

## **EXAMPLE S106 OBLIGATIONS**

**COMMUNITY INFRASTRUCTURE LEVY CLAUSE**

- 1. For the purposes of this clause “CIL” means a tax, tariff or charge introduced by the Council in accordance with regulations made pursuant to the Planning Act 2008 including the Community Infrastructure Levy Regulations 2010 or any subsequent proposed legislation and / or guidance to fund the delivery of infrastructure known as the “community infrastructure levy” or known by any other name.
- 2. If at any time hereafter a CIL becomes payable in respect of the Development or any part of it, then so far as it is lawful to do so and provided that:
  - a. The aggregate contribution under CIL and this Agreement is not reduced below the total amounts otherwise payable under the terms hereof; and
  - b. All physical works to be provided hereunder are carried out, whether for physical, social or green infrastructure,

then either the value of the financial contributions payable to the Council hereunder shall be offset against the CIL or the CIL shall be offset against the financial contributions payable accordingly.

**PUBLIC ART OBLIGATION EXAMPLE**

“**Public Realm**” means the area at found level shown for the purpose of identification only shaded green on Drawing No. AL (PA) 150 annexed to this Deed as Annexure E

The Owners and the Developer shall incorporate public art with a minimum value of £200,000 within the Public Realm following consultation with the Council and the public on the choice and location of such public art.

OR

Law Society Drafting:

Definitions (to be included in clause 1):

“**Public Art Contribution**” means a financial contribution of [ ] pounds (£[.....]) towards the provision of public art such provision to be entirely at the discretion of the Council in terms of size nature artistic influence and geographical location within the [Council area, or specified area]

Alternative definition:

“**Public Art Contribution**” means a financial contribution of [ ] pounds (£[.....]) towards the provision of Public Art which will include where appropriate sculpture, street furniture, landscaping and/or architectural detailing within [specify area] [within or within the vicinity of the Development as the Owner and Council may agree]

“**Public Art**” means [..... ]

- 1 To pay the Public Art Contribution within [...insert number to be specified...] days of the Commencement of Development

OR

- 1.1 To include as part of the Development a permanent work of Public Art to the value of the Public Art Contribution which is integral to the Development and permanently affixed to the Development Land the precise nature of the work of art and its precise location on the Development Land to be approved by the Council prior to Occupation of any part of the Development
- 1.2 The said work shall be provided on or before [...specify date or event...]

### AFFORDABLE HOUSING OBLIGATIONS EXAMPLES

- 1.1 **Dartford Borough Council (2) Co-Operative Group (CWS) Limited (3) Kent County Council (2002)**

**“Affordable Housing”** housing which is not for sale where the rent or price is reduced directly or indirectly by means of a subsidy or indirectly by means of a subsidy from the public private or voluntary sector to the reasonable satisfaction of the Council and which is provided or managed by an RSL

**“Affordable Housing Land”**- that part of the Property which is nominated by the Developer and agreed by the Council (such agreement not to be unreasonably withheld or delayed) and to be used for the purposes of constructing the Affordable Housing units

**“Affordable Housing Land Price”** a price which the Council or other public funding authority shall reasonably determine that the Affordable Housing Land shall be sold for in order to ensure that the cost of providing the Affordable Housing Units to be built thereon (including the Affordable Housing Land Price the cost of construction of the said Units and all ancillary expenses and costs of the provider) shall not exceed 100% of TCI for the type and size of Unit to be constructed as reasonably determined by the Council and to be construed by or on behalf of the RSL

**“Affordable Housing Units”** the number of two or three bedroomed homes equivalent to the whole number of units which is 20% of the number of residential units comprised in the Development of which at least one, but not more than two shall be Lifetime Homes to be offered for rent and at a rent within Housing Corporation Caps

**“Affordable housing Units Price”** shall mean not more than 100% of the TCI (including on costs) applicable to the actual type and size of Unit to be disposed of to an RSL

**“Commuted Sum”** the sum calculated by the application of the formula set out below to each and every dwellinghouse identified as “Affordable Housing Units” by the Developer

**“TCI”** TCI (applicable to A) x 100% x B

Where:

A means the actual type and size of Unit identified as an Affordable Housing Unit by the Developer and shall be deemed to be a mix of Affordable Housing Units consisting of two or three bedroom houses at the discretion of the Council within the Affordable Housing Land

