

# RIBBLE VALLEY BOROUGH COUNCIL REPORT TO HEALTH & HOUSING COMMITTEE

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Agenda Item No.

meeting date: 22 MARCH 2012  
title: MORTGAGE LENDING ON AFFORDABLE HOUSING SITES  
submitted by: CHIEF EXECUTIVE  
principal author: RACHAEL STOTT

## 1 PURPOSE

1.1 To make Committee aware of the difficulties households are experiencing in securing a mortgage on some affordable housing sites due to the content of the Section 106 Agreements.

1.2 Relevance to the Council's ambitions and priorities

- Council Ambitions – to meet the identified needs of households in the borough.
- Community Objectives – to achieve a balanced housing market.
- Corporate Priorities – housing.
- Other Considerations – none.

## 2 BACKGROUND

2.1 Section 106 Agreements are negotiated at the pre-application stage and the draft agreements submitted can be completely different from one site to the next. Ribble Valley have developed template agreements in an attempt to standardise them. The templates are available on the website and agents are always advised to use these as a starting point. However, all sites are unique with different tenure mix, grant requirements and planning history. This results in significant variations from the original template on all sites.

## 3 ISSUES

3.1 There have been three separate sites where mortgage lending has been highlighted as a problem due to specific clauses within the Section 106 Agreement. On sites at Barrowbrook, Barrow; Primrose Village, Clitheroe and Feildens Farm, Mellor existing or potential purchasers have all experienced problems in mortgage lending.

3.2 On the new site at Barrowbrook, of the 8 shared ownership properties, 4 units are occupying as intermediate rent to buy and 4 shared ownership units are unoccupied with purchasers lined up with a mortgage offer in place dependant on securing changes to the agreement. An application to vary has been received from St Vincents.

3.3 At Primrose Village, Clitheroe 10 out of 12 shared ownership properties are not able to secure mortgages due to the mortgage lenders identifying a problem with the mortgagee in possession clause with the Section 106 Agreement. No application to vary the agreement has yet been received.

- 3.4 The Strategic Housing Working Group arranged a meeting to discuss the specific problems within the Agreements and invited the relevant solicitors, mortgage advisors and Registered Providers to attend. Notes from the meeting are minuted at Appendix 1 of the Affordable Housing Update agenda item 16.
- 3.5 The main problems identified are the clauses that restrict sale in mortgagee in possession situations. Should a shared ownership unit be repossessed, then the lender requests that they notify the Council and then they market the property unit for 2 months following the eligibility criteria as specified within the Agreement and should no eligible household purchase the unit within that timeframe, then the unit can be sold on the open market free from restriction.
- 3.6 The other issue which is causing problems with lending is in the general marketing/sale of the shared ownership units. If, after two months of marketing to the Parish where the development is located and two months of marketing to the surrounding parishes and finally two months of marketing to households within the borough, the property has not been sold, then the request is that after the total of six months the unit can be sold as a shared ownership property to households outside the borough.
- 3.7 Advice from the Homes and Communities Agency on both these matters was to follow the 'Promoting Mortgage Access for Affordable Housing'; a good practice note' attached at Appendix 1. Paragraph 5.1 sets out the current lender position for timeframes restricting occupancy. Paragraph 6(c) sets out the advice on mortgagee in possession clauses.
- 3.8 The Cumbrian districts who we have consulted with previously, have also recently experienced the same problems with lenders and they have allowed a series of options with regards to relaxation from the original Agreement. The standard model is set out at Appendix 2. This is set out on page 3 of the document and any options for the wording within the Agreement is set out on page 12, Section 7.
- 3.9 Both documents acknowledge that 3 months or less is the time period mortgage lenders accept in terms of restricting sales in mortgagee in possession situations. A maximum of 6 months is the standard time period for general sales requiring a sale to an approved person.
- 3.10 These issues must be carefully considered in order to ensure households can secure mortgages for the affordable housing units developed in the borough. The objective being to maintain a balance between ensuring the units remain affordable for local households in perpetuity whilst ensuring the households can secure mortgages on the properties.
- 3.11 Although we are considering specific matters within the agreement in order to respond to changes in the lending market, an agreed range of conditions will provide the flexibility required whilst providing the boundaries within which we can operate.
- 3.12 Within the Cumbrian districts approach, the starting point for each clause provides the most protection for the retention of all affordable units in perpetuity but there is scope for negotiation when and where necessary, which allows for compromise whilst clearly provides limitation to any variation.
- 3.13 The Strategic Housing Working Group discussed the options available but concluded that the restrictions within the Agreement should not be relaxed to meet the demands of the Lenders. In the case of mortgagee in possession situations, Members felt that

a 4 month time period requiring a sale to an approved person was reasonable. Within the 4 months the property would be offered to both the Local Authority and the Registered Provider. The SHWG accepted that after 6 months of marketing the affordable unit to an approved person, a sale is permitted to a household not meeting the approved person criteria but all future sales would require compliance with the Agreement.

3.14 Therefore, acknowledge the views of the Strategic Housing Working Group in restricting any relaxation of the Agreements but consider the advice from the Homes and Communities Agency and the practices of Cumbrian authorities.

#### 4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications

- Resources – commitment of officer time dealing with the legal and practical issues due to the number of parties involved.
- Technical, Environmental and Legal – legal input is required in considering the redrafting or consideration of any amendments to vary existing agreements.
- Political – the Council's key ambition is to match the supply of homes in our area with the identified housing needs, and to continue to encourage further development.
- Reputation – once developed it is important that affordable units are occupied and occupation is not delayed due to the difficulties in securing a mortgage.

#### 5 **RECOMMENDED THAT COMMITTEE**

5.1 Accept national guidance and the advice of neighbouring authorities, and agree that in a mortgagee in possession sale, a restriction of 2 months to an approved person with the Local Authority and the Registered Provider being offered the unit will be used.

CHIEF EXECUTIVE

For further information please ask for Rachael Stott, extension 4567.



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# **Promoting mortgage access for affordable housing**

**A joint good practice note issued by the Chartered  
Institute of Housing and the Homes and Communities  
Agency**

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## Overview

Mortgage availability is likely to be restricted, in comparison to recent years, for the medium term. Affordable home ownership options can support those otherwise unable to afford an appropriate home into sustainable home ownership. There are a number of steps that can be taken by local partners to improve opportunities for affordable home ownership in local communities.

This good practice note shares the experience members of the Chartered Institute of Housing working in a variety of different organisations and of the Homes and Communities Agency (HCA) in working with retail mortgage lenders, local authorities and providers in the delivery of affordable housing to customers. It offers advice on how to maximise the mortgageability of all types of affordable home ownership properties planned by local authorities to meet the needs of their local areas.

It does not prescribe an approach which local authorities should take, as it is important that they undertake one which is locally appropriate. It does however highlight issues that can act as a barrier to delivery; ways of dealing with these issues; and offers local authorities that request it, further HCA support.

The note explains the benefits of simplicity and consistency in terms of products, operation and language in clauses irrespective of whether a property is grant funded by the HCA or delivered through planning obligations and providers resources alone. It also explains how to minimise the impact of local occupancy rules on the mortgageability of homes through the appropriate use of clauses ('cascades') which widen eligibility over time, leading to general marketing within a typical period of three months.

