

THIS DEED is made the _____ day of _____ Two thousand and
twenty three

BETWEEN:

- (1) **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of Hinckley Hub, Rugby Road, Hinckley, Leicestershire, LE10 0FR ("the Borough Council") and
- (2) **PERSIMMON HOMES LIMITED** (Company Registration No: 04108747) whose registered office is situated at Persimmon House, Fulford, York, YO19 4FE ("the Owner")

WHEREAS:

- A By a Deed (hereinafter called "the Principal Deed" and annexed hereto) dated 4 March 2022 the made between BAP Property Limited(1) Persimmon Homes (North Midlands) Limited (2) Lloyds Bank PLC (3) Hinckley and Bosworth Council (4) Leicestershire County Council (5) pursuant to the Town and Country Planning Act 1990 (as amended) between the owners and Council the owners agreed to secure planning obligations in favour of the Council in connection with proposed development of the land and buildings known as land to the North West side of Brookfield Road, Hinckley pursuant to planning permission granted upon application no 21/00225/FUL
- B On 4 March 2022 the Borough Council granted the Planning Permission for the Development.
- C On 07 March 2022 the Owner purchased the Application Land and the Application Land is registered at the Land Registry with title number LT156786. The Owner is developing the Application Land pursuant to the Planning Permission
- D The Borough Council and the Owner are desirous of altering the terms of the Principal Deed in respect of the Affordable Housing provisions in the manner hereinafter appearing

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. This Deed of Variation is made pursuant to Section 106A of the Town and Country Planning Act 1990 (as amended) and all other relevant enabling provisions. The covenants in this Deed of Variation are planning obligations for the purposes of that Act
2. The Borough Council is the local planning authority capable of enforcing the obligations in the Principal Deed and this Deed of Variation
3. The parties to this Deed of Variation do not intend that any of the terms of this Deed of Variation will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it
4. The Owner covenants to pay the reasonable legal costs of the Borough Council in respect of the preparation, negotiation, completion of this Deed of Variation, payable on completion
5. The parties to this Deed of Variation hereby agree and covenant with each other that from the date of this Deed of Variation the Principal Deed shall be varied in accordance with the following Schedule of Variation
6. This Deed shall be read in conjunction with the Principal Deed
7. Save as hereby modified all other obligations and terms of the Principal Deed shall continue in full force and effect
8. This Deed shall be registered as a Local Land Charge by the Borough Council

SCHEDULE OF VARIATION

The Principal Deed shall be varied as follows:

1. To delete the following definitions from Clause 1.1:
 - a. "Shared Ownership Dwellings";

2. All references to “Shared Ownership” in the remaining definitions in clause 1.1 shall be read as referring to “Discount Market Dwellings”
3. To amend the definition of “Affordable Dwellings in Clause 1.1 to remove reference to Shared Ownership Dwellings and replace with “Discount Market Dwellings” so that the definition now reads as follows:

<i>“Affordable Dwelling/s”</i>	<i>means the units to be constructed as part of the Development as Affordable Housing being 8 Dwellings (20%) and unless otherwise agreed in writing with the Borough Council to comprise:</i> <i>(i) 6 (75%) as Affordable Rented Dwellings; and</i> <i>(ii) 2 (25%) as Discount Market Dwellings</i>
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4. To insert the following definitions into Clause 1.1 hereof:

<i>“Affordable Housing Units”</i>	<i>means those 8 Dwellings which shall comprise of 6 Affordable Rented Dwellings and 2 Discount Market Dwellings as shown on Plan 2</i>
<i>“Affordable Rented Dwellings”</i>	<i>means the 6 Affordable Dwellings to be provided as Affordable Housing for Rent</i>
<i>“Discount Market Dwellings”</i>	<i>means Affordable Housing to be sold at the Discount Market Price</i>
<i>“Discount Market Price”</i>	<i>means 80% of the Open Market Value</i>
<i>“Eligible Purchaser”</i>	<i>means a person having a Local Connection</i>
<i>“Notice of Sales Release”</i>	<i>means written notification given by the Owner to the Director of Economic Development at the Borough Council of the date upon which it proposes to release the Discount Market Dwellings for Disposal and of which not less than 6 (six) weeks’ notice shall be given;</i>