TCI means the Total Cost Indicator published by the Housing Corporation and current at the date of the calculation using the formula

B means the Social Housing grant percentage rate applicable at the date of calculation as if the Affordable Housing Unit was to be provided by an RSL on a land acquisition and building contract basis and Social Housing Grant monies were confirmed by either the Housing Corporation or the Council for that purpose

**“Housing Waiting List”**- the individuals named on the Common housing register and transfer maintained by the Council

**“Initial Low Cost Market Units Discount”** the sum of the difference between the Low Cost Market Unit Sale Price and the Open Market Value of that Low Cost Market Unit at the date of the first disposal calculated both as a sum of money and as a percentage of the Open Market Value as at the date of the first disposal (whichever shall be greater)

**“Lifetime Homes”** homes constructed in accordance with the “Lifetime” Homes Criteria set out in Appendix 6 of the Dartford Borough Local Plan Review Deposit Draft Written Statement March 2000

**“Low Cost Market Units”** Units for sale at a discounted price and which (unless such terms shall prevent or inhibit the obtaining of mortgage finance on usual commercial terms) are sold on terms enforceable by the Council which prevent the future sale and disposal of such dwellings at a price exceeding the prevailing Open Market Value less the Initial Low Cost Market Units Discount

**“Low Cost Market Units Discount”** the sum of the difference between the Low Cost Market Unit Sale Price and the Open Market Value of a Low Cost market Unit at the date of the first disposal

**“Low Cost Market Unit Sale Price”** a price for which the relevant Low Cost Market Unit shall not exceed 100% of the TCI applicable to the actual type and size of Low Cost Market Unit

**“Low Cost Nomination Agreement”** an Agreement in a form to be agreed by the Council

**“Nomination Agreement”** an Agreement in a form agreed by the Council which grants 100% nomination rights on the initial letting of the Affordable Housing Units and 75% nomination rights on second and subsequent lettings

**“Nominated Person”** a person on the Council’s Housing Waiting List

**“Open Market Value”** open market value as defined in the Royal Institution of Chartered Surveyors’ Appraisal and Valuation Manual, namely:

As opinion of the best at which the sale of an interest in property would have been completed conditionally for each consideration on the date of valuation, assuming:

(a) a willing seller;

(b) that, prior to the date of valuation, there has been a reasonable period (having regard to the nature of the property) for the proper marketing of the interest, for the agreement of the price and terms and for the completion of the sale

(c) that the state of the market, level of values and other circumstances were, on any earlier assumed date of exchange of contract, the same as on the date of valuation

(d) that no account is taken of any additional bid by a prospective purchaser with a special interest; and

(e) that both parties to the transaction had acted knowledgeably, prudently and without compulsion

**“Option Agreement”** the Option Agreement substantially in the form as it is set out in schedule 3 hereto

**“Option Price”** Open Market Value of the relevant land less the Commuted Sum calculated at the date of the exercise of the Option by the Council (or its nominee)

**“RSL”** a registered social landlord or housing association or other organisation as defined in the Housing Act 1996 whose objectives include the provision of low cost housing

**“Unit”** an individual dwelling, house or flat

### **Affordable Housing**

3.1 The Developer shall advise the Council prior to the occupation of the 15<sup>th</sup> Residential Unit upon the Property:

3.1.1 the name of the RSL nominated by the Developer which shall be approved by the Council acting reasonably; and

3.1.2 if it requires the Council to nominate an RSL for the purposes of identifying a Purchaser for the Affordable Housing Land for Affordable Housing Units (in the event that the Developer cannot nominate an RSL for the purposes of identifying a Purchaser for the Affordable Housing Land; or

3.1.3 that it requires that the Council advise the Developer if it requires the Commuted Sum to be paid.

3.2 Within 28 days of receiving the Notice as referred to in paragraph 3.1 the Council shall:

3.2.1 nominate an RSL if so required by the Developer or advise the Developer of the same; and

3.2.2 advise the Developer if the Council requires the Commuted Sum

Provided that if the Council does require the Commuted Sum in respect of the Affordable Housing land all the Developer’s obligations in this paragraph 3 shall cease and further that in the event of the Council requiring the Commuted Sum for the Affordable Housing Land the Developer shall pay to the Council within 28 days of

agreeing with the Council (such agreement not to be unreasonably withheld or delayed) the Commuted Sum for the Affordable Housing Land.

