

**STANDARD MODEL AFFORDABLE
HOUSING SECTION 106 AGREEMENT
FOR CUMBRIA**

CUMBRIA HOUSING GROUP

July 2012

INTRODUCTION

Please find attached the standard model Section (S106) template agreement, which should be used to help secure affordable housing by local planning authorities in Cumbria.

The development of this document forms an Action to the Cumbria Housing Strategy 2011. The role of this document will be to improve and speed up the production of Affordable Housing S106 Agreements in the County, and thus assist in the delivery of affordable housing.

The document was prepared with the input of a writing group consisting of officers and employees representing:

- Allerdale Borough Authority
- Carlisle City Authority
- Cumbria County Authority
- Copeland Borough Authority
- Eden District Authority
- Lake District National Park Authority
- Homegroup
- Riverside Housing Association
- Story Land

In May/June 2011 the document was subject to a 6 week consultation focused on stakeholders in the County and as part of this process a meeting with stakeholders was held on May 16th. Responses received as part of this process were given full consideration and the responses received have helped with the shaping of this document.

ROLE

The role of this document will be to provide a standard model S106 agreement to be used to secure affordable housing in the county.

It will be for individual local planning authorities to adopt and use this document as appropriate in particular circumstances.

SCOPE

The document provides a model planning obligation that can be used to secure affordable housing. Nevertheless, given the number of planning authorities in Cumbria the model provided should be employed flexibly to work in different circumstances.

Consequently, it has been prepared in such a way that allows elements to be changed (and in some instances; included and omitted) to reflect local circumstances; the nature of development; specific geographical issues; local policy and the proposed development. For example matters like **Qualifying Person and Local Occupancy definitions** and **timescales** amongst others,

should be **edited to better reflect local policy and circumstance** or some authorities may wish to have reference made to local letting policies which not all authorities may have.

In line with the flexible nature of this document, a number of schedules have been included, these relating to various types of affordable housing types and tenures, namely:

- Discounted Sale
- Rented (Social and Affordable)
- Registered Provider Rented (Social and Affordable)
- Shared Ownership (and Shared Equity)

The schedules should be used as appropriate in respect of individual developments.

Consideration was also given to the opportunity to prepare a schedule relating to Self Build Affordable Housing. It is agreed that such housing can provide a valuable supply of deliverable affordable housing. However, given the general level of detail required to be included within S106s relating to self build housing and the particular circumstances concerning their provision it was not considered practical to do so in this document. Instead it is recommended that individual S106 should be prepared for Self Build Affordable Housing.

While an important source of contribution, it is considered appropriate that contributions towards the provision of commuted sums for affordable housing is not included in this document whose scope at present is limited to the securing of affordable on development sites directly.

It should also be noted that this document only relates to Section 106 agreements to be used to secure affordable housing, and does not relate to any other form of infrastructure or requirement to be secured/controlled through a Section 106 agreement

MONITORING

It is intended that the document will be subject to annual review and will be subject to update as appropriate.

CONTENT OF STANDARD MODEL S106

Set out below is guidance to be considered when using this document and should give a better understanding with respect to the use of this document.

Definitions

The definitions provided within the document relate to all the schedules provided. Clearly different schedules would require the use of appropriate

schedules. When preparing S106 document, district and applicant solicitors will be required to ensure the appropriate definitions are used in each case.

Particular comments:

Locality this definition refers to the geographic locality in which occupants of affordable homes would be derived. The appropriate geographic area would be identified as part of this definition.

Qualifying Person this definition will vary on a case by case basis to reflect local planning policy but also the particular circumstances affecting a site. Within the document an indicative list of potential conditions are listed as a guide.

Shared Equity Transfer it should be noted restrictions on the level of equity that could be purchased should not be limited in areas where right to buy legislation does not apply.

Mortgagee in Possession

Mortgagee in Possession means a person or body which has entered into a mortgage in respect of a dwelling constructed on the Land and has taken action following a default by the borrower in respect of the repayment due under that mortgage. This is considered an important element of any S106 agreement.

With respect to Mortgagee in Possession five potential options are provided to reflect different approaches to this matter that may be sought to use.

The first of these stipulates that where the property is repossessed, the Mortgagee in Possession will be affected by all restrictions stipulated within the S106 agreement.

The second and third options stipulate that where the property is repossessed, the Mortgagee in Possession will be unencumbered by the restrictions set out within the S106, however any subsequent occupier will be affected by the requirements of the S106. The third option relates only to a mortgagee of a Registered Provider or LHA, whereas the second includes mortgagees of individual owners. Paragraph 7.2 of the third option provides that a mortgagee in possession of a shared ownership unit would not be bound by the obligations so long as they have given the LHA the chance to nominate an occupier of that unit.

The fourth option stipulates that the only relaxation with the terms of the S106 that will take place will be in so far as to permit a disposal to any person where following repossession no Qualifying Person has been found within a nomination period of one month but that all other obligations continue to apply (not least the affordable price etc.) and then all obligations are re-imposed on a subsequent occupier.

The fifth option stipulates that where the property is repossessed the Mortgagee would be expected to take best steps to transfer the homes as an affordable unit. Where there is no one willing to take the unit on as an affordable unit (ie. Where there is no need for the homes) the mortgagee in possession would be able to dispose of affordable units free of the restrictions contained within the agreement.

In using the document regard should be given to mortgages to ensure S106 agreements do not prove unnecessarily onerous. When considering and utilising any mortgagee in possession clauses it is important that consideration be given to their impact on the ability to get finance and hence a series of options are offered for use by individual authorities, according to circumstances. Nevertheless it will remain important that S106 are robust and result in the delivery of appropriately secured housing. The Local Planning Authority should determine the most appropriate Mortgagee in Possession clauses to use in particular circumstances and locations.

