

DATED 11 JUNE 2021

- (1) LONDON LEGACY DEVELOPMENT CORPORATION
- (2) HIGGINS HOMES PLC

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**DEED OF VARIATION**

**made pursuant to section 106 and 106A of the Town and County Planning Act 1990 and other powers relating to development of land known as Sub-Zone 3D1, Chobham Farm, off Leyton Road, Newham**

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THIS DEED OF VARIATION IS MADE ON 11 JUNE

2021

**BETWEEN**

- (1) **LONDON LEGACY DEVELOPMENT CORPORATION** of Level 10, 1 Stratford Place, Montfichet Road, London ("the LPA"); and
- (2) **HIGGINS HOMES PLC** (Company Number 00843093) of One Langston Road, Loughton, Essex IG10 3SD ("the Owner")

**BACKGROUND**

- (A) The LPA exercises the functions of the local planning authority for the Site pursuant to The London Legacy Development (Planning Functions) Order 2012 and is the local planning authority by whom the obligations contained in this Deed are enforceable.
- (B) The LPA granted Planning Permission for the Development on 27 February 2014 and the 2014 Agreement secured planning obligations in respect of the Development.
- (C) The 2014 Agreement has been replaced by the 2015 Agreement which was entered into in connection with non material amendment applications under section 96A of the 1990 Act to bring forward the delivery of Zone 4 and to redefine the boundaries of Zones 2 and 3 under the Planning Permission.
- (D) The 2015 Agreement was subsequently supplemented by the 2015 Supplemental Agreement in relation to the development of Zone 4 only.
- (E) The 2020 Agreement was entered into to vary the 2015 Agreement in relation to the development of Zone 3 only.
- (F) The Owner is now the owner of a freehold interest in Sub-zone 3D1 registered at the Land Registry with Title Number TGL547411.
- (G) The LPA and the Owner have agreed to enter into this Deed to further vary the Composite Agreement in respect of Sub-zone 3D1 in the manner set out in this Deed.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 Save where expressly stated otherwise, words and expressions used in this Deed including the Recitals shall have the same meaning as defined in the Composite Agreement.
- 1.2 Unless the context otherwise requires, references in this Deed to "the parties" shall mean the parties to this Deed.
- 1.3 Where in this Deed the following defined terms are used they shall have the following meanings:

**2014 Agreement** means the agreement made pursuant to

section 106 of the 1990 Act and other enabling powers between the LPA (1) London and Continental Railways Limited (LCRL) (2) and East Homes Limited (3) dated 27 February 2014

**2015 Agreement**

means the agreement made pursuant to section 106 of the 1990 Act and other enabling powers between the LPA (1) LCRL (2) and East Thames Partnership Limited (3) dated 2 April 2015

**2015 Supplemental Agreement**

means the supplemental deed of agreement dated 19 November 2015 made between the LPA (1) LCRL (2) and Chobham Farm North LLP (3) in relation to the development of Zone 4

**2020 Agreement**

means the deed of modification dated 3 June 2020 made between the LPA (1), LCRL (2) and the Owner (3) which amends the 2015 Agreement in relation to the development of Zone 3

**Composite Agreement**

means the 2015 Agreement as varied by the 2020 Agreement

**Deed**

means this deed of modification

**2 LEGAL EFFECT AND ENABLING PROVISIONS**

- 2.1 This Deed is made pursuant to sections 106A(1)(a) and 106A(2) of the 1990 Act and all other relevant powers with the effect that the planning obligations and covenants contained in the Composite Agreement are modified by this Deed to the extent expressly stated herein and shall be enforceable by the LPA as local planning authority as if such provisions were provisions of the Composite Agreement subject to the terms of this Deed.
- 2.2 Subject to the modifications in this Deed the Composite Agreement will remain in full force and effect and shall be enforceable by the LPA as local planning authority by virtue of their powers referred to in the Composite Agreement.
- 2.3 Nothing in this Deed shall be construed as amending in any way the provisions of the 2015 Supplemental Agreement which shall continue in full force and effect.

