

**dated**

**201[ ]**

**[homeowner]**

**and**

**Homes and Communities Agency**

**Equity Mortgage – Help to Buy**

# Equity Mortgage

Dated [●] 201[ ]

## Parties

- (1) [●] of [●] (the **Borrower**)
- (2) Homes and Communities Agency, a body corporate established under Section 1 of the Housing and Regeneration Act 2008 of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 7QH (the **Lender**)

## Whereas

- (A) The Borrower intends to purchase the property described in the First Schedule to this mortgage (the Property);
- (B) The Borrower has agreed to the sum of £[●] being paid by the Lender to the Seller of the Property (or its agent) in order to enable the Seller to reduce the purchase price by the same amount.
- (C) This Deed is to secure the repayment by the Borrower to the Lender of the Repayment Sum (as defined later in this mortgage)

## Now this deed witnesses as follows:

### 1 Interpretation

1.1 In this mortgage the following expressions shall have the following meanings:-

**Bankrupt** means the Borrower has become bankrupt or makes or seeks an arrangement with its creditors or an interim order is made under section 252(1) of the Insolvency Act 1986 in relation to the Borrower;

**Default Interest Rate** means the lower of (a) a rate being 1% above the Bank of England base lending rate from time to time and (b) the Gross Interest payable under the terms of this mortgage at the time of the relevant default;

**Disposal** means a transfer to a third party of the Borrower's interest in the Property or any part of the Property or the grant of a lease whether periodic or for a fixed term other than an Exempt Disposal;

**Exempt Disposal** means a disposal that is the vesting of the whole of the Borrower's interest in the Property in a person taking under a will or on an Intestacy or under Section 24 or 24A of the Matrimonial Causes Act 1973 or under Section 2 of the Inheritance (Provision for Family and Dependants) Act 1975 or 17 Matrimonial and Family Proceedings Act 1984 where (in the case of the death of the Borrower) such person is a member of the family of the Borrower who has resided with the Borrower throughout the period of 12 months ending with the death of the Borrower and for the purposes of this Deed, a "member of the family" has the same meaning as that contained in Section 62 of the Housing Act 1996 (as amended or replaced from time to time);

Extended Term Expiry Date means the date confirmed by the Lender pursuant to Clause 13.2;

**First Charge** means the charge or mortgage described in Clause 10.1;

**Full Purchase Price** means the full purchase price of the property which would be payable but for Contributions offered pursuant to the Help To Buy Scheme and which does not exceed the Initial Market Value;

**Gross Interest** means a sum equal to 1.75% of the Initial Market Value subject to annual increases in accordance with Clause 9;

**Help to Buy Scheme** means the government home ownership initiative of the same name as described in the Help to Buy Participation Guidance initially published by the Homes and Communities Agency on 25 March 2013 and as updated by the Homes and Communities Agency from time to time;;

**Initial Market Value** means the sum of £[●] being the Market Value at the date of this mortgage;

**Initial Proportion** means [●]% being the percentage of the Initial Market Value which the Lender Contribution represents;

**Lender Contribution** means the sum of £[ ] being the amount paid by the Lender directly to the Seller or its nominee (with the agreement of the Borrower) to enable the Seller to charge the Reduced Purchase Price;

**Management Fee** means £1 per month payable in accordance with Clause 4.2;

**Management Fee Commencement Date** means the first day of the next calendar month following the calendar month in which this mortgage is completed;

**Market Value** means the price which the Property would fetch on the open market on a sale by a willing vendor to a willing purchaser on the assumption if not a fact that all the covenants on the part of the Borrower in this mortgage have been fully complied with and in the event of damage to the Property that it has been fully reinstated and disregarding any additions or improvements made by the Borrower with the written consent of the Lender provided that in the case of a Disposal where the Disposal price (disregarding any part of that price attributable to any additions or improvements made by the Borrower with the written consent of the Lender) is greater than the Market Value then the Market Value shall be substituted with such Disposal price when calculating the Repayment Sum;

