

FIRST HOMES

INTERPRETATION

The following words and expressions below shall mean as follows:-

“Additional First Homes Contribution”	means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraph 5.7, 5.8 or 7 of this Schedule, the lower of the following two amounts: (a) [30%] ¹ of the purchase monies; and (b) the purchase monies less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses
“Affordable Dwellings”	<i>means a Dwelling to be provided as Affordable Housing together with rights and easements over the Site² to provide access to the Dwelling and such entrance way corridors parking areas and other ancillary areas as are necessary for the enjoyment of such a Dwelling including car parking in accordance with this Schedule³</i>
“Affordable Housing”	<i>Definition to be found in Affordable Housing provisions. If First Homes are included in the definition, they will need to be specifically excluded from some of the Affordable Housing drafting relating to transfer to and management by RPs, mortgagee exclusion provisions</i>
“Affordable Housing Mix”	<i>Where required, definition to be found in Affordable Housing provisions but to include number and type of First Homes</i>
“Affordable Housing Plan”⁴	<i>Definition to be found in Affordable Housing provisions but to include requirement to show location of First Homes</i>
“Armed Services Member”	means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service
“Cluster”	shall mean a group of Affordable Dwellings which does not have contiguous boundaries with another group of Affordable Dwellings ⁵
“Compliance Certificate”	means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 5.2 applies the Eligibility Criteria (Local) [in the form at Annex [1]]

¹ To be adjusted in areas where First Homes are provided at a greater level of discount

² Amend throughout if the s.106 agreement uses a different term e.g. ‘Land’

³ Affordable Dwelling and Affordable Housing – can use existing standard definitions but if First Homes are included ensure existing Affordable Housing drafting specifically excludes First Homes where provisions will not apply to First Homes

⁴ It is assumed that an Affordable Housing Plan will either be attached to the s.106 agreement, or the s.106 agreement will contain a requirement for the Owner to obtain the Council’s approval of such a plan (potentially on a phased basis in the case of a phased development)

⁵ Cluster – can use existing standard definition

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"Development Standard"	means a standard to fully comply with the following:- <ul style="list-style-type: none">(a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015(b) all national design and construction standards which may be published by the Ministry of Housing Communities and Local Government(c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited(d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings) <i>[and</i>(e) <i>local requirements as set out in adopted local plan]</i> and the same may be amended by written agreement of the Parties in accordance with paragraph 4.1⁶
"Discount Market Price"	means a sum which is the Market Value discounted by at least [30%]
"Disposal"	means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than: <ul style="list-style-type: none">(a) a letting or sub-letting in accordance with paragraph 6(b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation and "Disposed" and "Disposing" shall be construed accordingly
"Dwelling"	<i>As defined in s106 (no additional definition required)</i>
"Eligibility Criteria (National)"	means criteria which are met in respect of a purchase of a First Home if: <ul style="list-style-type: none">(a) the purchaser is a First Time Buyer (and in the case of a joint purchase each joint purchaser is a First Time Buyer); and(b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).
"Eligibility Criteria (Local)"⁷	means criteria which are met in respect of a purchase of a First Home if: <ul style="list-style-type: none">(a) [the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local); and]⁸(b) [either or both of criteria (i) and (ii) below are met:<ul style="list-style-type: none">(i) the purchaser meets the Local Connection Criteria (and in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or

⁶ Development Standard – or use standard definition

⁷ Delete definition if no local eligibility criteria over and above national criteria.

⁸ Delete if no local income cap (i.e. if only national income cap applies)

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- (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member.⁹

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

“First Homes Owner” means the person or persons having the freehold or leasehold interest (as applicable) in a First Home after its first Disposal as a First Home or which was previously Disposed of as a First Home (and for the avoidance of doubt a tenant or sub-tenant of a permitted letting under paragraph 6 shall not be a First Homes Owner)

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

“Income Cap (Local)”¹⁰ means [•]

“Income Cap (National)” means:

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

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

[“Key Worker” means a person employed or with a confirmed job offer in XXX]¹¹

[“Local Connection Criteria” means criteria which are met by a person who satisfies one or more of the following definitions:

- (a) is ordinarily resident within [•] and has been for a continuous period of not less than [•] consecutive months prior to exchange of contracts for the relevant First Home; and/or
- (b) who has a close family association with [•] [by reason of a parent or child who is ordinarily resident within [•]]; and/or
- (c) has a requirement to live within [•] due to employment as a Key Worker.¹²

[or such other replacement local connection criteria for First Homes as may be published by the Council from time to time].

