

# South Hams District Council



## Delivering Affordable Housing Using Land Leasing

September 2008

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## **EXECUTIVE SUMMARY**

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This report explores the potential of 'land leasing' to positively contribute to the delivery of affordable rural housing both through the use of long and short leases for land and existing properties. The report aims to improve Stakeholders' understanding of the technical issues and to identify any policy implications for disposal of land, whether Public Sector or Private Sector).

There is no absolute or agreed definition of 'land leasing' and this report uses the term broadly to encompass all lease mechanisms whereby a landowner can grant a lease to another party (usually a social landlord) to provide affordable housing.

Land leasing is one mechanism through which landowners can provide land for affordable housing development. It involves the lease of land for development of buildings which is generally a long-term contractual agreement used in lieu of a freehold land purchase. Under lease arrangements a landowner can retain ownership of the land by either providing residential property for below market rents or leasing the land on a long-term basis to a Housing Association (Registered Social Landlord (RSL) or Housing Corporation-approved unregistered body or Unregistered Social Landlord or USL). The landowner does not sell the freehold to the land and as such retains the land as a long-term asset. Usually the landowner can opt to receive a capital receipt (or 'premium') for the land for a long lease (e.g. 99 years or 125 years) or, instead, can receive a regular income stream on a short to medium term basis. Exceptionally, in certain circumstances, the freeholder may choose to grant a long lease at nil premium and receive some share of the income in future years

Leasehold gives the freeholder greater control over development or use of existing properties than a freehold transfer can. Long leases can be utilised with Social Housing Grant (SHG) capital funding and most short leases can be eligible for Temporary SHG funding. We also discuss how to utilise long leases with rural exception sites planning regulations and consider how to avoid the pitfalls of the leasehold enfranchisement legislation.

A short lease is defined as less than 30 years (though commonly under 20 years); a long lease over 35 years (though commonly 99 to 125 years); leases between 31 to 64 years have no practical value in affordable housing because of the Social Housing Grant funding rules (see Housing Corporation 'Capital Funding Guide')

We examine long leases -used with equity share housing co-operatives, and special purpose vehicles (SPVs) in conjunction with long leases; and Short leases – both 'standard' and specialist – for use with 'leaseback' arrangements

We recommend how to utilise the range of leases to best suit the circumstances of the freeholder whilst providing affordable housing.

## **PREFACE**

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Land leasing can offer the possibility of releasing additional land and property for affordable housing both on a short lease and a long lease basis.

Leasing offers landowners the potential of contributing to affordable housing without parting with the freehold to their land and has proven to be a successful model elsewhere in Southern England (e.g. the Goodwood Estate in West Sussex).

Especially in the context of rural affordable housing where land is scarce and obtaining planning consents often fraught land leasing could make a considerable contribution to meeting needs.

With the Government's Rural Housing Commission highlighting the ongoing problems (June 6<sup>th</sup> 2008) and having appointed MP Matthew Taylor to investigate rural housing, the time could not be better for South Hams District Council to actively contribute to the pressing debate to deliver more rural affordable housing. *The Taylor Review is an independent study led by Matthew Taylor MP looking at ways to increase affordable housing to ensure sustainable rural communities. The report appeared in July 2008.*

Reference:

<http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/matthewtaylorreview/>

## **1. INTRODUCTION**

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### **1.1 Background**

- 1.1.1 South Hams is a Local Authority in rural south Devon with a population of 81,849 (2001 Census) whose main employment is in tourism and agriculture (correct [came from R Searle's research]). Demographically South Hams has an above average elderly population.
- 1.1.2 South Hams District Council has received funding from the Government's Beacon Peer Support Fund to support the development of good practice in the delivery of rural affordable housing.
- 1.1.3 There is a huge demand for Affordable Housing within the District with over 600 new affordable homes per year needed to address the backlog in existing need according to the South Hams District Housing Market & Needs Assessment 2006<sup>1</sup>. This has led the Council to investigate a much wider range of potential solutions to increase delivery including exploring strategies to improve both the land supply and the viability of schemes particularly in rural areas.
- 1.1.4 The Council is carrying out work to identify a wider range of potential solutions to expand affordable housing provision. As part of this work South Hams District Council employed Adams Integra, using Beacon Peer Support funding, to investigate and explain the use of "land leasing" arrangements in the delivery of rural affordable housing.
- 1.1.5 The term "land leasing" in the context of this report is taken to include any development arrangements where there is no freehold land disposal to the developer at the outset. This can include long or short-term lease, "peppercorn" or other rental arrangements. For the purposes of this report Community Land Trusts (CLTs) are not considered as these are being investigated separately by the Council as part of the Beacon Peer Support Initiative.
- 1.1.6 The aims of this report are to provide the Council and interested stakeholders with a clear explanation of what is meant by land leasing and its variations. In addition, this report sets out the technical components of land leasing arrangements giving examples of where this has been used previously. It also provides the Council with the key areas for consideration so that officers can properly explore land leasing as an alternative option when negotiating with landowners or communities or dealing with the disposal of Council owned land.

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<sup>1</sup> South Hams District – Housing Market & Needs Assessment 2006

1.1.7 Aims and objectives of the this report (addressing and incorporating the following key issues):

- Explanation of land leasing.
- Key legal and financial features.
- Impact of PPS3<sup>2</sup> definition of affordable housing on land leasing models.
- Advantages and disadvantages of land leasing for the Local Authority, landowners, community and other key stakeholders.
- Risks of land leasing.
- Impact of Leasehold Enfranchisement legislation on land leasing principles.
- Impact of existing planning and housing policy on land leasing.
- Examples of land lease documentation.
- Identification of good practice examples/case studies.
- Comparison with other options for disposal/acquisition of land for rural affordable housing.
- Implications for Registered Social Landlords (RSLs), including the 'SHG regime'.
- Implications for nomination agreements.

1.1.8 During the course of this piece of work it was difficult to identify case-studies that illustrated innovative use of land leasing and where all parties were willing to share the level of detail required to add sufficient value to the report. (The case studies included give a very brief introduction to a related aspect of improving delivery). The Council, therefore, decided to commission a complementary piece of work from Adams Integra for an appraisal of options for land leasing on a typical exception site scenario within the District where the land is owned by a large landowner and held in Trust. (See 'Dartington Hall Trust Desktop Appraisal – Leasing Options for Affordable Housing).

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<sup>2</sup> Communities & Local Government: Planning Policy Statement 3: Housing (November 2006)

## **2. LAND LEASING – DELIVERING RURAL AFFORDABLE HOUSING**

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### **2.1 Background**

- 2.1.1 The Affordable Rural Housing Commission report<sup>3</sup> into affordable housing in rural areas highlights the acute need for, and shortage of, affordable housing in rural communities. The report identifies lower wages and higher house prices as key factors in the increased need for affordable housing exacerbated by restriction on supply together with limited availability of suitable sites for development and pressure from people wanting to move to the countryside. This has all contributed to house prices rising faster and to higher (value) levels in rural areas than in the towns.
- 2.1.2 To meet affordable housing need in these rural communities the Affordable Rural Housing Commission goes on to say that “a supply of sites at a price which makes it viable to provide affordable housing is essential if more affordable homes are to be provided in rural areas”. The supply of land is based on the landowners’ (public or private) willingness to release land for development and this can be affected by a number of factors including price, business requirements and wider social or economic interests. Chapter 5 of the report suggests the possible use of lease arrangements for landowners and highlights concerns over how land leasing models work including partnering arrangements with RSLs and nomination rights. These issues are covered later in this report.
- 2.1.3 Land leasing should be seen in a context where a wide range of solutions and approaches to rural affordable delivery are needed. There is no one single solution. Indeed the debate over how to deliver more rural affordable housing is not without controversy and disagreement over how best to improve rural affordable housing supply. For instance, the South East England Regional Housing Board, which could be typical of many rural areas of Britain, stated there is *no need for prescriptive Government guidance* as this could affect Local Authorities’ ability to develop planning policies suited to their own circumstances.
- 2.1.4 Landowners have an important role to play in releasing land for affordable housing. There are a number of mechanisms through which affordable housing delivery can be facilitated. These include delivery through the planning system (through the use of Section 106 agreements) and direct development by affordable housing providers such as RSLs on land purchased on the open market. Land can also be made available through the use of “exception sites”. (For detail see section 2.5.2). These are sites that are not normally available for residential development but that can be given

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<sup>3</sup> Source: Affordable Rural Housing Commission Final Report (2006)  
SE England Regional Housing Body press release April 2008 in response to the Taylor Review)

‘exceptional’ planning permission to meet affordable housing needs. These sites would normally only be used to provide affordable housing in perpetuity (note, a 99 or 125 year lease can be regarded as ‘in perpetuity’) and the value of the land would be lower than that generated through the normal planning process to ensure the affordability of the home(s) created on it.

## **2.2 Affordable Housing Funding**

The Housing Corporation supports and agrees with the conclusions of the Affordable Rural Housing Commission in its prospectus for the National Affordable Housing Programme 2008-11 (NAHP). The Housing Corporation NAHP Prospectus (Housing Corporation 2007) sets out its plans for rural affordable housing but also recognises the difficulties in bringing forward affordable housing in rural areas. The Housing Corporation will concentrate on the needs of communities of less than 3,000 people (rather than the Office of National Statistics or ONS definition of “rural” which is 10,000). It can be argued that rural affordable housing strategy is equally applicable to settlements with populations of 10,000 or less as to those under 3000 (upon which the Housing Corporation has traditionally focused its funding). It is recommended that this issue and that of increasing rural housing supply be taken up with the Housing Corporation.

- 2.2.1 Social Housing Grant. The Housing Corporation provides capital grant known as Social Housing Grant (SHG) to Registered Social Landlords (RSLs) and other approved bodies such as unregistered social landlords (Unregistered Social Landlords) which can be private sector or Local Authority (via Arms Length Management Organisations (ALMOs) or Special Purpose Vehicles (SPVs) as defined in the Housing Corporation 2007 Prospectus.
- 2.2.2 Long-lease accommodation, either new build or refurbishment, can receive SHG funding via a RSL or USL.
- 2.2.3 SHG funding for permanent social housing (with rent or shared ownership/‘new build homebuy’) is available where the legal interest in a property is 35 years or more for refurbishment (‘full rehabilitation’) (30 years from handover of the building works) or 65 years for new build (60 years from hand over of the building works). Note, the Housing Corporation now officially terms SHG funded shared ownership, ‘new build homebuy’ however, we will use the term shared ownership throughout this document. Shared ownership will not be viable on leases under 125 years as they are insufficient for the purposes of the mortgage lenders to shared owners.
- 2.2.4 *Temporary Social Housing Grant (TSHG)*. The Housing Corporation also provides TSHG. TSHG is available for affordable rented units covered by a lease of between 2 to 30 years. The RSL needs a legally binding document to confer a legally binding interest in the property. Properties can be owned by a

public sector body, private individuals or private companies. The properties can be newly built or refurbished – either improved or unimproved. Dwellings must be equivalent to the Temporary Social Housing standards in the Housing Corporation’s ‘Design & Quality Standards’ (2007) (Housing Corporation April 2007). Tenancies can either be assured short-holds or assured periodic tenancies. Rents plus Housing Benefit-eligible service charges must be within the Housing Benefit threshold for the Local Authority and cheaper than equivalent bed and breakfast accommodation. Housing Benefit {where a non-RSL or USL is the landlord} threshold is a Local Authority limit set beyond which Housing Benefit will not be paid for rented accommodation in a particular Local Authority district (Housing Benefit regulations, Social Security statutory instrument No:213). In most circumstances tenants, with TSHG, are excluded from the Right to Acquire<sup>4</sup> (see below).

