

DATED 17<sup>th</sup> December 2014

**NIGEL JOHN MORRIS and CAROLE MORRIS**

- and -

**BDW TRADING LIMITED, TAYLOR WIMPEY UK LIMITED AND BOVIS HOMES LIMITED**

-and-

**BPHA LIMITED**

-and-

**RAGLAN HOUSING ASSOCIATION LIMITED**

-and-

**THE WARDEN AND SCHOLARS OF ST MARY COLLEGE OF WINCHESTER IN OXFORD  
(COMMONLY CALLED NEW COLLEGE IN OXFORD), HALLAM LAND MANAGEMENT LIMITED  
AND JJ GALLAGHER LIMITED**

-and-

**CHERWELL DISTRICT COUNCIL**

-and-

**OXFORDSHIRE COUNTY COUNCIL**

**DEED OF VARIATION**

pursuant to Section 106A of the Town and Country Planning Act 1990 and other legislation  
in relation to land known as Bankside, Banbury, Oxfordshire

DATE: 17<sup>th</sup> December

2014

**PARTIES:**

1. **NIGEL JOHN MORRIS and CAROLE MORRIS** of Deer Field Farm, Canal Lane, Bodicote, Oxfordshire, OX15 4AD ("**the First Owner**")
2. **BDW TRADING LIMITED** (Company Number 03018173) of Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF, **TAYLOR WIMPEY UK LIMITED** (Company Number 01392762) whose registered office is at Gate House, Turnpike Road, High Wycombe, Buckinghamshire HP12 3NR and **BOVIS HOMES LIMITED** (Company number 0397634) of The Manor House, North Ash Road, New Ash Green, Longfield, Kent, DA3 8HQ ("**the Second Owner**")
3. **BPHA LIMITED** (a charitable Industrial and Provident Society registered under the Industrial and Provident Societies Act 1965 with registered no 26751R) and whose registered office is at Bedford Heights, Manton Lane, Bedford MK41 7BJ ("**the Third Owner**")
4. **RAGLAN HOUSING ASSOCIATION** (a charitable Industrial and Provident Society number 20558R) of Lancaster House, Grange Business Park, Enderby Road, Whetstone, Leicester LE8 6EP ("**the Fourth Owner**")
5. **THE WARDEN AND SCHOLARS OF ST MARY COLLEGE OF WINCHESTER IN OXFORD (COMMONLY CALLED NEW COLLEGE IN OXFORD)** of Holywell Street, Oxford OX1 3BN, **HALLAM LAND MANAGEMENT LIMITED** (Company Number 02456711) of Banner Cross Hall, Ecclesall Road South, Sheffield S11 9PD and **JJ GALLAGHER LIMITED** (Company Number 03035968) of 15 Hockley Court, Stratford Road, Hockley Heath, Solihull B94 6NW (together "**the Mortgagees**")
6. **CHERWELL DISTRICT COUNCIL** of Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA ("**the District Council**")
7. **OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxford OX1 1ND ("**the County Council**")

**WHEREAS**

- A. This Deed of Variation relates to the Principal Deed made pursuant to Section 106 of the 1990 Act and other legislation

