



## **Cambridge Sub-Region**

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### **Improving the use of Section 106 Agreements to Deliver Affordable Housing**

#### **Section 9 – Recommended Model, Section 106 Clauses**

**March 2009**

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## 9. RECOMMENDED MODEL SECTION 106 CLAUSES

- 9.1 Most of this section is set out in the form of a schedule to a Section 106 Agreement dealing with the provision of affordable housing. The clauses reflect emerging good practice as identified by Ark and are written in a form which ought to be capable largely of being applied to a real agreement, i.e. they are legalistic and aim to be certain in meaning. Notwithstanding this, Ark is not a legal practice and it would be sensible for the Cambridge sub-regional authorities to procure a legal opinion on the proper enforceability of the clauses.
- 9.2 Not every clause will be relevant to every scheme. The model clauses are intended to cover most issues connected to an affordable housing planning obligation which might appropriately be dealt with in a Section 106 Agreement. There is therefore potential, as requested in the assignment brief, for authorities to pick and mix the clauses to suit the particular circumstances of their schemes.
- 9.3 Notwithstanding the points made earlier in this report about the enforceability of a local authority's right to approve an AHP, the model clauses are drafted to permit an authority such a right. Therefore, potentially this aspect of the model clauses could be open to challenge.
- 9.4 The model clauses are as follows:

### **DEFINITIONS relating to Affordable Housing**

The words and expressions below shall mean as follows:

- 1.1 "1985 Act" means the Housing Associations Act 1985
- 1.2 "1996 Act" means the Housing Act 1996
- 1.3 "Access" shall mean the provision of roads [footpaths and cycleways] to an adoptable standard together with all rights and easements over the said roads [footpaths and cycleways] to provide access and egress to the Affordable Dwellings
- 1.4 "Actual Market Value" means the market value of an Affordable Dwelling assessed in accordance with the provisions of the Homes and Communities Agency's Shared Ownership Lease Schedule 5 that deal with a Staircasing Event.
- 1.5 "Affordable Dwelling" shall mean a Dwelling forming part of the Affordable Housing together with Access and such entrance way corridors parking areas and other ancillary areas as are necessary for the enjoyment of such a dwelling [as set out in Schedule X].

- 1.6 "Affordable Housing" means affordable housing as described and defined in Annex B of Planning Policy Statement 3: Housing (2006) dated November 2006 and in Annex B of the document entitled: "Delivering Affordable Housing" dated November 2006, or any Planning Policy Statement Guidance Notes or Circulars which may supersede it and which are current at the date of this Agreement.
- 1.7 "Affordable Housing Contract" means: a binding contract with an approved Affordable Housing Provider (AHP) for:
- [Delete for the correct option as applicable]
- [the sale or an agreement for lease of the relevant part of the Affordable Housing Land; or a contract for sale or agreement for lease for the sale or long lease (here meaning a lease of no less than 125 years) of completed Affordable Dwellings; or a binding contract for sale or agreement for lease combining the sale or long lease of the relevant part of the Affordable Housing Land with a contract for the construction of the Affordable Dwellings on that land] which contract for sale or agreement for lease in each such case includes:-
- (a) terms requiring the Affordable Housing Provider to offer Nomination Rights to the Council in relation to the Social Rented Units and the HomeBuy Zone Agents in respect of the Shared Ownership Units;
  - (b) full and free rights of Access subject to any standard conveyancing requirements in respect of pro rata payments relating to the repair and maintenance of such Access pending adoption;
  - (c) full and free rights for the passage of Services through Service Media which shall be in the adjoining land up to and abutting the boundary to the relevant part of the Affordable Housing Land subject to any standard conveyancing requirements in respect of pro rata payments relating to the repair and maintenance of such Service Media pending adoption; and
  - (d) such other commercial terms and conditions as may be reasonably required by the relevant owner and/or the developer and/approved AHP;
- 1.8 "Affordable Housing Land" " shall mean those parts of the Land edged red on the plan number X annexed to this agreement which shall be identified as Affordable Housing and ancillary space to include car parking