### **2.3 Procurement Efficiencies in Rural Affordable Housing**

Procurement efficiencies can assist rural affordable housing whether it is delivered on land owned under leasehold or freehold. In particular it has attractions for land leasing where the freeholder wishes to share in capital receipts from shared equity sales when a fast construction method is used. The latter normally fall under the term Modern Methods of Construction.

A 2007 report (Affordable Rural Housing: lowering the costs - J Lancaster & C Savage, Community Action Hampshire, 2007<sup>5</sup>) investigated the possibilities of utilising Modern Methods of Construction (MMC) for affordable housing in rural locations in an attempt to highlight the potential contribution of MMC where often small and maybe isolated sites militate against achieving the efficiencies through economies of scale which present themselves in the urban context. MMC allows for rapid construction and thus could allow earlier rental income and/or shared ownership sales to boost receipts. As stated above, this may be attractive to freeholders willing to lease their land for affordable housing e.g. If a mechanism for sharing equity receipts is included then the landowner can anticipate receiving same in a shorter period than if ‘traditional (brick and block) construction’ is utilised. This may be seen as demonstrating how innovative partnerships can bring additionality. However, MMC will need to be carefully considered in relation to local Planning policies - although most types of MMC can be utilised with a variety of external cladding to suit the particular site and location.

### **CASE STUDY: Cae Banc - Natural Building Technology for Swansea Housing Association**

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<sup>4</sup> Source: Capital Funding Guide, Housing Corporation (2007)

<sup>5</sup> Affordable Rural Housing: lowering the costs - J Lancaster & C Savage, Community Action Hampshire, 2007)

This rural case study has been chosen as it utilises a ‘green form’ of MMC developed by ‘Natural Building’ who are based in the West Country. Cae Banc is a development of three bungalows, two of which have been constructed in the second phase using an NW1 System (NW1 is a single skin timber frame construction that uses Diffutherm wood fibre building insulation boards as cladding and a base for external render. This results in fewer layers and a slimmer construction than conventional techniques and leads to a lightweight building with a thermal mass and performance that exceeds that of many heavyweight structures). The bungalows are specially designed for families where one or more family member has severe disabilities. Special design features and internal modifications assist the families in coping with living with disability in the home environment. All the properties have a similar external appearance, despite the phase one house being constructed using conventional concrete blocks, as opposed to the other two which were built using a render and a timber frame system.

The overall aim was to go beyond meeting the basic building regulations and provide a higher performance specialised specification, but maintain the proposed budget level. The client was also keen to trial a timber frame solution and the Natural Building Technologies’ (NBT) NW1 System allowed all these objectives to be met.

The second phase (two NW1 units) took just over 6 months to complete. The NW1 system was quick to build and there were no specific design issues and the overall cost of the project finished within the budget (contract value £350,000, i.e. on a par with traditional construction costs but constructed more quickly).



Website: [natural-building.co.uk](http://natural-building.co.uk)

## 2.4 Nomination Agreements

Local Housing Authorities (district and unitary authorities in England) have the right to nominate tenants to SHG funded social housing owned and managed by RSLs and other unregistered bodies approved by the Housing Corporation. These normally take the form of legal documents between the

Local Authority and the social landlords. Similar referral arrangements often apply to shared ownership arrangements, though these are normally referral rights rather than nomination rights (enshrined in 1996 Housing Act). Standard Local Authority nominations arrangements for rented housing and the equivalent referrals for shared ownership can apply and may include landowner referral rights (see section 3.1.4).

## 2.5 Land Leasing - Relationship with PPS3

2.5.1 PPS3 (Government Planning Policy Statement 3 (which replaced PPG3)) and its companion document “Delivering Affordable Housing”<sup>6</sup> define affordable housing as:

“Social rented and intermediate housing, provided to specified eligible households whose needs are not met by the market. Affordable housing should:

- Meet 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
- include provisions for:
  - (i) The home to be retained for future eligible households; or
  - (ii) If these restrictions are lifted, for any subsidy to be recycled for alternative affordable housing provision.

**Social rented** housing is rented housing owned and managed by Local Authorities and RSLs, for which guideline target rents are determined through the national rent regime. The proposals set out in the Three Year Review of Rent Restructuring (July 2004) were implemented as policy in April 2006. It may also include rented housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the Local Authority or with the Housing Corporation as a condition of grant (i.e. USLs).

**Intermediate affordable** housing is housing at prices and rents above those of social rent but below market price or rents, and which meet the criteria set out above. These can include shared ownership/equity (e.g. HomeBuy) and other low cost home ownership options for shared equity sale, and intermediate rent.”

2.5.2 PPS3 also goes on to state that for rural communities “the aim should be to deliver high quality housing that contributes to the creation and maintenance

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<sup>6</sup> Communities & Local Government: Delivering Affordable Housing (November 2006)

of sustainable rural communities in market towns and villages. This requires planning at a local and regional level adopting a positive and pro-active approach which is informed by evidence, with clear targets for the delivery of rural affordable housing. Where viable and practical, Local Planning Authorities should consider allocating and releasing sites solely for affordable housing, including using a **Rural Exception Site Policy**. This enables small sites to be used, specifically for affordable housing in small rural communities that would not normally be used for housing because, for example, they are subject to policies of restraint. Rural exception sites should only be used for affordable housing in perpetuity. A Rural Exception Site policy should seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection, whilst also ensuring that rural areas continue to develop as sustainable, mixed, inclusive communities” (see also section 2.1.4 ).

2.5.3 In the context of PPS3, however, rural exception sites cannot include temporary social housing (or TSHG funding) using short leases as the affordable dwellings cannot by definition be provided in perpetuity. TSHG funding can be utilised on any rural non-exception sites or on existing (rural) properties.

2.5.4 The Commission for Rural Communities<sup>7</sup> state that policies introduced by Planning Policy Statement 3 (PPS3) could be used to provide affordable housing in villages and market towns. This includes a criterion for a high proportion of affordable housing on small sites, allocating sites solely for rural affordable housing and use of existing windfall rural exception site policy. The successful implementation of these policies requires landowners to release land for residential development at a price that makes it viable to provide affordable housing. If landowners see a risk that the properties will become market housing in the future, they may be unwilling to release a site or, try to achieve a higher price for the land, leading to viability issues for the affordable housing which in turn leads to a need, potentially, for greater public subsidy. For allocated or exception sites policy, securing the housing as affordable in perpetuity is generally a requirement of the policy.

2.5.5 If the rural area has been designated by the Secretary of State under Section 17 of the Housing Act 1996 then no Right to Acquire can arise. In the case of rural exception policy, normally the Local Authority can insist upon rural sites being used 'in perpetuity' to ensure availability if housing for local residents. This can be achieved in practice by:

- Capping the staircasing percentage on shared equity (although this may give rise to a risk of early enfranchisement - see “Leasehold Enfranchisement Legislation” below).

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<sup>7</sup> Commission for Rural Communities: Response to the Government’s Consultation on Shared Ownership and Leasehold Enfranchisement

- Ensuring an RSL inserts a buy-back obligation in the lease allowing the RSL to buy the property back when it is sold and thus ensuring that it is kept within its control.
- Insisting an RSL has a nominee provision in the lease enabling an RSL to nominate the next purchaser (in accordance with the nominations agreement it has with the Local Authority) when the existing purchaser wishes to sell. If the existing purchaser has first staircased up to 100% then the RSL has a right of first refusal. Grant funding is available for buy back in these circumstances. The Housing Corporation New Build HomeBuy Lease uses this mechanism.
- Or working with a USL (Unregistered Social Landlord, i.e. a non-RSL accredited by the Housing Corporation/New Agency) to receive SHG and/or provide housing management services.
- Long lease dwellings are as compatible with the requirements of PPS3 (as stated above) as freehold units. However, as stated above short-term leases would not be.
- Short lease dwellings are not considered to comply with PPS3. However, Planning authorities can give time-limited planning consents, for instance for 7 years, to allow temporary accommodation which could be used in conjunction with TSHG. Other councils, e.g. Bristol City Council, have explored granting temporary planning consents for chalet accommodation for Travellers. Such modern chalets may be seen as preferable to the often informal use of poorly insulated energy inefficient static caravans. (Note: the Housing Corporation has responsibility for ensuring funding for accommodation for Travellers).
- Shared Ownership can be provided on rural exception sites as the shared owners face a legal Planning consent-imposed cap on their ability to staircase (usually they cannot staircase beyond 90% of the equity); this ensures that the dwellings always remain as intermediate tenure. The Housing Corporation in this instance accepts that its standard model shared ownership lease (i.e. in this context an under-lease granted to the shared owner) can be amended to prevent 100% staircasing without losing the ability to obtain SHG (for 'New Build Homebuy' reference - Capital Funding Guide, HC 2008).

**Note:** Any RSL or USL developing a rural exception site would usually need a 'mortgagee in possession exclusion clause' to obtain

its private loan finance. This is to allow their private lender the right to dispose of the development in the unlikely event of the bankruptcy of the RSL/USL and in the even less likely event that the Housing Corporation/its successor proves incapable of arranging for another RSL to take over the property.

