

DATED

2007

THE METROPOLITAN BOROUGH COUNCIL OF STOCKPORT

and

xx

AGREEMENT

Pursuant to Section 106 of the  
Town and Country Planning Act 1990  
Relating to land at  
xx

Barry Khan  
Council Solicitor  
Stockport MBC  
Town Hall  
Stockport  
SK1 3XE

**THIS AGREEMENT** is made the                      day of                      two thousand **and**

**BETWEEN:**

**THE METROPOLITAN BOROUGH COUNCIL OF STOCKPORT** of Town Hall Wellington Road South Stockport SK1 3XE (hereinafter called "the Council") of the one part

**XXXX**

(hereinafter called ("the Owner") of the second part

**XXXX**

(hereinafter called ("the Developer") of the second part

**XXXX**

(hereinafter called ("the Mortgagee) of the third part

## **WHEREAS**

- (1) The Owner is the registered proprietors of the freehold interest in the Land (as hereinafter defined) **subject to a charge in favour of the Mortgagee and has agreed to sell the Land to the Developer**
  
- (1) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 for the Metropolitan Borough of Stockport within which the Land is situate
  
- (2) The Developer has submitted the Application to the Council.
  
- (3) In the event of Planning Permission for the Development being granted and implemented then the Developer **and the Owner** intend:-
  - (a) to pay the Commuted Sum and the Sustainable Transport Contribution to the Council
  
  - (b) to provide Affordable Housing within the Development in accordance with the provisions of Part 1 of the First Schedule through a RSL and the obligations of the RSL shall be governed in particular by paragraph 3 of the Part 1 of the First Schedule whereby all Affordable Units transferred to a RSL shall

subsequently be Disposed of by the RSL on a shared ownership basis

- (c) if an Affordable Unit is sold to a RSL who then Dispose of their interest under a shared ownership scheme then any subsequent sale by the person(s) who have acquired their interest in the Affordable Unit from an RSL shall not be governed by the provisions of this Agreement and that person(s) shall be free to sell whatever share of the ownership of the Affordable Unit that person(s) has acquired at the market value of that share in the normal manner
  
- (d) if the obligation to transfer the Affordable Housing to a RSL shall cease to have effect because it has not been possible to conclude a sale to a RSL within the 6 month period referred to in paragraph 4.1 of Part 1 of the First Schedule then the Affordable Housing shall be Disposed of at the Affordable Price to an Approved Person in accordance with the provisions of paragraph 4 of Part 1 of the First Schedule and in accordance with the provisions of the Second Schedule
  
- (e) if an Affordable Unit is not sold to a RSL then it is intended that upon any subsequent Disposal by the Approved Person (or his her or their successors in title) the selling price shall be the Affordable Cost, that is to say, the Market Value of the Affordable Unit multiplied by the Discount

**NOW THIS DEED WITNESSETH** as follows:-

**Interpretation**

1.1 In this deed (including the Recitals) where the context so requires or admits the following expressions shall have the following meanings:-

"the Act"	The Town and Country Planning Act 1990 as amended
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“Affordable Cost” means in relation to Disposals under the Second Schedule hereto:

1.1.2.1 on the First Disposal by sale of an Affordable Unit the Affordable Price for the Affordable Unit (and for the avoidance doubt sale of a long leasehold interest of the Affordable Unit shall be deemed to be included in the definition of a sale); and

1.1.2.2 on each subsequent Disposal by sale after the First Disposal of each Affordable Unit in the Development a sum calculated in accordance with the provisions of paragraph 1.5 of the Second Schedule hereto

1.1.2.3 on the First Disposal otherwise than by sale a rent not exceeding the Equivalent Mortgage Repayments that would have been payable had the Approved Person acquired the Affordable Unit at the Affordable Price; and

1.1.2.4 on each subsequent Disposal otherwise than by sale a rent not exceeding the Equivalent Mortgage Repayments that would have been payable had the Approved Person acquired the Affordable Unit for the sum calculated in accordance with paragraph 1.5 of the Second Schedule hereto

