**Schedule [ ]**

**Affordable Housing**

**Part A - Definitions:**

For the purposes of this Schedule the following expressions shall have the following meanings:

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| **“Affordable Dwelling”** | a Dwelling which is part of the Affordable Housing within the Development, together with its curtilage and any parking space or garage allocated to it; |
| **“Affordable Housing”**  | housing within the meaning of affordable housing as defined by Annex 2 of the NPPF to meet the needs of eligible households whose needs are not met by the market (and including Social Rented Dwellings and Shared Ownership Dwellings);  |
| **“Affordable Housing Allocation Scheme”** | (a) an allocation scheme set up pursuant to Part VI of the Housing Act 1996; or, in the event that the statutory basis for such a scheme is removed:-(b) such replacement scheme as the City Council may reasonably put in place to secure that Affordable Housing is allocated to persons nominated by the City Council by virtue of being in housing need;and for the avoidance of doubt, at the date of this Deed the Affordable Housing Allocation Scheme operated in Exeter City is the “Devon Home Choice” choice-based letting scheme;  |
| **“Affordable Housing Fractional Contribution”** | a contribution calculated in accordance with paragraph 1 of Part B of this Schedule;  |
| **“Affordable Housing Provider”** | a social landlord which is a private registered provider of social housing as defined in Section 80 of the Housing and Regeneration Act 2008 and registered as a non-profit organisation in accordance with Section 115(1)(a) of that Act, being a member of the Exeter Housing Partnership or (if not a member of the Exeter Housing Partnership) to be approved (or having been approved) by the City Council in accordance with paragraph 1.2 of Part C of this Schedule, or the City Council in its capacity as Housing Authority;  |
| **“Director for Housing”** | the City Council’s Director for Housing or similar post-holder responsible for carrying out the City Council's housing functions employed by the City Council from time to time, and includes his or her representative; |
| **“Ceiling Rent”** | the rent for a Social Rented Dwelling calculated in accordance with the Statutory Housing Body’s target rent regime in force from time to time (or any replacement regime for calculating rents for social rented housing implemented by or on behalf of HM Government from time to time), together with any service charge not exceeding the maximum amount which an occupier of the Social Rented Dwelling would be entitled to claim in respect of service charge under the Local Housing Allowance (or equivalent) regulations in force from time to time; |
| **"Details"** | the matters defined as such in paragraph 4 of Part B of this Schedule; |
| **“Equity Sharing Lease”** | a lease (of not less than 125 years) of an Affordable Dwelling under which a Specified Eligible Person:1. purchases a lease of a percentage of the equity of the Affordable Dwelling with the right to purchase an increased percentage; and
2. pays a rent to the freehold owner in proportion to the share of the equity retained by that owner;
 |
| **“Exeter Housing Partnership”** | a partnership set out in writing between the City Council and registered providers of social housing which operate in the Devon area (including any successor partnership or organisation);  |
| **“Intermediate Housing Dwelling”**  | means Dwellings at prices or rents which are above Social Rented Units but below the costs of Open Market Dwellings or rents on the open market and may include Shared Ownership Dwellings, First Homes or other shared equity products and low cost homes for sale or intermediate rent as agreed in writing with the City Council |
| **"Local Housing Allowance"** | the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental market area and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department for Work and Pensions or such similar framework that may replace it; |
| **"Mortgagee in Possession"**  | a mortgagee or chargee of the Affordable Housing Provider or of an individual Affordable Dwelling, or any receiver (including an administrative receiver) appointed by that mortgagee or chargee where the mortgagee or chargee or receiver is in possession of one or more of the Affordable Dwellings;  |
| **“NPPF”** | the National Planning Policy Framework published on 24 July 2018 and revised on 20 July 2021; |
| **“Open Market Dwellings”** | the Dwellings comprised in the Development other than the Affordable Housing, and Open Market Dwelling means one such Dwelling; |
| **“Open Market Value”** | the price that a willing purchaser would be willing to pay for a Dwelling if this Deed had not been made; |
| **“Shared Ownership Dwelling”**  | an Affordable Dwelling within the meaning of affordable housing as defined by Annex 2 of the NPPF disposed of on an Equity Sharing Lease under a shared equity scheme (including shared ownership) approved by the City Council; |
| **“Social Rented Dwelling”** | an Affordable Dwelling within the meaning of social rented housing as defined by Annex 2 of the NPPF to be let (or having been let) by an Affordable Housing Provider on a weekly or monthly periodic assured or secure tenancy or a fixed-term tenancy (including a fixed-term introductory/probationary tenancy) granted to a Specified Eligible Person at a Ceiling Rent;  |
| **“Specified Eligible Person”** | any person:-a) whose eligibility to be allocated a particular Affordable Dwelling has been established through the operation of the Affordable Housing Allocation Scheme; orb) who is otherwise identified in writing by the City Council as being in need of Affordable Housing; andin the case of a Shared Ownership Dwelling, who is on the register of applicants maintained by the Zone Agent, whose eligibility to be allocated a Shared Ownership Dwelling has agreed by the Zone Agent and the City Council and in accordance with the Statutory Housing Body's and the City Council's allocation priorities, and whose financial assessment has been undertaken by an independent financial advisor approved by the Zone Agent; |
| **"Standards"**  | the Design and Quality Standards dated April 2007 published by the former Housing Corporation (or any replacement standards published from time to time by the Statutory Housing Body and in force at the date of the relevant Reserved Matters Approval) and the City Council’s Residential Design Supplementary Planning Document (SPD) (adopted 28th September 2010) provided that in the event of any conflict or discrepancy between the two, the provisions of the SPD will prevail; |
| **“Statutory Housing Body”** | Homes England; and this definition shall include any statutory successors to that body; |
| **“Wheelchair Accessible Dwellings”** | Dwellings designed and equipped for occupation by households which include a person who requires a wheelchair to gain access to, and move around within, the Dwelling, and which comply in all respects with the Wheelchair Accessible Housing Design Standards (January 2011) published by the City Council (or any amended version thereof in force at the time of the grant of Reserved Matters Approval for the Dwellings in question); |
| **“Zone Agent”** | helptobuyagent3 of Collins House, Bishopstoke Road, Eastleigh, Hampshire SO50 6AD being the HomeBuy agent appointed by the government for the area which includes the Site (or any successor to that function appointed by the government). |

