

DATED 19 April 2021

HEYFORD REGENERATION LIMITED

and

LLOYDS BANK PLC

and

CHERWELL DISTRICT COUNCIL

and

OXFORDSHIRE COUNTY COUNCIL

MODIFICATION OF PLANNING OBLIGATIONS BY AGREEMENT

pursuant to Section 106A of

the Town and Country Planning Act 1990

in relation to Planning Obligations by Agreement dated

22 December 2011, 30 March 2016 and 8 May 2017

relating to the development of

land at Upper Heyford, Oxfordshire

*Anita Bradley
Director of Law and Governance
Bodicote House
White Post Road
Bodicote
Banbury
Oxfordshire OX15 4AA*

Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

THIS DEED is made the.....^{19th}.....day of.....^{April}.....2021

BETWEEN:

- (1) **HEYFORD REGENERATION LIMITED** (Co. Reg. No. 08610471) of Heyford Park House, Heyford Park, Camp Road, Upper Heyford, Bicester OX25 5HD (**"the Association"**)
- (2) **LLOYDS BANK PLC** (Co. Reg. No. 2065) whose registered office is at 25 Gresham Street, London EC2V 7HN (**"the Mortgagee"**);
- (3) **CHERWELL DISTRICT COUNCIL** of Bodicote House, White Post Road, Bodicote, Banbury in Oxfordshire OX15 4AA (**"the Council"**); and
- (4) **OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxford, in Oxfordshire, OX1 1ND (**"the County Council"**)

WHEREAS:

- (A) For the purposes of the 1990 Act the Council is the local planning authority for the area in which the Site is situated.
- (B) For the purposes of the 1990 Act the County Council is a local planning authority for the area in which the Site is situated.
- (C) The Association is now the freehold owner (Subject to certain leases) of those parts of the Site shown edged in red on the plans attached hereto the details of that ownership being set out in the First Schedule
- (D) The Mortgagee has an interest in some of those parts of the Site edged in red on the plans attached hereto which parts being detailed in the First Schedule
- (E) By the Original Undertaking a Planning Obligation relating to the Site was entered into and was subsequently modified or supplemented by the Modifications and the Original Agreement as so modified or supplemented now constitutes the Principal Agreement
- (F) The Principal Agreement remains enforceable by the Council and the County Council against all those with an interest in the Site.
- (G) Application has been made to the Council (allocated reference 20/03596/M106) to modify the planning obligations set out in the Principal Agreement and the Standalone Agreements

- (H) The Principal Agreement secured (inter alia) exemption from compliance with certain obligations relating to affordable housing should a chargee enforce its security held over any part of the Site owned by a Registered Proprietors but the Council and the County Council consider that the obligations therein continue to serve a useful purpose but the Council is of the view that they would serve that purpose equally well if the Principal Agreement had effect subject to the modifications applied for and as set out herein subject to the completion of this Deed.
- (I) This Deed is supplemental to and modifies the Principal Agreement in the manner hereinafter appearing.

NOW THIS DEED WITNESSES AS FOLLOWS

1. INTERPRETATION

1.1 In this Deed defined terms shall have the meanings given to them in the Principal Agreement unless otherwise stated herein or as follows:

Term	Meaning
“Original Undertaking”	means the agreement details of which are set out in Part 1 the Second Schedule
“the Modifications”	means the modifications to the Original Undertaking effected by the agreements details of which are set out in the Third Schedule
“Standalone Agreements”	means the agreements details of which are set out in Part 2 the Second Schedule

1.2 In this Deed where the context so requires:-

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 references to clauses schedules and paragraphs are references to clauses schedules and paragraphs in this Deed except where otherwise specified;
- 1.2.3 title headings to the clauses schedules and paragraphs are for convenience only and shall not affect the interpretation of this Deed.

2. LEGAL EFFECT

- 2.1 This Deed is supplemental to the Principal Agreement and is made pursuant to Section 106 and 106A of the 1990 Act Section 111 of the Local Government Act 1972 Section 120 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other powers so enabling the parties to enter this Deed and to give effect to its provisions.
- 2.2 Save as herein modified the Principal Agreement shall continue in full force and effect and shall be enforceable by the Council and the County Council as the local planning and County planning authorities for the area within which the Site is situated.
- 2.3 Nothing in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council and/or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its/their functions as local authority.
- 2.4 For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed is intended to confer any benefit upon or create rights in favour of any party other than the parties executing this Deed and their respective successors in title
- 2.5 This Deed shall take effect upon the date hereof

3. MODIFICATION OF THE PRINCIPAL AGREEMENT

- 3.1 The Association the Mortgagee the Council the County Council, hereby agree that as regards those parts of the Site shown edged in red on the plans and owned by the Association the Principal Agreement shall be modified in the manner set out in Schedule 2 of this Deed and that save as herein varied the Principal Agreement shall continue in full force and effect.

