

DATED

2025

- (1) **CUMBERLAND COUNCIL**
- (2) **HELEN RACHEL MCBRIDE AND
SARAH MARGARET SPEDDING**
- (3) **GLEESON REGENERATION LIMITED**
- (4) **CLYDESDALE BANK PLC**

PLANNING OBLIGATION

**under Section 106 of the Town and Country Planning Act
1990 (as amended)**

relating to

**Land the Former Orgill Infants School and How Bank
Farm, Egremont**

THIS AGREEMENT is made

2025

BETWEEN:-

- (1) **CUMBERLAND COUNCIL** of Cumbria House, 117 Botchergate, Carlisle CA1 1RD (the Council).
- (2) **HELEN RACHEL MCBRIDE** of How Bank Farm, How Bank, Egremont CA22 2QJ, **SARAH MARGARET SPEDDING** of 2 Garth Bank, Egremont, CA22 2BP ("the First Owners")
- (3) **GLEESON REGENERATION LIMITED** of (Company Registration. Number 3920096) of 6 Europa Court, Sheffield Business Park, Sheffield S9 1XE ("the Second Owner").
- (4) **CLYDESDALE BANK PLC** (Scot. Co. Regn. No. SC001111) of Business Lending Services, 20 Merrion Way, Leeds LS2 8NZ ("the Chargee")

WHEREAS

1. The Council is the local planning authority for the purposes of the Act for the area within which the Development Land is situated and is the authority by whom the obligations hereby created in favour of the Council are enforceable.
2. The First Owners are the proprietor of the freehold title to those parts of the Development Land, the How Bank Farm Land, which is registered at the Land Registry under Title Number CU272522.
3. On 16 July 2020 the Second Owner entered into a contract with the First Owners to purchase part of the Development Land and by application of 17 July 2020 applied to enter unilateral notice to the Land Registry on Title Number CU272522.
4. The Chargee is the beneficiary of a legal charge dated 28 February 2013 referred to in entry numbers 4 and 5 of the charges register of Title Number CU272522 and has agreed to enter into this Deed to give consent to its terms.
5. The Second Owner is the proprietor of the freehold title of those parts of the Development Land which is registered at the Land Registry under Title Number CU212227, the Former Orgill Infants School Land.,
6. The Second Owner has submitted the Application to the Council for planning permission for the Development.
7. The Council has resolved that Planning Permission should be granted for the Development subject to the prior completion of this Deed.

1. DEFINITIONS

- 1.1 In this Deed the following words and phrases have the following meanings unless the context otherwise demands:-

"Act" means the Town and Country Planning Act 1990 (as amended);

"Adjoining Locality"	means the parishes of Cleator Moor, Weddicar, Whitehaven, St. Bees, Haile, Lowside Quarter and Beckermest.
"Additional First Homes Contribution"	<p>means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 4.10, 4.11 or 6.4 of the First Schedule, the lower of the following two amounts:</p> <p>(a) 30% of the sale proceeds; and</p> <p>(b) The sale proceeds less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation. For this purpose, the "amount due and outstanding to any Mortgagee" shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage, but for the avoidance of doubt shall not include any other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home</p> <p>and which for the avoidance of doubt shall in each case be paid following the deduction of any additional SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home;</p>
"Affordable Dwellings"	means not less than 11 (eleven) Dwellings comprising 11 (eleven) First Homes Dwellings included in the Development Land as part of the Development in the locations identified on the Affordable Housing Plan for the purpose of Affordable Housing and reference to "Affordable Dwelling" shall be construed accordingly;
"Affordable Housing"	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 Housing Plan"	means the plan attached to this Deed at the Third Schedule with Drawing Number MJG/PL-111 Revision J showing the location of the Affordable Dwellings hatched in blue;
"Application"	means the application for planning permission for the Development registered under reference number 4/20/2432/0F1;
Armed Services Member	means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or reserve forces or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or

civil partner of a deceased member or former member whose death was caused wholly or partly by their service

"Chargee" Means Clydesdale Bank PLC as mortgagee pursuant to a legal charge dated 28 February 2013 and includes any receiver appointed by such persons pursuant to their legal charge.