**Part B - Provision of Affordable Housing**

1. Thirty-five per cent (35%) of the Dwellings constructed pursuant to the Planning Permission shall be provided as Affordable Housing, which shall not be occupied other than as Affordable Housing and by Specified Eligible Persons in accordance with the provisions of this Schedule, with:

1.1 a minimum of seventy per cent (70%) of the Affordable Housing to be Social Rented Dwellings;

1.2 a minimum of twenty-five percent (25%) of the Affordable Housing to be provided and retained as First Homes in perpetuity subject to the terms of Schedule [ ]; and

1.3 the remainder to be Intermediate Housing Dwellings or such other tenure of Affordable Housing as may be agreed in writing with the City Council

PROVIDED THAT if 35% of the Dwellings produces a whole number of Affordable Dwellings and a fraction of an Affordable Dwelling (“**the Fraction**”), the owner of the relevant Phase on which that Affordable Dwelling would otherwise have been delivered shall pay to the Council a sum of money in respect of the Fraction, calculated in accordance with the City Council’s Affordable Housing Supplementary Planning Document (2014), Appendix 3, (or any document updating or replacing the same that is in force at the date of payment), which sum is referred to as “**the Affordable Housing Fractional Contribution**” and shall be employed by the City Council in providing Affordable Housing in the City of Exeter.

2. The Affordable Dwellings will be delivered in a mixture of house types that comprises a mixture of house types informed by context, local housing need, and the most up to date housing market assessment (as advised by the City Council).

3. The Affordable Dwellings shall be distributed throughout the Site in clusters of no more than ten Affordable Dwellings, the clusters separated from each other by Open Market Dwellings or public space.

4. As part of the first application for Reserved Matters Approval, the Owners or the Developer shall submit to the City Council a proposed layout for the Development including the following matters (collectively referred to as "**the Details**"):-

4.1 the proposed physical location, layout, size and specification of the Affordable Dwellings (including First Homes) within the Development and of any common parts serving those Dwellings;

4.2 whether the Affordable Dwellings have parking spaces or garages;

4.3 which of the Affordable Dwellings are to be Social Rented Dwellings, First Homes and which are to be Intermediate Housing Dwellings or such other tenure of Affordable Housing as has been agreed with the City Council in accordance with paragraph 1 of this Part; and

4.4 which of the Affordable Dwellings are to be Wheelchair Accessible Dwellings in accordance with paragraphs 6 to 8 of this Part;

and the [Owner][Developer] shall not Commence the Development until the Details have been approved by the City Council as part of the Reserved Matters Approval in accordance with this paragraph;

PROVIDED THAT if the City Council shall have given to the [Owner][Developer] agreement in writing to the Development being carried out in Phases, this paragraph 4 shall have effect as requiring the Details for the Phases to be submitted as part of the first application for Reserved Matters Approval in respect of that Phase, and shall prevent Commencement of the Development of that Phase until those Details have been approved as part of that Reserved Matters Approval.

