

Appendix 6 - Sec106 Community Led Self Build Terms

The following provides example Section 106 content for providing permanently discounted community led self-build housing. The Section 106 sits as a legal charge on the land and can only be varied by agreement of the Local Authority. The purpose of these clauses is to restrict the initial occupiers/sale and subsequent resale (and sub-letting) of Units on to eligible persons at a pre-determined discount in perpetuity.

DEFINITION OF TERMS

The following definitions (or versions of them as approved by the Council) should be included in the *Definitions* section of the Section 106 Agreement.

“Affordable Community Led Self Build” - means the building or completion by individuals or associations of individuals, of dwellings to be occupied as homes by those individuals, where affordability is clearly defined and legally protected in perpetuity.

“Site Owner” is the other party in this sec 106 Agreement, selected by the Council to sign a conditional agreement for lease, whether they are incorporated CLH organisation (e.g. self-build group) or Individual household.

“Eligible Person” – Means any person who meet the Eligibility Criteria for the Borough “Affordable Self Build Programme” [and any additional criteria defined within [successful CLH group] membership criteria].

“Eligibility Criteria” – Is the criteria agreed by the Borough and [selected Community Led Organisation] to assess the eligibility of individuals to own and rent Units. The Eligibility Criteria includes (but is not limited to) conditions that prospective residents must:

- Have been resident in the Borough for [number] years
- Have a household income of no more than [£90,000] per annum
- [Other specific criteria to be agreed]

AFFORDABLE HOUSING TERMS

General

These clauses should set out the parameters of the agreement that the successful Site Owner is entering. For example:

The Site Owner [selected CLH organisation or Individual] shall provide Intermediate Affordable Housing units with a discount of [XX%] on Open Market Value and Open Market Rent to be applied in perpetuity to all immediate and future sales and lettings.

The Site Owner shall not Occupy, cause or permit the Occupation and/or use or cause or permit the use of the Units other than as Intermediate Affordable Housing

That in respect of every lease granted assigned transferred or otherwise provided in respect of any Unit the following covenants shall be imposed:

"the lessee for himself or herself and his or her successors in title being the owner or owners for the time being and the mortgagee in possession of the terms of years hereby granted of the Unit hereby covenant with the lessor and separately with the [London Borough of Tower Hamlets] to comply with the terms of the Agreement between (1) the [London Borough of Tower Hamlets] and (2) the Site Owner [Individual or Community Led Organisation] pursuant to section 106 of the Town and Country Planning Act 1990 and dated [] and this covenant shall also be enforceable by the [London Borough of Tower Hamlets] against the Lessee and any successor in title under section 33 of the Local Government (Miscellaneous Provisions) Act 1982, section 16 of the Greater London Council (General Powers) Act 1974 and the Contracts (Rights of Third Parties) Act 1999, Section 1; and covenant not to sub-let the Units save with the prior approval of the Director of Housing as provided by clauses XX to XX inclusive of the same Agreement"

Determining the Open Market Value

The Open Market Value of the Units shall be determined as follows:

- the Site Owner will appoint a Valuer to undertake a Fair Check Valuation as at the anticipated date that

- such units will be available for first Occupation
- the Site Owner shall provide the Valuer's full written assessment to the Council for its approval
 - in the event that the Council is minded not to accept the figure suggested by the Valuer for the Open Market Value then the Council shall appoint a second Valuer (who shall be independent of the first Valuer and at the cost of the Site Owner) to make a further assessment of the Open Market Value of an Unit by way of a Fair Check Valuation as at the anticipated date that such units will be available for first Occupation

FIRST OCCUPATION (OR SALE)

These clauses should describe the process and requirements for first occupation of the Units by self-builders, including a marketing program and the process for dealing with unsold units. For example:

Following the Implementation Date, the Site Owner / members of the [CLH group] Site Owner shall take up occupation of the Unit(s) with a good and marketable long leasehold title. This may involve a transaction between the Site Owner and individual owners of Units. The Site Owner / members of the [CLH group] Site Owner shall be Eligible Persons in accordance with the terms of this Agreement.

Where the Site Owner / members of the [CLH group] Site Owner are unable to take up occupation / ownership of Unit(s), prior to first occupation, not to sell or permit the sale of, nor to market or permit the marketing of the Units, other than in accordance with the Marketing Programme below.

SALES OR RE-SALES OF THE UNITS

These clauses should describe the process and requirements for selling the Units, including a re-sale marketing program and Re-sale Marketing Methods Plan units. For example:

General

An owner of a Unit desiring to sell that Unit shall comply with the terms of this Agreement

not to sell or permit the sale of any Unit to any person other than to an Eligible Person nor to Occupy or permit Occupation of the Units other than by an Eligible Person unless otherwise than in accordance with clauses below

to ensure that any disposal of a Unit pursuant to clause XX above contains a covenant restricting the subsequent disposal of that Unit in accordance with the terms of this Agreement

Marketing Programme

Not to market to sell or to permit the sale of any Unit other than in strict accordance with the following:

the owner of an individual Unit shall notify The Council in writing of the intention to sell the Unit

for the first [x] months following the date of the notification of the intention to sell the Unit (commencement of the marketing period) the owner shall not market or sell the Unit otherwise than in accordance with the Marketing Methods Plan exclusively to Eligible Persons who reside or are employed within the Borough and who meet the Eligibility Criteria.

