

<b>Policy Name</b>	Shared Ownership Policy
<b>Policy Category</b>	Customer Services
<b>Policy Number</b>	TM008
<b>Officer Responsible</b>	Chief Executive
<b>Application</b>	Lochaber Housing Association
<b>Scottish Housing Regulator Standard</b>	2 & 3
<b>Equality Impact Assessment Complete</b>	November 22
<b>Date to Board of Management</b>	November 22
<b>Next Review Date</b>	November 27

## 1. INTRODUCTION

- 1.1 Lochaber Housing Association's main aim is to provide affordable housing to meet the needs of local communities. This is reflected in the Association's membership of the Highland Housing Register, which recognises the importance of identifying and meeting housing needs at a community level. The same principle is continued for the sale and re-sale of Shared Ownership properties. It will be operated in accordance with the core objectives and operating principles stated below.
- 1.2 The Association has a stock of shared ownership properties in Fort William, Caol Ballachulish, Inverlochty and Achaphubuil, representing a small percentage of the Association's overall housing stock.
- 1.3 Grant subsidy for this model of Shared Ownership development is no longer available and it is therefore unlikely that the Association will develop any new Shared Ownership homes within this model.
- 1.4 The Association will therefore seek to maintain this stock as an affordable housing option: by facilitating the sale of shares between people wishing to move on, and people in housing need for whom Shared Ownership is an affordable option.
- 1.5 This policy therefore doesn't cover the allocation of new shared ownership properties, but the criteria and processes to be applied when shares change hands with existing properties. The principles for allocating and pointing applicants is attached (**APPENDIX 1**)
- 1.6 The Association will not actively seek to dispose of Shared Ownership units. But in particular market circumstances, retaining a property may not be in the best interests of the Association. This policy also sets out the options that the Association may consider as exceptional circumstances.

## **2. CORE OBJECTIVES**

### **(i) *To Improve the Affordable Housing Options Available to Meet Local Housing Needs***

Lochaber Housing Association will provide Shared Ownership housing as part of a range of affordable home ownership options; to increase the available housing options for those with housing needs in Lochaber; and, to help sustain Lochaber's many diverse communities. Shared Ownership properties should not be owned as second homes or used for any other purpose such as AirBnB. The property should be the sharing owners main and principal home.

### **(ii) *To Make Best Use of Available Housing Stock***

The Association will work alongside the Local Authority and other housing providers to ensure the best use is made of the housing stock in the Lochaber area.

The Association will always endeavour to ensure that shares in properties are marketed and sold on to suitable applicants as efficiently as market conditions will allow, and at the market value.

### **(iii) *To facilitate and support any sharing owners to purchase shares in their property and out right ownership***

The Association will support sharing owners to purchase shares in their property and staircase to become out right owners.

### **(v) *To Encourage Maintenance of Shared Ownership Properties by Owners***

The Association will always work with owners to encourage the maintenance of properties in line with the Occupancy Agreement, and to prevent deterioration and serious disrepair. The Association will carry out periodical stock condition surveys (5 yearly) that inform both parties of the condition of the external fabric of the property.

## **3. OPERATING PRINCIPLES (Purchasing and Selling shares)**

### **3.1 *Sales of a Sharing Owners Interest in a Property***

i) When a sharing owner moves on from a property and wishes to sell their interest in the property, the Occupancy agreement provides for three options:

- The Association can buy back the share and sell it on
- The Association can join with the owner in a sale of the property in the open market
- The Association can allow the sharing owner to sell the sharing owner's share of the property on the open market, subject to such reasonable conditions as the Association may require.

In all but exceptional cases, the Association will adopt the third option.

- ii) The Association will not normally buy back shares in a property. Our aim is to retain the property in our affordable housing portfolio if possible so that other people on low incomes can benefit from it. The Association will therefore encourage the sharing owner to market and sell their share of the property to a qualifying buyer, as outlined below.
- iii) The sharing owner should market the property and their share available for purchase on the open market. The sharing owner is responsible for all their legal and marketing costs, and for obtaining a home report.
- iv) Prospective purchasers must initially be referred to the Association by the sharing owner or their selling agent to ensure that they meet the qualifying criteria.
- v) The Association will not maintain a list for shared ownership properties unless a property is being marketed with any list subject to those noting interest in purchasing a share for that specific property. The Association will not keep a list of those known to be interested in the tenure but will assist sharing owners by circulating marketing details to known interested applicants and other parties as appropriate. Prospective purchasers will always be referred direct to the sharing owner and or their agent to arrange viewing.
- vi) The eligibility of potential purchasers will be assessed by the Association on a first come first served basis to replicate the realities of the market. Providing essential qualifying criteria are met, no further personal needs assessment will be carried out, although financial checks will be made to ensure the applicant is likely to be able to sustain occupancy after purchase. The points considered for the applications eligibility are contained in **APPENDIX 1**.
- vii) Applicants who do not meet the qualifying criteria to purchase will only be considered if no qualifying applicant applies, and in this case the sharing owner may opt for a joint open market sale with the Association.

### **3.2 Qualifying Applicants**

- i) A potential purchaser should generally be in one of the following groups:
  - First time buyers who would otherwise be unable to afford outright purchase of a property
  - Owner-occupiers who have had a change in circumstances which means they can no longer afford to sustain to move back to full owner occupation
  - Existing local authority or housing association or other public sector tenants
  - Applicants on the Highland Housing Register with unmet housing needs
  - Older people unable to purchase a property outright on the open market

- People with special needs unable to purchase a property outright that is suitable for their needs
  - Serving members of the armed forces; or veterans who have left the forces within the last two years; or widows, widowers or other partners of service personnel killed in action during the last two years
  - Be aged 18 or over
- ii) Applicants must be able to demonstrate that they have sufficient financial resources to be able to meet all monthly housing costs (mortgage, occupancy charge and household bills); no legal restrictions to purchasing a property; and to be able to afford to keep the property maintained and in good repair. Affordability assessments and maximum income levels may be set by the Association where appropriate. Where applied, details will be included in information to potential purchasers at application stage and will be reviewed at least annually.
- iii) Owners of other properties will not be considered for sharing ownership. Purchasers must be made aware that they should occupy the property as their main and principle home and must not sublet as a holiday let or AirBnB property.
- iv) Appendix 1 covers the allocation criteria for applicants seeking to purchase a share in a property being marketed.
- Operating principles for allocating Shared Ownership Properties
  - Principles for Allocating Accommodation
  - Points Assessment

This information will be made publicly available.

### **3.3 Approval of Sales**

- i) A request to sell an interest in a property or to enter a joint open-market sale with the Association must be made in writing and signed by all joint owners where there are any. The Association will not take any action until this is received.
- ii) If the Association wishes to buy the share back the sharing owner must be notified within 42 days. The Association will inform the sharing owner in writing if they do not intend to purchase the property and will invite the sharing owner to market their share to a potential purchaser. The Association will otherwise have been deemed to have agreed to a joint open market sale.
- iii) The sharing owner will normally be responsible for meeting all marketing, legal and survey costs for the sale of their own share on the open market.
- iv) In the exceptional circumstances where a joint open market sale is required (for example failure to achieve the sale of part share of the property in restricted market conditions), the Association will agree a marketing plan and notional budget with the sharing owner for joint open market sales. Marketing costs will be split on a pro rata basis equivalent to the property

share held by each party. Each party will be responsible for their own legal costs. The sharing owner must make sure that an up-to-date home report is produced at their own cost.