5. The Affordable Dwellings (including First Homes) shall be designed and constructed in accordance with the Standards and the approved Details, and so as to be indistinguishable (in terms of design concept and general appearance) from the Open Market Dwellings, and employing so far as is practicable the same external materials as are employed for the Open Market Dwellings.

 6. At least five per cent (5%) of the Affordable Dwellings (with fractions of 0.5 or more rounded up and fractions of 0.49 or less rounded down to give a whole number of Dwellings) shall be constructed as Wheelchair Accessible Dwellings.

7. The Affordable Dwellings to be constructed as Wheelchair Accessible Dwellings shall be those sizes and types of dwelling which will most effectively meet the greatest need (as at the time of submission of the Details for approval under paragraph 4 above) of those on the City Council's Housing Register at that time who are in need of Wheelchair Accessible Dwellings (as advised to the [Owner][Developer] by the Director for Housing).

8. The Wheelchair Accessible Dwellings within the Development shall not be let or occupied other than as Social Rented Dwellings.

**Part C - Phasing of the Development and disposal of the Affordable Housing**

1. The [Owner][Developer] shall not Commence the Development until:-
	1. the [Owner][Developer] has notified the City Council in writing of the date of anticipated commencement of construction of Dwellings;
	2. the [Owner][Developer] has notified the Director for Housing of the Affordable Housing Provider(s) for the Development nominated by the [Owner][Developer]; and
	3. the Affordable Housing Provider(s) thus notified or approved has/have confirmed to the City Council in writing that it has/they have agreed terms with the [Owner][Developer] for the acquisition of the Affordable Dwellings (not including any First Homes), or that it/they anticipate[s] doing so in the near future;

PROVIDED THAT if the City Council shall have given to the [Owner][Developer] its agreement in writing to the Development being carried out in Phases, this paragraph 1 shall have effect as if reference in this paragraph to “Commence the Development” were reference to Commencement of Development of a Phase as so agreed; and reference in this paragraph to “the Affordable Dwellings” were reference to the Affordable Dwellings comprised within such a Phase.

2. No more than fifty per cent (50%) of the Open Market Dwellings shall be sold or Occupied until:

2.1 fifty per cent (50%) of the Affordable Dwellings comprised in the Development are completed in accordance with the Details, connected to mains services and available and fit for residential occupation; and

* 1. 2. 2 the [Owner][Developer] has transferred those 50% of the Affordable Dwellings (excluding any First Homes) to the Affordable Housing Provider(s) in accordance with paragraph 4 below; and
	2. 2. 3 the [Owner][Developer] has paid the Affordable Housing Fractional Contribution to the City Council;

PROVIDED THAT if the City Council shall have given to the [Owner][Developer] its agreement in writing to the Development being carried out in Phases, this paragraph 2 shall have effect as if reference in this paragraph to “the Development” were reference to a Phase of the Development; and reference in this paragraph to “the Affordable Dwellings” or “Open Market Dwellings” were reference to the Affordable Dwellings or Open Market Dwellings comprised within such a Phase.

3. No more than eighty per cent (80%) of the Open Market Dwellings shall be sold or Occupied until:

3.1 all of the Affordable Dwellings comprised in the Development are completed in accordance with the Details, connected to mains services and available and fit for residential occupation; and

* 1. 3.2 the [Owner][Developer] has transferred all of the Affordable Dwellings to the Affordable Housing Provider(s) (excluding any First Homes) in accordance with paragraph 4 below

PROVIDED if the City Council shall have given to the [Owner][Developer] its agreement in writing to the Development being carried out in Phases, this paragraph 3 shall have effect as if reference in this paragraph to “the Development” were reference to a Phase of the Development; and reference in this paragraph to “the Affordable Dwellings” or “Open Market Dwellings” were reference to the Affordable Dwellings or Open Market Dwellings comprised within such a Phase.

