

DATED

2026

(1) BERKELEY HOMES PLC

AND

(2) BERKELEY HOMES
(SOUTHERN) LIMITED

AND

(3) HORSHAM DISTRICT COUNCIL

AND

(4) WEST SUSSEX COUNTY COUNCIL

FOURTH DEED OF VARIATION
PURSUANT TO SECTION 106 AND 106A
OF THE TOWN AND COUNTRY
PLANNING ACT 1990

in respect of
Land West of Worthing Road, Southwater,
Horsham, West Sussex RH13 9DT

Legal Ref: SW/12247
Planning Reference:
DC/24/1158

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THIS DEED OF VARIATION is made on

2026

BETWEEN:

- (1) **BERKELEY HOMES PLC** (company number 4088248) whose registered office is at Berkeley House, 19 Portsmouth Road, Cobham, Surrey KT11 1JG ("**Guarantor**");
- (2) **BERKELEY HOMES (SOUTHERN) LIMITED** (company number 01454061) whose registered office is at Berkeley House, 19 Portsmouth Road, Cobham, Surrey KT11 1JG ("**Owner**");
- (3) **HORSHAM DISTRICT COUNCIL** of Albery House, Springfield Road, Horsham, West Sussex RH12 2GB ("**District Council**"); and
- (4) **WEST SUSSEX COUNTY COUNCIL** of County Hall West Street Chichester West Sussex PO19 1RQ ("**County Council**").

(the "**Parties**")

BACKGROUND

- A The Owner is the registered proprietor of that part of the DOV Land to which this Deed applies with absolute title registered at the Land Registry under Title Number WSX376044.
- B The District Council granted the Outline Permission following the completion of the Original S106 Agreement.
- C On 16 January 2017 the Owner, the Guarantor, Southwater Property Promotion Limited, the Council and the County Council entered into the First Variation and the 2017 Section 106 Agreement.
- D On 9 October 2019 the Owner, the Guarantor, Southwater Property Promotion Limited, the Council and the County Council entered into the Second Variation.
- E On 24 June 2024 the Owner, the Guarantor, Southwater Property Promotion Limited, the Council and the County Council entered into the Third Variation.
- F On 30 July 2024 the Owner submitted an application under reference DC/24/1158 (which planning application was validated on 28 August 2024) to vary condition 2 of application reference DC/24/0772 (non-material amendment to previously approved application DC/18/1246) for 199 no. residential dwellings including 61 affordable dwellings and to vary the plans approved under condition 1 of application reference DC/18/1246;
- G Without prejudice to the covenants in the Varied S106 Agreement, the Parties have agreed to vary the terms of the Varied S106 Agreement as set out in Schedule 1 of this Deed.
- H This Deed is made under s106 and s106A of the 1990 Act and is supplemental to the Varied S106 Agreement
- I The District Council is satisfied that the planning obligations are:
 - (i) necessary to make the Development acceptable in planning terms; and
 - (ii) directly related to the Development; and
 - (iii) fairly and reasonably relate in scale and kind to the Development,and satisfy the requirements of in Regulation 122 (as amended).

J This Deed of Variation is to be entered into simultaneously with the Phase 5 Section 106 Agreement a copy of which appears at Appendix E. It is necessary to enter into this Deed of Variation to correlate with the Section 73 Permission and Phase 5 Development and in order to cap the number of dwellings which may be delivered on the DOV Land pursuant to the Section 73 Permission in order that this aligns with the implemented Outline Planning Permission and Phase 5 Development.

