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**Dated:**

30 March

2016

(1) MOUNT STREET MORTGAGE SERVICING LIMITED

To

(2) CHERWELL DISTRICT COUNCIL

(3) OXFORDSHIRE COUNTY COUNCIL

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**UNILATERAL UNDERTAKING**

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under section 106 of the Town and Country Planning Act 1990 relating to the land at  
Dow Street Upper Heyford Oxfordshire

**THIS UNDERTAKING** is given on 30 March 2016

**BY:**

- (1) **MOUNT STREET MORTGAGE SERVICING LIMITED (Company Number 03411668)** whose registered office is 26 Red Lion Square, London WC1R 4AG (**"The Additional Mortgagee"**)

**TO**

- (2) **CHERWELL DISTRICT COUNCIL** of Bodicote House, Bodicote, Banbury, Oxon, OX15 4AA (**"the District Council"**); and
- (3) **OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxford, OX1 1ND (**"County Council"**)

**BACKGROUND**

- (A) This Undertaking is being entered into alongside the Dow Street Agreement with the intention of binding the Additional Mortgagee to the terms of the Dow Street Agreement.
- (B) The District Council is the local planning authority for the purposes of the Act for the area in which the Application Site and the Upper Heyford Site are situated.
- (C) The County Council is the county planning authority for the area in which the Application Site and the Upper Heyford Site are situated and has sundry powers and duties in respect of education, the provision of library facilities, museums, waste disposal and social and health care and in respect of highways transport and regulation of traffic.
- (D) The Additional Mortgagee has taken a legal charge over part of the Upper Heyford Site pursuant to a debenture dated 11 March 2016 but does not have an interest in the Application Site.

**OPERATIVE PROVISIONS**

1. **INTERPRETATION**

2. The definitions in the Dow Street Agreement shall apply to this Undertaking unless stated to the contrary.

- 2.1 In this Undertaking, the following words and expressions have the following meanings:

**"Dow Street Agreement"**

means a planning obligation of the same date as this Undertaking between (1) Cherwell District Council, (2) Oxfordshire County Council, (3) Dorchester Heyford Park GP Limited, Dorchester Heyford Park Nominee Limited, (4) Upper Heyford GP Limited, 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

- 2.2 In this Undertaking:
- 2.2.1 the clause headings do not affect its construction or interpretation;
  - 2.2.2 references to any statute or statutory provision include references to:
    - 2.2.2.1 any statutory re-enactment, modification, amendment or consolidation of it from time to time in force; and
    - 2.2.2.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
  - 2.2.3 references to any party in this Undertaking include the successors in title of that party and in the case of the District Council and the County Council include any successor to their respective statutory functions;
  - 2.2.4 references to "including" means "including, without limitation";
  - 2.2.5 any covenant by the Additional Mortgagee not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing; and
  - 2.2.6 if any provision is held to be illegal, invalid, ultra vires or unenforceable, the legality, validity and enforceability of the remainder of the Undertaking is to be unaffected.
- 2.3 The Additional Mortgagee does not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it unless that person is a successor to that party's title or statutory function (as applicable).

### **3. EFFECT OF THIS UNDERTAKING**

- 3.1 This Undertaking is given pursuant to section 106 of the 1990 Act and to the extent that they fall within the terms of section 106 of the 1990 Act the obligations contained in this Undertaking are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the District Council and the County Council.
- 3.2 The District Council and the County Council are the local authorities having the power to enforce the planning obligations contained in this Undertaking.

### **4. COMMENCEMENT DATE**

- 4.1 This Undertaking will come into effect on the date shown at the top of this Undertaking.

### **5. OBLIGATIONS OF THE ADDITIONAL MORTGAGEE**

- 5.1 The Additional Mortgagee undertakes to the District Council and the County Council to comply with and be bound by the terms of and the obligations within the Dow Street Agreement in the same manner and to the same extent as if they were a party to the Dow Street Agreement as a mortgagee in the same manner as the Third Mortgagee and the Fourth Mortgagee.
- 5.2 It is hereby declared that the Additional Mortgagee does not have an interest in the Application Site and accordingly shall (unless it acquires such an interest and takes possession of the Application Site or part of it) have no liability in respect of any of the obligations in the Dow Street Agreement which relate solely to the Application Site, which for the avoidance of doubt shall include the obligations contained in Schedules 2, 3, 4 and 5 of the Dow Street Agreement.
- 5.3 The Additional Mortgagee agrees to the variation of the Principal Agreement as set out in the Dow Street Agreement and thereby the Additional Mortgagee acknowledges that the Upper Heyford Site is bound by the obligations contained in the Dow Street Agreement to the intent that the securing of the Additional Mortgagee's interest over the Upper Heyford

Site shall take effect subject to the Principal Agreement as varied by the Dow Street Agreement (including for the avoidance of doubt clause 15.2 of the Principal Agreement as so varied which exempts mortgagees from personal liability to comply with the obligations in the Principal Agreement as so varied save as provided in that clause unless they take possession of the Upper Heyford Site or part of it) as set out in the Schedule attached to this Deed.