- iii) For sales of shares in a property other than joint open market sales, the sharing owner is responsible for marketing their share making sure that a home report is produced, and for all their legal and marketing costs.
- iv) If the sharing owner is selling on only their share of the property, the Association's written permission must be obtained before the sale is completed.
- v) If the prospective purchaser wishes to proceed, they should agree a price with the seller, then apply to the Association so that their eligibility can be assessed before submitting a final offer and incurring legal costs. A sale will not be approved for a purchaser who does not meet the shared ownership eligibility criteria.
- vi) Current staff, former staff, Board members and close relatives may apply to purchase an interest in a shared ownership property, but permission will only be granted where it complies with the regulatory guidance and best practice.
- vii) Formal offers to purchase a share from the Association, will be made and concluded through the Association's solicitors.
- viii) Every sharing owner will also have a Deed of Conditions and an Occupancy Agreement, agreed, and concluded through the Association's solicitors

### **3.4 Failure to Secure a Sale**

- i) Where re-sale of an existing share can not be achieved within a reasonable period, the Association will generally join the sharing owner in a joint open market sale, with the proceeds being split according to the ownership ratio.

In exceptional circumstances, the Association may wish to consider converting the tenure of the property to social rent

- ii) Change of tenure at the property will only be considered after an appropriate options appraisal carried out by the Housing Services Co-Ordinator and Senior Management with recommendations following this from the Chief Executive on the process to be considered. The feasibility must identify high housing need exists locally that matches the property profile, which is unlikely to be met through other resources. Following a CEO decision on a change of tenure, the feasibility will identify what the financial implications may be for the Association and approval may be required the Board and Scottish Government.

## **4 MANAGING OCCUPIED SHARED OWNERSHIP PROPERTIES**

The occupancy agreement **APPENDIX 2** sets out the conditions to be met by the sharing owner, the principle and legal requirements of the agreement will be enforced including but not limited to;

- Arrears
- Factoring
- Responsibility for repair and maintenance
- Home Improvements
- Neighbour complaints/Anti-Social Behaviour

Sharing owners will be provided with a copy of the Occupancy Agreement, and a Sharing Owners Handbook setting out their rights and responsibilities in line with the Occupancy Agreement.

Arrears associated with the occupancy agreement will be subject to the Associations rent arrears procedures.

Breaches in the Occupancy agreement will be dealt with in terms of the legal clauses inserted in the agreement. Subject to the principle of early intervention, engagement, negotiation, and the provision of advice & assistance before considering any action to enforce the agreement, including recovering, or forcing sale of a property.

## **5. General Data Protection Regulations**

- 5.1 The organisation will treat personal data in line with our obligations under the current data protection regulations and our own data protection policy. Information regarding how personal data will be used and the basis for processing personal data is provided in the LHA Group's privacy notices.

This policy can be made available in other formats, for example in large print, audio format or Braille, the document may also be available in other languages, in full or summary form, as appropriate.

## **6. Equality, Diversity, and Inclusion**

- 6.1 This policy reflects the Association's commitment to meeting our equality obligations in advancing equality, promoting good relations between protected characteristics, and eliminating discrimination in the way we provide our services

It also aims to reflect our commitment to considering the Equalities and Human Rights impacts of what we do as an RSL.

- 6.2 The Association assesses and reviews where appropriate new and revised policies and procedures, and an Impact Assessment is attached to support this policy.

## **APPENDIX 1**

### **1 OPERATING PRINCIPLES**

(i) ***Consistency***

The Association's Process for assessing applications for interested parties will be consistently and fairly applied in the assessment and pointing of all application forms.

(ii) ***Openness***

The Association will not only make the Shared Ownership Policy publicly available, but will also provide meaningful information about process, and keep all interested parties appropriately informed during the selection and allocation process.

(iii) ***Legal and Professional Accountability***

The Association will ensure that its Shared Ownership Policy meets all statutory and regulatory requirements, including all those laid down by the Housing (Scotland) Act 2001, and will comply with the Scottish Housing Regulator and Scottish Federation of Housing Association's (SFHA) performance standards.

(iv) ***Equal Opportunities***

The Allocations Policy will not discriminate between any individual, household or group on the grounds of any protected characteristics such as sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, gender, language or social origin, or other personal attributes, including beliefs or opinions such as religious beliefs or political opinions as protected in legislation.

[v] ***Confidentiality***

Lochaber Housing Association will respect the confidentiality of individual applicants at all times and will act in accordance with the Data Protection Act 1998.

[vi] ***Right to Appeal***

Applicants will have the right to appeal any decision or process undertaken by the Association within 14 days, in writing and addressed to the Senior Management Team, Lochaber Housing Association.

## 2 PRINCIPLES FOR ALLOCATING ACCOMMODATION

### ACCEPTING HOUSING APPLICATIONS

Applicants interested in purchasing a property that is being marketed by an existing owner will be asked to complete a Shared Ownership application form and will be required to submit details of their income as part of the application.

Applications will be accepted subject to the following conditions:

- (i) The applicant has capital that would cover conveyancing fees; *and*
- (ii) The applicant has a “mortgage in principle” offer from a recognised mortgage lender; *or*
- (iii) The applicant has capital that would allow them to buy a share outright.

If the Association considers that an applicant earns sufficient income to seek alternative housing available on the open market, the applicant will be placed on a reserve list for the property and only be considered should the Association not have any applicants with lower incomes.

If an applicant or a joint applicant owes a debt to the Association (including but not limited to rent arrears, recharges, and factoring charges), their application will not be considered until the debt is cleared in full.

All applicants will be awarded points in accordance with the Association’s points system, and allocations will be made strictly based on the points system.

Preference will not be given based on ability to purchase a greater share than the minimum 25%.

Preference will not be given based on ability to purchase a share outright without the need for a mortgage or loan.

#### ***Joint Applications***

Joint applications will be accepted. If the application is successful, offers of accommodation will be in the form of a joint Occupancy Agreement.

#### ***Housing (Scotland) Act 2001, schedule 7***

Applicants will be required to declare any relationship with the Association’s staff or Committee members. Where there is a relationship to an applicant, the member of staff in question will take no part in the allocations process, and the final allocation will be approved explicitly by the Management Committee.



## ***Overcrowding***

Although it is preferable that a separate bedroom should be provided for a couple and each child – e.g. a couple with two children should only be offered a three-bedroomed property – the Association recognises that this may not always be possible when maximising the use of its stock to meet housing need. The Association’s policy, therefore, is that where it is not possible to provide a separate bedroom for each child as stated above, a separate bedroom should be provided for each couple, and no child aged 6 or over should share a bedroom with a child of the opposite sex.

In allocating properties this criterion will be observed, and no offer of accommodation will be made that will create a household that is overcrowded. In exceptional circumstances this may be considered, but such an allocation can only be made with the approval of the Housing Services Co-Ordinator or a member of the Senior Management Team in their absence, after careful consideration of the individual circumstances of the case.

Equally, when allocating the property being marketed, preference will be given to applicants with a housing need for the size of property in question.