IT IS AGREED that:

1 DEFINITIONS AND INTERPRETATIONS

- 1.1 In this Deed where the context so admits all words and phrases defined in the Varied S106 Agreement shall have the same meanings unless otherwise varied by the terms of this Deed and the following expressions shall have the following meaning:

“2017 Section 106 Agreement” means the agreement dated 16 January 2017 made between Berkeley Homes (Southern) Ltd (1) Horsham District Council (2) and West Sussex County Council (3) in respect of **“Block B”**;

“Commencement of the Section 73 Permission Development” means the date upon which the Section 73 Permission Development shall begin by the carrying out of a material operation in accordance with the provisions of section 56(4) of the Act PROVIDED THAT any works of or associated with demolition, site clearance, remediation works, ground investigations, environmental or archaeological investigations, site and soil surveys, erections of contractors work compound, erection of site office, erection of fencing to site boundaries, marking of site boundaries and laying out of access roads and services shall for the purposes of the agreement be deemed not to be material operations and **“Commence”**, **“Commencement”** and **“Commenced”** shall be construed accordingly;

“Implementation of the Phase 5 Development” means the carrying out of a material operation as defined in Section 56(4) of the Act in respect of the Phase 5 Development)

“Deed” means this Fourth Deed of Variation;

“DOV Land” means the land within the ownership of the Owner at the date of this Deed as shown on the DOV Land Plan and which identifies Phase 3.2 Land, Phase 4 Land and Phase 5.

“DOV Land Plan” means plan reference S835_SW_LTP_00 P03 attached hereto at Appendix A

“First Variation” means the deed of variation dated 16 January 2017 made between Berkeley Homes PLC (1) Berkeley Homes (Southern) Limited (2) Southwater Property Promotion Limited (3) Horsham District Council (4) and West Sussex County Council (5);

“Original S106 Agreement” means the Agreement dated 25 June 2015 made between Henry Egerton Aubrey-Fletcher, Peter Robert Michael Bond, Thomas Egerton Aubrey-Fletcher (1) Berkeley Strategic Land Limited (2) the Horsham District Council (3) and the West Sussex County Council (4) Berkeley Homes PLC (5);

“Outline Permission” means the planning permission granted by the District Council on 25 June 2015 under planning reference DC/14/0590 which granted outline planning permission for the residential development of up to 540 dwellings and 54 retirement living apartments associated vehicular cycle and pedestrian access drainage and landscape works;

“Phase 3.2 and Phase 4 Permission” means the reserved matters planning consents granted pursuant to application DC/18/1246, DC/21/1764, DC/23/0443 and DC/24/0772 permitting a total of 214 no. residential dwellings including 61 affordable dwellings (and which for the avoidance of doubt does not include any variations to these approvals pursuant to section 73 of the Act.

“Phase 3.2 Land” means the land identified as Phase 3.2 (respectively) on the DOV Land Plan which land has the benefit of the Phase 3.2 and Phase 4 Permission.

“Phase 4 Land” means the land identified as Phase 4 on the DOV Land Plan which land has the benefit of the Phase 3.2 and Phase 4 Permission.

“Phase 5” means the area edged red on the Phase 5 Plan which for the avoidance of doubt was intended to be Phase 5 of the Outline Permission;

“Phase 5 Section 106 Agreement” means the agreement to be entered into between (1) Horsham District Council (2) West Sussex County Council (3) Berkeley Homes (Southern) Limited and (4) Southwater Property Promotion Limited with respect to the Phase 5 Development and which is to be completed simultaneously with this Agreement.

“Phase 5 Development” means the erection of 94 dwellings with associated access, parking and landscaping pursuant to full planning permission applied for under planning reference DC/19/2464 on Phase 5 and including any variation of planning permission reference DC/19/2464 pursuant to section 73 and / or section 96a of the Town and Country Planning Act 1990 (or any equivalent authority to vary a planning permission) and for the avoidance of doubt includes any subsequent variations to those section 73 and / or section 96a (or equivalent authority) amended permissions;

“Phase 5 Plan” means plan reference S835/Ph5/LP attached hereto at Appendix A;

“Second Variation” means the deed of variation dated 9 October 2019 made between Berkeley Homes PLC (1) Berkeley Homes (Southern) Limited (2) Southwater Property Promotion Limited (3) Horsham District Council (4) and West Sussex County Council (5);