3.3 in the event that the Council advises the Developer that it does not require the Commuted Sum as referred to in paragraph 3.2.2 then the Developer shall within three months of receiving the said notice as referred to in paragraph 3.2.2 in each case either:

3.3.1 not later than the occupation of the 21<sup>st</sup> Residential Unit upon the Property use all reasonable endeavours to enter into an unconditional contract for the freehold sale of the Affordable Housing Land for affordable Housing Units to an RSL either nominated by the Developer or nominated by the Council (as the case may be) and that as a condition of sale the RSL will covenant to enter into the Nomination Agreement with the Council provided always that in the event that the Developer shall have failed to enter into such a binding contract with the RSL then the provisions of paragraph 3.4 shall apply.

3.4 Upon the Developer filing to sell the Affordable Housing Land for Affordable Housing Units to a RSL as referred to in paragraph 3.3.1 the Developer shall advise the Council in writing within 14 days of the same and at the same time request that the Council advise the Developer if the Council requires the payment of the Commuted Sum.

3.5 The Council shall within 14 days upon receiving the Notice as referred to in paragraph 3.4 advise the Developer:

3.5.1 if the Council requires the Commuted Sum; or

3.5.2 that the Council requires the Developer to grant the Option to the Council

provided that if the Council does require the Commuted Sum in respect of the Affordable Housing land all of the Developer's obligations in this paragraph 3 shall cease and further that in the event of the Council requiring the Commuted Sum of or the Affordable Housing Land the developer shall pay to the Council within 28 days of agreeing with the Council (such agreement not to be unreasonably withheld or delayed) the Commuted Sum for the Affordable Housing Land.

3.6 In the event that the Council advises that it does not require the Commuted Sum as referred to in paragraph 3.5.1 but does require the Option as referred to in paragraph 3.5.2 then the Developer shall be obliged for a period of two calendar months from the date of receiving the Notice from the Council as referred to in paragraph 3.5.2 to grant to the Council an Option in favour of the Council in the form of the Option Agreement provided always that if the Council do not require the granting of an Option or if an Option is so granted and the Council shall fail to exercise the said Option within the said period of two months then the Council shall within 14 days advise the Developer if it requires the Commuted Sum and provided that if the Council does require the Commuted Sum in respect of Affordable Housing land all of the Developer's obligations in this paragraph 3 shall cease and further that in the event of the Council requiring the Commuted Sum for the Affordable Housing Land the Developer shall pay to the Council within 28 days of agreeing with the Council (such agreement not to be unreasonably withheld or delayed) the Commuted Sum for the Affordable Housing Land.

3.7 In the Event that the Council does not require the Commuted Sum as referred to in paragraph 3.6 the Developer shall construct upon the Affordable Housing Land Low Cost

Market Units prior to the occupation of the 25<sup>th</sup> Residential Unit on the Property to practical completion standard and to the reasonable satisfaction of the Council and the Council and the Developer shall enter into the Nomination Agreement in respect of those Low Cost Market Units.

3.8 The sale price of each Affordable Housing unit shall not exceed the Affordable Housing unit Price.

3.9 The sale of the Affordable Housing Land shall be at a price not exceeding the Affordable Housing Land Price.

3.10 Not knowingly to permit occupation of any of the Affordable Housing Units otherwise than strictly in accordance with the terms of paragraph 3.12.

3.11 The provisions of this paragraph 3 shall not bind any mortgagee of the holder of any freehold or leasehold interest in the Affordable Housing Units once constructed or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to such freehold or leasehold owner and provided further that the provisions of this paragraph 3 shall cease to apply to any part or the whole of the Affordable Housing Units should such part of the whole be transferred or leased by any Mortgage of such freehold or leasehold owner or any receiver or manager (including administrative receiver) appointed pursuant to the Law of property Act 1925 or otherwise by a party who has provided loan facilities to such freehold or leasehold owner.

3.12 To use reasonable endeavours at all times to ensure that the Affordable Housing Units are occupied by persons who do not have a right whether statutory or voluntary to acquire the freehold of an Affordable Housing Unit under the Housing Act 1996 or any other statutory power but if such a person does require the whole of the freehold of an Affordable Housing Unit then the provisions of this paragraph 3 shall cease to have any effect in respect of that Unit.