## **PRIORITIES FOR HOUSING**

The main aim of Lochaber Housing Association is to provide good quality, truly affordable housing for local people in their preferred communities.

Lochaber Housing Association will allocate its properties to meet housing need. This will be undertaken on a points-based system, which is set out in a separate part of the Allocations Policy.

In addition, when allocating Shared Ownership properties, priority shall be given to the following types of applicants:

- First time buyers who would otherwise be unable to afford outright purchase of a property
- Owner-occupiers who have had a change in circumstances which means they can no longer afford to sustain to move back to full owner occupation
- Existing local authority or housing association or other public sector tenants
- Applicants on the Highland Housing Register with unmet housing needs
- Older people unable to purchase a property outright on the open market
- People with special needs unable to purchase a property outright that is suitable for their needs
- Serving members of the armed forces; or veterans who have left the forces within the last two years; or widows, widowers or other partners of service personnel killed in action during the last two years
- Be aged 18 or over

If there are insufficient applicants within the above categories, other applicants will be considered.

### **EQUAL OPPORTUNITIES**

The Association sets out in 1(iv) its equalities position and notes the following in terms of eligibility for non UK nationals.

Non United Kingdom nationals are eligible for shared ownership properties so long as they:

- (i) have a right to permanent residency within the United Kingdom;
- (ii) do not have a home elsewhere; and
- (iii) meet the eligibility criteria set out in this policy.

### **ALLOCATIONS PROCESS**

- (i) All applicants will be required to complete an application form, and to provide details of income and capital as requested.
- (ii) Providing the applicant meets the required criteria, their application will be assessed by two members of staff – usually the Development Officer and a Housing Officer – who will award points according to the Association’s points system.
- (iii) The Shared Ownership property will then be offered to the applicant with the highest number of points, and applicants will be allowed 7 days in which to accept or refuse the offer. If the offer is refused, the property will then be offered to the applicant with the next highest number of points. If the offer is again refused this process will be continued until there is an acceptance.
- (iv) Allocations of Shared Ownership properties will be reported to the Management Committee on a quarterly basis.

## **3 POINTS ASSESSMENT**

All applications will be assessed against the criteria detailed below.

Once all the applications for a particular property have been assessed, the property will usually be allocated to the applicant with the highest level of points.

### **Criteria Points Award**

#### **a) Shared Ownership Priority Categories**

- (i) First-time buyer who cannot afford to buy outright 20 points
- (ii) Existing tenants of LHA, The Highland Council or another RSL 25 points

#### **b) Homeless Applicants**

- (i) Accepted as statutory homeless by the Local Authority; or 25 points

c) **Under-occupation**

*(Defined as being where the person(s) have more rooms than required as detailed above in the definition “overcrowding” and more than the number of rooms for which they have applied)*

by 1 room	2 points
by 2 rooms	3 points
by more than 2 rooms	4 points

d) **Overcrowded in Present Accommodation**

Lacking 1 bedroom	5 points
Lacking 2 bedrooms	10 points
Lacking 3 bedrooms	15 points

*Overcrowding will only relate to those included in the application form. It will be based on the assumption of a separate bedroom for a couple and each child. For example, where a couple with two children are currently occupying a two-bedroomed property, they will be awarded 5 points.*

- (i) If a single person occupies a bedsit there is no overcrowding.*
- (ii) If the overcrowding results from or is exacerbated by additional people living in the household on a temporary basis, then points for overcrowding will not apply.*
- (iii) If the overcrowding results from or is exacerbated by the letting of rooms to other people on a commercial basis i.e. lodgers then the points for overcrowding will not apply.*

*There will be an exception to (ii) & (iii) above where additional occupation comes about through fostering agreements entered by the applicants or host households and Social Services. Applicants will require to provide supporting evidence where this applies.*

e) **Sharing Accommodation/Facilities**

*(Points may only be awarded under (i) or (ii))*

- (i) Sharing facilities with close friends or members of family who are not on the application for re-housing with the applicant)*
  - Sharing cooking facilities 2 points
  - Sharing bathroom or toilet facilities 2 points
  - Sharing a bedroom 5 points

*A maximum of 7 points may be awarded in total.*

*Single people living at home over the age of 16 will be deemed to be sharing accommodation and will be awarded points in*

*this category from the age of 19 onwards.*

- (i) Sharing facilities with people other than close friends or Relatives (who are not on the application for re-housing with the applicant)

- Sharing cooking facilities 4 points
- Sharing bathroom or toilet facilities 4 points
- Sharing a bedroom 8 points

*A maximum of 12 points may be awarded in total.*

- f) **Inhabiting Caravans** 8 points

- g) **Condition of Existing Property**

Structurally unstable	10 points
Suffers from rising or penetrating damp	5 points
Suffers from excessive condensation	5 points
Has insufficient natural or artificial lighting and provision for ventilation and heating	5 points
Inadequate supply of wholesome water	10 points
Has no hot and cold water supply to a sink	10 points
Has no internal WC	5 points
Has no effective drainage and disposal of foul and surface water	5 points
Has no satisfactory facilities for cooking food within the house	5 points
Has no satisfactory access to all external doors and outbuildings	5 points

*In combination, these have a maximum of 20 points*

- h) **Insecure Accommodation**

Insecure accommodation, including living at home where there is no immediate threat of homelessness 5 points

Persons leaving institutional care or supported accommodation 10 points  
*(applicants will be required to provide supporting information from a healthcare or other professional to be awarded points in this category)*

- i) **Length of Time in Present or Similar Accommodation** 2 points per year after first 2 years (maximum 10)

*Points will be awarded in excess of 2 years that applicants have suffered present housing conditions. This only applies if points have already been awarded in categories d, e, f, or g.*

j) **Medical Condition**

*In order to qualify for medical points, applicants must have registered on The Highland Housing Register for rented accommodation and been assessed and awarded points by the Medical Officer.*

Points awarded will be 1/5 of points awarded by The HHR

**Location**

- (i) To be nearer place of work

Where an applicant is currently employed but is experiencing continual difficulty in travelling to work for financial or locational reasons and the move would bring them within 5 miles of their place of work 5 points

- (ii) To be nearer relatives to give/receive support

Where an applicant of pensionable age wishes to be nearer relatives for support 10 points

Where any other applicant wishes to be near relatives for support 5 points

*(applicants will be required to provide supporting information from a healthcare or other professional in order to be awarded points in this category)*

- (iii) To be nearer other facilities/services E.g. hospital, shops or care facilities 5 points

**Other factors**

- (i) Breakdown of relationship

Where an applicant has suffered a relationship breakdown and there is no danger to the applicant if they remain in the current accommodation 5 points

- (ii) Other Social Factors

This may be awarded for unforeseen factors which may have a bearing in terms of the housing application but is not covered adequately elsewhere in the Allocations Policy. Members of staff will have to specify in some detail why points are to be awarded in this category, and these awards must be approved by the Operations Manager. 10 points maximum

*Some examples include:*

- (a) *To facilitate better access arrangements for children where applicants are parents who are divorced/separated.*

(b) *To compensate for overcrowding by host family members to accommodate the current applicants, who would not otherwise be awarded points under 5(d).*

(iii) **Resolution of a tie**

To resolve a tie in the number of points awarded. Preference to be given to those with the strongest local connection.