- 1.9 “Affordable Housing Provider” (AHP) shall mean an organisation selected jointly by the Owners and the Council and approved by the Homes and Communities Agency and which is either:
- (i) a Registered Social Landlord within the meaning given in Part 1 of the Housing Act 1996; or
  - (ii) another organisation whose object is or includes the provision and or management of Affordable Housing
- 1.10 “Cluster” shall mean a group of Affordable Dwellings
- 1.11 “Dwelling” shall mean any unit of self-contained residential accommodation constructed pursuant to the Planning Permission.
- 1.12 “HomeBuy Zone Agent” means a body appointed or approved by the Homes and Communities Agency to act as agents for the allocation of affordable dwellings disposed of by way of intermediate tenure (including Shared Ownership Units).
- 1.13 “Homes and Communities Agency” shall include any successor body in substitution for the Homes and Communities Agency.
- 1.14 “Index Linked” shall mean the indices based on RPI plus ½ per cent as appropriate.
- 1.15 “Infrastructure” means all sewerage plant machinery apparatus and equipment and sewerage works drains rising mains and associated manholes mains inspection chambers headwalls public utilities bridges (including any railway and/or river crossings) tunnels and underpasses culverts lagoons balancing ponds flood storage areas pumping stations or pumping apparatus flood plains sound barriers noise attenuation works screens or bunds strategic planting and landscaping open space and other main amenities and accommodation works and all other works Services and Service Media apparatus and equipment that may be required pursuant to this Agreement or pursuant to any other planning or infrastructure agreement or otherwise needed in order to commence construct complete sell use and occupy the Development and/or to market and sell all or any of the Dwellings comprised in the Development or any variation amendment or substitution thereof or any Reserved Matters Approvals pursuant thereto.
- 1.16 “Intermediate Housing” shall mean an Affordable Dwelling that is within the definition of intermediate housing contained in Planning Policy Statement 3 Housing (November 2006)

- 1.17 “Intermediate Rented Unit” shall mean an Affordable Dwelling that forms part of the Affordable Housing where:
- (i) the rents are capped at 80% of the local market rate;
  - (ii) the tenancies are periodic not permanent i.e. Assured Shorthold Tenancies; and
  - (iii) the tenancies are not subject to the Right to Acquire.
- 1.18 “Long Lease” shall mean a lease for a term of at least 125 years.
- 1.19 “Management Standards” means the standard of long term housing management expected from the AHP or its managing agent as set out in the document [ ] annexed
- 1.20 “Market Dwelling” means any Dwelling other than an Affordable Dwelling
- 1.21 “Market Value” means (in relation to the initial calculation of the Subsidy only) the market value as assessed by a Valuer of a Dwelling as confirmed to the Council by the relevant Approved AHP (such value being calculated in accordance with the RICS Appraisal and Valuation Standards (5th Edition)) and being the estimated amount for which in the absence of this Agreement residential units of equivalent location specification size state of repair and condition and which are not restricted to use as affordable housing should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s-length transaction after proper marketing wherein the parties had each acted knowledgeably prudently and without compulsion and on the following assumptions:-
- (a) no discount is to be allowed for bulk sales or on the basis that more than one property is being sold to the same purchaser;
  - (b) it is sold with vacant possession and with good and marketable title;
  - (c) the title is free from encumbrances;
  - (d) the valuation is for the unrestricted freehold *or as appropriate leasehold (of an initial minimum 125 year term)* with vacant possession which, for the avoidance of doubt, ignores any use as Affordable Housing;
  - (e) that the property is newly built, decorated, fully equipped for sale and serviced and fit for immediate occupation;
  - (f) that the valuation is for sale of an individual unit and not part of a larger sale;