4. COSTS

The Association covenants to pay on completion of this Deed

- 4.1 the sum of £3,500 to the Council being the Council's proper and reasonable legal costs in in connection with this Deed; and
- 4.2 the sum of £280 to the Council being the Council's proper and reasonable costs incurred in the execution and in accordance with Clause 6 registration of this Deed; and
- 4.3 the sum of £500 to the County Council being the County Council's proper and reasonable legal costs in in connection with this Deed

5. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales

6. LOCAL LAND CHARGE


This Deed shall be registered as a local land charge by the Council.

EXECUTED as a **DEED** by the parties hereto and delivered on the date set out at the beginning of this Deed

FIRST SCHEDULE

Title Number	Brief Description	Mortgagee's interest
ON316908	13 (odd) and 17 to 21 (odd) Broad Way, Upper Heyford	REGISTERED CHARGE dated 13 March 2018
ON317508	9 to 17 (inclusive) Bourne End and 2 to 6 (even) Broad Way, Upper Heyford	REGISTERED CHARGE dated 13 March 2018
ON324087	56 Hampden Square, Upper Heyford	REGISTERED CHARGE dated 13 March 2018
ON324093	70 Hampden Square, Upper Heyford	REGISTERED CHARGE dated 13 March 2018
ON324094	72 Hampden Square, Upper Heyford	REGISTERED CHARGE dated 13 March 2018
ON324099	21 Hampden Square, Upper Heyford	REGISTERED CHARGE dated 13 March 2018
ON324100	23 Hampden Square, Upper Heyford	REGISTERED CHARGE dated 13 March 2018
ON330191	Land on the east side of Dacey Drive, Upper Heyford	REGISTERED CHARGE dated 13 March 2018
ON331367	1, 3, 4, 6, 8 to 15, 21 and 23 Bayliss Drive, 5, 7, 9, 11 to 18, and 20 Dale Way, 21A, 21B and 21C Carswell Circle, Upper Heyford	REGISTERED CHARGE dated 13 March 2018
ON332595	Land lying to the south of Camp Road, Upper Heyford	REGISTERED CHARGE dated 13 March 2018
ON338225	19 Gordon Road, and 2 to 18 (even) Allen Row, Eady Road, Upper Heyford	REGISTERED CHARGE dated 28 March 2019
ON341607	land on the north side of Williams Road, Upper Heyford	REGISTERED CHARGE dated 28 March 2019
ON351207	2 Nash Road, Upper Heyford	None
ON355724	Plots 361 to 364 (inclusive), 370 to 377 (inclusive), 382 to 388 (inclusive), 390 and 391 Heyford Park, Camp Road, Upper Heyford	None
ON356033	Land lying to the north of Camp Road, Upper Heyford	None
ON356060	29 and, 30 Nash Road, Upper Heyford	None
ON357283	389 and 392, Heyford Park, Camp Road, Upper Heyford	None



KEY
 AREA OF AFFORDABLE PLOTS

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B. Malhotra


Chris Smith

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HEYFORD PARK - COMPOSITE PLAN (1of3)