1 point

APPENDIX 2



**Exclusive Occupancy Agreement**

between

**Lochaber Housing Association Limited**

and

**[Name of Sharing Owner(s)]**

Subjects: [One half/ One quarter / Three Quarters] *pro indiviso* share of [short address of subjects]

Ref: 507638/CTM/KST

FAS: 2889

## Table of Contents

1	Interpretation	<a href="#">3</a>
2	Occupancy	<a href="#">4</a>
3	Staircasing	<a href="#">5</a>
4	Sharing Owner's Obligations	<a href="#">5</a>
5	The Association's Obligations	<a href="#">7</a>
6	Maintenance	<a href="#">7</a>
7	Alterations	<a href="#">7</a>
8	Default	<a href="#">8</a>
9	Termination	<a href="#">8</a>
10	Procedure upon Termination	<a href="#">9</a>
11	Assignment by Association	<a href="#">11</a>
12	Complaints/Arbitration	<a href="#">11</a>
13	Notices	<a href="#">12</a>
14	Force and Effect	<a href="#">12</a>
15	Registration	15
16	<a href="#">Schedule - Part 1</a>	
	Purchase Of Additional Shares (Staircasing Provisions)	<a href="#">14</a>
<a href="#">17</a>	<a href="#">Schedule - Part 2</a>	
	Calculation of the Occupancy Payment	30
18	<a href="#">Schedule - Part 3</a>	
	Services	18
19	<a href="#">Schedule - Part 4</a>	
	Occupancy Payment Review Notice	19
20	<a href="#">Schedule - Part 5</a>	
	Conditions relating to voluntary sale of the Property	21



## Exclusive Occupancy Agreement

between

Lochaber Housing Association Limited a registered society registered under the Co-operative and Community Benefit Societies Act 2014 with registered number 2289RS and as a Scottish charity under registered number SC030951 and having its registered office at 101 High Street, Fort William, Inverness Shire, PH33 6DG (the "Association")

and

[insert name of sharing owner(s)], formerly residing at [former address from original agreement] and currently residing at [insert address] (hereinafter referred to as the "**Sharing Owner**")

WHEREAS

(A) The Association is a registered social landlord within the meaning of Section 111 of the Housing (Scotland) Act 2001 (the "**2001 Act**") and is registered with Scottish Ministers acting through The Scottish Housing Regulator under Section 57 of the 2001 Act in the Register maintained under Section 57(1) of the 2001 Act;

(B) The Sharing Owner is the heritable proprietor of a [one quarter / one half / three quarters] pro indiviso share in and to the subjects known as and forming [address of subjects], all as more particularly described in clause 1 hereof;

(C) The Association is the heritable proprietor of the remaining [three quarters / one half / one quarter] pro indiviso share in and to the said subjects known as and forming [address of subjects];

(D) The Association and the Sharing Owner previously entered into a formal agreement regarding their shared ownership of the said subjects, which agreement expired on [date of expiry of original agreement] (the "**original shared ownership agreement**");

(E) The Sharing Owner wishes to continue as heritable proprietor of a [one quarter / one half / three quarters] pro indiviso share in and to the said subjects following expiry of the original shared ownership agreement; and

(F) The Sharing Owner has requested and the Association has agreed to enter into a further formal agreement regarding their shared ownership of the said subjects as from the date of expiry of the original shared ownership agreement;

NOW THEREFORE THE PARTIES HERETO HAVE AGREED AND DO HEREBY AGREE AS FOLLOWS:

### 1 Interpretation

In this Agreement where the context so admits the following expressions shall have the following meanings:-

"**Agreement**" means these presents and the Schedule;

**"Association's Share"** means the pro indiviso share in the Property from time to time within the ownership of the Association;

**"Data Protection Legislation"** means the General Data Protection Regulation (EU) 2016/679, the Data Protection Act 2018 and/or any corresponding or equivalent national laws or regulations and any replacement, amendment, re-enactments or consolidation of the same from time to time;

**"Date of Entry"** means [the date one day following the date of expiry of original agreement];

**"Occupancy"** means the exclusive occupancy rights created by clause 2 hereof;

**"Occupancy Payment"** means the payment made by the Sharing Owner to the Association in compensation for the loss of occupancy rights by the Association and is calculated as specified in Part 2 of the Schedule;

**"Prescribed Rate"** means the rate of four per centum per annum above the base lending rate from time to time of the Bank of Scotland;

**"Property"** means the entire subjects known as [postal address of subjects] and [more particularly described in [insert descriptive deed if Sasine] / registered in the Land Register of Scotland under Title Number insert title number if registered];

**"Schedule"** means the Schedule annexed and executed as relative hereto;

**"Service Charge"** means the amount payable by the Sharing Owner to the Association to meet the costs incurred by the Association in terms of clause 5.2 hereof and the Association's reasonable administrative expenses in connection therewith;

**"Services"** are defined in Part 3 of the Schedule;

**"Sharing Owner's Share"** means the pro indiviso share in the Property from time to time within the ownership of the Sharing Owner;

1.1 words importing the singular number include the plural number and vice versa and words importing gender include any other gender;

1.2 obligations made or assumed by any individual shall be binding and enforceable against his executors and personal representatives;

1.3 where the expression **"Sharing Owner"** shall include more than one person all obligations on the part of the Sharing Owner herein contained shall be binding jointly and severally on them and the survivor or survivors of them.

## 2 **Occupancy**

### 2.1 Duration and Conditions

The Association and the Sharing Owner agree that this Agreement shall subsist for a period of [20] years from the Date of Entry unless terminated earlier or the period is extended by either mutual agreement of the

Association and the Sharing Owner or where the Sharing Owner exercises his rights to purchase the Association's share as detailed in clause 10.2.1 hereof. The Sharing Owner shall have exclusive right to occupy the Property and the Association shall refrain from exercising any occupancy rights over the Property until the occurrence of any of the events detailed in clause 9 hereof.

## 2.2 Occupancy Payment

The Sharing Owner hereby binds and obliges himself to pay the Occupancy Payment to the Association monthly in advance by equal instalments on the first day of each calendar month in each year ("payment dates") without any deduction whatsoever with the first payment of Occupancy Payment on the Date of Entry being a proportionate payment for the period from the Date of Entry until the next payment date and the next payment on the first payment date occurring after the Date of Entry and so forth monthly, termly and continuously thereafter throughout the period of the Occupancy with interest on each instalment of Occupancy Payment or on any sums of money payable by the Sharing Owner pursuant to any of the obligations of the Sharing Owner in terms of this Agreement at the Prescribed Rate calculated from the date when the same shall have become due until payment.

## 2.3 Occupancy Payment Review

The Occupancy Payment payable in terms of clause 2.2 hereof will be subject to annual review in accordance with the provisions of Part 2 of the Schedule.

## 3 **Staircasing**

At any time during the duration of the Occupancy the Sharing Owner will (subject as aftermentioned) be entitled to purchase further shares of the Association's Share from the Association provided always that:-

3.1 each such further share shall represent either a one quarter, one half or three quarters pro indiviso share in the Property;

3.2 the provisions of Part 1 of the Schedule shall apply to the purchase by the Sharing Owner of each such further share;

3.3 the Sharing Owner shall only be entitled to exercise his right to purchase further shares in terms of this clause if they shall have paid all Occupancy Payments and other sums due hereunder and otherwise complied with, performed and discharged all the obligations incumbent upon him in terms of this Agreement; and

3.4 the Sharing Owner shall not be entitled to exercise his right to purchase further shares in terms of this clause more than once in each period of twelve months.