- (g) all necessary Access landscaping and open space have been laid out and completed and all other Dwellings within the Development have been built, sold and occupied;
  - (h) assuming the Application Land is free from contamination;
- 1.22 New Build HomeBuy means the Government initiative known as “New Build HomeBuy” as set out in the document entitled “Delivering Affordable Housing” dated November 2006
- 1.23 “Nominations Agreement” means a nominations agreement in respect of the Affordable Housing in favour of the [Council/HomeBuy Agent] and that will be substantially in the form attached at Annex .....
- 1.24 Nomination Rights” means;
  - (a) in respect of Social Rented Affordable Housing Units for the Council the opportunity to refer potential occupiers of the Social Rented Affordable Housing Units to the AHP [pursuant to a Nominations Agreement];
  - (b) in respect of New Build Homebuy or other Intermediate Housing Units the HomeBuy Zone Agents will be afforded the opportunity to refer potential occupiers of the Intermediate Housing Units to the AHP;
- 1.25 “Occupation” means first residential occupation of a Dwelling save for the purpose of construction fitting out or marketing and the expressions “Occupy” and “Occupied” shall be construed accordingly.
- 1.26 “On Costs” means any reasonable costs incurred by an AHP in relation to any transaction regarding Staircasing Receipts as described in Sub-Paragraph 2.5 of Schedule 5 of the Homes and Communities Agency Shared Ownership Lease which are not to be reimbursed by any other person.
- 1.27 “Practical Completion” means substantial completion of a Dwelling to a stage where it is fit for occupation.
- 1.28 “Public Subsidy” means funding of whatever kind made available by the Homes and Communities Agency whether by way of grant, equity stake or other mode of investment or any other grant invested by a public or statutory body.
- 1.29 “RPI” means the General Index of Retail Prices compiled and published by the Office of National Statistics or any other such index that substitutes the General Index of Retail Prices which for the avoidance of doubt shall be used as the baseline index for each annual change where relevant.

- 1.29 “Rental Agreement” means an assured tenancy in respect of a Social Rented Affordable Housing Unit under which the rental payments are in accordance with the Target Rents]
- 1.30 "Services" shall mean the supply of water electricity gas telephone and the disposal of foul and surface water.
- 1.31 “Service Media” shall mean all pipes sewers mains ducts conduits gutters watercourses wires cables channels flues and ducting lasers optical fibres electronic data or impulse transmission communication or reception systems broadband and all other conducting media and any other apparatus.
- 1.31 “Shared Equity Units” shall mean those Affordable Dwellings where the occupier purchases a proportion of the equity but pays no rent on the other retained proportion and is not permitted to staircase.
- 1.32 “Shared Ownership Units” shall mean those Affordable Dwellings where the occupier purchases a proportion of the equity but pays no rent on the other retained proportion and is not permitted to staircase.
- 1.33 “Shared Ownership Lease” means a lease or sub lease under which an Affordable Dwelling may be disposed of by way of shared ownership or shared equity sale and/or lease (including New Build HomeBuy) granted at a premium to be paid by the tenant or sub tenant upon completion or raised by way of mortgage or charge and under which the provisions of the lease or sub lease enable the tenant or sub tenant to acquire the balance or an increased share of the legal or equitable interest in the relevant Dwelling including The Homes and Communities Agency standard Shared Ownership Lease.
- 1.34 “Shared Ownership Unit(s)” (including New Build HomeBuy) means an Affordable Dwelling(s) [which are identified as such in accordance with Schedule X and] which are intended to be disposed of by way of Shared Ownership Leases
- 1.35 “Social Rented Affordable Housing Unit” shall mean an Affordable Dwelling [identified as such in accordance with Schedule X] and which is to be let on an assured tenancy at Target Rents.
- 1.36 “Staircasing Event” means any occasion on which a lessee of a Shared Ownership Unit acquires additional equity in that unit pursuant to a Shared Ownership Lease or a tenant of a Social Rented Affordable Housing Unit acquires a share or the whole equity in their property under any current or future legislation that applies to Affordable Housing granting tenants the right to acquire the property.