"Commencement of Development" means the date upon which the Development shall be commenced by the carrying out on the Development Land pursuant to the Planning Permission of a material operation specified in Section 56 of the Act SAVE THAT the term "material operation" shall not for the purposes of this Deed include operations in connection with site clearance, demolition, ground stabilisation, archaeological investigation, investigation for the purposes of assessing contamination, removal of contamination, diversion and laying of services and the erection of means of enclosure for the purposes of site security and/or display of advertisements, exploratory boreholes and any dug works, matters and operations to enable the foregoing to take place and reference to "Commence Development" shall be construed accordingly;

Compliance Certificate means the certificate issued by the Council confirming that a First Homes Dwelling is being Disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 4.3 First Schedule applies, the Eligibility Criteria (Local);

"Contributions" Means the Education Contribution and Recreational Space Contribution.

" Development" means the *Residential development (105 dwellings in total)* to take place on the Development Land;

"Development Land" means the land edged in red on Plan 1 comprising the How Bank Farm Land and the Former Orgill Infants School Land where the Development shall take place.

"Development Standard" means a standard to fully comply with the following:-

- (a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015
- (b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time
- (c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited

		<p>(d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings);</p> <p>(e) local requirements as set out in adopted local plan</p>
"Discount Market Price"		means a sum which is the Market Value discounted by at least 30%.
"Disposal"		<p>means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:</p> <p>a) a letting or sub-letting in accordance with paragraph 4</p> <p>b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner</p> <p>(c) an Exempt Disposal</p> <p>and "Disposed" and "Disposing" shall be construed accordingly</p>
"District"		means the administrative district of Cumberland;
"Dwellings"		means the Residential Units that may be built on the Development Land pursuant to the Planning Permission and reference to "Dwelling" shall mean any of the Dwellings;
"Education Contribution"		means the sum of £601,040 (six hundred and one thousand and forty pounds) to be applied by the Council towards Secondary school education in the Locality.
"Eligibility (National)"	Criteria	<p>means criteria which are met in respect of a purchase of a First Home if:</p> <p>a) the purchaser is a First Time Buyer (and in the case of a joint purchase each joint purchaser is a First Time Buyer); and</p> <p>b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).</p>
"Eligibility Criteria (Local)"		<p>means criteria (if any) published by the Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:</p> <p>(a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and</p>

- (b) any or all of criteria (i) and (ii) below are met:
- (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or
 - (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member

it being acknowledged that at the date of this agreement the Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home.

"Exempt Disposal"

means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner;
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order; or
- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant unit (and for the avoidance of doubt paragraph 5 shall apply to such sale)

Provided that in each case other than (d) the person to whom the Disposal is made complies with the terms of paragraph 5 of the First Schedule;

"First Home"

means a First Homes Dwelling which may be Disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap;

"First Homes Dwellings"

means the Affordable Dwellings to be delivered within the Development Land as a First Home and reference to "First Home Dwelling" shall be construed accordingly;

"First Homes Owner"

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- (f) the Owners (at the date of this agreement)/ the Developer;
- (g) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (h) a tenant or sub-tenant of a permitted letting under Paragraph 5 First Schedule

"First Time Buyer" means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

"Former Orgill Infants School Land" means the land hatched in blue on Plan 1 where the Development will take place pursuant to the Planning Permission.

"Homes England" means Homes England or any bodies undertaking the existing functions of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act);

"How Bank Farm Land" means the land hatched in red on Plan 1 where the Development will take place pursuant to the Planning Permission.

"Income Cap (Local)" means:

- a) On the first sale of the First Home eighty thousand pounds (£80,000); or
- b) On a second or subsequent sale of a First Home such sum (if any) as may be published by the Council from time to time as the "First Homes Income Cap (Local)" for the Council and is in operation at the time of the relevant disposal of the First Home it being acknowledged that at the date of this agreement the Council has not set an Income Cap (Local);

"Income Cap (National)" means:

- a) in the case of a First Home situated within the administrative area of any London Borough Council (including the City of London), ninety thousand pounds (£90,000); and
- b) in the case of any other First Home, eighty thousand pounds (£80,000)

or such other sum as may be published for this purpose from time to time by the Secretary of State;