- B. The Deed of Covenant and the Modification and Routing Deed of Covenant and Modification both amended the Principal Deed in terms of its affordable housing provisions
- C. Various registered providers interested in acquiring affordable housing on the Land (and who have already acquired some of such Land) require slight amendments to the Principal Deed as amended to reflect both their operational and lender requirements in relation to the affordable housing provisions
- D. The District Council has therefore agreed to enter into this Deed, the purpose of which is to vary the Principal Deed
- E. The District Council is the local planning authority for the purpose of Section 106 of the 1990 Act for the area where the Land is situated and is the authority by whom the affordable housing obligations contained in clause 3 of the Principal Deed are enforceable
- F. The First Owner is the registered proprietor of that part of the Land registered with title absolute under title number ON217478 at the Land Registry (subject to the matters referred to in the charges register) and against whom the affordable housing provisions in clause 3 of the Principal Deed are enforceable ( in accordance with the terms and conditions of this Deed) in respect of that part of the Land
- G. The Second Owner is the successor in title to a large part of the remainder of the Land registered with title absolute under title numbers ON269171, ON311804, ON311803 and ON311802 and against whom the affordable housing provisions in clause 3 of the Principal Deed are enforceable (subject to the terms and condition of that deed) in respect of that part of the Land only
- H. The Third Owner is the successor in title to a small part of the Land (previously forming part of registered title number ON311804) pursuant to a transfer dated 27 June 2014 and against whom the affordable housing provisions in clause 3 of the Principal Deed are enforceable (subject to the terms and conditions of that deed) in respect of that part of the Land
- I. The Fourth Owner is the successor in title to a small part of the Land (previously forming part of the Land registered under title number ON311802) pursuant to a transfer dated 27 June 2014 and against whom the affordable housing provisions in clause 3 of the Principal Deed are enforceable (subject to the terms and conditions of that deed) in respect of that part of the Land
- J. The Mortgagees have registered charges over parts of the Land as set out in the charges register of title number ON269171

**NOW THIS DEED WITNESSETH** as follows:

**1 Definitions:**

In this Deed save where the context otherwise requires words and expressions shall have the same meaning as has been assigned to them in the Principal Deed save as otherwise follows:

<b>“Deed of Covenant and Modification”</b>	means the deed dated 15 February 2013 titled “Deed of Covenant and Modification in relation to a Planning
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Obligation" entered into by the First and Second Owners, the District Council and the County Council

**"Plan"**

means the Plan annexed to this Deed showing the First Owner's part of the Land outlined and hatched blue and the Second Owner's, the Third Owner's and the Fourth Owner's parts of the Land edged red and which plan is not to scale and is for illustrative purposes only

**"Principal Deed"**

means the Section 106 Agreement dated 30 September 2009 relating to development at Bankside, Banbury, Oxfordshire, as amended by the Deed of Covenant and Modification and the Routing Deed of Covenant and Modification

**"Routing Deed of Covenant and Modification"**

means the deed dated 15 February 2013 titled "Deed of Modification in relation to a Planning Obligation and Deed of Modification in relation to a Routeing Agreement" entered into by the First and Second Owners, the District Council and the County Council

**2 Interpretation**

- 2.1 Clause headings shall not affect the interpretation of this deed
- 2.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- 2.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established
- 2.4 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular
- 2.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders
- 2.6 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the County Council and the District Council the successors to its respective statutory functions
- 2.7 A reference to a statute or statutory provision is a reference to it as it is in force at the date of this deed.
- 2.8 A reference to a statute or statutory provision shall include any subordinate legislation made as at the date of this deed under that statute or statutory provision.
- 2.9 An obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done.

- 2.10 Where an obligation fails to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

### 3 Statutory Provisions

- 3.1 This Deed of Variation is made pursuant to sections 106 and 106A of the 1990 Act, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000, section 1 of the Localism Act 2011 and all other enabling powers and enactments which may be relevant for the purposes of giving validity to this Deed of Variation.
- 3.2 Except as modified by clause 4 of this Deed the Principal Deed shall remain in full force and effect

### 4 Variation of Principal Deed

It is hereby agreed by the parties to this Deed that the definitions and terms of the Principal Deed shall be amended as follows:

- 4.1 The following definition shall be inserted after clause 1.2 of the Deed of Covenant and Modification:

*"1.2A "Original Planning Agreement" means the Section 106 Agreement dated 30 September 2009 relating to development at Bankside, Banbury, Oxfordshire"*

- 4.2 The definition of Chargee in the Principal Deed (as inserted by the Deed of Covenant and Modification) shall be deleted and replaced with:

*"Chargee means a mortgagee or chargee of all or any part of the Affordable Housing Land or a receiver or manager (including an administrative receiver) appointed by the Chargee pursuant to the Law and Property Act 1925 or otherwise or any person appointed under any security documentation to enable such mortgagee or chargee to realise its security"*

- 4.3 The following definition shall be added to the Principal Deed:

*"Mortgage Land means the Affordable Housing Land or any part of it which is mortgaged or charged to the Chargee"*

- 4.4 Clause 4.2 of the Principal Deed (as amended by the Deed of Covenant and Modification) shall be deleted and replaced with:

*"any purchaser of an Affordable Housing Unit (and such purchaser's mortgagee or chargee or a receiver or manager including any administrative receiver appointed by the mortgagee or chargee pursuant to the Law and Property Act 1925 or otherwise) which is Shared Ownership Housing once "staircasing out" has been effected whereby the leaseholder acquires 100% equity share in the Dwelling or any successor in title and its mortgagee or chargee"*

- 4.5 Clause 4.3 of the Principal Deed (as amended by the Deed of Covenant and Modification) shall be deleted and replaced with:

*"A Chargee exercising its powers of sale in respect of all or any part of the Affordable Housing Land (including, for the avoidance of doubt, in respect of any individual Affordable Housing Unit or number of Affordable Housing Units) and its successors in title provided the Chargee of a Registered Provider shall first have satisfied the Mortgage Sale Provisions".*

- 4.6 A new clause 4.4 shall be inserted into the Principal Deed which reads as follows:

*"4.4 A Shared Ownership Housing owner's/leaseholder's mortgagee, chargee or receiver or manager (including any administrative receiver appointed by such mortgagee or chargee pursuant to the Law of Property Act 1925 or otherwise) and successors in title to such mortgagee, chargee, receiver or manager.*

- 4.7 Schedule 4 in the Principal Deed (as amended by the Deed of Covenant and Modification) shall be deleted and replaced with:

#### **SCHEDULE 4**

##### ***Mortgagee sale provisions***

- 1 *For the avoidance of doubt clause 3.5 is not binding on a Chargee or its successors in title PROVIDED THAT the Chargee:*

- 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*

- 1.2 *has used reasonable endeavours over a period of three months from receipt of notification pursuant to paragraph 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 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 Deed of Agreement or all sums due under the terms of the Chargee's mortgage or charge together with costs and interest AND FURTHER PROVIDED THAT in any event if upon the expiry of 3 months from the date of receipt by the District Council of the notice in paragraph 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 then upon expiry of the said 3 months the Chargee shall be able to sell the Mortgage Land free from the restrictions in clause 3.5 with the effect that they shall cease to bind the Mortgage Land.*

#### **5 Mortgagees' Consent**

- 5.1 The Mortgagees acknowledge and declare that this Deed has been entered into by the Second Owner with their consent and that the Second Owner's interest in the

Land shall be bound by the obligations contained in the Principal Deed as varied by this Deed and that the security of their charges over parts of the Second Owner's Land shall take effect subject to the Principal Deed as varied by this Deed PROVIDED THAT the Mortgagees shall otherwise have no liability under the Principal Deed as varied by this Deed unless they take possession of the parts of the Land over which they have an interest in which case they too will be bound by the obligations as if it were a person deriving title from the Second Owner.

**6 Miscellaneous**

- 6.1 The District Council shall procure forthwith that this Deed shall be entered on the local land charges register in relation to the Land.
- 6.2 The Second Owner will pay to the District Council and the County Council their respective legal costs of the preparation of this Deed on its completion.