“Affordable Housing” all the Affordable Units to be provided by

the Developer at the Affordable Cost in accordance with and subject to the provisions of the First Schedule and comprising xxxxx

“Affordable Price” a sum in respect of each xxx affordable Unit not exceeding £xxxx and in respect of each xxx Affordable Unit not exceeding £xxx (except for increases in accordance with paragraph 1.1 of Part 1 of the First Schedule)

“Affordable Unit” each and every one of those units comprising the Affordable Housing

“Agreed Value” the Market Value of the relevant Affordable Unit being part of the Affordable Housing ascertained in accordance with the provisions of Part 1 of the First Schedule hereto

”the Application” Application numbered DC02 for planning permission for the Development dated 200 submitted by the Developer to the Council

“Approved Person” a person who has reasonably demonstrated to the Council a need for Affordable Cost housing based on his earned income and any available capital together with any earned income and available capital of any persons who would live with such person in the

Affordable Unit and who meets the criteria for low cost home ownership operated from time to time by the RSL

“Commuted Sum” xxxxxxxxxxxx thousand xxxxxx hundred and pounds and pence (£xxx)

“Development” the erection of and bedroom flats

“Discount” the aggregate of the Affordable Prices of all the Affordable Units divided by the aggregate of the Agreed Values of all those Affordable Units

“Disposal” each and every means by which the right of occupation of an Affordable Unit is given or transferred to another person body or company and “Dispose” shall be construed accordingly and for the sake of clarity the term “Disposal” and “Dispose” shall not include mortgages nor the purchase of the freehold of the Land nor the exercise of the right to staircase under a shared ownership lease

“Equivalent Mortgage Repayments” in respect of an Affordable Unit which is rented (either in its entirety by the Owner or as part of a shared ownership scheme by a RSL) an amount equivalent to such amount as a borrower would from time to time ordinarily have to pay under a variable interest rate repayment

mortgage (on a 25 year term) with Halifax Plc (or its successors) in relation to a mortgage debt equivalent in amount to the Affordable Cost (or in the case of a RSL shared ownership scheme the Affordable Price) of that Affordable Unit on a Disposal by sale at the time the Affordable Unit is rented

“First Disposal” the Disposal of an Affordable Unit by the Owner to an Approved Person who is the first person to occupy the Affordable Unit as his main residence

“Housing Unit” each dwelling within the Development

“Implement” carry(ing) out a material operation as  
“Implementation! And defined in section 56 of the Act but  
“Commence” the term “material operation” shall exclude works of demolition site clearance ground investigations site surveys archaeological investigations and the erection of boundary fencing or hoardings

“Land” all that the land and premises situate at and known as [redacted] Stockport registered at the Land Registry under title number GM [redacted] and shown edged red on the attached plan

“Market Dwellings” the dwellings comprising the Development other than the Affordable

## Housing

“Market Value”	the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably prudently and without compulsion
“Nomination Form”	a completed notice in the form annexed hereto and providing all the information referred to therein requesting the Council to nominate an Approved Person for occupation of the Affordable Unit referred to therein
"Planning Permission"	Planning permission for the Development to be granted by the Council pursuant to the Application in the form of the draft annexed hereto
“Recycled Capital Receipts Fund”	the RSL’s Recycled Capital Receipts Fund operated in accordance with section REC-4 of The Housing Corporation’s “Capital Funding Guide” dated 1 October 2002
“RSL”	a Registered Social Landlord registered with the Housing Corporation
“RSL Affordable	on a Disposal by a RSL on a shared



Cost"

ownership basis the price paid for the share of the equity of the Affordable Unit sold to an Approved Person which shall not exceed the Affordable Price for the Affordable Unit and in addition a rent/finance charge may be levied to the extent that repayments on a mortgage of the type referred to in clause 1.1.12 on the share of the ownership acquired by the Approved Person and rent/finance charge payments do not exceed the Equivalent Mortgage Repayments that would have been payable had the Approved Person acquired the Affordable Unit (or the share thereof rented) at the Affordable Price and paid a rent/finance charge of £10 per week