"Independent Chartered Surveyor"	means a member of the Royal Institution of Chartered Surveyors with at least 10 (ten) years post qualification experience (unless otherwise agreed) of housing development as may be proposed by the Owners and approved in writing by the Council (such approval not to be unreasonably withheld or delayed) and reference to "Independent Chartered Surveyors" shall be construed accordingly;
"Interest"	means interest at 4% (four per cent) above the base lending rate of National Westminster Bank plc from time to time;
"Key Worker"	means a person employed or with a confirmed job offer in the District.
"Locality"	means the Parish of Egremont.
"Local Connection Criteria"	such local connection criteria as may be designated and published by the Council from time to time as its "First Homes Local Connection Criteria" and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Local Connection Criteria". which shall apply to that disposal it being acknowledged that at the date of this agreement the Council has not designated any criteria as Local Connection Criteria;
"Local Lettings Policy"	means the Council's policy for letting Affordable Housing (or any successor policy or legislation in respect of qualifying for Affordable Housing);
"Management Company"	a limited company established or appointed by the Owners (which may include a resident management company) with the purpose of managing the Development Land in accordance with the On- Site Open Space Management Plan;
"Market Dwelling"	means the Dwellings to be constructed on the Development Land pursuant to the Planning Permission excluding the Affordable Dwellings and reference to " Market Dwelling" shall be construed accordingly
"Market Value"	means the open market value as assessed by a Valuer as confirmed to the Council by the First Homes Owner which a disposal of the interest in a Dwelling 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

Dwelling 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 no account is taken of an additional bid by a purchaser with a special interest;
- (v) that any restrictions imposed upon the Dwellings in or by reason of this Deed are disregarded; and
- (vi) that an independent valuation is carried out three (3) months prior to the sale of the Dwelling

"Mortgagee"	means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home
"Occupation" and "Occupied" and "Occupier" and "Occupy"	means occupation for the purposes permitted by the Planning permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
"On-Site Open Space"	means the open space provided within the Development Land in accordance with the On-Site Open Space Management Plan and as detailed on Plan 2.
"On-Site Open Space Management Plan"	a plan to manage and maintain the on-site open space within the Development Land.
"The Owners"	means together the First Owners and the Second Owner.
"Plan 1"	means the location plan attached to this Deed at the Sixth Schedule to identify the Development Land comprising the How Bank Farm Land and the Former Orgill Infants School Land;
"Plan 2"	means the attached plan at the Sixth Schedule to detail the provision of On-Site Open Space.

"Planning Permission"	means a planning permission to be granted for the Development pursuant to the Application of which the draft form is annexed hereto at the Seventh Schedule
"Price Index"	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation as at the date the Contributions become payable respectively;
"Practical Completion"	means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied
"Price Cap"	means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State
"Recreational Space Contribution"	means the sum of £50,000.00 (fifty thousand pounds) to be applied by the Council towards the provision of sports pitch and play provision in the Locality.
"Residential Units"	means both the Affordable Dwellings and the Market Dwellings to be constructed on the Development Land pursuant to the Planning Permission and reference to "Residential Unit" shall be construed accordingly;
"SDLT"	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
"Secretary of State"	means the Secretary of State for the Ministry of Housing, Communities and Local Government from time to time appointed and includes any successor in function
"Travel Plan Monitoring Fee "	means the sum of £6,600 (six thousand six hundred pounds) in respect of the costs associated with the ongoing review and monitoring of the travel plan, submitted by the Owners in accordance with the Planning Permission.
"Valuer"	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity;

"Wider Locality"	Means the following wards Kells and Sandwith ED, Howgate ED, Bransty ED, Mirehouse ED, Cleator Moor West ED Hillcrest and Hensingham ED, Egremont North and St Bees ED, Egremont ED, Cleator Moor East and Frizington ED, Gosforth ED, Millom Without ED and Millom ED.
"Working Day"	means any day except Saturdays, Sundays or bank holidays and reference to "Working Days" shall be construed accordingly.