3.13 Upon receipt the Commuted Sum shall be held by the Council and any sum not applied for the purpose of acquisition maintenance or repair by any person of any land or property to be utilised directly or indirectly for the provision of affordable housing within the Council's geographical boundaries shall be repaid to the person who made the original payment on the tenth anniversary of that payment having been made together with interest on the sum not applied calculated from the date of receipt of the original payment and compounded on each anniversary of that date calculated using the prevailing average interest rate achieved by the Council's Finance Department.

3.14 Upon the sale of any Low Cost Market Unit the owner shall procure that the disponee of such unit shall execute in favour of the Council a Legal Charge in order to protect the repayment of the Low Cost Market Unit Discount.

3.15 The Affordable Housing Units or Low Cost Market Unit shall be of such size and mix as shall be required to meet the housing needs as identified by the Council by reference to such surveys and other information as it shall consider relevant acting reasonably.

## 1.2 **London Borough of Waltham Forest (2) Co-Operative Group (CWS) Limited (2003)**

**“Affordable Housing Units”** units of low cost market and subsidised housing for people who cannot afford to rent or buy houses generally in the open market as defined in the Department of Environment Transport and the Regions Circular 6/98 and the size of such units shall be a matter for the determination at the reserved matters stage

**“Development”** means the redevelopment to provide 50 one bedroomed flats and 3 live work units, associated access and car parking

**“Discounted Rate”** seventy five per cent (75%) of the Open Market Value

**“Local Connection”** (not in any order):

(a) persons who have or persons whose partners have for a continuous period of three years immediately prior to their occupation of an Affordable Housing Unit had their only or principal home in the Surrounding Area;

(b) persons who have or persons whose partners have previously had their only or principal home in the Surrounding Area for a continuous period of five years;

(c) Persons who have or whose partners have for a period of 12 months immediately prior to their occupation of an Affordable Housing Unit had their place of work in the Surrounding Area;

(d) persons who have had or persons whose partners have had immediately prior to their occupation of an Affordable Housing Unit assigned one or more of their parents grandparents children or siblings living within the Surrounding Area for a continuous period of five years

**“Open Market Value”** the open market value of all or any of the dwellings to be constructed upon the Property assessed in accordance with the Appraisal and Valuation Manual of the RICS (The Red Book)

**“Qualifying Criteria”**-where a person is in housing need in accordance with the relevant criteria of the Council and meets one or more of the following criteria in descending order of priority immediately prior to his proposed occupation\:

(a) had a Local Connection in the borough;

(b) had a Local Connection in the surrounding area

**“Registered Social Landlord”** a Housing association or other non-profit making body either of which being registered with the Housing Corporation as a social landlord

**“Surrounding Area”** the area within a five mile radius of the Property

#### **The Developer’s covenants (Schedule 1)**

1. The Developer covenants that 13 of the dwellings to be constructed as part of the Development pursuant to the Planning Permission shall be Affordable Housing Units.

2. The occupation of more than 35 dwellings on the Property shall not occur prior to the transfer of the Affordable Housing Units.



3. Subject to the other provisions of this schedule the Owner shall only be entitled to transfer of all or any of the designated Affordable Housing Units to a Registered Social Landlord approved by the Council such approval not to be unreasonably withheld or delayed at the Discounted Rate of the Open Market Value provided that nothing in this Agreement shall prevent or limit the disposal of any interest in the land on which the designated Affordable Housing Units are to be constructed prior to their construction.

4. In the event that the Owner can demonstrate to the satisfaction of the Council's Director[of Community Services] that an appropriate Registered Social Landlord is not available to acquire the designated Affordable Housing Units or if an approved Registered Social Landlord is subsequently not able to proceed with acquisition then the Owner may dispose of all or any of the designated Affordable Housing Units:

4.1 to any individual meeting the qualifying criteria; or

4.2 if no such individuals can be found to the satisfaction of the Council's Director of Community Services] to any individual, body of persons, group or association approved by the Council, such approval not to be unreasonably withheld at the Discounted Rate of the Open Market Value.