<i>“Open Market Value”</i>	<i>means the price which 100% of the freehold interest in a Market Dwelling would fetch if sold on the open market by a willing vendor to a willing purchaser and disregarding the obligations in this Agreement</i>
<i>“Practical Completion”</i>	<i>means the date given in a written statement issued by the Owner (which for the avoidance of doubt includes their successors in title) or their agent certifying practical completion of a Dwelling and/or Dwellings;</i>

5. In clause 3.1.2 to delete the words *“Affordable Dwellings”* and replace with *“Affordable Rented Dwellings”* and to delete the words *“an Affordable Housing Provider”* and replace with the *“Borough Council”* and to delete in its entirety the words ready for Occupation and the freehold interest in them has been so that clause 3.1.2 now reads as follows:
“Not to Occupy or permit the Occupation of more than 65% of the Market Dwellings until the Affordable Rented Dwellings have been constructed and are ready for to be transferred to the Borough Council”
6. To insert a new clause 3.1.2A as follows:
3.1.2A Not to Occupy or permit the Occupation of more than 65% of the Market Dwellings until the Discount Market Dwellings have been constructed and are ready for Occupation and the freehold interest in them has been transferred to an Approved Provider”
7. To delete reference to *“Shared Ownership Dwelling”* in clause 3.1.5.2, 3.1.5.3 and 3.1.5.4 *“The Owner’s Planning Obligations with the Borough Council*
8. To insert the following and *“3.1.2A”* into clause 3.1.3 after *“3.1.2*
9. To amend clause 3.1.4 of the *“The Owner’s Planning Obligations with the Borough Council to the Principal Deed* by replacing references to *“Affordable Dwellings”* with *“Discount Market Dwellings”* throughout the Clause.

10. To amend clause 3.1.6 to remove the words *“and being such persons as shall be agreed between the Borough Council and the Affordable Housing Provider”* and to delete the final paragraph of clause 3.1.6 from *“PROVIDED THAT....to criteria”*
11. To insert a new clause 3.1.6A - of the Owner's Planning Obligations with the Borough Council to the Principal Deed as follows:
“In the event that the Affordable Rented Dwellings have not been transferred to the Borough Council in accordance with Clause 3.1.2 within 6 months of the date of this Agreement to notify the Team Leader Development Management of the Borough Council that the Affordable Rented Dwellings will revert to Discount Market Dwellings and the provisions of Clause [] shall apply to those Affordable Rented Dwellings”
12. To insert a new clause 3.1.6AA “Discount Market Dwellings”
3.1.6AA
 - a) The Discount Market Dwellings shall only be sold at the Discount Market Price
 - b) The Discount Market Units shall only be used for the purpose of Affordable Housing and in accordance with the below

Discount Market Dwellings to Eligible Purchasers

No later than 6 (six) weeks prior to the expected Practical Completion of the Discount Market Dwellings the Owner will issue a Notice of Sales Release Date to the Borough Council of the date upon which they intend to release the first of the Discount Market Dwellings for sale and inviting the Borough Council to nominate an Eligible Purchaser in accordance with the Borough Council's Housing Allocation Policy in force from time to time and the provisions of this Agreement

The Discount Market Dwellings shall be offered at the Discount Market Price to persons at least one of whom is an Eligible Purchaser

The first of each and every Disposal of a Discount Market Dwelling shall provide (by way of a covenant in favour of the Owner) that each and every Disposal of the Discount Market Dwelling shall be at the Discount Market Price to an Eligible Purchaser in accordance with the provisions of this Agreement and that all subsequent owners of the Discount Market Dwelling shall be bound by the provisions of this Agreement