CONSTRUCTION IN THIS DEED

- 1.2 Clause headings are for reference only and shall not affect the construction of this Deed.
- 1.3 Where more than one person is included in the expressions "the Council", "the First Owners", "the Second Owner" and the "Chargee" agreements and obligations expressed to be made or assumed by such party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally.
- 1.4 Any covenant by the Owners not to do any act or thing shall be deemed to include a covenant not to cause, permit or suffer the doing of that act or thing.
- 1.5 Any covenant by the Owners to do something shall be deemed to include a covenant to procure the doing of that act or thing.
- 1.6 Subject to the other clauses in this Deed, covenants and obligations made or assumed by any party shall be binding and enforceable against his her or its successors in title, heirs and assigns.
- 1.7 The masculine and feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa.
- 1.8 A reference to an Act of Parliament refers to the Act as it applies at the date of this Deed and any later amendment or re-enactment of it and any regulations or statutory instrument made under it.
- 1.9 A reference to a clause, paragraph or Schedule is a reference to a clause, paragraph or Schedule contained in this Deed.

2. LEGAL BASIS

- 2.1 This Deed is a planning obligation made pursuant to Section 106 of the Act and all other powers so enabling and, subject to the other release clauses in the Deed, may be enforced by the Council in respect of the Owners covenants in the Schedules against the Owners and anyone deriving title from the Owners.
- 2.2 Insofar as any of the covenants contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 2.3 The covenants contained in this Deed are conditional and shall take effect only upon the grant of the Planning Permission save for:
 - 2.3.1 the covenants contained in clauses 2.17, 2.18 and 2.19 which shall take effect from the date of this Deed; and
 - 2.3.2 subject to Clause 2.3.3 the covenants contained in clauses 2.4 which are conditional and shall take effect only upon the Commencement of Development.

- 2.3.3 Clause 2.4 shall apply on completion of this Deed in relation only to paragraphs 1.1 of the Second Schedule, paragraphs 1.1-1.4 inclusive of the Third Schedule and paragraph 1.2 of the Fourth Schedule.
- 2.4 The Owners covenant with the Council so as to bind their respective interests in the Development Land (but not further or otherwise) so as to comply with the planning obligations in so far as they relate to their respective interests in the Development Land in the Schedules to this Deed.
- 2.5 The Council hereby covenants with the Owners to comply with its obligations contained within this Deed.
- 2.6 This Deed shall cease to have effect (insofar as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) if it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 2.7 The expressions "the Council", "the First Owner", the "Second Owner" and the "Chargee" shall where the context admits include their successors in title (and in the case of the Council the successors to its respective statutory functions) and those deriving title under each of them.
- 2.8 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Deed or as to any other matter or thing arising out of or connected with the subject matter of this Deed or any failure to agree upon any matter may be referred in accordance with clause 2.9 to the determination of an Independent Chartered Surveyor.
- 2.9 Any reference to an Independent Chartered Surveyor in accordance with clause 2.8 shall be to a reputable chartered surveyor unconnected to any of the parties hereto and experienced in commercial development matters who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such Independent Chartered Surveyor shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error) and if the parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Independent Chartered Surveyor shall act as an expert pursuant to the terms of this clause 2.9 then each of the parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Independent Chartered Surveyor himself) shall be paid.
- 2.10 Insofar as any clause or clauses of this Deed 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 Deed.
- 2.11 Nothing in this Deed shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights powers duties and obligations in any capacity as a local or public authority.

- 2.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the Development Land in accordance with a planning permission (other than Planning Permission) granted after the date of this Deed.
- 2.13 The obligations hereby created shall be registered as a Local Land Charge.
- 2.14 No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law.
- 2.15 No party shall be bound by the terms of this Deed or be liable for the breach of any covenants restrictions or obligations contained in this Deed:-
- 2.15.1 occurring after he or it has parted with his or its interest in the Development Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);
- 2.15.2 if he shall be an owner occupier or tenant of any of the Market Dwellings or a purchaser of an individual Market Dwelling;
- 2.15.3 if it is a statutory undertaker or other person who acquires any part of the Development Land or an interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services; or
- 2.15.4 the owner occupiers or tenants of the Affordable Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them SAVE FOR the relevant provisions of the First Schedule;
- 2.16 The Council will on the reasonable written request of the Owners at any reasonable time or times after any of the planning obligations under this Deed have been fulfilled issue written confirmation thereof and/or at any reasonable time after all of the planning obligations under this Deed have been fulfilled or at any reasonable time after this Deed ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the register of Local Land Charges.
- 2.17 The Second Owner shall pay to the Council on completion of this Deed the Council's reasonable legal costs incurred in the negotiation, preparation and execution of this Deed such fees not to exceed £1,500 (one thousand and five hundred pounds).
- 2.18 The provisions of this Deed shall be of no effect until this Deed has been dated.
- 2.19 It is hereby agreed and declared that any notice or other written communication to be served by one party upon any other pursuant to the terms of this Deed 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 Deed and any such notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory thereof.
- 2.20 The Owners agree with the Council to give the Council written notice of any Disposal of their respective interests in the Development Land (or part of it) occurring before all the obligations under this Deed have been discharged such notice to give details of the transferees full name and registered office (if a company or usual address if not) together with the area of the Development Land or unit of occupation acquired by reference to a plan PROVIDED THAT