“Section 73 Application” planning application reference DC/24/1158 for Minor Material Amendment (Section 73) to vary condition 2 of application reference DC/24/0772 (non material amendment to previously approved application DC/18/1246) for 199 no. residential dwellings including 61 affordable dwellings and vary the plans approved under condition 1 of application reference DC/18/1246;

“Section 73 Permission” the planning permission granted pursuant to the Section 73 Application;

“Section 73 Permission Development” means the development of the Land pursuant to the Section 73 Permission;

“Third Variation” means the deed of variation dated 24 June 2024 made between Berkeley Homes PLC (1) Berkeley Homes (Southern) Limited (2) Southwater Property Promotion Limited (3) Horsham District Council (4) and West Sussex County Council (5); and

“Varied S106 Agreement” means the Original S106 as varied by the First Variation, the Second Variation and the Third Variation.

- 1.2 Save where is otherwise provided references in this Deed to the Owner shall include their successors in title and assigns.
- 1.3 References in this Deed to **“District Council”** and **“County Council”** shall include any successor to their functions as local planning authority highway authority fire authority and education authority.
- 1.4 The clause headings in this Deed are for convenience only and do not form part of the Deed.
- 1.5 References in this Deed to clauses paragraphs and schedules shall (unless the context otherwise requires) be references to clauses paragraphs and schedules in this Deed.
- 1.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 References in this Deed to the singular shall include the plural and vice versa.

- 1.8 References in this Deed to one gender shall include all other genders.
- 1.9 Any covenant in this Deed by which the relevant party is not to do an act shall be construed as if it were a covenant not to do or permit or suffer to be done such act.
- 1.10 Any covenant in this Deed whereby the relevant party is not to omit to do an act or thing shall be construed as if it were a covenant not to omit or permit or suffer to be omitted such act or thing.
- 1.11 References in this Deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.
- 1.12 Where any party to this Deed is two or more individuals references to that party shall include the plural number and obligations expressed or implied to be made by or with such party are deemed to be made by or with such individuals jointly and severally.
- 1.13 If and to the extent that there is any inconsistency as between the Varied S106 Agreement and this Deed then the provisions of this Deed shall prevail.

2 STATUTORY POWERS

- 2.1 This Deed is made pursuant to Section 106 and 106A of the Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and any other enabling powers and enactments that are relevant.
- 2.2 It is acknowledged by the Parties that the planning obligations are obligations for the purpose of Section 106 and 106A of the Act.
- 2.3 The Parties acknowledge and agree that the variations contained in this Deed are only binding upon the DOV Land and those variations are enforceable by the District Council and County Council as local planning authority against the Owner and their successors in title in respect of their interests in the DOV Land.
- 2.4 The obligations contained in the Varied S106 Agreement as varied by this Deed are binding on the DOV Land and enforceable by the District Council and County Council as local planning authority against the Owner and their successors in title in respect of their interest in the DOV Land.
- 2.5 It is acknowledged and agreed by the Council and County Council that the amendments in this Deed in respect of the Housing Mix and Affordable Housing mix (Paragraph 2.1 of Schedule 19) reflect the existing development of the Land within Phases 1, 3.1 and 3.2 as at the date of this Deed and the proposed ongoing development of the Land within Phase 4 and Phase 5 Land pursuant to the Section 73 Permission and Phase 5 Development (as applicable) and as is set out in Appendix C for completeness. The Council and County Council acknowledge that the development of Phases 4 and 5 pursuant to the Section 73 Permission and Phase 5 Development would be compliant with the Housing Mix and Affordable Housing mix (Paragraph 2.1 of Schedule 19).

3 PHASE 4 LAND

- 3.1 The Owner covenants as follows :
- 3.1.1 save for any development existing at the date of grant of the Section 73 Permission (and for the avoidance of doubt the development existing at the date hereof is within phases 1, 3.1 and 3.2 and is confirmed in the breakdown at Appendix ~~C~~~~4~~ below) not to carry out further development on the Phase 3.2 and Phase 4 Land pursuant to the Phase 3.2 and Phase 4 Permission from the date of grant of the Section 73 Permission.