THE FIRST SCHEDULE

Depending on the types of affordable housing to be provided as part of a development different schedules may be utilised either individually or a number on a single site where different forms of affordable housing are to be provided.

Where reference is made to and/or in the context of affordable need and local occupancy, the occasions when the 'or' element would be used would depend upon each Authority's housing policy. The option is there for each Authority to amend as appropriate.

Schedule A - Discounted Sale Affordable Housing

This schedule relates to discounted sale affordable housing. These are properties on housing development that are sold by the developer initially with a discount from the open-market value which remain with the property through all subsequent sales.

Schedule B – Non Registered Provider Delivered Rented Affordable Housing

This schedule relates to rented affordable housing which is delivered by a non-Registered Provider and which is either managed by a non-registered provider or where it transferred to a registered provider.

This can relate to social rented affordable housing which is rented housing owned and managed by local authorities or registered providers for which guideline target rents are determined through the national rent regime.

It could also relate to Affordable Rented Housing. This is rented housing let by registered providers of social housing to households who are eligible for social rented housing. Affordable rent is not subject to the national regime but

is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent.

Schedule C – Registered Provider Delivered Rented Affordable Housing

This schedule relates to rented affordable housing which is delivered and managed by a Registered Provider.

This can relate to social rented affordable housing which is rented housing owned and managed by local authorities or registered providers for which guideline target rents are determined through the national rent regime.

It could also relate to affordable rented housing. This is rented housing let by registered providers of social housing to households who are eligible for social rented housing. Affordable rent is not subject to the national regime but is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent.

Schedule D – Shared Ownership Affordable Housing

Shared ownership is used to help people achieve home ownership even though they cannot afford to purchase a property outright. With this form of housing, normally a developer will sell a percentage of the property. As well as the percentage bought by the occupier, the purchaser may be required pay a rent on the remaining non-purchased proportion. The purchaser can normally buy further shares in the property (called staircasing), in some instances 100% of the property, however in areas defined as rural areas by the Government there is a limitation as to the level of staircasing that can be achieved.

This schedule can also be modified to reflect Shared Equity affordable housing. Under shared equity the purchaser buys all of a property but with an equity share loan making up the difference between the mortgage and the purchase price. The loan is normally for a maximum period of 10 years (interest only is paid) or is repayed on the sale of the property (if this happens first)

Relevant to all schedules in situations where housing is for 'Local Occupancy' but not affordable housing reference schedules should remove reference to local needs housing.

Cascades

Within the document two different approaches to cascades are presented. Which cascade is used can depend on preference and suitability in a local context. Careful consideration should be given to the timescales within any cascade and it should be noted that if the process is too slow it could create financing difficulties, nonetheless, cascades should not operate with undue speed given their important role.

THE SECOND SCHEDULE

The second schedule is used to identify the affordable housing (and their type) to be delivered on an individual site.

In this schedule the plot numbers associated with individual homes would be listed as would be accompanied by a map highlighting properties. In instances where no plot numbers can be identified (eg. in the case of some outline applications) this schedule can be simplified to acknowledge the number of range of affordable homes to be provided.

USE

It will be for individual planning authorities to adopt and utilise this document which sets out a framework to be used across the county as far as possible.

REVIEW

Legislation in respect to planning and housing is currently undergoing a considerable period of flux; with this it is important that this document remains current. It is also important independent of changing legislation and guidance this work is subject to regular review to see what elements are effective and which may require review. This process can be undertaken through the Cumbria Housing Group Structures.

To this end it is considered important that, using this document; the development industry, local planning and housing authorities and mortgage providers work closely together during negotiations to ensure, as far as practical, these can be concluded to the satisfaction of parties.

DATED

20...

The Lake District National Park Authority

and

[name of developer/ Registered Provider]

and

[name of Mortgagee]

A PLANNING OBLIGATION BY AGREEMENT

relating to Land at ...

[name of appropriate officer at Authority]
[address]

THIS PLANNING OBLIGATION BY AGREEMENT is made the day of 20...

BETWEEN

- (1) **[name of Authority]** of [address] ("the Authority")
- (2) **[name of developer/landowner]** of [address] ("the Owner")
Or
- (2) **[name of Registered Provider]** of [address] ("the Registered Provider")
- (3) **[name of Mortgagee]** of [address] ("the Bank")

1. Definitions and Interpretation

"the Act" is the Town & Country Planning Act 1990 as amended

"Affordable Housing" means social rented, affordable rented and intermediate housing which is provided to eligible households whose needs are not met by the market and which (a) meets 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 (b) includes provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision

"Affordable Price" means

- (a) on the first Disposal of the Affordable Units not more than (...) ... per centum of the Open Market Value of the Affordable Units notified by the Owners to the Authority in the Notice of Sales Release Date; and
- (b) on each and every subsequent Disposal of the Affordable Units not more than (...) ... per centum of the Open Market Value as hereinafter determined

"Affordable Rent" means such rent and on such terms as set in line with such recommendations and guidelines as may from time to time be published by the Homes and Communities Agency or any statutory successors thereto in relation to affordable rents and tenancy terms and as approved by the Authority (such approval not to be unreasonably withheld or delayed) and as may be increased annually on 1st April only in line with Homes and Communities Agency guidelines.

