

**THIS DEED** is dated the

day of

**201**

**BETWEEN**

A PEAK DISTRICT NATIONAL PARK AUTHORITY (“the Authority”)  
of Aldern House Baslow Road Bakewell Derbyshire DE45 1AE

B (“the Owner”) of

C (“the Applicant”) of

D (“the Mortgagee”) of

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. INTRODUCTION**

1.1 The Authority is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated and by whom the Obligations created by this Deed are enforceable.

1.2 The Owner is registered as the owner of the freehold of the Land with title absolute under title number subject to a registered charge dated INSERT DATE in favour of the Mortgagee.

**OR**

1.2 The Owner warrants that he is the owner of the freehold of the land in fee simple subject to a mortgage/charge dated in favour of the Mortgagee.

1.3 The Owner confirms that other than the parties to this Deed – DELETE AS APPLICABLE there are no other persons with any interest (legal or equitable) in the Land or any part thereof.

1.4 The Owner/or Applicant has by the Planning Application applied to the Authority for permission to carry out the Development.

1.5 The Authority has decided to grant planning permission for the Development in accordance with the Planning Application subject to conditions and subject to the making of this Deed without which planning permission for the Development would not be granted. The Obligations are intended to maintain the affordability of the Affordable Dwelling in perpetuity.

**2. DEFINITIONS AND INTERPRETATION**

2.1 For the purposes of this Deed the following expressions shall have the following meanings:

<b>“Act”</b>	means the Town and Country Planning Act 1990
<b>“Adjoining Parish”</b>	means any parish adjoining the Parish insofar only as the Parish and any Adjoining Parish are situated within the boundary of the Peak District National Park
<b>“Affordable Dwelling”</b>	means the unit of residential accommodation (or any one of them) to be <b>erected/converted</b> on the Land in accordance with the Planning Permission that will be available to persons who satisfy the occupancy restrictions contained in this Deed
<b>“Agreed Letting”</b>	means the letting of the Affordable Dwelling to a Tenant in compliance with the terms of this Deed.
<b>“Approved Selling Price”</b>	means a freehold or leasehold Valuation of the Land subject to the Local Occupancy Restriction as determined by the District Valuer in accordance with the provisions of this Deed
<b>“Assured Shorthold Tenancy”</b>	means an Assured Shorthold Tenancy under the Housing Act 1988 (or subsequent revision replacement or amendment of the same)
<b>“Assured Tenancy”</b>	means an Assured Tenancy under the Housing Act 1988 (or subsequent revision replacement or amendment of the same)
<b>“Authority”</b>	includes the successors to the Authority as local planning authority
<b>“Cascade Provisions”</b>	refers to the provisions set out in Paragraphs 4.2 (and any sub-paragraphs) of the Second Schedule of this Deed
<b>“Commencement of Development”</b>	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements

and “Commence Development” shall be construed accordingly.

<b>“Contiguous Parish”</b>	means a parish which adjoins an Adjoining Parish insofar only as the Contiguous Parish is situated within the boundary of the Peak District National Park
<b>“Curtilage”</b>	means the boundary of the Land for which the Planning Permission is to be granted pursuant to the Planning Application shown for identification purposes edged <b>red/blue</b> on the Plan
<b>“Development”</b>	means the development authorised by the grant of the Planning Permission.
<b>“District Valuer”</b>	means a District Valuer appointed by the Valuation Office Agency for the area within which the Land is situated.
<b>“First Occupier”</b>	means the first occupier of the Affordable Dwelling following completion of the construction/conversion of the Affordable Dwelling
<b>“First Occupation”</b>	means the date the First Occupier occupies the Affordable Dwelling
<b>“Floor Space Guidelines”</b>	means the floor space guidelines published in the Relevant Development Plan Documents or Supplementary Planning Guidance Document in force at the time of the grant of Planning Permission (or any subsequent revisions, replacements or amendments to the same).
<b>“Freehold Valuation”</b>	means a valuation of the Land together with the Affordable Dwelling if sold upon the open market as a freehold estate without the Local Occupancy Restriction.
<b>“Homes and Communities Agency”</b>	means the public body whose role is to fund Registered Providers pursuant to the Housing and Regeneration Act 2008 (or any statutory successor recognised as such by government).
<b>“Land”</b>	means the land or any part thereof (together with any buildings thereon) against which this Deed may be enforced and described in the First Schedule
<b>“Leasehold Valuation”</b>	means a valuation of the long leasehold interest created over the Land (meaning a lease of over 21