the requirement in this clause 2.20 to provide written notice shall not apply on the Disposal of an individual Dwelling;

- 2.21 If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of payment.
- 2.22 Any sum referred to in this Deed (save for the Travel Plan Monitoring Fee) shall be increased by an amount equivalent to the increase in the Price Index from the date hereof until the date on which such sum is actually paid.

SECTION 73 OF THE 1990 ACT

- 2.23 If an application is made under section 73 of the 1990 Act in respect of the Planning Permission to carry out the Development without complying with a condition or conditions to which the Planning Permission is subject (a **S73 Application**) then in the event that the Council is minded to approve such S73 Application:
- (a) if the Council considers that the planning obligations contained in this Deed are both sufficient and necessary to make the development proposed by such S73 Application acceptable in planning terms then references to **Planning Permission** in this Deed shall be deemed to also be references to that new planning permission and the Parties agree that this Deed shall apply to and remain in full force in respect of both that new planning permission and the Planning Permission without the need for a further deed to be made pursuant to section 106 of the 1990 Act; or
 - (b) if the Council considers that additional or modified planning obligations are necessary to make the development proposed by such S73 Application acceptable in planning terms then for the avoidance of doubt nothing in this Clause 2.23 shall fetter the Council's ability in the exercise of its proper planning judgment to require the completion of such further deed made pursuant to section 106 of the 1990 Act as it considers necessary and in such case Clause 2.23 (a) shall be disregarded.

CHARGEES CONSENT

- 2.24.1 The Chargee consents to the completion of this Deed and declares that their interest in the How Bank Farm Land shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of their interest in the How Bank Farm Land.
- 2.24.2 The Chargee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Chargee is in possession of all or any part of the How Bank Farm Land. The Chargee shall have no liability after they have discharged the security or disposed of the How Bank Farm Land which is subject to their security, whether by sale or otherwise.

IN WITNESS whereof the parties hereto have executed this Deed the day and year first before written.

FIRST SCHEDULE

FIRST HOMES DWELLINGS

1. OBLIGATIONS

1.1 Unless otherwise agreed in writing by the Council the Owners for and on behalf of itself and its successors in title to the Development Land with the intention that the following provisions shall bind the Development Land and every part of it into whosoever's hands it may come covenants with the Council as below save that:-

- 1.1.1 paragraphs 2 and 3 shall not apply to a First Homes Owner;
- 1.1.2 paragraphs 4 and 5 apply as set out therein, save that where a First Home is owned by a First Homes Owner they shall apply to a First Homes Owner, but only in respect of the relevant First Home owned by that First Homes Owner; and
- 1.1.3 Paragraph 6 applies as set out therein.

2. QUANTUM OF FIRST HOMES

2.1 Eleven First Homes Dwellings to be identified reserved and set aside as First Homes in accordance with the Affordable Housing Plan and shall be provided and retained as First Homes in perpetuity subject to the terms of this First Schedule.

2.2 To limit Occupation of the Market Dwellings on the following basis:-

- 2.2.1 To limit Occupation to no more than 9 of the Market Dwellings on the Former Orgill Infants School Land until 1 First Homes Dwelling has been constructed and made ready for residential occupation on the Former Orgill Infants School Land and written notification of such has been received by the Council.
- 2.2.2 To limit Occupation to no more than 40 of the Market Dwellings on the How Bank Farm Land until 4 First Homes Dwellings have been constructed and made ready for residential occupation on the How Bank Farm Land and written notification of such has been received by the Council.
- 2.2.3 To limit Occupation to no more than 72 of the Market Dwellings on the How Bank Farm Land until a total of 10 First Homes Dwellings have been constructed and made ready for residential occupation on the How Bank Farm Land and written notification of such has been received by the Council.