"Affordable Unit" means the dwelling houses shown edged [colour] on Plan no. 2 annexed hereto or such other dwelling houses as shall be agreed in writing by the Authority's [appropriate post]

"the Application" is the application for Planning Permission numbered ... for development of the Site by [description of development]

"the Commencement Date" means the date upon which the Development shall be commenced by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the Act

"the Development" is the development proposed in the Application

"Disposal" means the sale of the freehold or the grant of a lease or underlease of twenty one years or more or the assignment of a lease or underlease with more than twenty one years left to run and "Dispose" shall be construed accordingly and for the sake of clarity the term "Disposal" and "Dispose" shall not include the creation of mortgages or charges

"District" means the administrative area of the District or Borough Authority

“Full Market Value Unit” means a Unit to be sold on the open market

“Housing Need” means a situation where, in the opinion of the Authority, a person or household (as defined in section 113 of the Housing Act 1985):

- (a) Needs to move from accommodation which is in disrepair, shared, temporary or overcrowded, or
- (b) Needs to be rehoused as a result of leaving tied accommodation, or
- (c) Is or includes an elderly or disabled person who needs to move due to medical conditions, or
- (d) Needs to move due to special circumstances as determined by the Authority’s housing allocation policy; and
- (e) Does not have available to them and cannot afford to buy or rent suitable accommodation at Open Market Value or market rent prevailing within the Locality.

“Intermediate Affordable Housing” means housing at prices and rents above those of an Affordable Price or Affordable Rent but below Open Market Value or market rent and which (a) meets 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 (b) includes provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision; Intermediate Affordable Housing may include shared equity schemes such as ‘Homebuy’ but does not include affordable rented housing

“Lettings Policy” means a written document prepared by the Owners and setting out the procedures and requirements for letting the Affordable Units including who shall qualify for an Affordable Unit, how they are to be nominated and the proposed procedure for management of the Affordable Units

“Local Housing Authority” bears the meaning set out in Section 1 of the Housing Act 1985 as amended

“Locality” means [the Parishes of, or insert other geographical area as appropriate]

“Notice of Commencement of Development” means written notification given by the Owner to the Authority’s [appropriate post] of the Commencement Date

“Notice of Occupation” means written notification given by the Owner to the Authority’s [appropriate post] of first Occupation of the Development

“Notice of Sales Release Date” means written notification given by the Owner to the Authority’s [appropriate post] of the date on which it proposes to release the Affordable Units for sale.

“Open Market Value” means the best price as determined by a chartered member of the Royal Institution of Chartered Surveyors at which a Disposal of the interest in an Affordable Unit might reasonably be expected to have been completed unconditionally for cash consideration on the date of valuation assuming

- (i) A willing seller and buyer;
- (ii) That prior to the date of the valuation there has been a reasonable period (having regard to the nature of the Affordable Unit and the state of the market) for the proper marketing of the interest for the agreement of price and terms and for the completion of the Disposal;
- (iii) That the state of the market level of values and other circumstances were on any earlier assumed date of exchange of contracts the same as on the date of valuation;

- (iv) That an independent valuation is carried out on the marketing of the property as new build;
- (v) That any extras such as higher specification fittings are disregarded when the property is first marketed as new build;
- (vi) That the restrictions imposed upon the Affordable Units in or by reason of this Deed are disregarded; and
- (vii) That an independent valuation is carried out three (3) months prior to the same of the Affordable Unit.

“the Planning Permission” means the grant of planning permission by the Authority pursuant to the Application

“Qualifying Person(s)” means a person having local connections and proven or identified need which shall be conclusively presumed in the case of a person who

[THIS DEFINITION WILL VARY ON A CASE BY CASE BASIS TO REFLECT LOCAL PLANNING POLICY BUT ALSO THE PARTICULAR CIRCUMSTANCES AFFECTING A SITE]

- (a) was born in the Locality (or other defined geographic area as the case may be), or
- (b) has lived in the Locality (or other defined geographic area as the case may be) for a continuous period of at least three (3) years up to and including the date on which a Disposal is agreed, subject to contract, of an Affordable Unit, or
- (c) has, immediately before the date on which a Disposal is agreed, accepted an offer of permanent employment in the Locality (or other defined geographic locality as the case may be), or
- (d) has worked in the Locality (or other defined geographic area as the case may be) for a continuous period of at least three (3) years up to and including the date on which a Disposal is agreed, subject to contract, of an Affordable Unit, or
- (e) is currently a member of HM Armed Forces or is in prison, hospital or similar accommodation and immediately prior to this lived in the Locality (or other defined geographic area as the case may be) for a minimum of three years, or
- (f) has within the three years up to and including the date on which a Disposal is agreed, completed a tertiary education course and immediately prior to commencing that course had lived within the Locality (or other defined geographic area as the case may be) for a minimum period of three years, or
- (g) is by blood or marriage or civil partnership a member of the family (as defined in Section 113 of the Housing Act 1985) of a person who falls within one of the above categories and needs to live in the Locality (or other defined geographic area as the case may be) either because they are ill and require care and support from that person or because that person is ill and requires care and support from the applicant, or
- (h) has any other reason for living in the Locality (or other defined geographic area as the case may be) which is approved by the Authority; and
- (i) has registered an interest in living in the Locality (or other defined geographic area as the case may be) and is on the housing register maintained by the Local Housing Authority and/ or any Registered Provider operating in the District

1. The person has been continuously resident in the Locality Defined for three years immediately prior to:
 - (a) Needing another dwelling resulting from changes to their household, including circumstances such as getting married, divorced, having children, or downsizing,
 - (b) Undertaking full time post-secondary education or skills training and is returning to the Locality Defined within 12 months of its completion, or
 - (c) Being admitted to hospital, residential care or sentenced to prison, and are returning to the Locality Defined within 12 months of their discharge/release; or