"Staircase"

acquire an additional share or shares of the equity of the Affordable Unit

"Working Day"

any day from Monday to Friday (inclusive) which is neither Christmas Day nor Good Friday or a statutory Bank Holiday

- 1.2. The expressions "the Council" ("the Owner" "the Developer" "the Mortgagee") and "the Developer" shall include their respective successors in title and assigns unless the context otherwise requires
- 1.3. Words importing the singular meaning shall where the context so admits include the plural meaning and vice versa
- 1.4. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that manner
- 1.5. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligation can be enforced against all of them jointly and against each individual unless there is an express provision otherwise
- 1.6. 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 of deriving validity from it
- 1.7. References to any party in this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions
- 1.8. References in this Deed to any clause or sub-clause or appendix without further designation shall be a reference to the clause or sub-clause of or appendix to the Agreement so numbered.

### **Statutory Powers**

2. This Agreement is made in pursuance of Section 106 of the Act to the intent that it shall bind all interests in the Land into whosoever hands the

same may come and the Developer and its successors in title and assigns and all persons claiming under or through it

### **Commencement**

3. Except as otherwise mentioned this Agreement shall take effect when the Planning Permission is granted

### **Owner's and Developer's Covenants**

4. The Owner and the Developer for itself themselves and its their successors in title and assigns hereby jointly and severally covenant with the Council that it he she they will comply in all respects with the obligations on their behalf in the First Schedule and the Second Schedule

### **Council's Covenants**

5. The Council hereby covenants with the Owner and the Developer to comply in all respects with the obligations in the Third Schedule hereto

### **Consequential Matters**

6. It is hereby agreed and declared as follows:-
  - 6.1 the Owner/Developer shall on the date hereof pay to the Council the reasonable costs of the Council in negotiation preparation and execution of this Deed
  - 6.2 no provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
  - 6.3 this Deed shall be registered as a local land charge by the Council
  - 6.4 where the agreement approval consent expression of satisfaction or permission is required by the Owner (and/or the Developer) under the terms of this Deed such agreement approval consent expression of satisfaction or permission shall be in writing and shall not be unreasonably

withheld or delayed and shall be given on behalf of the Council by the Corporate Director Environment and Economy or such other officer authorised by the said Director to do so

- 6.5 all notices served pursuant to this Deed shall be in writing and shall be deemed to have been properly served if delivered or sent by the recorded delivery service to the principal address or registered office (as appropriate) of the relevant party
- 6.6 insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 6.7 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 Owner/(and the Developer)) it is modified by any statutory procedure the Planning Permission or expires prior to the Commencement of the Development
- 6.8 no person shall be liable for any breach of any planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or the part thereof in respect of which such breach shall occur but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 6.9 this Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them
- 6.10 nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed

6.11 following the performance and satisfaction of all obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed

## **7. Expert**

7.1 Except as to matters of law and subject to the express provisions of this Agreement to the contrary any dispute or difference arising between the parties as to any of the provisions of this Agreement and/or their respective rights duties or obligations or as to any other matter or thing in any way arising out of or in connection with the subject matter of this Agreement shall forthwith be referred by the parties or any of them for determination by an independent person ("the Expert") to be agreed upon between the parties and failing such agreement within ten (10) Working Days of any party calling upon the others to agree to be appointed on the application of the parties or any of them by the President for the time being of The Royal Institution of Chartered Surveyors or any successor Institute ("the President")

7.2 The Expert shall act as an expert and make his determination within twenty (20) Working Days from the date of his appointment such determination to be made in writing giving full reasons therefor and shall be binding upon the parties

7.3 If the Expert shall die delay or become unwilling or incapable of acting or if for any reason the President shall in his absolute discretion think fit he may in writing discharge the Expert and appoint another in his place