⁹ Delete if no local connection criteria.

¹⁰ Delete if no local income cap

¹¹ Include or delete depending upon local requirements

¹² This is a suggested form of definition of Key Worker, for use as part of a local connection requirement, to be completed by the LPA. Delete this definition if the LPA does not impose local connection requirements (or does not make specific provision for Key Workers as part of its local connection requirements).

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"Market Dwelling"	means any Dwelling which is not a First Home or Affordable Housing
"Market Value"	(a) means the open market value as assessed by a Valuer of Dwelling as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the [30%] discount in the valuation ¹³
"Mortgagee"	means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home
"Price Cap"	means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed [Two Hundred and Fifty Thousand Pounds (£250,000) or Four Hundred and Twenty Thousand Pounds (£420,000)] ¹⁴ if the First Home is situated within the administrative area of any London Borough Council including the City of London or such other amount as may be published from time to time by the Secretary of State
"Secretary of State"	means the Secretary of State for Housing Communities and Local Government from time to time appointed and includes any successor in function
"Valuer"	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity

¹³ Market Value – or use definition in existing standard drafting

¹⁴ Or a lower price cap if the local authority can demonstrate the need for this through evidence and has decided to apply that lower price cap, as set out in the policy.

OBLIGATIONS

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

- 1.1 paragraphs 1, 2, 3 and 4 shall not apply to a First Homes Owner;
- 1.2 paragraphs 5 and 6 apply as set out above, save that where a First Home is owned by First Homes Owner it shall apply only apply to a First Home Owner, but only in respect of the relevant First Home owned by that First Home Owner)¹⁵ ; and
- 1.3 Paragraph 7 applies as set out therein.

1. QUANTUM OF FIRST HOMES

- 1.1 [[•%] of the total number] OR [•] of the Dwellings on the Site [(rounded up or down to the nearest whole Dwelling – *where percentage only*)] shall be identified reserved and set aside as First Homes in accordance with the [approved] Affordable Housing Plan and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.
- 1.2 1.2 [Where phased development] Unless otherwise agreed through the [Site Wide Affordable Housing Plan] [•%] of the total number of the Dwellings in each residential phase (rounded up or down to the nearest whole Dwelling) OR [•] Dwellings in each residential phase shall be identified reserved and set aside as First Homes and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule in accordance with the [approved] Affordable Housing Plan relevant to that residential phase.

2. CLUSTERING

- 2.1 the First Homes shall not be visually distinguishable from the Market Dwellings based upon their external appearance;
- 2.2 Clusters of houses shall not exceed • Affordable Dwellings;
- 2.3 Clusters of flats in blocks with • or less storeys shall:
 - 2.3.1 not exceed • Affordable Dwellings;
 - 2.3.2 not have more than 6 flats with shared access; and
 - 2.3.3 be of a single tenure where sharing a communal entrance;

¹⁵ We are aware that it is the practice of some LPAs to agree 'carve-out' clauses, usually in the front-end of a s.106 agreement, providing that residential purchasers are generally not liable for compliance with the obligations in the s.106 agreement. However, this drafting contains certain obligations which must bind residential purchasers as successors in title; specifically, provisions which are designed to ensure that the First Homes remain discounted and subject to the sales and lettings restrictions in perpetuity. Care must therefore be taken when using this template to ensure that any such 'carve-out' clause in the s.106 agreement does not override the relevant provisions of this template.

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- 2.4 The size of Clusters and shared access arrangements for Affordable Dwellings which are flats in blocks with • or more storeys shall be agreed in writing with the Council as part of the Affordable Housing Plan 16

3. TYPE AND DISTRIBUTION

The mix of First Homes provided within the Site shall be in accordance with

- 3.1 the Affordable Housing Mix; and
3.2 the distribution in the Affordable Housing Plan

4. DEVELOPMENT STANDARD¹⁷

- 4.1 All First Homes shall be constructed to:-

- 4.1.1 the Development Standard current at *[the time of the relevant reserved matters approval/the date of this Agreement]*; and
4.1.2 no less than the standard applied to the Market Dwellings.