	years) if sold upon the open market without the Local Occupancy Restriction
<b>“Letting”</b>	means the letting of the Affordable Dwelling to a tenant on an Assured Shorthold Tenancy Assured Tenancy or periodic tenancy (upon payment of rent not exceeding the Target Rent) without payment of a premium or fine.
<b>“Local Occupancy Restriction”</b>	means the restrictions upon occupation of the Land imposed by this Deed
<b>“Local Plan”</b>	means the Peak District National Park Authority Local Plan 2001 (or any subsequent Local Development Framework under the Planning and Compulsory Purchase Act 2004) including any amendments alterations revisions or replacements of the same.
<b>“Local Qualification Provisions”</b>	means a person who (immediately prior to taking occupation) falls within one or more of the following categories:
	(i) a person (and his or her dependants) who has a minimum of 10 years permanent residence within the last 20 years in the Parish or an Adjoining Parish
	(ii) a person (and his or her dependants) who has an essential functional need to live close to his or her work in the Parish or an Adjoining Parish
	(iii) a person (and his or her dependants) who has an essential need to live close to another person who has a minimum of 10 years permanent residence in the last 20 years in the Parish or an Adjoining Parish, the essential need arising from age or infirmity.
<b>“Obligations”</b>	means the obligations contained in the Second Schedule to this Deed
<b>“Occupation” and “Occupied”</b>	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 relating to security operations

<b>“Open Market Rental”</b>	means the open market rental for the Affordable Dwelling if let upon an Assured Shorthold Tenancy, Assured Tenancy or other periodic tenancy from year to year or less free from the Local Occupancy Restriction.
<b>“Over Investment”</b>	means any expenditure on the Affordable Dwelling, fixtures, fittings and Curtilage that cause the Total Build Costs to exceed the Total Cost Indicator applicable at the date of the Planning Permission for; a) the construction/conversion of the Affordable Dwelling (including the Land acquisition and all other associated costs) or b) any subsequent extensions or alterations to the Affordable Dwelling or its Curtilage including those permitted by the Authority in writing.
<b>“Parish”</b>	means the civil parish in which the Land is situate.
<b>“person”</b>	means an individual and not a body corporate or unincorporated body
<b>“Plan”</b>	means the plan attached to this Deed
<b>“Planning Application”</b>	means the planning application <b>NP/</b> submitted by the Applicant on and registered with the Authority on for <b>details to be inserted</b> together with the plans and particulars deposited with the Authority and forming part of the Planning Application
<b>“Planning Permission”</b>	means the planning permission subject to conditions to be granted by the Authority for the Development pursuant to the Planning Application a draft of which is referred to in the Fourth Schedule of this Deed and a copy thereof annexed hereto and the expression Planning Permission shall include all approvals and variations to conditions granted under it
<b>“Proven Need For”</b>	
<b>“Accommodation”</b>	means that a prospective occupier of the Affordable Dwelling satisfies the Local Qualification Provisions and is; (a) in need of accommodation of the size and type of the Affordable Dwelling as a result of being either;

(i) a person (and his or her dependents) who is living in accommodation which is overcrowded or in the opinion of the Authority otherwise unsatisfactory or

(ii) a person (and his or her dependents) who is setting up a household for the first time

**and**

(b) the need cannot be met within the existing housing stock at a price similar to that of the proposed Affordable Dwelling.