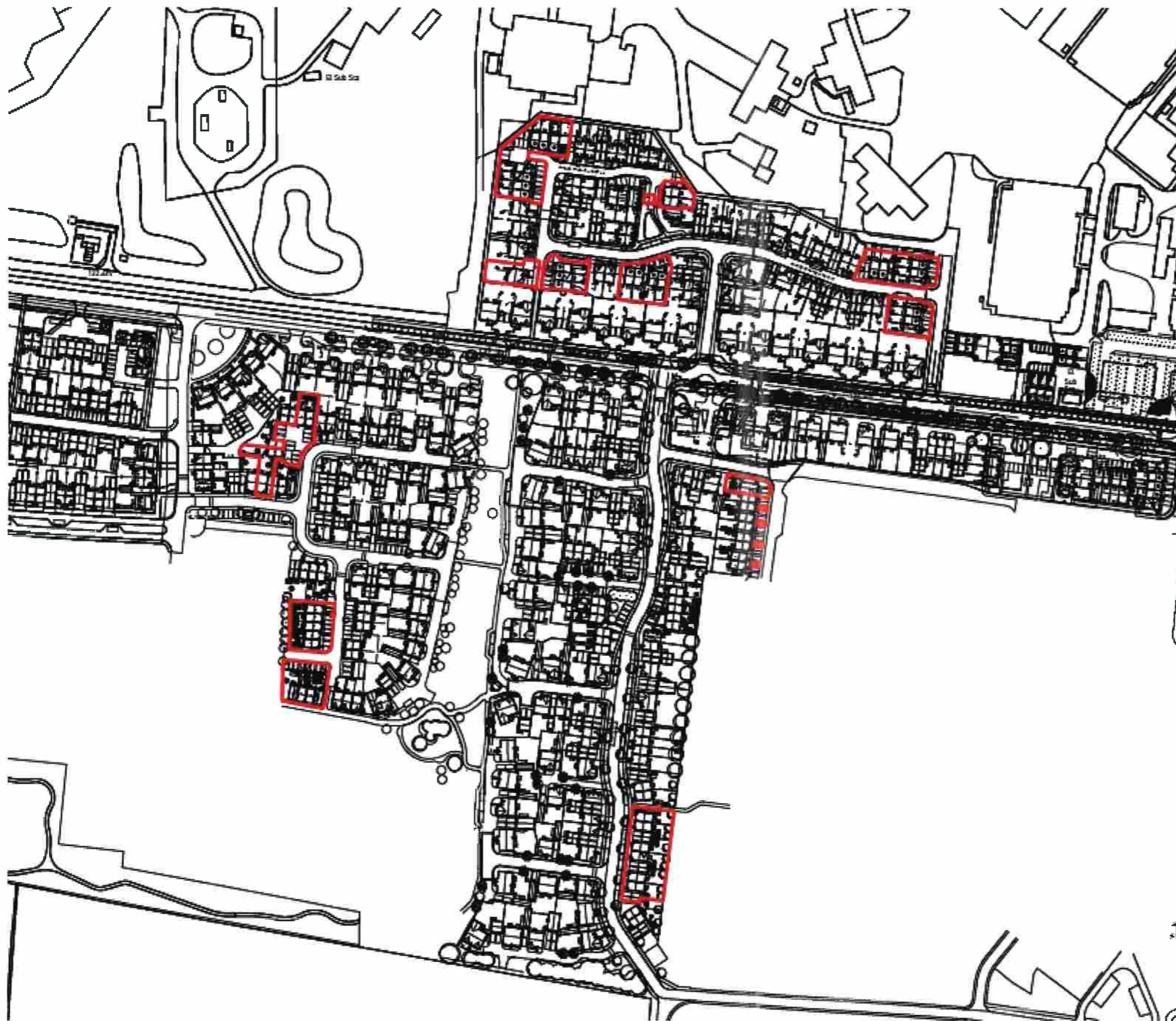
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 [Signature]
 B. Malhotra
 Chris Smith

Handwritten signature:
 P. [Signature]

HEYFORD PARK - COMPOSITE PLAN (2of3)





KEY
 AREA OF AFFORDABLE PLOTS

al
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B. Mallow
Chris Smith
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HEYFORD PARK - COMPOSITE PLAN (3of3)



SECOND SCHEDULE

PART 1: THE PRINCIPAL AGREEMENT

THE agreement entered into pursuant to (inter alia) 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) in connection with the grant of planning permission ref no 10/01642/OUT

PART 2: THE STANDALONE AGREEMENTS

The agreements entered into pursuant to (inter alia) section 106 of the Act dated

- 1.1 30 March 2016 entered into by the District Council (1) the Oxfordshire County Council (2) Dorchester Heyford Park GP Limited and Dorchester Heyford Park Nominee Limited (3) Upper Heyford GP Limited and Upper Heyford Nominee Limited (4) Heyford Park Estate Limited (5) Bovis Homes Limited (6) Heyford Commercial Limited (7) Heyford Commercial Development Limited (8) Heyford Residential Limited (9) Lloyds Bank PLC (10) and Secure Trust Bank PLC (11) in respect of land at Dow Street (“**the First Standalone Agreement**”);
and
- 1.2 8 May 2017 between the District Council (1) the Oxfordshire County Council (2) Dorchester Heyford Park GP Limited and Dorchester Heyford Park Nominee Limited (3) Upper Heyford GP Limited and Upper Heyford Nominee Limited (4) Heyford Park Estate Limited (5) Bovis Homes Limited (6) Heyford Commercial Limited (7) Heyford Commercial Development Limited (8) Heyford Residential Limited (9) Lloyds Bank PLC (10) and Secure Trust Bank PLC (11) Heyford Park Developments Limited (12) and Mount Street Mortgage Servicing Limited (13) in respect of land at Camp Road Upper Heyford (Phase 6) (“**the Second Standalone Agreement**”)

THIRD SCHEDULE THE MODIFICATIONS

Supplemental Agreement dated 28 August 2012 made between (1) Cherwell District Council, (2) Oxfordshire County Council, (3) Upper Heyford GP Limited and Upper Heyford Nominee Limited, (4) Dorchester Heyford Park GP Limited and Dorchester (Heyford Park) Limited, (5) FREP 2 (Heyford Park) Limited and (6) Investec Bank PLC.