3. DEVELOPMENT STANDARD

3.1 All First Homes shall be constructed to:-

- 3.1.1 the Development Standard current at the date of this Deed; and

3.1.2 no less than the standard applied to the Market Dwellings.

4. **DELIVERY MECHANISM**

4.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

4.1.1 the Eligibility Criteria (National); and

4.1.2 the Eligibility Criteria (Local)

4.2 The First Homes Dwellings shall first be offered at Discount Market Price to persons at least one of whom has been certified by the Council (following the Homes England First Homes process to provide Authority to Proceed and Authority to Exchange approvals) as complying with the Local Connection Criteria in respect of the Locality (or other defined geographic area as the case may be). In the event the Council has the Eligibility Criteria (Local), paragraph 4.3 this Schedule will apply.

4.3 If, on an initial or subsequent marketing of the First Homes Dwellings for a period of one month no person within the Locality has met the Eligibility Criteria (Local) then provided that the vendor has supplied the Council with copies of at least two advertisements placed in newspapers commonly circulated within the Locality during the one month period or satisfactory evidence of marketing the said unit on a national property marketing website relating to the sale of the First Homes Dwellings then the relevant First Homes Dwelling shall be marketed for a further period of one month as available to a person within the Locality or the Adjoining Locality. If after the initial two month period or satisfactory evidence of marketing the said unit on a national property marketing website relating to the sale of the First Homes Dwellings then the relevant First Homes Dwellings shall be marketed for a further period of one month as available to a person satisfying the Eligibility Criteria (Local) with the Locality, Adjoining Locality and Wider Locality.

4.4 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) paragraph 4.1.2 shall cease to apply.

4.5 Subject to paragraphs 4.7 to 4.111, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee

4.6 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

4.6.1 The Council has been provided with evidence that:

4.6.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 4.4 applies meets the Eligibility Criteria (Local) (if any)

4.6.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and

4.6.1.3 the transfer of the First Home includes:

a) a definition of the "Council" which shall be Cumberland Council or its successors in function;

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in paragraphs 4.1 to 4.10 of the First Schedule of the s106 Agreement, attached hereto as the Annexure

- c) A definition of " s106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated made between (1) Cumberland Council (2) Frain and Harley Limited and (3) Gleeson Regeneration Limited.
- d) a provision that the First Home is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the property or any part of it other than in accordance with the First Homes Provisions
- e) a copy of the First Homes Provisions in an Annexure

4.6.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 4.4 and 4.5.1 have been met

4.7 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"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, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the Assistant Director Adult Social Care and Housing (or other officer authorised for the time being by the Council) or their conveyancer of Cumbria House, 117 Botchergate, Carlisle CA1 1RD or its successors in functions or their conveyancer that the provisions of clause **XXXX** (the First Homes provision) of the Transfer dated **[Date]** referred to in the Charges Register have been complied with or that they do not apply to the disposition"

4.8 The owner of a First Home (which for the purposes of this clause shall include the Owners, and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

4.8.1 the First Homes Dwelling has been actively marketed as a First Home for six (6) months in accordance with Paragraphs 4.1 and 4.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with Paragraphs 4.4 and 4.5.1; or

4.8.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 4.7.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

4.9 Upon receipt of an application served in accordance with paragraph 4.7 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price.

4.10 If the Council is satisfied that either of the grounds in Paragraph 4.7 have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with Paragraph 4.7 that the relevant Dwelling may be Disposed of:

4.10.1 to the Council at the Discount Market Price; or

- 4.10.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from Paragraph 4.11 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is Disposed of other than as a First Home

- 4.11 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in Paragraph 4.7 have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 4.7 serve notice on the owner of the First Home setting out the further steps it requires the owner of the First Home to take to secure the Disposal of a Dwelling as a First Home, and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner of the First Home has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with Paragraph 4.7 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.
- 4.12 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with Paragraphs 4.9 or 4.10 the owner of the First Home Dwelling shall pay to the Council forthwith upon receipt of the sale proceeds the Additional First Homes Contribution
- 4.13 Upon receipt of the Additional First Homes Contribution the Council shall:
- 4.13.1 within fifteen working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in Paragraph 4.6 where such restriction has previously been registered against the relevant title; and
- 4.13.2 apply all monies received towards the provision of Affordable Housing
- 4.14 Any person who purchases a First Home free of the restrictions in the First Schedule of this Deed pursuant to the provisions in paragraphs 4.10 and 4.11 shall not be liable to pay the Additional First Homes Contribution to the Council.