2. The person has been in continuous employment in the Locality Defined for at least the last 9 months and for a minimum of 16 hours per week immediately prior to occupation; or
3. The person is a person who:
 - (a) Is serving in the regular forces or who has served in the regular forces within five years prior to occupation;
 - (b) Has recently ceased, or will cease to be entitled, to reside in the accommodation provided by the Ministry of Defence following the death of that person's spouse or civil partner where –
 - (i) the spouse or civil partner has served in the regular forces; and
 - (ii) their death was attributable (wholly or partly) to that service; or
 - (c) Is serving or has served in the reserve forces and who is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to that service; or
4. The person needs to live in the Locality Defined because they need substantial care from a relative who lives in the Locality Defined, or because they need to provide substantial care to a relative who lives in the Locality Defined. Substantial care means that identified as required by a medical doctor or relevant statutory support agency

“Registered Provider” has the meaning set out in the Housing and Regeneration Act 2008 as may be amended

“the Site” is the land against which this Deed may be enforced and which is registered at the Land Registry under title no. [...] and shown for identification purposes only edged [colour] on Plan no. 1 annexed hereto

“Shared Equity Transfer” means a transfer by a Local Housing Authority or Registered Provider to a Qualifying Person of a share of not more than [insert percentage] of the freehold of a Shared Ownership Unit so that the freehold interest in such unit is then held by the Local Housing Authority or Registered Provider and such person proportionately

“Shared Ownership Lease” means a lease substantially in the same form as that provided by Local Housing Authorities and Registered Providers for comparable properties provided that any such lease shall (a) not enable the leaseholder to acquire at any time more than a [insert percentage] share of the Open Market Value of the Shared Ownership Unit and (b) provide for the leaseholder to pay an annual rent of not less than [insert figure] or not less than such other amount as exceeds £1 the amount defined as a ‘low rent’ by the Leasehold Reform Act 1967 or any amendment or re-enactment thereof

“Shared Ownership Unit” means an Affordable Unit in respect of which a Shared Ownership Lease is granted by the Local Housing Authority or Registered Provider to a Qualifying Person

“Social Rented Housing” means rented housing owned and managed by Local Housing Authorities and Registered Providers for which guideline target rents are determined through the national rent regime and may also include rented housing owned or managed by other persons or bodies and provided under equivalent rental arrangements, as agreed with the Authority or with the Homes and Communities Agency as a condition of grant

“Unit” means any dwelling constructed or to be constructed on the Site in accordance with the Planning Permission

“Valuer” means a chartered member of the Royal Institute of Chartered Surveyors

- 1.2 The expressions “the Authority” “the Owner”/ “the Registered Provider” [delete as appropriate] and “the Bank” shall where the context admits include those deriving title under each of them.
- 1.3 Words importing one gender shall be construed as including any gender.
- 1.4 Words importing the singular shall be construed as importing the plural and vice versa.
- 1.5 The clause and the paragraph headings in the body of this Agreement and in the Schedules do not form part of this Deed and shall not be taken into account in its construction or interpretation.
- 1.6 Any reference in this Agreement to any statute or statutory provision shall be construed as referring to that statute or statutory provision as the same may from time-to-time be amended, modified, extended, re-enacted or replaced (whether before or after the date of this Agreement) and including subordinate legislation made under it from time-to-time.
- 1.7 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.

2. Recitals

- 2.1 The Authority is the local planning authority for the purposes of the Act for the area within which the Site is located and is the authority by which the planning obligations herein contained are enforceable.
- 2.2 The Owner/ Registered Provider [delete as appropriate] is the freehold/leasehold owner of the Site which is part of the land and premises registered at HM Land Registry with Title No:
- 2.3 The Owner/ Registered Provider [delete as appropriate] has applied to the Authority pursuant to the Act for permission to develop the Site under the Application.
- 2.4 The Bank is the owner of a charge over the property registered at entry no. ... of the charges register at the Land Registry and consents to the Owner/Registered Provider entering into this Agreement.
- 2.4 The Authority have resolved that subject to completion of this Agreement Planning Permission should be granted in respect of the Application.

3. Planning Obligations

- 3.1 This Planning Obligation by Agreement is made pursuant to Section 106 of the Act and all other enabling powers and the obligations contained in this Deed are planning obligations for the purposes of that section insofar as they fall within the terms of sub-section 106(1).

4. The Covenant of the Owner/ Registered Provider [delete as appropriate]

The Owner/ Registered Provider [delete as appropriate] covenants with the Authority so as to bind their interest in the Site to perform the obligations specified in the First Schedule herein.

5. The Covenant of the Authority

The Authority hereby covenants with the Owner/ Registered Provider [delete as appropriate] to issue the Planning Permission notice as soon as reasonably practicable after the date of this Agreement.

6. The Consent of the Bank

- 6.1 The Bank hereby consents to the giving of the obligations on the part of the Owner/Registered Provider and hereby agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession, and that such liability will cease once it has parted with its interest in the Land.

7. Mortgagee in Possession [DELETE AS APPROPRIATE]

- 7.1 The Mortgagee hereby consents to the giving of the obligations on the part of the Owner/Registered Provider and hereby agrees to be bound by the said obligations only in the event that it becomes a Mortgagee in Possession, and that such liability will cease once it has parted with its interest in the Land.

or

- 7.1 The obligations contained in this Agreement shall not be binding or enforceable against any mortgagee in possession of an owner or Registered Provider or any receiver appointed by such a mortgagee in possession provided always that a successor in title of such a person will be bound by the obligations contained in this deed.

or

- 7.1 The obligations contained in this deed shall not be binding or enforceable against any mortgagee of a Local Housing Authority or Registered Provider or any receiver appointed by such a Mortgagee, or any person deriving title through such a mortgagee or receiver provided always that a successor in title of such a person will be bound by the obligations contained in this deed