5. DELIVERY MECHANISM

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

- 5.1.1 the Eligibility Criteria (National)]; and
5.1.2 the Eligibility Criteria (Local)]¹⁸.

- 5.2 [If after a First Home has been actively marketed for 3 months it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local), paragraph 5.1.2 shall cease to apply.]¹⁹

- 5.3 Subject to paragraphs 5.6 to 5.9, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee

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

- 5.4.1 The Council has been provided with evidence that:

5.4.1.1 the intended purchaser meets the Eligibility Criteria (National) [and unless paragraph 5.2 applies meets the Eligibility Criteria (Local)]²⁰

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

5.4.1.3 the transfer of the First Home expressly includes a covenant to comply with the obligations relating to First Homes set out in this Schedule

Clustering wording to be removed if dealt with as part of wider affordable housing requirements

¹⁷ Only to be included if not secured via planning condition, or as part of general Affordable Housing provisions in s.106 agreement.

¹⁸ Delete if no local eligibility criteria. Note that this may require reformatting of paragraphs.

¹⁹ Delete if no local eligibility criteria. Note that this may require renumbering of paragraphs. y

²⁰ Delete if no Eligibility Criteria (Local).

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- 5.4.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 5.3 and 5.4.1 have been met
- 5.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:
- "No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause XX [the First Homes provision] of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"*
- 5.6 The Owner of a First Home may apply to the Council to Dispose of it other than as a First Home on the grounds that either:
- 5.6.1 the Dwelling has been actively marketed as a First Home for six (6) months [(and where paragraph 5.2 applies, the six (6) months shall be calculated from the date when paragraph 5.2 first applied)]²¹ and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 5.3 and 5.4.1; or
- 5.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 5.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship.
- 5.7 If the Council is satisfied that either of the grounds in paragraph 5.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 5.6 that the relevant Dwelling may be Disposed of other than a First Home and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 5.9 which shall cease to apply on receipt of payment by the Council
- 5.8 If the Council is not satisfied that either of the grounds in paragraph 5.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 5.6 serve notice on the Owner setting out the further steps it requires the Owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months) and at the end of that period if the Owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 5.6 and if the Council is satisfied that reasonable endeavours have been used to comply with the steps set out in its notice it shall issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home and if not so satisfied it shall issue a further notice in accordance with this paragraph 5.8 PROVIDED THAT the Council may not refuse to issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home if it has already served two notices under this paragraph 5.8 in respect of the same Disposal
- 5.9 Where a Dwelling is Disposed of other than as a First Home in accordance with paragraph 5.7 or 5.8 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the purchase monies the Additional First Homes Contribution and upon receipt of such sum the Council shall:

²¹ Delete if no optional paragraph 5.2

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5.9.1 provide a completed application to enable the removal of the restriction on the title set out in paragraph 5.5 where such restriction has previously been registered against the relevant title within []²² working days

5.9.2 Apply all monies received towards the provision of Affordable Housing

5.10 Any person who purchases a First Home free of the restrictions in schedule []²³ of this Deed pursuant to the provisions in paragraphs 5.8 and 5.9 shall not be liable to pay the Additional First Homes Contribution to the Council.²⁴

6. USE

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of otherwise than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 6.1 – 6.4 below.

6.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

6.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or

²² Local authority to insert standard response period

²³ First Homes schedule

²⁴ Any walkaway clause in the section 106 agreement will need to dovetail with this requirement – i.e. the outgoing First Home Owner will still need to be on the hook for paying the Additional First Homes Contribution even after it has parted with its interest in the land.

delay giving such consent[, and not to unreasonably withhold such consent in any of circumstances (a) – (e) below:

- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
 - b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
 - c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.]
- 6.3 A letting or sub-letting permitted pursuant to paragraph 6.1 or 6.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 6.4 Nothing in this paragraph 6 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence²⁵.

7. MORTGAGEE EXCLUSION

The obligations in paragraphs 1-6 of this Deed in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

- 7.1 such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
- 7.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 7.3
- 7.3 following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.7.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:
 - (a) forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 5.5; and
 - (b) apply all such monies received towards the provision of Affordable Housing

²⁵ Local authorities may want to update this to reflect local policies.