## Background

1. This note has been produced by the Chartered Institute of Housing (CIH) and the Homes and Communities Agency (HCA) in response to requests from a number of housing professionals, local authorities, retail mortgage lenders and providers of affordable housing. It is intended to raise awareness within local authority housing and planning departments of the issues faced by retail mortgage lenders when providing mortgages for affordable home ownership. The issues raised are equally applicable to conditions that may be applied by local authorities as part of s106 agreements or through planning conditions (e.g. on rural exceptions sites or to achieve other planning policy aims). The note covers both new provision of affordable home ownership and the amendment of previous agreements, to assist in re-sales. It is hoped that the general messages will also be of assistance to housebuilders and providers of affordable housing.
2. In the past greater liquidity in the mortgage market meant that many retail mortgage lenders were prepared to lend on homes that were subject to a wide range of conditions. This is no longer the case. Lenders are now taking

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a more cautious view towards properties that are subject to certain conditions or restrictions. From the extensive engagement that the HCA has carried out with retail mortgage lenders it is clear that the predominant business model is one of high volume and low margins that cannot easily accommodate variation. Consideration of current market lending practices needs to therefore form an integral part of the whole planning process in order to maximise mortgage availability for prospective customers.

3. Local authorities may, where affordable housing is scarce, seek to address the needs of the local community by enabling affordable housing for households who are either current residents or have an existing family or employment connection, whilst also ensuring that these areas continue to develop as sustainable, mixed, inclusive communities. The mechanism for the delivery of such aims should be carefully considered to ensure that a mortgage can be secured against the properties once completed. This note is designed to enable local authorities to deliver against these local ambitions.
4. The Council of Mortgage Lenders (CML) issued a briefing note in 2009 ([click here](#)) that outlined the issues faced by retail mortgage lenders and offered suggestions of good practice for local authorities to aid mortgageability. This has been promoted by the CIH to its members and by the HCA when working with local authorities to identify local investment priorities. This good practice note complements the CML briefing by highlighting key messages that can be put into practice when delivering affordable home ownership.

### **Current lender position**

5. In order for a property to be mortgageable with high street lenders any conditions placed upon homes will need to be in accordance with their published guidance to conveyancers. Such guidance can usually be found on lenders' websites and three issues in particular are important to consider:
  - I. *Retail mortgage lenders require the property to be able to be sold within a reasonable length of time.* - In areas where there is a need to restrict the occupancy of properties this can be achieved through the use of a 'cascade'. Lenders' requirements differ but an optimal cascade will generally operate over three months and no lender will offer mortgages to purchasers on properties involving a cascade that exceeds six months. Limiting this timescale also benefits purchasers of LCHO, particularly those who need to sell their home due to financial difficulties.
  - II. *Any restrictive covenants need to be flagged at the earliest possible stage* – It is helpful if lenders and purchasers are made aware of any restrictive covenants, including any potential difficulties, early in the sales/nominations process. This could be flagged by the local authority and/or the affordable housing provider. This will reduce problems that could occur with mortgage lenders at a later stage in the sales process, reducing the potential for surprises for both purchasers and vendors.

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- III. *Retail mortgage lenders require a Mortgagee Protection Clause for shared ownership* – The HCA model lease contains such a clause, recently updated, which must be used in all HCA-funded shared ownership. Lenders will not accept a new lease without this clause in place, even if it is not grant funded. Under the Mortgagee Protection Clause, losses that may reasonably be incurred by the lender through repossession of a shared ownership property are covered by the provider. The Mortgagee Protection Clause is different from a Mortgagee in Possession clause which is covered below.

### **Specific restrictions affecting mortgage availability**

6. Through a number of recent discussions retail mortgage lenders have highlighted further concerns to the HCA, namely:
- a. *Provisions that restrict value with reference to something other than open market value* – These are not currently supported by retail mortgage lenders. Examples given include values that are fixed at a multiple of local wages or that rise fall in relation to certain chosen indices. The lender requires the realisable value of their security to be based upon the specific value of the property they are lending upon. The lender must be able to instruct its surveyor to value the property on the basis of open market value.
  - b. *Considerable complexity in drafting clauses* – Is likely to lead to retail mortgage lenders refusing to support schemes. Examples given include cross-referral to other documents including multiple appendices, the use of non-standard agreements and difficulty in identifying which restrictions apply to which properties. The conveyancer will be asked to check as part of their general undertaking that the lender's requirements are being met by the document. Any doubt in this is likely to result in the withdrawal of the mortgage offer. A s106 agreement which is clear as a stand-alone document can help to avoid such difficulties.
  - c. *Mortgagee in possession clauses* – These are clauses that allow a (commercial or retail) lender who has repossessed the property to operate free of restrictions which are placed upon individual properties. These are required by commercial lenders and an increasing number of retail lenders. Many local authorities allow these clauses to be activated immediately, recognising that repossessions are an extremely rare event. In order to be accepted by a lender any time limit set will need to be three months or less. Such a clause does not solve all the issues outlined in this note; therefore these issues still need to be considered, even when a Mortgagee in Possession clause is included.

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## How does this affect your local area?

7. From our experience it appears that these issues are most effectively addressed by local authorities who consider the mortgage market throughout the planning process and address the issues holistically. We believe that there are four key points in time when consideration of the mortgage market in planning for affordable housing will be particularly beneficial.
  - I. *Formulating planning policy* – Most local authority planning policies set out the percentage requirements for affordable housing that will be sought, based on viability and need. This provides the framework for the facilitation of developer contributions to affordable housing. If local authorities are seeking to specify policy beyond these requirements (e.g. in relation to local occupancy or incomes) then they are likely to benefit from consideration of issues outlined in this note, particularly those in relation to product type and cascades.
  - II. *Pre-application discussion* – Many local authorities have standard requirements for affordable housing which are set out in pre-application check-lists to speed-up the planning process. Where these specify provision of affordable home ownership brief coverage and/or explanation of the issues in this note is likely to be of benefit. Pre-application discussions may also be an appropriate point to ensure that the applicant/provider fully understands how the mortgage market can impact on the provision of affordable home ownership.
  - III. *Determining a planning application* – Agreement of heads of terms at an early stage, giving consideration to the issues highlighted in this note, in relation to the provision of the affordable housing will help to avoid subsequent problems with the availability of mortgages.
  - IV. *Drafting the s106/planning conditions* – The prior agreement of the heads of terms should render this task a relatively simple one. To further assist local authorities in this we have included some examples of clauses that retail mortgage lenders have highlighted to us which would prevent them from lending on a home at annex one of this note.

### Good practice for the future

8. *Product type* - To maximise the chances of obtaining mortgages secured on affordable home ownership properties, local authorities will benefit from specifying tenures that are clear and simple or, as some local authorities do, simply specifying the tenure as 'Intermediate affordable housing' (or similar) to give flexibility for future provision. Where products are specified these could be in line with the standard HCA products, noting that the HCA has recently produced a simple standard shared ownership lease (mentioned above). HCA standard products are well understood and supported by lenders but their use does not mean that every property has to be funded by the HCA. Many local authorities are able to deliver affordable home

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ownership that meets the needs of their local areas through planning obligations and provider resources alone, without the need for additional government subsidy. The HCA is keen to support such provision and consideration of the issues within this note will help enable delivery.

9. *Cascades* – Where there is a need to place restrictions on the future occupancy of affordable homes, this can be achieved through a clear and time-limited cascade of typically three months. A cascade initially restricts marketing of a property to qualifying purchasers within a very small local market and gradually widens the net. At the end of the cascade period, if an appropriate offer has not been made, the property can be sold to any purchaser on the open market, or the local authority or provider can agree to buy the property back. In order to be effective the cascade should be time-limited, commencing at the start of the sales process, and clearly allow that if no qualifying purchaser can be found the lender is able to realise their security within a maximum of six months. It is important to note that a number of retail mortgage lenders require a maximum of three months making this an optimum time-limit which will result in a wider choice of mortgage providers, delivering greater choice for local people. Such a mechanism protects the property to ensure that, where there is demand, it will remain as affordable in perpetuity but also ensures that the lender has access to an asset whose value can be realised.
10. *Nominations agreements* – Some local authorities prefer to use nominations agreements with the provider of LCHO rather than placing restrictions on specific properties to ensure appropriate occupancy of affordable homes. The standard HCA shared ownership lease contains a clause that before selling any owner must first offer the property back to the provider. If such a process is tied in with a local authority nominations agreement then it can ensure appropriate occupancy without imposing a condition which would affect a retail lender.
11. *Variations to existing planning obligations* – Local authorities may also wish to carry out variations to historic schemes whose restrictions render the properties subject to them unmortgageable. Local authorities may be alerted to such problems upon first-sale or upon a subsequent resale. In both cases variation to bring the restrictions into line with current good practice will be beneficial to individual purchasers and their communities. Where such revisions take place it will be helpful to, as far as possible, cover all of the affected homes in one exercise. Difficulties in relation to understanding multiple revisions are often reported as an issue in this area for lenders.