**IN WITNESS** whereof the parties hereto have executed this document as a Deed delivered the day and year first before written

CDC 18799

BOVIS HOMES LIMITED

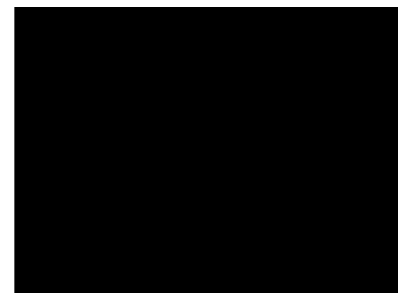
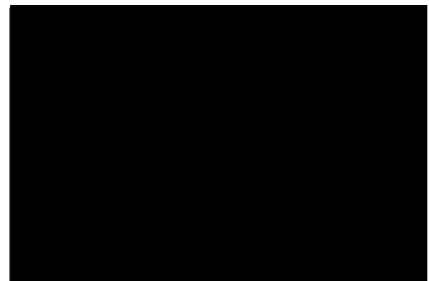
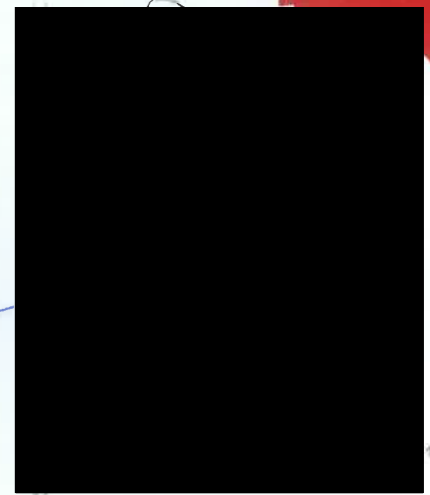
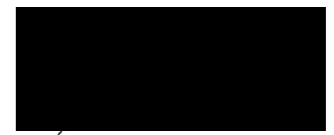
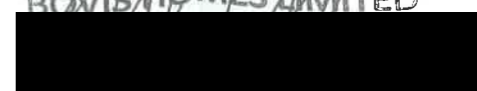
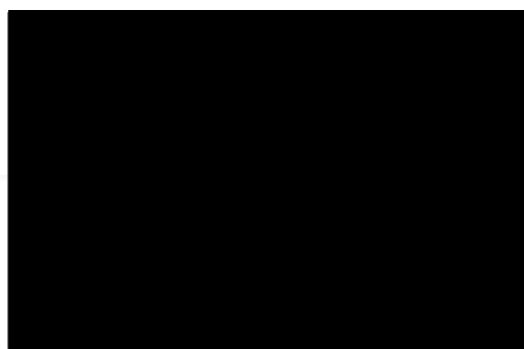
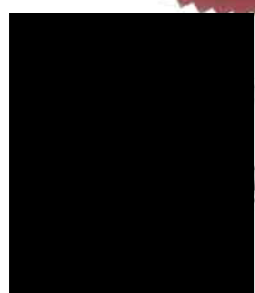
Authorised Signatory

Authorised Signatory

Director

Director

Land Registry  
Office  
100 Victoria Road  
Bristol  
BS1 6LQ

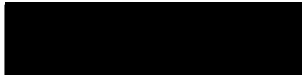


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SIGNED AS A DEED BY )  
NIGEL JOHN MORRIS )  
IN THE PRESENCE OF )

NIGEL JOHN MORRIS



Witness Name:  
Witness Address:  
Witness Occupation:

AMY ELIZABETH CORNISH  
BARRATT WEST MIDLANDS  
60 WHITEHALL ROAD  
HALESOWEN  
WEST MIDLANDS  
B63 3JS  
Tel. No. 0121 585 5303  
Fax No. 0121 585 5304

SIGNED AS A DEED BY )  
CAROLE MORRIS )  
IN THE PRESENCE OF )

CAROLE MORRIS



Witness Name:  
Witness Address:  
Witness Occupation:

AMY ELIZABETH CORNISH  
BARRATT WEST MIDLANDS  
60 WHITEHALL ROAD  
HALESOWEN  
WEST MIDLANDS  
B63 3JS  
Tel. No. 0121 585 5303  
Fax No. 0121 585 5304

THE COMMON SEAL OF )  
CHERWELL DISTRICT COUNCIL )  
WAS AFFIXED IN THE PRESENCE OF )

Authorised Signatory:



CDC  
18799



THE COMMON SEAL OF )  
OXFORDSHIRE COUNTY COUNCIL )  
WAS AFFIXED IN THE PRESENCE OF )

County Solicitor/Designated Officer:



1073/14

SIGNED AS A DEED FOR AND )  
ON BEHALF OF **BDW TRADING** )  
**LIMITED** BY TWO DIRECTORS OR A )  
DIRECTOR AND THE )  
COMPANY SECRETARY )

in exercise of the powers  
conferred on them by a  
power of Attorney dated  
29 January 2014 in the presence of

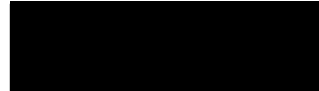
DAVID WYNNE THOMAS

.....  
DIRECTOR



ROBERT DAVID WHITE

.....  
DIRECTOR/ COMPANY SECRETARY



Chantelle Williams

BARRATT WEST MIDLANDS  
60 WHITEHALL ROAD  
HALESOWEN  
WEST MIDLANDS  
B63 3JS  
Tel. No. 0121 585 5303  
Fax No. 0121 585 5304

EXECUTED AS A DEED BY )  
AFFIXING THE COMMON SEAL OF )  
**BOVIS HOMES LIMITED** )  
IN THE PRESENCE OF TWO )  
AUTHORISED SIGNATORIES )



AUTHORISED SIGNATORY



AUTHORISED SIGNATORY



EXECUTED AS A DEED BY )  
TAYLOR WIMPEY UK LIMITED )  
ACTING BY: )

[Redacted signature]

ATTORNEY

[Redacted signature]

ATTORNEY

[Redacted signature]

..... LYNNENE ANNE NETTLL  
WITNESS 600 Park Avenue  
Aztec West  
Almondsbury  
Bristol BS3 24SD  
Secretary

THE COMMON SEAL of )  
THE WARDEN AND SCHOLARS OF )  
ST MARY COLLEGE OF )  
WINCHESTER IN OXFORD )  
(COMMONLY CALLED )  
NEW COLLEGE IN OXFORD) )  
was affixed in the presence of:- )



[Redacted signature]

EXECUTED AS A DEED by affixing )  
the COMMON SEAL of )  
HALLAM LAND MANAGEMENT )  
LIMITED )  
in the presence of: )

[Redacted signature]

Director:

[Redacted signature]

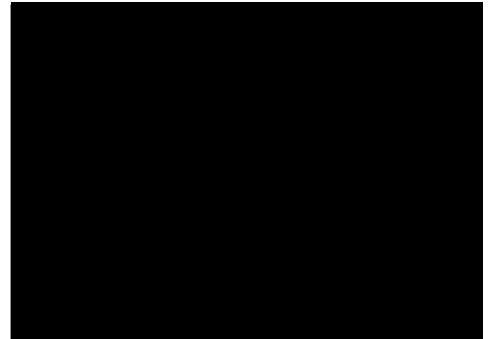
Director/Secretary:



**SIGNED AS A DEED** for and on )  
behalf of **JJ GALLAGHER LIMITED** )  
by the Directors )  
or a Director and its Secretary )

Director:

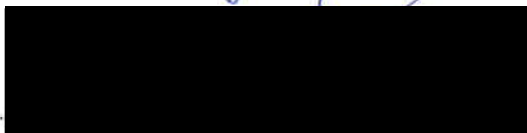
~~Director/Secretary:~~



**EXECUTED as a DEED** )  
by affixing the Common Seal of )  
**BPHA LIMITED** )  
in the presence of: )



Authorised signatory



Authorised signatory



16447

**EXECUTED AS A DEED FOR** )  
**AND ON BEHALF OF** )  
**RAGLAN HOUSING ASSOCIATION** )  
**LIMITED** )  
**BY AFFIXING THE COMMON SEAL** )  
**IN THE PRESENCE OF:** )

DIRECTOR



DIRECTOR / SECRETARY