(c) Where a successor in title of the Owner is a Registered Provider, the prospective occupier qualifies for the occupation of the Affordable Dwelling in accordance with both this Deed and the letting regulations of that Registered Provider.

**“Registered Provider”**

means a provider of social housing pursuant to Part 2 of the Housing and Regeneration Act 2008 who is regulated by the Tenant Services Authority and has not been de-registered pursuant to section 118 of that Act and who is approved by the Authority (such approval not to be unreasonably withheld or delayed).

**“Sale”**

means the transfer of the freehold or the creation or transfer of a long lease (meaning a lease of more than 21 years) of the Land (whether or not for valuable consideration)

**“Shared Ownership”**

means a dwelling part let to and part owned by the same person or persons

**“Supplementary Planning Guidance”**

means the published Supplementary Planning Guidance adopted by the Authority in July 2003 to supplement and clarify the wording of the Local Plan (including any subsequent guidance documents adopted by the Authority replacing revising modifying or amending the same).

**“Target Rent”**

means the maximum rent that can be charged for the Affordable Dwelling at any particular time. Details as to the mechanism for calculating the Target Rent (which may change from time to time) can be obtained on request from the Authority)

<b>“Tenant”</b>	means a tenant of the Affordable Dwelling under the terms of an Agreed Letting
<b>“Tenant Services Authority”</b>	means the successor to the Homes and Communities Agency in terms of the regulation of all providers of social housing pursuant to the Housing and Regeneration Act 2008
<b>“Total Build Costs”</b>	means the total costs incurred by the [Applicant] or Owner in completing the Development including (but not limited to) the costs of Land acquisition, infrastructure and services.
<b>“Total Cost Indicator”</b>	means the cost allowances produced by the Authority to establish the estimated costs of building dwellings for social housing schemes in different parts of the National Park (copies of which can be obtained from the Authority upon request)
<b>“Total Floor Area”</b>	means the total floor area of the Affordable Dwelling as defined in the Housing Corporation TCI Guidance Notes 2004/2005 (or subsequent revisions or amendments to the same)
<b>“Valuation Report”</b>	means a valuation report prepared by the District Valuer in a form agreed by the Authority or any review of the same by the Authority

### **3. CONSTRUCTION OF THIS DEED**

- 3.1 Where in this Deed reference is made to clause, paragraph, or schedule or recital such reference (unless the context requires otherwise) is a reference to a clause paragraph or schedule or recital in this Deed
- 3.2 References to any party to this Deed shall include the successors in title to that party and any deriving title through or under that party and in the case of the Authority the successors to their respective statutory functions
- 3.3 Where there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 3.4 Words of the masculine gender include the feminine and neuter genders and vice versa
- 3.5 Words importing the singular shall be construed as importing the plural and vice versa unless stated otherwise.

3.6 The clause and paragraph headings in the body of this Deed and in the Schedule do not form part of this Deed and shall not be taken into account in its construction or interpretation.

3.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

#### **4. LEGAL BASIS**

4.1 This Deed is made pursuant to section 106 of the Act as amended and all other powers and enabling enactments which may be relevant for the purpose of giving validity thereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Owner's interest in the Land. The Owner's Obligations shall be enforceable against all purchasers or lessees of the Land or any part thereof. Covenants in this Agreement falling within the provisions of s106 of the Act shall be deemed to be expressed to be planning obligations to which the said section shall apply.

#### **5. CONDITIONALITY**

5.1 This Deed is conditional upon:

- (i) The grant of Planning Permission; and
- (ii) The Commencement of Development [save for the provisions of clause 8.1 which shall come into effect immediately upon completion of this Deed

#### **6. THE OWNER'S OBLIGATIONS**

6.1 The Owner covenants with the Authority as set out in the Second Schedule

#### **7. THE AUTHORITY'S OBLIGATIONS**

7.1 The Authority covenants with the Owner as set out in the Third Schedule

#### **8. MISCELLANEOUS**

8.1 The Owner shall pay to the Authority on completion of this Deed the reasonable legal costs of the Authority incurred in negotiation, preparation and execution of this Deed.