## 2.6 Land Leasing - Planning and Housing Policy

**Land leasing is simply the mechanism by which the land is owned and any development will need to comply with Planning Policy. The most obvious difficulty relates to short leases and exception sites where Affordable Housing provided on a short lease and funded through TSHG is unlikely to meet perpetuity requirements as defined in PPS3. Long land leases may however be a factor in site viability as they can, in effect, spread land values over a longer period**

## 2.7 Land Leasing - Leasehold Enfranchisement Legislation

- 2.7.1 Enfranchisement is the legal right for a tenant to acquire the freehold or long leasehold interest in their property. A risk which is sometimes identified is that a shared ownership tenant enfranchises before they have staircased to 100% thus paying less for the property than was otherwise intended. Of equal concern to Local Authorities and landowners is the loss of control and the ability for a tenant to potentially circumvent the affordable housing restrictions imposed on the property and sell on to a third party who would then be free from any such obligations.
- 2.7.2 In the event that the RSL has a buy-back/right of first refusal it is irrelevant whether a tenant staircases to 100% as, when it comes to sell, the RSL will take the property back and then re-sell it on a shared ownership basis. Local Authorities can compel the RSL to use a lease containing this provision. *Enfranchisement is a problem because, if the tenant successfully enfranchises, they are not bound by the terms of the lease and are, therefore, not bound by the buy-back provisions either.*
- 2.7.3 However, under current legislation, there is no possibility of a leasehold tenant of a flat enfranchising before it staircases to 100% because the legislation treats them differently from houses. Housing Association and Local Authorities are currently at no risk from enfranchisement either provided that the lease allows staircasing to 100%. (Leasehold Reform Act 1967, Section 33A as amended by the Leasehold Reform and Urban Development Act 1993 and Commonhold and Leasehold Reform Act 2002.)

2.7.4 If a cap on staircasing is used then the lease would need to be drafted in such a way as to ensure that the tenant will not acquire a right to enfranchise and this obligation would need to be imposed upon the RSL/USL. This is not a problem if the land has been designated as rural under S.17 Housing Act 1996.

2.7.5 The Government sought consultation on Shared Ownership and Leasehold Enfranchisement in 2007 and the results of the consultation have now been published ([www.communities.gov.uk](http://www.communities.gov.uk)). The aim is to reduce risks to landowners and allow for caps to be placed on staircasing without any risk of Enfranchisement and ensuring that the properties can remain shared ownership in perpetuity more easily.

## **2.8 Land Leasing – Right to Acquire (RTA)**

2.8.1 All dwellings provided with the benefit of Social Housing Grant (SHG), from the Disposals Proceeds Fund (post 1997, see Housing Corporation online IMS guidance 2007) or transferred from a public sector landlord are subject to the RTA unless they are exempt under Part V of the Housing Act 1985 as amended by The Housing Act 2004, The Housing (Right to Acquire) Regulations 1997, or under one of the Housing (Right to Acquire or Enfranchisement) (Designated Rural Areas) Orders 1997. The Right to Acquire does not apply where the Freehold is owned by a non-Public Sector body, e.g. a private or charitable landowner.

2.8.2 This legislation means that properties excluded from the RTA include the following:

- Properties where the landlord has insufficient legal interest, i.e. where the property is a house, under a lease with a term less than 21 years and for a flat, a lease with a term less than 50 years.
- The landlord is a co-operative Housing Association.
- Properties situated in a rural area designated by order of the Secretary of State under Section 17(1) (b) (Right to Acquire: Supplementary Provisions) of the Housing Act 1996.
- Properties let in connection with employment.
- Properties designed with special features for letting to people with physical disabilities. To gain exemption the property should be one of a group of properties normally let to people with physical disabilities and a social service or special facility is provided close by wholly or partly to assist the tenants.

- Properties with special facilities let to tenants who are suffering or have suffered from a mental disorder. As above the property must be one of a group of properties and a social service or special facility must be provided close by wholly or partly to assist the tenants.
- Properties which are one of a group of properties which it is the practice of the landlord to keep for occupation by persons who have special needs and require intensive housing assistance and such intensive housing assistance is provided either directly or indirectly by the landlord.
- Properties let to persons of pensionable age. Such properties must be one of a group of properties let to the elderly and have special facilities consisting of or including a resident warden, a non-resident warden with a calling facility and a common room close by.
- Properties held on Crown tenancies.
- Properties where the attributable loan debt is equal to or greater than its current market value.
- Properties that are due to be demolished within 24 months of an RSL serving a final demolition notice, and having followed the prescribed notification process as contained in s182 of the Housing Act 2004.

2.8.3 There are many potential land leasing options. The following sections provide details of some options which are felt to be most appropriate in the rural affordable housing context and how each of these land leasing models fit with the provision of affordable housing.

### **3. LAND LEASING – MODELS**

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#### **3.1 Model 1: 125 Year Lease (variant = 99 year lease) – Long lease**

This assumes nil or nominal ground rent as the payment of a lease premium for the land value removes the ability of the social landlord to share the revenue income with the freeholder when they have to service a private loan or mortgage as well as cover their housing management and property maintenance running costs

Long leases represent the preferred option (if freehold transfer is not available) for ensuring ‘permanent’ rural affordable housing, either social rent (or intermediate rent) or shared ownership.

##### **3.1.1 Key Legal and Financial Features**

- Long lease definition – are leases where the landowner (freeholder) commonly grants a lease to the tenant leaseholder for a term of 99 years or 125 years (and see Blake Laphorn Tarlo Lyons Skeleton Lease, Appendix I).
- 99 and 125 year leases are well established forms of lease and familiar to many landowners, RSLs and others.
- Rural exception sites and the ‘in perpetuity rule’ can be used with long leases and there are many examples of rural exception sites on long leases.
- Thus, shared ownership staircasing can be limited to 90% or 95%, so long as shared owner model lease is worded appropriately to comply with the wording in the Section 106 agreement.
- Capped shared ownership may affect the availability of SHG for an RSL/USL as it conflicts with the Housing Corporation’s model shared ownership lease (which requires the shared owner to have the ability of staircasing to 100% of the equity), unless the site is a rural exception site. However, if non-SHG shared ownership or shared equity is utilised –on non rural exception sites - then there is no requirement to use the Housing Corporation model lease. Equally, if the new Government proposals on capping rural shared ownership become law, units to the private sector and overcome the Housing Corporation’s model lease issue. If houses are provided then there is a possible early enfranchisement problem (see 2.7.3).
- Long leases are relatively straightforward to enact and a wealth of legal expertise is available - depending upon the exact terms negotiated. Tenant's Right to Acquire may apply – see 2.8 above.

- Bespoke transactions are usually only needed where the deal is significant in terms of value or is of strategic importance or unless a third party is meeting the Council's legal fees (on a Local Authority lease disposal).
- *Long leases can also be used in conjunction with mixed use (mixed residential and commercial) developments, including 'live-work' units where Planning authorities may grant consent to developments incorporating work and residential space in the same unit, often on sites or in areas previously zoned for employment or industrial use. Such units have generally been developed in London (both refurbishment and new build and often with RSL involvement) but could be equally applicable in the rural context.*
- Legal fees – are normally 'average' for long leases as the format and conditions are well developed in the legal profession and familiar to property holding clients.

### 3.1.2 Advantages/Disadvantages for Stakeholders

#### **Benefits to Landowners**

- Owner gets a land value/capital receipt (a 'premium') but not on a par with that which would be achieved through open market housing, however 'mixed use' (commercial and residential development) may offer landowners opportunities for some residential units on otherwise controversial sites and thus offer a potentially higher lease premium. It must be noted, however, that leasehold is not a mechanism whereby a landowner can override Planning policy
- But, generally, it needs a 'philanthropic' landowner who is prepared to part with their land or property for 99 or 125 years or longer- as the model rarely permits anything more than a nominal ground rent
- Nonetheless, both public landowners and private freeholders, e.g. landed estates, can insert clauses in the lease to require the leaseholder to comply with its requirements over design quality- including external treatment and layout of dwellings, landscaping, density, exterior colour schemes - to ensure continuity of the aesthetics of the estate in question. Equally, the ability of the freeholder to enforce compliance with such clauses is much easier under leasehold arrangements than it is where a freehold transfer has occurred and restrictive covenants have been inserted in the title documents.

- The freeholder could also require the RSL to agree to a long-stop date by which development must commence or return the site should development not prove possible.
- The landowner may insert a clause requiring collateral warranties ('third party legal guarantees') from the RSL's contractor and building consultants (e.g. architect) so that the freeholder can enforce redress against such third parties should a defect that may breach the terms of the lease arise.
- The freeholder may insert clauses governing the circumstances where the RSL leaseholder can grant under-leases to other parties, thus further maintaining its oversight of the utilisation of its land.
- Owner and developer can share 'overage' on SHG and non-SHG shared equity future staircasing receipts. 'Overage' may be defined as a former landowner (including the freeholder disposing of a long lease) sharing in a proportion of increases in value of the newly built dwellings with the developer of said new dwellings (including an RSL/USL); a legally binding 'overage document is drawn up' between the parties which may be annexed to the lease. (Note, an RSL would need Section 9 consent from the Housing Corporation to grant a 'disposal' to such arrangements)
- The landowner's ability to share in the equity staircasing can be seen as attractive because the landowner gets a lease premium on creation of the long lease and a share of staircasing receipts in the future.
- Local Authorities have the capacity to recycle receipts (including from S.106 commuted sums as grant to support rural affordable housing).
- 125 year leases could be included in a Devon-wide approach to affordable housing, e.g. into improving the identification of sustainable rural settlements including where 'live-work' could afford tangible benefits (see Draft SW Regional Spatial Strategy Policy C<sup>8</sup> – [and see next point]).
- Long leases can involve a variety of stakeholders, for instance, local private landowner(s), the Local Authority (including as freeholder), RSL(s), other community groups [including housing co-ops as managing agents] Such partnerships using long leases may then

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<sup>8</sup> The Draft Regional Spatial Strategy for the South West 2006-2026, South West Regional Assembly, 2006

encourage social enterprises, i.e. firms which are aimed at achieving a ‘social good’ (often in the form of workers’ cooperatives) where, subject to not breaching EU ‘state aid’ rules, public bodies can offer support or subsidy in cash or in kind. (See ‘Guardian’ newspaper article of successful Local Authority support of social enterprises in Scotland – Society Guardian, 19 March 2008, Raploch Regeneration Company).

- Long leases can be used for ‘mixed use’ with commercial premises as well as residential.
- The landowner can elect to charge VAT with the land premium. However, this can present a problem for RSL as VAT may be non-recoverable unless a ‘golden brick’ method is adopted [see glossary for definition].
- Landowners not wishing to part with the freehold interest of their land or property may consider either long (or short) leases as a commercially and socially acceptable option to assisting meet rural housing needs.

### **Benefits to Local Authorities**

- On all affordable housing the Local Authority gets the benefit of nomination/referral rights to all the housing provided, alleviating its homelessness and waiting list issues, unless the landowner stipulates a proportion of nomination rights for its own staff in the lease.
- If the Local Authority is freeholder and grants a long lease it can exercise control over design quality, overage and housing management issues (see above Benefits to Landowners)
- From off-site S.106 contributions such commuted sums/contributions can be made available to social landlords by the Local Authority to act as a top up or in lieu of SHG. However, there is the issue of lack of reliability/consistency/certainty of contributions especially if the market declines (as it may do – due to the global ‘credit crunch’).
- As with other public sector landowners County Councils may also benefit from the long lease of their own land and can also possibly contribute subsidy via the use of 2<sup>nd</sup> home council tax receipts. West Sussex County Council has explored in this context enabling key worker housing on some of its sites [unpublished Adams Integra report for WSCC 2007].