## 4 **Sharing Owner's Obligations**

### 4.1 Use

The Sharing Owner will use the Property as his sole or main dwellinghouse only and for no other purpose and will not:-

4.1.1 without the consent in writing of the Association (which consent shall not unreasonably be withheld or delayed) assign his interest under this Agreement and/or grant conveyances of or securities over his interest in the Property; and

4.1.2 without the consent in writing of the Association let the Property in whole or in part or otherwise grant any rights of occupancy in it.

#### 4.2 Maintenance

The Sharing Owner accepts the Property as being in good and habitable condition and repair and will be solely liable for the cost of keeping it in good habitable condition and repair[, **including without prejudice to the foregoing generality maintaining in good and substantial condition and repair the exterior of the Property including the staircase and fabric thereof, the internal structure and fabric of the Property, the boundary walls, hedges and fences and paths, and the internal structure and external structure and fabric of all common parts – delete if this is part of the services provided by the Association per Part 3 of the Schedule**]. The Sharing Owner also undertakes to comply with the provisions specified in the title deeds to the Property and agrees that the Association may assume those regarding insurance and those undertaken by the Association in terms of clause 5.2 hereof. The Sharing Owner also undertakes to pay the Service Charge at such times and in such manner as the Association may at its sole discretion determine from time to time.

#### 4.3 Insurance

The Association will at all times during the duration of the Occupancy insure and keep insured the Property for the full reinstatement value thereof under a comprehensive policy and will if reasonably required produce to the Sharing Owner a certificate from the insurers stating for what sum the Property is insured. The Sharing Owner will pay and so free and relieve the Association of all premiums necessary for keeping in force the insurance specified in this clause and will not do or cause, permit or suffer to be done on or bring or cause, permit or suffer to be brought on to the Property any act, matter or thing which may cause the insurance of the Property or any part thereof to become void or voidable.

#### 4.4 Obligations

The Sharing Owner will, subject as aforesaid, observe any condition and perform any obligation in respect of the Property lawfully binding on the owner or occupier of the Property whether imposed by virtue of any enactment or otherwise.

#### 4.5 Ground Burdens

The Sharing Owner will make due and punctual payment of all ground burdens, all Council Tax and other public burdens and all other payments due in respect of the Property.

#### 4.6 Planning

The Sharing Owner will in connection with any matter arising under the Town and Country Planning (Scotland) legislation (hereinafter referred to as the "Planning Acts"):-

4.6.1 notify the Association of any notice or order issued under the Planning Acts which affects or is likely to affect the Property within Fourteen days of receipt of such notice by sending a copy of the notice or the order to the Association;

4.6.2 take, as soon as practicable, all reasonable or necessary steps to comply with such a notice or order or, as the case may be, timeously object thereto; and

4.6.3 if so directed by the Association object, or join with the Association in objecting to any such notice or order or in making representations against any proposal therefor.

## **5 The Association's Obligations**

The Association undertakes:

5.1 that in consideration of the Sharing Owner complying with his obligations hereunder they may peaceably and quietly hold and enjoy the Property during the duration of the Occupancy without any interruption by the Association so far as this is reasonably possible; and

5.2 to carry out the Services more particularly described in Part 3 of the Schedule.

## **6 Maintenance**

6.1 In the event of the Sharing Owner failing to maintain or repair the Property in accordance with the provisions of clause 4 hereof the Association may carry out such repairs or maintenance and recover from the Sharing Owner the costs incurred by it in so doing including administrative costs.

6.2 The Association will be entitled to enter the Property during reasonable hours on giving not less than three days' notice to the Sharing Owner (except in cases of emergency) for the purpose of inspecting its condition and, if necessary, carrying out repairs or maintenance work.

6.3 The Association may serve a notice on the Sharing Owner requiring him to carry out the required repair and/or maintenance work within thirty days thereafter, failing compliance with which the Association may carry out such work and recover the cost as provided for in clause 6.1 hereof. In cases of emergency the Association may carry out the work immediately or as soon as practicable and recover the cost as provided for in clause 6.1 hereof.

## **7 Alterations**

The Sharing Owner will not make any alteration or improvement to the Property that would require planning permission or a building warrant or that would change the structure or external appearance of the building without first obtaining approval in writing from the Association (which approval will not be unreasonably withheld or delayed). Failure to comply with this clause will entitle the Association at its discretion to require the Sharing Owner to effect reinstatement of the

Property to its original condition at the sole expense of the Sharing Owner, failing which the Association will be entitled to effect such reinstatement and to hold the Sharing Owner liable for the costs thereof including administrative costs.

## **8 Default**

In the event of the occurrence of any of the following events, namely if: -

8.1 the Occupancy Payment or any part thereof shall at any time be in arrears and unpaid for a period of twenty one days after the same shall have become due (whether any formal or legal demand therefor shall have been made or not); or

8.2 the Sharing Owner shall at any time fail or neglect to perform or observe any of the terms, conditions or provisions contained in this Agreement on the part of the Sharing Owner to be performed or observed; or

8.3 the Sharing Owner shall at any time fail or neglect to perform or observe any of the terms, conditions or provisions to be performed or observed by the Sharing Owner in terms of any standard security that may be granted over the Property or the Sharing Owner's Share; or

8.4 the Sharing Owner shall become apparently insolvent or enter into any arrangement or composition for the benefit of his creditors or permit any diligence to be executed on his goods then the Association will be entitled at any time thereafter but on not less than 28 days prior written notice to terminate the Occupancy whereupon all rights of the Sharing Owner to exclusive occupation of the Property shall cease forthwith. Notwithstanding the foregoing should the Sharing Owner continue to occupy the Property after termination of the Occupancy in terms of clauses 9.1, 9.2 and 9.5 hereof then the Sharing Owner will be liable to pay by way of penalty to the Association a sum equivalent to the Occupancy Payment which was payable immediately prior to the date of default or termination until the Sharing Owner removes from the Property. Similarly in the event of the termination of the Occupancy in terms of clause 9.3 hereof then the executors of the Sharing Owner will be liable to pay to the Association a sum equivalent to the Occupancy Payment which was payable immediately prior to the date of death until the sale of the Sharing Owner's Share or the joint sale of the Property as detailed in clause 10.1 hereof.

## **9 Termination**

The Occupancy shall terminate immediately on the occurrence of any of the following events:-

9.1 Default in terms of clause 8 hereof;

9.2 Expiry of [20] years or the expiry of any further period agreed as detailed in clause 2.1 hereof;

9.3 The death of the Sharing Owner;

9.4 The Sharing Owner acquiring 100% ownership of the Property;

9.5 The Sharing Owner voluntarily removing from the Property in terms of clause 10.3 hereof.

## 10 Procedure upon Termination

### 10.1 Default or Death

Upon termination of the Occupancy under clauses 9.1 and 9.3 the Association will have the option either to;

10.1.1 purchase the Sharing Owner's Share of the Property; or

10.1.2 require the Sharing Owner to conjoin with the Association in the joint sale of the Property with vacant possession on the open market for the best price that can reasonably be obtained; or

10.1.3 require the Sharing Owner to sell the Sharing Owner's Share of the Property with vacant possession on the open market subject to such reasonable conditions as the Association may require.