8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

8.3 This Deed shall be registrable as a local land charge by the Authority



- 8.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Authority under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Authority by the Head of Planning Service (or other officer duly authorised by the Authority to give such a certificate)
- 8.5 Any notices shall be deemed to have been properly served if sent by first class post to the principal address or registered office (as appropriate) of the relevant party.
- 8.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 8.7 This Deed shall cease to have effect (insofar only 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 Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 8.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.9 Prior to or upon completion of this Deed the Owner shall provide the Authority with a completed Land Registry Form RX1 (or any subsequent revisions amendments or replacements of the same) signed by the Owner and thereby authorises the Authority to register a restriction at the Land Registry in respect of the Land in the following terms;
- “No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by the Peak District National Park Authority of Aldern House Baslow Road Bakewell Derbyshire DE45 1AE that the provisions of **[The Second Schedule]** of the Deed dated [ ] between Peak District National Park Authority (1) and [ ] (2) have been complied with or that they do not apply to the disposition”
- 8.10 The Applicant shall be responsible for all Land Registry fees in connection with the registration of the above restriction.

## 9. WAIVER

9.1 No waiver (whether expressed or implied) by the Authority or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Authority or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

**10. MORTGAGEE'S CONSENT**

10.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Land shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner].

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

**FIRST SCHEDULE**

**Details of the Owners title and description of the Land**

All that land known as [Insert Description] and registered under title number [Insert title number]  
And shown for identification purposes only edged red on the Plan

**SECOND SCHEDULE**

**The Owners Covenants**

The Owner covenants with the Authority as follows:-

**1. LOCAL OCCUPANCY RESTRICTION**

- 1.1 Not to cause or permit the Affordable Dwelling to be occupied by any person other than one who satisfies the Local Qualification Provisions (or where applicable the Proven Need for Accommodation or other Cascade Provisions).
- 1.2 Not to cause or permit (other than by mortgage or legal charge) the disposal of the Land together with the Affordable Dwelling except by way of a Sale or an Agreed Letting in both cases at a price or rental that reflects the terms of this Deed.

- 1.3 Not to permit the Land to be occupied by a person other than one who is occupying the Affordable Dwelling as his sole residence

## **2. FIRST VALUATION**

- 2.1 Immediately following completion of the Development when the Affordable Dwelling is fit for occupation the Owner shall write to the Authority requesting that the Authority instruct the District Valuer to prepare a Valuation Report to provide (a) a Freehold Valuation or where appropriate, a Leasehold Valuation and (b) an Approved Selling Price in the case of a freehold or leasehold (as appropriate) and (c) an Open Market Rental valuation in respect of any letting. The District Valuer will prepare his valuations as an expert not as an arbitrator.
- 2.2 The Owner will be responsible for payment of all fees and expenses of the District Valuer.
- 2.3 In the event of the Owner not requesting that the Authority to instruct the District Valuer in accordance with the above provisions, the Authority shall be at liberty to instruct the District Valuer and the costs of this Valuation Report will repaid to the Authority by the Owner.
- 2.4 In determining the (a) Freehold Valuation or the Leasehold Valuation (b) Approved Selling Price or (c) Open Market Rental the District Valuer shall disregard any Over Investment.