7.4 It is hereby agreed and declared that:-

- (a) the Expert shall afford to the parties the opportunity to make representations in writing and consider any written representations made by or on behalf of the parties hereto which are received by him within ten (10) Working Days after the parties have been afforded such an opportunity and each party shall be entitled to

receive a copy of any such written representations made by or on behalf of the other parties and within five (5) Working Days of such receipt to make written counter-representations

- (b) the Expert shall be entitled to call for such independent expert advice on such matters as he shall think fit
- (c) the Expert shall have an unfettered discretion to determine the reference to him
- (d) the fees and expenses of the Expert including the cost of his appointment shall be borne equally between the parties (and if any party shall pay the Expert's fees and expenses it shall be entitled to recover one half from the other) unless the Expert shall direct otherwise and he shall have power so to direct if he considers it reasonable to do so having had regard to the conduct of the parties during the course of the dispute in question

#### **Mortgagee's Consent**

8.1 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 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

8.2 The Owner hereby covenants to indemnify the Mortgagee in respect of any liabilities action demands proceedings costs and expenses arising directly or indirectly as a result of the Mortgagee having entered into this Deed

#### **Waiver**

9. No waiver (whether expressed or implied) by the Council or the 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 Council or the Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default

#### **Notice of Change in Ownership**

10. The Owner agrees with the Council to give to the Council immediate notice of any change in ownership of any of its interests and the creation of any new interests in the Land occurring before all the obligations under this Deed have been discharged and such notice shall give details of the transferee's full name and registered office (if a company) or usual address together with the area of the Land or relevant unit of occupation by reference to a plan

#### **Indexation**

- 11.1 The Commuted Sum shall be increased by the amount which bears the same proportion thereto as the amount by which the All Items Index of Retail Prices published by the Office for National Statistics or any successor Ministry or Department for the month immediately preceding the date of payment exceeds the index figure of the said Index at the date of this deed

#### **Interest**

12. If any sum due to the Council under this Deed shall remain unpaid after the same has become due interest shall be paid thereon from the date the sum becomes due to the date of payment at the rate 4% above the base rate of interest of the Bank of England applying from time to time during such period

#### **VAT**

13. All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

#### **Jurisdiction**

14. This Deed is governed by and interpreted in accordance with the law of

England and Wales

**IN WITNESS** whereof this document has been executed as a Deed by the respective parties hereto in the appropriate manner with the intention of such document being Delivered on the part of each of them as a Deed on (but not before) the day and year first before written



## **FIRST SCHEDULE**

### **Part 1**

#### **(Developer's and Owner's Planning Obligations concerning Affordable Housing)**

##### **Determination of Affordable Cost which shall apply both in relation to a Disposal by the Owner to an RSL and to a Disposal by the Owner under the provisions of the Second Schedule**

- 1.1 If on the Disposal of an Affordable Unit the Office for National Statistics has published the results of an annual survey of hours and earnings (excluding supplementary information) for a year after 2006 which includes the mean weekly gross pay for all employees for Stockport the Affordable Price shall be uplifted by the same proportion that the figure for the mean weekly gross pay as aforesaid for the latest year published bears to the figure for 2006.
- 1.2 Upon the first Disposal of the first Affordable Unit to be disposed of the Owner the Trustee or the Developer shall submit in writing to the Council for approval (such approval not to be unreasonably withheld or delayed) its assessment of the Market Value of each of the Affordable Units at that time
- 1.3 If the Council does not approve the assessment of the Open Market Value of the Affordable Units the Open Market Value of each Affordable Unit not approved as aforesaid shall be determined by an Expert in accordance with clause 7 of this Agreement

#### **2. Developer's and Owner's Obligations**

2. The Developer and the Owner shall:-

- 2.1 not commence the Development (with the exception of demolition works) until it has submitted to and the Council has approved (such approval not

to be unreasonably withheld or delayed) proposals for the timing of the provision of Affordable Housing and notice of intention to commence the Development