6. **TERMINATION OF THIS AGREEMENT**

- 6.1 This Undertaking will cease to have effect if the Dow Street Agreement is quashed, revoked or otherwise withdrawn or other ceases to be in force.

7. **JURISDICTION**

- 7.1 This Undertaking is to be governed by and interpreted in accordance with the law of England and Wales.
- 7.2 The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Undertaking.

8. **EXECUTION**

The Additional Mortgagee has executed this Undertaking as a deed and it is delivered on the date set out above.

## SCHEDULE

1. The Principal Agreement at clause 15 states as follows:

15.1 The Mortgagees acknowledge that the Site is bound by the obligations contained in this Agreement to the intent that the securing of the Mortgagees' interest over the Site shall take effect subject to this Agreement;

15.2 It is hereby declared that the Mortgagees and any future mortgagees except as detailed in paragraphs 1.7 and 9 of Schedule 3 shall not be personally liable to comply with the obligations in this Agreement on the part of the Landowner unless they take possession of the Site.

2. The Principal Agreement at clause 1.2.4 states as follows:

1.2.4 References to the Site include any part of it

3. The Principal Agreement at paragraph 1.7 of Schedule 3 states as follows:

1.7 Subject to the provisions of paragraph 9 below which shall continue to apply to mortgagees of Affordable Housing Providers the restriction in paragraph 1.6 shall not bind any mortgagee of the Retained Housing Land or Retained Housing Units exercising its power of sale or a receiver appointed by such mortgagee or a purchaser from such mortgagee or receiver nor any successor in title to such purchaser provided that for a period of at least 1 year from the date on which the mortgagee exercises their power of sale or appoints a receiver no notice may be served ending the tenancy or seeking possession from any such Eligible Occupiers referred to in paragraph 1.6.

4. The Principal Agreement at paragraph 1.6 of Schedule 3 states as follows:

1.6 The Landowner shall not serve notice ending the tenancy of or seeking possession from any Eligible Occupier resident on the Site as at the date of the Affordable Housing Survey until that Eligible Occupier has been offered an Affordable Housing Unit PROVIDED THAT nothing in this Agreement shall prohibit the Landowner from serving notice ending the tenancy of any Eligible Occupiers who are in breach of their tenancy agreement.

5. The Principal Agreement at paragraph 9 of Schedule 3 states as follows:

9. The provisions of paragraph 8 of this Schedule are not intended to bind:

9.1 a mortgagee of an Affordable Housing Provider exercising its power of sale or a receiver appointed by such mortgagee or a purchaser from such mortgagee or receiver (other than a purchaser which is an Affordable Housing Provider) nor any successor in title to such purchaser provided that the mortgagee shall first have made every reasonable effort to the reasonable satisfaction as certified in writing of the District Council's Head of Development Control and Major Developments or such other officer as the District Council may designate for such purpose (such certification not to be unreasonably withheld or delayed) over a period of three months to dispose of the land at its then open market value subject to any leases and tenancies then subsisting and to the terms of this Deed to an Affordable Housing Provider provided that:

9.1.1 If any such mortgagee is unable within the said period of three months to dispose of the land in accordance with paragraph 9.1 it shall then give notice in writing to the District Council offering to transfer the land to the District Council at a consideration representing the open market value at the date of the notice subject to any leases or tenancies then subsisting and the terms of this Deed the amount of such consideration to be agreed between the District Council and the mortgagee or failing such agreement to be determined

by a member of the Royal Institution of Chartered Surveyors acting as an expert and not as an arbitrator to be appointed by joint agreement of the District Council and the mortgagee 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 mortgagee or chargee and the District Council in equal shares)

9.1.2 If the District Council either:

9.1.2.1 within 42 days of receipt of the notice given by the mortgagee gives notice in writing to the mortgagee that it does not wish to acquire the land or

9.1.2.2 fails to complete the transfer of the land within 4 weeks of the price having been agreed between the mortgagee and the District Council or determined by the said expert


then the mortgagee shall be deemed to have to have complied with this provision

9.2 people who have acquired 100% ownership of a Shared Ownership Housing Dwelling nor people exercising their right to acquire an Affordable Housing Unit either pursuant to a statutory or voluntary right to buy preserved right to buy or right to acquire nor any successor in title to such a person.


6. The Principal Agreement at paragraph 8 of Schedule 3 states as follows:

8. Not to use or cause or permit the use of any Affordable Housing Site or Retained Housing Unit identified as an Affordable Housing Unit for any purpose other than for the provision of Affordable Housing in accordance with the Affordable Housing Scheme as approved by the District Council.

Executed (but not delivered until the date inserted herein) as a deed by  
**MOUNT STREET MORTGAGE SERVICING LIMITED**  
acting by

  
..... Attorney  
as attorney under a power of attorney  
in the presence of:

Name of witness: NICHOLAS MAHER.....

Signature of witness: .....

Address: Third Floor, New City Court  
20 St Thomas Street  
.....London SE1 9RS.....

Occupation: Solicitor.....