**DATED 2020**

1. **CHERWELL DISTRICT COUNCIL**

and

1. **HEYFORD REGENERATION LIMITED**

and

1. **LLOYDS BANK PLC**

-----------------------------------------------------

**SUPPLEMENTAL DEED UNDER SECTION 106A**

**OF THE TOWN AND COUNTRY**

**PLANNING ACT 1990 (AS**

**AMENDED)**

**relating to land at Upper Heyford, Oxfordshire**

----------------------------------------------------



Devonshires Solicitors

30 Finsbury Circus

London

EC2M 7DT

**THIS DEED** is made the day of 2020

**BETWEEN**:

1. **CHERWELL DISTRICT COUNCIL** of Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA **(“the District Council”)**; and
2. **HEYFORD REGENERATION LIMITED** (Co. Reg. No. 08610471) of Heyford Park House, Heyford Park, Camp Road, Upper Heyford, Bicester OX25 5HD **(“the Association”)**
3. **LLOYDS BANK PLC** (Co. Reg. No. 2065) whose registered office is at 25 Gresham Street, London EC2V 7HN **(“the Bank”)**

**WHEREAS:**

1. The District Council is the local planning authority for the purposes of the Act for the area in which the Upper Heyford Site is situated.
2. Planning permission was granted on 22 December 2011 in respect of application 10/01642/OUT (the “Outline Permission”) relating to the Site (as defined in the Principal Agreement).
3. The Principal Agreement secured a number of the dwellings comprising the development permitted by the Outline Permission to be provided as Affordable Housing Units in accordance with a specified tenure mix.
4. This Deed (the “Deed”) pertains to those Affordable Housing Units which have been provided pursuant to the Principal Agreement and transferred to the Association which are shown for identification purposes only edged red on the Affordable Housing Plan attached to this Deed (the “Heyford Affordable Housing Units”).
5. The Association is the freehold owner of the Heyford Affordable Housing Units and is the person against whom the obligations regulating the use and occupation are enforceable.
6. The Bank is the proprietor of a first legal charge registered in respect of some of the Heyford Affordable Housing Units.
7. The parties hereto have agreed that the obligations in the Principal Agreement shall be varied insofar as they affect the Heyford Affordable Housing Units in the manner hereinafter appearing and pursuant to Section 106 and Section 106A of the Act as amended.

**NOW IT IS AGREED** as follows:

1. **Definitions and Interpretation**
   1. The definitions in the Principal Agreement shall apply to this Deed unless the context otherwise requires or as varied pursuant to the terms of this Deed and in this Deed the following expression shall have the following meaning:

**“Act”** the Town and Country Planning Act 1990

**“Affordable Housing Plan”** the plan attached hereto identifying the Heyford Affordable Housing Units

**“Chargee”** any mortgagee or chargee of the Registered Provider of the Affordable Housing Units or any part of it and includes any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 (including a Housing Administrator under the provisions of the Housing and Planning Act 2016) howsoever appointed or any person appointed under any security documentation to enable such mortgagee or chargee to realise its security

**“Mortgage Land”** the Affordable Housing Site or any part of it which is mortgaged or charged to the Chargee at any time

**“Principal Agreement”** the agreemententered into pursuant to section 106 of the Act dated 22 December 2011 and made between the District Council (1), Oxfordshire County Council (2), Upper Heyford GP Limited and Upper Heyford Nominee Limited (3), Dorchester Heyford Park GP Limited and Dorchester Heyford Park Nominee Limited (4), FREP 2 (Heyford Park) Limited (5) and Investec Bank PLC (6) as such agreement has subsequently been amended and supplemented by the agreements pursuant to Section 106 and Section 106A of the Town and Country Planning Act 1990 (as amended) on the following dates:

28 August 2012

27 June 2014

30 March 2016

8 May 2017

12 October 2017

21 March 2019

**“Registered Provider”** Heyford Regeneration Limited or an alternative provider of affordable housing which is designated in the registered maintained by the RSH or any similar future authority carrying on substantially the same regulatory or supervisory functions pursuant to section 111 of the Housing and Regeneration Act 2008 as a non-profit organisation under sub-sections 115(1)(a) or 278(2) of the Act or which is designated in that register as a profit-making organisation under section 115(1)(b) of the Housing and Regeneration Act 2008 which is EITHER on the District Council’s list of preferred partners OR has demonstrated that it meets the performance criteria applicable to an organisation with preferred partner status and has been approved in writing by the District Council (such approval not to be unreasonably withheld or delayed)