## **3. RESTRICTION ON TRANSFER**

- 3.1 Before initiating any Sale of the Land the Owner shall again write to the Authority giving details of the proposed Sale and repeat the procedure for obtaining a Freehold Valuation or a Leasehold Valuation (as appropriate) and Approved Selling Price in accordance with clause 2 (and its sub-clauses above)
- 3.2 The Owner having received the further Valuation Report may then proceed with the Sale of the Land at a price not exceeding the Approved Selling Price. A copy of the Valuation Report shall be made available to all parties interested in the Sale.
- 3.3 The Owner shall not ask for nor accept any consideration for a Sale of the Land/Affordable Dwelling in excess of the Approved Selling Price.
- 3.4 Prior to agreeing any Sale of the Land the Owner must provide the Authority with the name and address of the proposed purchaser together with evidence, sufficient to satisfy the Authority, that the proposed purchaser complies with either (a) the Local Qualification Provisions or where applicable the Proven Need for Accommodation and other Cascade

Provisions referred to in paragraphs 4.2 and 4.3 (and their sub-clauses) below or (b) is a Registered Provider and that the provisions relating to local advertising contained in clauses 4.1.3 and 4.1.4 of this Deed have been complied with. PROVIDED THAT where the Owner is a Registered Provider clause 3.5 (and its sub-clauses) below applies.

#### **Restrictions on transfer by a Registered Provider**

- 3.5 Where the Owner of the Land is a Registered Provider the Owner covenants as follows:
- 3.5.1 Not to cause or permit the disposal of the Land (other than by mortgage or legal charge) to any party other than a Registered Provider at a price not exceeding the Approved Selling Price
  - 3.5.2 Not to cause or permit any person to occupy the Affordable Dwelling unless that person is a Tenant of the Affordable Dwelling (or part owner of the same by way of Shared Ownership) who complies with the Local Qualification Provisions and where applicable the Proven Need for Accommodation or other Cascade Provisions together with any other letting requirements of the Registered Provider PROVIDED THAT no occupier of the Affordable Dwelling shall be permitted to own more than 80% of the Affordable Dwelling by way of Shared Ownership
  - 3.5.3 To comply with the advertising provisions in clause 4.1.3 and 4.1.4 below
- 3.6 The Owner shall ensure that the instrument of disposal contains covenants on the part of the transferee or lessee in the same terms as the Owners Obligations contained in this Deed in so far as such obligations are applicable and capable of being complied with.
- 3.7 Upon the completion of any Sale or disposal of the Land the Owner will forthwith supply to the Authority a certified copy of the instrument of disposal.

#### **4. LOCAL ADVERTISING**

- 4.1 Before any Sale of the Land or Letting of the Affordable Dwelling where the Owner is not a Registered Provider:
- 4.1.1 the Owner shall endeavour to sell or rent to a person within the Parish or an Adjoining Parish satisfying the Local Qualification Provisions and advertise (in the case of a proposed Sale) that the Land/Affordable Dwelling is for Sale at a price not exceeding the Approved Selling Price or (in the case of a proposed letting) that the Affordable Dwelling is available for letting at a rental not exceeding the Target Rent. The Affordable Dwelling must be advertised at least every four weeks in at least two newspapers circulating within the Parish and the Adjoining Parishes (or subsequently where the provisions of subparagraph 4.2 below applies the Peak District National Park or Adjoining Parishes outside

of its boundary as appropriate). The advertisement must clearly identify the Affordable Dwelling as being available only to those people who satisfy the Local Qualification Provisions (or where applicable the Cascade Provisions). Copies of such advertisements must be provided to the Authority if requested.

4.1.2 In the case of a proposed Sale or Letting the Owner shall also copy any advertisement of the proposed Sale or Letting to (a) the parish council of the Parish (b) the Parish Councils of the Adjoining Parishes (c) the Housing Authority for the municipal district in which the Affordable Dwelling is situated (d) any housing association operating within the area in which the Land is situated and (e) any other housing associations or Registered Providers nominated by the Authority. A list of the relevant housing associations/Registered Providers will be provided by the Authority upon request. Copy letters should make clear who has been included in the circulation and that recipients are free to inform those that they consider may have an interest in the Affordable Dwelling