### 3.1.3 Land Leasing Risks

- Leasehold is not as good as freehold - some mortgage lenders may not wish to lend to shared owners on such sites, especially if the head lease is under 125 years; the current 'credit crunch' and the restriction on the availability of mortgages by banks and building societies in Britain may exacerbate this issue.
- Ground rent. Most RSL/USL deals will not be able to support anything other than a nominal ground rent as they will require the bulk of the tenants'/shared owners' rent to pay a private loan (mortgage) which has part-funded the capital costs (in conjunction with SHG/equivalent subsidy). Viability of schemes needs to be tested, in each individual case and it may be possible for a freeholder to transfer a long lease at nil premium and to modestly share in rental income after 30 to 35 years (see Adams Integra Dartington Hall site viability case study report, September 2008).
- The RSL/USL would need a mortgagee in possession exclusion clause which in exceptional circumstances could lead to the development ceasing to continue as affordable housing should the RSL lender have to step in and sell on the leasehold units. In practice, up to now, the Housing Corporation has always arranged for another RSL to take over where such a scenario has been threatened.
- Without a Mortgagee in Possession clause RSLs cannot use the properties as security for future loans undermining longer term ability to borrow and invest in social housing.

### 3.1.4 Implications for RSLs

*Long leases meet the Housing Corporation requirements for both rent and shared ownership tenures and theoretically should not present the shared owner with any difficulties in obtaining a mortgage (though this may be an issue with some mortgage lenders if the head lease is 99 years or less).*

#### **Benefits to RSLs**

RSL/or equivalent Unregistered Social Landlords can get Social Housing Grant

- RSL/USL can receive S.106 contribution in lieu of/in addition to SHG.

- RSLs can do mixed use schemes.
- RSLs cannot do tied accommodation. *However, there are cases of landowners agreeing referral rights for a number of their employees via the Local Authority Nomination process. E.g. at Goodwood Estate in West Sussex*

**Note:** The Landowner cannot evict an employee from their social or shared ownership accommodation if they lose their job with said landowner.

### 3.1.5 Nomination Agreements

Standard Local Authority nominations arrangements for rented housing and the equivalent referrals for shared ownership can apply [including landowner referral rights, see above].

#### **CASE STUDY: Rural Landowner Nomination Rights – Witney Parish Council:**

In 2001 a planning application was lodged to build 15 units in the Parish of Witney, Waverley Borough, Surrey. A local Housing Needs Survey, carried out in November 2000 by the Rural Housing Trust, recognised the housing needs for current residents with an established local connection.

As part of the planning application submitted, the Council were to receive 100% nomination rights to the accommodation at first letting and 75% thereafter with an agreement to give the private landowner a portion of the nominations. It is worth noting that this innovative approach to securing land for rural affordable housing predates the 2008 Taylor similar recommendation report (see Preface, above)The development was subject to a Section 106 Agreement (consistent with the LA's Planning policy), which required all occupants to have an established local connection to the Parish of Witney, effectively a restrictive covenant.

The development was completed in 2004 and comprised of 8 rented units and 7 of shared ownership.



### **3.2 Model 2: 65 Year Lease - Long lease**

(assumes nil or nominal ground rent).

#### Key Legal and Financial Features

As 125 year lease except for shared ownership/shared equity, as mortgage lenders are not inclined to lend where such a term of head lease applies.

#### Advantages/Disadvantages for Stakeholders

As 125 year lease, save that a 65 year lease may be perceived by landowner as preferable to a 99 year or 125 year lease.

#### Land Leasing Risks

As shared ownership/equity is essentially precluded there are only minimal Right To Acquire risks from SHG-funded rental property.

#### Implications for RSLs

A 65 year lease meets minimum Housing Corporation requirement for the 'life' of new build housing. However, as stated above, it is unlikely that a shared owner would be able to obtain a mortgage on such a reduced lease length and thus is probably only suitable for rented housing. Also 65 year leaseholds are less attractive to offer to private lenders as security

#### Nomination Agreements

Local Authority nominations arrangements for rent can apply as normal.

### **3.3 Model 3: Leaseback (variant of short lease)**

#### Key Legal and Financial Features

- Leaseback is complex. The concept of leaseback may be expressed as follows:

A purchaser/developer/financier buys the freehold of a property/estate outright and then leases it back to a management company/RSL/USL for renewable periods of up to 20 years (commonly with a 10 year 'break clause' to allow either party to withdraw). In return, the property owner receives a guaranteed rental return, irrespective of occupancy, at a fixed escalating annual amount, which offsets the cost of their loan/finance/mortgage payments. The rental return is net of all community/council fees/taxes, running and maintenance (including housing management and property maintenance) costs which are covered by the management company/RSL/USL.

- Given the complexity of lease-back it needs to be looked at on a case by case basis. Legal fees can be high for all parties and it can be very time consuming to agree documentation.
- Rent Escalator – as built into the lease is a requirement for the leaseholder to pay an increase in the rent (ground rent) each year to the freeholder regardless of social or market rent levels and occupancy levels.

#### Advantages/Disadvantages for Stakeholders

*Leaseback is only suitable for a large site (which is unlikely in the rural context) or where a large number of sites are available (from the same lease-financier); the financial mechanism requires an escalating lease payment each year.*

- It is sub-market housing without SHG (see below).
- It can involve a variety of stakeholders e.g. local landowner(s), Local Authority (including as freeholder granting a long lease at a peppercorn to the financier), RSL(s), other community groups (including housing co-ops as managing agents).

#### Land Leasing Risks

Leaseback deals - needs rent escalator to work – are not suitable for social rent nor probably LCHO; it has been used for student accommodation and is also a possibility for 'key workers' (e.g. for NHS staff) with a rent guarantee (from the NHS Trust/employer/university) to the RSL; the freehold stays with financier; the RSL must guarantee rents to freeholder; the lease-financier may not consider rural schemes are large enough to invest.

#### Implications for RSLs

*Leaseback is not possible to use with SHG funding or for housing tenants on assured tenancies – it can be (and is) used for providing housing for key workers or students where the employer/college gives a revenue guarantee.*

- The RSL gets units to rent at intermediate market levels and can have the possibility to buy the asset at the expiry of the lease term (often at a nominal sum).
- As the RSL must pay ‘ground rent’ at an escalator each year it risks having to meet this regardless of the residents’ ability to pay and/or voids and has to cover its own management and maintenance running costs from the rental income too.

#### Nomination Agreements

Tenants need to be on assured short-holds and be able to pay a submarket rent and thus standard nominations agreements are not applicable. However, Local Authority referrals for key workers, (Note - not Department of Communities & Local Government – Key Worker Living) or ‘essential workers’ are possible.

#### **CASE STUDY: RSL Leaseback – Shrewsbury & Atcham**

Shrewsbury & Atcham Borough Council has a highly successful tie up with Shropshire Rural Housing Association. In 2004, two properties at Wilcott were acquired by the Borough Council under the leaseback scheme and leased for 22 years to Shropshire Rural Housing Association.

The Council had reviewed its financial strategy following the cessation of local authority social housing grant and allocated £7million for the provision of social housing to 2006 through an innovative leaseback arrangement. It has decided to continue with such arrangements for 2008/9 The LA has financed the arrangements using capital receipts from the sale of strategic sites.

See [www.shrewsbury.gov.uk](http://www.shrewsbury.gov.uk) for more information

### **3.4 Model 4: Equity Share Co-ops (used with long leases)**

#### Key Legal and Financial Features

All co-op members have an equity stake in the dwellings owned by the co-op (similar to ‘co-ownership’) to allow them to participate in shared equity.

It is often used by self-builders where ‘sweat equity’ gives one a shared equity stake in one’s home.

To enable this to work landowners need to offer 99 - 125 year leaseholds with 'low' initial premiums and, at most, nominal ground rents.

However, landowners could share in equity staircasing receipts subject to any Housing Corporation section 9 consent if any SHG funding was involved.

Legal fees can be higher than the norm as equity share co-ops are not common.

- The loan stock option (as recommended by the Co-operative Bank) – the housing co-op holds stock and members payments include a rent element and an equity stake element which they can realise when they leave the co-op. The co-op buys them out at this point.
- Loan stock is a totally private finance model (i.e. is not to be used in conjunction with SHG) needing a 'soft loan' at outset and 'cheap land/properties'.
- There is a risk of inadequate funding and an inability of the co-op to buy out members wishing to leave.

#### Advantages/Disadvantages for Stakeholders

Equity share can provide intermediate tenure accommodation; possibly linked to construction/allied skills training for self-builders.

- However, common self-build problems include - lack of cohesion/leadership/infighting in the co-op.
- Staircasing to 100% is common under the (non-loan stock) standard arrangement (unless on rural exception sites) which then takes the dwelling out of the co-op and out of intermediate tenure. Restrictive clauses can be applicable (see section 2 above).

It may be argued that the culture required for successful cooperative developments, 'the co-op concept' and/or self-build – is it appropriate to rural Devon? However, the 'Exeter Community Initiative' has successfully raised bonds to provide affordable housing (<http://www.eci.org.uk/projects.htm>).

Private funding, may be an issue but in addition to the Co-operative Bank plc, the Triodos Bank also funds '3<sup>rd</sup> sector' cooperative initiatives.

#### Land Leasing Risks

The co-op might implode (see above) and leave unfinished dwellings, if self-building, though they could hire a builder or tradesperson mentors to assist or complete the dwellings; the co-op could hire a building contractor to build out or refurbish the entirety of the dwellings, although the latter options increase the capital costs and may make the scheme unaffordable.

#### Implications for RSLs

*It may be possible for an equity share co-op model to meet the Housing Corporation's shared ownership requirements and thus be eligible for SHG funding; however, if the landowner wishes to retain a stake in the equity of the dwellings this will prevent recourse to SHG funding unless Section 9 consent can be obtained .*

- The co-op can have an out-sourcing arrangement with an RSL to manage and maintain the dwellings and to handle referrals with the Local Authority.

#### Nomination Agreements

Referral arrangements are practical.

(Please note *Fully Mutual Housing Co-ops* are another option but these are only suitable for rented housing but can also be a vehicle for self-build).

#### **CASE STUDY: Walter Segal Self-Build – Marks Tey, Nr Colchester, Essex**

Marks Tey is a village located six miles west of Colchester, with a population fewer than 3,600 people.