4. The transfer of the Affordable Dwellings (excluding any First Homes) to an Affordable Housing Provider pursuant to paragraphs 2 and 3 above shall be on the following terms:

4.1 the transfer shall be of the unencumbered freehold of the Affordable Dwellings and their curtilages (or in the case of any Affordable Dwellings which are flats or apartments the grant/transfer of a leasehold interest of at least 125 years) free from encumbrances (save for any encumbrances (not being financial charges) existing prior to the date of this Deed) with full title guarantee and vacant possession;

4.2 the transfer or lease shall grant all rights and easements (if any) as are required to give pedestrian and vehicular access between the Affordable Dwellings and the public highway and as are required to connect all sewers, drains, pipes, cables and other conducting media serving the Affordable Dwellings.

1. 5. Once eighty per cent (80%) of the Open Market Dwellings have been sold, under contract to be sold or Occupied, the [Owner][Developer] shall not market, or otherwise invite or seek offers for, any of the remaining twenty per cent (20%) of Open Market Dwellings (or the site of any such Dwelling) if at the time of such marketing or invitation or seeking of offers the requirements of sub-paragraphs 3.1 and 3.2 of this Part have not been complied with, unless the [Owner][Developer] notifies prospective purchasers in writing (i) of the requirements of this Part and (ii) that such requirements have not at that time been complied with PROVIDED THAT if the City Council shall have given to the [Owner][Developer] its agreement in writing to the Development being carried out in Phases, this paragraph 5 shall have effect as if reference in this paragraph to “Open Market Dwellings” were reference to Open Market Dwellings comprised within such a Phase.
2. 6. The [Owner][Developer] shall give the following notice in writing to the Director for Housing of the date on which each Affordable Dwelling will be available for first occupation, namely:

6.1 four months’ notice in the case of a Shared Ownership Dwelling or a Wheelchair Accessible Dwelling; and

6.2 six weeks’ notice in any other case.

7. Where the Development is being carried out in Phases, [the Owners or the Developer] shall give written notice to the City Council upon the Occupation of:

7.1 fifty per cent (50%) of the Open Market Dwellings in a Phase; and

7.2 eighty per cent (80%) of the Open Market Dwellings in a Phase.

8. Any Shared Ownership Dwellings within the Development shall not be occupied except pursuant to an Equity Sharing Lease granted by an Affordable Housing Provider, which Equity Sharing Lease shall unless otherwise agreed in writing with the City Council:-

8.1 be substantially in the form of the Statutory Housing Body’s model form (if any) as most recently published from time to time, and including all provisions as the Statutory Housing Body specifies as mandatory for such leases;

8.2 provide for the lessee to acquire an initial share of the equity in the Affordable Dwelling having a value not exceeding forty per cent (40%) of the Open Market Value of the Affordable Dwelling at that time (the “Initial Share”) with the opportunity (but no obligation) for the purchaser to acquire additional equity shares; PROVIDED THAT the share of the equity acquired by an individual purchaser upon the initial grant of an Equity Sharing Lease of a Shared Ownership Dwelling may exceed the Initial Share, but only if the average initial share acquired by all the purchasers of the Shared Ownership Dwellings does not exceed the 40% of the Open Market Value;

8.3 provide for an initial rent payable that does not exceed two point seven five per cent (2.75%) of the Open Market Value of the equity retained by the landlord, which rent may be increased no more than annually and by not more than the corresponding increase in the Retail Price Index plus 0.5%, with any service charge not exceeding the maximum amount which an occupier of the Affordable Dwelling would be entitled to claim in respect of service charge under the Local Housing Allowance (or equivalent) regulations in force from time to time;

8.4 provide for the Shared Ownership Dwellings to be advertised and allocated to a Specified Eligible Person by the Zone Agent.

9. Nothing in this Deed shall prevent a tenant under an Equity Sharing Lease from assigning the whole of his interest acquired in accordance with these provisions in an Affordable Dwelling to a Specified Eligible Person.

10. The Social Rented Dwellings and any Shared Ownership Dwellings for rent shall not be occupied except pursuant to a weekly or monthly periodic tenancy or a fixed-term tenancy (including a fixed term introductory or probationary tenancy) granted by the Affordable Housing Provider to a Specified Eligible Person.