#### **Local advertising by a Registered Provider**

4.1.3 Where the Owner is a Registered Provider, before any Sale of the Land (or part thereof) the Owner shall endeavour to sell to a Registered Provider and advertise that the Land is for sale at a price not exceeding the Approved Selling Price. The Land must be advertised at least every four weeks in at least two newspapers circulating within the Parish and the Adjoining Parishes or subsequently where the provisions of sub-paragraph 6.2 below applies the Peak District National Park or Adjoining Parishes outside of its boundary as appropriate (or such alternative scheme of advertising as the Authority may approve in writing.) The advertisement must clearly identify the Land as being available only to Registered Providers. Copies of such advertisements to be provided to the Authority if requested.

4.1.4 The Owner shall also copy any advertisement of the proposed Sale to (a) the parish council of the Parish (b) the Parish Councils of the Adjoining Parishes (c) the Housing Authority for the municipal district in which the Affordable Dwelling[s] are situated (d) any housing association operating within the area in which the Dwelling is situated and (e) any other housing associations or Registered Providers nominated by the Authority. A list of the relevant housing associations/Registered Providers will be provided by the Authority upon request. Copy letters should make clear who has been included in the circulation and that recipients are free to inform those that they consider may have an interest in the property.

#### **CASCADE PROVISIONS**

4.2 All prospective Occupiers of the Affordable Dwelling (other than the First Occupier) are to be selected in accordance with the following priorities and in the following order:

- 4.2.1 Firstly, a person who qualifies in accordance with the Local Qualification Provisions.
- 4.2.2 Secondly, if no such person is found within a period of not less than 3 months of the date of first advertising of the Sale of the Land or Letting of the Affordable Dwelling (in accordance with clauses 4.1 and its sub-clauses) (“the First Advertising Date”) the prospective Occupiers shall be selected in the following order:
- i. Firstly a person currently resident in the Parish or an Adjoining Parish whose permanent residence for the last 5 consecutive years has been in the Parish or an Adjoining Parish;
  - ii. Secondly, in the absence of such a person, a person who satisfies the Local Qualification Provisions in a Contiguous Parish rather than the Parish or an Adjoining Parish ;
  - iii. Thirdly, in the absence of a person falling within categories i or ii above by the end of the period of 4 months from the First Advertising Date, a person whose permanent residence for the last 10 consecutive years has been in the Peak District National Park, who would qualify in accordance with the Local Qualification Provisions if they were amended so that instead of “Parish” and “the Adjoining Parish” the words “the Peak District National Park” were substituted;
  - iv. Fourthly, in the absence of a person falling within categories i, ii or iii above by the end of the period of 6 months from the First Advertising Date, a person who would qualify in accordance with the Local Qualification Provisions if they were amended so that the words “a part of a rural parish split by the National Park boundary but lying outside that boundary or a rural parish lying outside but adjacent to the said boundary” were substituted instead of “the Parish” and “the Parish or an Adjoining Parish”, such person having permanently resided in that rural parish or elsewhere in the Peak District National Park for the last 10 consecutive years.
- 4.3 In the case of any prospective Occupier (other than the First Occupier or one who satisfies the Local Qualification Provisions) the Owner shall, prior to a Sale or Letting, provide satisfactory documentary evidence to the Authority that sufficient steps have been taken to find an Occupier falling within a higher priority group within the Cascade Provisions but that no such person has come forward.
- 4.4 For the avoidance of doubt, the Cascade Provisions shall apply afresh in the case of each proposed Sale or Letting of the Affordable Dwelling.