2.2 build the Affordable Housing in accordance with:-

2.2.1 the Planning Permission and

2.2.2 a specification to be approved by the Council (acting reasonably)(which specification shall take into account the requirements of the RSL and subject to that shall generally accord with that of the Market Dwellings of the same or similar type as the Affordable Housing PROVIDED THAT it is hereby acknowledged that the specification for any Market Dwelling may be higher than for the Affordable Housing of the same or similar type when the purchaser of any Market Dwelling has requested and paid for such higher specification)

2.3 the proposals approved in accordance with paragraph 2.1 and 2.2 of this Schedule

2.4 not Dispose of more than 80% of the Market Dwellings until the Affordable Housing has been practically completed and each Affordable Unit has been transferred to a RSL at the Affordable Price subject however to paragraph 4.1 of this Schedule

2.5 give notice in writing to the Council as soon as reasonably practicable after the completion of the disposal of the Affordable Housing to a RSL

### **3. Obligations of an RSL upon taking an interest in the Affordable Housing**

3. Upon the Disposal of the Affordable Housing to a RSL "RSL" shall be substituted for "Council" in the definition of "Approved Person" in clause 1.1.8 and the RSL shall at all times thereafter:-

3.1 manage the Affordable Housing in accordance with the RSL's usual and

normal shared ownership terms and conditions of the type and style recommended by the housing corporation in such form of standard shared ownership long lease as shall be appropriate for the Affordable Housing

- 3.2 require (insofar as it is legally possible to do so) each Approved Person who acquires an Affordable Unit to enter into an obligation in the document effecting the relevant Disposal to occupy it as that person's sole or main residence
- 3.3 not Dispose of or sell any part or share of the equity of an Affordable Unit for a consideration which exceeds the RSL Affordable Cost PROVIDED THAT nothing in this agreement shall prevent or restrict the right of an Approved Person who has acquired a share of the ownership or part of the equity of an Affordable Unit subsequently to staircase under a Shared Ownership Lease and subsequently to Dispose free of restrictions of his or her interest in that Affordable Unit.
- 3.4 pay into a designated reserve fund to be operated in the same manner as the Recycled Capital Receipts Fund any proceeds (after deduction of mortgage redemption and legal and administrative costs) received from an Approved Person who has increased his equitable share of an Affordable Unit pursuant to the right to staircase under a Shared Ownership Lease
- 3.5 utilise any proceeds referred to in paragraph 3.4 for the provision of affordable housing within Stockport including the use of such sum as is necessary to enable an Affordable Unit to be sold at the RSL Affordable Cost where the current value of the share of that Affordable Unit owned by the former Approved Person exceeds the RSL Affordable Cost following the exercise by that person of the right to staircase
- 3.6 maintain records in respect of each Affordable Unit containing the name of the shared owner(s) and occupier(s) of the Affordable Unit and sufficient details of that person(s) to show that he/she is an Approved Person and the price or rent paid for the Affordable Unit and upon request allow the

Council to inspect those records in order to enable the Council to verify that the Affordable Housing has been Disposed of in accordance with the terms of this Agreement

**4. Obligations of the Developer and the Owner if the Affordable Housing is not transferred to an RSL**

4.1 The obligation in paragraph 2.4 to convey the Affordable Housing to a RSL shall at the Developer's and the Owner's discretion cease to have effect upon the expiry of a period of six months commencing on the date upon which the Planning Permission is first implemented if an agreement for the sale of the Affordable Housing to a RSL has not been exchanged before the expiry of the said period of six months PROVIDED THAT it is demonstrated to the reasonable satisfaction of the Council that the Owner has used reasonable endeavours to conclude such an agreement with a RSL

4.2 If the provisions in paragraph 2.4 shall cease to apply in the circumstances referred to in paragraph 4.1 the Developer and the Owner shall not Dispose of more than 80% of the Market Dwellings until the Affordable Housing has been practically completed and each Affordable Unit is available for sale in accordance with the arrangements set out in the Second Schedule hereto