11. Social Rented Dwellings shall only be let at a Ceiling Rent, with any service charge not exceeding the maximum amount which an occupier of the Affordable Dwelling would be entitled to claim in respect of service charge under the Local Housing Allowance (or equivalent) regulations in force from time to time.

12. If the [Owners or the Developer] fail to settle any account properly and duly rendered in respect of the Affordable Housing Fractional Contribution within 14 days of despatch to them, the sum due shall accrue interest at the Law Society’s Interest Rate calculated on a daily basis.

13. The provisions which govern the disposal and Occupation of the First Homes are set out in Schedule [ ] to this Deed.

**Part D - Mortgagee in possession**

1. This Part D only applies to Affordable Dwellings delivered as Social Rented Dwellings and/or Intermediate Housing Dwellings and/or any Shared Ownership Dwellings. It does not apply to First Homes.

2. Once freehold ownership of any Affordable Dwelling has been transferred to the Affordable Housing Provider, the provisions of this Schedule shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each “a Receiver”)) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

1.1 such mortgagee or chargee or Receiver shall first give written notice to the City Council of its intention to dispose of the Affordable Dwelling and shall have used reasonable endeavours over a period of three months from the date of the written notice to seek a disposal of the Affordable Dwelling to the City Council or to another registered provider (nominated by the City Council) or a specified eligible person nominated by the City Council (in the case of an individual Affordable Dwelling) for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

1.2 if contracts have not been exchanged within the three month period with a completion date no later than one month from exchange of contracts the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the affordable housing provisions in this Deed which provisions shall determine absolutely

2 If the provisos in paragraphs 1.1 and 1.2 of this Part D are met in respect of any Affordable Dwelling, the City Council will forthwith certify to that effect, whereupon the Mortgagee in Possession may manage and/or sell the Affordable Dwelling concerned free from the provisions of this Schedule.

**Exclusions**

3. None of the covenants in this Schedule shall apply to or be binding upon:

3.1 the tenant of any Shared Ownership Dwelling who has exercised his right to acquire 100% of the equity in that Dwelling, or his mortgagee; or

3.2 the tenant of a Social Rented Dwelling who has acquired ownership of that Dwelling under the right to acquire provisions of the Housing Act 1996 (or any legislation amending or replacing the same) or his mortgagee; or

3.3 any successors in title to each of the aforementioned and their mortgagees.

3.4 any person who acquires the freehold or leasehold interest on an Affordable Dwelling from a Mortgagee in Possession or its receiver pursuant to paragraph 1 of this Part D or to the mortgagee or successors in title to that person.

**Part E – City Council’s right to information**

1. The City Council may at any time serve notice on the owner or any occupier for the time being of an Affordable Dwelling, requiring that person to provide information as to the ownership and/or occupation of the Affordable Dwelling and to produce any evidence reasonably required to satisfy the City Council that the Affordable Dwelling is occupied by a Specified Eligible Person.

2. Any request for information served under the above paragraph shall be deemed to be made under the provisions of Section 330 of the 1990 Act and the provisions of that section shall apply to any refusal to provide information so required or false statements made in reply thereto.

