

### **COMMERCIAL IN CONFIDENCE**

#### **GLOUCESTER CITY COUNCIL TO GLOUCESTER CITY HOMES**

#### **INTRODUCTION TO THE TRANSFER AGREEMENT**

##### **1. INTRODUCTION**

Following the successful ballot of tenants, Gloucester City Council (the "Council") and Gloucester City Homes ("GCH") will need to enter into a formal contract to complete the housing stock transfer. The Transfer Agreement is the contract which sets out the rights, responsibilities, covenants and requirements of both parties. It also contains all of the necessary arrangements to terminate the Management Agreement and enable GCH to receive and manage the properties and the Council to enforce the promises made to tenants during the consultation period.

Set out below is an overview explanation as to the likely shape and extent of the Transfer Agreement to give:

- a) a broad sight of the transfer process;
- b) an indication of what contributions will be needed from the Corporate Impacts Group and the Core Project Team;
- c) a useful reference point for senior Council members if and when making a public statement about the Transfer Agreement's priority and importance; and
- d) useful guidance and a framework to supplement the legal and financial issues lists for discussion by the Core Project Team to allow us to produce the first draft of the Transfer Agreement.

The Transfer Agreement is in draft form and is being negotiated between the Council's officers, GCH and their respective advisers. Once the Transfer Agreement is in final and agreed form between the Council and GCH we will produce a plain English guidance note in a similar format to this introductory document explaining what has actually been agreed between the parties.

##### **2. THE TRANSFER AGREEMENT**

The Transfer Agreement will take the form of a contract for sale with numerous schedules and annexes containing supporting information.

In particular, the Agreement will contain:

- (i) covenants by the Council and GCH in favour of each other;
- (ii) an Assignment of Rent and Service Charge Arrears which will be entered into within 28 days of the completion of the transfer;
- (iii) title warranties by the Council in respect of the property being transferred.
- (iv) provisions dealing with any ongoing contractual obligations of the Council with third parties, which are relevant to the stock being transferred (e.g. maintenance contracts);
- (v) provisions for the actual transfer of the tenanted dwellings and any associated land, any commercial properties and open spaces;
- (vi) a Nominations Agreement. The Nominations Agreement will give the Council the right to make nominations into an agreed percentage of the transferring dwellings for the purposes of the Council meeting its obligations in relation to provision of temporary accommodation, asylum seekers and housing agency services;

- (vii) subject to the new regulations of use of RTB receipts and therefore if required, a Right to Buy Sharing Agreement which protects GCH from fluctuations in RTB and shared ownership sales and gives the Council a share of RTB / shared ownership sale proceeds following transfer. The Council's right to receive an agreed percentage of RTB / shared ownership receipts for an agreed number of years from the transfer, after deduction of any agreed clawback, administration fees and a sum representing the cost in rent and management terms of GCH losing a particular property from its stock;
- (viii) provisions for both parties to apply for and maintain registration as data controllers and to comply with the provisions of the Data Protection Act 1998 and the Freedom of Information Act 2000;
- (ix) agreements for the provision of services by GCH and the Council to each other after transfer (which are currently being discussed between the Council and GCH); and
- (x) all of the other necessary provisions to transfer the housing function to GCH as a going concern.

Other significant clauses will be as follows:-

- (a) Certain of the Law Society's standard conditions of sale used in everyday property transactions will be incorporated into the Agreement, changed to reflect the circumstances of this transfer.
- (b) A rent and service charge arrears calculation and terms on which the Council will transfer over to GCH the rent, service charge and sundry debt arrears due from existing and former tenants and leaseholders to reflect the value of the arrears to the Council and the cost to GCH of pursuing them.
- (c) Apportionment of responsibility for payment for goods and services up to the completion date so that the Council is responsible for payment for goods and services up to the completion date and that GCH is responsible for payment for goods and services on and after the completion date.
- (d) Arrangements covering insurance claims and risk. This is usually agreed on the basis that if any properties are destroyed or damaged before completion then the Council will reimburse the RP for the reasonable cost of reinstatement.
- (e) The legal position of the transferring employees setting out the basis on which GCH will be the employer of the transferring employees by virtue of the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE"). Any staff warranties given by the Council to GCH will mean the Council retains the risk of any staff claims caused by matters such as breach of the employee contracts of employment by the Council, the Council failing to pay the staff their money due before completion, the Council's failure to consult with trade unions on the staff transfer and so on.
- (f) With regard to the employees who transferred to GCH on creation of the ALMO, GCH may seek an indemnity from the Council in respect of any equal pay or personal injury claims over an agreed materiality threshold.
- (g) The Agreement will seek to limit the Council's contractual liability under the staff warranties and their liability for all other claims to an agreed materiality threshold and period after completion.
- (h) The Agreement will seek to impose a requirement on GCH to obtain admission to the Local Government Pension Scheme for the benefit of the transferring employees and the employees who transferred to GCH when it was set up as an ALMO.
- (i) The Agreement will also deal with Council employees who will remain with the Council after transfer and provide services to GCH (and vice versa) for a limited period after completion. When these agreements end, those employees may have rights to transfer to GCH or the Council as appropriate.

