

EDEN DISTRICT COUNCIL

-and-

Name

-and-

Name (if more than one owner)

AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990

Relating to Land at [add name of site]

PG Foote BA (Hons) Solicitor
Director of Corporate and Legal Services

Eden District Council
The Town Hall
Penrith
Cumbria
CA11 7QF

Ref: CP/ [add planning application no]

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

BETWEEN

(1) **EDEN DISTRICT COUNCIL** of Town Hall, Penrith, Cumbria, CA11 7QF
("the Council")

(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 and 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 60% of the Open Market Value of the Affordable Units notified by the Owners to the Council in the Notice of Sales Release Date; and
- (b) on each and every subsequent Disposal of the Affordable Units not more than 60% of the Open Market Value as hereinafter determined

"Affordable Rent" such rent as is not more than 80% of the open market rent, based on a valuation obtained at the Owner's expense and provided by a qualified member of the Royal Institution of Chartered Surveyors (RICS) and approved by the Council, provided that in the event of any dispute the matter would be referred at the Owner's expense to the District Valuer, whose decision will be final and provided that in the event of any annual rent increases such increases shall be no more than the Retail Price Index (RPI) + 0.5% and must be agreed with the Council and provided that upon the change of each tenancy the rent shall be revalued at the Owner's expense by a RICS qualified surveyor and agreed with the Council with any dispute being referred to the District Valuer whose decision will be final

“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 Council

“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 Eden District Council

“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 Council, 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 Council’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 includes low cost home ownership schemes, such as shared ownership, shared equity, or discounted sale 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 Council’s Head of planning Services, or in the event of any restructuring of posts by the Council such successor as the Council may from time to time determine, of the Commencement Date

“Notice of Occupation” means written notification given by the Owner to the Council’s Head of planning Services, or in the event of any restructuring of posts by the Council such successor as the Council may from time to time determine, of first Occupation of the Development

“Notice of Sales Release Date” means written notification given by the Owner to the Council’s Head of planning Services, or in the event of any restructuring of posts by the Council such successor as the Council may from time to time determine, 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 sale of the Affordable Unit.

“the Planning Permission” means the grant of planning permission by the Council 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:

- 1) A person or household who currently lives in the relevant locality and has done so for a continuous period of at least three years; and/or
- 2) A person or household who works in the relevant locality and has done so for a continuous period of at least three years; and/or
- 3) Who has moved away but has strong established and continuous links with the relevant locality by reason of birth or long term immediate family connections; and/or
- 4) Who has an essential need through age or disability to live close to those who have lived in the relevant locality for at least three years
- 5) For market led housing a local connection to the area will also apply to a person or household who has secured work in the relevant locality

The definition of ‘locality’ refers to the Parish and surrounding parishes in the first instance, and if after a reasonable period of active marketing a purchaser cannot be found the definition would cascade out to include the County of Cumbria

“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 Council 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 Council” “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 Council 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 Council 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
- 2.5 The Council has 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 Council so as to bind their interest in the Site to perform the obligations specified in the First Schedule herein.

5. The Covenant of the Council

The Council 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

- 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 Council 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.

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 Council shall be deemed valid and effectual if on its face value it is signed on behalf of the Council 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 Director of Corporate and Legal Services (or other officer authorised for the time being by the Council) of Eden District Council, of Town Hall, Penrith, Cumbria, CA11 7QF 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 Council 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 Council within two weeks of the Council’s written request to do so such information as the Council 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 Council 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 **[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 Council'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 Council) 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 Council) 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 Council 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 Council 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 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 Council
 - 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 Council
 - 1.6 To provide the Council 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 Council as follows:
 - 2.1 To provide the Council 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 Council may nominate a Qualifying Person and/or person with a Housing Need for occupation of the unit
 - 2.2 To accept the Council'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
 - 2.4 If no sale has been agreed, subject to contract, within four weeks of the Affordable Units first being offered for sale then the Affordable Units may additionally be offered at the Affordable Price for a further four week period to persons at least one of whom is a Qualifying Person and/or a person with a Housing Need in respect of the District of Eden
 - 2.5 If no sale has been agreed, subject to contract, within four weeks of the expiry of the period set out in paragraph 2.4 than 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 County of Cumbria

- 2.6 In the event that the Owner or any subsequent owner of the Affordable Unit shall demonstrate to the Council 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 twelve 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 Council then the Affordable Units shall be entitled (on giving fifteen working days notice to the Council) 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. Such persons must be approved in writing by the Council and the property shall be these persons only or principal residence
- 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 Council 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 Council 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 Council 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 Council's Affordable Housing Officer, or in the event of any restructuring of posts by the Council such successor as the Council may

from time to time determine, of his intention to sell the Affordable Unit prior to it being offered for sale in order that the Council may nominate a Qualifying Person and/or person with a Housing Need to occupy the unit and the owner shall accept the Council's nomination

