of the Assets shall take place on the Completion Date at the offices of the Council or such other place as the Parties shall agree.
- 5.2 On the Completion Date, the Council shall deliver, transfer, give or make available to the Association:
 - 5.2.1 entry to the Properties subject to and with the benefit of the rights of the Existing Tenants, [the Garage Tenants,] the Special Letting Tenants [and any Commercial

Tenants] under the Tenancy Agreements [and the Commercial Leases respectively];

5.2.2 management and control of the Assets together with the beneficial ownership of the Assets;

5.2.3 the Council's title to the Properties comprising:

5.2.3.1 the Dispositions validly executed by the Council;

5.2.3.2 Form 10/11 Reports (or Form 12/13 Reports) in respect of each of the titles comprised in the Dispositions brought down to a date as near as practicable to the Completion Date and a Search in the Register of Inhibitions and Adjudications against the Council for the prescriptive period, and showing no entries prejudicial to the interest to be acquired in the Property by the Association or prejudicial to the Council's ability to validly grant that interest;

5.2.3.3 Letters of Obligation from the Council in the Agreed Form;

5.2.3.4 evidence of the consent of the Scottish Ministers to the transfer of the Properties for the purposes of Section 12 of the 1987 Act and Sections 92-94 of the 2001 Act;

5.2.3.5 the Title Deeds where these relate exclusively to any part of the Properties but not where they also relate to any property ownership of which is to be retained by the Council after the Completion Date. Where this latter situation applies, such Title Deeds will be made available to the Association whenever reasonably required at no cost to the Association and, without limitation, where required to support the Association's application for registration of the Dispositions within a timescale to enable the Association to comply with any requisition from the Keeper;

5.2.3.6 such other documents and other evidence (including plans) as are or will subsequent to the Completion Date be required by the the Keeper of the Land Register of Scotland (whether by requisition to the Association or to the Council; in the latter case, the Council shall keep the Association regularly advised of the status of any requisitions and attend to any such requisitions promptly) to complete the transfer of the Properties and to transfer title to the Properties to the Association and to enable the Keeper to issue Land Certificates for the Properties in the name of the Association;

- 5.2.3.7 any other such documents as are, or will be required, by the Association to complete the sale and purchase of the Moveables and the transfer to it of the Continuing Contracts.;
- 5.2.3.8 to the extent permitted by the provisions of the 1998 Act, all management and other records and documentation including, *inter alia*, all staff records, management records and accounts relating to the Properties and the Tenancies and the Council shall following the Completion Date make any further relevant legal and financial records relating to the Properties which it is retaining available for inspection and copying by the Association on reasonable request;
- 5.2.3.9 the Excluded Houses Assignment;
- 5.2.3.10 [the Factoring Deed of Appointment]
- 5.2.3.11 the Deliverable Items;
- 5.2.3.12 [others].

5.3 On the Completion Date, the Association will deliver to the Council:

- 5.3.1 the price for the moveables in terms of Clause 4.3 above;
 - [5.3.2 the RTB Agreement;]
 - [5.3.3 the Disposal Clawback Agreement;]
 - 5.3.4 the Reciprocal Leases (where the Council is the tenant thereunder);
 - 5.3.5 copies of any consents required from Communities Scotland to the Association entering into this Agreement and the agreements and documents listed in this Clause 5.3;
 - 5.3.6 [the Council Special Lettings];
- 5.4 It is agreed by the Parties that all the agreements and documents listed in Clause 5.3 above together with this Agreement will be duly executed by the Parties or the Council or the Association (as may be appropriate) in duplicate.
- 5.5 Insofar as not achieved by delivery of the items referred to at Clauses 5.2 and 5.3 at any time after Completion and to the extent required, the Council or the Association (as appropriate) shall forthwith do and execute or procure to be done and executed, and deliver all necessary acts, documents and things reasonably requested of them by the other Party to give effect to this Agreement and the transactions and other matters contemplated by it or in it.