**Memorandum** means the Memorandum of Redemption of Part annexed to this mortgage at the Second Schedule;

**Nominated Agent** means such agent appointed by the Lender from time to time and notified in writing to the Borrower;

**Payment Date** means the fifth anniversary of the date of this mortgage;

**Qualifying Lender** has the meaning given in Statutory Instrument 2005/2863;

**Reduced Purchase Price** means the Full Purchase Price less the Lender Contribution;

**Remaining Proportion** means the Initial Proportion less any Specified Proportion(s) in respect of which payment has been made in accordance with clause 8.4;

**Repayment Sum** means the Remaining Proportion of the Market Value shown in the Valuation obtained under clause 6, 7 or 8 as the case may be;

**Review Date** means

- (a) where this mortgage is dated 1 April – 31 December (inclusive) the first 1 April following the Payment Date and each successive 1 April; and
- (b) where this mortgage is dated 1 January – 31 March (inclusive) the second 1 April following the Payment Date and each successive 1 April;

**RPI** means the United Kingdom General Index of Retail Prices or in the event that such ceases to be published (as to which the Lender's reasonable decision shall be conclusive) or if the said Index or the basis on which it is calculated or published is altered to a material extent (as to which the Lender's reasonable decision shall be conclusive) then the Lender may give written notice to the Borrower of some other published index of general prices or the value of money as a substituted index and in that case the substituted index so selected shall from that point onwards be the RPI;

**Security Interest** means any mortgage, pledge, lien, charge, security assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security (including, for the avoidance of doubt, a floating charge) or any other type of preferential arrangement having a similar effect;

**Seller** means the party transferring the legal interest in the Property to the Borrower on the date hereof;

**Specified Interest** means a sum equal to the Remaining Proportion of the Gross Interest per annum and paid monthly in arrears;

**Specified Proportion** means a percentage stated in an application under Clause 8.2 being a minimum of 10% of the Market Value provided that the Specified Proportion may never be such that the Remaining Proportion will be less than 5%;

**Term Date** shall mean either:

- (a) (where (b) does not apply) the twenty-fifth anniversary of this Mortgage; or
- (b) (where the Lender has agreed to extend the term pursuant to Clause 13) the Extended Term Expiry Date;

**Transfer Notice** means notice served pursuant to clause 6.1;

**Valuation Notice** means notice of the determination of the Valuer of the Market Value;

**Valuer** means an independent qualified valuer appointed by agreement between the parties or failing agreement by or on behalf of the president for the time being of the Royal Institute of Chartered Surveyors on the application of either party.

- 1.2 In this mortgage where the context admits references to the “Borrower” and “the Lender” include their successors and the persons deriving title under them
- 1.3 Where the Borrower is more than one person the covenants on the part of the Borrower shall be joint and several covenants and references to the Borrower include any one or more of those persons
- 1.4 The singular includes the plural and the masculine includes the feminine and the neuter and vice versa
- 1.5 Any clauses schedules and paragraphs referred to in this mortgage are clauses schedules and paragraphs to this mortgage unless specifically stated otherwise
- 1.6 Any primary or subordinate statutory provisions referred to in this mortgage shall include any regulations statutory instruments or secondary legislation made pursuant to such statutory provisions and any variation amendment or re-enactment of such provisions.

1.7 **Nominated Agent**

The Lender reserves the right to appoint a Nominated Agent to administer this loan on its behalf and to collect all payments that are due (including any payments pursuant to Clauses 6,7 and/or 8). Where the Lender has confirmed that a Nominated Agent is appointed:

- 1.7.1 all correspondence and/or payments that are required under this mortgage should be directed to the Nominated Agent unless the Lender has notified you otherwise (in writing) of any changes to this arrangement; and
- 1.7.2 the Nominated Agent will be entitled to recover from the Borrower on behalf of the Lender any reasonable costs and expenses which the Lender is entitled to recover from the Borrower under the terms of this Mortgage.