5. USE

- 5.1 Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of otherwise than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with Paragraphs 5.2 – 5.4 below.
- 5.2 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.
- 5.3 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances 5.3.1.1 – 5.3.1.6 below:
- 5.3.1.1 the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;

- 5.3.1.2 the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
 - 5.3.1.3 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - 5.3.1.4 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - 5.3.1.5 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - 5.3.1.6 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 5.4 A letting or sub-letting permitted pursuant to Paragraph 5.1 or 5.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 5.5 Nothing in this paragraph 5 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

6. MORTGAGEE EXCLUSION

- 6.1 The obligations in Paragraphs 1-5 of this Schedule in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:
- 6.2 Such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
- 6.3 Once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 6.4.
- 6.4 Following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.
- 6.5 Following receipt of notification of the Disposal of the relevant First Home the Council shall:
- 6.5.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 4.6; and
 - 6.5.2 apply all such monies received towards the provision of Affordable Housing.

SECOND SCHEDULE

1. NOTICE AND MONITORING

- 1.1 The Owners shall give notice in writing to the Council not later than 28 days before the Commencement of Development.
- 1.2 The Owners shall give notice in writing to the Council not later than 28 days before first Occupation of any part of the Development.
- 1.3 The Owners shall give notice in writing to the Council upon Occupation of the final Dwelling.
- 1.4 The Owners shall provide in writing to the Council (as soon as reasonably practicable following a written request made by the Council) such information as the Council reasonably requires to monitor compliance with this Deed.

THIRD SCHEDULE

Financial Payments

1. CONTRIBUTIONS

The Owners covenant with the Council as follows:

Recreational Space Contribution

1.1 To pay the Recreational Space Contribution to the Council prior to first Occupation of the Dwellings on the Development Land.

1.2 That Occupation shall not occur until the Recreational Space Contribution has been paid to the Council.

Education Contribution

1.3 To pay 25% of the Education Contribution to the Council prior to first Occupation of the Dwellings on the Development Land.

1.4 To pay a further 25% of the Education Contribution to the Council prior to Occupation of the 25th Dwelling on the Development Land.

1.5 To pay the remaining 50% of the Education Contribution to the Council prior to Occupation of the 50th Dwelling on the Development Land.

2. Travel Plan Monitoring Fee

2.1 To pay the Travel Plan Monitoring Fee to the Council prior to first Occupation of the Dwellings on the Development Land.

