

THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD TAKE INDEPENDENT LEGAL ADVICE BEFORE SIGNING AND SIGN ONLY IF YOU WANT TO BE LEGALLY BOUND.

FACTORING AGREEMENT

between

ARGYLL COMMUNITY HOUSING ASSOCIATION LIMITED, a registered social landlord, a Scottish charity (charity number SC042713), and a registered society under the Co-operative and Community Benefit Societies Act 2014 (registered number 2661RS) with its registered office at Menzies House, Glenshellach Business Park, Oban, PA34 4RY, and with property factor registration number PF000302 ("**ACHA**")

and

«**Salutation_1**» «**Owner_1_firstname**» «**Owner_1_surname**» and «**Salutation_2**» «**Owner_2_firstname**» «**Owner_2_surname**» residing at «**Owner_Add_1**», «**Owner_Add_2**», «**Owner_Add_3**», «**Owner_postcode**» ("**the Owner**")

WHEREAS:

- A. The Owner is the proprietor of the Property, part of the Block; and
- B. ACHA has been appointed as the Factor for the Block to provide the Factoring Service set out in detail in this Agreement;

THEREFORE the Parties agree as follows:

1 INTERPRETATION

1.1 In this Agreement and in the Schedule, unless the context shall otherwise require, the following expressions shall have the following meanings:

- "**ACHA**" means ACHA, as defined above;
- "**Administration Charge**" means the Administration Charge detailed in Schedule Part 1 of this Agreement, as reviewed in line with Clause 4.1 of this Agreement;
- "**Agreement**" means this legally binding agreement setting out details of the Factoring Service provided by ACHA and the obligations of the Owner and ACHA;
- "**Arrears**" means money owed to ACHA in terms of this Agreement;
- "**Board of Management**" means members of ACHA who are elected onto its Management Board to regulate, approve and make decisions on behalf of ACHA;
- "**Block**" means the building which contains two or more Flats or Units sharing the same elements, known as "**Block**";
- "**Block Owners**" means all the owners of Flats or Units within the Block, which includes the Owner;
- "**Closing Administration Charge**" means the Closing Administration Charge detailed in Schedule Part 1 of this Agreement, as reviewed in line with Clause 4.1 of this Agreement;

“Common Parts”	means a part or parts within a Block which are owned by two or more people (e.g. roofs, gutters, pathways, any close, etc.);
“Common Ground”	means an area or areas of ground which is owned by two or more people;
“Common Repairs”	means repairs and maintenance to Common Parts or Common Ground, which may include (a) improvement work being upgrading work to improve the Property, the Block, and the Common Ground (whether prior to such work becoming essential or an emergency or otherwise) and/or (b) reinstatement work being repairs and maintenance required as a result of damage to the Block caused by storm, fire, flood or any other insured perils;
“Contractors”	means companies, individuals, in-house repairs teams, or persons appointed by ACHA who are approved to carry out work on behalf of ACHA;
“Cyclical Maintenance”	means regular arranged maintenance to the fabric of a building (e.g. clearing guttering, close painting etc.);
“Emergencies”	means circumstances or situations which are considered dangerous or seriously detrimental to the safety of the Property or the Block, or people who may come into contact with the Property or the Block, and “Emergency” shall be construed accordingly;
“Factor”	means ACHA, appointed to provide the Factoring Service for the Block in terms of this Agreement;
“Factoring Policy”	means ACHA’s policy setting out the regulation of its Factoring Service;
“Factoring Service”	means a property management service to carry out regular and routine property maintenance and repair to Common Parts and Common Ground;
“Factors Deposit”	means the Factors Deposit detailed in Schedule Part 1 of this Agreement;
“Financial Year”	means a financial accounting period of 12 months ending on 31 March;
“Flat” or “Unit”	means an individual flat, house or unit which forms part of a Block;
“Management Fee”	means the Management Fee detailed in Schedule Part 1 of this Agreement, as reviewed in line with Clause 4.1 of this Agreement;
“Majority of Owners”	means a majority of the Block Owners, where Block Owners have one vote per individual Flat or Unit;
“Major Works”	means refurbishment of the Property or the Block, to improve the lifespan of the building;
“Owner”	means the Owner, as defined above, the proprietor of the Property; where the Owner is more than one person, the said persons are jointly and severally liable for all the obligations on the Owner in this Agreement;

“Parties”	means ACHA and the Owner and a reference to a Party means one of them, as the context requires, and includes its successors and assignees;
“Property”	means the Flat or Unit that is owned by the Owner at «Hse_Num» «Street», «Town», «Area», «Post_Code_1»;
“Schedule”	means the schedule in three (3) parts attached to this Agreement;
“Title deeds”	means the Feu Disposition, Disposition, Conveyance, Deed of Conditions, Land Certificate or Title Sheet which transfers ownership of the Property and contains burdens and conditions which affect the Property;

- 1.2 All references in this Agreement to a statutory provision shall be construed as including reference to:
- 1.2.1 Any statutory modification, consolidation or re-enactment (whether before or after the date of this Agreement) for the time being in force;
 - 1.2.2 All statutory instruments or orders made pursuant to a statutory provision; and
 - 1.2.3 Any statutory provision of which a statutory provision is a consolidation, re-enactment or modification.
- 1.3 Unless otherwise specified, words importing the singular include the plural, words importing any gender include every gender, and words importing persons include bodies corporate and unincorporated, and in each case vice versa.
- 1.4 Reference to Clauses and other provisions are references to Clauses and other provisions of this Agreement and any reference to a sub-provision is, unless otherwise stated, a reference to a sub-provision of the provision in which the reference appears.
- 1.5 The headings are included for convenience only and shall not affect the interpretation of this Agreement.
- 1.6 Any undertaking by any of the Parties not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing.

2 FACTORING SERVICE

- 2.1 In providing the Factoring Service, ACHA will:
- 2.1.1 Instruct Emergency Common Repairs, and any works required by the Title Deeds or by law, as and when required;
 - 2.1.2 Instruct Common Repairs that are not Emergencies subject to:
 - 2.1.2.1 Notifying all Block Owners of costs likely to exceed £100 per Flat or Unit, with Common Repairs proceeding up to a value of £200 per Flat or Unit;
 - 2.1.2.2 Consulting Block Owners on Common Repairs likely to exceed £200 per Flat or Unit and providing 14 days from issue of consultation letters to advise ACHA in writing of any objection to the proposed works; in the absence of any objections from the Owner within the said 14 days, the Owner will be deemed to be in full agreement to the Common Repairs proceeding; the Common Repairs will then proceed if a Majority of Owners are in full agreement;
 - 2.1.3 Plan for, arrange, and oversee a programme of Cyclical Maintenance of the Common Parts and Common Ground (where appropriate); and

- 2.1.4 Provide such other services as requested by a Majority of Owners and accepted by ACHA in writing (e.g. close and stair cleaning).
- 2.2 In addition, on behalf of the Block Owners, ACHA will:
- 2.2.1 Request estimates or tenders for Common Repairs or Major Works expected to exceed £5,000 for the Block;
- 2.2.2 Complete, sign and authorise any feasibility study grant application form on behalf of Block Owners to enable grant funding to be released to ACHA on behalf of those Block Owners to contribute towards the cost of that study;
- 2.2.3 Plan for, arrange and oversee Common Repairs or Major Works when identified by ACHA or otherwise instructed by the Block Owners.
- 2.3 The Factoring Service will be monitored as follows. ACHA will:
- 2.3.1 apportion costs for Common Repairs and render invoices on a quarterly basis, as further detailed in Clause 4.3 of this Agreement;
- 2.3.2 issue annual statements of account to the Owner, as required by Clause 4.2 of this Agreement; and
- 2.3.3 recover any outstanding Arrears.
- 2.4 For the avoidance of doubt, the Factoring Service does not include work on property owned exclusively by the Owner (e.g. privately owned ground, parking, pathways, or internal parts of the Property).

3 **QUALITY OF SERVICE**

- 3.1 In order to provide a high quality of service, ACHA will:
- 3.1.1 Maintain an approved list of Contractors capable of carrying out Common Repairs or Major Works. This can be provided by ACHA on request.
- 3.1.2 Operate a Cyclical Maintenance programme. The cycle set for redecoration, cleaning, servicing, renewal of components, etc. is as recommended by best practice guidelines.
- 3.1.3 Request three separate estimates or tenders for any Common Repairs or Major Works anticipated to exceed the cost of £5,000 for the Block, for consultation with Block Owners.

4 **COSTS**

- 4.1 The Owner will pay ACHA all costs and charges due, as detailed in this Agreement, for the Factoring Service. The Management Fee, Administration Charge and Closing Administration Charge will be reviewed annually by ACHA, and any changes intimated to the Owner four weeks prior to the change coming into effect.
- 4.2 A statement of account will be issued by ACHA to the Owner after the end of each Financial Year, showing invoices issued and payments received during the course of the preceding Financial Year.
- 4.3 Invoices will be issued quarterly, for the quarters (1) April to June, (2) July to September, (3) October to December, and (4) January to March, or at such other interval as may be agreed between ACHA and the Owner, and will comprise any and all of the items listed in Schedule Part 1 that apply in the relevant quarter. For the avoidance of doubt, the Management Fee will be due every quarter.

- 4.4 Invoices will contain information and details of the Common Repairs or Major Works carried out and the share due by the Owner (if any – and as calculated in accordance with Clause 5 below), accrued for the Block.

5 SHARE OF COSTS

- 5.1 The plan attached in at Schedule Part 2 shows the solum of the Block and Common Ground (if any) relating thereto.
- 5.2 Repairs costs will be apportioned according to each Block Owner's share of responsibility as detailed in Schedule Part 3 of this Agreement.

6 FACTORS DEPOSIT

- 6.1 The Owner will pay ACHA the Factors Deposit at the outset of factoring.
- 6.2 The Factors Deposit will be invoiced to the Owner in the first factoring invoice.
- 6.3 If the Owner sells the Property, any balance due to the Owner from the Factors Deposit will be repaid by ACHA after deduction of any Closing Administration Charge, any other outstanding sums due, or charges for works instructed, but not yet paid for, in terms of this Agreement.

7 INSURANCE

- 7.1 The Owner (as with all Block Owners) is required to keep in force a contract of insurance for the reinstatement value of the Property and any parts of the Block attached to the Property. ACHA does not provide insurance cover. Any other Block Owner may request evidence of the policy or payment of the premiums.
- 7.2 ACHA may request Block Owners to exhibit (1) evidence of existing buildings insurance when this Agreement is signed and (2) copies of new or renewed policies thereafter.

8 COMMON REPAIRS

- 8.1 The Block Owners are responsible for intimating any required repairs to ACHA. In the event of such Common Repairs being required, the Owner should report the need for repairs to the Customer Service Centre freephone number – 0800 028 2755 – as early as possible. A record will be kept of the date, and the name of the person reporting, together with details of the reported issue.
- 8.2 ACHA carries out Common Repairs under three categories, detailed below, along with the timescale for a response by ACHA and, thereafter, for any such Common Repair to be completed.

Type of Common Repair	Response time
Emergency repair	Response within 2 hours and completed within 24 hours
Urgent repair	Responded to and completed within 5 working days
Routine repair	Responded to and completed within 20 working days

- 8.3 Common Repairs will be carried out by ACHA's approved contractors, except in the case of an emergency, in which case ACHA will find the most suitable and available contractor to carry out the work.
- 8.4 In addition, Common Repairs include the ongoing maintenance of Common Parts and Common Ground. Under the terms of the Title Deeds or in terms of the Tenements (Scotland) Act 2004 it is each Block Owner's responsibility to maintain the Common Parts and Common Ground, unless there is an agreement for these services to be provided on behalf of the Block Owners by a third party. In the absence of such an agreement, ACHA will arrange for any necessary

maintenance work to be carried out and will charge such maintenance as part of the Common Repairs undertaken for the Block Owners under this Agreement.

9 CYCLICAL MAINTENANCE

- 9.1 ACHA will develop a programme of cyclical maintenance recommendations. ACHA requires the agreement of the Majority of Owners to put the programme in place. Therefore, Block Owners will be notified in writing of the total cost of proposed cyclical work, in line with the process for notification, consultation and agreement (as needed) process for Common Repairs set out in Clause 2.1.2.

10 MAJOR WORKS

- 10.1 Agreement from all Block Owners is necessary to enable Major Works to proceed. Each Owner will be responsible for their share of the cost of Major Works, including any feasibility study, consultants fees, planning and/or building warrant charges (where applicable) and ACHA's costs and charges.
- 10.2 ACHA will assist Block Owners to identify any available grant funding.
- 10.3 Prior to Major Works commencing the Owner (and all other Block Owners) shall pay ACHA the amount of the anticipated works cost, their proportion of consultants fees, planning and/or building warrant charges, where applicable, and the Association's administrative charge together with, if requested, a contingency equal to 10% of the anticipated works cost.
- 10.4 Major works shall not commence until ACHA has received (1) payment of the full amount required in Clause 10.3, (2) a signed Minute of Agreement further detailing the agreed Major Works and payment of related costs, and (3) completed and signed grant mandate authorising any grant to be paid directly to ACHA.
- 10.5 Such amounts received by ACHA shall be placed in a dedicated bank account, which shall be drawn upon by ACHA to meet costs as detailed in the Minute of Agreement. Once the account has been finally reconciled any overpayments will be refunded to the relevant Block Owners, or any balance due invoiced to the Block Owners.

11 ACCESS

- 11.1 ACHA, its authorised representatives and contractors, will have a right of access to the whole Block, including the individual Property, where this is required for the purpose of investigating Common Repairs or Major Works; or to affect a repair to Common Parts; or to prevent damage to the Property.
- 11.2 ACHA will give three (3) days' notice, except in the case of Emergencies where immediate access will be required, and the Owner is required to permit immediate access.

12 NEW SERVICES

- 12.1 Block Owners may request that ACHA arranges to have new services carried out as part of this Agreement. The consent of the Majority of Owners is required before new services can be introduced. The provision of statutory services outwith the control of ACHA (e.g. stair lighting), will not be subject to competitive quotations and these will therefore be charged at cost to the owners.

13 DEFECTS

- 13.1 If the Block is a new build or newly refurbished building defects may arise from the building / refurbishment works (such defects are not repairs arising through accident, negligence, wilful damage or some other external factor which is not the contractor's responsibility). If such defects arise they will usually be the responsibility of the contractor. Therefore, where defects arise, the Owner should report them immediately to ACHA who will inform the contractor. The

contractor will attend to defects at their own expense where it is contractually their duty and within a reasonable timescale consistent with the severity of the defect.

14 **ASSIGNATION OR TERMINATION OF FACTORING SERVICE**

- 14.1 The Factor shall be ACHA and its successors until such time as this Agreement is terminated
- 14.2 ACHA may assign (transfer) their rights and obligations under this Agreement to a third party to act as Factor, should ACHA, in its sole discretion, deem it appropriate.
- 14.3 In the event that ACHA no longer owns any Units in the Block then ACHA may:
- 14.3.1 Terminate this Agreement at the date of sale of ACHA's ownership within the Block, in which case ACHA will give at least 28 days' notice to the Block Owners in writing of the termination of this Agreement; or
- 14.3.2 At the request of the Majority of Owners, and if ACHA agrees to do so, continue factoring the Block.
- 14.4 ACHA may terminate this Agreement in the event of persistent non-payment of invoices due by Block Owners (whether the Owners, or other Block Owners).
- 14.5 Block Owners may dismiss ACHA as Factors by simple majority, and on at least 28 days' notice, and otherwise as detailed in the Tenement (Scotland) Act 2004.

15 **CLOSING ADMINISTRATION CHARGE**

- 15.1 The Owner will pay to ACHA a Closing Administration Charge, on the sale of the Property, to cover ACHA's additional administrative duties connected to that sale, including liaison with the Owner's agents, providing information on planned and instructed works, issuing closing invoices and closing statements to the Owner's agents.

16 **CHANGE IN OWNERSHIP**

- 16.1 In the event of the Property being sold, the Owner will make potential purchasers aware of this Agreement and the appointment of ACHA as factors, with details of the costs and charges relating to the Factoring Service.
- 16.2 The Owner's solicitor will notify ACHA in writing of the date of sale, the new owners full names, contact address, and their solicitor's details. Thereafter ACHA shall issue detailed information regarding the Factoring Service to the new owners.

17 **ARREARS**

- 17.1 ACHA will follow its Factoring Debt Recovery Procedure in respect of any Arrears due by the Owner, a copy of which will be provided to the Owner on request.
- 17.2 All payments due under this Agreement are due within 28 days of the invoice being issued by ACHA, unless otherwise agreed.
- 17.3 ACHA will send 2 reminder letters to the Owner if payment is not received within the required 28 days.
- 17.4 Failure to pay within the said 28 days, or in response to the reminders issued under Clause 17.3, may result in ACHA raising court action for payment of the Arrears. In this case, the Owner will be liable for all court expenses and other costs properly incurred by ACHA.