2 **Mortgage**

- 2.1 The Borrower has agreed to the Seller of its agent being paid the Lender Contribution by the Lender and the Seller has agreed that:
- 2.1.1 the Lender Contribution will be applied towards the Full Purchase Price of the Property so that the Borrower only pays the Reduced Purchase Price; and
- 2.1.2 any obligation on the Borrower to pay an amount equal to the Lender Contribution to the Seller is satisfied by the Borrower entering into this mortgage.
- 2.2 In consideration of the reduction in the Full Purchase Price by an amount equal to the Lender's Contribution, the Borrower with full title guarantee charges all of his rights, title and interest in the Property by way of legal mortgage to the Lender as security for the discharge of the obligations and the making of the payments referred to in clause 2.3.
- 2.3 The Borrower covenants with the Lender that it will discharge all of its obligations which arise under the terms of this Mortgage and make all payments to the Lender as set out in this Mortgage as and when they fall due.

**3 Proviso for redemption and power of sale**

- 3.1 If the Borrower pays to the Lender all the sums he covenants in this mortgage to pay the Lender, the Lender will duly discharge this security in accordance with the terms of this Mortgage.
- 3.2 The Lender shall at any time after the occurrence of one of the events set out in Clause 5 have the power of sale and of appointing a receiver and other powers conferred by the Law of Property Act 1925.

**4 Covenants by the borrower**

The Borrower covenants with the Lender:

- 4.1 To pay to the Lender on or immediately after a redemption event (which is described in Clause 5) an amount equal to the Repayment Sum by reference to the valuation as on the date of such an event together with any reasonable costs and expenses incurred by the Lender pursuant to this Mortgage and any other sums payable and outstanding under this Mortgage. This payment is to be made in the way described in Clause 6 which clause also describes the valuation which is required.
- 4.2 To pay by monthly instalments by direct debit on the first day of each month (in arrears)
- 4.2.1 from the Management Fee Commencement Date the Management Fee; and
- 4.2.2 from the Payment Date the Specified Interest.
- 4.3 To occupy the Property as the Borrower's only or main residence and not to hold a legal or beneficial interest in any residential property other than the Property.
- 4.4 To keep the Property and all additions to the Property in good and substantial repair (allowing the Lender to enter and view the state of repair of the same at all reasonable times on reasonable notice without becoming liable to account as mortgagee in possession) and insured against loss or damage by fire and all other risks which the Lender reasonably considers ought to be insured against in the Borrower's name and with the interest of the Lender noted on the policy to the full value of the Property in an insurance office of repute and will duly and punctually pay all premiums and other monies necessary for effecting and keeping up such insurance immediately on the same becoming due or within one week of the due date and will on demand produce to the Lender the policy or policies of such insurance and the receipt for every such payment.
- 4.5 To apply all monies received on any insurance whatsoever in respect of loss or damage by fire or otherwise to the Property or any part of the Property in making good the loss or damage as soon as possible or (at the option of the Lender where repayment has become due under Clause 5) in or towards the discharge of the Repayment Sum.
- 4.6 To observe and perform all restrictive and other covenants all building regulations and all restrictions conditions and stipulations (if any) for the time being affecting the Property or the mode of the user or enjoyment of the same or any part of the Property.
- 4.7 To pay and discharge all existing and future rents rentcharges rates taxes duties charges assessments impositions and outgoings whatever (whether imposed by deed or statute or

otherwise and even though of a wholly novel character) now or at any time during the continuance of this security payable in respect of the Property or any part of the Property or by the owner or occupier of the Property.

- 4.8 To execute and do at the expense of the Borrower all such works and things whatever as may now or at any time during the continuance of this mortgage be directed or required by any national or local or other public authority to be executed or done upon or in respect of the Property or any part of the Property or by the owner or occupier of the Property.
- 4.9 To obtain all licences permissions and consents and execute and do all works and things and bear and pay all expenses required or imposed by any existing or future legislation in respect of any works carried out by the Borrower on the Property or any part of the Property or of any user of the Property during the continuance of this mortgage.
- 4.10 Not to make or cause or permit to be made any alteration in or addition to the Property nor carry out any development or change of use on the Property within the meaning of any legislation for the time being relating to town and country planning without the previous consent in writing of the Lender such consent not to be unreasonably withheld.
- 4.11 To deliver to the Lender within seven days of receiving them full particulars of any notice or order or proposal served or made by a planning authority affecting the Property or any part of the Property which the Borrower receives and take all necessary steps to comply with any such notice or order or proposal. If you do not comply with this clause then you must permit the Lender to enter on the Property for the purpose of taking such steps.
- 4.12 At the Borrower's own cost at the request of the Lender to make or join with the Lender in making such representations or objections or appeals in respect of any such notice, order or proposal served or made by any planning authority as the Lender may reasonably require and indemnify the Lender against all costs charges and expenses reasonably and properly incurred by the Lender in respect of such representations objections and appeals.
- 4.13 Not without the prior consent in writing of the Lender to exercise the power of leasing or agreeing to lease or accepting surrenders of leases conferred on a mortgagor in possession by the Law of Property Act 1925 nor otherwise to grant or agree to grant any lease or tenancy of the Property or any part of the Property nor to confer upon any person any contractual licence right or interest to occupy the Property or any part of the Property or part with possession of the Property.
- 4.14 Not to deal with his interest in the Property in any way other than in accordance with clause 6 or 7.
- 4.15 Without limiting the generality of Clause 4.14, not to create or permit to subsist any Security Interest on the Property, save for
- 4.15.1 any lien arising by operation of law in the ordinary course of business in relation to fixtures and fittings and securing amounts not more than 30 days overdue;
  - 4.15.2 a Security Interest securing amounts owing to a Qualifying Lender but only to the extent permitted by paragraph 10.1;
  - 4.15.3 any Security Interest created with the prior written consent of the Lender.

4.16 That it has not made any false or misleading statements or withheld information in applying to participate in the Help to Buy Initiative.

4.17 To keep the Lender fully indemnified in respect of any breach or non-observance of the covenants contained in this clause.

## 5 **Redemption events**

The occurrence of any of the following events shall trigger repayment under the provisions of Clause 4.1 of this Mortgage:

5.1 Any Disposal save for an Exempt Disposal; or

5.2 If the Borrower is in breach of the Borrower's covenants and obligations under this Mortgage the expiry of a default notice served by the Lender where the Borrower fails to take the action specified by the Lender in any default notice by the date specified for such purpose in the default notice; or

5.3 Upon repayment in full of the First Charge unless at the same time the Borrower takes out another First Charge in accordance with Clause 10; or

5.4 Any event or circumstance shall occur which would entitle the mortgagee under the First Charge to enforce the same or otherwise demand repayment of any debt secured thereby; or

5.5 The Borrower is Bankrupt; or

5.6 The occurrence of the Term Date.

## 6 **Transfer of the Property and Determining the Repayment Sum**

6.1 If the Borrower wishes to make a Disposal the Borrower must notify the Lender in writing to the effect that he wishes to make a Disposal.

6.2 Within fourteen (14) days of service of the Transfer Notice or where any of the other events set out in Clause 5 applies (each a "relevant event"), the Borrower shall apply (at its own cost) to the Valuer (whose decision shall be final) to determine the Market Value as at the date of receipt of the Transfer Notice or as at the date of the other relevant event as the case may be and within five (5) working days of receipt of such determination the Borrower shall serve a Valuation Notice on the Lender.

6.3 The Valuation Notice shall remain valid for a period of three (3) months (or four (4) months if extended by the Valuer) and in the case of a Disposal where completion of the Disposal does not take place within three (3) months (or as extended) of service of the Valuation Notice by the Borrower on the Lender, the procedure set out in Clauses 6.1 and 6.2 shall be repeated prior to the Disposal.

6.4 Upon completion of the Disposal in accordance with this Clause 6 or, where any other relevant event occurs within seven (7) days after determination of Market Value under Clause 6.2, the Borrower shall pay to the Lender the sums due in accordance with clause 4.1 PROVIDED THAT following completion of a Disposal no person shall be registered as proprietor of the Property until such time as the sums due in accordance with clause 4.1 are paid to the Lender at which time the Lender shall provide consent to the registration in



accordance with Clause 11 and apply to the Land Registry to remove the restriction referred to in Clause 11 from the Register.

## **7 Redemption before transfer**

7.1 If the Borrower wishes to redeem this mortgage before an event specified in clause 5 the following procedure shall apply:

7.1.1 The Borrower shall apply in writing to the Lender.

7.1.2 Within fourteen (14) days of service of the notice as specified in 7.1.1 the Borrower shall apply (at its own cost) to the Valuer (whose decision shall be final) to determine the Market Value as at the date of receipt of such application and within five working days of receipt of such determination by the Valuer the Borrower shall serve a Valuation Notice on the Lender.

7.1.3 At any time within three (3) months (or four (4) months if extended by the Valuer) of service of the Valuation Notice the Borrower may pay an amount equal to the Repayment Sum together with any reasonable costs and expenses incurred by the Lender pursuant to this Mortgage and together with any other sums payable and outstanding under this Mortgage.

7.1.4 As soon as reasonably possible after receipt of such payment the Lender will duly discharge this security and apply to the Land Registry to remove the restriction referred to in clause 11 from the Register.

## **8 Redemption of part before transfer**

8.1 Subject to Clause 8.2 the Borrower shall be permitted to redeem a Specified Proportion of this Mortgage at any time before an event specified in clause 5 and the following procedure shall apply:

8.2 The Borrower shall apply in writing to the Lender indicating what Specified Proportion the Borrower would like to redeem.

8.3 Within fourteen (14) days of service of such an application as specified in 8.2 the Borrower shall apply to the Valuer to determine the Market Value as at the date of receipt of such application and within five (5) working days of receipt of such determination by the Valuer the Borrower shall serve a Valuation Notice on the Lender together with written confirmation of any change to the Specified Proportion that the Borrower would like to repay following on from such valuation.

8.4 At any time within three (3) months (or four (4) months if extended by the Valuer) of service of the Valuation Notice the Borrower may pay the Specified Proportion (as specified in accordance with 8.2 or 8.3) of the Market Value together with any reasonable costs and expenses incurred by the Lender pursuant to this Mortgage together with any other sums payable and outstanding under this Mortgage.

8.5 As soon as reasonably possible after receipt of such payment the Lender shall execute a Memorandum evidencing the redemption of part and specifying the Remaining Proportion and details of the revised amount of Specified Interest and provide such Memorandum to the Borrower.

9 **Interest Review**

9.1 On and with effect from each Review Date the Gross Interest shall be adjusted by increasing the actual amount of Gross Interest payable immediately before that Review Date by 1% plus the increase (if any and expressed as a percentage) in RPI for the twelve (12) month period ending at the end of the September immediately preceding that Review Date.

9.2 On each Review Date the Specified Interest shall be increased to an amount equal to the Remaining Proportion of the Gross Interest increased in accordance with clause 9.1 as at the relevant Review Date.

10 **Provisos**

10.1 This Mortgage shall have priority immediately after one (1) prior legal charge (including any further advances issued in accordance with that legal charge for the purposes below) securing an amount advanced to the Borrower by a lending institution which is a Qualifying Lender for the purposes of enabling the Borrower to

10.1.1 acquire the Property; or

10.1.2 fund improvements in the Property which have been approved by the Lender; or

10.1.3 redeem a sum pursuant to Clause 7 or 8; or

10.1.4 refinance an existing loan made in accordance with this clause 10.1;

provided that such legal mortgage (or any further advances) is approved in advance in writing by the Lender and the capital sum advanced under such legal mortgage (or as a further advance as applicable) does not exceed, where clause 10.1.1 applies, the sum equal to the Initial Market Value less the Contribution and any deposit paid by the Borrower or where clause 10.1.2 applies, the amount payable in respect of such improvements or where clause 10.1.3 applies, the sum required to redeem a sum pursuant to Clause 7 or 8 or where 10.1.4 applies, the amount originally borrowed under the existing loan (plus any further advances) as approved in accordance with this Clause 10.1.

