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## DEED OF VARIATION

UNDER SECTIONS 106 AND 106A TOWN AND COUNTRY PLANNING  
ACT 1990

RELATING TO LAND AT HOTEL SITE BICESTER HERITAGE  
BUCKINGHAM ROAD BICESTER OX26 5HA

OXFORDSHIRE COUNTY COUNCIL	(1)
BICESTER MOTION LIMITED	(2)
THE SECRETARY OF STATE FOR DEFENCE	(3)

Ref: JF16/ED04  
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**Borges  
Salmon**

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Classification: Confidential

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THIS AGREEMENT is made on

15<sup>th</sup> February 2023

## PARTIES

- (1) **OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxford, OX1 1ND (the "Council");
- (2) **BICESTER MOTION LIMITED** (company registration number 8273333) of Bicester Heritage, Buckingham Road, Bicester, Oxfordshire OX27 8AL (formerly Bicester Heritage) (the "Owner"); and
- (3) **THE SECRETARY OF STATE FOR DEFENCE** (Property Legal Team, Defence Infrastructure Organisation) of Mailpoint 2215, Poplar 2, Abbey Wood, Bristol, BS34 8JH (the "Mortgagee").

## BACKGROUND

- (A) The Council is the local planning authority for the purposes of s 106 and s 106A of the 1990 Act for the area within which the Site is situated and is capable of enforcing the obligations in the Original Agreement.
- (B) The Owner is the registered proprietor of the freehold of the Site under title number ON 307011 subject to a charge in favour of a Mortgagee but otherwise free from encumbrances.
- (C) On 10 March 2020 the Council, the Owner and the Mortgagee entered into the Original Agreement.
- (D) On 19 May 2022 the Owner made an application pursuant to section 73 of the 1990 Act to Cherwell District Council with reference 22/01643/F to vary the Planning Permission and in relation to which the completion of this Agreement is required.
- (E) Without prejudice to the covenants in the Original Agreement the parties have agreed to vary the terms of the Original Agreement as set out in this Agreement.

## IT IS AGREED:

### 1 INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

"1990 Act" means the Town and Country Planning Act 1990 (as amended);

"Charge" means the charge against part of the Site dated 27 March 2013 referred to in the Charges Register of the land registered at HM Land Registry under Title Number ON307011;

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"Original Agreement" means the agreement made pursuant to s 106 of the 1990 Act dated 10 March 2020 between the Council, the Owner and the Mortgagee in relation to land at Bicester Heritage, Buckingham Road, Bicester, OX26 5HA;

- 1.2 Unless the context requires otherwise, all words and phrases defined in the Original Agreement shall have the same meaning in this Agreement (except to the extent that they are expressly varied in this Agreement).
- 1.3 References in this Agreement to the 'Owner' and the 'Mortgagee' shall include their respective successors in title to the Site and their assigns.
- 1.4 References in this Agreement to the 'Council' shall include any successor to its functions as local planning authority.
- 1.5 References in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.
- 1.6 The clause headings in this Agreement are for convenience only and do not form part of the Agreement.
- 1.7 References to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Agreement.
- 1.8 References to the singular shall include the plural and vice versa.
- 1.9 Where a party includes more than one person, any obligations of that party will be joint and several.
- 1.10 Where more than one party enters into any obligation or liability those parties are jointly and severally liable

## **2 STATUTORY POWERS**

This Agreement entered into by deed is made pursuant to s 106 and 106A of the 1990 Act and pursuant to s 111 of the Local Government Act 1972 and s 1 of the Localism Act 2011 and any other enabling powers and is supplemental to the Original Agreement and it is acknowledged by the parties that the obligations contained within it are binding on the Site and are enforceable by the Council as local planning authority against the Owner as owner of the Site and against their successors in title and assigns in respect of their interests in each and every part of the Site provided always that no person shall be liable for any breach of any covenant or obligation in this Agreement after it has parted with all of its interest in the Site or the part of the Site in respect of which such breach occurs

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(save in relation to any antecedent breach which occurs prior to parting with such interest).

### **3 VARIATIONS TO THE ORIGINAL AGREEMENT**

3.1 Without prejudice to the other covenants in the Original Agreement which shall continue in full force and effect, the parties to this Agreement agree that from the date of this Agreement the Original Agreement shall be amended as set out in this Agreement.

3.2 The obligations and covenants in the Original Agreement as varied by this Agreement relate to the Site, are planning obligations to which the statutory provisions in clause 2 apply and are for the purposes of regulation 122 of the Community Infrastructure Regulations 2010 necessary, directly related to and fairly and reasonably related in scale and kind to the development of the Site.