6. EXCLUDED HOUSES

- 6.1 In respect of any Excluded Houses where a contract has been concluded by the Council for their sale, the Council will, as at the Completion Date, deliver to the Association the Excluded Houses Assignment, duly executed by the Council, assigning to the Association with effect from the Completion Date the Council's whole right, title and interest, in and to the contracts for the sale of the Excluded Houses. The Council binds itself to intimate this assignment to the other party to each sale contract forthwith following the Completion Date and to exhibit evidence of such intimation to the Association.

7. USE OF THE HOUSES AND COMMON PARTS

- 7.1 For the duration of the Agreement the Houses shall be kept and occupied as or available for Social Housing Purposes or for such other purposes as may be associated with the management of the Properties or shall be used for such other purpose as may be permitted to a Registered Social Landlord from time to time.
- 7.2 The Garages shall be used under existing leases (if any) and thereafter for letting to Existing Tenants or New Tenants of the Houses unless no such tenant is willing to take such a lease. In the event that no tenant wishes to take such a lease the Association shall be entitled to let any such garage to any individual or organisation.

8. RENT POLICY/RENT ARREARS

- 8.1 For each of the [] years from [] and terminating on [], the Association shall not increase the rent payable by Existing Tenants or New Tenants of the Houses by more than [*insert terms of rent guarantee*].
- 8.2 Subject to the terms of this Clause 8, the Council will assign to the Association all arrears of rent charge, service charge [or factoring charge] due to the Council at the Completion Date from (a) any Existing Tenants of the Houses, (b) [any of the Commercial Tenants], (c) [any of the Garage Tenants], (d) [any owner of a Factored House] and (e) any Special Letting Tenants (together "the Arrears") together with, insofar as the same are capable of assignment, all rights to recover the same. The Council will within twenty one days after the Completion Date (or such other period as the Parties may agree) deliver to the Association a duly executed assignment of the Arrears in the form of the Arrears Assignment. For the avoidance of doubt, the Council will retain the right to any arrears of rent or service charge which are owed to the Council by former tenants (that is, persons who are not Existing Tenants immediately prior to or at the Completion Date).
- 8.3 [*Insert agreed arrangements relating to payment/reimbursement by the Association to the Council in respect of the Arrears*].

9. APPORTIONMENTS/PREPAYMENTS

- 9.1 All rental income, debts payable, outgoings and expenses of whatsoever nature (including without limitation all salaries, wages and other emoluments and all statutory contributions and all income tax deductible under PAYE for which the Council is accountable and all employer's contributions to the Council's pension scheme, accrued holiday pay and all other normal employment costs in respect of the Employees) attributable to the Assets up to the Completion Date shall be received by or, as applicable, borne and paid by the Council and all rental income, debts payable, outgoings and expenses whatsoever attributable to the Assets from and after the Completion Date shall be received by or, as applicable, borne and paid by the Association. Any income, debts, outgoings and expenses whatsoever relating to a period both before and after the Completion Date shall be apportioned accordingly.
- 9.2 Prepayments and payments in advance made to the Council on or before the Completion Date in respect of (a) goods or services to be supplied by the Association after the Completion Date and (b) rent relating to periods after the Completion Date shall be payable by the Council to the Association, and prepayments and payments in advance made by the Council in respect of goods ordered but not delivered and services contracted for but not rendered to the Council in connection with the business of the Council in relation to the Assets prior to the Completion Date shall be refundable by the Association to the Council.
- 9.3 No account shall be taken in the operation of Clause 9.1 of the Debts, this being fully apportioned between the Parties through the operation of Clause 8.
- 9.4 The sum if any, payable by either of the Parties to the other under this Clause shall be paid within six months after the Completion Date.
- 9.5 The Council will remain liable for claims by third parties in respect of any service supplied or procured by or on behalf of the Council prior to the Completion Date.
- 9.6 The Council shall as soon as practicable after the Completion Date discharge all liabilities in respect of its business of the ownership and management of the Assets.
- 9.7 Upon becoming aware of any claim against it, the Council will promptly give notice of it to the Association and shall not take any steps which might reasonably be expected to damage the commercial interests of the Association without prior consultation with the Association.
- 9.8 If the Association considers after prior notice to and consultation with the Association that it is desirable to take preventive action with a view to avoiding claims under Clause 9.5 then such preventive action shall be reasonable and appropriate having regard to the nature of the claim. The Council shall in such circumstances bear the reasonable cost of that action.
- 9.9 Nothing in the Agreement shall make the Association liable in respect of anything done or omitted to be done prior to the Completion Date by the Council and the Council shall

remain responsible to the Association in respect of any liability (which liability shall include, without limitation, all losses, costs, claims, expenses, damages, legal and other professional fees and expenses) which it may incur as a result of anything so done or omitted to be done.