## **5. OCCUPANCY RESTRICTION FOR FIRST THREE YEARS**

- 5.1 The First Occupier of the Affordable Dwelling (other than a Tenant) shall:
- 5.1.1 satisfy the Local Qualification Provisions **and**
  - 5.1.2 establish a Proven Need for Accommodation **and**
  - 5.1.3 occupy the Affordable Dwelling for a period of not less than 3 years, unless the Authority shall at the request of the First Occupier approve in writing a shorter period of occupation on the ground that overriding unforeseen circumstances have arisen.
- 5.2 Any Tenant of the Affordable Dwelling during the period of three years from the date of First Occupation shall:
- 5.2.1 satisfy the Local Qualification Provisions (and where applicable Cascade Provisions) **and**
  - 5.2.2 establish a Proven Need for Accommodation
- 5.3 Thereafter the occupation of the Affordable Dwelling shall be restricted to a person or persons who accord with the Cascade Provisions.

## **6. RESTRICTIONS ON LETTING**

- 6.1 To ensure that any Tenant of the Affordable Dwelling accords with the Local Qualification provisions (or where applicable the Cascade Provisions) and to ensure that the rent does not exceed the Target Rent no Letting shall be permitted unless the Owner is a Registered Provider or the Authority has approved in writing;
- 6.1.1 the terms of the proposed tenancy agreement
  - 6.1.2 the proposed rent (including any reviewed rent) and
  - 6.1.3 the intending tenant.
- 6.2 Where the Owner is not a Registered Provider, prior to agreeing any Letting of the Affordable Dwelling the Owner covenants to provide the Authority with:
- 6.2.1 the name and address of the intending tenant together with evidence, sufficient to satisfy the Authority, that the intending tenant satisfies the Cascade Provisions and where applicable has a Proven Need for Accommodation
  - 6.2.2 a draft copy of the proposed tenancy agreement. The said tenancy agreement must comply with the terms of this Deed and in particular must include inter alia, (a) a clause prohibiting any assignment or sub-letting in breach of the Local Occupancy Restriction and (b) a rent review clause that does not conflict with the provisions of this Deed, (namely that any reviewed rent must not exceed the Target Rent at the time of review).

- 6.2.3 details of the proposed rent to be charged.
- 6.3 Prior to agreeing any rent review under the terms of the tenancy agreement approved under clause 6.1 the Owner covenants to obtain the approval of the Authority to the proposed reviewed rent unless the Owner is a Registered Provider.
- 6.4 Where the Owner is a Registered Provider, upon completion of the Letting of any Affordable Dwelling the Owner covenants to provide a certificate in writing to the Authority confirming that the tenant complies with the Cascade Provisions (or in the case of a First Occupier a certificate confirming that the First Occupier satisfies clause 5.2 of this Agreement.)

## **7. RESTRICTIONS ON EXTENSIONS/ALTERATIONS**

- 7.1 Not to execute, undertake or permit or allow any extensions or alterations to the Affordable Dwelling or its Curtilage without the prior consent of the Authority including (but not limited to) any of the following:-
  - 7.1.1 any extensions or alterations to the Affordable Dwelling that result in the Total Floor Area exceeding the Floor Space Guidelines. (For the avoidance of doubt no internal or external alterations will be permitted which result in the total floor space of the Affordable Dwelling or any Affordable Dwelling within the Development exceeding 87 square metres.).
  - 7.1.2 any conversion of storage or roof space into a space to be used for other purposes
  - 7.1.3 any merging or uniting of the Affordable Dwelling with any other property or building
  - 7.1.4 any internal alterations to the Affordable Dwelling to the extent that they affect the Affordable Dwelling's ability to accommodate the number of persons for which it was designed (and as agreed in the original or any subsequent planning permissions).
- 7.2 The Owner shall not seek to use any of the following as a means of seeking the removal of the Local Occupancy Restriction;
  - 7.2.1 any consent given by the Authority for the alterations referred to in clause 7.1
  - 7.2.2 any Over Investment
  - 7.2.3 any under occupancy of the Affordable Dwelling (such that the Affordable Dwelling would then fall outside the Floor Space Guidelines).
- 7.3 Notwithstanding any immunity gained through continuous breach of any planning condition the Authority expect the provisions of this Deed to prevail in respect of the valuation of the Land/Affordable Dwelling and the Authority will enforce this deed as



necessary to prevent the Affordable Dwelling being developed or used in breach of the s106 Obligations.