The Association will require to intimate to the Sharing Owner which of the foregoing options it intends to exercise by serving written notice on the Sharing Owner or his executors within a period of 42 days from the date of termination of the Occupancy and failing service of such notice, will be deemed to have exercised the option specified in clause 10.1.2 hereof. In either case, the provisions regarding the sale of the Property and the application of the sale proceeds described in clause 10.3 hereof will apply.

### 10.2 Expiry of [20] years

#### 10.2.1 Option to purchase Association's Share on expiry

10.2.1.1 The Sharing Owner will have the right to purchase the Association's Share forthwith upon the expiry of the twentieth year of the Occupancy or the expiry of any further period agreed as detailed in clause 2.1 hereof provided that the Sharing Owner notifies the Association in writing to this effect at least three months prior to the date of said expiry.

10.2.1.2 The provisions of Part 1 of the Schedule (other than paragraph 2.2 thereof) shall apply to such a purchase under declaration that:-

(a) at the expiry of the year of the Occupancy or the expiry of any further period agreed as detailed in clause 2.1 hereof the Sharing Owner will be deemed to have served on the Association the Notice referred to in paragraph 2.1 of Part 1 of the Schedule;

(b) the Sharing Owner shall settle the purchase of the Association's Share within eight weeks of receiving notification of the Market Value;

(c) the Sharing Owner shall pay interest on the purchase price to the Association at the rate of five per centum per annum above the then current base lending rate of the Bank of Scotland from the expiry of the eight week period referred to in clause 10.2.1.2.2 hereof until payment.

#### 10.2.2 Option to purchase Sharing Owner's share on expiry

If the Sharing Owner does not exercise his right to purchase the Association's Share in terms of clause 10.2.1 hereof the Association will upon the expiry of the

year of the Occupancy or the expiry of any further period agreed as detailed in clause 2.1 hereof have the right to purchase the Sharing Owner's share provided that notice to this effect is served by the Association upon the Sharing Owner within two months prior to the date of expiry. The provisions of clause 10.3.2 hereof shall apply to such purchase subject to the notice served in terms of this clause being deemed to be counter notice in terms of clause 10.3.1 hereof.

#### 10.2.3 Joint Sale on Expiry

If neither the Sharing Owner nor the Association exercises its right in terms of clause 10.2.1 or 10.2.2 hereof the parties shall jointly sell the Property and the provisions of clause 10.3.3 hereof shall apply.

### 10.3 Voluntary Removal

10.3.1 The Sharing Owner shall, in the event that they wish to remove from the Property, serve notice in writing on the Association giving the Association the option at its discretion either

10.3.1.1 to purchase the Sharing Owner's Share;

10.3.1.2 to join with the Sharing Owner in a sale of the Property: or

10.3.1.3 to allow the Sharing Owner to sell the Sharing Owner's share on the open market subject to such reasonable conditions as the Association may require.

The Association, if it wishes to purchase the Sharing Owner's Share, shall within forty two days after service by the Sharing Owner of the said notice serve on the Sharing Owner a counter notice confirming its intention to purchase. If the Association fails to serve such counter notice within the said forty two days the Association shall be deemed to have agreed to join with the Sharing Owner in a sale of the Property.

10.3.2 in the event that the Association serves the said counter notice as aforesaid the following provisions shall apply:-

10.3.2.1 in this clause the expression "Portioned Percentage" shall mean the Sharing Owner's Share expressed as a percentage of the Property and the expressions "**Market Value**" and "**the Valuer**" shall have the meanings respectively ascribed thereto in Part 1 of the Schedule save that the assumptions 1.4 and 1.5 of Part 1 of the Schedule shall be disregarded when determining the Market Value for the purposes of this 10.3.2 clause;

10.3.2.2 the Association shall, within seven days of serving the said counter notice, instruct the Valuer to determine the Market Value as at the date of service of the said counter notice and shall notify the Sharing Owner of the amount thereof in writing within seven days of the said determination by the Valuer (declaring always that the Valuer shall be deemed to be acting as an expert and not as an arbiter and his decision as to the Market Value shall be final and binding on the parties hereto);

10.3.2.3 the Association shall settle the purchase of the Sharing Owner's Share within eight weeks of the said determination by the Valuer (under



declaration that time shall be of the essence) and the costs of such determination shall be paid by the Association;

10.3.2.4 the purchase price payable for the Sharing Owner's Share shall be the sum equal to the Portioned Percentage of the Market Value as determined as aforesaid and in exchange for payment of the said purchase price the Sharing Owner shall give the Association entry to the Property with vacant possession and shall deliver to the Association a validly executed Disposition of the Sharing Owner's share in favour of the Association or its nominee; and

10.3.2.5 the Occupancy shall terminate upon settlement of the purchase by the Association of the Sharing Owner's Share.

10.3.3 In the event that the Association does not serve the said counter notice as aforesaid and where clause 10.3.1.3 does not apply the parties shall jointly sell the Property with vacant possession on the open market by private bargain for the best price that can be reasonably obtained and shall participate in the free proceeds of sale in accordance with their respective interests as joint owners in the Property provided always that in a division of the sale proceeds due regard shall be had to the effect on the sale price of (a) any improvements made to the Property by the Sharing Owner otherwise than in pursuance of an obligation incumbent upon him in terms of this Agreement and (b) any failure of the Sharing Owner to comply with and perform the obligations incumbent upon him in terms of this Agreement. The Occupancy shall terminate upon settlement on the date of entry of the sale by the parties.

10.3.4 The terms and conditions upon which the Property may be sold or the Sharing Owner may exercise his right to sell his share of the Property under Clause 10.3 hereof are contained in Part 5 of the Schedule.

10.3.5 Where there is more than one Sharing Owner, the giving of notice by any one of them under clause 10.3.1 hereof shall be deemed to be a notice given by the Sharing Owner.

## **11 Assignment by Association**

The Association shall not assign its rights in this Agreement and/or convey its interest in the Property to persons other than a registered social landlord within the meaning of Section 111 of the 2001 Act

## **12 Complaints / Arbitration**

12.1 Any complaint which the Sharing Owner may have relating to the Association shall in the first instance be dealt with in accordance with the Association's internal complaints procedure.

12.2 Any dispute or difference between the parties as to the interpretation of this Agreement or as to the fulfilment or otherwise by either party of their respective obligations hereunder or as to any matters connected therewith (other than as to the valuation of the Property) shall, failing agreement and following exhaustion of the Association's internal complaints procedure (where appropriate), be determined by an Arbiter to be nominated by the parties failing agreement by the President for the time being of The Law Society of Scotland on the application of either party and the awards of such Arbiter shall be final and binding on the parties.