For this particular development, The Walter Segal construction method was chosen as a way of building with only basic/limited skills available. The Marks Tey project was instigated by a parent of a disabled son who was anxious that people with disabilities had no involvement in the type of property available for them and represents a successful example of rural self-build involving disabled persons.

The Local Council offered backing for the scheme which would enable people with disabilities to control the design to cater for their individual needs. Land was donated by the council as well as financial support to cover various costs (building and professional) for the development of five bungalows.



Working Agreements were established and volunteers were contracted for a period of 18 months on the premise that they could earn a qualification through participation. A Site Manager and a Contract Manager were appointed and Shaftesbury Housing was designated development agents.

Such projects can be used with long leases

### **3.5 Model 5: Short Leases (i.e. 'standard' short leases)**

#### Key Legal and Financial Features

Short leases are not uncommon and there is a wealth of legal and practical experience for owners and RSLs in operating them for 'temporary' affordable housing.

Leases under 14 years may be 'off balance sheet'. The treatment of operational leases is an accounting mechanism rather than a legal one. It may be more favourable to certain landlords in certain specific circumstances to grant a short term lease so that the capital value of the asset remains on their balance sheets and the income stream is treated as rent rather than disposing of a longer interest in the land and entering the capital receipt into the accounts. Although this may be an advantage to certain specific landowners it will be dependent upon the facts in each case.

All short leases of up to 30 years [see above TSHG section] can make a property eligible for Housing Corporation TSHG (Temporary Social Housing Grant funding) for short-term rented housing. Equally Local Authorities can utilise such units for PSL (Private Sector Leasing); tenants are usually on assured short-hold tenancies.

Leases can be structured to allow the landowner to share in the revenue income though caution is needed to ensure affordability.

Please note Stamp Duty Land Tax applies where the lease requires a rent to be paid to the landlord, unless the lease is for a period of lease less than seven years.

However, such given the variety of possible options, lease documents may not be standard and hence legal fees could be quite high.

### Advantages/Disadvantages for Stakeholders

Where sub-market renting (as opposed to social renting) is considered appropriate this can be used with non-TSHG funded short lease property where a sub-market rent (usually defined as 75% to 80% of local market rents) would provide a reasonable revenue stream to allow a share of said income to the freeholder (via ground rent).

PPS3 arrangements do not apply (see above section 2.5).

Such arrangements could possibly be used as part of an Empty Homes Strategy for a Local Authority

### Land Leasing Risks

There are no RTA or enfranchisement risks (if lease less than 20 years) and the landowner gets the properties back in a relatively short period.

### Implications for RSLs

*‘Standard’ short leases can be eligible for TSHG; it is not possible to offer shared ownership under such short leases as the length precludes any mortgage being made available.*

Tenancies normally would be Assured Short-hold (AST).

- Potential to get Temporary Social Housing Grant (TSHG).
- Potential for the RSL to offer to buy a longer lease or the freehold at the end of the original lease period.
- Problem of meeting a high ground rent if tenants cannot afford the rent or obtain sufficient Housing Benefit.

### Nomination Agreements

Suitable arrangements between Local Authority and RSL (based on Private Sector Leasing or PSL) are not uncommon.

Local Authority can use for temporary accommodation for homeless households.

## **3.5.1 Special Purpose Vehicles (SPVs) – used with long leases and possibly leaseback**

The Housing Corporation's NAHP Prospectus allows Local Authorities to establish SPVs, including in conjunction with partners, to bid for SHG funding (having demonstrated they meet Housing Corporation criteria in a Pre-Qualification process). A potential option for Local Authorities would be to set up an SPV with a local landowner partner to provide affordable housing on land (leasehold or freehold) owned by either or both parties; SPVs may be viewed as a new way to do 'council housing'. However, they can be complex – and only worth doing if a number of sites are involved in the same joint venture or SPV. There is the potential to bid for SHG if the SPV approved by Housing Corporation.

Legal fees can be very high.

#### Advantages/Disadvantages for Stakeholders

Advantages – SPVs present Local Authorities with the possibility of accessing SHG for new affordable housing. (Arms Length Management Organisations or ALMOs can also access SHG. However, ALMOs are not possible for LA's which have transferred their stock- but they can set up an SPV. SPVs also offer the LA the opportunity of a partnership with other organisations, see below)

Landowners, private developers and RSLs can also be partners in a Local Authority-led SPV.

PPS3 arrangements will apply (see above section 2.5).

#### Land Leasing Risks

Only suitable for long leaseholds (preferably 125 years).

RTA and enfranchisement risks would be the same as for all other long leases.

#### Implications for RSLs

*RSLs if not a party to the SPV could offer lettings and tenancy management and maintenance services to the SPV, under a management agreement.*

Tenancies normally would be Assured Tenancies.

- Potential to get Social Housing Grant (SHG).
- Potential for shared ownership.

### Nomination Agreements

Suitable arrangements between Local Authority as housing needs agency and SPV (based on standard RSL practice) could be put in place.

Local Authority can use for permanent temporary accommodation for homeless households.

### **3.6 Example Land Lease Documentation**

See *'Skeleton Lease'*, Appendix 1.

### **3.7 Good Practice**

A structure for model land lease documentation is provided separately (see 'Dartington Hall Trust Desktop Appraisal – Leasing Options for Affordable Housing')

The land lease models can be utilised in combination with innovative procurement methods (including Modern Methods of Construction), skills training and 'green building techniques' (see section 2.3) to make South Hams District Council a beacon for holistic good practice in sustainable rural housing.

### **3.8 Other Land Disposal/Acquisition Options**

- Fully mutual housing co-ops with short or long leases are a possibility for social rented accommodation (Note: RTA does not apply to fully mutual co-ops) and are commonly used in self-build (including refurbishment) situations.
- Joint venture (JV) arrangements may be considered as similar to SPVs and can involve a legal partnership between a Local Authority, a private landowner and an RSL to deliver affordable housing where each party takes on a portion of the risks involved and the rewards. Such JVs can be used with long leases.

#### **4. CONCLUSIONS AND RECOMMENDATIONS**

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The utilisation by mainly rural Local Authorities of the above menu of land lease options with the concomitant funding mechanisms can assist Local Authorities in their role of ‘strategic leader and place-shaper’ (Local Government: Strong and Prosperous Communities, DCLG 2006) and strengthen the ability of the district to ‘attract and retain high value added firms and workers for local prosperity’ (see *ibid*).

##### **RECOMMENDATIONS:**

Land leasing models offer Local Authorities considerable scope and flexibility to lever affordable rural housing that addresses many of the common concerns of rural landowners (regarding selling the ‘family jewels’ and/or losing control of their assets) whilst satisfying Planning policy concerns and requirements.

Local Authorities can utilise land lease initiatives to work with Government (the CLG) to implement the ‘sustainable’ Planning policy recommendations of the 2008 Taylor Report (see Preface, above)

It is recommended that Local Authorities market the lease models to key stakeholders (utilising the advice leaflets) and trial some of the models having consider the applicability of the above-mentioned land leasing models to best suit the requirements of the landowner (including Councils themselves) to promote additional affordable housing, (be it shared ownership, non-SHG shared equity, social rent, including temporary social housing for rent, where applicable).

**Final Report  
End of Main Study  
Appendices follow  
September 2008**

## **Appendices**

**Appendix 1    Skeleton Lease (please note, individual landowners are advised to seek their own legal advice in each case; the skeleton lease is for guidance)**

**Appendix 2    Summary matrix of long lease and short lease options**

**Appendix 3    Summary of SHG and leasehold enfranchisement rules**

**Appendix 4    Glossary of Terms**

**Appendix 1**

**Skeleton Lease**

**DATED**

**2008**

**and**

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**LEASE**

**of**

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**Blake Laphorn Tarlo Lyons**

Harbour Court  
Compass Road, North Harbour  
Portsmouth PO6 4ST  
Ref: [•]

S O U T H A M P T O N · W I N C H E S T E R · O X F O R D · F A R E H A M · P O R T S M O U T H · L O N D O N



**LR9. Rights of acquisition etc.**

**LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land**

None.

**LR9.2 Tenant's covenant to (or offer to) surrender this lease**

None.

**LR9.3 Landlord's contractual rights to acquire this lease**

None.

**LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property**

None.

**LR11. Easements**

**LR11.1 Easements granted by this lease for the benefit of the Property**

None

**LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property**

None

**LR12. Estate rentcharge burdening the Property**

None.

**LR13. Application for standard form of restriction**

The Parties to this lease apply to enter the following standard form of restriction against the Tenant's title:-

**[insert standard form or agreed restriction]**

**LR14. Declaration of trust where there is more than one person comprising the Tenant**

None



**Planning Agreement:** means an agreement entered into under Section 106 of the Town and Country Planning Act 1990 as amended by the Planning and Conservation Act 1991 and the Planning and Compulsory Purchase Act 2004 and made between the [Council] (1) [the Tenant] (2) and [the Landlord] (3) dated the day of 2008 a true and complete copy of which is annexed hereto and comprises part of this Lease;

**Planning Permission:** means planning consent dated Reference granted pursuant to the Planning Agreement

**Permitted Use:** [x] no. Dwelling houses but restricted at all times so as to be used and occupied only in accordance with the Planning Agreement (or any replacement document agreed between the parties acting reasonably in the event of a new planning permission being required to construct Dwellinghouses during the Term following damage by fire flood earthquake or otherwise) and the provisions of this Lease;

**Plan:** means the plan annexed hereto;

**Premium:** [£ ]

**Property:**

**Registered Social Landlord:** means a social landlord registered with the Housing Corporation as referred to in sections 1, 2 and 3 of the Housing Act 1996 but (in the event only of any statutory modification or change being made to the said reference) shall include any landlord providing social housing whose status and functions will be substantially the same as a social landlord as aforesaid;

**Rent Payment Date:** 1st January;

**Service Media:** all media for the supply or removal of heat, electricity, gas, water, sewage, energy, telecommunications, data and any and all other services and utilities and all structures, machinery and equipment ancillary to those media;

**Third Party Rights:** all rights, covenants and restrictions affecting the Property including the matters referred to at the date of this lease in the property register of Title Number [ ];

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement or additional tax;

**1954 Act:** Landlord and Tenant Act 1954.

- 1.2 A reference to this **lease**, except a reference to the date of this lease or to the grant of the lease, is a reference to this deed and any deed, licence, consent, approval or other instrument supplemental to it.
- 1.3 A reference to the **Landlord** includes a reference to the person entitled to the immediate reversion to this lease. A reference to the **Tenant** includes a reference to its successors in title and assigns.