## **8. REQUIREMENT TO PROVIDE INFORMATION**

- 8.1 To assist the Authority in monitoring affordable housing within the Peak District National Park and to enable it to fulfil its statutory functions the Owner covenants to fully respond to requests for information from the Authority regarding the occupation or use and development of the Land/Affordable Dwelling within 30 days of receipt of a written request for the same (or such longer period as the Authority may agree in writing).

## **9. RESOLUTION OF DISPUTES**

- 9.1 All differences and questions which arise between the Authority the Owner (or any of them) concerning or arising out of the provisions of this Deed (but not otherwise) shall be referred to and determined by an independent person in accordance with the following sub-clauses of this clause.
- 9.1.1 In the case of a difference or question regarding the interpretation of any of the said clauses it shall be referred to a solicitor or barrister agreed upon by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President for the time being of the Law Society.
- 9.1.2 In the case of any other difference or question it shall be referred to a suitably qualified chartered surveyor with not less than 10 years experience in dealing with such matters agreed upon by the parties to the dispute but in default of agreement appointed by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors.
- 9.1.3 The parties to the dispute shall be entitled to agree in writing that any such reference to a solicitor or barrister or chartered surveyor shall be deemed to be a reference to an expert (and not to an arbitrator) whose decision shall be final and binding but otherwise it shall be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996.
- 9.1.4 If any solicitor barrister or chartered surveyor shall act as an expert pursuant to the terms of this clause then any party to the dispute shall be entitled to submit to him written representations and cross representations with such supporting evidence as they shall respectively consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing and the

reference to him shall include authority to determine in what manner all the costs of the referral shall be paid.

### **THIRD SCHEDULE**

#### **10. AUTHORITY'S OBLIGATIONS**

The Authority covenants as follows:-

- 10.1 The Authority shall grant the Planning Permission as soon as practicable following the completion of this Deed.
- 10.2 Save as otherwise provided in this Deed any approval in writing or consent to be given by the Authority in connection with this Deed shall be given within 30 days of receipt by the Authority of such a request.
- 10.3 The Authority shall publish details of the Target Rents to be used on any Agreed Lettings such rents to be reviewed annually on 1st April. Details of the Target Rents approved by the Authority are available from the offices of the Authority at Aldern House Baslow Road, Bakewell Derbyshire DE45 1AE.
- 10.4 Nothing in this Deed shall be construed as preventing or restricting the exercise by the Authority of the powers vested them or in either of them by the Act or any other statutory power.

### **FOURTH SCHEDULE**

#### **DRAFT FORM OF NOTICE OF PLANNING PERMISSION ATTACHED**

EXECUTED AS A DEED by the parties on the date which first appears in this Agreement

The COMMON SEAL of \_\_\_\_\_ )  
PEAK DISTRICT NATIONAL PARK AUTHORITY )  
was affixed to this deed in the presence of \_\_\_\_\_ )

Authorised Signatory

Signed as a Deed by the said [ \_\_\_\_\_ ] .....  
in the presence of:-

Witness Signature .....

Name .....

Address .....

.....

.....

Signed as a Deed by the said [ \_\_\_\_\_ ] .....  
in the presence of:-

Witness Signature .....

Name .....

Address .....

.....

.....



PEAK DISTRICT NATIONAL PARK AUTHORITY

and

[NAME OF OWNER/APPLICANT]

and

[NAME OF MORTGAGEE (if applicable)]

**PLANNING OBLIGATION BY DEED**

**under s106 of the Town and Country Planning Act 1990 relating to [Insert address of the  
Land]**

Andrea G. McCaskie  
Head of Law  
Peak District National Park Authority  
Aldern House  
Baslow Road  
Bakewell  
Derbyshire  
DE45 1AE