- 1.38 “Staircasing Receipts” means payments made to the AHP (less reasonable On Costs) as a result of a Staircasing Event by a shared ownership lessee tenant or any other person for the acquisition of equity in a Dwelling pursuant to a Staircasing Event.
- 1.39 “Subsidy” means the amount expressed in pounds of the difference between;
- (a) the price (including land) attributable to the disposal of Affordable Dwelling to an AHP (being for the avoidance of doubt the price to be received from the AHP pursuant to an Affordable Housing Contract by an Owner as at the date of exchange of contracts of the Affordable Housing Contract and notified to the Council in writing and the relevant AHP; and
  - (b) the Market Value attributable to that Affordable Dwelling (including land) as at the date of exchange of contracts for the sale and purchase of that Affordable Dwelling to an AHP as agreed between the relevant owner and the AHP pursuant to an Affordable Housing Contract assuming it to have been completed and ready for residential occupation as at that date and notified to the Council in writing (such Market Valuation to have been certified by a Valuer)
- 1.40 “Target Rents” means either:
- (i) the Homes and Communities Agency/Tenant Services Authority target rents system PROVIDED THAT if The Homes and Communities Agency/Tenant Services Authority target rent system shall cease to operate or shall not have been revised in the year of the date of grant of the relevant assured tenancy then the last published target rent index linked to the increase (if any) in RPI plus 0.5% shall apply instead.
  - (ii) such other measure of rental affordability as may be submitted by the Owners or Developers and approved by the Council that retains the affordable housing at affordable prices or
- 1.41 “Valuer” shall mean a Member or Fellow of the Royal Institution of Chartered Surveyors being a chartered valuation surveyor of at least 10 years post qualification experience and appointed by the AHP and acting in an independent capacity.

## **Affordable Housing Obligations**

### **Covenants relating to Affordable Housing**

2. Unless otherwise agreed in writing by the Council the Owner on behalf of itself and its successors in title to the Land with the intention that the following provisions shall

bind the Land and every part of it into whomsoever's hands it may come (with the exception of individual purchasers of plots identified for Market Dwellings) covenants with the Council that;

### **Quantum**

- 2.1 X% (..... percent) of the total number of Dwellings constructed pursuant to the Planning Permission (rounded up or down to the nearest whole Dwelling) shall be provided as Affordable Housing.

### **Distribution**

- 2.2 The location of the Affordable Dwellings shall be substantially in accordance with the Plan [X] agreed with the Council and annexed to this Agreement.

### **Clustering**

- 2.3 Each Cluster shall be physically separate from and discontinuous with any other Cluster and there shall be no more than [ ] houses and [ ] flats within any Cluster.
- 2.4 The Affordable Dwellings shall not be visually distinguishable from the Market Dwellings constructed on the Site.

### **Tenure**

- 2.5 [%] of the Affordable Dwellings shall be provided as Social Rented Affordable Housing Units (rounded up or down to the nearest whole Dwelling); and
- 2.6 [%] of the Affordable Dwellings shall be provided as New Build Homebuy Units (rounded up or down to the nearest whole Dwelling);
- 2.7 [%] of the Affordable Dwellings shall be provided as Shared Equity Units/Shared Ownership Units (rounded up or down to the nearest whole Dwelling);
- 2.8 [%] of the Affordable Dwellings shall be provided as Intermediate Rented Units (rounded up or down to the nearest whole Dwelling);

### **Type by Tenure**

- 2.9 The mix of Affordable Dwellings rounded up or down to the relevant whole number shall be as follows:-

**Social Rented Affordable Housing Units consisting of: (Note: Need to show plot numbers, bed size and unit size in m<sup>2</sup>).**

.....

**Shared Ownership Units consisting of:**

.....

**Shared Equity Units consisting of:**

.....

**Intermediate Rented Units consisting of:**

.....

or such other tenure as agreed in writing with the Council's Director of .....

Note: This breakdown may need to appear by phase for a large multi-phased project noting the need to aim for equilibrium in mix by phase and when this proves impractical on a particular phase that the mix should be returned to that expected position within the next phase.