10.2 If default shall at any time be made by the Borrower in the performance of any of the covenants contained in this Mortgage it shall be lawful for but not obligatory upon the Lender:

10.2.1 to perform the same and to pay all costs and damages reasonably occasioned by such default; and

10.2.2 with power in the case of any failure to repair in accordance with the covenants contained in this mortgage to enter upon the Property upon reasonable prior written notice without becoming liable to account as mortgagee in possession.

10.3 All monies expended by the Lender for any such purpose and all costs charges and expenses reasonably and properly incurred by the Lender in relation to the protection or enforcement of this security whether involving litigation or not shall on demand be repaid to the Lender by the Borrower.

- 10.4 If the Borrower fails to pay any amount payable by it under this mortgage, it shall on demand by the Lender, pay interest on both the overdue amount and on all costs, charges and expenses properly incurred by the Lender in relation to the protection or enforcement of this security (whether involving litigation or not and on a complete unlimited and unqualified indemnity basis) from the date upon which such amount was due up to the date of actual payment, both before and after judgement, at the Default Interest Rate (such interest being compounded at such intervals as the Lender shall determine but no more than once per year).
- 10.5 Until repayment all monies due shall be a charge on the Property provided that the charge shall be in addition and without prejudice to any and every other remedy lien or security which the Lender may or but for the said charge would have for the recovery of monies secured by this mortgage or any part of those monies.

## 11 **Restriction**

The parties agree that no person or persons shall be registered under the Land Registration Acts 1925 to 2002 or any statutory amendment or re-enactment of those Acts as proprietor or proprietors of the Property or any part of the Property without the consent in writing of the Lender (which shall not be granted if the Lender is not satisfied that other provisions of this Agreement have been complied with in relation to the Property) and the Borrower shall at the same time as registering this mortgage apply to HM Land Registry for the following restriction in standard form P pursuant to rule 91 and Schedule 4 of the Land Registration Rules 2003 (as amended) to be entered in the proprietorship register of the title to the Property:

**“No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [●] 20[●] in favour of Homes and Communities Agency referred to in the charges register”**

## 12 **Possession**

If the Lender shall enter into possession of the Property (or any part of the Property) the Lender may from time to time go out of such possession and shall not be liable to account as mortgagee in possession while in fact out of such possession provided that notice of such fact shall within seven days after its happening be served on the Borrower.

## 13 **Extension of the term of this Mortgage**

13.1 Where prior to the Term Date (but no earlier than the twenty-fourth anniversary of the date of this Mortgage) the Borrower requests in writing to the Lender an extension to the term of this Mortgage, the Lender hereby agrees to consent to such request provided that:

- 13.1.1 the term of the First Charge (including any replacement First Charges approved by the Lender pursuant to Clause 10.1) is due to expire after the Term Date; and
- 13.1.2 the First Charge is valid and subsisting as at the date the Lender grants its consent to any extension; and

13.1.3 the approved extension matches (or does not exceed) the remaining term of the First Charge.

13.2 In approving any extension of the term of this Mortgage pursuant to Clause 13.1, the Lender shall confirm in writing the length of the extension and the Extended Term Expiry Date for the purposes of Clause 5.5.

**In witness** of the above provisions the Borrower has executed this mortgage as a deed the day and year set out at the beginning of this mortgage

**The First Schedule to the Equity Mortgage (Homes and Communities Agency)  
The Property**

**[•]**

**Title Number**

**[•]**

**The Second Schedule to the Equity Mortgage (Homes and Community Agency)  
Memorandum Of Redemption Of Part**

Borrower : [●]

Lender : Homes and Communities Agency

This is to record

On the [●] day of [●] 201[●] the Borrower paid to the Lender £[●] being [●]% (the Specified Proportion) of the Market Value as assessed by the Valuer on the [●] day of [●] 201[●]

The Remaining Proportion from the [●] day of [●] 201[●] shall be [●]%

Signed by the Borrower

Signed as a deed by the Borrower(s):

.....

.....

in the presence of:

Signature: .....  
.....

Name (BLOCK CAPITALS): .....  
.....

Address<sup>1</sup>: .....  
.....  
.....,  
.....

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<sup>1</sup> Please note that if there is more than one borrower, the deed will need to be executed by each borrower and each borrower's signature must be witnessed.