10. THE ASSOCIATION'S OBLIGATIONS

The Association undertakes and binds itself for the period of thirty years from and after the Completion Date to use its best endeavours:

- 10.1 To carry out all works of maintenance, repair, upgrading, improvement [and demolition] and fulfil all of the promises and commitments as set out in the Consultation Documents, within the timescales referred to therein and in a good and workmanlike manner.
- 10.2 Within six months following the end of each of the Association's Financial Years [other than its first Financial Year] the Association, if requested by the Council, will submit to the Council:
 - 10.2.1 a copy of its Annual Accounts for the immediately preceding Financial Year, independently audited;
- 10.3 Not to change its rules so as to reduce the level of local authority involvement on the Association's committee of management or area committee without the Council's prior written consent, such consent not to be unreasonably withheld or delayed whether in relation to advice issued by Communities Scotland concerning the governance of all or certain classes of Registered Social Landlords or otherwise.
- 10.4 Not knowingly to do any act or take any steps or fail to do any act or take any steps, any of which is likely to result in the removal of the Association from the Register of Social Landlords held by Communities Scotland.

11. THE COUNCIL'S INDEMNITIES

- 11.1 The Council:-
 - 11.1.1 undertakes to indemnify the Association against all and any Loss in connection with the existence, occurrence or application of any and/or all of the Indemnity Statements; and
 - 11.1.2 accepts that the Association has entered into this Agreement for the transfer of the Assets in reliance upon the existence of the undertaking and indemnity contained in Clause 11.1.1 and its ability to claim under it.
- 11.2 Each of the Indemnity Statements shall be construed separately and shall not be limited or restricted by reference to or inference from the terms of any other Indemnity Statement.

- 11.3.1 In the event of any or all of the Indemnity Statements existing, occurring or applying, and the Association considers that it is or might be entitled to claim under Clause 11.1.1, the Association may serve upon the Council notice of such matter.
- 11.3.2 If within a period of thirty days following service of such notice the matter has not been remedied, or the Council has not within that time given an undertaking on terms satisfactory to the Association to remedy it within a period satisfactory to the Association, the Association shall be entitled to make a claim under the relevant Indemnity Statement for all or any Loss relating to that matter and the Council shall pay to the Association the full amount of all / or any Loss relating to that matter within thirty days of the date upon which the Association makes such claim in writing.
- 11.4 The Council further undertakes to indemnify the Association on demand against any liabilities (including, without limitation, reasonable and proper costs and expenses including legal expenses) which the Association may reasonably and properly incur either before or after the commencement of any action in connection with:-
- 11.4.1 the making and settlement of any successful claim under the Indemnity Statements; and / or
- 11.4.2 any proceedings which the Association initiates under the Indemnity Statements and in which a decision is given in favour of the Association; and / or
- 11.4.3 the enforcement of any decision, settlement or judgement in favour of any or all of the Association in respect of the Indemnity Statements.
- 11.5 Notwithstanding any provision in this Agreement, when (a) a Land Certificate has at the time of a potential claim by the Association under the Title Indemnity Statements been issued by the Keeper in the name of the Association in respect of a property to which the claim relates and (b) the subject matter of the Title Indemnity Statement giving rise to the claim is something which is covered by the Keeper's Indemnity in terms of Section 12 of the Act (the "Keeper's Indemnity"), the Council will not be required to make any payment in respect of any Loss under any Title Indemnity Statement unless and until the Association has used all reasonable endeavours to claim upon the Keeper's Indemnity.
- 11.6 Without prejudice to the terms of any statutory or other limitation on the time for making claims the liability of the Council in terms of this Clause 11 will terminate (except in respect of claims in respect of the Indemnity Statements notice of which has been given to the Council prior to that date):-
- 11.6.1 in respect of claims arising from any of the Title Indemnity Statements on the thirtieth anniversary of the Completion Date;
- 11.6.2 in respect of claims arising from any of the Environmental Indemnity Statements on the thirtieth anniversary of the Completion Date;