Deed of Variation dated 27 June 2014 made between (1) Cherwell District Council, (2) Oxfordshire County Council, (3) Dorchester Heyford Park GP Limited and Dorchester Heyford Park Nominee Limited, (4) Upper Heyford GP Limited and Upper Heyford Nominee Limited, (5) Heyford Park Estate Limited, (6) Bovis Homes Limited, (7) Heyford Commercial Limited, (8) Heyford Commercial Development Limited, (9) Heyford Residential Limited, (10) Trimont Real Estate Advisors BV, and (11) Lloyds Bank PLC.

Supplemental Deed of Variation dated 30 March 2016 made between (1) Cherwell District Council, (2) Oxfordshire County Council, (3) Dorchester Heyford Park GP Limited and Dorchester Heyford Park Nominee Limited, (4) Upper Heyford GP Limited and Upper Heyford Nominee Limited, (5) Heyford Park Estate Limited, (6) Bovis Homes Limited, (7) Heyford Commercial Limited, (8) Heyford Commercial Development Limited, (9) Heyford Residential Limited, (10) Lloyds Bank PLC and (11) Secure Trust Bank PLC.

Supplemental Deed of Variation dated 8 May 2017 made between (1) Cherwell District Council, (2) Oxfordshire County Council, (3) Dorchester Heyford Park GP Limited and Dorchester Heyford Park Nominee Limited, (4) Upper Heyford GP Limited and Upper Heyford Nominee Limited, (5) Heyford Park Estate Limited, (6) Bovis Homes Limited, (7) Heyford Commercial Limited, (8) Heyford Commercial Development Limited, (9) Heyford Residential Limited, (10) Lloyds Bank PLC, (11) Secure Trust Bank PLC, (12) Heyford Park Developments Limited and (13) Mount Street Mortgage Servicing Limited.

Deed of Variation dated 12 October 2017 made between (1) Cherwell District Council, (2) Dorchester Heyford Park GP Limited and Dorchester Heyford Park Nominee Limited, (3) Heyford Park Estate Limited, (4) Heyford Park Developments Limited, (5) Bovis Homes Limited, (6) Secure Trust Bank PLC, and (7) Heyford Regeneration Limited.

Deed of Variation dated 21 March 2019 made between (1) Cherwell District Council, (2) Oxfordshire County Council, (3) Heyford Park Developments Limited and (4) Secure Trust Bank PLC.

FOURTH SCHEDULE

MODIFICATION(S) TO THE PRINCIPAL AGREEMENT AND STANDALONE AGREEMENTS

1. THE PRINCIPAL AGREEMENT

The Third Schedule of the Principal Agreement shall be modified as follows

1.1 Delete the term and definition of “Affordable Housing Provider” and substitute the words “*Registered Provider*” wherever the term ‘Affordable Housing Provider’ appears in the Third Schedule

1.2 After the definition of “Affordable Rented Housing” insert:

“Chargee” *means any mortgagee or chargee of the Registered Provider of the Affordable Housing Site or any part of it or of any Affordable Housing Unit and includes any receiver or manager or administrator appointed pursuant to the Law of Property Act 1925 or any administrator appointed by such mortgagee or chargee including a Housing Administrator under the provisions of the Housing and Planning Act 2016 or any person appointed under any security documentation to enable such mortgagee or chargee to realise its security.*

1.3 After the definition of ‘Market Rent’ insert

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

1.4 After the definition of ‘Optimum Housing Mix’ insert

“Registered Provider” *means Heyford Regeneration Limited or an alternative provider of Affordable Housing which is designated in the register maintained by the HCA 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 and 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 (and where such request has been submitted it shall be deemed approved where there is no response from the District Council within 6 weeks of receipt of such request by the District Council)