**Delivery Mechanism**

- 2.10 All Affordable Dwellings shall transfer to an Approved AHP and other than where justified following an assessment of economic viability in accordance with the Council's policy shall be provided without recourse to Public Subsidy provided always that the Approved AHP may use its own resources borrowings rental income receipts from sales/persons exercising any right to acquire under the 1996 Act or to staircase (other than receipts from the right to acquire under the 1996 Act or a Staircasing Event in respect of the other Affordable Dwellings as described in Schedule x) or other sources of finance to fund the acquisition of Affordable Dwellings and may use any available public subsidy to fund the acquisition of Additional Affordable Housing in combination with the Staircasing Receipts reserved and set aside pursuant to this Agreement.
- 2.11 The Owner will not permit the occupation of any Market Dwellings until it has entered into the Affordable Housing Contract with an AHP in relation to the Affordable Dwellings and before the Practical Completion of any of the Affordable Housing Units in accordance with the Affordable Housing Contract [or legal completion of transfer of Affordable Housing Land to the Council].
- 2.12 No more than [50%] of the Market Dwellings shall be Occupied until [75%] of the Affordable Dwellings shall have achieved Practical Completion and shall have been transferred to an AHP.
- 2.13 No more than [75%] of the Affordable Dwellings shall be Occupied until [50%] of the Market Dwellings shall have achieved completion.

- 2.14 The Owner will give written notice to the Council when the legal transfer of 50% of the total number of Market Dwellings and 75% of the Affordable Dwellings shall have been achieved.

### **Review and Resulting Variation in Affordable Housing Provision**

- 2.15 In the event that the Affordable Housing contribution is less than the policy expectations set out in the Council's Local Development Framework applying at the time of agreement and where the scheme (Affordable Housing and Market Housing) will complete more than 3 years from the date of agreement, the Council will require a review of the economic viability of the scheme.
- 2.16 The review will be conducted 18 months after the date of agreement in accordance with the template for testing economic viability included at annex ..... As a result of changes in the financial characteristics of the scheme resulting in an improvement to the developer's forecast profit for the remainder of the development not completed at the time of review by more than ....., the affordable housing contribution will be increased. The level of increase in contribution will be such as to return the economic viability forecast to a position where the forecast profit will equate to the forecast percentage level when this agreement was completed plus the tolerance of .....
- 2.17 For schemes continuing for more than 4 years from the date of agreement, further reviews will be conducted in accordance with these provisions on a cycle of one review each 18 months provided a scheme is at least 1 year from forecast completion at the point of the final review being conducted.
- 2.18 When considering how the affordable housing contribution should be increased following a review, the Council will seek an increase in dwelling types and tenures which are supported by recent evidence on housing needs and their relative priority.
- 2.19 A variation to the quantum or mix of Affordable Housing will be confirmed by issue of a Deed of Variation to this Agreement.

### **Availability of Grant and Variation in Affordable Housing Provision**

- 2.20 Where the Affordable Housing contribution set out in clauses 1.1 to 1.8 of this agreement is dependent on Public Subsidy and where at the date of this agreement there is no commitment from The Homes and Communities Agency (or other provider of Public Subsidy) to provide the Public Subsidy to the AHP then the level of Affordable Housing contribution can decrease in accordance with the following provisions:
- (a) if Public Subsidy is not forthcoming at all, then the Affordable Housing contribution will be adjusted to the baseline position as set out in

- table 1 in annex ..... for any period of the scheme's development when no Public Subsidy is available,
- (b) if Public Subsidy is forthcoming at a level less than that agreed between the Owner and the Council, as set out in table 2 in annex ....., then the Affordable Housing contribution will be adjusted pro-rata between the levels indicated in tables 1 and 2 in annex .... for any period of the scheme's development where Public Subsidy is lower than the agreed level.
- 2.21 Where the Owner has demonstrated to the satisfaction of the Council that it is unable to meet the Council's policy expectations for the provision of Affordable Housing because it would not be economically viable so to do the Council will use its reasonable endeavours in conjunction with the AHP to attract Public Subsidy at the levels indicated in table 2 in annex ..... in order to achieve the agreed Affordable Housing contribution.
- 2.22 For schemes continuing beyond a period for which a commitment to provide the Public Subsidy has been secured, a review will be conducted in accordance with the provisions of this clause and of clause 1.14 of this agreement.