- 11.6.3 in respect of claims arising from any of the Business Indemnity Statements on the [third / sixth / tenth] anniversary of the Completion Date.
- 11.7.1 The Parties acknowledge that the financial limit of the Council's liability in terms of this Clause 11 will [not exceed the sum of [*insert agreed cap*]].
- 11.7.2 No claim will be made by the Association against the Council in terms of this Clause 11 for an amount of [£500] or less, nor will the Council require to make any payment in respect of any such claim in excess of £500 until the value of such claims exceeds [£5,000] in the aggregate, at which point all such claims shall be met in full (provided that such claims are a Loss).
- 11.8.1 The Council acknowledges and agrees that the Association shall be entitled to assign all or any rights and remedies under this Clause 11 but only to (a) the Lender or (b) to any purchaser of the Properties or any part or parts thereof pursuant to the exercise of any power of sale or disposal by the Lender as heritable creditor.
- 11.8.2 Subject always to the terms of Clause 11.8.1, the Parties agree that the rights and remedies under this Clause 11 will not be capable of assignation to, or be capable of being relied upon by, a purchaser of any part of the Properties pursuant to a voluntary sale or disposal of such part of the Properties by the Association to such purchaser.
- 11.9 The Council agrees not to contend that any permitted assignee of the benefit of this Clause 11 and of the Indemnity Statements shall be precluded from recovering hereunder any loss by reason that:-
- 11.9.1 such assignee is not an original party to this Agreement; or
- 11.9.2 the Association (here meaning Argyll Community Housing Association Limited only) or any intermediate assignee has suffered no loss.
- 11.10 The Council shall not assign its interest in this Clause 11.
- 11.11 The Indemnity Statements are given subject to the Disclosures, which Disclosures must be treated as disclosures for the purpose of the Agreement as a whole and not merely in relation to the particular Indemnity Statements to which they are expressly related [to be discussed] [it being agreed by the Parties that the Association shall not be prevented from claiming under this Clause 11 as a result of the occurrence existence or application of any Indemnity Statement even if the Association knew or could have discovered or ought to have known on or before the Completion Date of the existence, application or circumstance which could have given rise the Indemnity Statement in question and the Council shall not invoke the Association's knowledge (actual, construed or implied) of any such existence, application or circumstance as a defence to a claim in respect of any Indemnity Statement].

- 11.12 The Council shall have no liability in respect of any of the Indemnity Statements:-
- 11.12.1 to the extent that such liability has occurred or incurred after the Completion Date or by reason of the coming into force (or amendment) of any legislation not in force at the Completion Date; or
 - 11.12.2 to the extent that such liability occurred or increased as a result of the Association or any other third party dealing with the Common Parts and / or the Houses in a way which is contrary to the purposes for which the Council undertook to dispose of the Assets to the Association, which purposes are clearly stated (a) in the Business Plan and (b) in the Agreement.
- 11.13 The Council shall be relieved of any liability in respect of any of the Indemnity Statements to the extent that the Association will be, or has been, indemnified against any loss or damage suffered in respect of the existence, occurrence or application of an Indemnity Statement under the terms of any insurance policy provided that any cost borne by the Association by way of excess on any such policy or by way of increased premium as a result of claiming under such insurance policy shall constitute a valid claim under all, or any of, the Indemnity Statements unless the costs are an insured risk.
- 11.14 The Association shall promptly reimburse the Council an amount equal to any sum paid to the Association in terms of this Clause 11 which is subsequently recovered by the Association from any third party provided that any expenses borne by the Association in such recovery shall contribute a Loss unless the costs are an insured risk.
- 11.15 If any matter comes to the notice of the Association which may result in a claim in respect of one of the Indemnity Statements, the Association shall:-
- 11.15.1 as soon as reasonably practicable give notice thereof to the Council specifying the nature of the claim in reasonable detail;
 - 11.15.2 not make any admission of liability to, or agreement or compromise with, any person in relation to such claims without the prior written consent of the Council unless required to do so by a court of relevant jurisdiction;
 - 11.15.3 give the Council copies of any relevant documents and information in relation to its claim;
 - 11.15.4 at the Council's expense take such action as the Council may reasonably request, to avoid, dispute, defend, appeal or settle such claim; and
 - 11.15.5 at all times pending (a) intimating a claim, (b) a claim being raised or (c) a claim being settled or dismissed, mitigate and minimise all losses, outlays and expenses (legal and/or otherwise).