13 **Notices**

Any notice required to be given by any party to this Agreement shall be in writing. Any notice to the Sharing Owner shall be sufficiently served if delivered by hand to the Property or if sent by recorded delivery post addressed to the Sharing Owner at the Property. Any notice to the Association shall be sufficiently served if delivered by hand to the Association's Registered Office or if sent by recorded delivery post addressed to the Association at its Registered Office. The date of service of any notice will be deemed to be the date of delivery if the notice is delivered by hand or two working days after the date of posting if the notice is served by post and in proving such service it shall be sufficient to prove that the notice was properly addressed and posted-

14 **Data Protection**

14.1 The Association is required to Process the Sharing Owner's Personal Data as a Controller under the Data Protection Legislation. The Association will Process the Personal Data of the Sharing Owner in accordance with the Association's privacy notice provided by the Association to the Sharing Owners. 14.2 For the purposes of this Clause 14, the terms "**Controller**", "**Personal Data**", and "**Process**" shall have the meaning ascribed to them in the Data Protection Legislation.

15 **Force and Effect**

This Agreement shall remain in full force and effect until the Sharing Owner has purchased the Association's Share, the Association has purchased the Sharing Owner's Share or the Property has been sold by the parties whether pursuant to the terms of clauses 10.1, 10.2, and 10.3 hereof or otherwise and also until the Sharing Owner has made payment of all sums due to the Association in terms of this Agreement.

16 **Registration**

The parties hereto consent to registration hereof for preservation and execution IN WITNESS WHEREOF these presents on this page and the preceding 10 pages together with the Schedule annexed as executed as relative hereto:-

By [Full name of sharing owner]

.....  
Signature of Sharing Owner

.....  
Signature of Witness

.....  
Date of signing

.....  
Full name of witness (print)

.....  
Place of signing

.....  
Address of witness .....

.....

.....

[\*Delete where appropriate\* By [Full name of joint sharing owner]]

..... Signature of Sharing Owner	..... Signature of Witness
..... Date of signing	..... Full name of witness (print)
..... Place of signing	..... Address of witness .....
	.....
	.....

For and on behalf of Lochaber Housing Association Limited:-

.....

.....  
Signature of Authorised Signatory / Committee Member

.....  
Signature of Witness

.....  
Date of signing

.....  
Full name of witness (print)

.....  
Place of signing

.....  
Address of witness .....

.....

.....

*This is the Schedule referred to in the foregoing Exclusive Occupancy Agreement between Lochaber Housing Association Limited and #*

## **Schedule**

### **Part 1**

#### **Purchase of Additional Shares (Staircasing Provisions)**

1- In this Part of the Schedule the following expressions shall have the following meanings: -

**"Market Value"** means the open market value of the Property from time to time upon the following assumptions: -

1.1 that the Occupancy had not been granted;

1.2 that vacant possession of the Property is available;

1.3 that neither the Sharing Owner nor a member of his family residing with him wishes or has any right to purchase the Property;

1.4 that the Sharing Owner has duly complied with, performed and discharged all the obligations incumbent upon him in terms of this Agreement; and

1.5 that any improvements made to the Property by the Sharing Owner at his expense and otherwise than in pursuance of an obligation incumbent upon him in terms of this Agreement shall be ignored and any value attributable thereto disregarded;

**"Initial Percentage"** means the Sharing Owner's Share as at the date of this Agreement expressed as a percentage of the Property;

**"Portioned Percentage"** means at any relevant time such portion of the Property being a relevant Share expressed as a percentage of the Property;

**"Relevant Share"** means at any relevant time such share as is referred to in clause 3 of this Agreement as the Sharing Owner elects to purchase pursuant to paragraph 2.2 hereof;

**"the Valuer"** means either (a) the District Valuer of HM Revenue & Customs for the district in which the Property is situated or such other professionally qualified valuer as the Association and the Sharing Owner may agree or (b) such other person approved of in writing by the Scottish Ministers .

2

2.1 The Sharing Owner shall serve on the Association a notice in writing requiring the Association to instruct the Valuer to determine the Market Value as at the date of service of the said notice and the Association shall notify the Sharing Owner of the amount thereof in writing within seven days of the said determination by the Valuer.

- 2.2- Provided settlement is effected within three months of such notification by the Association the Sharing Owner may purchase a relevant Share subject to and in accordance with the provisions of paragraph 3 hereof.
- 2.3- The costs of any such determination by the Valuer shall be paid on demand by the Sharing Owner to the Association.
- 2.4- The Valuer shall be deemed to be acting as an expert and not as an arbiter and his decision as to the Market Value shall be final and binding on the parties hereto.
- 3- The purchase price payable for the relevant Share shall be a sum equal to the Portioned Percentage of the Market Value as determined as aforesaid by the Valuer and in exchange for payment of said purchase price and any other sum due in terms of paragraph 5 hereof the Association shall deliver to the Sharing Owner a validly executed Disposition in respect of the relevant Share in favour of the Sharing Owner.
- 4- The Occupancy Payment payable with effect from the first day of the month following payment of the purchase price to the Association shall be calculated as specified in Part 2 of the Schedule with the Association's Share reduced to reflect the Sharing Owner's purchase.
- 5- At settlement of the purchase of a relevant Share the Sharing Owner shall pay any arrears of Occupancy Payment and any other sums due in terms of this Agreement to the Association.
- 6- Upon settlement of the purchase of a relevant Share the Sharing Owner and the Association shall forthwith execute a Memorandum detailing the new Occupancy Payment.

## Schedule

### Part 2

#### Calculation of the Occupancy Payment

- 1 The annual Occupancy Payment payable by the Sharing Owner comprises:
  - 1.1 a Basic Payment calculated in accordance with the Association's rental policy, multiplied by the Association's Share;
  - 1.2 a Management Fee/Insurance Charge, and
  - 1.3 a Service Charge in respect of the maintenance and other services provided by the Association

and is made up as follows:

BASIC PAYMENT x ASSOCIATION'S SHARE

£[basic payment] x [25/50/75]% = £[sharing owner's share]

MANAGEMENT FEE + £ [fee]

INSURANCE PREMIUM + £ [premium]

SERVICE CHARGE + £ [charge]

OCCUPANCY PAYMENT = £ [total payable]

- 2 The Occupancy Payment is subject to annual review on 1 April each year.
- 3 The Association will give the Sharing Owner not less than four weeks' notice of any proposed change in the Occupancy Payment in the form shown in Part 4 of the Schedule hereto.
- 4 Where a Service Charge is payable, the Association will issue a written statement of projected costs for the coming year, duly certified by its authorised officer, to the Sharing Owner along with the Occupancy Payment review notice.
- 5 If the Sharing Owner wishes to contest the Occupancy Payment chargeable, they may serve a notice on the Association of intention to appeal not more than four weeks after the date of service of the Occupancy Payment review notice.
- 6 If the Association and the Sharing Owner cannot agree on the Occupancy Payment chargeable within four weeks of the date of service of the Sharing Owner's notice of intention to appeal, either party may for the purpose of having the Occupancy Payment fixed apply to an independent valuer being

(a) a Chartered Surveyor nominated by the Chairman for the time being of the Scottish Branch of the Royal Institution of Chartered Surveyors or (b) such other person as may be approved by the Sharing Owner and the Association. The decision of such independent valuer will be final and binding. The expenses of the appeal will be allocated between the parties by such independent valuer as they deems equitable as part of his determination and such allocation will be final and binding upon the parties.