### **Further support**

12. In addition to the strong and ongoing relationships built by HCA local teams with local authorities and the support offered by the CIH to its members, the HCA intends to carry out further work with a wide range of stakeholders, to improve awareness and understanding of the mortgageability of affordable home ownership properties. If there is sufficient local appetite this could include working towards the creation of standard clauses that work for local

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areas and retail mortgage lenders. It will also involve consideration of the wider intermediate market, not simply those properties which the HCA has funded.

13. Some independent mortgage advisors have extensive experience and knowledge of the mortgage market and may be able to provide interested local authorities with valuable insight. Local authorities interested in accessing this advice can contact the HomeBuy Agent for their area who will have a panel of experienced independent mortgage advisors.
14. The HCA is also keen to work with local authorities to see what further support could be beneficial. We are already engaged in pilot partnership discussions with a number of local authorities to assist the provision of mortgages in their area and are ready to work with others who invite us to do so. Local authorities, or other partners, who would like to invite the HCA to work with them or would like to provide any feedback on this note can e-mail [HomeBuy@hca.gsx.gov.uk](mailto:HomeBuy@hca.gsx.gov.uk)

## Conclusion

15. Local authorities, developers and affordable housing providers are encouraged to carefully consider this note before entering into a Section 106 agreement that places a restriction upon affordable homes for sale. At all times an approach that ensures simplicity and consistency will be beneficial.
16. The support of retail mortgage lenders is necessary to ensure that affordable home ownership is available to those who need it. Local authorities who have developed an understanding of the mortgage market and have been willing to be flexible in the pursuit of their aims have found success in planning for affordable homes for their residents and communities.

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## Annex One – Clauses rejected by retail mortgage lenders

The following clauses give examples of drafting that has been rejected by retail mortgage lenders, along with some explanation.

*‘Low Cost Home Ownership Units – 5% of the total Residential Units which shall be sold to Qualifying Purchasers at a price which shall be no more than two times the Average Local Income’* – This clause does not use open market value to determine the value of the property and would therefore be rejected by a retail mortgage lender.

*‘Low Cost Home Ownership Units – 5% of the total Residential Units which shall be sold at a discount of 20% of Open Market Value’* – This clause utilises a non-standard affordable home ownership product in that it fixes a discount to the property. Only two retail mortgage lenders will lend where such a restriction is in place and the presence of additional conditions as outlined in this note will usually prevent them from lending. Recasting the unit as shared ownership would allow a much greater choice of lenders.

*‘Qualifying Purchaser – A person who has lived in xxxxxx Parish continuously for at least ten years prior to time of purchase’* – This clause presents a very narrow restriction on who the properties can be sold to and would therefore be rejected by a retail mortgage lender. If the local authority wishes to target such a group then they could utilise a cascade which would also allow marketing to a wider group if insufficient purchasers could be found in initially identified group.

*‘Cascade – Providing that the vendor can provide evidence that every Qualifying Purchaser is not willing to purchase the Low Cost Home Ownership Unit and a period of six months has elapsed then the Registered Provider may market the Low Cost Home Ownership Unit to any purchaser who meets the eligibility criteria of the Homes and Communities Agency’* – This is an example of a cascade, which would itself normally address problems of a narrow restriction on occupancy. Unfortunately in this example the process is involved and would be difficult to complete within the time-period. It would therefore be rejected by the lender. In order to be effective, rather than specifying a process, a cascade should use a time period as the reference point. An optimal time period, as it is accepted by all lenders, is three months rather than the six months shown in this example.

*‘The mortgagee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than nine months’ prior notice to the Council of its intention to dispose’* – This is an example of a mortgagee in possession clause which releases the mortgagee from the restrictions placed on the affordable housing units. The time-period after possession is too long and therefore would be rejected by a retail mortgage lender. Many local authorities allow these clauses to be activated immediately, recognising that repossessions are an extremely rare event. In order to be accepted by a lender any time limit will need to be set to three months or less.

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**The Chartered Institute of Housing (CIH)** is the professional body for people involved in housing and communities. We are a registered charity and not-for-profit organisation. We have a diverse and growing membership of over 22,000 people – both in the public and private sectors – living and working in over 20 countries on five continents across the world. We exist to maximise the contribution that housing professionals make to the wellbeing of communities.

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**For further information, please contact:**

Customer Services: [customer.services@cih.org](mailto:customer.services@cih.org), or 024 7685 1700

**The Homes and Communities Agency (HCA)** is the single, national housing and regeneration delivery agency for England. Our vision is to create opportunity for people to live in homes they can afford in places they want to live, by enabling local authorities and communities to deliver the ambition they have for their own areas.

For more information visit [homesandcommunities.co.uk](http://homesandcommunities.co.uk)

The CIH and HCA welcome any feedback or comment on the contents of this note.

**Any feedback, queries or questions in relation to this note should be directed to:**

[HomeBuy@hca.gsx.gov.uk](mailto:HomeBuy@hca.gsx.gov.uk)

**DRAFT            STANDARD            MODEL**  
**AFFORDABLE HOUSING SECTION 106**  
**AGREEMENT FOR CUMBRIA**

**HOUSING GROWTH, AFFORDABILITY  
AND COMMUNITY SUSTAINABILITY  
EXPERT GROUP**

**December 2011**

## **INTRODUCTION**

Please find attached the standard model Section (S106) template agreement, which should be used to help secure affordable housing by local planning authorities in Cumbria.

The development of this document forms Actions A1 and A4 of the Cumbria Housing Strategy 2006/2011. The role of this document will be to improve and speed up the production of Affordable Housing S106 Agreements in the County and thus assist in the delivery of affordable housing.

The document was prepared with the input of a writing group consisting of officers and employees representing:

- Allerdale Borough Council
- Carlisle City Council
- Cumbria County Council
- Copeland Borough Council
- Eden District Council
- Homegroup
- Riverside Housing Association
- Story Land

In May/June 2011 the document was subject to a 6 week consultation focused on key stakeholders in the County and as part of this process a meeting with stakeholders was held on May 16<sup>th</sup>. Responses received as part of this process were given full consideration and in response to this a series of changes were made to the document.

## **ROLE**

The role of this document will be to provide a standard model S106 agreement to be used to secure affordable housing in the county.

Following the endorsement of the Cumbria Housing Group, it will be for individual local planning authorities to adopt and use this document.

## **SCOPE**

The document provides a model planning obligation that can be used to secure affordable housing. Nevertheless, given the number of planning authorities in Cumbria the model provided should be employed flexibly to work in different circumstances.

Consequently, it has been prepared in such a way that allows elements to be changed (and in some instances; included and omitted) to reflect local circumstances; the nature of development; specific geographical issues; local policy and the proposed development. For example matters like (Qualifying Person and Local Occupancy definitions) and timescales should be edited to better reflect local policy and circumstance or some authorities may wish to

have reference made to local letting policies which not all authorities may have.

In line with the flexible nature of this document, a number of schedules have been included, these relating to various types of affordable housing types and tenures, namely:

- Discounted Sale
- Rented (Social and Affordable)
- Housing Association Rented (Social and Affordable)
- Shared Ownership (which would include Shared Equity)

The schedules should be used as appropriate in respect of individual developments.

Consideration was also given to the opportunity to prepare a schedule relating to Self Build Affordable Housing. It is agreed that such housing can provide a valuable supply of deliverable affordable housing however, given the general level of detail required to be included within S106 relating to self build housing and the particular circumstances concerning their provision it was not considered practical to do so in this document, rather individual S106 should be prepared for Self Build Affordable Housing.

While an important source of contribution it is considered appropriate that contributions towards the provision of commuted sums for affordable housing is not included in this document whose scope at present is limited to the securing of affordable on development sites directly.

It should also be noted that this document only relates to Section 106 agreements to be used to secure affordable housing and does not relate to any other form of infrastructure or requirement to be secured/controlled through a Section 106 agreement

## **CONTENT OF STANDARD MODEL S106**

Set out below is guidance to be considered when using this document and should give a better understanding with respect to the use of this document.

### **Definitions**

The definitions provided within the document relate to all the schedules provided. Clearly different schedules would require the use of appropriate schedules. When preparing S106 document district and applicant solicitors will be required to ensure the appropriate definitions are used in each case.

### ***Particular comments:***

**Locality** this definition refers to the geographic locality in which occupants of affordable homes would be derived. The appropriate geographic area would be identified as part of this definition.

**Qualifying Person** this definition will vary on a case by case basis to reflect local planning policy but also the particular circumstances affecting a site. Within the document an indicative list of potential conditions are listed as a guide.

**Shared Equity Transfer** it should be noted restrictions on the level of equity that could be purchased should not be limited in areas where right to buy legislation does not apply.

### **Mortgagee in Possession**

Mortgagee in Possession means a person or body which has entered into a mortgage in respect of a dwelling constructed on the Land and has taken action following a default by the borrower in respect of the repayment due under that mortgage. This is considered an important element of any S106 agreement.

With respect to Mortgagee in Possession three potential options are provided to reflect different approaches to this matter in operation in the County.

The first of these stipulates that where the property is repossessed, the Mortgagee in Possession will be affected by all restrictions stipulated within the S106 agreement.

The second option stipulates that where the property is repossessed, the Mortgagee in Possession will be unencumbered by the restrictions set out within the S106, however any subsequent occupier will be affected by the requirements of the S106.

The third option stipulates that where the property is repossessed the Mortgagee would be expected to take best steps to transfer the homes as an affordable unit. Where there is no one willing to take the unit on as an affordable unit (ie. Where there is no need for the homes) the mortgagee in possession would be able to dispose of affordable units free of the restrictions contained within the agreement.

In using the document regard should be given to mortgages and the efforts to ensure S106 agreements do not prove unnecessarily onerous. Nevertheless it will remain important that S106 are robust and result in the delivery of appropriately secured housing in perpetuity. The Local Planning Authority should determine the most appropriate Mortgagee in Possession clauses to use in particular circumstances and locations.

### **THE FIRST SCHEDULE**

Depending on the types of affordable housing to be provided as part of a development different schedules may be utilised either individually or a number on a single site where different forms of affordable housing are to be provided.

Where reference is made to and/or in the context of affordable need and local occupancy, the occasions when the 'or' element would be used would depend upon each Council's housing policy. The option is there for each Council to amend as appropriate.

### **Schedule A - Discounted Sale Affordable Housing**

This schedule relates to discounted sale affordable housing. These are properties on housing development that are sold by the developer initially with a discount from the open-market value which remain with the property through all subsequent sales.

### **Schedule B – Non Registered Provider Delivered Rented Affordable Housing**

This schedule relates to rented affordable housing which is delivered by a non-Registered Provider and which is either managed by a non-registered provider or where it transferred to a registered provider.

This can relate to social rented affordable housing which is rented housing owned and managed by local authorities or registered providers for which guideline target rents are determined through the national rent regime.

It could also relate to Affordable Rented Housing. This is rented housing let by registered providers of social housing to households who are eligible for social rented housing. Affordable rent is not subject to the national regime but is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent.

### **Schedule C – Registered Provider Delivered Rented Affordable Housing**

This schedule relates to rented affordable housing which is delivered and managed by a Registered Provider.

This can relate to social rented affordable housing which is rented housing owned and managed by local authorities or registered providers for which guideline target rents are determined through the national rent regime.

It could also relate to affordable rented housing. This is rented housing let by registered providers of social housing to households who are eligible for social rented housing. Affordable rent is not subject to the national regime but is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent.

### **Schedule D – Shared Ownership Affordable Housing**

Shared ownership is used to help people achieve home ownership even though they cannot afford to purchase a property outright. With this form of housing, normally a developer will sell a percentage of the property. As well as the percentage bought by the occupier, the purchaser may be required pay

a rent on the remaining non-purchased proportion. The purchaser can normally buy further shares in the property (called staircasing), in some instances 100% of the property, however in areas defined as rural areas by the Government there is a limitation as to the level of staircasing that can be achieved.

Shared Equity is a form of Shared Ownership affordable housing, under shared equity the purchaser buys all of a property but with an equity share loan making up the difference between the mortgage and the purchase price.

Relevant to all schedules in situations where housing is for 'Local Occupancy' but not affordable housing reference schedules should remove reference to local needs housing.

### **Cascades**

Within the document two different approaches to cascades are presented. Where cascades are to be used may be appropriate and can be utilised depending on preference and suitability in respect of local context. Careful consideration should be given to the timescales within the cascade to ensure the process is not too slow.

### **THE SECOND SCHEDULE**

The second schedule is used to identify the affordable housing (and their type) to be delivered on an individual site.

In this schedule the plot numbers associated with individual homes would be listed as would be accompanied by a map highlighting properties. In instances where no plot numbers can be identified (eg. in the case of some outline applications) this schedule can be simplified to acknowledge the number of range of affordable homes to be provided.

### **USE**

It will be for individual planning authorities to adopt and utilise this document which sets out a framework to be used across the county as far as possible.

### **REVIEW**

Legislation in respect to planning and housing is currently undergoing a considerable period of flux; with this it is important that this document remains current. It is also important independent of changing legislation and guidance this work is subject to regular review to see what elements are effective and which may require review. This process can be undertaken through the Cumbria Housing Group Structures.

To this end it is considered important that, using this document; the development industry, local planning and housing authorities and mortgage providers work closely together during negotiations to ensure, as far as practical, these can be concluded to the satisfaction of parties.

DRAFT DECEMBER 2011

**DATED**

**20...**

[name of Council]

and

[name of developer/ Housing Association]

and

[name of Mortgagee]

**A PLANNING OBLIGATION BY AGREEMENT**

**relating to Land at ...**

[name of appropriate officer at Council]  
[address]

DRAFT DECEMBER 2011



**“Full Market Value Unit”** means a Unit to be sold on the open market

**“Housing Need”** means a situation where, in the opinion of the Council, a person or household (as defined in section 113 of the Housing Act 1985):

- (a) Needs to move from accommodation which is in disrepair, shared, temporary or overcrowded, or
- (b) Needs to be rehoused as a result of leaving tied accommodation, or
- (c) Is or includes an elderly or disabled person who needs to move due to medical conditions, or
- (d) Needs to move due to special circumstances as determined by the Council's housing allocation policy; and
- (e) Does not have available to them and cannot afford to buy or rent suitable accommodation at Open Market Value or market rent prevailing within the Locality.

**“Intermediate Affordable Housing”** means housing at prices and rents above those of an Affordable Price or Affordable Rent but below Open Market Value or market rent and which (a) meets the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices, and (b) includes provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision; Intermediate Affordable Housing may include shared equity schemes such as ‘Homebuy’ but does not include affordable rented housing

**“Lettings Policy”** means a written document prepared by the Owners and setting out the procedures and requirements for letting the Affordable Units including who shall qualify for an Affordable Unit, how they are to be nominated and the proposed procedure for management of the Affordable Units

**“Local Housing Authority”** bears the meaning set out in Section 1 of the Housing Act 1985 as amended

**“Locality”** means [the Parishes of, or insert other geographical area as appropriate]

**“Notice of Commencement of Development”** means written notification given by the Owner to the Council's [appropriate post] of the Commencement Date

**“Notice of Occupation”** means written notification given by the Owner to the Council's [appropriate post] of first Occupation of the Development

**“Notice of Sales Release Date”** means written notification given by the Owner to the Council's [appropriate post] of the date on which it proposes to release the Affordable Units for sale.

**“Open Market Value”** means the best price as determined by a chartered member of the Royal Institution of Chartered Surveyors at which a Disposal of the interest in an Affordable Unit might reasonably be expected to have been completed unconditionally for cash consideration on the date of valuation assuming

- (i) A willing seller and buyer;
- (ii) That prior to the date of the valuation there has been a reasonable period (having regard to the nature of the Affordable Unit and the state of the market) for the proper marketing of the interest for the agreement of price and terms and for the completion of the Disposal;
- (iii) That the state of the market level of values and other circumstances were on any earlier assumed date of exchange of contracts the same as on the date of valuation;

- (iv) That an independent valuation is carried out on the marketing of the property as new build;
- (v) That any extras such as higher specification fittings are disregarded when the property is first marketed as new build;
- (vi) That the restrictions imposed upon the Affordable Units in or by reason of this Deed are disregarded; and
- (vii) That an independent valuation is carried out three (3) months prior to the same of the Affordable Unit.

**“the Planning Permission”** means the grant of planning permission by the Council pursuant to the Application

**“Qualifying Person(s)”** means a person having local connections and proven or identified need which shall be conclusively presumed in the case of a person who

[THIS DEFINITION WILL VARY ON A CASE BY CASE BASIS TO REFLECT LOCAL PLANNING POLICY BUT ALSO THE PARTICULAR CIRCUMSTANCES AFFECTING A SITE]

- (a) was born in the Locality (or other defined geographic area as the case may be), or
- (b) has lived in the Locality (or other defined geographic area as the case may be) for a continuous period of at least three (3) years up to and including the date on which a Disposal is agreed, subject to contract, of an Affordable Unit, or
- (c) has, immediately before the date on which a Disposal is agreed, accepted an offer of permanent employment in the Locality (or other defined geographic locality as the case may be), or
- (d) has worked in the Locality (or other defined geographic area as the case may be) for a continuous period of at least three (3) years up to and including the date on which a Disposal is agreed, subject to contract, of an Affordable Unit, or
- (e) is currently a member of HM Armed Forces or is in prison, hospital or similar accommodation and immediately prior to this lived in the Locality (or other defined geographic area as the case may be) for a minimum of three years, or
- (f) has within the three years up to and including the date on which a Disposal is agreed, completed a tertiary education course and immediately prior to commencing that course had lived within the Locality (or other defined geographic area as the case may be) for a minimum period of three years, or
- (g) is by blood or marriage or civil partnership a member of the family (as defined in Section 113 of the Housing Act 1985) of a person who falls within one of the above categories and needs to live in the Locality (or other defined geographic area as the case may be) either because they are ill and require care and support from that person or because that person is ill and requires care and support from the applicant, or
- (h) has any other reason for living in the Locality (or other defined geographic area as the case may be) which is approved by the Council; and
- (i) has registered an interest in living in the Locality (or other defined geographic area as the case may be) and is on the housing register maintained by the Local Housing Authority and/ or any Housing Association operating in the District

**“Registered Provider”** has the meaning set out in the Housing and Regeneration Act 2008 as may be amended

**“the Site”** is the land against which this Deed may be enforced and which is registered at the Land Registry under title no. [...] and shown for identification purposes only edged [colour] on Plan no. 1 annexed hereto

**“Shared Equity Transfer”** means a transfer by a Local Housing Authority or Housing Association to a Qualifying Person of a share of not more than [insert percentage] of the freehold of a Shared Ownership Unit so that the freehold interest in such unit is

then held by the Local Housing Authority or Housing Association and such person proportionately

**“Shared Ownership Lease”** means a lease substantially in the same form as that provided by Local Housing Authorities and Housing Associations for comparable properties provided that any such lease shall (a) not enable the leaseholder to acquire at any time more than a [insert percentage] share of the Open Market Value of the Shared Ownership Unit and (b) provide for the leaseholder to pay an annual rent of not less than [insert figure] or not less than such other amount as exceeds £1 the amount defined as a ‘low rent’ by the Leasehold Reform Act 1967 or any amendment or re-enactment thereof

**“Shared Ownership Unit”** means an Affordable Unit in respect of which a Shared Ownership Lease is granted by the Local Housing Authority or Housing Association to a Qualifying Person

**“Social Rented Housing”** means rented housing owned and managed by Local Housing Authorities and Housing Associations for which guideline target rents are determined through the national rent regime and may also include rented housing owned or managed by other persons or bodies and provided under equivalent rental arrangements, as agreed with the Council or with the Homes and Communities Agency as a condition of grant

**“Unit”** means any dwelling constructed or to be constructed on the Site in accordance with the Planning Permission

**“Valuer”** means a chartered member of the Royal Institute of Chartered Surveyors

- 1.2 The expressions “the Council” “the Owner”/ “the Housing Association” [delete as appropriate] and “the Bank” shall where the context admits include those deriving title under each of them.
- 1.3 Words importing one gender shall be construed as including any gender.
- 1.4 Words importing the singular shall be construed as importing the plural and vice versa.
- 1.5 The clause and the paragraph headings in the body of this Agreement and in the Schedules do not form part of this Deed and shall not be taken into account in its construction or interpretation.
- 1.6 Any reference in this Agreement to any statute or statutory provision shall be construed as referring to that statute or statutory provision as the same may from time-to-time be amended, modified, extended, re-enacted or replaced (whether before or after the date of this Agreement) and including subordinate legislation made under it from time-to-time.
- 1.7 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.

## **2. Recitals**

- 2.1 The Council is the local planning authority for the purposes of the Act for the area within which the Site is located and is the authority by which the planning obligations herein contained are enforceable.

- 2.2 The Owner/ Registered Provider [delete as appropriate] is the freehold/leasehold owner of the Site which is part of the land and premises registered at HM Land Registry with Title No: ....
- 2.3 The Owner/ Registered Provider [delete as appropriate] has applied to the Council pursuant to the Act for permission to develop the Site under the Application.
- 2.4 The Bank is the owner of a charge over the property registered at entry no. ... of the charges register at the Land Registry and consents to the Owner/Registered Provider entering into this Agreement.
- 2.4 The Council have resolved that subject to completion of this Agreement Planning Permission should be granted in respect of the Application.

### **3. Planning Obligations**

- 3.1 This Planning Obligation by Agreement is made pursuant to Section 106 of the Act and all other enabling powers and the obligations contained in this Deed are planning obligations for the purposes of that section insofar as they fall within the terms of sub-section 106(1).

### **4. The Covenant of the Owner/ Housing Association [delete as appropriate]**

The Owner/ Registered Provider [delete as appropriate] covenants with the Council so as to bind their interest in the Site to perform the obligations specified in the First Schedule herein.

### **5. The Covenant of the Council**

The Council hereby covenants with the Owner/ Registered Provider [delete as appropriate] to issue the Planning Permission notice as soon as reasonably practicable after the date of this Agreement.