12. SUPPORTING ARRANGEMENTS AND AGREEMENTS

- 12.1 On the Completion Date, the Parties shall enter into the following contracts and agreements:-

[Insert details of any ancillary agreements, service contracts or joint working protocols to be entered into between the parties – e.g. homelessness, property maintenance, ground maintenance, ICT etc.]

13. TENANCIES

- 13.1 Within [12] months of the Completion Date the Association will offer all Existing Tenants a Scottish Secure Tenancy Agreement in terms of the draft which forms Part 16 of the Schedule at the rent specified in Part 8 of the Schedule. Existing Tenants who do not sign and return to the Association their Scottish Secure Tenancy Agreement will be entitled to benefit from the rent guarantee set out in the Scottish Secure Tenancy Agreement offered to them and shall have no fewer or lesser tenancy rights than the tenancy terms which they enjoyed contractually prior to the Completion Date or rights which they enjoy by reason of statute.

14. STAFF

- 14.1 The Association acknowledges and undertakes to the Council that, subject to an Employee's right to object to a relevant transfer, with effect from the Completion Date the contract of employment of each Employee will by virtue of the 1981 Regulations (subject to any exclusion in the 1981 Regulations regarding pension rights) have effect as if originally made between the Employee and the Association.

15. [CONTINUING CONTRACTS

- 15.1 The Association undertakes with effect from and after the Completion Date to assume the Council's obligations and to become entitled to the benefits available to the Council under the Continuing Contracts but only insofar as such obligations and benefits relate to the period after the Completion Date. The Association shall indemnify and keep fully indemnified the Council against all liabilities, losses, actions, proceedings, costs, claims, demands and expenses brought or made against or incurred by the Council in respect of the non-performance or defective or negligent performance by the Association of the Continuing Contracts.
- 15.2 The Council shall, on and with effect from the Completion Date, assign to the Association or ensure the assignation to the Association of all the Continuing Contracts which are capable of assignation without the consent of other parties.
- 15.3 If any of the Continuing Contracts are not assignable to the Association without the agreement of or novation by or consent to the assignation by another party the Agreement shall not constitute an assignation or attempted assignation if such assignation or

attempted assignment would constitute a breach of the same. In the event that agreement, consent or novation is required to such assignment:-

- 15.3.1 the Council shall, at the Association's written request, use its best endeavours, with the co-operation of the Association, to ensure such novation or assignment as aforesaid;
 - 15.3.2 unless and until any such Continuing Contracts shall be novated or assigned as aforesaid the Council shall hold the same in trust for the Association absolutely and subject to the Association's obligations under clause 9.1, the Association shall, as the Council's sub-contractor, perform all the obligations of the Council under such Continuing Contracts unless such sub-contracting is not permitted under the Continuing Contract in question;
 - 15.3.3 unless and until any such Continuing Contracts shall be novated or assigned the Council will give all such assistance to the Association as the Association may reasonably require to enable the Association to enforce its rights under such Continuing Contracts and will provide access to all relevant books, documents and other information in relation to such Continuing Contracts as the Association may reasonably require from time to time.
- 15.4 If such agreement, consent or novation is not obtained the Council will co-operate with the Association in any reasonable arrangements designed to provide for the Association the benefits under any of the Continuing Contracts, including enforcement for the account of the Association of any and all rights of the Council against the other party to the Continuing Contracts arising out of any cancellation by such other party or otherwise, subject to payment to the Council of all expenses properly incurred. If, and to the extent that, any such arrangements cannot be made, neither the Council nor the Association shall (subject to the Association's obligations under Clause 15.1) have any further obligation to the other.]