## Part 2

### **(Additional Planning Obligations of the Developer and the Owner)**

(Commuted Sum and Sustainable Transport Contribution)

The Developer and the Owner shall:-

1. not implement the Planning Permission until the Commuted Sum increased with inflation in accordance with clause 8.1 and the Sustainable Transport Contribution increased with inflation in accordance with clause 8.2 have been paid to the Council
2. not less than seven days before commencing the Development give notice to the Council of its intention to commence the Development and to pay to the Council the Commuted Sum and the Highways Contribution

## SECOND SCHEDULE

### (Additional Affordable Housing provisions that will apply if the Affordable Housing is not transferred to a RSL)

#### Developer's and the Owner's Obligations concerning First Disposals

1. The Developer and the Owner shall:-
  - 1.1 not less than three months prior to the completion of each Affordable Unit submit to the Council a Nomination Form in respect thereof
  - 1.2 upon receipt of nominations by the Council of an Approved Person cooperate with and provide reasonable assistance to the Approved Person in connection with the acquisition by the Approved Person of the Affordable Unit
  - 1.3 on completion of each Affordable Unit or as soon as possible thereafter use reasonable endeavours to Dispose of such Affordable Unit at the Affordable Price to an Approved Person in the manner hereinafter provided
  - 1.4 upon the Disposal of each and every Affordable Unit to an Approved Person to secure a covenant from the Approved Person to comply with the provisions of this Second Schedule
  - 1.5 upon each Disposal of an Affordable Unit (after the First Disposal) by a person who has acquired his interest in the Affordable Unit under the provisions of this Schedule the Affordable Unit shall not be disposed of for a price which exceeds the Affordable Cost which shall be the Market Value thereof at the time of such Disposal (either agreed with the Council or determined by the Expert) multiplied by the Discount
  - 1.6 nothing in this Schedule shall oblige the Owner on the first Disposal of each of the Affordable Units to Dispose of them otherwise than by means

of the grant of a long leasehold interest at a premium

**Covenants applicable to all Disposals and occupation of an Affordable Unit**

- 2 The Developer and the Owner shall:-
- 2.1 use its best endeavours to ensure that the Affordable Unit is occupied as the sole or Main Residence of the Approved Person
- 2.2 not Dispose of any Affordable Unit for a consideration that exceeds the Affordable Cost
- 2.3 not Dispose of any Affordable Unit otherwise than to an Approved Person nor place an Affordable Unit on the market for Disposal unless a Nomination Form has been submitted to the Council in respect of that Disposal of that Affordable Unit and either:-
- (a) a period of eight weeks has elapsed from the receipt by the Council of such Nomination Form and the Council has failed to nominate any Approved Person in accordance with paragraph 3 of this Schedule or
  - (b) if the Council has nominated an Approved Person a period of six months (or in the case of a sale by a seller acting as Mortgagee in Possession under a power of sale contained in a registered charge a period of three months) has elapsed from the date of receipt by the Council of the Nomination Form and an agreement for the Disposal of the Affordable Unit to an Approved Person has not been entered into
- 2.4 upon the receipt from the Council of a nomination in writing of an Approved Person in accordance with paragraph 3 hereof co-operate with and provide reasonable assistance to (which for the avoidance of doubt shall not include any financial assistance or payment of the Approved

Person's legal costs or disbursements) and use reasonable endeavours to Dispose of the Affordable Unit to the Approved Person at the Affordable Cost within the period of months referred to in paragraph 2.3(b) of this Schedule