**3 2014 AGREEMENT**

- 3.1 For the avoidance of doubt the 2015 Agreement has replaced the 2014 Agreement as pursuant to clause 4.1 of the 2015 Agreement the Approvals have been granted and

issued accordingly the 2014 Agreement has been terminated and ceases to have effect.

#### **4 MODIFICATION OF THE COMPOSITE AGREEMENT**

4.1 The parties agree that on the date of this Deed the Composite Agreement shall be modified in the manner shown in the Schedule to this Deed.

#### **5 GENERAL**

5.1 No term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed.

5.2 The parties have executed this Deed as a deed and it is delivered on the date set out at the front of this Deed.

5.3 The Owner agrees that it will pay the LPA's reasonable legal costs properly incurred in the negotiation and completion of this Deed (inclusive of any such reasonable costs properly incurred by external lawyers appointed by the LPA in relation to the negotiation and completion of this Deed) within 28 days of receiving an invoice in relation to the same.

5.4 This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registrable as such.

5.5 This Deed is governed by and shall be implemented in accordance with the law of England.

**IN WITNESS** whereof the parties hereto have executed this agreement as a Deed on the day and year first before written.

EXECUTED AS A DEED by affixing  
THE COMMON SEAL of  
**LONDON LEGACY DEVELOPMENT  
CORPORATION**  
in the presence of:-

)  
)  
)  
)  
  
Authorised Signatory



EXECUTED AS A DEED by  
**HIGGINS HOMES PLC**  
Acting by a director  
In the presence of:

Signed:   
Director

  
.....

[SIGNATURE OF WITNESS]

MISS. KEM BAH.....

[NAME OF WITNESS]

4 BLACKACRE ROAD

THEYDON BOIS.....

EPPING CM16 7LU

[ADDRESS OF WITNESS]

## SCHEDULE

- 1 The following definitions shall be added to clause 1 of the Composite Agreement:

### **Staircasing Receipts**

means the sum received by the Affordable Housing Provider by way of Staircasing proceeds pursuant to the terms of a shared ownership lease for a Shared Ownership Unit, such proceeds shall not include:

a) the sum required to redeem the mortgage or charge or relevant security document (if necessary) of the Shared Ownership Unit; and

b) all reasonably incurred costs of the Affordable Housing Provider in relation to the purchase and sale of the Shared Ownership Unit as well as the subsequent Staircasing transaction such costs shall include (but not be limited to) legal expenses and admin fees.

- 2 Paragraph 2.6 of Schedule 3 of the Composite Agreement shall be amended by the insertion the following words at the beginning of the paragraph:

"Save in relation to Affordable Housing provided in Sub-Zone 3D1 to which only paragraph 2.7 shall apply (for the avoidance of doubt paragraphs 2.1 to 2.5 of this Schedule do not bind the Affordable Housing in Sub-Zone 3D1)..."

- 3 A new paragraph 2.7 shall be inserted in Schedule 3 of the Composite Agreement as follows:

"2.7 Subject to the terms of any grant agreement with any body or other binding funding conditions providing Grant Funding, the Staircasing Receipts arising in respect of Shared Ownership Units in Sub-Zone 3D1 shall be applied by the Affordable Housing Provider towards the provision of additional Affordable Housing within the LPA's administrative area SAVE THAT in the event that the Affordable Housing Provider exercises reasonable endeavours over a reasonable period of time to reinvest the Staircasing Receipts within the LPA's administrative area but is unable to do so then the Affordable Housing Provider shall be permitted to allocate the Staircasing Receipts towards the provision of additional Affordable Housing within the Greater London area provided that the Affordable Housing Provider shall first be in

receipt of the LPA's written consent (such consent not to be unreasonably withheld or delayed)."