1.5 Delete the wording of paragraph 9 and substitute the following

“9. Paragraph 1.2, 1.5, 1.6 and 8 above will not be binding on

9.1 a bona fide purchaser for value from the Chargee exercising its power of sale (other than to a purchaser which is a Registered Provider) or the successors in title of such purchaser or persons deriving title therefrom provided that 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, its mortgage, charge or other security; and

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 of Agreement to a Registered Provider or the District Council

and if upon the 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 in this paragraph have been completed and no transfer of the Mortgage Land to either the District Council or a Registered Provider has completed within the said period of 3 months the Chargee shall be able to sell the Mortgage Land free from the obligations 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 under the mortgage;

9.2 *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 acquired 100% of the equity therein (or any successor in title thereto) or to any completed Affordable Housing Dwellings where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to Section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof or any mortgagee or chargee of any such purchaser nor any administrator, administrative receiver, fixed charge receiver including any receiver appointed under the Law of Property Act 1925 or any other person appointed under any security documentation by such mortgagee or any person deriving title through such persons; or*

9.3 *any statutory undertaker in respect of any part of the Site which the statutory undertaker occupies as part of its undertaking."*

2. THE FIRST STANDALONE AGREEMENT

In the Second Schedule of the First Standalone Agreement:

2.1 Under the heading 'Definitions' (page 18) delete the wording defining the term 'Chargee' and insert:

"any mortgagee or chargee of the Registered Provider of the Affordable Housing Site or any part of it includes any receiver or manager or administrator appointed pursuant to the Law of Property Act 1925 or any administrator appointed by such mortgagee or chargee including a Housing Administrator under the provisions of the Housing and Planning Act 2016 or any person appointed under any security documentation to enable such mortgagee or chargee to realise its security."

2.3 Delete paragraph 4 and substitute therefore:

4. *It is hereby agreed and declared that the proviso contained in paragraph 3 will only apply where the Chargee exercising its power of sale:*

- 4.1. *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; and*
- 4.2. *has used reasonable endeavours over a period of three months from receipt of notification pursuant to paragraph 4.1 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*
- 4.3. *if upon expiry of 3 months from the date of receipt by the District Council of the notice in paragraph 4.1 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 obligations in this Schedule with the effect that they shall cease to bind the Mortgage Land and determine absolutely.*

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 under the mortgage."

3. THE SECOND STANDALONE AGREEMENT

In the Second Schedule of the Second Standalone Agreement:

- 3.1 Under the heading 'Definitions' (page 17) delete the wording defining the term 'Chargee' and insert:

"any mortgagee or chargee of the Registered Provider of the Affordable Housing Site or any part of it includes any receiver or manager or administrator appointed pursuant to the Law of Property Act 1925 or any administrator appointed by such mortgagee or chargee including a Housing Administrator under the provisions of the Housing and Planning Act 2016 or any person appointed under any security documentation to enable such mortgagee or chargee to realise its security."

3.2 Delete paragraph 4 and substitute therefore:

4. *It is hereby agreed and declared that the proviso contained in paragraph 3 will only apply where the Chargee exercising its power of sale:*

4.1. *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; and*

4.2. *has used reasonable endeavours over a period of three months from receipt of notification pursuant to paragraph 4.1 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*

4.3. *if upon expiry of 3 months from the date of receipt by the District Council of the notice in paragraph 6.1 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 obligations in this Schedule with the effect that they shall cease to bind the Mortgage Land and determine absolutely.*

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 under the mortgage."

EXECUTED as a **DEED** by **HEYFORD REGENERATION LIMITED** acting by a Director and Secretary or two Directors:

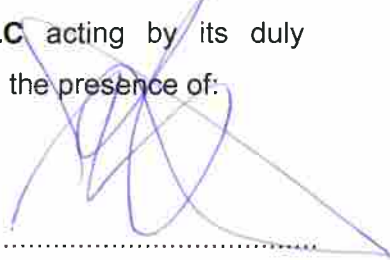
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Director
Director/Secretary

SIGNED AS A DEED for and on behalf of
LLOYDS BANK PLC acting by its duly
authorised attorney in the presence of:

B. McAulister

Witness signature: 

Witness name:
(BLOCK CAPS) BRADLEY MCAULISTER

Witness address: 56, 10 GRESHAM STREET,
LONDON

EXECUTED as a **DEED** by affixing the
COMMON SEAL of **CHERWELL DISTRICT**
COUNCIL in the presence of:



Paul
Authorised Signatory

EXECUTED as a **DEED** by affixing the
common seal of **OXFORDSHIRE COUNTY**
COUNCIL in the presence of:

Chris Smith

Director of Law and Governance/
Authorised Signatory