### **6. The Consent of the Bank**

- 6.1 The Bank hereby consents to the giving of the obligations on the part of the Owner/Registered Provider and hereby agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession, and that such liability will cease once it has parted with its interest in the Land.

### **7. Mortgagee in Possession [DELETE AS APPROPRIATE]**

- 7.1 The obligations contained in this Agreement shall not be binding or enforceable against any mortgagee in possession of an owner or Registered Provider or any receiver appointed by such a mortgagee in possession provided always that a successor in title of such a person will be bound by the obligations contained in this deed.

or

- 7.1 The obligations contained in this deed shall not be binding or enforceable against any mortgagee of a Local Housing Authority or Registered Provider or any receiver appointed by such a Mortgagee, or any person deriving title through such a mortgagee or receiver provided always that a successor in title of such a person will be bound by the obligations contained in this deed

[7.2 The obligations contained in this deed shall not be binding or enforceable against any person who by virtue of the terms of the lease of a Shared Ownership Unit or any mortgagee of a Shared Ownership Unit or any person deriving title through such a mortgagee or receiver provided always that a successor in title of such a person will be bound by the obligations contained in this deed]

or

7.1 The mortgagee in possession or receiver appointed by the mortgagee in possession shall, before seeking to dispose of the Affordable Units pursuant to any default under the terms of its mortgage or charge, give not less than three months' prior notice to the Council of its intention to dispose, and the following provisions shall apply, provided that the rights and obligations in this paragraph shall not require the mortgagee in possession to act contrary to its duties under the charge or mortgage and the Council must give full consideration to protecting the interest of the mortgagee in possession in respect of the money outstanding under the charge or mortgage:

7.1.1 If the Council responds within one month from the receipt of the mortgagee in possession's notice and indicates that arrangements for the transfer of the Affordable Units can be made in such a way as to safeguard them as Affordable Housing, the mortgagee in possession shall co-operate with those arrangements and use its best endeavours to secure the transfer.

7.1.2 If the Council or any other person cannot within one month of the date of service of its response under paragraph 7.1.1 secure the transfer then, provided that the mortgagee in possession has complied with its obligations under paragraph 7.1.1, the mortgagee in possession shall be entitled to dispose of the Affordable Units free from the restrictions set out in this paragraph 7.1 which shall then cease to apply to those units.

7.1.3 If the Council does not serve its response to the mortgagee in possession's notice within one month, the mortgagee in possession shall be entitled to dispose of the Affordable Units free of the restrictions set out in this paragraph 7.1 which shall then cease to apply to those units

## **8. Agreements and Declarations**

It is hereby agreed and declared as follows:

8.1 Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid first class or recorded delivery post to the party to be served at its address herein specified or such other address as may from time to time be notified for this purpose by notice served under this Agreement and any such notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face value it is signed on behalf of the Council by an officer or duly authorised signatory thereof.

8.2 No person shall be liable for breach of a covenant contained in this Agreement after it shall have parted with all interest in the Site or that part of the Site in respect of which such breach occurred but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

8.3 If the Planning Permission shall expire before the Commencement Date or shall at any time be revoked the provisions of this Agreement shall forthwith determine and cease to have effect.

8.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission)

granted (whether or not on appeal) after the date of this Agreement save for any subsequent reserved matters permission.

- 8.5 Each Disposal of the Affordable Unit shall include a restriction in the following terms:  
"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the [appropriate council post] (or other officer authorised for the time being by the Council) of the [name of council], [address of council] that the provisions of [*specify clause, paragraph or other particulars from transfer of Affordable Unit*] have been complied with"
- 8.6 This Agreement shall upon completion be registered as a Local Land Charge against the Affordable Units.
- 8.7 The Council will upon the written request of the Owner/ Registered Provider [delete as appropriate] at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof and cancel all related entries in the register of Local Land Charges.
- 8.8 The Owner/ Registered Provider [delete as appropriate] will supply to the Council within two weeks of the Council's written request to do so such information as the Council may reasonably require for monitoring purposes in order to determine whether the restrictions and obligations of this Agreement are being observed
- 8.9 Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 8.10 Where any certificate, consent, permission or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the decision of the same shall not be unreasonably withheld and shall be given without unreasonable delay and shall either be granted or written reasons given for refusal.
- 8.11 [For the avoidance of doubt, in the event that s [Shared Ownership Unit/ Rented Unit] is purchased outright by the current owner the provisions of paragraphs [...] shall no longer apply]
- 8.12 The Owner agrees to pay the Council's reasonable legal costs, charges and disbursements incurred in connection with the preparation of this agreement and registration at the Land Registry

## **9. Disputes**

- 9.1 Unless and to the extent not specified otherwise in this Agreement any dispute (save for any disputes as to matters of law) shall be referred at any appropriate time by either party to a person having appropriate professional qualifications and experience in such matters ("the Expert") appointed jointly by the parties or in default by the President for the time being of the Royal Institution of Chartered Surveyors or the President of such other professional body as shall be relevant for the nature of the dispute in question (as appropriate) (or on his behalf) on the application of either party.
- 9.2 The Expert shall have sufficient post qualification experience (as determined by the Council) in the area of the dispute in question.
- 9.3 The Expert shall act as an expert and not as an arbitrator and the decision of the Expert shall be final and binding upon the parties and the following provisions shall apply to the Expert.

- 9.4 The charges and expenses of the Expert shall initially be borne equally between the parties and following the Expert's decision shall be borne in such proportions as the Expert may direct.
- 9.5 The Expert shall give the parties an opportunity to make representations to him before making his decision which he shall make available to the other party on request.
- 9.6 The Expert shall be entitled to obtain opinions from others if he so wishes.
- 9.7 The Expert shall make his decision on valuation matters within the range of any representations made by the parties.
- 9.8 The Expert shall comply with any time limits or other directions agreed by both parties on or before his appointment.
- 9.9 If the Expert dies or is unable or unwilling to accept his appointment or to carry out his functions then either party may apply for a replacement to be appointed in his place and this procedure may be repeated as often as necessary.
- 9.10 The decision of the Expert must be given in writing setting out the reasons behind such decision.
- 9.11 If the parties fail to agree as to the nature of the difference or question then a decision as to the nature of such difference or question shall be referred to a solicitor or barrister of sufficient relevant experience (as determined by the Council) in the same manner and the same terms as set out in clause 9.1 to 9.10 inclusive who shall determine which type of professional should be appointed in relation to such matter.

**IN WITNESS** whereof the Council the Owner/ Housing Association [delete as appropriate] and the Bank have executed this Planning Obligation by Agreement as a Deed the date and year first before written.

