

DATED 15 February 2013

(1) **NIGEL JOHN MORRIS and CAROLE MORRIS**

- and -

(2) **BDW TRADING LIMITED, TAYLOR WIMPEY UK LIMITED
and BOVIS HOMES LIMITED**

-and-

(3) **CHERWELL DISTRICT COUNCIL**

-and-

(4) **OXFORDSHIRE COUNTY COUNCIL**

**DEED OF COVENANT AND MODIFICATION
IN RELATION TO A PLANNING OBLIGATION**

under (i) sections 106 and 106A of the Town and Country
Planning Act 1990 (as amended) section 111 of the Local
Government Act 1972 and section 1 of the Localism Act 2011



PENNINGTONS
S O L I C I T O R S

Penningtons Solicitors LLP
da Vinci House
Basing View
Basingstoke
Hampshire RG21 4EQ
Tel: +44 (0)1256 407100
Fax: +44 (0)1256 479425
DX: 148600 Basingstoke 21
Ref:/TEMP : 22/01/13

Dated:

15 February

2013

Parties

- (1) **NIGEL JOHN MORRIS and CAROLE MORRIS** both of Deer Field Farm, Canal Lane, Bodicote, Oxfordshire (together "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) of 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 (together the "the New Owner")
- (3) **CHERWELL DISTRICT COUNCIL** of Bodicote House, Bodicote, Banbury, Oxfordshire OX15 4AA ("the District Council")
- (4) **OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxford OX1 1ND ("the County Council")

INTRODUCTION

1. The First Owner and the predecessors in title to the New Owner entered into the Original Planning Agreement.
2. [By agreement(s)/transfers dated [] 2013] the New Owner has acquired the freehold interests of the predecessors in title to the New Owner in the Land and part of the freehold interest of the First Owner and will apply to Land Registry to be registered as owner.
3. The First Owner retains an interest in the Retained Land as defined in the Deed of Covenant and Modification.
4. The First Owner and the New Owner confirm that for the purposes of section 56(2) of the 1990 Act development has not been begun pursuant to the Planning Permission.
5. The parties to this Deed have entered into the Deed of Covenant and Modification which amended certain provisions of the Original Planning Agreement.
6. The parties have agreed to enter into this Deed to amend further certain provisions of the Original Planning Agreement as varied by the Deed of Covenant and Modification

1. DEFINITIONS

- 1.1 "Chargee" means a mortgagee or chargee of all or any part of the Affordable Housing Land or a receiver or manager (including any administrative receiver) appointed by the Chargee pursuant to the Law and Property Act 1925 or otherwise
- 1.2 "Deed of Covenant and Modification" means a deed of covenant and modification dated [] between the First Owner (1) the New Owner (2) the District Council (3) the County Council (4) varying the Original Planning Agreement
- 1.3 Words and expressions defined in the Original Planning Agreement as varied by the Deed of Covenant and Modification shall have the same meaning in this Deed

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever more than one person is a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 2.5 "Including" means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and "include" shall be construed accordingly.
- 2.6 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of that restriction.
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

- 2.8 Reference to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the District Council the successors to its statutory functions and any duly appointed employee or agent of the District Council or such successor.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to sections 106 and 106A of the Act and section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers and is a planning obligation for the purposes of section 106 of the Act entered into by the First Owner in respect of the Retained Land and the New Owner in respect of the Land (excluding the Retained Land) and enforceable by the District Council and the County Council.

- 3.2 Except as modified by clause 4 of this Deed the Original Planning Agreement as varied by the Deed of Covenant and Modification shall remain in full force and effect and for the purposes of complying with section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 and so to give full legal effect to the provisions of this Deed the terms of the Original Planning Agreement as varied by the Deed of Covenant and Modification and by this Deed are deemed to be incorporated in full into this Deed.

4. MODIFICATION OF THE ORIGINAL PLANNING AGREEMENT

It is agreed between the parties that the Original Planning Agreement as varied by the Deed of Covenant and Modification is modified pursuant to section 106A of the Act as follows.

- 4.1 The definitions in clauses 1.1 and 1.2 of this Deed shall be added to the Original Planning Agreement.

- 4.2 Clauses 4.1 and 4.2 and 4.3 shall be deleted from the Original Planning Agreement and replaced with the following:

4.1 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) pursuant to the exercise of any statutory right to buy or acquire or any successor in title and its mortgagee or chargee

4.2 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 and its mortgagee or chargee

- 4.3 a Chargee exercising its power of sale in respect of all or any part of the Affordable Housing Land and its successors in title (other than a successor which is a Registered Provider) provided the Chargee of a Registered Provider shall first have satisfied the Mortgagee Sale Provisions.

- 4.3 Schedule 4 shall be deleted from the Original Planning Agreement and replaced with the following:

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 it:
 - 1.1 has first served written notice on the District Council of its intention to exercise its power of sale with a proposed price and
 - 1.2 has made every reasonable effort over a period of three months (calculated from and including the date of service of its notice pursuant to paragraph 1.1 above) to dispose of the Affordable Housing Land (or relevant part thereof) to a Registered Provider and or the District Council at its then open market value subject to any leases and tenancies then subsisting and subject to the terms of this Deed and it is agreed that in relation to seeking a Registered Provider purchaser the Chargee shall be deemed to have taken every reasonable effort if the Chargee has sent details of the Affordable Housing Land (or relevant part thereof) and the proposed price to each of the Registered Providers that have stock in the area of the District Council and these details have been copied to the District Council PROVIDED ALWAYS THAT if either the District Council wishes to purchase the Affordable Housing Land but considers the proposed price is higher than the open market value subject to any leases and tenancies then subsisting and subject to the terms of this Deed or it appears to the District Council that one or more Registered Providers might wish to purchase it but the proposed price is higher than the said value then the District Council may require that the price be determined by a member of the Royal Institution of Chartered Surveyors acting as an expert and not as an arbitrator by serving written notice on the Chargee within 20 working days of receipt of the details of the proposed price referred to in 1.1 above such expert to be appointed within a further 10 working days

of the District Council notifying the Chargee it does not agree with the proposed price and by joint agreement of the District Council and the Chargee or in default of agreement nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of either party (the cost of his appointment and acting to be met by the Chargee and the District Council in equal shares) and the expert shall be instructed to advise as to a price at which he considers that the Chargee may (but shall not be required) to sell and at which a Registered Provider or the Council may (but shall not be required) to buy within 10 working days of appointment

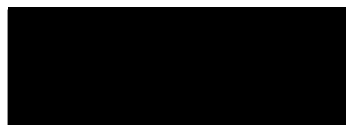
- 1.3 If upon the expiry of 3 months from the date of receipt by the District Council of the notice in paragraph 1.1 and provided the steps in paragraph 1.2 have been completed and no transfer of the Affordable Housing Land to either the District Council or a Registered Provider has been completed then a Chargee shall be able to sell the Affordable Housing Land free from the restrictions in clause 3.5 of this Deed.

5. MISCELLANEOUS

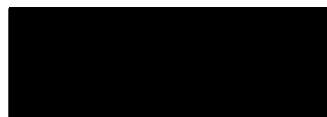
The New Owner will pay to the District Council and the County Council their respective legal costs of the preparation of this Deed on its completion.

IN WITNESS whereof the parties have executed this Deed on the day and year first before written.

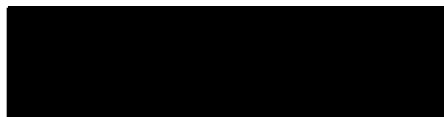
SIGNED AS A DEED by)
NIGEL JOHN MORRIS)
in the presence of)



Signature of witness:



Name:

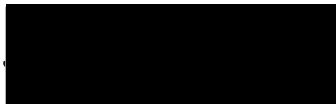


Address: **BODICOTE HOUSE, BODICOTE, OX15 4AA**

SIGNED AS A DEED by)
CAROLE MORRIS)
in the presence of)



Signature of witness:



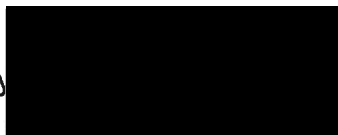
Name:



Address: **BODICOTE HOUSE, BODICOTE, OX15 4AA**

THE COMMON SEAL of)
CHERWELL DISTRICT COUNCIL)
was affixed in the presence of:-)

Authorised Signatory



CDC 18483

THE COMMON SEAL of)
OXFORDSHIRE COUNTY COUNCIL)
was affixed in the presence of:-)

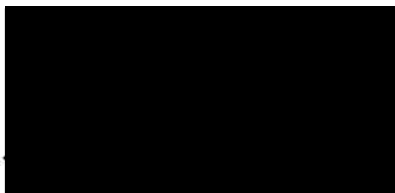


~~Authorised Signatory:-~~
Designated Officer



1330/12

Signed as a Deed
for and on behalf of **BDW TRADING LIMITED**
by two Directors or a Director and the
Company Secretary



Director

ROBERT DAVID WHITTAKER



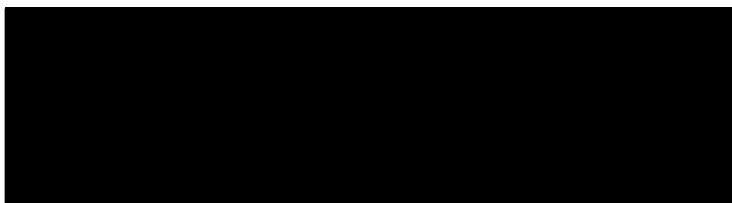
BARRATT WEST MIDLANDS
60 WHITEHALL ROAD
HALESOWEN
WEST MIDLANDS
B63 3JS
Tel. No. 0121 585 5303
Fax No. 0121 585 5304



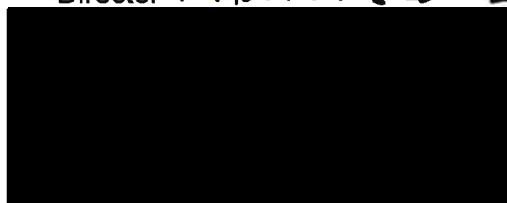
Director / Company Secretary

DAVID WYNNE THOMAS

Executed
~~Signed as a Deed~~ *by affixing the Common Seal of*
~~for and on behalf of BOVIS HOMES LIMITED~~
~~by a Director or a director and the Company Secretary~~
in the presence of two authorised signatories



Director *Authorised Signatory*



Director / Company Secretary *Authorised Signatory*



Executed as a Deed
by **TAYLOR WIMPEY UK LIMITED**
acting by

[Redacted Signature]

Attorney *DIANA COMMINGS*

[Redacted Signature]

Attorney *JAMES BALL*

Witness

[Redacted Signature]

DEBBIE FITZPATRICK
Taylor Wimpey UK Limited
600 Park Avenue
Aztec West
Bristol
BS32 4SD