- 2.13 Any subsequent owner shall on each and every subsequent Disposal of an Affordable Unit submit to the Council's Affordable Housing Officer, or in the event of any restructuring of posts by the Council such successor as the Council may from time to time determine, 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 Council 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 Council (within 2 weeks of the Council's written request so to do) such information as the Council 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 Council 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 Council
 - 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 Council
 - 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 Council 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 Council in writing
2. The Owner further covenants with the Council as follows:
 - 2.1 Before an Affordable Unit is marketed for letting to submit to the Council 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 Council and to join the Council's Housing Register and Cumbria Choice register
 - 2.3 On the initial letting of an Affordable Unit to give to the council six weeks notice in writing of the availability for letting of that unit and provide a rental valuation (using the Council's standard valuation template) from a Royal Institution of Chartered Surveyors (RICS) qualified surveyor in order that the Council can have the valuation of the unit verified by its agent to enable the initial Affordable Rent calculation in line with the formula set by the Homes and Communities Agency and to enable the Council to nominate a Qualifying Person and/or a person with a Housing Need for occupation

- 2.4 On subsequent lettings to give the Council four weeks notice in writing of the availability of the Affordable Unit in order that the Council may nominate a Qualifying Person and/or a person with a Housing Need for occupation
- 2.5 To accept the Council'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
- 2.7 If no Qualifying Person and/or a person with a Housing Need has agreed terms for letting with the Owners within four weeks 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 Eden District
- 2.8 If no Qualifying Person and/or a person with a Housing Need has agreed terms for letting with the Owners within four weeks of the expiry of the period set out in paragraph 2.7 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 County of Cumbria 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
 - 3.2.2 If no Qualifying Person and/or a person with a Housing Need in respect of the locality is identified using best endeavours within four weeks of the unit being available and marketed then the Affordable Units may thereafter be offered to Qualifying Persons and/or persons with a Housing Need in respect of the District of Eden
 - 3.2.3 If no Qualifying Person and/or a person with a Housing Need in respect of the locality is identified using best endeavours within four

weeks of the unit being available and marketed then the Affordable Units may thereafter be offered to Qualifying Persons and/or persons with a Housing Need in respect of the County of Cumbria

- 3.2.4 The Council 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 Council (within two weeks of the Council's written request so to do) such information as the Council 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 Council 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
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 four 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 for a further period of four weeks 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 of Eden
 - 2.3 If the property has still not been let within the expiry of the period set out in paragraph 2.2 then the Affordable Units may additionally be offered at the Affordable Rent to persons as least one of whom is a Qualifying Person and/or a Person with a Housing Need in respect of the County of Cumbria PROVIDED THAT on any subsequent re-letting of an Affordable Unit the provisions of this paragraph 2 shall apply in their entirety
 - 2.4 The Owner covenants and agrees to supply to the Council (within 2 weeks of the Council's written request so to do) such information as the Council 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 Council 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 Council at least six weeks before the units are ready for first occupation in order that the Council 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 Council four weeks notice in writing of the availability of the unit in order that the Council may nominate a Qualifying Person and/or person with a Housing Need for occupation
 - 2.4 To accept the Council'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
 - 2.6 If no Qualifying Person and/or a person with a Housing Need in respect of the Locality is identified using best endeavours within four 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 of Eden for a further four week period
 - 2.7 If no sale has been agreed within four weeks of the expiry of the period set out in paragraph 2.6 then the Shared Ownership Units may additionally be offered to qualifying persons and/or persons with a Housing Need in respect of the County of Cumbria for a further four weeks

- 2.8 In the event that the Owner or any subsequent owner of the Shared Ownership Unit shall demonstrate to the Council that the Shared Ownership Unit has been offered on the open market to Qualifying Persons and/or persons with a Housing Need for not less than twelve 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 Shared Ownership Unit) or such shorter period as may be approved in writing by the Council then the Shared Ownership Units shall be entitled (on giving fifteen working days notice to the Council) to Dispose of the Shared Ownership Unit but only on a Shared Ownership Lease basis 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 Shared Ownership Units being Disposed of on a Shared Ownership Lease PROVIDED THAT when the Shared Ownership Unit becomes available for occupation again the provisions of this paragraph 2 shall apply in their entirety
- 2.9. The Registered Provider shall be entitled upon obtaining the prior written agreement of the Council 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 Council as acceptable scheme for provision of the Intermediate Affordable Housing.
3. The Owner covenants and agrees to supply to the Council (within 2 weeks of the Council's written request so to do) such information as the Council 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 Council'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

THE COMMON SEAL OF)
EDEN DISTRICT COUNCIL)
was affixed in the presence of:)

Chairman

Director of Corporate and Legal Services

SIGNED AS A DEED)
By)

in the presence of

Signature of Witness:

Full Name of Witness:

Address of Witness:

SIGNED AS A DEED)
By)

in the presence of

Signature of Witness:

Full Name of Witness:

Address of Witness:

SIGNED AS A DEED

)

By

)

in the presence of

Signature of Witness:

Full Name of Witness:

Address of Witness:

