



# FACTORING AGREEMENT

## ARGYLL COMMUNITY HOUSING ASSOCIATION LIMITED

This is a FACTORING AGREEMENT

between

Argyll Community Housing Association Limited, having our registered office at Menzies House, Glenshellach Business Park, Oban, PA34 4RY, Registered with the Scottish Government, Property Factor Registration Number PF000302 (“ACHA”)

and

(“the owner”) of

(“the property”)

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This Factoring Agreement sets out the Factoring Policy operated by ACHA and approved by its Board of Management.

### **DEFINITIONS:-**

ACHA:	Argyll Community Housing Association, registered office Menzies House, Glenshellach Business Park, Oban, PA34 4RY, and its successors.
The owner:	The person or people who hold a legal title to property whether individually or jointly.
The property:	A flat, unit, house or building owned by the owner.
Factoring Agreement:	A legally binding agreement setting out details of the factoring service and obligations of the owner and ACHA.
Factoring Policy:	The policy created by ACHA to set out the regulation of the factoring service.
Board of Management:	Members of the Association who are elected onto the Management Board to regulate, approve and make decisions on behalf of the ACHA.
Factoring Service:	A property management service to carry out regular and routine property maintenance and repair to common property and common ground.

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Common Repairs:	Repairs and maintenance carried out to part of properties which are shared with two or more owners (eg roof, pathways, close).
Flat/Unit:	Individual flat, house or unit which may form part of a tenement.
Tenement:	Building where two or more owners share elements in common.
Block:	A building which contains two or more flats/units sharing the same elements.
Common parts/areas:	An area within a block which is owned by two or more people.
Common ground:	An area of ground which is owned by two or more people.
Cyclical maintenance:	Regular arranged maintenance to the fabric of the building eg clearing guttering, close painting etc.
Title deeds:	The Feu Disposition, Disposition, Conveyance, Deed of Conditions or Land Certificate which transfers the ownership of the property and contains burdens and conditions which affect the property.
Majority of owners:	Owners of more than half the properties in the tenement constitutes a majority counting one vote per individual flat/unit.
Contractors:	Companies, individuals, in-house repairs teams, or persons appointed by the Association who are approved to carry out work on behalf of the Association.
Factors Deposit:	Money paid to ACHA at the outset of factoring which will be returned to owners on sale (after deduction of any sums due).
Emergencies:	Circumstances or situations which are considered dangerous or seriously detrimental to the safety of property or people who may come into contact with the property.
Improvement works:	Upgrading work to improve property prior to it becoming essential or an emergency.
Major works:	Refurbishment of property to improve the lifespan of the building.
Arrears:	Money owed to ACHA in payment of work instructed on behalf of owners, property management or administration fees and charges.

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## **1. FACTORING SERVICE**

The factoring service is provided to assist owners in managing repairs and maintenance, gain agreement from neighbouring owners, and have work carried out to maintain common parts of the building and common areas.

### **1.1** In operating the service ACHA will:-

- (a) Instruct emergency common repair works as and when required.
- (b) Notify owners of costs likely to exceed £100 per flat/unit with repairs proceeding up to a value of £200 per flat/unit.
- (c) Consult owners on repairs likely to exceed £200 per flat/unit and provide fourteen days from issue of notification or consultation letters to advise ACHA in writing of any objections to the proposed works. In the absence of any written objections within the said fourteen day period then owners will be deemed to be in full agreement to works proceeding.
- (d) Plan for, arrange and oversee a programme of cyclical planned maintenance of the common parts pertaining to the property (where appropriate).
- (e) Instruct maintenance and repair of common ground and all other common parts where applicable.
- (f) Provide other such services as requested by owners and accepted by ACHA in writing (e.g. close and stair cleaning).

### **1.2** ACHA will undertake the following work on behalf of owners:-

- (a) Obtain estimates or tender for work expected to exceed £5,000 per block.
- (b) Complete, sign and authorise a feasibility study grant application form on behalf of factored owners to enable grant funding to be released to the Association on behalf of owners to cover the cost of the study.
- (c) Plan for, arrange and oversee repairs, maintenance and improvement work when instructed by ACHA.

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- 1.3** Monitoring of the factoring service will be carried out:-
- (a) To ensure that owners abide by the terms of the title deeds in their use of the property and to take action on instruction by the majority of owners where there has been a breach of this.
  - (b) To apportion costs for common repairs and render invoices on a quarterly basis covering periods April to June, July to September, October to December and January to March or at other such intervals as may be agreed between ACHA and the owners; and to recover outstanding debts.
  - (c) To issue annual statements of account.

## **2. QUALITY OF SERVICE**

ACHA is committed to providing an efficient and effective maintenance service. This service will reflect the requirements of the property and the needs of the owners.

In order to provide a high quality of service, the following is undertaken:-

### **2.1 Contractors Selection**

ACHA maintains an approved list of contractors capable of carrying out the works for which they are engaged. This can be provided by the Association on request.

### **2.2 Maintenance**

ACHA operates a maintenance programme in line with recommendations published by the Scottish Federation of Housing Associations.

The cycle set for redecoration, servicing, renewal of components, etc are all as recommended as best practice by the relevant professional and Government bodies and are reviewed in the light of the results of regular inspections.

### **2.3 Estimates**

ACHA will request three separate estimates or tender for works anticipated to exceed the cost of £5,000 per block for consultation with owners.

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## 3. COSTS

### 3.1 Fees and Charges

The costs and charges are detailed in Appendix I. Fees and charges will be reviewed annually and any changes intimated to owners one month prior to commencement.

Statements of account will be issued after the end of each financial year showing invoices issued and payments received during the course of the preceding financial year. Invoices will be issued quarterly and will comprise the following costs:-

1. Factors Deposit (outset of factoring)
2. Property Management fee.
3. Common repairs and maintenance.
4. Cyclical maintenance.
5. Service charges eg Lighting, Ground Maintenance (if applicable)
6. Administration charge
7. VAT if applicable
8. Recovering common repairs costs due by neighbouring owners
9. Any agreed outlays incurred by ACHA on owners behalf

Invoices will contain information and details of the repairs, works carried out and share due by the owner (if any), accrued in the previous three month period or on completion of the paperwork by repairs staff.

Quotes, invoices, estimates and others from private contractors will be available to owners for inspection at their request within a period of fourteen days following the issue of invoices, consultation or notification letters being issued to private owners.

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## 3.2 Apportionment of Repairs Costs

Repairs costs will be apportioned according to each owner's share of responsibility as detailed in the title deeds or this Factoring Agreement. In the event of the title deeds being inconsistent or unclear shares of responsibility shall be determined by the Tenements (Scotland) Act 2004 or the Housing (Scotland) Act 2006 and detailed in this Agreement.

The plan attached in Appendix II shows the solum of the building and common ground relating thereto.

### SHARES DUE BY THE OWNERS:-

Roof:	th
Common close and stairs:	th
Walls and gables:	th
Gutters and downpipes:	th
Common ground and pathways:	th
Common drains, pipes, cables and others:	th
Common electricity:	th

## 3.3 Factors Deposit

A £100 Factors Deposit will be paid to ACHA at the outset of factoring. The amount of the deposit will be reviewed periodically by ACHA. The deposit will be invoiced to owners in the first factoring invoice. Any balance due to the owner from the deposit will be repaid following on sale, after deduction of any outstanding sums due or works instructed, but not yet paid for.

## 3.4 Insurance

All owners are required by Section 18 of the Tenements (Scotland) Act 2004 to keep in force a contract of insurance for the reinstatement value of the property and any parts of the tenement building attached to the property. Any owner may request evidence of the policy or payment of the premiums.

ACHA may request owners to exhibit evidence of existing buildings insurance with the signed copy of this agreement and copies of the new policies on request thereafter.

**IMPORTANT NOTE TO OWNERS: Owners should note that buildings insurance cover does not include personal effects, furniture, fittings, etc and it is their responsibility to ensure that they are adequately covered in this respect by household contents insurance.**

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## **4. REPAIRS AND IMPROVEMENTS**

### **4.1 Maintenance, Common Repairs and Major Repairs**

In the event of common repairs and maintenance being required, they should be reported 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 the repair together with details of the problem.

Repairs are carried out under three categories, which are detailed below, along with the timescale for the repairs to be completed.

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

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 works.

### **4.2 Major work**

**Agreement from all owners is necessary to enable major work to proceed. Each owner will be responsible for their share of the cost of major work, feasibility study, consultants fees, planning and/or building warrant charges (where applicable) and ACHA's costs and charges.**

**ACHA shall apply, on behalf of owners, for a grant funded feasibility study and shall apply for grant funding on behalf of the owners following on majority interest once work has been identified as being required for the tenement.**

**Major work to common property shall not commence until ACHA has received payment of the full amount as detailed below, together with the signed Factoring Agreement and signed Minute of Agreement and completed and signed grant mandate authorising payment of the main grant to be paid directly to ACHA. ACHA will assist owners in identifying suitable grant funding.**

**Prior to work commencing each owner 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.**

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Such amounts received by ACHA shall be placed in a suspense account held by ACHA's Solicitors, which shall be drawn upon to meet interim and final certificates detailed in the Minute of Agreement. Once the account has been finally reconciled any overpayments will be refunded to the relevant owners, or any balance due invoiced to the owners.

### **4.3 Right of access**

ACHA, its authorised representatives and contractors, will have a right of access to the whole property including individual houses where this is required for the purpose of investigating common repairs and maintenance work required to the tenement; or to affect a repair to common parts or services; or to prevent damage to the property.

Three days notice will normally be given, except in the case of emergencies where immediate access will be required.

### **4.4 Emergencies**

Emergencies shall be defined as circumstances or situations which are considered dangerous or seriously detrimental to the safety of the property or persons.

Such repairs will be instructed outwith normal procedures.

In the case of an emergency the owners are required to permit immediate access to the property.

Emergency repairs should be notified to the Customer Service Centre on 0800 028 2755 who will contact the appropriate contractor.

All emergency works will be charged to owners through the quarterly factoring invoices.

### **4.5 Common Areas**

Under the terms of the title deeds of the property, deed of conditions, Factoring Agreement or in terms of the Tenements (Scotland) Act 2004 it is each owners responsibility to maintain the common areas e.g. close, stairs, landing, backcourts, gardens, grounds, etc unless there is an agreement for these services to be provided on the behalf of the owners by ACHA.

In the absence of such an agreement ACHA will be entitled to arrange for the necessary work to be carried out with charges due by the owners.



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## **4.6 Improvement Works**

From time to time ACHA or owners may determine that certain improvements will bring long term benefits to the property, prior to materials reaching the end of their life, and replacement may be recommended before the works become emergency repairs. In the event of ACHA or the owners identifying potential improvement works then these will be carried out only on the agreement of the majority of owners.

Owners will be notified in writing of the nature of the improvements, total costs, and the share of the costs due. Owners will have fourteen days from issue of notification to advise ACHA in writing of any objections to the proposed improvement works. In the absence of any written objections within the said fourteen days then owners will be deemed to be in full agreement with the proposed improvement works. Improvement works will only be instructed on the agreement of the majority of owners. It may be necessary for improvement works to be paid for in advance if they are classed as major works.

## **4.7 Cyclical Maintenance**

Cyclical maintenance provides for the regular maintenance of the fabric of the building, e.g. painting to common parts, cleaning of guttering, drainage inspection.

Approval from the majority of owners is required for works to proceed.

Owners will be notified in writing of the proposals for cyclical maintenance, total costs, and the share of the costs due. Owners will have fourteen days from issue of notification to advise ACHA in writing of any objections to the proposed improvement works. In the absence of any written objections within the said fourteen days then owners will be deemed to be in full agreement with the proposed maintenance work proceeding

## **4.8 Owners obligation**

Owners are responsible for intimating any common repairs required to ACHA. Owners are responsible for their own exclusive property and privately owned ground, parking, pathways etc which are not covered in this Factoring Agreement.

## **4.9 Services**

Owners may request that ACHA arranges to have new services carried out.

The consent of the majority of owners is required before new services can be introduced.

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The provision of statutory services outwith the control of ACHA eg stair lighting, will not be subject to competitive quotations and these will therefore be charged at cost to the owners.

### **5. NEW BUILD/REFURBISHED PROPERTIES**

#### **5.1 Defects Liability in Relation to New or Refurbished Properties**

Defects are usually the responsibility of the contractor. Defects are not repairs which arise through accident, negligence, wilful damage or any other external factors which could not reasonably be deemed to be the responsibility of the contractor.

Where defects arise, they should be reported immediately to ACHA who will inform the contractor. The contractor will attend to defects at his own expense where it is contractually their duty and within a reasonable timescale consistent with the severity of the problem.

### **6. TERMINATION, DISPUTES AND FORMALITIES**

#### **6.1 Change of ownership**

In the event of the property being sold the owners are requested to give potential purchasers clear information about the responsibilities of being an owner, including repair and maintenance obligations and details of the costs and charges relating to the service. Solicitor will notify ACHA in writing of the date of sale, the new owners full names, contact address, and their Solicitors details. The owners undertake to make the purchasers aware of the Factoring Agreement and the appointment of ACHA as factors and thereafter ACHA shall issue detailed information to the new owners.

#### **6.2 Terminating the factoring agreement**

The Factor shall be ACHA and its successors so long as they are owners of at least one of the dwelling houses in the property. In the event of ACHA no longer being owners of any dwelling house in the property then the Factoring Agreement may be terminated at the date of sale. ACHA will advise the owners in writing of the termination of the agreement.

ACHA retains the right to transfer their rights and obligations under this Factoring Agreement to a third party to act as Factor, should ACHA, in its sole discretion, deem it appropriate.

ACHA retains the right to continue factoring the block at the request of owners following on the sale of all properties formerly belonging to ACHA in the same block.

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Owners retain the right to dismiss ACHA as factors by simple majority as detailed in the Tenement (Scotland) Act 2004.

The Association retains the right to withdraw factoring from a block in the event of persistent non-payment of invoices.

### **6.3 Neighbour Disputes**

Owners are expected to conduct themselves in a manner which does not cause annoyance or nuisance to their neighbours and in accordance with statute and local laws and title deeds.

### **6.4 Arrears**

ACHA will adopt a flexible and reasonable approach to ensure that arrears are minimized and the outstanding debts are recovered.

All payments are due within fourteen days of the invoice being issued. Two reminder letters will be sent to the owner.

Failure to pay sums due within the said fourteen day period may result in payment being pursued through the Association's Factoring Recovery Procedure which may include raising action through the small claims court, summary cause, normal court proceedings or service a Notice of Potential Liability on the property. Owners will be liable for all court expenses and costs incurred in pursuing payment, fees and all other amounts incurred (including recording, registration, legal, court Sheriff Officers and administration expenses) to cover the cost of recovering the debt.

Accounts that remain unpaid will be subject to expenses and outlays for recovery and court action may commence against the owner to recover the outstanding amount. This could result in further expense, as the owner will be liable for Court and any additional expenses incurred by ACHA in pursuing the debt.

Should a decree be awarded by the Court against the owner, this may result in the lodging of an arrestment of the owner's wages or bank account, or the attachment and auction of the owner's personal assets. In addition, a Notice of Potential Liability may be registered against your property which may affect any future sale. On repayment of the debt in full (including any expenses incurred) the Notice of Potential Liability will be Discharged. All costs will be due by the owner.

A decree recorded in the owner's name may also adversely affect their future credit rating.

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### **6.5 Disputes with ACHA**

Complaints or disputes regarding repairs or maintenance works should be referred in the first instance to the relevant member of staff dealing with repairs and maintenance in accordance with the Association's complaints procedure (see owner's handbook).

If the dispute is not resolved, independent arbitration by the local Sheriff within the locality of the property, or the Housing Association Ombudsman or their successors may be sought by the owners. In this case both ACHA and the owners will be bound by the findings of the arbiter. Costs shall be borne by the owner pending determination of the decision by the Arbiter.

Notwithstanding the foregoing provisions, ACHA reserves its right to pursue through the Courts any claim for unpaid factoring fees and charges.

### **6.6 Acknowledgements**

ACHA is registered with the Information Commissioner and is subject to the provision of the Data Protection Act (Scotland) 1998. ACHA may retain your personal details and associated data provided by you for a period of five years following on sale/transfer of your property. You give your consent for that information to be held however we will not pass any information to a subsidiary or a third party related or otherwise to ACHA without your express agreement unless provided for under the Act(s).

This Agreement shall be covered by Scots Law and signing the Agreement may have important legal consequences. You are advised to take independent legal advice before signing this Agreement.

The/...



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The owner acknowledges receipt of a copy of this Agreement; The owner and ACHA consents to registration in the Books of Council and Session; These presents are:-

SUBSCRIBED for and on behalf of the said Argyll Community Housing Association Limited as follows:-

Place of signing:

Date of signing:

..... Witness .....

..... Full name .....

..... Address .....

.....

.....

..... Occupation and duly authorised signatory

SUBSCRIBED by the owners as follows:-

Place of signing:

Date of signing:

..... Witness signature

.....Witness full name .....

.....Witness address .....

.....

.....

.....Witness occupation

..... Owner 1 signature

..... Owner 2 signature

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## APPENDIX I

SERVICE:-	COST*:-
Factors Deposit	£100
Property Management fee (Tenemental Properties - flats)	£99.92
Property Management fee (Estate properties – detached, semi-detached & terraced)	£49.96
Administration fee	5%

**\*Note:** Any obligation in the Factoring Agreement to pay or reimburse a sum of money refers to a sum exclusive of value added tax ("VAT") and any VAT charged on it is payable in addition by the owner. In the event that VAT is payable then this will be detailed in the Accounts rendered by ACHA in terms of Clause 3.1 hereof.



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## APPENDIX II

Agreement Creation Date: April 2008  
Agreement Last Amended: 3<sup>rd</sup> April 2018

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