### **Nominations of Approved Persons**

- 3.1 The Council may within eight weeks of the receipt of each Nomination Form under paragraph 2.3 of this Schedule nominate any number of Approved Persons by written notification to the Developer **and the Owner** **PROVIDED THAT** although the Council may nominate any number of Approved Persons to purchase the Affordable Unit in question within the said 6 months period such nominations shall only be made in succession to the previous nomination and the Developer **and the Owner** shall not be obliged to deal with more than one Approved Person at a time in relation to each Affordable Unit
- 3.2 If:-
- 3.2.1 any Approved Person nominated by the Council under paragraph 3.1 of this Schedule withdraws from the acquisition of the Affordable Unit; or
  - 3.2.2 the Council considers that satisfactory progress is not being made in the acquisition of the Affordable Unit; or
  - 3.2.3 the Developer **or the Owner** makes representations to the Council that an Approved Person is not making satisfactory progress with regard to the acquisition of an Affordable Unit and the Council (which acting reasonably shall take due account of such representations) consents to the Developer terminating arrangements with that Approved Person;
- the Council may at any time within six months of the receipt of the Nomination Form nominate further Approved Persons but subject to the provisions of paragraphs 2.3 and 4.1 and to the proviso to paragraph 3.1 of this Schedule.



**Disposal of an Affordable Unit at Affordable Cost to a person who is not an Approved Person**

4.1 The Developer **and the Owner** may Dispose of an Affordable Unit at the Affordable Cost to any person who is not an Approved Person if either:-

4.1.1 the Council has failed to nominate an Approved Person within the period of eight weeks from the receipt of a Nomination Form in respect of that Affordable Unit (or such shorter period as may be approved in writing by the Council) or

4.1.2 the Council has nominated an Approved Person in respect of that Affordable Unit but an agreement has not been entered into for the Disposal of that Affordable Unit to such Approved Person within the period referred to in paragraph 2.3(b) of this Schedule **PROVIDED THAT** the Developer **and the Owner** **has/have**:

- (a) complied fully with paragraph 2.4 of this Schedule and
- (b) notified the Council in writing immediately it becomes aware that an Approved Person has decided not to proceed with the Disposal to him of the Approved Unit and
- (c) dealt with any subsequent nominations made by the Council in accordance with Paragraph 3.2 of this Schedule as if such nominations had been made in accordance with paragraph 3.1 of this Schedule

4.2 Upon the Disposal of an Affordable Unit pursuant to paragraph 4.1 of this Schedule to a person who is not an Approved Person such person shall be deemed to be an Approved Person and the provisions of this Schedule shall remain in force

**Submission of Nomination Forms to the Council**

5 All Nomination Forms submitted to the Council under paragraphs 1.1 and 2.3 shall notwithstanding the provisions of clause 6.4 of this Agreement be served by being delivered or sent by the recorded delivery service

addressed to the Director of Community Services (Housing Advice Team) at Stopford House Piccadilly Stockport SK1 3XE or to such other officer or address as the Council may notify the Owners

### **Records**

6. The Developer **and the Owner** shall maintain records in respect of each Affordable Unit containing the name of the shared owner(s) and occupier(s) of the Affordable Unit and sufficient details of that person(s) to show that he/she is an Approved Person and the price or rent paid for the Affordable Unit and upon request allow the Council to inspect those records in order to enable the Council to verify that the Affordable Housing has been Disposed of in accordance with the terms of this Agreement

### **7. Sales by a Mortgagee**

- 7.1 A mortgagee or chargee in possession of an Affordable Unit (a "Mortgagee") shall use all reasonable endeavours in effecting any power of sale thereof to comply in all respects with the obligations and restrictions contained in this Schedule subject however to the following provision of this paragraph.
- 7.2 In the event that the amount required to discharge the mortgage debt and up to 12 months arrears of interest and costs accrued in respect of the mortgage on the Affordable Unit ("the Mortgage Debt") is greater than the Affordable Cost a sale of the Affordable Unit by a Mortgagee at a price that does not exceed the Mortgage Debt shall not be in breach of the requirements of this Schedule save that the Mortgagee shall notify the Council of the sale price achieved
- 7.3 In the event that no purchaser enters into a binding contract to purchase the Affordable Unit at the Affordable Cost or at a price that does not exceed the Mortgage Debt and subject to the obligations and restrictions in this Schedule within three months of a Mortgagee's power of sale

becoming exercisable none of the obligations and restrictions in this Schedule shall apply to a Mortgagee or any person or body deriving title from such Mortgagee PROVIDED THAT the Mortgagee shall have:-