2.2 That the Occupation shall not occur until the Travel Plan Monitoring Fee has been paid to the Council.

FOURTH SCHEDULE

1 ON-SITE OPEN SPACE AND SITE MANAGEMENT PLAN

The Owners covenants with the Council as follows:-

- 1.1 To provide and lay out the On-Site Open Space in accordance with the Planning Permission and the On-Site Open Space Management Plan.
- 1.2 Not to Commence Development without having submitted to the Council the On-Site Open Space Management Plan and not Occupy or cause or permit Occupation of any Dwelling on the Development Land until the On-Site Open Space Management Plan has been approved in writing by the Council.
- 1.3 In the event that the Council considers (acting reasonably) that it is unable to approve the submitted version of the On-Site Open Space Management Plan then the Owners shall submit a revised version to the Council, taking into account any comments that the Council has provided, for their approval. Such procedure shall be repeated as often as is necessary until the Council approve the On-Site Open Space Management Plan (such approval not to be unreasonably withheld or delayed).
- 1.4 The On-Site Open Space Management Plan shall only be varied or amended with the written approval of the Council.
- 1.5 To carry out all works contained in the On-Site Open Space Management Plan in accordance with the On-Site Open Space Management Plan and the Planning Permission. The Owners also covenant with the Council as follows:-
 - 1.5.1 To require the Management Company to covenant to reasonably and properly maintain the Development Land in accordance with the terms of the On-Site Open Space Management Plan.
 - 1.5.2 In the event of the Management Company (which for the purposes of this paragraph 1.5.2 and paragraph 1.5.3 below shall be deemed to include the Owners in the event that the Management Company does not exist) fails to comply with the objectives of the covenant referred to in paragraph 1.5.1 above the Council may serve notice on the Management Company detailing any works which it considers to be reasonably required in accordance with the approved On-Site Open Space Management Plan and giving to the Management Company the required notice as will be set out in the projected maintenance schedule in the On-Site Open Space Management Plan (which shall be at least 2 (two) weeks) and subject always to the provisions of paragraph 1.5.3 below if the Management Company fails to comply with such notice within 2 (two) weeks of receipt of it then the Council may access Development Land with workmen, plant and machinery to carry out the works required to remedy the default and to recover its reasonable costs of carrying out such works from the Management Company.
 - 1.5.3 In the event that the Management Company does not agree that it has failed to reasonably and properly maintain the Development Land as stated in the Council's notice referred to in paragraph 1.5.2 above or that the works specified in such notice are outside the scope of the projected maintenance schedule in the On-Site Open Space Management Plan the Management Company and the Council shall use reasonable endeavours to agree the extent of the outstanding works required to be remedied (if any) within a further 2 (two) weeks of the date of the notice failing which the Management Company and the Council shall refer the matter to an Independent Chartered Surveyor in accordance with the terms of this Deed and for the avoidance of doubt the Council shall not access the Site to remedy the alleged default in accordance with paragraph 1.5.2 above until the Independent Chartered Surveyor has determined that the Management Company is in default of its obligations to reasonably and properly maintain the Development Land in accordance with the approved On-Site Open Space

Management Plan but such restriction shall be without prejudice to the Council exercising any of its statutory powers.

2 The Council covenants with the Owners as follows:-

- 2.1 To use its reasonable endeavours to issue its written approval (or provide detailed reasons for its reasonable refusal) of any On-Site Open Space Management Plan submitted pursuant to paragraph 1.2 above within 20 (twenty) Working Days of receipt of such On-Site Open Space Management Plan.
- 2.2 To inspect the relevant parts of the Development Land within 10 (ten) Working Days of receipt of any notice received from the Management Company and to give written details to the Owners of any reasonable additional works that may be required to be carried out.
- 2.3 Where relevant, to use reasonable endeavours to issue written confirmation that the Council is satisfied with any additional works to the relevant parts of the Development Land within 5 (five) Working Days of the Owners completing to the Council's reasonable satisfaction the additional works to the relevant parts of the Development Land as per any written details given to the Owners pursuant to paragraph 1.5.2 and or 1.5.3 above.

FIFTH SCHEDULE

The Council's Covenants

The Council hereby covenants with the Owners:-

1. To issue the Planning Permission following completion of this Deed.
2. To use all Contributions received from the Owners under the terms of this Deed for the purposes specified in Clause 1.1 of this Deed.
3. In the event that any Contribution (or any parts thereof) are not expended within 10 (ten) years of that date of payment then the sum or sums not expended plus interest accrued shall be repaid to the party that paid it.
4. To use the Travel Plan Monitoring Fee towards the cost incurred by the Council in respect of ongoing review and monitoring of the travel plan, submitted by the Owners in accordance with the Planning Permission.

SIXTH SCHEDULE
PLANS

SEVENTH SCHEDULE

The Draft Planning Permission in the form annexed hereto

EXECUTED AS A DEED by the)
CUMBERLAND COUNCIL)
by affixing its common seal in the)
presence of)

Authorised Signatory

Signed as a Deed by
HELEN RACHEL MCBRIDE

In the presence of:

Witness Signature:

Witness Address:

Signed as a Deed by
SARAH MARGARET SPEDDING

In the presence of:

Witness Signature:

Witness Address:

Executed as a Deed by **GLEESON**
REGENERATION LIMITED acting by a
Director

In the presence of:

Witness Signature:

Witness Name:

Witness Address:

EXECUTED as a deed by

as attorney for

CLYDESDALE BANK PLC

in the presence of:-