## THE FIRST SCHEDULE

**[A – DISCOUNTED SALE delete if not applicable]**

### The Obligations

#### Affordable Housing

1. The Owner covenants with the Council as follows:-
  - 1.1 To ensure that provision is made for the Affordable Units in the construction of the Development
  - 1.2 That the Affordable Units will be developed and built in accordance with the Planning Permission
  - 1.3 Not to allow completion of the Disposal of and/ or occupation of more than ... per cent (...%) of the Full Market Value Units until the Affordable Units have been constructed and made ready for residential occupation and written notification of such has been received by the Council
  - 1.4 Any subsequent owner of an Affordable Unit shall reside in the Affordable Unit as his main residence and shall not permit any other person to live in the Affordable Unit (other than a person who forms part of their own household) without first obtaining the written consent of the Council.
  - 1.6 To provide the Council with the Notice of Commencement of Development no later than the Commencement Date and the Notice of Development of the first dwellinghouse no later than the date of occupation of the first dwellinghouse.
2. The Owner further covenants with the Council as follows:-
  - 2.1 To provide the Council with the Notice of Sales Release Date not less than six (6) weeks before the date upon which they propose to release the Affordable Units for Sale in order that the Council may nominate a Qualifying Person and/or person with a Housing Need for occupation of the unit.
  - 2.2 To accept the Council's nomination of a Qualifying Person with a Housing Need for the occupation of an Affordable Unit.
  - 2.3 The Affordable Units shall first be offered at the Affordable Price to persons at least one of whom is a Qualifying Person and/or a person with a Housing Need in respect of the Locality (or other defined geographic area as the case may be)
  - 2.4 If no sale has been agreed, subject to contract, within ... (...) weeks of the Affordable Units first being offered for sale then the Affordable Units may additionally be offered at the Affordable Price to persons at least one of whom is a Qualifying Person and/or a person with a Housing Need in respect of the parishes of [...](or other defined geographic area as the case may be).
  - 2.5 If no sale has been agreed, subject to contract, within ... (...) weeks of the expiry of the period set out in paragraph 2.4 than the Affordable Units may additionally be offered at the Affordable Price to persons as least one of whom is a Qualifying Person and/or a Person with a Housing Need in respect of the District of [...](or other defined geographic area as the case may be).
  - 2.6 In the event that the Owner or any subsequent owner of the Affordable Unit shall demonstrate to the Council that the Affordable Unit has been offered on the open market to Qualifying Persons and/or persons with a Housing Need for not less than ... (...)

weeks (and produce a certificate in writing to this effect from either the Owner or a local estate agent instructed by a subsequent owner in respect of the sale of the Affordable Unit) or such shorter period as may be approved in writing by the Council then the Affordable Units shall be entitled (on giving ... (...) working days' notice to the Council) to Dispose of the Affordable Unit at the Affordable Price to persons notwithstanding that such person may not be a Qualifying Person and/or a person with a Housing Need, provided always that on any subsequent Disposal the provisions of this Agreement shall again apply and always subject to the Affordable Units being Disposed of at the Affordable Price..

- 2.7 In the event that an Affordable Unit could be occupied by either a Qualifying Person and/or a person with a Housing Need the person with a Housing Need will take priority UNLESS a local lettings policy is in place in which case allocation shall be in accordance with the local lettings policy.
- 2.8 The Affordable Unit shall not be Disposed of after the date hereof for an amount exceeding the Affordable Price ascertained in accordance with the provisions of this Agreement
- 2.9 No Disposal of the Affordable Unit after the date hereof shall be completed and no such Disposal shall be registered at the Land Registry unless the Council has first consented in writing to such registration PROVIDED THAT such consent shall be given forthwith upon
- (a) evidence being furnished that the disponent (or in the case of joint disponents one of the disponents) is a Qualifying Person; and
  - (b) the Solicitor or Licensed or other authorised Conveyancer acting for the disponent(s) firstly certifying to the Council that any consideration expressed to be given for the Low Cost Unit by the disponent(s) did not exceed the Affordable Price as evidenced by the certificate given by a Valuer not more than six (6) months before the date of such Disposal and secondly supplying to the Council a deed of covenant executed by the disponent(s) in accordance with clause 2.9 hereof.
- 2.10 The terms of the Agreement and transfer of an Affordable Unit to a Qualifying Person shall be no less beneficial than the terms on which the owner at the time generally offer dwelling houses for sale on the open market.
- 2.11 The first of each and every disposal of an Affordable Unit shall provide (by way of a covenant in favour of the Owner) that each and every Disposal of the Affordable Unit shall be at the Affordable Price to a Qualifying Person in accordance with the provisions of this Deed and that all subsequent owners of the Affordable Unit shall be bound by the provisions of this Agreement
- 2.12 Any subsequent owner of an Affordable Unit shall give written notification to the Council's [appropriate post] of his intention to sell the Affordable Unit prior to it being offered for sale in order that the Council may nominate a Qualifying Person and/or person with a Housing Need to occupy the unit and the owner shall accept the Council's nomination.
- 2.13 Any subsequent owner shall on each and every subsequent Disposal of an Affordable Unit submit to the Council's [appropriate post] for approval the calculation of the Affordable Price and the Open Market Value of the Affordable Unit prior to the Affordable Unit being offered for sale and the Council hereby covenants that the approval hereby required to be obtained shall not be unreasonably withheld or delayed
- 3 The Owner covenants and agrees to supply to the Council (within 2 weeks of the Council's written request so to do) such information as the Council may reasonably require in order to determine whether the matters referred to herein are being observed.

## THE FIRST SCHEDULE

**[B – OWNER RENTED delete if not applicable]**

### The Obligations

#### Affordable Housing

1. The Owner covenants with the Council as follows:-
  - 1.1 That the Affordable Units will be developed and built in accordance with the Planning Permission
  - 1.2 Not to allow completion of the Disposal of and/ or occupation or more than ... per cent (...%) of the Full Market Value Units until the Affordable Units have been constructed and made ready for residential occupation and written notification of such has been received by the Council
  - 1.3 Any subsequent owner of an Affordable Unit shall reside in the Affordable Unit as his main residence and shall not permit any other person to live in the Affordable Unit (other than a person who forms part of their own household) without first obtaining the written consent of the Council.
  - 1.4 The Affordable Units shall be occupied only by a Qualifying Person and/or a person with a Housing Need and members of their household.
  - 1.5 The Affordable Units shall not be used other than as Affordable Housing in perpetuity
  - 1.6 Not to allow any Affordable Unit to be disposed of other than by letting by way of an Assured Tenancy or Assured Shorthold Tenancy (as defined in the Housing Act 1988 as amended) or on such other terms as the Council shall approve (such approval not to be unreasonably withheld or delayed) at the Affordable Rent
  - 1.7 Not to increase the Affordable Rent without first agreeing the increase with the Council in writing.
2. The Owner further covenants with the Council as follows:-
  - 2.1 Before an Affordable Unit is marketed for letting to submit to the Council the Owner's Lettings Policy for written approval
  - 2.2 To ensure whenever an Affordable Unit is marketed for letting that potential applicants are advised that they need to register their interest with the Council and to join the Council's Housing Register and Cumbria Choice register.
  - 2.3 On the initial letting of an Affordable Unit to give to the council ... (...) weeks' notice in writing of the availability for letting of that unit in order that the council may carry out a valuation of the unit to enable the initial Affordable Rent calculation in line with the formula set by the Homes and Communities Agency and to enable the Council to nominate a Qualifying Person and/or a person with a Housing Need for occupation.
  - 2.4 On subsequent lettings to give the Council ... (...) weeks' notice in writing of the availability of the Affordable Unit in order that the Council may nominate a Qualifying Person and/or a person with a Housing Need for occupation.
  - 2.5 To accept the Council's nomination of a Qualifying Person and/or a person with a Housing Need for occupation of an Affordable Unit save that the Owner shall be entitled to refuse such nomination on grounds which shall be legitimate commercial or legal reasons.