- [7.2 The obligations contained in this deed shall not be binding or enforceable against any person who by virtue of the terms of the lease of a Shared Ownership Unit or any mortgagee of a Shared Ownership Unit or any person deriving title through such a mortgagee or receiver provided always that a successor in title of such a person will be bound by the obligations contained in this deed]

or

- 7.1 Where any mortgagee of a Local Housing Authority or Registered Provider or any receiver appointed by such a Mortgagee takes possession of any Affordable Unit, the obligations contained in this Agreement shall be binding and enforceable against such a person except that, where no Qualifying Person can be found within one calendar month of notice being duly given and received by the Authority of the intention to dispose of the particular Affordable Unit, such a mortgagee or such a receiver may be entitled to dispose of such Affordable Unit to any person provided

always that all other obligations contained in this Agreement shall continue to apply and provided always that any subsequent successor in title to such a mortgagee or such a receiver shall be bound by all the obligations contained in this Agreement.

or

- 7.1 The mortgagee in possession or receiver appointed by the mortgagee in possession shall, before seeking to dispose of the Affordable Units pursuant to any default under the terms of its mortgage or charge, give not less than ...(...) months' prior notice to the Authority of its intention to dispose, and the following provisions shall apply, provided that the rights and obligations in this paragraph shall not require the mortgagee in possession to act contrary to its duties under the charge or mortgage and the Authority must give full consideration to protecting the interest of the mortgagee in possession in respect of the money outstanding under the charge or mortgage:
- 7.1.1 If the Authority responds within one month from the receipt of the mortgagee in possession's notice and indicates that arrangements for the transfer of the Affordable Units can be made in such a way as to safeguard them as Affordable Housing, the mortgagee in possession shall co-operate with those arrangements and use its best endeavours to secure the transfer.
- 7.1.2 If the Authority or any other person cannot within ...(...) month/weeks of the date of service of its response under paragraph 7.1.1 secure the transfer then, provided that the mortgagee in possession has complied with its obligations under paragraph 7.1.1, the mortgagee in possession shall be entitled to dispose of the Affordable Units free from the restrictions set out in this paragraph 7.1 which shall then cease to apply to those units.
- 7.1.3 If the Authority does not serve its response to the mortgagee in possession's notice within ...(...) month/weeks, the mortgagee in possession shall be entitled to dispose of the Affordable Units free of the restrictions set out in this paragraph 7.1 which shall then cease to apply to those units

8. Agreements and Declarations

It is hereby agreed and declared as follows:

- 8.1 Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid first class or recorded delivery post to the party to be served at its address herein specified or such other address as may from time to time be notified for this purpose by notice served under this Agreement and any such notice or other written communication to be given by the Authority shall be deemed valid and effectual if on its face value it is signed on behalf of the Authority by an officer or duly authorised signatory thereof.
- 8.2 No person shall be liable for breach of a covenant contained in this Agreement after it shall have parted with all interest in the Site or that part of the Site in respect of which such breach occurred but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 8.3 If the Planning Permission shall expire before the Commencement Date or shall at any time be revoked the provisions of this Agreement shall forthwith determine and cease to have effect.
- 8.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement save for any subsequent reserved matters permission.
- 8.5 Each Disposal of the Affordable Unit shall include a restriction in the following terms:

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the [appropriate Authority post] (or other officer authorised for the time being by the Authority) of the [name of Authority], [address of Authority] that the provisions of [*specify clause, paragraph or other particulars from transfer of Affordable Unit*] have been complied with”

- 8.6 This Agreement shall upon completion be registered as a Local Land Charge against the Affordable Units.
- 8.7 The Authority will upon the written request of the Owner/ Registered Provider [delete as appropriate] at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof and cancel all related entries in the register of Local Land Charges.
- 8.8 The Owner/ Registered Provider [delete as appropriate] will supply to the Authority within two weeks of the Authority's written request to do so such information as the Authority may reasonably require for monitoring purposes in order to determine whether the restrictions and obligations of this Agreement are being observed
- 8.9 Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Authority this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 8.10 Where any certificate, consent, permission or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the decision of the same shall not be unreasonably withheld and shall be given without unreasonable delay and shall either be granted or written reasons given for refusal.
- 8.11 [For the avoidance of doubt, in the event that s [Shared Ownership Unit/ Rented Unit] is purchased outright by the current owner the provisions of paragraphs [...] shall no longer apply]
- 8.12 The Owner agrees to pay the Authority's reasonable legal costs, charges and disbursements incurred in connection with the preparation of this agreement and registration at the Land Registry

9. Disputes

- 9.1 Unless and to the extent not specified otherwise in this Agreement any dispute (save for any disputes as to matters of law) shall be referred at any appropriate time by either party to a person having appropriate professional qualifications and experience in such matters (“the Expert”) appointed jointly by the parties or in default by the President for the time being of the Royal Institution of Chartered Surveyors or the President of such other professional body as shall be relevant for the nature of the dispute in question (as appropriate) (or on his behalf) on the application of either party.
- 9.2 The Expert shall have sufficient post qualification experience (as determined by the Authority) in the area of the dispute in question.
- 9.3 The Expert shall act as an expert and not as an arbitrator and the decision of the Expert shall be final and binding upon the parties and the following provisions shall apply to the Expert.
- 9.4 The charges and expenses of the Expert shall initially be borne equally between the parties and following the Expert's decision shall be borne in such proportions as the Expert may direct.

- 9.5 The Expert shall give the parties an opportunity to make representations to him before making his decision which he shall make available to the other party on request.
- 9.6 The Expert shall be entitled to obtain opinions from others if he so wishes.
- 9.7 The Expert shall make his decision on valuation matters within the range of any representations made by the parties.
- 9.8 The Expert shall comply with any time limits or other directions agreed by both parties on or before his appointment.
- 9.9 If the Expert dies or is unable or unwilling to accept his appointment or to carry out his functions then either party may apply for a replacement to be appointed in his place and this procedure may be repeated as often as necessary.
- 9.10 The decision of the Expert must be given in writing setting out the reasons behind such decision.
- 9.11 If the parties fail to agree as to the nature of the difference or question then a decision as to the nature of such difference or question shall be referred to a solicitor or barrister of sufficient relevant experience (as determined by the Authority) in the same manner and the same terms as set out in clause 9.1 to 9.10 inclusive who shall determine which type of professional should be appointed in relation to such matter.