16. [FACTORED HOUSES

The Council appoints the Association as factor of the Factored Houses with effect from the Completion Date and for so long as the Council may competently do so in terms of the titles of the Factored Houses. The Association shall be entitled to exercise the powers of the Factor as described in the titles of the Factored Houses and shall free and relieve the Council in respect of all its obligations as Factor from the Completion Date, including provision of a factoring service and provision of a block insurance policy. The Council shall intimate in writing the Association's appointment as Factor to the proprietors of each of the Factored Houses within twenty one days of the Completion Date. Any repair deposits held by the Council as Factor of the Factored Houses at the Completion Date shall be paid over to the Association under deduction of any amounts due to the Council for works carried out to the Factored Houses prior to the Completion Date.]

17. COMPENSATION FOR TENANTS' IMPROVEMENTS

The Council shall be liable in terms of the 2002 Regulations to compensate Existing Tenants for any qualifying improvements carried out prior to the Completion Date including any compensation claims which may arise as a result of the transfer of the Houses by virtue of this Agreement, provided that intimation is made by the Existing Tenants to the Council of any compensation claim within the twenty eight day period prior to the Completion Date or the twenty one day period subsequent to the Completion Date. Following the expiry of the said twenty one day period after the Completion Date, the Association will become responsible for compensating any Existing Tenants or any New Tenants in terms of the 2002 Regulations for any qualifying improvements, whether such improvements were carried out before or after Completion.

18 NOTICES

All notices which require to be given in terms of the Agreement shall be in writing and shall be deemed to be sufficiently given if sent by recorded delivery post addressed, in the case of the Council, to its Principal Office marked for the attention of the Chief Executive and, in the case of the Association, to its Registered Office marked for the attention of the Chief Executive /the Secretary or such other address as either Party may from time to time notify to the other in accordance with the provisions of this Clause. Any such notice shall be deemed to have been served forty eight hours after the date on which the same was posted (excluding weekends and public and statutory holidays). In proving service it shall be sufficient to prove that the envelope containing the notice was duly addressed to the recipient in accordance with this Clause and posted to the place to which it was so addressed.

19. INTEREST

Without prejudice to anything contained in the Agreement either Party shall be bound to pay to the other on demand interest on any sum of money which is due and payable under the Agreement, but which remains unpaid as at the due date, at the Agreed Rate from the date on which the same became due until payment thereof as well after as before any decree or judgement and that without prejudice to any other right, remedy or power herein contained or otherwise available to either Party.

20. ASSIGNATION

Except with the prior written consent of the Council or in the case of an assignation in security by the Association to the Lender, the Association shall not assign its rights and/or obligations (in whole or in part) under the Agreement to any third party. Without prejudice to the foregoing, the Agreement shall, if the context so permits, be binding upon the successors to the Parties.

21. WAIVER

No failure, delay or omission by the Council or the Association to exercise any right, power or remedy shall operate as a waiver thereof nor shall any single or partial exercise preclude any other or further exercise or the exercise of any other right, power or remedy.

22. VAT

- 22.1 Save as otherwise stated herein, the amount of any payment or the value of any supply is expressed in this Agreement as being exclusive of any Value Added Tax properly chargeable thereon, and where any payment or taxable supply falls to be made pursuant to this Agreement such Value Added Tax will be paid in addition by the recipient of the supply for which the payment (if any) is consideration upon production of a valid Value Added Tax Invoice in respect thereof.
- 22.2 Where one Party is required by the terms of this Agreement to reimburse the other Party for the cost or expense of any supply made to the other Party, the first Party shall reimburse the other Party for the full amount of such cost or expense, including such part thereof as represents any amount in respect of Value Added Tax incurred by the other Party in respect of such supply, save to the extent that the other Party is entitled to credit or repayment in respect of such amount in respect of Value Added Tax from H.M. Customs & Excise.