**Schedule [ ]**

**First Homes**

1. **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 paragraphs 3.8, 3.9 or 5 of this Schedule, the lower of the following two amounts: (i) 30% of the proceeds of sale; or(ii) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home. |
| **“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 |
| “**Compliance Certificate**” | means the certificate issued by the City Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 6.2 applies the Eligibility Criteria (Local) in the form at Annex [1] |
| “**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: i) a letting or sub-letting in accordance with paragraph 4 ii) 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 except where the transfer is to a First Homes Owner an Exempt Disposal and “Disposed” and “Disposing” shall be construed accordingly |
| “**Eligibility Criteria (National)**” | means criteria which are met in respect of a purchase of a First Home if:(a) the purchaser is a First Time Buyer (or 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)**” | means criteria (if any) published by the City Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:(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) (if any); and(b) any or all of criteria (i) (ii) and (iii) below are met: (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker it being acknowledged that at the date of this agreement the City Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home. |
| “**Exempt Disposal**” | means the Disposal of a First Home in one of the following circumstances: (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner(c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order(d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 8 shall apply to such sale)Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 4 |
| “**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 other than:(a) the [Owner/Developer]; or (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or (c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 4 |
| “**First Time Buyer**” | means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003 |
| “**Income Cap (Local)**” | means a sum as may be published for this purpose from time to time by the City Council and is in force at the time of the relevant disposal of the First Home it being acknowledged that at the date of this agreement the City Council has not set an Income Cap (Local).  |
| “**Income Cap (National)**” | means 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 and is in force at the time of the relevant disposal of the First Home |
| “**Key Worker**” | such categories of employment as may be designated and published by the City Council from time to time as the “First Homes Key Worker criteria” and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Key Worker” criteria which shall apply to that disposal it being acknowledged that at the date of this agreement the City Council has not designated any categories of employment as Key Worker |
| “**Local Connection Criteria**”  | criteria set out in the City Council’s First Homes Planning Policy Statement dated June 2021 which specifically states that the criteria are met by a person who satisfies one or more of the following conditions (a)-(d):(a) having resided in Devon for EITHER:(i) six of the last twelve months; (ii) three out of the last five years (where residence has been out of choice); OR(iii) service personnel who have been based and living in Devon.(b) having had permanent work in Devon: (i) with a minimum of a 16 hour per week contract for the previous 6 months; AND (ii) without a break in the period of employment for more than three months. (c) having family connections in Devon where EITHER: (i) the applicant, or a member of their household has parents, adult children or brothers or sisters who have been resident in Devon for at least the last 5 years; OR(ii) in any other circumstance, where agreed in writing with the City Council, where the residence of relatives other than those listed above are to be taken as establishing a local connection. (d) having had special circumstances for moving to Devon because of particular special needs such as including (but not limited) to where the only/most appropriate treatment available for a specific medical condition is based in Devon.Such other local connection criteria as may be published by the City Council from time to time as its First Homes “Local Connection Criteria” and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Local Connection Criteria” which shall replace the criteria above and apply to that disposal |
| "**Market Value**"  | means the open market value as assessed by a Valuer of Dwelling as confirmed to the City 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 |
| “**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 |
| “**Practical Completion**” | means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied |
| “**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)  |
| “**SDLT**” | means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect |
| “**Secretary of State**” | means the Secretary of State for Levelling Up, Housing and Communities 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 |

1. **Obligations**

Unless otherwise agreed in writing by the City 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 City Council as below save that paragraphs 3 and 4 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner

1. **Delivery Mechanism**
	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:
		1. the Eligibility Criteria (National); and
		2. the Eligibility Criteria (Local) (if any).
	2. If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 3.1.2 shall cease to apply.
	3. Subject to paragraphs 3.6 to 3.10, 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
	4. No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:
		1. The City Council has been provided with evidence that:
			1. the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 3.2 applies meets the Eligibility Criteria (Local) (if any)
			2. the Dwelling is being Disposed of as a First Home at the Discount Market Price and
			3. the transfer of the First Home includes:
				1. a definition of the “Council” which shall be the City Council
				2. a definition of "First Homes Provisions" in the following terms:

“means the provisions set out in Schedule [ ] of the S106 Agreement a copy of which is attached hereto as the Annexure.”

* + - * 1. A definition of "S106 Agreement" in the following terms:

“means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ ] made between (1) [ ], (2) [ ], (3) [ ], (4) the City Council and (5) the County Council”

* + - * 1. a provision that the First Home is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions
				2. a copy of the First Homes Provisions in an Annexure
		1. The City Council has issued the Compliance Certificate and the City 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 3.3 and 3.4.1 have been met
	1. 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”

* 1. The owner of a First Home (which for the purposes of this clause shall include the Owner and any First Homes Owner) may apply to the City Council to Dispose of it other than as a First Home on the grounds that either:
		1. the Dwelling has been actively marketed as a First Home for six (6) months in accordance with paragraphs 3.1 and 3.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) 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 3.3 and 3.4.1; or
		2. requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 3.6.1 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
	2. Upon receipt of an application served in accordance with paragraph 3.6 the City Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price
	3. If the City Council is satisfied that either of the grounds in paragraph 3.6 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 6.6 that the relevant Dwelling may be Disposed of:
		1. to the City Council at the Discount Market Price; or
		2. (if the City Council confirms that it does not wish to acquire the relevant Dwelling) other than as 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 3.10 which shall cease to apply on receipt of payment by the City Council where the relevant Dwelling is disposed of other than as a First Home