IN WITNESS whereof the Authority the Owner/ Registered Provider [delete as appropriate] and the Bank have executed this Planning Obligation by Agreement as a Deed the date and year first before written.

THE FIRST SCHEDULE

[A – DISCOUNTED SALE delete if not applicable]

The Obligations

Affordable Housing

1. The Owner covenants with the Authority as follows:-
 - 1.1 To ensure that provision is made for the Affordable Units in the construction of the Development
 - 1.2 That the Affordable Units will be developed and built in accordance with the Planning Permission
 - 1.3 Not to allow completion of the Disposal of and/ or occupation of more than ... per cent (...%) of the Full Market Value Units until the Affordable Units have been constructed and made ready for residential occupation and written notification of such has been received by the Authority
 - 1.4 Any subsequent owner of an Affordable Unit shall reside in the Affordable Unit as his main residence and shall not permit any other person to live in the Affordable Unit (other than a person who forms part of their own household) without first obtaining the written consent of the Authority.
 - 1.6 To provide the Authority with the Notice of Commencement of Development no later than the Commencement Date and the Notice of Development of the first dwellinghouse no later than the date of occupation of the first dwellinghouse.
2. The Owner further covenants with the Authority as follows:-
 - 2.1 To provide the Authority with the Notice of Sales Release Date not less than six (6) weeks before the date upon which they propose to release the Affordable Units for Sale in order that the Authority may nominate a Qualifying Person and/or person with a Housing Need for occupation of the unit.
 - 2.2 To accept the Authority's nomination of a Qualifying Person with a Housing Need for the occupation of an Affordable Unit.
 - 2.3 The Affordable Units shall first be offered at the Affordable Price to persons at least one of whom is a Qualifying Person and/or a person with a Housing Need in respect of the Locality (or other defined geographic area as the case may be)
 - 2.4 If no sale has been agreed, subject to contract, within ... (...) weeks of the Affordable Units first being offered for sale then the Affordable Units may additionally be offered at the Affordable Price to persons at least one of whom is a Qualifying Person and/or a person with a Housing Need in respect of the parishes of [...](or other defined geographic area as the case may be).
 - 2.5 If no sale has been agreed, subject to contract, within ... (...) weeks of the expiry of the period set out in paragraph 2.4 then the Affordable Units may additionally be offered at the Affordable Price to persons as least one of whom is a Qualifying Person and/or a Person with a Housing Need in respect of the District of [...](or other defined geographic area as the case may be).
 - 2.6 In the event that the Owner or any subsequent owner of the Affordable Unit shall demonstrate to the Authority that the Affordable Unit has been offered on the open market to Qualifying Persons and/or persons with a Housing Need for not less than ...

(...) weeks (and produce a certificate in writing to this effect from either the Owner or a local estate agent instructed by a subsequent owner in respect of the sale of the Affordable Unit) or such shorter period as may be approved in writing by the Authority then the Affordable Units shall be entitled (on giving ... (...) working days' notice to the Authority) to Dispose of the Affordable Unit at the Affordable Price to persons notwithstanding that such person may not be a Qualifying Person and/or a person with a Housing Need, provided always that on any subsequent Disposal the provisions of this Agreement shall again apply and always subject to the Affordable Units being Disposed of at the Affordable Price..

- 2.7 In the event that an Affordable Unit could be occupied by either a Qualifying Person and/or a person with a Housing Need the person with a Housing Need will take priority UNLESS a local lettings policy is in place in which case allocation shall be in accordance with the local lettings policy.
- 2.8 The Affordable Unit shall not be Disposed of after the date hereof for an amount exceeding the Affordable Price ascertained in accordance with the provisions of this Agreement
- 2.9 No Disposal of the Affordable Unit after the date hereof shall be completed and no such Disposal shall be registered at the Land Registry unless the Authority has first consented in writing to such registration PROVIDED THAT such consent shall be given forthwith upon
- (a) evidence being furnished that the disponee (or in the case of joint disponees one of the disponees) is a Qualifying Person; and
 - (b) the Solicitor or Licensed or other authorised Conveyancer acting for the disponee(s) firstly certifying to the Authority that any consideration expressed to be given for the Low Cost Unit by the disponee(s) did not exceed the Affordable Price as evidenced by the certificate given by a Valuer not more than six (6) months before the date of such Disposal and secondly supplying to the Authority a deed of covenant executed by the disponee(s) in accordance with clause 2.9 hereof.
- 2.10 The terms of the Agreement and transfer of an Affordable Unit to a Qualifying Person shall be no less beneficial than the terms on which the owner at the time generally offer dwelling houses for sale on the open market.
- 2.11 The first of each and every disposal of an Affordable Unit shall provide (by way of a covenant in favour of the Owner) that each and every Disposal of the Affordable Unit shall be at the Affordable Price to a Qualifying Person in accordance with the provisions of this Deed and that all subsequent owners of the Affordable Unit shall be bound by the provisions of this Agreement
- 2.12 Any subsequent owner of an Affordable Unit shall give written notification to the Authority's [appropriate post] of his intention to sell the Affordable Unit prior to it being offered for sale in order that the Authority may nominate a Qualifying Person and/or person with a Housing Need to occupy the unit and the owner shall accept the Authority's nomination.
- 2.13 Any subsequent owner shall on each and every subsequent Disposal of an Affordable Unit submit to the Authority's [appropriate post] for approval the calculation of the Affordable Price and the Open Market Value of the Affordable Unit prior to the Affordable Unit being offered for sale and the Authority hereby covenants that the approval hereby required to be obtained shall not be unreasonably withheld or delayed
- 3 The Owner covenants and agrees to supply to the Authority (within 2 weeks of the Authority's written request so to do) such information as the Authority may reasonably require in order to determine whether the matters referred to herein are being observed.