- 1.4 In relation to any payment, a reference to a **fair proportion** is to a fair proportion of the total amount payable, determined conclusively (except as to questions of law) by the Landlord.
- 1.5 The expressions **Landlord covenant** and **Tenant covenant** each has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995.
- 1.6 Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it.
- 1.7 A reference to the **term** is to the Contractual Term.
- 1.8 A reference to the **end of the term** is to the end of the term however it ends.
- 1.9 References to the **consent** of the Landlord are to the consent of the Landlord given in accordance with clause 0 and references to the **approval** of the Landlord are to the approval of the Landlord given in accordance with clause 0.
- 1.10 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England & Wales.
- 1.11 Unless otherwise specified, a reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under it and all orders, notices, codes of practice and guidance made under it.
- 1.12 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.
- 1.13 Any obligation in this lease on the Tenant not to do something includes an obligation not to agree to or suffer that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 1.14 Unless the context otherwise requires, where the words **include(s)** or **including** are used in this lease, they are deemed to have the words "without limitation" following them.
- 1.15 A **person** includes a corporate or unincorporated body.

- 1.16 References to **writing** or **written** do not include email.
- 1.17 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause of, or Schedule to, this lease and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.
- 1.18 Clause, Schedule and paragraph headings do not affect the interpretation of this lease.

## **2. GRANT**

- 2.1 In consideration of the Premium paid by the Tenant to the Landlord the receipt of which the Landlord hereby acknowledges the Landlord with limited title guarantee lets the Property to the Tenant for the Contractual Term.
- 2.2 The grant is made together with the ancillary rights set out in clause 0, excepting and reserving to the Landlord the rights set out in clause 0, and subject to the Third Party Rights and the matters contained or referred to in the Schedule.
- 2.3 The grant is made with the Tenant paying the following as rent to the Landlord:
- (a) the Annual Rent and all VAT in respect of it;
  - (b) all interest payable under this lease; and
  - (c) all other sums due under this lease.

## **3. ANCILLARY RIGHTS**

- 3.1 The right of way at all times and for all purposes with or without motor vehicles over and along the adjacent land shown edged brown on the Plan (“the Adjacent Land”)
- 3.2 The right to lay and thereafter use (including rights for maintenance repair replacement and connecting into) all Service Media under the Adjacent Land
- 3.3 Right of support and protection for the Property from the Adjacent Land as is now enjoyed
- 3.4 Neither the grant of this lease nor anything in it confers any right over neighbouring property nor is to be taken to show that the Tenant may have any right over neighbouring property, and section 62 of the Law of Property Act 1925 does not apply to this lease.

#### **4. RIGHTS EXCEPTED AND RESERVED**

4.1 The following rights are excepted and reserved from this lease to the Landlord (the **Reservations**):

- (a) the right to develop any neighbouring property (whether or not belonging to the Landlord);
- (b) the right to enter the Property for any other purpose mentioned in this lease or for any other purpose connected with this lease or with the Landlord's interest in the Property or in any neighbouring property;
- (c) the right at all times and for all purposes with or without motor vehicles and on foot over and along the Estate Roads;
- (d) the right of free flowing and use of all Service Media and the right to connect into lay re-lay cleanse upkeep upgrading and maintaining any Service Media for any purposes in connection with any neighbouring land or property in respect of which the Landlord shall own or require be serviced across the Property;
- (e) the right to enter upon the Property for any purpose or reason in the event of any breach non observance or non compliance by the Tenant of any of the obligations on its part contained or referred to within this Lease.

4.2 The Reservations may be exercised by the Landlord and by anyone else who is or becomes entitled to exercise them, and by anyone authorised by the Landlord.

4.3 The Tenant shall allow all those entitled to exercise any right to enter the Property, to do so with their workers, contractors, agents and professional advisors, and to enter the Property at any reasonable time (whether or not during usual business hours) and, except in the case of an emergency, after having given reasonable notice (which need not be in writing) to the Tenant.

4.4 No one exercising any of the Reservations, nor its workers, contractors, agents and professional advisors, shall be liable to the Tenant or to any undertenant or other occupier of or person at the Property for any loss, damage, injury, nuisance or inconvenience arising by reason of its exercising any of those rights except for:

- (a) physical damage to the Property; or
- (b) any loss, damage, injury, nuisance or inconvenience in relation to which the law prevents the Landlord excluding liability.

#### **5. THIRD PARTY RIGHTS**

5.1 The Tenant shall comply with all obligations on the Landlord relating to the Third Party Rights (insofar as those obligations relate to the Property) and shall not do

anything (even if otherwise permitted by this lease) that may interfere with any Third Party Right.

- 5.2 The Tenant shall allow the Landlord and any other person authorised by the terms of the Third Party Right to enter the Property in accordance with its terms.

## **6. THE ANNUAL RENT**

- 6.1 The Tenant shall pay the Annual Rent (if demanded) and any VAT (if any) in respect of it annually in advance on or before the Rent Payment Date. The payments shall be made by banker's standing order or by any other method that the Landlord requires at any time by giving notice to the Tenant.

- 6.2 The first instalment of the Annual Rent and any VAT (if any) in respect of it shall be made on the date of this lease and shall be the proportion, calculated on a daily basis, in respect of the period from the date of this lease until the day before the next Rent Payment Date.

## **7. INSURANCE**

- 7.1 The Tenant shall keep the Property insured with a reputable insurer, in the joint names of the Landlord and the Tenant, against loss or damage by the Insured Risks and such other risks as the Landlord or the Tenant reasonably consider prudent to insure against from time to time for the full reinstatement cost thereof. The Landlord shall not be obliged to insure any part of the Property installed or developed by the Tenant.

- 7.2 The Tenant shall:

- (a) give the Landlord notice immediately any matter occurs that any insurer or underwriter may treat as material in deciding whether or on what terms to insure or to continue to insure the Property;
- (b) not do or omit anything as a result of which any policy of insurance of the Property or any neighbouring property may become void or voidable or otherwise prejudiced, or the payment of any policy money may be withheld, nor (unless the Tenant has previously notified the Landlord and has paid any increased or additional premium) anything as a result of which any increased or additional insurance premium may become payable;
- (c) comply at all times with the requirements and recommendations of the insurers relating to the Property;
- (d) give the Landlord immediate notice of the occurrence of any damage or loss relating to the Property arising from an Insured Risk or of any other event that might affect any insurance policy relating to the Property;

- (e) to supply the Landlord on demand (but not more than once in any 12 months period) a full and complete copy of all policy documents schedule and information relating to the insurance policy effected in accordance with the above clause.

7.3 The Tenant shall, subject to obtaining all necessary planning and other consents promptly, use all insurance money received (other than for loss of rent) to repair reinstate and fully make good all damage caused.

7.4 All insurance monies received shall be held and banked into a joint account in the joint names of the Landlord and the Tenant.

## **8. RATES AND TAXES**

8.1 The Tenant shall pay all present and future rates, taxes and other impositions payable in respect of the Property, its use and any works carried out there, other than:

- (a) any taxes payable by the Landlord in connection with any dealing with or disposition of the reversion to this lease; or
- (b) any taxes, other than VAT and insurance premium tax, payable by the Landlord by reason of the receipt of any of the rents due under this lease.

8.2 If any rates, taxes or other impositions are payable in respect of the Property together with other property, the Tenant shall pay a fair proportion of the amount payable.

## **9. UTILITIES**

9.1 The Tenant shall pay all costs in connection with the installation, use, supply and removal of electricity, gas, water, sewage, telecommunications, data and other services and utilities to or from the Property.

9.2 If any of those costs are payable in relation to the Property together with other property, the Tenant shall pay a fair proportion of all those costs.

9.3 The Tenant shall comply with all laws and with any recommendations of the relevant suppliers relating to the use of those services and utilities.

## **10. COMMON ITEMS**

10.1 The Tenant shall pay the Landlord on demand a fair proportion of all costs expenses and outgoings payable for the maintenance, repair, lighting, cleaning and renewal of

all Service Media, structures and other items used or capable of being used by the Property in common with other property.

- 10.2 The Tenant shall comply with all reasonable regulations after prior consultation with the Landlord that the Landlord may make from time to time in connection with the use of any of those Service Media, Estate Roads, structures or other items on the Property which shall affect the Adjacent Land

## **11. VAT**

- 11.1 All sums payable by the Tenant are exclusive of any VAT that may be chargeable hereunder from time to time (if at all).

## **12. DEFAULT INTEREST AND INTEREST**

- 12.1 If any Annual Rent or any other money payable under this lease has not been paid by the date it is due, whether it has been formally demanded or not, the Tenant shall pay the Landlord interest at the Default Interest Rate (both before and after any judgment) on that amount for the period from the due date to and including the date of payment.

- 12.2 If the Landlord does not demand or accept any Annual Rent or other money due or tendered under this lease because the Landlord reasonably believes that the Tenant is in breach of any of the tenant covenants of this lease, then the Tenant shall, when that amount is accepted by the Landlord, also pay interest at the Interest Rate on that amount for the period from the date the amount (or each part of it) became due until the date it is accepted by the Landlord.

## **13. COSTS**

- 13.1 The Tenant shall pay the reasonable and properly incurred costs and expenses of the Landlord including any solicitors' or other professionals' costs and expenses (incurred both during and after the end of the term) in connection with or in contemplation of:

- (a) the enforcement of the tenant covenants of this lease following an actual or alleged breach by the Tenant;**
- (b) serving any notice in connection with this lease under section 146 or 147 of the Law of Property Act 1925 or taking any proceedings under either of those sections, notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;**
- (c) serving any notice in connection with this lease under section 17 of the Landlord and Tenant (Covenants) Act 1995;**
- (d) the preparation and service of a schedule of dilapidations in connection with this lease (but only after the Landlord shall have provided not less**

**than 28 days prior written notice of the Landlord's intention to prepare such Schedule); and**

**(e) any consent or approval applied for under this lease, whether or not it is granted**

13.2 Where the Tenant is obliged to pay or indemnify the Landlord against any solicitors' or other professionals' costs and expenses (whether under this or any other clause of this lease) that obligation extends to those costs and expenses assessed on a full indemnity basis.

#### **14. COMPENSATION ON VACATING**

14.1 Any right of the Tenant or anyone deriving title under the Tenant to claim compensation from the Landlord on leaving the Property under the Landlord and Tenant Act 1927 or the 1954 Act is excluded, except to the extent that the legislation prevents that right being excluded.

#### **15. NO DEDUCTION, COUNTERCLAIM OR SET-OFF**

The Annual Rent and all other money due under this lease are to be paid by the Tenant or any guarantor (as the case may be) without deduction, counterclaim or set-off.

#### **16. REGISTRATION OF THIS LEASE**

Promptly following the grant of this lease, the Tenant shall apply to register this lease at HM Land Registry. The Tenant shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly. Within one month after completion of the registration, the Tenant shall send the Landlord official copies of its title.