#### **Affordability of Intermediate Housing**

- 2.23 **Note:** each LA to consider current policy and write own para based on its own policy

#### **Shared Ownership Units**

- 2.24 Subject to Clause [ ] of this Agreement and paragraph [ ] of this Schedule the Shared Ownership Units shall not be disposed of on their initial sale other than by way of Shared Ownership Lease unless otherwise agreed in writing by the Council;

#### **Social Rented Affordable Housing Dwellings**

- 2.25 Subject to clause ..... of this Agreement and paragraph [ ] of this Schedule the Social Rented Affordable Housing Units shall not be disposed of other than by way of a Rental Agreement unless otherwise agreed in writing by the Council and the AHP shall use reasonable endeavours to procure that each Affordable Housing Unit shall be excluded (so far as legally possible) from:-
- i. any Voluntary Purchase Grant scheme as referred to in the 1995 White Paper 'Our Future Homes' and/or the right to acquire as referred to in the Housing Act 1996

- ii. any right to buy introduced in favour of the occupiers of the Affordable Housing Units and/or
- iii. from any other mechanism that could result in any of the Affordable Housing Units becoming available for sale in the private housing market

### **Nomination rights**

2.26 The terms of any transfer of an interest in an Affordable Dwelling to an AHP shall provide that:

2.26.1 in respect of all first lettings of all Social Rented Affordable Housing Units and 75% of all true voids in terms of subsequent lettings of Social Rented Affordable Housing Units the Council shall be given Nomination Rights pursuant to a Nominations Agreement;

2.26.2 in respect of all first lettings of all [Intermediate Rented, Shared Equity, Shared Ownership Units], the [HomeBuy Zone Agent] shall be given Nomination Rights and the AHP shall use reasonable endeavours to enter into a Nomination Agreement with the [HomeBuy Zone Agent] in relation to those Shared Ownership Units pursuant to the draft agreement in Annex ...

**Note:** Problematic in application as a result of the sub-regional CBL scheme and is worthy of further debate.

### **Standards of Development**

2.27 The Social Rented Affordable Housing Units and Intermediate Housing must be constructed to meet or exceed the Design and Quality Standards April 2007 applicable from 1/04/2008 and in force at the time of commencement of the Development or in accordance with such other guidance as shall be issued by the Homes and Communities Agency or its successor and supplemented by the achievement of: Housing Quality Indicator (version 3) unit minimum scores of Size, Layout, Noise and Services, Accessibility and Energy and the Joseph Rowntree Foundation Lifetime Homes and the achievement of Secured by Design standards.

2.28 All Affordable Dwellings shall be built to meet or exceed Level 3 of the Code for Sustainable Homes and in addition any subsequent changes in Building Regulations will need to be met at a minimum.

**Note:** For longer term schemes, aspirational Code levels may be inserted in the agreement for future phases.

### **Satisfaction of Affordable Housing Requirement**

- 2.29 Once the Affordable Dwellings equating to X% (..... percent) of the total Dwellings approved pursuant to Reserved Matters Approvals shall have been identified by reference to those approvals then any residual areas of Affordable Housing Land may be developed for Market Dwellings.
- 2.30 The amount of the Subsidy and the date of any Affordable Housing Contract for disposal to an AHP in respect of each Affordable Dwelling shall be provided to the Council by the AHP together with a plan identifying the Affordable Dwelling to which that Subsidy relates

### **Service Charges and exclusion of liability for payments towards maintenance of public open space**

- 2.31 None of the individual purchasers tenants or occupiers of an Affordable Dwelling shall be required to make any contribution towards the maintenance of areas of public open space within the Application Land. The service charges payable by the occupiers of any Affordable Housing that are developed as flats shall be ..... Ground rents for the Affordable Housing shall be at a peppercorn.

**Note:** Each authority to include its own policy position on service charges/caps.

### **Application of Staircasing Receipts**

- 2.32 On the occurrence of any Staircasing Event relating to an Affordable Dwelling the Owner shall:
- (a) ring fence any equity released (including any capital gain) from a Shared Ownership Lessee staircasing under or out of the Shared Ownership Lease or a tenant of a relevant Affordable Housing Unit exercising any Right to Acquire after the deduction of the legal costs, agent fees and other costs reasonably incurred in connection with the transaction which may include any sums repayable to the Homes and Communities Agency or the Council and/or to any mortgagee resulting from such transaction (the "Relevant Equity Release") and to the extent that the Relevant Equity Release is not so applied it shall be applied towards the provision of Additional Affordable Housing within the ..... area to offset the loss of Affordable Housing in the area caused by a Shared Ownership Lessee staircasing under or out of the Shared Ownership Lease or a tenant of a relevant Affordable Housing Unit exercising the Right to Acquire. The Owner shall notify the Council's Director of ..... of any Shared

Ownership Lessee purchasing further equity in any Relevant Affordable Housing Unit or any tenant exercising the Right to Acquire.