THE FIRST SCHEDULE

[B – OWNER RENTED delete if not applicable]

The Obligations

Affordable Housing

1. The Owner covenants with the Authority as follows:-
 - 1.1 That the Affordable Units will be developed and built in accordance with the Planning Permission
 - 1.2 Not to allow completion of the Disposal of and/ or occupation or more than ... per cent (...%) of the Full Market Value Units until the Affordable Units have been constructed and made ready for residential occupation and written notification of such has been received by the Authority
 - 1.3 Any subsequent owner of an Affordable Unit shall reside in the Affordable Unit as his main residence and shall not permit any other person to live in the Affordable Unit (other than a person who forms part of their own household) without first obtaining the written consent of the Authority.
 - 1.4 The Affordable Units shall be occupied only by a Qualifying Person and/or a person with a Housing Need and members of their household.
 - 1.5 The Affordable Units shall not be used other than as Affordable Housing in perpetuity
 - 1.6 Not to allow any Affordable Unit to be disposed of other than by letting by way of an Assured Tenancy or Assured Shorthold Tenancy (as defined in the Housing Act 1988 as amended) or on such other terms as the Authority shall approve (such approval not to be unreasonably withheld or delayed) at the Affordable Rent
 - 1.7 Not to increase the Affordable Rent without first agreeing the increase with the Authority in writing.
2. The Owner further covenants with the Authority as follows:-
 - 2.1 Before an Affordable Unit is marketed for letting to submit to the Authority the Owner's Lettings Policy for written approval
 - 2.2 To ensure whenever an Affordable Unit is marketed for letting that potential applicants are advised that they need to register their interest with the Authority and to join the Authority's Housing Register and Cumbria Choice register.
 - 2.3 On the initial letting of an Affordable Unit to give to the Authority ... (...) weeks' notice in writing of the availability for letting of that unit in order that the Authority may carry out a valuation of the unit to enable the initial Affordable Rent calculation in line with the formula set by the Homes and Communities Agency and to enable the Authority to nominate a Qualifying Person and/or a person with a Housing Need for occupation.
 - 2.4 On subsequent lettings to give the Authority ... (...) weeks' notice in writing of the availability of the Affordable Unit in order that the Authority may nominate a Qualifying Person and/or a person with a Housing Need for occupation.
 - 2.5 To accept the Authority's nomination of a Qualifying Person and/or a person with a Housing Need for occupation of an Affordable Unit save that the Owner shall be entitled to refuse such nomination on grounds which shall be legitimate commercial or legal reasons.

- 2.6 The Affordable Units shall first be offered for rental at the Affordable Rent to persons at least one of whom is a Qualifying Person and/or a person with a Housing Need in respect of the locality (or other defined geographic area as the case may be).
- 2.7 If no Qualifying Person and/or a person with a Housing Need has agreed terms for letting with the Owners within ... (...) months of the unit being made available for letting and marketed as such locally then the Affordable Units may additionally be offered by the Owners for rental at the Affordable Rent to persons at least one of whom is a Qualifying Person and/or a person with a Housing Need in respect of the District PROVIDED THAT when the Affordable Unit becomes available for occupation again the provisions of this paragraph 2 shall apply in their entirety.
3. The Owner may, as an alternative to their obligations under paragraph 2 above, transfer the Affordable Units to a Registered Provider in which case the provisions of this paragraph 3 shall apply:
- 3.1 The Owner shall not allow more than [number] of units of occupation to be built on the Site in implementation of the Development until it has contracted to Dispose of those units which are to be Affordable Units to a Registered Provider on terms that accord with relevant Homes and Communities Agency funding requirements current at the date of construction of the Affordable Units.
- 3.2 The Affordable Units shall thereafter be rented by the Registered Provider to Qualifying Persons and/or persons with a Housing Need at the Affordable Rent in accordance with the terms set out below:
- 3.2.1 The Affordable Units shall initially be offered to Qualifying Persons and/or persons with a Housing Need in respect of the locality (or other defined geographic area as the case may be).
- 3.2.2 If no Qualifying Person and/or a person with a Housing Need in respect of the locality (or other defined geographic area as the case may be) is identified using best endeavours then the Affordable Units may thereafter be offered to Qualifying Persons and/or persons with a Housing Need in respect of the District (or other defined geographic area as the case may be).
- 3.2.3 The Authority shall in the first instance be invited to nominate a Qualifying Person and/or person with a Housing Need for occupation of an Affordable Unit.
- 3.3 In the event that an Affordable Unit could be occupied by either a Qualifying Person and/or a person with a Housing Need, the person with a Housing Need shall take priority UNLESS a local lettings policy is in place in which case the allocation shall be in accordance with the local lettings policy.
- 3.4 In the event of an agreement having been completed as provided for in paragraph 3.1 but the same subsequently terminating then the Owner shall use its best endeavours to conclude second or further agreements as the case may be with another Registered Provider in respect of the Affordable Units provided that if none can be concluded then the provisions of paragraph 2 shall apply.
4. The Owner covenants and agrees to supply to the Authority (within 2 weeks of the Authority's written request so to do) such information as the Authority may reasonably require in order to determine whether the matters referred to herein are being observed.