* 1. If the City Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 3.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.6 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). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the City Council in accordance with paragraph 3.6 following which the City Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home
	2. Where a Dwelling is Disposed of other than as a First Home or to the City Council at the Discount Market Price in accordance with paragraphs 3.8 or 3.9 above the Owner of the First Home shall pay to the City Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution
	3. Upon receipt of the Additional First Homes Contribution the City Council shall:
		1. within 20 working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 3.5 where such restriction has previously been registered against the relevant title
		2. apply all monies received towards the provision of Affordable Housing
	4. Any person who purchases a First Home free of the restrictions in this Schedule pursuant to the provisions in paragraphs 3.9 and 3.10 shall not be liable to pay the Additional First Homes Contribution to the City Council.
1. **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 other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 4.1 – 4.4 below.

* 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 City 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.
	2. A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the City Council and the City Council consents in writing to the proposed letting or sub-letting. The City Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) 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.

* 1. A letting or sub-letting permitted pursuant to paragraph 4.1 or 4.2 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.
	2. Nothing in this paragraph 4 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 residence.
1. **First Homes Mortgagee Exclusion**

The obligations in paragraphs 1-4 of this Schedule 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:

* 1. such Mortgagee or Receiver shall first give written notice to the City Council of its intention to Dispose of the relevant First Home; and
	2. once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the City Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 5.3
	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 City Council the Additional First Homes Contribution.
	4. following receipt of notification of the Disposal of the relevant First Home the City Council shall:
		1. 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 3.5; and
		2. apply all such monies received towards the provision of Affordable Housing

**ANNEXURE [1]**

**Compliance Certificate**

**FIRST HOMES COMPLIANCE CERTIFICATE**

|  |  |
| --- | --- |
| **Date:**  | [          ]  |
| **To:**  | [Buyer’s conveyancer ]  |
|   | [Builder’s/Seller’s conveyancer]  |
|   | [Buyer’s mortgage advisor]  |
|   | [First Home Buyer(s)]  |
| **First Homes Buyer(s) name(s) (the proposed First Homes Owner(s)):**  | [      ]  |
| **First Home property to be purchased:**  | [ plot number & site name/address ]  |
| **Copied to:**  | [First Homes Buyer(s) current address before purchase] [First Homes house builder ]  |

The proposed First Homes Buyer(s) First Homes application has been approved by [*Council name*] pursuant to the supplemental agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 relating to [*details of site*]  dated [*date*] and made between [*parties*] and this Compliance Certificate issued to the proposed First Homes Buyer(s) and their conveyancer by [*Council*] as follows:

|  |  |
| --- | --- |
| **First Homes Buyer(s) name(s) (the proposed First Homes Owner(s))**  | [ Full Names ]  |
| **[Builder] [Current First Homes Owner]**  | [Builder/Seller  ]   |
| **First Home property to be purchased:**  | [ plot number & site name/address ]   |
| **First Home forecast purchase legal completion date:**  |   |
| **Market value (100% of value)**  | [£          ]  |
| **First Homes discount %**  | 30%  |
| **First Homes Purchase Price (price to be paid by the proposed First Homes Buyer(s) applying the First Homes discount to the Market value)**  | [£       )]  |
| **Proposed date of exchange of contracts**  |   |
| **Proposed date of completion**  |   |

This **COMPLIANCE CERTIFICATE** is issued by [*Council*] and confirms that a Residential Property is being disposed of to the First Home Buyer(s) specified in this Compliance Certificate who meet the:

1. Eligibility Criteria (National)
	* + - 1. First Time Buyer;
				2. Having Household income no more than £80,000 per annum [; and *if applicable*
2. the Eligibility Criteria (Local)
	* + - 1. [*insert Local eligibility Criteria*]
				2. [ ]

As set out in full in  the Supplemental Agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 relating to [*details of site*]  dated [*date*] and made between [*parties*] (“**Planning Obligations**”).

The First Homes Buyer(s) (the new First Homes Owner) has provided all the necessary First Homes confirmations and declarations of eligibility required by [*Council*] and the First Homes Buyer(s) solicitor has confirmed that the transfer to the First Home Buyer(s) will comply with the requirements in Planning Obligations in relation to the Residential Property.

Yours sincerely

|  |  |
| --- | --- |
| **Name:**   |   |
| **Signed:**   |   |
| **For and on behalf of**  | **[ *Council* ]**  |
| **Dated:**  |   |