5. Prior to the disposal of any or all of the designated Affordable Housing Units the Owner shall serve upon the Council a valuation notice in respect of those units.

6. The Council shall notify the Owner in writing within 10 working days of receipt of the valuation notice stating whether or not it agrees with the Owner's calculation of Open Market Value and in the event that no such written notice is received from the Council within this period of time it shall be deemed that the Owner's calculation is agreed.

7. In the event that the Council disagrees with the Owner's calculation of Open Market Value it shall give full reasons for the disagreement together with supporting evidence and the parties shall endeavour to agree the Open Market Value within a period of 10 working days or such longer period as they may agree.

8. In the event of the parties failing to reach agreement after the said further period of 10 working days the parties shall refer the matter for determination by an independent person in accordance with the provisions of clause 9 hereof such arbitration to be completed within 14 days of the date of the reference.

9. The Owner shall notify the Council in writing of the identity of any prospective Registered Social Landlords that wish to purchase any of the designated Affordable Housing Units no later than three months after the Commencement of the Development and the Council shall notify the Owner in writing within 21 days of receipt whether or not it is acceptable to the Council such approval not to be unreasonably withheld or delayed and in the event that no written response is received by the Owner within the said period of 21 days the Council's approval shall be deemed to have been given.

10. In the event that the prospective purchaser is a Registered Social Landlord and the Council does not give its approval thereto the Council's notice shall set out its full reasons for not giving approval and in the event that the Owner is of the opinion that the Council has acted unreasonably he shall be free to refer the dispute to an independent person in accordance with the provisions of clause 9 hereof.

11. In the event of a first disposal of any designated Affordable Housing Unit or Units to a Registered Social Landlord such unit or units shall from the date of such disposal and at all times thereafter be occupied only by individuals meeting the Qualifying Criteria or is no such individuals can be found to the satisfaction of the Council's Director of Community Services to any individual approved by the Council such approval not to be unreasonably withheld or delayed.

12. In the event of a first disposal of any designated Affordable Housing Unit to an individual meeting the Qualifying Criteria as to any other individual body of persons group or association approved by the Council then any future disposal thereof (be it by way of sale lease or other means of disposal) shall also:

12.1 to be an individual meeting the Qualifying Criteria or such other prospective purchaser where the Council has given approval under paragraph 4; and

12.2 at seventy five per cent (75%) of the open market value in perpetuity as to ensure that the designated Affordable Housing Units remain as such.

13. None of the provisions of this planning obligation relating to designated Affordable Housing Units shall be binding upon a mortgagee in possession of one or more of the designated Affordable Housing Units which said mortgagee in possession may sell and dispose of the unit(s) free from the terms of this Agreement and upon such sale as aforesaid this Agreement shall become null and void in respect of that Unit(s) and nor shall the terms of this Agreement be binding upon any receiver appointed by such mortgagee in possession of the unit(s) subject to the said mortgagee in possession.

### **LOCAL LABOUR OBLIGATION EXAMPLE**

1.1 Prior to Implementation of the Development to submit to the Council for approval the Employment and Skills Plan and not to Implement the Development or permit Implementation of the Development until a plan has been approved by the Council (a template has been appended in order to provide a guide for the plan's completion).

1.2 The Employment and Skills Plan shall include arrangements setting out how the owner and to the extent they are not the same person any developer or occupier and their contractors will work directly with local employment/training agencies as part of an employment and training consortium including but not limited to:

1.2.1 Jobcentre Plus and the Learning & Skills Council; and

1.2.2 Voluntary and private sectors providers; and

1.2.3 Sixth form colleges; colleges of further education; and universities

1.3 The Employment and Skills Plan shall specify the provision for training opportunities and other initiatives in respect of the vocational and employability skills required by the owner/developer, their contractors and future occupiers, for any new jobs and business opportunities created by the Development.

1.4 Following approval of the Employment and Skills Plan by the Council the owner will implement and where necessary procure implementation and promote the objectives of the approved plan and ensure that *so far as is reasonably practicable* the objectives are met.

*1.5 As part of the Employment and Skills Plan the owner/developer may be required to provide financial contributions to the Council to cover specific costs incurred by the council in the implementation of the Employment and Skills Plan. The Plan shall set out the matters on which such expenditure may be incurred together with the timings for such expenditure and the trigger for these payments.*