- 2.6 The Affordable Units shall first be offered for rental at the Affordable Rent to persons at least one of whom is a Qualifying Person and/or a person with a Housing Need in respect of the locality (or other defined geographic area as the case may be).
- 2.7 If no Qualifying Person and/or a person with a Housing Need has agreed terms for letting with the Owners within ... (...) months of the unit being made available for letting and marketed as such locally then the Affordable Units may additionally be offered by the Owners for rental at the Affordable Rent to persons at least one of whom is a Qualifying Person and/or a person with a Housing Need in respect of the District PROVIDED THAT when the Affordable Unit becomes available for occupation again the provisions of this paragraph 2 shall apply in their entirety.
3. The Owner may, as an alternative to their obligations under paragraph 2 above, transfer the Affordable Units to a Housing Association in which case the provisions of this paragraph 3 shall apply:
  - 3.1 The Owner shall not allow more than [number] of units of occupation to be built on the Site in implementation of the Development until it has contracted to Dispose of those units which are to be Affordable Units to a Housing Association on terms that accord with relevant Homes and Communities Agency funding requirements current at the date of construction of the Affordable Units.
  - 3.2 The Affordable Units shall thereafter be rented by the Housing Association to Qualifying Persons and/or persons with a Housing Need at the Affordable Rent in accordance with the terms set out below:
    - 3.2.1 The Affordable Units shall initially be offered to Qualifying Persons and/or persons with a Housing Need in respect of the locality (or other defined geographic area as the case may be).
    - 3.2.2 If no Qualifying Person and/or a person with a Housing Need in respect of the locality (or other defined geographic area as the case may be) is identified using best endeavours then the Affordable Units may thereafter be offered to Qualifying Persons and/or persons with a Housing Need in respect of the District (or other defined geographic area as the case may be).
    - 3.2.3 The Council shall in the first instance be invited to nominate a Qualifying Person and/or person with a Housing Need for occupation of an Affordable Unit.
  - 3.3 In the event that an Affordable Unit could be occupied by either a Qualifying Person and/or a person with a Housing Need, the person with a Housing Need shall take priority UNLESS a local lettings policy is in place in which case the allocation shall be in accordance with the local lettings policy.
  - 3.4 In the event of an agreement having been completed as provided for in paragraph 3.1 but the same subsequently terminating then the Owner shall use its best endeavours to conclude second or further agreements as the case may be with another Housing Association in respect of the Affordable Units provided that if none can be concluded then the provisions of paragraph 2 shall apply.
4. The Owner covenants and agrees to supply to the Council (within 2 weeks of the Council's written request so to do) such information as the Council may reasonably require in order to determine whether the matters referred to herein are being observed.

## THE FIRST SCHEDULE

**[C – REGISTERED PROVIDER RENTED delete if not applicable]**

### The Obligations

#### Affordable Housing

1. The Registered Provider covenants with the Council as follows:-
  - 1.1 That the Affordable Units will be developed and built in accordance with the Planning Permission
  - 1.2 That, without prejudice to any statutory rights to acquire, the Affordable Units shall not be used other than as Affordable Housing in perpetuity
  - 1.3 That the Affordable Units shall be made available for occupation at the Affordable Rent by persons at least one of whom is a Qualifying Person and/or person with a Housing Need
  - 1.4 Not to permit the occupation of the Affordable Units otherwise than by a Qualifying Person and/or person with a Housing Need at the Affordable Rent together with any person who forms part of their own household
  - 1.5 Not to permit the occupation of the Affordable Units other than by persons occupying them as their main or only residence
  - 1.6 Not without the prior consent of the Council to sell any Affordable Unit other than by selling the freehold to a Registered Provider
2. The Registered Provider further covenants as follows:-
  - 2.1 The Affordable Units shall first be marketed for occupation at the Affordable Rent by persons at least one of whom is a Qualifying Person and/or person with a Housing Need in respect of the locality
  - 2.2 If after an Affordable Unit has been marketed for letting for a period of [...] weeks and no Qualifying Persons and/or person with a Housing Need has been identified and applied for a tenancy of the Affordable Unit then the Registered Provider may additionally offer the Affordable Unit at the Affordable Rent to persons at least one of whom is a Qualifying Person and/or person with a Housing Need in respect of the District (or other defined geographic area as the case may be) PROVIDED THAT on any subsequent re-letting of an Affordable Unit the provisions of this paragraph 2 shall apply in their entirety.
  - 2.3. The Owner covenants and agrees to supply to the Council (within 2 weeks of the Council's written request so to do) such information as the Council may reasonably require in order to determine whether the matters referred to herein are being observed.

## THE FIRST SCHEDULE

*[D – SHARED OWNERSHIP delete if not applicable]*

### The Obligations

#### Affordable Housing

1. The Registered Provider covenants with the Council as follows:-
  - 1.1 That the Shared Ownership Units will be developed and built in accordance with the Planning Permission
  - 1.2 That the Shared Ownership Units shall not be used other than as Affordable Housing in perpetuity
  - 1.3 Not to permit the occupation of the Shared Ownership Units other than by persons occupying them as their main or only residence together with members of their own household
2. The Registered Provider further covenants as follows:-
  - 2.1 That the Shared Ownership Units shall not be occupied otherwise than by persons at least one of whom is a Qualifying Person and/or person with a Housing Need under a Shared Ownership Lease or Shared Equity Transfer managed by a local housing authority or Registered Provider
  - 2.2 To notify the Council at least [...] weeks before the units are ready for first occupation in order that the Council may nominate a Qualifying Person and/or person with local Housing Need for occupation of a Shared Ownership Unit
  - 2.3 On subsequent Disposals to give the Council [...] weeks' notice in writing of the availability of the unit in order that the Council may nominate a Qualifying Person and/or person with a Housing Need for occupation.
  - 2.4 To accept the Council's nomination of a Qualifying Person or person with a Housing Need for Occupation of a Shared Ownership Unit save that the Owner shall be entitled to refuse such nomination on grounds which shall be legitimate commercial or legal reasons.
  - 2.5 The Shared Ownership Units shall initially be offered to Qualifying Persons and/or persons with a Housing Need in respect of the locality (or other defined geographic locality as the case may be)
  - 2.6 If no Qualifying Person and/or a person with a Housing Need in respect of [name of parish(es) (or other defined geographic locality as the case may be) is identified using best endeavours within [...] weeks then the Shared Ownership Units may thereafter be offered to Qualifying Persons and/or persons with a Housing Need in respect of the District(or other defined geographic area as the case may be) .
  - 2.7. The Registered Provider shall be entitled upon obtaining the prior written agreement of the Council to provide the Shared Ownership Units as Intermediated Affordable Housing instead; such prior written agreement shall not be unreasonably withheld and shall be forthcoming upon the Registered Provider submitting to the Council as acceptable scheme for provision of the Intermediate Affordable Housing.
3. The Owner covenants and agrees to supply to the Council (within 2 weeks of the Council's written request so to do) such information as the Council may reasonably require in order to determine whether the matters referred to herein are being observed.

## THE SECOND SCHEDULE

The unit size and tenure of Affordable Housing Units shall, unless otherwise specifically agreed in writing by the Council's [appropriate post] expressly for the purposes of this paragraph, be as follows:-

### Discounted Sale

- 1 bedroom (number) ([plot]number(s))
- 2 bedroom (number) ([plot]number(s))
- 3 bedroom (number) ([plot]number(s))
- 4 bedroom (number) ([plot]number(s))
- Total (number)

### Rented

- 1 bedroom (number) ([plot]number(s))
- 2 bedroom (number) ([plot]number(s))
- 3 bedroom (number) ([plot]number(s))
- 4 bedroom (number) ([plot]number(s))
- Total (number)

### Shared Ownership

- 1 bedroom (number) ([plot]number(s))
- 2 bedroom (number) ([plot]number(s))
- 3 bedroom (number) ([plot]number(s))
- 4 bedroom (number) ([plot]number(s))
- Total (number)

### Social Rented

- 1 bedroom (number) ([plot]number(s))
- 2 bedroom (number) ([plot]number(s))
- 3 bedroom (number) ([plot]number(s))
- 4 bedroom (number) ([plot]number(s))
- Total (number)

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**THE THIRD SCHEDULE**

Draft planning permission in the form annexed hereto

DRAFT DECEMBER 2011

**EXECUTED AS A DEED** by the )  
[name of council] )  
by affixing its common seal in the )  
presence of: )

Authorised Signatory .....

Authorised Signatory.....

**SIGNED AS A DEED** by )  
... )  
In the presence of )  
Name: )  
Address: )  
)

**SIGNED AS A DEED** by )  
... )  
In the presence of )  
Name: )  
Address: )  
)

DRAFT DECEMBER 2011