THE FIRST SCHEDULE

[C – REGISTERED PROVIDER RENTED delete if not applicable]

The Obligations

Affordable Housing

1. The Registered Provider covenants with the Authority as follows:-
 - 1.1 That the Affordable Units will be developed and built in accordance with the Planning Permission
 - 1.2 That, without prejudice to any statutory rights to acquire, the Affordable Units shall not be used other than as Affordable Housing in perpetuity
 - 1.3 That the Affordable Units shall be made available for occupation at the Affordable Rent by persons at least one of whom is a Qualifying Person and/or person with a Housing Need
 - 1.4 Not to permit the occupation of the Affordable Units otherwise than by a Qualifying Person and/or person with a Housing Need at the Affordable Rent together with any person who forms part of their own household
 - 1.5 Not to permit the occupation of the Affordable Units other than by persons occupying them as their main or only residence
 - 1.6 Not without the prior consent of the Authority to sell any Affordable Unit other than by selling the freehold to a Registered Provider
2. The Registered Provider further covenants as follows:-
 - 2.1 The Affordable Units shall first be marketed for occupation at the Affordable Rent by persons at least one of whom is a Qualifying Person and/or person with a Housing Need in respect of the locality
 - 2.2 If after an Affordable Unit has been marketed for letting for a period of [...] weeks and no Qualifying Persons and/or person with a Housing Need has been identified and applied for a tenancy of the Affordable Unit then the Registered Provider may additionally offer the Affordable Unit at the Affordable Rent to persons at least one of whom is a Qualifying Person and/or person with a Housing Need in respect of the District (or other defined geographic area as the case may be) PROVIDED THAT on any subsequent re-letting of an Affordable Unit the provisions of this paragraph 2 shall apply in their entirety.
 - 2.3. The Owner covenants and agrees to supply to the Authority (within 2 weeks of the Authority's written request so to do) such information as the Authority may reasonably require in order to determine whether the matters referred to herein are being observed.

THE FIRST SCHEDULE

[D – SHARED OWNERSHIP delete if not applicable]

The Obligations

Affordable Housing

1. The Registered Provider covenants with the Authority as follows:-
 - 1.1 That the Shared Ownership Units will be developed and built in accordance with the Planning Permission
 - 1.2 That the Shared Ownership Units shall not be used other than as Affordable Housing in perpetuity
 - 1.3 Not to permit the occupation of the Shared Ownership Units other than by persons occupying them as their main or only residence together with members of their own household
2. The Registered Provider further covenants as follows:-
 - 2.1 That the Shared Ownership Units shall not be occupied otherwise than by persons at least one of whom is a Qualifying Person and/or person with a Housing Need under a Shared Ownership Lease or Shared Equity Transfer managed by a local housing authority or Registered Provider
 - 2.2 To notify the Authority at least [...] weeks before the units are ready for first occupation in order that the Authority may nominate a Qualifying Person and/or person with local Housing Need for occupation of a Shared Ownership Unit
 - 2.3 On subsequent Disposals to give the Authority [...] weeks' notice in writing of the availability of the unit in order that the Authority may nominate a Qualifying Person and/or person with a Housing Need for occupation.
 - 2.4 To accept the Authority's nomination of a Qualifying Person or person with a Housing Need for Occupation of a Shared Ownership Unit save that the Owner shall be entitled to refuse such nomination on grounds which shall be legitimate commercial or legal reasons.
 - 2.5 The Shared Ownership Units shall initially be offered to Qualifying Persons and/or persons with a Housing Need in respect of the locality (or other defined geographic locality as the case may be)
 - 2.6 If no Qualifying Person and/or a person with a Housing Need in respect of [name of parish(es) (or other defined geographic locality as the case may be) is identified using best endeavours within [...] weeks then the Shared Ownership Units may thereafter be offered to Qualifying Persons and/or persons with a Housing Need in respect of the District(or other defined geographic area as the case may be) .
 - 2.7. The Registered Provider shall be entitled upon obtaining the prior written agreement of the Authority to provide the Shared Ownership Units as Intermediated Affordable Housing instead; such prior written agreement shall not be unreasonably withheld and shall be forthcoming upon the Registered Provider submitting to the Authority as acceptable scheme for provision of the Intermediate Affordable Housing.
3. The Owner covenants and agrees to supply to the Authority (within 2 weeks of the Authority's written request so to do) such information as the Authority may reasonably require in order to determine whether the matters referred to herein are being observed.

THE SECOND SCHEDULE

The unit size and tenure of Affordable Housing Units shall, unless otherwise specifically agreed in writing by the Authority's [appropriate post] expressly for the purposes of this paragraph, be as follows:-

Discounted Sale

1 bedroom (number) ([plot]number(s))
2 bedroom (number) ([plot]number(s))
3 bedroom (number) ([plot]number(s))
4 bedroom (number) ([plot]number(s))
Total (number)

Rented

1 bedroom (number) ([plot]number(s))
2 bedroom (number) ([plot]number(s))
3 bedroom (number) ([plot]number(s))
4 bedroom (number) ([plot]number(s))
Total (number)

Shared Ownership

1 bedroom (number) ([plot]number(s))
2 bedroom (number) ([plot]number(s))
3 bedroom (number) ([plot]number(s))
4 bedroom (number) ([plot]number(s))
Total (number)

Social Rented

1 bedroom (number) ([plot]number(s))
2 bedroom (number) ([plot]number(s))
3 bedroom (number) ([plot]number(s))
4 bedroom (number) ([plot]number(s))
Total (number)

THE THIRD SCHEDULE

Draft planning permission in the form annexed hereto

EXECUTED AS A DEED by the)
[name of Authority])
by affixing its common seal in the)
presence of:)

Authorised Signatory

Authorised Signatory.....

SIGNED AS A DEED by)
...)
In the presence of)
Name:)
Address:)
)
)

SIGNED AS A DEED by)
...)
In the presence of)
Name:)
Address:)
)
)