- 7 If the Sharing Owner does not serve a notice of intention to appeal within the time limit they will be deemed to have agreed the Occupancy Payment shown in the Occupancy Payment review notice.
- 8 If the Sharing Owner serves a notice of intention to appeal within the time limit, they shall nevertheless be liable for payment of the Occupancy Payment shown in the Occupancy Payment review notice from 1 April until another Occupancy Payment has been agreed between the Association and the Sharing Owner, or until the appeal is decided, as the case may be.

## **Schedule**

### **Part 3**

#### **Services**

The Association will provide the following services:-

[Insert services not covered by factoring agreement and carried out by the Association in its capacity as the owner of the remaining share of the Property in exchange for the service charge and/or the occupancy payment. Consider whether Association would continue to provide services if sharing owner tranches up to 100% - if so, then enter into separate factoring agreement, otherwise specify those services below. Example wording:-

maintaining in good and substantial condition and repair the exterior of the Property, including the structure and fabric thereof, the internal structure and fabric of the Property, the boundary walls, hedges or fences and paths, and the internal and external structure and fabric of all common parts;

grass-cutting within larger development of which the Property forms part.]

The Association may add to, withdraw or change the services after consultation with the Sharing Owners, on giving not less than four weeks' notice of any material change.



**Schedule**

**Part 4**

**Occupancy Payment Review Notice**

This is an important notice. If you take no action you will be deemed to have agreed the Occupancy Payment payable.

Date :

To : (name and address of the Sharing Owner)

From : (name and address of Association)

Re : (address of property)

We hereby give you notice that with effect from **(date)** next, the Occupancy Payment payable will be, made up as follows:-

BASIC PAYMENT x ASSOCIATION'S SHARE	£ x % = £
MANAGEMENT FEE/INSURANCE CHARGE	+ £
SERVICE CHARGE	+ £
OCCUPANCY PAYMENT	= £

**Appeal**

- 1 If you wish to appeal the Occupancy Payment chargeable you have four weeks from the date of service of this notice within which to serve a written notice on the Association of your intention to appeal. Written notice must be either delivered by hand or sent by recorded delivery post to our address above.
- 2 If agreement cannot be reached between us on the Occupancy Payment chargeable within four weeks of the date of service of your notice of intention to appeal either you or we may for the purpose of having the Occupancy Payment fixed apply to an independent valuer being (a) a Chartered Surveyor\_nominated by the Chairman for the time being of the Scottish Branch of the Royal Institution of Chartered Surveyors or (b) such other person as may be approved by the Sharing Owner and the Association to have the Occupancy Payment fixed. The decision of such independent valuer will be final and binding. The expenses of the appeal will be allocated between the parties by such independent valuer as they deem equitable as part of his determination and such allocation will be final and binding upon the parties.
- 3 The Occupancy Payment shown in this notice will be payable unless and until you and we agree another Occupancy Payment or another Occupancy Payment is fixed as the case may be.

## **Notes**

- 1 If you do not serve written notice of intention to appeal within the time limit you will be liable for payment of the Occupancy Payment as shown in this notice.
- 2 The date of service of any notice will be deemed to be the date of delivery if the notice is delivered by hand, or two working days after the date of posting if the notice is sent by recorded delivery post.

## **Schedule**

### **Part 5**

#### **Conditions relating to voluntary sale of the Property**

##### **1 Valuation**

In the event of the Association having instructed and obtained from the Valuer an up to date market value of the Property following upon having received notification from the Sharing Owner that they wish to remove from the Property, the Association will accept responsibility for payment of the Valuer's fee.

##### **2 Marketing**

The Sharing Owner will accept responsibility for the marketing of the Property and will be entitled to instruct estate agents and advertise the Property in whatever manner they wish. The Sharing Owner will accept responsibility for the whole costs incurred in connection with the said marketing of the Property, subject to the Association accepting liability, in the event that it has joined with the Sharing Owner in a sale of the whole Property, for one half of the whole marketing costs incurred by the Sharing Owner up to a maximum sum of Two Hundred and Fifty Pounds (£250), inclusive of VAT or such other sum as the Association may agree from time to time. Payment by the Association of its share of said marketing costs will only be made by it upon exhibition by the Sharing Owner or their agent of invoices properly rendered to him in respect of these costs. For the avoidance of doubt, the Association will not be liable for any share of the marketing or advertising costs incurred by the Sharing Owner in the event that only the Sharing Owner's share of the Property is sold.

##### **3 Fees**

The Sharing Owner will be liable for payment of all fees and outlays incurred in connection with a sale (including any transfer of ownership) of the Property in terms of this Agreement, whether a sale of the Sharing Owner's share only or a share of the whole Property. Such fees and outlays will include:-

- 3.1 Payment of the Sharing Owner's own legal fees and outlays in connection with the sale.
- 3.2 Fees and outlays properly incurred by the Association to Messrs. Harper Macleod, The Ca'd'bro, 45 Gordon Street, Glasgow, or such other agents instructed by the Association in connection with the protection of the Association's interests and acting on behalf of the Association in connection with the same.
- 3.3 In the event of only the Sharing Owner's share of the Property being sold, the cost of any outlays incurred by Messrs. Harper Macleod in connection with any new Exclusive Occupancy Agreement entered into between the

Association and the purchaser of the Sharing Owner's share and any Co-operation Agreement entered into between the Association and the purchaser's lenders.

#### **4 Conditions of Consent to Sale**

The Association will only consent to a sale (including any transfer of ownership) by the Sharing Owner of their *pro indiviso* share in the Property to a third party upon satisfaction of the following criteria:-

- 4.1 Payment by the Sharing Owner, prior to settlement of the sale, of any outstanding occupancy payment, common charges, repairs or factoring fees incurred or due by the Sharing Owner in respect of the Property.
- 4.2 Approval by the Association of the proposed purchaser as a suitable occupier of the Property.
- 4.3 The purchaser entering into an Exclusive Occupancy Agreement with the Association at or prior to entry.
- 4.4 Receipt by the Association from the purchaser at or prior to entry of the factoring deposit required in terms of the title deeds to the Property.
- 4.5 The Association approving the purchase price to be paid by the prospective purchaser, taking account of any valuation of the property carried out for the Association by the Valuer as aforesaid.
- 4.6 Payment of all fees and outlays incurred by the Association, all as specified in Clause 3 above.

#### **5 Profit**

In the event of the Association consenting to the Sharing Owner selling only his share of the Property, the Sharing Owner will be entitled to receive outright the whole of any profit which they make on the sale of his share of the Property and the Association will not be entitled to participate in any such profit. In the event of the Association and the Sharing Owner jointly selling the property for the best price that can reasonably be obtained, the Association and the Sharing Owner will participate in the free proceeds of sale proportionately in accordance with their respective interests as joint owners in the Property, all in terms of Clause 10.3.3 of the foregoing Agreement.

6 **Termination upon Death**

6.1 Should the Occupancy terminate under Clause 9.3 of the foregoing Agreement, the executors of the Sharing Owner's estate shall use their best endeavours to comply with the terms of this Agreement as soon as reasonably practicable and in particular to assist the Association and their agents in applying the Procedure upon Termination as detailed in Clause 10 of the foregoing Agreement.

Sharing Owner .....  
(signature)

Joint Sharing Owner (where applicable) .....  
(signature)

Association .....  
(signature)