7.3.1 allowed the Council one month's exclusive period in which to nominate an Approved Person: and

7.3.2 allowed such Approved Person two months within which to have exchanged contracts for the purchase of the Affordable Unit

7.4 In the event that an Affordable Unit is sold by a Mortgagee in pursuance of paragraph 7.2 the Affordable Price in respect of that Affordable Unit shall thereupon be such percentage as the sale price represents of the Market Value at that time and that substituted percentage shall thereafter apply to all sales by persons or bodies deriving title from such Mortgagee

7.5 In the event that an Affordable Unit is sold by a Mortgagee in pursuance of paragraph 7.3 at a price that exceeds the Affordable Cost the Mortgagee shall upon completion of the sale pay to the Council the difference between the proceeds of sale and the amount of the Mortgage Debt

7.6 The Council shall use all sums received in accordance with paragraph 7.5 for the provision of affordable housing within the Metropolitan Borough of Stockport

**THIRD SCHEDULE**  
**(Council's obligations)**

The Council shall:-

1. issue the Planning Permission to the Owner within 7 days of the date of this Agreement
2. use the Commuted Sum in accordance with Section 6 of the document entitled "Supplementary Planning Guidance to the Stockport Unitary Development Plan - Recreational Open Space Provision and Commuted Payments" dated July 2006 or any amendment or revision thereto and if upon the expiry of a period of eight years from the date of payment the Commuted Sum has not been spent or committed for such use to refund to the party who paid the same any part thereof that has not been spent or committed with interest thereon from the date of receipt by the Council to the date of repayment at the base rate of the Bank of England from time to time during which the said sum is held

**THE COMMON SEAL of THE** )  
**METROPOLITAN BOROUGH COUNCIL** )  
**OF STOCKPORT** was hereunto )  
affixed in the presence of:-

Mayor

Council Solicitor and Secretary

**SIGNED as a DEED by** )  
in the presence of:-

**EXECUTED as a Deed by** **LIMITED)**  
acting a Directors and Director/Company Secretary:-

Director

Director/Secretary

**NOMINATION REQUEST TO STOCKPORT COUNCIL**

1. **Address of Property** .....

.....

.....

2. **Property Details:-**

2.1 **Type** .....

2.2 **Number of Bedrooms** .....

2.3 **Floor Level** .....

2.4 **Lift?** **Yes/No** (Delete as appropriate)

2.5 **Heating Type** .....

2.6 **Special Features** .....

.....

.....

.....

2.7 **Pets Allowed?** **Yes/No** (Delete as appropriate)

3. **Tenure** (if leasehold please .....  
state term unexpired) .....

4. **Proposed sale price/rent** .....

5. **Amount of any service charge** .....

**Payment dates** .....

6. **Date available for occupation** .....

7. **Comments/Information** .....

.....

.....

.....

**Signed** ..... **Date**.....

**On behalf of (if a developer)**.....

**Address** .....

**Telephone No**.....

**Please see notes overleaf on completion of this form**

## NOTES

1. A separate nomination form should be submitted for each property.
2. Property Details:
  - 2.1 Type eg., Terraced house, semi detached house, detached house, or flat
  - 2.3 Floor level need only be answered for flats and maisonettes
  - 2.6 Special Features – if the property is designed to meet particular housing needs please give details, eg., Cat I/Cat II for the elderly, or to meet mobility standards.
3. Comments/Information – Please provide any information which you consider may assist the Council in selecting suitable nominees.
4. When completed this form should be sent to the Director of Community Services (Housing Advice Team) at Stopford House, Piccadilly, Stockport SK1 3XE