#### **17. ASSIGNMENTS**

17.1 The Tenant shall not assign the whole of this lease other than to a Registered Social Landlord and after first having obtained the Landlord's prior written approval which shall not be unreasonably withheld or delayed.

17.2 The Tenant shall not assign part only of this lease.

17.3 The Landlord may refuse to consent to an assignment if there is any material breach of any of the covenants.

- 17.4 Nothing in this clause shall prevent the Landlord from giving consent subject to any other reasonable condition, nor from refusing consent to an assignment in any other circumstance where it is reasonable to do so.

## **18. UNDERLETTINGS**

- 18.1 The Tenant shall not underlet the whole of the Property at any time during the term but may sublet complete dwelling houses being part of the Property strictly and only by virtue of Assured Tenancies pursuant to the Housing Act 1988 and Housing Act 1996/or such other form of tenancy as may from time to time be prescribed by statute as offering residential tenants of any such Registered Social Landlord a similar measure of security or on such other basis as may from time to time be approved in writing by the Head of Housing and the Head of Planning & Transport in accordance with the Planning Agreement (which is deemed to form part of this Lease).
- 18.2 The letting of any completed dwelling house shall be undertaken in accordance with the provisions of the attached illustrative draft Tenancy Agreement or in such changed form which the Landlord and the Tenant shall agree acting reasonably the provisions of this Lease ("a Tenancy Agreement").
- 18.3 The Tenant shall not enter into any subletting agreement which shall be or be capable of continuing beyond the expiration of the Contractual Term.
- 18.4 The Tenant shall not enter into any Tenancy Agreement or other letting assignment or agreement which shall be capable of being underlet or sub-underlet.

## **19. CHARGING**

- 19.1 The Tenant shall not mortgage or charge the whole of this lease without the consent of the Landlord, such consent not to be unreasonably withheld or delayed.
- 19.2 The Tenant shall not charge part only of this lease.

## **20. PROHIBITION OF OTHER DEALINGS**

- 20.1 Except as expressly permitted by this lease, the Tenant shall not assign, underlet, charge, part with or share possession or share occupation of this lease or the Property or hold the lease on trust for any person (except pending registration of a dealing permitted by this lease at HM Land Registry).

## **21. REGISTRATION AND NOTIFICATION OF DEALINGS AND OCCUPATION**

- 21.1 In this clause a Transaction is:**

- (a) any dealing with this lease or the devolution or transmission of, or parting with possession of any interest in it; or
- (b) the creation of any underlease or other interest out of this lease other than a Tenancy Agreement, or out of any interest, underlease derived from it, and any dealing, devolution or transmission of, or parting with possession of any such interest or underlease other than a Tenancy Agreement; or
- (c) the making of any other arrangement for the occupation of the Property.

21.2 In respect of every Transaction that is registerable at HM Land Registry, the Tenant shall promptly following completion of the Transaction apply to register it (or procure that the relevant person so applies). The Tenant shall (or shall procure that) any requisitions raised by HM Land Registry in connection with an application to register a Transaction are dealt with promptly and properly. Within one month of completion of the registration, the Tenant shall send the Landlord official copies of its title (and where applicable of the undertenant's title).

21.3 No later than one month after a Transaction the Tenant shall:

- (a) give the Landlord's solicitors notice of the Transaction;
- (b) deliver two certified copies of any document effecting the Transaction to the Landlord's solicitors; and
- (c) pay the Landlord's solicitors a reasonable registration fee being not less than £50 (plus VAT).

## **22. CLOSURE OF THE REGISTERED TITLE OF THIS LEASE**

Immediately after the end of the term (and notwithstanding that the term has ended), the Tenant shall make an application to close the registered title of this lease and shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly

## **23. CONDITION**

23.1 The Tenant shall keep the Property and the buildings on the Property at all times in a good and substantial state of repair and condition throughout the term.

## **24. ALTERATIONS**

24.1 The Tenant may not develop nor use the Property other than in accordance with the terms of the Planning Agreement and the Planning Permission or any further planning permission supplementing collateral to or varying the Planning Permission which shall have been first approved in writing by the Landlord provided always that this provision

shall not prevent or restrict planning applications of a minor nature or which does not increase or reduce the number of residential dwellings on the Property.

- 24.2 The Tenant shall not install any additional Service Media nor alter the route of any Service Media or the Estate Road without first obtaining the prior written consent of the Landlord nor grant or allow the use of any service media by any third party or adjoining land owner without first obtaining the prior written approval of the Landlord such approval not to be unreasonably withheld or delayed

## **25. RETURNING THE PROPERTY TO THE LANDLORD**

- 25.1 At the end of the term the Tenant shall return the Property to the Landlord in the condition required by this lease.

## **26. USE**

- 26.1 The Tenant shall not use the Property for any purpose and only strictly in accordance with the Permitted Use.
- 26.2 The Tenant shall not use the Property for any illegal purpose nor for any purpose or in a manner that would cause loss, damage, injury, nuisance or inconvenience to the Landlord, its other tenants or any other owner or occupier of neighbouring property.

## **27. COMPLIANCE WITH LAWS**

- 27.1 The Tenant shall comply with all laws relating to:
- (a) the Property and the occupation and use of the Property in accordance with the Planning Agreement and the Planning Permission;
  - (b) the use of all Service Media and machinery and equipment at or serving the Property;
  - (c) any works carried out at the Property;
  - (d) all materials kept at or disposed from the Property; and
  - (e) the Estate Roads.
- 27.2 Without prejudice to any obligation on the Tenant to obtain any consent or approval under this lease, the Tenant shall carry out all works that are required under any law to be carried out at the Property whether by the owner or the occupier.
- 27.3 Within seven working days after receipt of any notice or other communication affecting the Property (and whether or not served pursuant to any law) the Tenant shall:

- (a) send a copy of the relevant document to the Landlord; and
- (b) take all steps necessary to comply with the notice or other communication and take any other action in connection with it as the Landlord may require.

27.4 The Tenant shall not apply for planning permission for the Property without first obtaining the Landlord's prior written consent.

27.5 The Tenant shall not carry out any works at the Property in respect of which the Construction (Design and Management) Regulations 1994 apply without the consent of the Landlord. Such consent is not to be unreasonably withheld in the case of works in respect of which the Landlord is not otherwise to withhold its consent unreasonably or which the Tenant is obliged to carry out under the terms of this lease.

27.6 The Tenant shall maintain the health and safety file for the Property in accordance with the Construction (Design and Management) Regulations 2007 and shall give it to the Landlord at the end of the term.

## **28. REMEDY BREACHES**

28.1 The Landlord may enter the Property to inspect its condition and state of repair and may give the Tenant a notice of any breach of any of the tenant covenants in this lease relating to the condition or repair of the Property.

28.2 If the Tenant has not begun any works needed to remedy that breach within one month following that notice (or if works are required as a matter of emergency, then immediately) or if the Tenant is not carrying out the works with all due speed, then the Landlord may enter the Property and carry out the works needed.

28.3 The reasonable costs properly incurred by the Landlord in carrying out any works pursuant to this clause (and any professional fees and any VAT in respect of those costs) shall be a debt due from the Tenant to the Landlord and payable within 14 days of receipt of a written demand.

28.4 Any action taken by the Landlord pursuant to this clause shall be without prejudice to the Landlord's other rights.

## **29. INDEMNITY**

The Tenant shall keep the Landlord fully and effectually indemnified from and against all expenses, costs, claims, damage, liabilities and loss arising from any breach of any tenant covenants in this lease, or any act or omission of the Tenant, any

undertenant or their respective workers, contractors or agents or any other person on the Property with the actual or implied authority of any of them.

**30. LANDLORD'S COVENANT FOR QUIET ENJOYMENT**

The Landlord covenants with the Tenant that the Tenant shall have quiet enjoyment of the Property without any lawful interruption by the Landlord or a person claiming under the Landlord or by title paramount.

**31. CONDITION FOR RE-ENTRY**

31.1 The Landlord may re-enter the Property at any time after any of the following occurs:

- (a) any material breach of any tenant covenant, in this lease;
- (b) where the Tenant:
  - (i) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Tenant or guarantor; or
  - (ii) the making of an application for an administration order or the making of an administration order in relation to the Tenant or guarantor; or
  - (iii) the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the tenant or the guarantor; or
  - (iv) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant or guarantor; or
  - (v) the commencement of a voluntary winding-up in respect of the Tenant or guarantor, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies; or
  - (vi) the making of a petition for a winding-up order or a winding-up order in respect of the Tenant or guarantor; or
  - (vii) the striking-off of the Tenant or guarantor from the Register of Companies or the making of an application for the Tenant or the guarantor to be struck-off; or
  - (viii) the Tenant otherwise ceasing to exist; or
  - (ix) the Tenant is no longer a Registered Social Landlord.

**32. ENTIRE AGREEMENT AND EXCLUSION OF REPRESENTATIONS**

- 32.1 This lease constitutes the entire agreement and understanding of the parties relating to the transaction contemplated by the grant of this lease and supersedes any previous agreement between the parties relating to the transaction.
- 32.2 The Tenant acknowledges that in entering into this lease it is not relying on, and shall have no remedy in respect of, any statement or representation made by or on behalf of the Landlord.
- 32.3 Nothing in this lease constitutes or shall constitute a representation or warranty that the Property may lawfully be used for any purpose allowed by this lease.
- 32.4 Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

**33. NOTICES, CONSENTS AND APPROVALS**

- 33.1 Except where this lease specifically states that a notice need not be in writing, or where notice is given in an emergency, any notice given pursuant to this lease shall be in writing.
- 33.2 A written notice shall be delivered by hand or sent by pre-paid first class post or registered post. A correctly addressed notice sent by pre-paid first class post shall be deemed to have been delivered at the time at which it would have been delivered in the normal course of the post.
- 33.3 Section 196 of the Law of Property Act 1925 shall otherwise apply to notices given under this lease.
- 33.4 Where the consent of the Landlord is required under this lease, a consent shall only be valid if it is given by deed, unless:
- (a) it is given in writing and signed by a person duly authorised on behalf of the Landlord; and
  - (b) it expressly states that the Landlord waives the requirement for a deed in that particular case.

If a waiver is given, it shall not affect the requirement for a deed for any other consent.

- 33.5 Where the approval of the Landlord is required under this lease, an approval shall only be valid if it is in writing and signed by or on behalf of the Landlord, unless:
- (a) the approval is being given in a case of emergency; or

(b) this lease expressly states that the approval need not be in writing.

33.6 If the Landlord gives a consent or approval under this lease, the giving of that consent or approval shall not imply that any consent or approval required from a third party has been obtained, nor shall it obviate the need to obtain any consent or approval from a third party.