18 **DISPUTES**

- 18.1 Complaints or disputes regarding ACHA's Factoring Service should be referred to ACHA in line with ACHA's Complaints Handling Procedure, a copy of which will be provided to the Owner on request.
- 18.2 If the complaint or dispute is not resolved, the Owner may refer the matter to the Housing and Property Chamber, which will consider matters where ACHA has failed either to comply with the code of conduct for factors, or to carry out its duties under the Property Factors (Scotland) Act 2011.
- 18.3 Notwithstanding clauses 18.1 and 18.2, ACHA reserves its right to pursue Arrears through the courts.
- 19 **DATA PROTECTION/GDPR**
- 19.1 ACHA takes the security of the Owner's personal data seriously and complies with current data protection regulations. Copies of ACHA's data protection policy and data retention policy and ACHA's the fair processing/privacy notice for factored owners will be provided to the Owner on request.
- 20 **MISCELLANEOUS**
- 20.1 If any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable the remainder of this Agreement or application of such term or provision to persons or circumstances other than those to the extent to which it is invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20.2 This Agreement shall be governed by the laws of Scotland.

IN WITNESS WHEREOF this Agreement, comprising this and the eight preceding pages and the Schedule in three parts annexed hereto, is executed as follows:

For and on behalf of ARGYLL COMMUNITY HOUSING ASSOCIATION LIMITED:

..... (signature)
Committee Member/Secretary/Authorised Signatory	Witness signature
.....
Full name of party signing	Full name of witness
.....
Date of signing
.....
Place of signing	Address of Witness

By «Owner_1_firstname» «Owner_1_surname»:

..... (signature)
«Owner_1_firstname» «Owner_1_surname»	Witness signature
.....
Date of signing	Full name of witness
.....
Place of signing	Address of Witness

By «Owner_2_firstname» «Owner_2_surname»:

..... (signature)
«Owner_2_firstname» «Owner_2_surname»	Witness signature
.....
Date of signing	Full name of witness
.....
Place of signing	Address of Witness

This is the Schedule referred to in the foregoing Factoring Agreement between
ARGYLL COMMUNITY HOUSING ASSOCIATION LIMITED and
 «Salutation_1» «Owner_1_firstname» «Owner_1_surname» and «Salutation_2»
 «Owner_2_firstname» «Owner_2_surname»

PART 1
Costs and charges due (clause 4.3)

Items to be paid by the Owner	Cost
Factors Deposit	£100 (see clause 6)
Management Fee	Annual fee – £104.92 (note – this is reviewed annually in terms of Clause 4.1)
Common Repairs costs	Owner's shares set out in Clause 5
Cyclical Maintenance costs	Owner's shares set out in Clause 5
Service charges e.g. lighting, ground maintenance (if applicable)	Owner's shares set out in Clause 5
Administration Charge	5% will be charged on work where the total net cost of work to the Block is £10,000 or more (note – this is reviewed annually in terms of Clause 4.1)
Value added tax (VAT), if applicable	As required by law
Any outlays incurred in recovering costs due by neighbouring Block Owners	Owner's shares set out in Clause 5
Any other outlays incurred by ACHA on behalf of Block Owners	Owner's shares set out in Clause 5
Costs of any Major Works	Owner's shares set out in Clause 5
Closing administration charge	£25 (note – this is reviewed annually in terms of Clause 4.1)

PART 2

Plan of solum of the Block and Common Ground relating thereto (clause 5.1)

Sample Agreement

PART 3
Shares due by the Owner (clause 5.2)

Common Part or Common Ground	Share
Roof	«Share_1»
Common close and stairs	«Share_2»
Walls and gables	«Share_3»
Gutters and downpipes	«Share_4»
Common Ground (including pathways)	«Share_5»
Common drains, pipes, cables and others	«Share_6»
Common electricity	«Share_7»

.....
 For and on behalf of Argyll Community Housing Association Ltd

.....
 «Owner_1_firstname» «Owner_1_surname»

.....
 «Owner_2_firstname» «Owner_2_surname»