23. NO PARTNERSHIP

The Agreement does not and shall not be deemed to constitute a partnership or a joint venture between the Parties and neither is an agent, express or implied of the other and neither shall hold itself out or submit itself to be held as such.

24. APPLICABLE LAW

The Agreement shall be governed and construed in accordance with the law of Scotland and insofar as not already subject thereto the Parties hereby submit to the non-exclusive jurisdiction of the Scottish courts.

25. DISPUTE RESOLUTION

- 25.1 All differences, questions and disputes which arise at any time between the Council and the Association concerning the Agreement which cannot be resolved by mutual agreement of the Council and the Association, shall be referred to an arbiter chosen and agreed upon by the Parties. If the Parties cannot agree on an arbiter, either the Council or the Association may apply to the President, for the time being, of the Law Society of Scotland to appoint an arbiter.
- 25.2 The decision of any such arbiter appointed in terms of this clause shall be final and binding on the Parties and no appeal shall be competent to any Court in terms of Section 3 of the Administration of Justice (Scotland) Act 1972.
- 25.3 The fees payable to the said President and arbiter shall be borne by the Parties in such shares and in such manner as the arbiter shall determine or, failing any such determination, in equal shares.

26. DURATION OF AGREEMENT

The Agreement shall, continue in full force and effect for the period from the Completion Date until the Termination Date and will cease to be enforceable from the date six months after the Termination Date except in relation to any proceedings which may have commenced by either Party within the said period, but declaring that the foregoing is without prejudice to any specific provisions within the Agreement or a document to be entered into in the form set out in the Schedule or any ancillary agreements relating to the period of subsistence of any particular provisions including, where appropriate, indemnities.

27. SEVERANCE

All the provisions of the Agreement are severable and distinct from one another and if at any time one or more of such provisions becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

28. ENTIRE AGREEMENT

The Agreement and the Schedule, together with any documents referred to in the Agreement and the Schedule, comprise the whole agreement and undertaking between the Parties.

29. DATA PROTECTION

- 29.1 The Parties acknowledge that they are subject to the provisions of the 1998 Act insofar as the Act shall apply to the provisions of this Agreement from time to time and the Parties confirm that they shall comply with the 1998 Act for so long as they hold information governed by the 1998 Act and in particular the Parties confirm that they and their employees and agents shall at all times safeguard information held from unauthorised access or disclosures.
- 29.2 The Association confirms to the Council that it has applied for or will when necessary forthwith apply for and thereafter maintain for so long as is reasonably necessary registration as a data controller under the 1998 Act and will meet all associated registration costs.
- 29.3 The Council confirms to the Association that it has applied for and will maintain for so long as is reasonably necessary registration as a data controller under the 1998 Act and shall meet all associated registration costs.
- 29.4 The Council and the Association shall use, store, transfer, disclose or process information provided by the other only for the purposes which and in a manner permitted by the 1998 Act, and not further or otherwise.

29.5 Each Party will save and keep the other Party fully and sufficiently indemnified against any liability arising from any breach of their respective confirmations contained in this Clause 29.

30. CONFIDENTIALITY

No Party (including their respective agents, employees or representatives) will without the prior written consent of the other Party disclose or permit to be disclosed any parts of this Agreement except and to the extent that disclosure may be necessary to:-

- 30.1 comply with the law or the requirements or auditors;
- 30.2 meet the requirements of Communities Scotland and/or the Scottish Ministers and their respective professional advisers;
- 30.3 provide information to the Lender and future lenders to the Association and their respective professional advisers;
- 30.4 provide information to H.M. Customs & Excise and its professional advisers;
- 30.5 provide information to a Party's professional advisers; and
- 30.6 disclose to such other Party as the Council and the Association may agree (acting reasonably) has a legitimate interest in obtaining disclosure of the same.

31. COMFORT

The Association shall have due regard, in the management of its business and affairs, to its obligations under this Agreement. Where it can be shown to the Council's reasonable satisfaction that compliance by the Association with any of its said obligations would result in an adverse effect on its business and affairs or would result in an adverse effect on its loan arrangements with its Lender [or any Substitute Lender] then the Council and the Association will, in good faith and having regard to their respective interests, negotiate, agree and record alternative arrangements to ensure that, wherever possible, the Association's business and affairs or its said loan arrangements are not prejudiced by said alternative arrangements.

