

Dated *1 August* 2019

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OLD OAK AND PARK ROYAL  
DEVELOPMENT CORPORATION (1)

AND

HOLLYBROOK LIMITED (2)

AND

HERITABLE DEVELOPMENT FINANCE LIMITED (3)

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**DEED OF VARIATION OF A SECTION 106  
AGREEMENT**

under section 106A of the Town and Country  
Planning Act 1990 and all other powers  
enabling relating to land known as Land East of  
Victoria Centre, Acton Lane, London

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THIS DEED is made on

1 August

2019

**BETWEEN:**

- (1) **OLD OAK AND PARK ROYAL DEVELOPMENT CORPORATION** of City Hall, The Queen's Walk, More London Riverside, London SE1 2AA (the "OPDC");
- (2) **HOLLYBROOK LIMITED** a company registered in England and Wales (company number 006867406) whose registered office is at Foresters Hall, 25-27 Westow Street, London, SE19 3RY (the "Owner");
- (3) **HERITABLE DEVELOPMENT FINANCE LIMITED** a company registered in England and Wales (company number 08606584) of Reliance House, Sun Pier, Medway Street, Chatham, ME4 4ET (the "Mortgagee");

Together known as the "Parties".

**RECITALS**

- (A) By virtue of The Old Oak and Park Royal Development Corporation (Planning Functions) Order 2015, the OPDC is the local planning authority for the area in which the Site is located for the purposes of Part 3 of the 1990 Act and is the local planning authority by whom the obligations contained in this Deed are enforceable.
- (B) The Owner is the registered owner of the freehold interest in the Site with title absolute under title number NGL889701.
- (C) The Mortgagee has registered legal charges over the Site dated 18 January 2017 and 25 March 2019.
- (D) OPDC granted the Planning Permission for the Development pursuant to the Planning Application.
- (E) The Parties entered into an agreement made under s.106 of the 1990 Act dated 23 July 2019 (the "Section 106 Agreement"),

- (F) The Parties have agreed to vary the terms of the Section 106 Agreement in the manner contained in this Deed.

**THE PARTIES AGREE AS FOLLOWS:**

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 References in this Deed to any of the parties shall include reference to its successors in title and assigns and to persons claiming through or under it in relation to all or any part of the Site save where the context otherwise requires.
- 1.2 References to the OPDC shall include reference to any successor body exercising any of the powers currently vested in the OPDC in relation to this Deed.
- 1.3 Words including the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.4 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies and other corporate bodies and also firms and all such words shall be construed interchangeably in that manner.
- 1.5 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction (including for the avoidance of doubt any obligation preventing or restricting Commencement or Occupation) include an obligation not to cause, permit, suffer or allow infringement of the restriction.
- 1.6 Any reference to a statute or a provision thereof or a statutory instrument or a provision thereof shall include any modification, extension or re-enactment thereof for the time being in force (including for the avoidance of doubt any modification, extension or re-enactment made prior to the date of this Deed) and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.

- 1.7 The word "including" means including without limitation or prejudice to the generality of any description defining term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 1.8 The clause and paragraph headings in the body of this Deed and in the schedules hereto do not form part of this Deed and shall not be taken into account in its construction or interpretation.
- 1.9 References to the Site include any part of it.
- 1.10 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise

## **2 LEGAL BASIS**

- 2.1 This Deed is made pursuant to:
- (a) sections 106 and 106A of the 1990 Act;
  - (b) sections 1 and 201 of the 2011 Act; and
  - (c) all other powers so enabling.
- 2.2 The OPDC is the local planning authority having the power to enforce the planning obligations contained in this Deed.

## **3 NATURE OF OBLIGATIONS**

- 3.1 The obligations, covenants and undertakings on the part of the Owner in this Deed are planning obligations insofar as they are capable of being lawfully made pursuant to and for the purpose of section 106 of the 1990 Act and are given so as to bind the Owner's interest in the Site and with the intent that they shall be enforceable by the OPDC not only against the Owner but also against any successors in title to or assigns of or transferees of the Owner



and/or any person claiming through or under the Owner an interest or estate in the Site as if that person had been an original covenanting party and insofar as any such obligations, covenants or undertakings are not capable of falling within section 106 of the 1990 Act the same are entered into as obligations, covenants or undertakings in pursuance of any other such enabling power.

- 3.2 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the OPDC of any of its statutory powers, functions or discretions.

#### **4 VARIATION TO THE SECTION 106 AGREEMENT**

- 4.1 The Section 106 Agreement shall be varied in the manner set out below.
- 4.2 Plan 5 contained in the Section 106 Agreement shall be removed from the Section 106 Agreement and replaced with the plan attached to this Deed at Schedule 1.

#### **5 REGISTRATION**

- 5.1 The OPDC shall request registration of this Deed as a Local Land Charge by the Borough or its respective successor in statutory function.

#### **6 MORTGAGEE'S CONSENT**

- 6.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and the Site shall be bound by the obligations contained in this Deed in priority to the charge of the Mortgagee and that the security of the Mortgagee over the Site shall take effect as if this Deed had been entered into prior to the charge of the Mortgagee.
- 6.2 The parties hereby agree that the obligations contained in this Deed shall not be enforceable against the Mortgagee unless it takes possession of the Site in which case it will be bound by the obligations as if it were a person deriving title from the Owner.

**7 GOVERNING LAW**

This Deed and any dispute, controversy, proceedings or claims of whatever nature arising out of or in any way relating to this Deed or its formation (including any non-contractual disputes or claims) shall be governed and construed in accordance with English law.

**8 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Any person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

**IN WITNESS** whereof this Deed has been executed as a deed and delivered on the date first above written.

**SCHEDULE 1**

**PLAN 5**





Key

Play/Open Space Plan

Location: Park Royal, Acton Lane, Brent London

Name: Plan 5 - Play and Open Space Plan



Scale: 1:300@A1/ 1:800@A3



Michael  
 [Signature]  
 [Signature]  
 [Signature]

The common seal of

OLD OAK AND PARK ROYAL  
DEVELOPMENT CORPORATION was  
affixed in the presence of:

)   
JASBIR KAUR SANDHU.  
)  
  
[witness]


Authorised Signatory

Executed as a deed by  
HOLLYBROOK LIMITED acting by a  
director:

)   
)  
)

in the presence of

Executed as a deed by  
HERITABLE DEVELOPMENT FINANCE  
LIMITED acting by a director and a  
secretary/two directors:

 AP SAULTER B.JUR  
SOLICITOR  
HOLLYBROOK LTD  
19 QUEEN ELIZABETH STR  
LONDON SE1 2LP

Director



Director/Secretary