### 3. THE SCHEDULES

Much of the information and detail of the transfer will be contained in the Schedules to the Agreement. The form of these schedules is likely to be as follows (subject to their relevance to this transfer):

- (a) **The First Schedule:** This Schedule will give details of all property to be transferred to GCH including general needs property, sheltered units (including the common areas in sheltered schemes), open spaces, garages, garage plots and the freehold interest in shops. The transfer of land and land assets will be with reference to plans which the Council's officers are preparing and agreeing with GCH's officers now.
- (b) **The Second Schedule:** Contains the Nomination Rights. As mentioned above, GCH will give the Council the right to nominate tenants for housing into an agreed percentage of GCH's properties. The nomination procedure will be set out in detail in the Nominations Agreement.
- (c) **The Third Schedule:** This Schedule will contain the contracts affecting the transferring property to be assigned to GCH or retained by the Council.
- (d) **The Fourth Schedule:**
  - (i) This Schedule will set out the warranties which the Council will give to GCH in respect of the transferring employee and the provisions in respect of GCH staff referred to above.
  - (ii) Will give details of the posts likely to transfer to GCH/ the Council at the end of any service level agreements.
  - (iii) Contains any disclosures to the staff warranties with regard to the transferring employees. There may also be some disclosures in relation to the employees.
- (e) **The Fifth Schedule:**
  - (i) Part 1 will set out the Council's covenants or commitments in favour of GCH. If the Council breaches any of the covenants, GCH will be able to claim damages from the Council. Specifically the covenants are likely to include the following:-
    - (1) to work with GCH in the formulation of wider community initiatives;
    - (2) to assist GCH to answer Land Registry requisitions so that GCH can register its title to the property;
    - (3) to maintain amenity areas, play areas and grounds retained by the Council in good order;
    - (4) to pay Housing Benefit to GCH direct where tenants agree to this;
    - (5) to process claims for Housing Benefit quickly and in accordance with the Housing Benefit Regulations;
    - (6) to enforce any rights that the Council has against its contractors and consultants, for the benefit of GCH;
    - (7) to assist GCH with any enquiries GCH might have regarding the transfer for an agreed period from completion;
    - (8) to nominate Council board members who have the desired skills and experience for the role and capacity to attend board meetings and attend induction and other necessary training; and
    - (9) not to use its rights as a shareholder of GCH in such a way as to prevent the Homes and Communities Agency's (HCA) use of its statutory powers.

(ii) Part 2 of the Fifth Schedule will set out in detail GCH's covenants. Specifically the covenants are likely to include the following:-

- (1) to use the income and receipts from rent and any sales of property in the payment of its loans and in the management, maintenance, repair, modernisation and improvement of the housing stock - any surpluses are to be used primarily within Salford;
- (2) to attend quarterly meetings with the Council for six years after transfer so that the Council can monitor its progress;
- (3) not to change its constitution as regards Council or tenant board membership without the Council's agreement;
- (4) to maintain all open space and amenity land in reasonable order and, in particular that grassed areas are not kept to a standard which is lower than the standard applied by the Council to other similar areas;
- (5) to maintain its registration with the HCA (or its successor);
- (6) not to do anything which might result in GCH's registration with the HCA being withdrawn;
- (7) to carry out the promises made by the Council in the Consultation Document and Stage Two Letter (including, but not limited to, the programme of catch-up repairs and modernisation);
- (8) to raise rents only in line with what is allowed in the consultation document and to comply with the Government's rent convergence regime as described in the consultation document for as long as it is in force;
- (9) to abide by its obligations in the tenancy agreement;
- (10) not to take possession proceedings other than on the grounds set out in the tenancy agreement;
- (11) to consult with tenants on any changes in housing management;
- (12) to accept the Council's Board Members, make sure that the Tenant Board Members are properly appointed and to act reasonably in considering membership applications from tenants;
- (13) not to vary the tenancy agreement after transfer without advising the Council of the proposed changes and allowing the Council to comment on them;
- (14) to use reasonable endeavours to employ local people and encourage and support local employment training schemes;
- (15) to work with the Council in the adoption of joint objectives for housing in the formulation of a crime and disorder strategy to work with the Council in the formulation of its social housing strategy and regeneration policy;
- (16) to give the Council and its auditors all reasonable and practical information and assistance it needs to complete its annual returns; and
- (17) to give the Council certain information in relation to asbestos works and asbestos claims and to give the Council a copy of its asbestos management policy.

- (f) **The Sixth Schedule – The Warranties:** The Council will be asked to warrant to GCH that there are no matters in connection with the land or property transferring that could cause GCH financial or other loss. In particular, the Council will be required to give environmental warranties so that as far as possible, any risk of liability in relation to environmental contamination stays with the Council. The Council will give warranties both to GCH and separately to GCH's funders. The warranties will last for an agreed period (usually 30 years) and are for the purposes of risk allocation.