Following the end of the Marketing Programme period not to market or sell the Units other than to Eligible Persons irrespective of where they reside or are employed.

In the event of the Marketing Programme being unsuccessful in achieving a sale of the Units such units shall continue to be marketed exclusively to Eligible Persons wherever they may reside.

Marketing Methods Plan

Prior to the Commencement of Development, the Site Owner shall submit a draft Marketing Methods Plan to the Council for approval setting out the marketing methods to be employed by the owner of a Unit for the duration of the Marketing Programme.

No owner of a Unit shall market any Unit otherwise than in strict accordance with the approved Marketing

Methods Plan as approved in writing by the Council.

To use reasonable endeavours throughout the duration of the Marketing Programme to comply with the provisions of the approved Marketing Methods Plan.

The terms of the Marketing Methods Plan may only be varied with the express written consent of the Council.

Reports to the Council throughout the Marketing Programme

To report to the Council in writing no less than once every calendar month throughout the Marketing Programme period with information including but not necessarily limited to the following:

- marketing methods employed
- outcome of the previous two months' marketing programme activities and the name address occupation and place of employment of the Eligible Person to whom any Unit was sold or is being sold
- analysis of success of the terms of the Marketing Methods Plan in general and including details of the numbers of enquiries inspections offers and so on
- any other information that the Council may reasonably request from time to time

The marketing methods employed for the duration of the Marketing Programme shall be deemed to be in accordance with the approved Marketing Methods Plan and the Marketing Programme unless the Council notifies the Owner in writing of deficiencies or omissions in the marketing methods employed within 14 days of receipt of the report submitted pursuant to clause XX above

Notification and Certification in respect of Re-Sales

Not to exchange contracts (or permit the exchange of contracts) for the sale of any Unit other than following the provision of a certificate ("the Certificate") in writing to the seller of the Unit that the Re-sale of the Unit has been carried out in accordance with the provisions of this Agreement.

not later than seven days following completion of the Re-sale of an Unit the Site Owner shall provide to the Council a copy of a Certificate together with details relevant to the status of the new owner as an Eligible Person, the sale price of the Unit, and Mortgagees of the Unit.

Mortgagees

In the event that a mortgagee of an individual unit shall become a mortgagee in possession or receiver shall be appointed then such mortgagee (or receiver) shall be entitled to sell that unit on the open market (for full open market value) only on the condition that at the point of sale, the Council shall be paid the remaining amount up to the value of the percentage discount set out above.

RENTALS OF THE UNITS

The clauses in this section should set the conditions upon which the Owner of a Unit is permitted to rent the Units, which requires Director Housing approval. Included here as an example (and may or may not be desired in full:

An owner of a Unit desiring to rent that Unit shall comply strictly with the provisions of clauses XX to XX in this Agreement not to rent out or otherwise permit the Rental of that Unit to any person other than in accordance with the following:

- that the tenant is an Eligible Person; and
- that the rent charged shall be at the discount of Open Market Rent as defined in clause XX of this Agreement with such value to be determined prior to any such letting of a Unit in accordance with clause XX of this Agreement; and
- that the Unit shall not be let or made available to let for a period of more than one year; and
- any such Rental shall be by way of an "Assured Shorthold Tenancy" as defined by the Housing Act 1988 and in the event that this legislation is amended or repealed and not re-enacted then any such Rental shall be limited to a specific duration which shall be for no more than one year; and
- before or upon the expiry of any such tenancy the Owner shall secure vacant possession of the Unit.

Not to rent out or otherwise permit the Rental of the Unit other than by first obtaining the Director of

Housing's written permission ("the Rental Certificate") in respect of each and every tenancy or rental agreement entered into and that the stipulations of such a tenancy or rental agreement shall prohibit the sub-letting of any such Unit to any other person unless that person is an Eligible Person and a Rental Certificate has been obtained in writing from the Director of Housing before the sub-let commences.

The Director of Housing shall have discretion to refuse to issue a Rental Certificate (and thereby refuse to permit the Rental of an Unit) in circumstances where an owner of an individual Unit seeks to rent it out for a term which in total would be longer than one year.

The Director of Housing shall be entitled to charge the lessor of a Unit a fee of not more than £150 (One Hundred and Fifty Pounds) plus valued added tax such a figure to be revised annually by the Director of Housing for the provision of the Rental Certificate.

The Open Market Rent of the Unit shall be determined by a Valuer appointed at the behest and expense of the owner of the Unit.