32. GOODWILL

The Council undertakes that it will not do nor take any action after the Completion Date which would damage or affect the goodwill of the Association.

33. HOUSING BENEFIT

33.1 The Council will (if so permitted by the Housing Benefit (General) Regulations 1987 or such other regulations in respect of Housing Benefit which may in the future be applicable) pay Housing benefit direct to the Association for the credit of the tenant's rent

account if the tenant is eight weeks or more in arrears with the payment of rent to the Association. For the avoidance of doubt the reference to the period of eight weeks shall include such proportion of such period as arose prior to the Completion Date.

- 33.2 The Council will use all reasonable endeavours to process all claims for Housing Benefit within fourteen days or as soon as reasonably practicable thereafter after submission by the tenant of the properly documented claim. If any claim cannot be processed within the statutory period, the Council shall make such interim payments on account to the Association as may be required by the said regulations.

34. RECIPROCAL RIGHTS

- 34.1 The Council will maintain the Retained Land to a standard to be determined from time to time by the Council acting reasonably, which standard shall be no lower than the standard applied by the Council to other similar amenity areas, play areas or grounds maintained by the Council, for the period from Completion until the Council or such successor either (a) develops any of the Retained Land or puts the Retained Land to some other use or (b) disposes of the Retained Land.

- 34.2 The Association will maintain the Acquired Land to a standard expected of a reasonable Registered Social Landlord for the period from Completion until the Association or such successor either (a) develops any of the Acquired Land or puts the Acquired Land to some other use or (b) disposes of the Acquired Land.

- 34.3 Each Party will permit its tenants or invitees or any person with the consent of its tenants or invitees to use and enjoy the Acquired Land and the Retained Land or any part thereof until they or part thereof are rendered unavailable by reason of the events referred to in sub-paragraphs (a) and (b) of Clauses 34.2 and 34.2 above (but declaring that the foregoing permission will give or create no greater rights of use and enjoyment over the Acquired Land and / or the Retained Land than given to members of the general public).

- 34.4 Each Party will:

34.4.1 maintain and keep in repair all private roads, parking places, footpaths and ways, kerbs, pavements, street lighting, sign-posting and notices on the Acquired Land and on the Retained Land as appropriate, which are used inter alia for the benefit of each other;

34.4.2 maintain and keep in repair all private drains, sewers, culverts, ditches and ponds, all private water and gas pipes and electricity cables in on or under the Acquired Land and the Retained Land, as appropriate, for the benefit of each other;

34.4.3 maintain and keep in repair the Unadopted Roads and Footpaths so that they are safe and useable for their normal purpose and for the benefit of each other;

but declaring that the foregoing provisions will not oblige either Party to put or keep any of the said Acquired Land and the Retained Land, as appropriate, or roads, services or media or the Unadopted Roads or Footpaths in any better condition than they are in as at the Completion Date, nor, in the case of the Council, to upgrade or intensify the level or standard of maintenance or repair to which it has been the Council's practice to keep said Retained Land or roads, services or media.

- 34.5 For the period of thirty years from the Completion Date each Party will indemnify the other from any sums paid out by that Party in respect of injuries caused to third parties as a result of a Party being in breach of the terms of this Clause.

35. FORCE MAJEURE

The Association shall not be held in breach of the Agreement nor shall it not be liable in damages under it for any delay or default in performing and / or implementing if such delay or default in performing and / or implementing hereunder if such delay or default is caused by conditions or circumstances beyond its control including, but not limited to, Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the control of the Association whose performance is affected.

36. DEROGATIONS

Nothing in this Agreement will prejudice or affect the Council's rights, powers, duties and obligations in the exercise of its functions as a local authority and the rights, powers, duties and obligations of the Council under all public and private statutes, bye-laws, orders, regulations and statutory instruments may be as fully and effective [?] exercised in relation to the Properties as if the Council had not been a party to this Agreement: **IN WITNESS WHEREOF**