**“RSH”** the Regulator of Social Housing, an executive non-departmental public body, who regulates Registered Providers and any successor or successors for the time being of the RSH and any similar future authority responsible for the regulation of social housing

1. **Variations**
   1. The following variations will be made to the Principal Agreement from the date hereof insofar as they relate to the Heyford Affordable Housing Units:

2.1.1. The definition of “Chargee” as set out above shall be included in Schedule 3 of the Principal Agreement.

2.1.2 Paragraph 9 of Schedule 3 of the Principal Agreement shall be deleted and substituted with the following:

“9. The provisions of this Schedule 3 will not be binding on the Chargee or a bona fide purchaser for value from the Chargee exercising its power of sale (other than a purchaser which is a registered provider) or the successors in title of such purchaser provided that the provisions below have been complied with:

9.1 It is hereby agreed and declared that the proviso contained in paragraph 9 will only apply where the Chargee exercising its power of sale:

9.1.1 has first served written notice on the District Council of its intention to exercise its power of sale or other power or right conferred upon it, in its mortgage, charge or other security;

9.1.2 has used reasonable endeavours over a period of three months from receipt of notification pursuant to paragraph 9.1.1 above to dispose of the Mortgage Land subject to any leases and tenancies then subsisting and to the terms of this Deed to a Registered Provider or the District Council; and

9.1.3 if upon expiry of 3 months from the date of receipt by the District Council of the notice in paragraph 9.1.1 above and provided the steps detailed in this paragraph have been completed no transfer of the Mortgage Land to either the District Council or a Registered Provider has completed then upon expiry of the said 3 months the Chargee shall be able to sell the Mortgage Land free from the restrictions in this Schedule with the effect that they shall cease to bind the Mortgage Land.

PROVIDED ALWAYS that nothing herein shall require the Chargee to dispose of the Mortgage Land at a price which is less than the greater of the open market value of the Mortgage Land (subject to the restrictions contained within this Schedule) or all sums due under the terms of the Chargee’s mortgage or charge together with costs and expenses of the sale of the Mortgage Land and interest due to the Chargee.”

2.1.3 A new paragraph 9A shall be inserted which shall state:

“9A. It is agreed that the provisions of this Schedule 3 shall not be binding on any purchaser pursuant to the exercise of a statutory or voluntary right to buy, preserved right to buy or right to acquire or any owner of Shared Ownership Housing who has staircased up to 100% or any mortgagee, chargee or successor in title thereto.

3. **Miscellaneous provisions**

3.1 This Deed is made pursuant to section 106A of the Act so as to vary the provisions of the Principal Agreement insofar as they relate to the provision of the Heyford Affordable Housing Units

3.2 The Principal Agreement shall remain fully effective as varied by this Deed and the terms of this Deed have effect as though the provisions contained in this Deed had been originally contained in the Principal Agreement and shall remain enforceable by the District Council (and by the Oxfordshire County Council as provided therein)

3.3 This Deed is a Local Land Charge and the District Council shall register it in its Register of Local Land Charges in accordance with the provisions of the Local Land Charges Act 1975 and Section 106(11) of the Act as amended.

3.4 If any provision of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed to be affected or impaired.

3.5 This Deed shall be governed by and construed in accordance with the laws of England and each of the parties hereby submits to the exclusive jurisdiction of the English Court.

**IN WITNESS** whereof this Deed has been executed by the parties hereto as a Deed and is intended to be and is hereby delivered on the date first above written.

|  |  |
| --- | --- |
| EXECUTED as a Deed by affixing the Common Seal of **CHERWELL DISTRICT COUNCIL** in the presence of: |  |
|  | ……………………………………………… Authorised Signatory |

|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |
| EXECUTED as a Deed by affixing the Common Seal of **HEYFORD REGENERATION LIMITED** in the presence of: | ……………………………………………… Director  ……………………………………………… Director/Secretary |
|  |  |
| EXECUTED as a Deed by affixing BY [ ] as attorney for **LLOYDS BANK PLC** in the  presence of: | ……………………………………………… Witness Signature  ……………………………………………… Witness Name  ……………………………………………… Witness Address |
|  |  |

**The Plan**