- (b) The provisions of paragraph (a) above shall not apply where there is a statutory or regulatory requirement to account for the Staircasing Receipts to any other body;
- (c) the Owner shall procure that :
- all Staircasing Receipts are paid into an interest bearing account (including any interest accrued thereon) and shall procure an annual audited account to the Council demonstrating details of all receipts from the sale of any interest in Affordable Housing (including the dates upon which the Staircasing Receipts were received.
  - a record of all Staircasing Receipts are kept
  - that record is made available to the Council on demand
  - any Staircasing Receipts (including accrued interest) shall only be used for the provision of Additional Affordable Housing within the area or district
  - the AHP shall use reasonable endeavours to ensure the Staircasing Receipts are committed to the provision of Additional Affordable Housing within 3 years and spent within 5 years unless otherwise agreed in writing with the Council. In the event of any dispute then Independent Arbitration will be entered into by both parties.

## Monitoring

2.33 The Owner shall procure that the number and type of Affordable Housing will be monitored in order to ensure compliance with this Schedule ..... and shall by the 1<sup>st</sup> February and 1<sup>st</sup> August in each calendar year make a written return to the Council for the preceding six months detailing:

- the cumulative total and location of Dwellings Occupied for the whole site
- the number of Affordable Housing Dwellings completed with a breakdown specifying the number Affordable Housing Dwellings built and occupied with details of their tenure and unit type and size
- the number location and tenure of the Affordable Housing Dwellings with details of the rent and service charges and Market Value and equity sold to the occupier if under a Shared Ownership Lease
- the amount of receipts following a Staircasing Event

## **Mortgagee in Possession**

- 2.34 A mortgagee or chargee appointed by a mortgagee acting pursuant to the terms of a legal charge or mortgage shall be entitled to dispose of an Affordable Housing Unit free from the provisions of this Agreement, subject to the following:
- (a) The mortgagee or chargee will notify the Council in writing of its intention to exercise its power of sale
  - (b) The mortgagee or chargee shall use its reasonable endeavours to dispose of the Affordable Housing Unit to an approved RSL or AHP nominated in writing by the Council within 28 days of the Council receiving notification under (a) above.
  - (c) In the event of a nomination not being made under (b) above or a sale to a nominated Approved RSL or AHP not being completed within 3 months of a nomination being made the mortgagee or chargee may dispose of the Affordable Housing Unit on the open market free from the restrictions in this Agreement
  - (d) The Council shall in formulating or promoting any arrangements in respect of the Affordable Housing Unit give consideration to protecting the interests of the chargee in respect of monies outstanding under the charge or mortgage
- 2.35 The mortgagee shall, on completion of the sale of any Affordable housing Unit pursuant to paragraph [ ] above, apply the proceeds of the sale in the following order of priority:
- (a) To the mortgagee in respect of payment of all monies due under its legal charge or mortgage.
  - (b) To the mortgagee in respect of the reasonable costs incurred in connection with the sale and discharge of the legal charge or mortgage.
  - (c) To the Council the balance of the proceeds of sale up to the equivalent of the Subsidy.
  - (d) To the Approved RSL or AHP against whom the mortgagee exercised its rights under its legal charge or mortgage the balance of the proceeds.

## Releases

2.36 It is agreed and declared that:

2.36.1 The provisions of paragraph [ ] above shall cease to bind any of the Affordable Housing Dwellings if in relation to that Affordable Housing Dwelling it shall have been sold under a shared ownership lease and the leaseholder (or its mortgagee) has staircased his ownership under the lease to 100 percent; and