**(i) Title Warranties**

The warranties themselves are likely to be as follows:

- (1) that the warranties are true and accurate, clear and not misleading;
- (2) that the legal title to the property is good;
- (3) that the property is free from any mortgages, rents, charges or loans;
- (4) that the current use of the property does not breach the Planning Acts or any other law or regulations;
- (5) that there are no circumstances in which planning enforcement action could be taken and that there are no outstanding or unperformed obligations by the Council;
- (6) that there are no compulsory purchase/demolition/slum clearance orders affecting the property;
- (7) that any leasehold property is held on standard terms;
- (8) that the property is subject only to the Council's tenancies and that there are no claims or known potential claims against the Council by any of the tenants which might affect the value of the property;
- (9) that the information supplied by the Council with regard to the property, including information relating to the stock condition survey and valuation, is correct;
- (10) that properties sold off under the Right to Buy have been sold on appropriate terms;
- (11) that there are no current actions, demands, disputes or liabilities in respect of the property nor circumstances which could give rise to any actions;
- (12) that the Council has the right to go onto adjoining land to carry out works of maintenance of the property and GCH will have the same rights;
- (13) in a nutshell, the Council will warrant that unless formally disclosed, title to the property being transferred is good, marketable and free from encumbrances.

We will seek to limit many of the warranties in respect of housing management so that the Council is only warranting what it is aware of following an initial period where the Council takes responsibility for all risks over an agreed material threshold, as GCH have much of the information around these areas.

**(ii) Environmental Warranty**

The warranty in respect of environmental pollution is normally very important to the RP as potentially claims could be enormously damaging to its business and in line with standard practice on stock transfers, we envisage there being no provision within the GCH's business plan to pay for environmental clean-up costs. The warranty normally seeks to confirm that:

- (1) the Council is complying and has complied with all applicable environmental law and obtained environmental approvals relating to the ownership and use of the property;
- (2) there is no current pending or threatened environmental claim against the Council and there are no past or present acts, omissions, events or circumstances that could form the basis of any environmental claim against the Council or the funders in respect of the ownership and use of the property;
- (3) there is no dangerous substance at, in, on, or under any of the property and no such substance has been used, disposed of, generated (and so on) at, in, on or under the property;
- (4) no part of the property could lawfully be designated as contaminated within the meaning of the Environment Act 1995. This protects GCH from the key risks if the Property is found to contain contaminated land or buildings; and
- (5) No part of the Property is affected by subsidence.

**(iii) Asbestos Indemnity**

The cost of asbestos works to the transferring properties will usually have been taken into account the RP's business plan. However the Council may be expected to give an indemnity to GCH for any costs of asbestos remediation over what has been budgeted in GCH's business plan. Any personal injury claims linked to asbestos will be dealt with as part of the environmental warranties.

**(v) Other Warranties**

Finally, the Council will warrant:

- (1) that it has the appropriate power and authority to enter into the transfer;
  - (2) that no material adverse entries would have been revealed if individual local authority and other searches had been made against each of the properties to be transferred; and
  - (3) that the terms under which the leasehold parts of the property (including the sub stations and shops) are held are standard and have not been changed.
- (g) **The Seventh Schedule:** Will contain the form of Property Transfer to be used to actually convey any land and property to GCH on completion.
  - (h) **The Eighth Schedule:** This schedule will contain a non-binding protocol setting out how GCH and the Council's members will work together.
  - (i) **The Ninth Schedule:** Will contain details of any commercial property to transfer to GCH.
  - (j) **The Tenth Schedule:** Will contain details of any services that the parties will provide to each other after completion (for example, grounds maintenance).
  - (k) **The Eleventh Schedule:** Will contain a standard form of Deed of Assignment of rent and service charge arrears to be used post-completion.
  - (l) **The Twelfth Schedule:** Will contain RTB / Shared Ownership Sharing Agreement documenting the arrangements agreed with GCH.
  - (m) **The Thirteenth Schedule:** Will contain Disposals Clawback provisions which will require GCH to pay the Council an agreed percentage of GCH's net profit on the sale of any land sold for commercial gain for an agreed period from the completion date.
  - (n) **The Fourteenth Schedule:** Will contain a protocol to deal with the future spend by GCH on asbestos works. This is to allow the Council to monitor GCH's asbestos spend.

- (o) **The Fifteenth Schedule:** Will contains a protocol describing how the parties will work together in the administration of housing benefit for GCH's tenants.
- (p) **The Sixteenth Schedule:** Will contain the potential deeds of variation in case the VAT Scheme changes.
- (q) **The Seventeenth Schedule:** Will set out the arrangements for sharing of the VAT monies received back from Customs.
- (r) **The Eighteenth Schedule:** Will contain the form of Development Agreement which the Council and GCH will enter into just before the transfer is completed. This will ensure that the VAT shelter is properly in place.

**ANTHONY COLLINS SOLICITORS LLP**

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