In the event that the Owner or any subsequent owner of the Discount Market Dwelling shall demonstrate to the Borough Council that the Discount Market Dwelling has been offered on the open market to Eligible Purchasers for not less than 12 (twelve) weeks (and produce a

certificate in writing from either the Owner or a local estate agent instructed by a subsequent owner in respect of the Disposal of the Discount Market Dwelling that the Discount Market Dwelling has been on the open market for not less than 12 (twelve) weeks and that no Eligible Purchaser has been able or willing to exchange contracts in respect of the purchase of the Discount Market Dwelling) then the Owner or such subsequent owner shall be entitled to Dispose of the Discount Market Dwelling to a person not being an Eligible Purchaser

In the event that the Discount Market Dwelling is Disposed of to a person not being an Eligible Purchaser in accordance with paragraph 1.12 the provisions within this Schedule which apply to a Disposal of any of the Discount Market Dwellings will apply upon each re-sale

No Discount Market Dwelling may be Disposed of after the date hereof for an amount exceeding the Discount Market Price ascertained in accordance with the provisions of this Agreement

On each and every Disposal the calculation of the Discount Market Price and the Open Market Value of the Discount Market Dwelling shall be submitted to the Council for approval (acting reasonably) not less than 6 (six) weeks prior to the Discount Market Dwelling being offered for Disposal

No Disposal of the Discount Market Dwellings after the date hereof shall be completed and no such Disposal shall be registered at the Land Registry unless the Borough Council has first consented in writing to such registration (acting reasonably and expeditiously) PROVIDED THAT such consent shall be given as soon as reasonably practicable upon:-

- (a) evidence being furnished that the disponee (or in the case of joint disponees one of the disponees) is an Eligible Purchaser; and
- (b) the Solicitor or licensed or other authorised Conveyancer acting for the disponee(s) firstly certifying to the Borough Council that any consideration expressed to be given for the Discount Market Dwelling by the disponee(s) did not exceed the Discount Market Dwelling Price as evidenced by the certificate given by an Independent Chartered Surveyor not more than 3 (three) months before the date of such Disposal and secondly supplying to the Council the deed of covenant executed by the disponee(s)

On the first Disposal of each Discount Market Dwelling which is registrable at the Land Registry the Owner shall require a restriction to be entered on the Land Registry title in the following form (subject to any amendments required thereto by the Land Registry and agreed between the parties hereto acting reasonably):-

No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the Director of Governance (or other officer authorised for the time being by Hinckley and Bosworth Borough Council) of Hinckley Hub, Rugby Road, Hinckley, Leicestershire, LE10 0FR that the provisions of the Schedule of Variation of the Deed of Variation dated [] 2023 containing planning obligations relating to Land on the North West side of Brookfield Road, Hinckley made between (1) Hinckley and Bosworth Borough Council (1) and Persimmon Homes Limited (2) have been complied with"

13. To amend clause 3.1.7 to read as follows:-

"The Affordable Housing provisions in this Agreement (as set out in this clause 3.1.) shall not be binding on a mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Dwellings including for the avoidance of doubt any mortgagee or charge or receiver for the Discount Market Dwellings or any other persons or bodies deriving title through such mortgagee or charge or Receiver PROVIDED THAT:

IN WITNESS whereof the parties have respectively sealed this Deed as a Deed the day and year first before written

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of)
THE COUNCIL OF THE
BOROUGH OF HINCKLEY
AND BOSWORTH)
in the presence of:)

.....Authorised Signatory

EXECUTED AS A DEED by)
PERSIMMON HOMES LIMITED)
Acting by its Attorneys)

Attorney Signature.....

Attorney Name

in the presence of:)

Witness signature.....

Witness name.....

Witness address

Attorney Signature.....

Attorney Name

in the presence of:)

Witness signature.....

Witness name.....

Witness address

DATED _____ **20**

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

-and-

PERSIMMON HOMES LIMITED

DEED OF VARIATION
relating to all that land and buildings
known as land to the North West side of
Brookfield Road, Hinckley