#### **34. GOVERNING LAW AND JURISDICTION**

34.1 This lease shall be governed by and construed in accordance with the law of England and Wales.

34.2 The Landlord and the Tenant (and any guarantor) irrevocably agree to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this lease or the legal relationships established by it.

#### **35. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this lease shall not have any rights under or in connection with this lease by virtue of the Contracts (Rights of Third Parties) Act 1999.

#### **36. LANDLORD AND TENANT (COVENANTS) ACT 1995**

This lease creates a new tenancy for the purposes of the Landlord and Tenant (Covenants) Act 1995.

#### **3.7 Charities**

37.1 THE PROPERTY AS A RESULT OF THIS LEASE IS HELD BY THE TENANT AS AN RSL AND/OR EXEMPT CHARITY [DELETE IF INAPPLICABLE]

**THE SCHEDULE**

- All matters contained or referred to in the Title Registers of Title [       ]
- the Planning Agreement
- the Planning Permission
- [Insert as required]

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Signed as a deed by

acting by

.....  
Chairman

.....  
Vice Chairman/Director duly  
authorised

Signed as a deed by

acting by

.....  
Authorised signatory

.....  
Authorised signatory

**Appendix 2**

**Summary matrix of long lease and short lease options and SHG  
(basis for advice leaflet)**

<b>LONG LEASES (over 65 years)</b>	<b>SHORT LEASES (under 30 years)</b>
<ul style="list-style-type: none"> <li>• <b>SHG</b></li> <li>• <b>Permanent Rented Housing (both social and sub-market rent)</b></li> <li>• <b>LCHO (if over 125 years)</b></li> <li>• <b>No leaseback</b></li> <li>• <b>Equity Share Co-ops</b></li> <li>• <b>Fully mutual Co-ops (rent)</b></li> <li>• <b>PPS3</b></li> <li>• <b>Rural Exception Sites</b></li> <li>• <b>SPVs</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>TSHG (2-30year life)</b></li> <li>• <b>Temp Rented Housing (both social and sub-market rent)</b></li> <li>• <b>No LCHO</b></li> <li>• <b>Leaseback (10-20 years)</b></li> <li>• <b>Fully mutual Co-ops (rent)</b></li> <li>• <b>No PPS3 (but temporary Planning Permission e.g. for 7 years is possible)</b></li> <li>• <b>Rural Exception sites are excluded</b></li> <li>• <b>No SPVs</b></li> </ul>

**Appendix 3**

**SHG Rules and LEASEHOLD ENFRANCHISEMENT  
(including RIGHT TO ACQUIRE)**

LEASEHOLD ENFRANCHISEMENT	SHG RULES
<p><i>Enfranchisement is a problem because, if the resident successfully enfranchises to obtain a freehold, they are not bound by the terms of the lease and are, therefore, not bound by any buy-back provisions either.</i></p> <p><b>If rural exception site under 1996 legislation no enfranchisement is possible</b> (S.17 Housing Act 1996), nor Right to Acquire.</p> <ul style="list-style-type: none"> <li>• <b>Non rural exception site – danger of enfranchisement.</b></li> <li>• <b>Including of a resident of a house (not a flat) enfranchising before 100% staircasing.</b></li> <li>• <b>Right to Acquire (under 1996 Housing Act).</b></li> <li>• <b>No RTA on leasebacks.</b></li> </ul> <ul style="list-style-type: none"> <li>• <b>Fully mutual Co-ops (rent)</b></li> <li>• <b>SPVs - tenants and shared owners of SPVs will be subject to the same provisions as above.</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Legislation/SHG rules gives social tenants Right to Acquire (RTA) their home or shared owners the power to 100% staircase: i.e. enfranchise unless their home is on rural exception site/or provisions are inserted in the lease used as below.</b></li> <li>• <b>Shared ownership 100% staircasing and Right to Acquire on social rent do not apply to rural exception sites.</b></li> <li>• <b>For all non-rural exception sites RSL/USL needs to insert a buy-back clause in the shared owners' (under) lease.</b></li> <li>• <b>E.g. RSL has a buy-back/right of first refusal on shared ownership.</b></li> <li>• <b>Temporary Rented Housing (both social and sub-market rent no RTA)</b></li> <li>• Properties where the social landlord has insufficient legal interest, i.e. where the property is a house, under a lease with a term less than 21 years and for a flat, a lease with a term less than 50 years <b>no RTA.</b> <ul style="list-style-type: none"> <li>▪ The Right to Acquire does not apply where the Freehold is owned by a non-Public Sector body, e.g. a private or charitable landowner.</li> </ul> </li> <li>• <b>No RTA for tenants of cooperative HAS (Fully mutual co-ops).</b></li> </ul>

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>• <b>For all leaseholds include a nominal ground rent of more than £250 per year to minimise the ability of the tenant to enfranchise.</b></li></ul> |  |
|--|--|

## Appendix 4

### Glossary of Terms

#### **COMMUTED SUM**

A Planning 'charge' on development. See S106 above. In addition, or in place of the provision of planning gain affordable dwellings, the Local Authority may require cash contribution towards Education/community benefits and/or cash for new affordable housing in lieu of such dwellings on the site.

#### **DESIGN AND QUALITY STANDARDS (DQS)**

Minimum standards for new SHG funded developments (probity, compliance, quality) set down by the Housing Corporation (formerly SDS).

#### **DCLG**

##### **Department of Community and Local Government**

The Government department responsible for housing in England. The Housing Corporation is overseen by DCLG.

#### **EGAN COMPLIANCE**

SHG funded new developments must comply with these construction criteria, through 2012 Construction Commitments or obtaining and maintaining Clients Charter status.

#### **ESSENTIAL WORKER HOUSING**

A term used by Local Authorities for their priority keyworker housing outside of the terms of the DCLG/Housing Corporation system. Land and/or credit approval subsidies may be available to Housing Association partners.

#### **FIXED EQUITY**

Fixed equity housing refers to dwellings produced without SHG whereby the resident typically purchases 70% of the market value of the unit, pays no rent but has no right to purchase any further equity (unlike 'shared ownership'). The Housing Association ensures that the dwelling remains for non-market housing by retaining its share (30%) of the equity.

#### **HOUSING CORPORATION**

The principal regulatory and grant funding body (Quango) for Registered Social Landlords/Unregistered Social Landlords. It reports to the DCLG and is due to be replaced by the New Homes and Communities Agency (for funding) and Tenant Services Authority (formerly known as Oftenant) for regulation.

#### **KEY WORKER LIVING**

The new DCLG/Housing Corporation variant of key worker housing whereby RSLs build and let/sell on shared ownership to certain restricted categories of 'key workers' referred by 'zone agent' RSLs to the owning/managing Housing Association.

### **LEASEBACK**

Sometimes known as Build and Lease. A generic term for non-grant schemes where a lender/developer leases new dwellings to Housing Associations for typically 20 years on a guaranteed rental, commonly increasing by preset amounts each year (rental accelerator). Often used to provide NHS keyworker or student accommodation. At the end of the lease the Housing Association may be offered the freehold at a notional cost.

### **MILESTONES (ex-CASH PLANNING TARGETS)**

The SHG cash spending limit for each Registered Social Landlord/USL in receipt of NAHP funding by the Housing Corporation.

### **MODERN METHODS OF CONSTRUCTION (MMC)**

The Housing Corporation/DCLG collective term for all variants of 'non traditional construction', e.g. modular/prefab, timber frame, light-weight steel frame construction. A high percentage of all SHG funded projects must demonstrate MMC.

### **NATIONAL AFFORDABLE HOUSING PROGRAMME (NAHP)**

The now tri-annual capital programme drawn up by the Housing Corporation. It sets the DCLG (ex-ODPM) agreed capital grant of housing development for the 3 year programme. In year bids or Regular Market Engagement is now possible each quarter.

### **NON-QUALIFYING COSTS**

Project capital costs on SHG funded schemes which the Housing Corporation treats as inadmissible for funding, e.g. garages.

### **OJEU RULES**

The regulations for procurement for all public bodies in the European Union. In September 2004 the British Government changed its position so that all RSL's are counted as public bodies for EU purposes. All building works (currently > £3.4M) and service agreements (currently >£130k) over certain thresholds have to be advertised for tender in the EU journal, formerly 'OJEC'.

### **RESTRICTIVE COVENANTS**

Legal covenants placed on land or property title which restricts the use to which the land in question may be put, e.g. only for housing (not commercial use). Restrictive covenants insurance may guard against any enforcement action.

### **RIGHT TO ACQUIRE**

A scheme introduced in 1996 to allow RSL assured tenants to buy their SHG-funded homes at a discounted price.

### **SECTION 106 AGREEMENTS (PLANNING GAIN)**

An agreement negotiated with a developer (including a Housing Association) under the 1990 Planning Act requiring the developer to include affordable homes in schemes over a certain size. PPS3 gives the DCLG guidance thereon.

### **SHARED OWNERSHIP**

A Housing Corporation SHG funded 'low cost home ownership' scheme where residents buy part and rent part of their home. They can buy more when they can afford it and must be allowed the possibility of 'staircasing' to 100% of the equity. This is now termed '**New Build Homebuy**' by the Housing Corporation.

### **SOCIAL HOUSING GRANT (SHG)**

The capital grant from the Housing Corporation for funding social housing development - available for social rented housing, shared ownership and intermediate renting.

### **SPECIAL PURPOSE VEHICLE (SPV)**

A special legal entity whereby which an organisation may establish to carry out a particular project or group of projects.

Any financial liability from said projects is limited to the SPV.

From 2007 Housing Corporation bid round Local Housing Authorities have the ability to set up Special Purpose Vehicles to bid for Social Housing Grant funding subject to passing Housing Corporation criteria.

### **SUB-MARKET RENTS**

Intermediate tenancies where typically 80% of full market rents are charged.

Such schemes may be able to receive SHG funding.

### **SUSTAINABILITY CRITERIA**

The criteria against which SHG funded new developments must be assessed to ensure they meet minimum requirements (location and amenities). Similar to **Housing Quality Indicators or HQIs**. Also all new SHG funded projects must achieve a **Code for Sustainable Homes** energy efficiency rating of 'level 3'.

In addition schemes must also achieve a **Building for Life** score of 12 (10 in rural areas).

### **TARGET RENT**

The rents that may be set for new 'Social rented' developments, as determined by the Housing Corporation. They are linked to 'rent restructuring'.

### **UNREGISTERED SOCIAL LANDLORD (USL)**

Non-RSLs who have been approved by the Housing Corporation to qualify to receive SHG finding. They may also apply for **Housing Management Accreditation (HMA)** to provide housing management services.