### **4 THE OWNER'S COVENANTS**

The Owner covenants with the Council that they will observe and perform the covenants restrictions and obligations on their part contained in the Original Agreement as amended by Schedule 1 to this Agreement.

### **5 THE MORTGAGEE'S COVENANTS**

The Mortgagee acknowledges that this Agreement has been entered into by the Owner with their consent and that the Site shall be bound by the obligations contained in it and that the security of the Mortgagee over the Site shall take effect subject it PROVIDED THAT the Mortgagee shall have no liability under this Agreement unless they take possession or exercise their powers of appointing a receiver/foreclosure in which case they too will be bound by the obligations as if it were a person deriving title from the Owner.

### **6 THE COUNCIL'S COVENANTS**

The Council covenants with the Owner that it will observe and perform the covenants restrictions and obligations on its part contained in the Original Agreement as amended by this Agreement.

### **7 LOCAL LAND CHARGE**

This Agreement is a local land charge and the Council shall apply to Cherwell District Council to register it as such.

### **8 NO FETTER**

Nothing contained or implied in this Agreement shall prejudice or affect the rights powers and duties of the County Council in the exercise of their functions as Local Planning

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Authority and their rights powers and duties under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the County Council were not a party to this Agreement.

**9 SEVERABILITY**

Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable manner as achieves the intention of the parties without illegality.

**10 LEGAL COSTS**

The Owner covenants to no later than the date of this Agreement pay the Council's reasonable legal costs for the preparation and completion of this Agreement.

**11 THIRD PARTY RIGHTS**

This Agreement gives no rights under the Contract (Rights of Third Parties) Act 1999, but this does not affect any rights which are available apart from that Act and it may be enforced by any successors in title of the parties and by any successor to the Council's statutory functions.

**12 NO WAIVER**

No waiver (whether express or implied) by a party of any breach or default in performing or observing any of the terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent a party from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof.

**13 JURISDICTION**

This Agreement is governed by and interpreted in accordance with the Law of England.

This Agreement has been executed as a deed and delivered on the date stated at the beginning of this Agreement

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Schedule 1

Amendments to Original Agreement

- 1 The Original Agreement shall be amended as follows:
- 1.1 the definition of "Commencement of Development" shall be deleted and replaced with the following revised definition:

Commencement of Development:	the carrying out on the Site of any material operation pursuant to the Planning Permission or (where clause 6.9 applies) a Section 73 Permission and "material operation" shall have the meaning given to it in Section 56(4) of the 1990 Act save that a material operation shall not include operations in connection with any archaeological investigations, works of excavation, demolition site clearance, diversion of services, installation of services for construction purposes only, site or soil investigations, remedial action in respect of any contamination, landscaping works, provision of construction access but not a permanent access, noise attenuation works, the erection of hoardings and fences, or works to create a car park and/or a construction compound but not an internal road or access road or any part of such roads and "Commence Development" and "Commenced" shall be construed accordingly.
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THE COMMON SEAL of  
OXFORDSHIRE COUNTY COUNCIL  
was affixed in the presence of:-



18/4/22



Director of Law and  
Governance/Designated Officer

Executed as a deed by **BICESTER MOTION LIMITED** acting by a director, in the presence of:



[SIGNATURE OF WITNESS]



Name of Witness

[IN BLOCK CAPITALS]



[SIGNATURE OF DIRECTOR]

Director

Address of Witness

9 building 36, the Parade, OX27 8AD

Occupation of Witness

Carefield

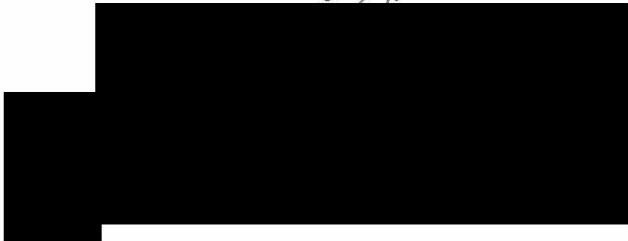
Receptionist



THE COMMON SEAL of THE  
SECRETARY OF STATE FOR  
DEFENCE was affixed in the presence  
of:-



Authorised Signatory



36229  
OFFICE OF DEFENCE  
OFFICE INFRASTRUCTURE ORGANISATION  
ACROSS SPAIN

CONFIDENTIAL  
EVALUATION