4 Paragraph 12 of Schedule 3 of the Composite Agreement shall be amended by the insertion of a new paragraph 12.1A at the beginning of paragraph 12:

"12.1A This paragraph 12 shall apply in respect of the Affordable Housing provided pursuant to this Agreement save in relation to Affordable Housing provided in Sub-Zone 3D1 to which paragraph 13 shall apply."

5 A new paragraph 13 shall be inserted at the end of Schedule 3 of the Composite Agreement:

**"13 Affordable Housing Mortgagee Protection in relation to Sub-Zone 3D1**

13.1 For the purposes of this paragraph 13 the following definitions shall apply:

**Charge** means a mortgage, charge or other security or loan documentation granting a security interest in the Affordable Housing Units in Sub-Zone 3D1 (or any number of them) in favour of the Chargee;

**Chargee** means any mortgagee or chargee of the Affordable Housing Provider of the Affordable Housing Units in Sub-Zone 3D1 (or any number of them) and any receiver (including an administrative receiver) and manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator;

**Date of Deemed Service** means in each instance where a Chargee has served a Default Notice the date on which the Default Notice is deemed to be received as specified in Clause 8.1 of this Agreement;

**Default Notice** means a notice in writing served on the LPA by the Chargee under paragraph 13.2.1 of the Chargee's intention to enforce its security over the relevant Affordable Housing Units in Sub-Zone 3D1;

<b>Intention Notice</b>	means a notice in writing served on the Chargee by the LPA under paragraph 13.3 that the LPA is minded to purchase the relevant Affordable Housing Units in Sub-Zone 3D1;
<b>Moratorium Period</b>	means, in each instance where a Chargee has served a Default Notice under paragraph 13.2.1, the period from (and including) the Date of Deemed Service on the LPA of the Default Notice to (and including) the date falling three months after such Date of Deemed Service (or such longer period as may be agreed between the Chargee and the LPA);
<b>Option</b>	means the option to be granted to the LPA (and/or its Substitute) in accordance with paragraph 13.4 for the purchase of the relevant Affordable Housing Units in Sub-Zone 3D1;
<b>Substitute</b>	means any substitute Affordable Housing Provider nominated by the LPA;
<b>Sums Due</b>	means all sums due to a Chargee of the Affordable Housing Units in Sub-Zone 3D1 pursuant to the terms of its Charge including (without limitation) all interest and reasonable legal and administrative fees costs and expenses.

13.2 A Chargee must:

- 13.2.1 serve a Default Notice on the LPA in accordance with Clause 8 of this Agreement prior to seeking to dispose of the relevant Affordable Housing Units in Sub-Zone 3D1;
- 13.2.2 when serving the Default Notice, provide to the LPA official copies of the title registers for the relevant Affordable Housing Units in Sub-Zone 3D1; and
- 13.2.3 subject to paragraph 13.7 below, not exercise its power of sale over or otherwise dispose of the relevant Affordable Housing Units in Sub-Zone 3D1 before the expiry of the Moratorium Period except in accordance with paragraph 13.4 below.



- 13.3 From the first day of the Moratorium Period to (but excluding) the date falling one calendar month later, the LPA may serve an Intention Notice on the Chargee.
- 13.4 Not later than 15 Working Days after service of the Intention Notice (or such later date during the Moratorium Period as may be agreed in writing between the LPA and the Chargee), the Chargee will grant the LPA (and/or the Substitute) an exclusive option to purchase the relevant Affordable Housing Units in Sub-Zone 3D1 which shall contain the following terms:
- 13.4.1 the sale and purchase will be governed by the Standard Commercial Property Conditions (Third Edition – 2018 Revision) (with any variations that may be agreed between the parties to the Option (acting reasonably));
- 13.4.2 the price for the sale and purchase will be agreed in accordance with paragraph 13.5.2 below or determined in accordance with paragraph 13.6 below;
- 13.4.3 provided that the purchase price has been agreed in accordance with paragraph 13.5.2 below or determined in accordance with paragraph 13.6 below, but subject to paragraph 13.4.4 below, the LPA (or its Substitute) may (but is not obliged to) exercise the Option and complete the purchase of the relevant Affordable Housing Units at any time prior to the expiry of the Moratorium Period;
- 13.4.4 the Option will expire upon the earlier of (i) notification in writing by the LPA (or its Substitute) that it no longer intends to exercise the Option and (ii) the expiry of the Moratorium Period; and
- 13.4.5 any other terms agreed between the parties to the Option (acting reasonably).
- 13.5 Following the service of the Intention Notice:
- 13.5.1 the Chargee shall use reasonable endeavours to reply to enquiries raised by the LPA (or its Substitute) in relation to the Affordable Housing Units as expeditiously as possible having regard to the length of the Moratorium Period; and
- 13.5.2 the LPA (or its Substitute) and the Chargee shall use reasonable endeavours to agree the purchase price for the relevant Affordable Housing Units, which shall be the higher of:
- (a) the price reasonably obtainable in the circumstances having regard to the restrictions as to the use of the Affordable Housing Units contained in this Schedule 3; and

(b) (unless otherwise agreed in writing between the LPA (or its Substitute) and the Chargee) the Sums Due.

- 13.6 On the date falling 10 Working Days after service of the Intention Notice, if the LPA (or its Substitute) and the Chargee have not agreed the price pursuant to paragraph 13.5.2(a) above then notwithstanding any other terms of this Agreement:
- 13.6.1 the LPA (or its Substitute) and the Chargee shall use reasonable endeavours to agree the identity of an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the London area to determine the dispute and, if the identity is agreed, shall appoint such independent surveyor to determine the dispute;
- 13.6.2 if, on the date falling 15 Working Days after service of the Intention Notice, the LPA (or its Substitute) and the Chargee have not been able to agree the identity of an independent surveyor, either party may apply to the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to appoint an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the London area to determine the dispute;
- 13.6.3 the independent surveyor shall determine the price reasonably obtainable referred to at paragraph 13.5.2(a) above, due regard being had to all the restrictions imposed upon the Affordable Housing Units by this Agreement;
- 13.6.4 the independent surveyor shall act as an expert and not as an arbitrator;
- 13.6.5 the fees and expenses of the independent surveyor are to be borne equally by the parties;
- 13.6.6 the independent surveyor shall make his/her decision and notify the LPA, the Substitute (if any) and the Chargee of that decision no later than 14 days after his/her appointment and in any event within the Moratorium Period; and
- 13.6.7 the independent surveyor's decision will be final and binding (save in the case of manifest error or fraud).
- 13.7 The Chargee may dispose of the relevant Affordable Housing Units free from the obligations and restrictions contained in Schedule 3 of this Agreement which shall determine absolutely in respect of those Affordable Housing Units (but subject to any existing tenancies) if:
- 13.7.1 the LPA has not served an Intention Notice before the date falling one calendar month after the first day of the Moratorium Period;
- 13.7.2 the LPA (or its Substitute) has not exercised the Option and completed the purchase of the Affordable Housing Units on or before the date on which the Moratorium Period expires; or

- 13.7.3 the LPA (or its Substitute) has notified the Chargee in writing pursuant to the Option that it no longer intends to exercise the Option.
- 13.8 The LPA (and its Substitute, if any) and the Chargee shall act reasonably in fulfilling their respective obligations under paragraphs 13.2 to 13.7 above (inclusive).
- 13.9 The provisions of Schedule 3 of this Agreement shall not be binding on:
  - 13.9.1 a tenant of a Shared Ownership Unit who Staircases to 100%; and
  - 13.9.2 a tenant of an Affordable Housing Unit who exercises their statutory right to acquire; and
  - 13.9.3 any successors in title to or any persons deriving title through or with title paramount to any of the persons referred to the above sub-paragraphs."