3.1.2 it will not claim or seek compensation or legal redress in respect of the application of clause 3.1.1

3.1.3 not to build more than 199 dwelling units on the Phase 3.2 and Phase 4 Land.

4 CONDITIONALITY

4.1 This Deed shall come into effect upon:

4.1.1 grant of the Section 73 Permission; and

4.1.2 Commencement of the Section 73 Permission Development

4.1.3 save for clauses 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17 and 18 which shall come into effect upon grant of the Section 73 Permission and clause 11 which will come into effect upon the Implementation of the Phase 5 Development

5 DETERMINATION OF DEED

5.1 The obligations in this deed (with the exception of Clauses 1, 2, 5, 9, 10, 11.1.1, 11.1.3-11.1.5, 11.2 – 11.12, 12 and 16 - 18) shall cease to have effect if the Section 73 Permission:

5.1.1 expires;

5.1.2 is varied or revoked other than at the Owner's request; or

5.1.3 is quashed following a successful legal challenge.

5.2 The obligations in clause 3, 5.3 and 11 of this deed shall cease to have effect if the Phase 5 Development permission expires, is ~~varied or revoked other than at the request of the owner of Phase 5~~, or is quashed following successful legal challenge.

5.3 In the event of Implementation of the Phase 5 Development prior to the Section 73 Permission being quashed following a successful legal challenge the Owner covenants not to build more than 199 dwelling units on the Phase 3.2 and Phase 4 Land pursuant to the Phase 3.2 and Phase 4 Permission

6 VARIATIONS TO THE VARIED S106 AGREEMENT

6.1 Without prejudice to the other covenants in the Varied S106 Agreement which shall continue in full force and effect, the Parties to this Deed agree that the Varied S106 Agreement shall be amended as set out in Schedule 1 of this Deed.

6.2 Save for as provided in this Deed it is agreed by the Parties that all covenants and obligations in the Varied S106 Agreement met and performed prior to the date of this Deed are satisfied.

7 LOCAL LAND CHARGE

7.1 This Deed is a local land charge and the Council shall register it as such as soon as practicable after the completion of this Deed.

7.2 Upon the full satisfaction of all the terms of this Deed or if this Deed lapses pursuant to clause 5.1 hereto the District Council shall at the request of the Owner procure that all entries in the register of local land charges relating to it shall be removed forthwith.

Commented [VT1]: LPA following instructions from my client if this needs to relate

Commented [SW2R1]: This is accepted.

8 NO FETTER ON DISCRETION

Nothing in this Deed shall fetter or prejudice the District Council's or County Council's statutory rights powers discretions and responsibilities (save where legally or equitably permitted) under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

9 SEVERABILITY

It is agreed that if any part of this Deed is declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the offending provision(s) will be severed from the Deed and the remainder of this Deed shall continue in full force and effect

10 PARTING OF INTEREST

No person shall be bound by any obligations rights or duties contained in this Deed and/or be liable for any breach of covenant and/or obligations contained in this Deed after they shall have parted with all interest in the DOV Land or any part of the DOV Land in respect of which such obligation relates or such breach occurs provided that they shall remain liable for any subsisting breach of covenant prior to parting with their interest.

11 PHASE 5

11.1 The Parties hereby agree and acknowledge the following:

- 11.1.1 that no reserved matters application can be made under the Outline Permission for Phase 5 due to the passage of time and therefore a separate full application has been submitted for the Phase 5 Development;
- 11.1.2 the Outline Permission granted consent for a total of 594 dwellings across the Site to include 32 over 55 units. In order to enable consent to be granted for 94 dwellings pursuant to the Phase 5 Development and for the Phase 5 to align with the Outline Permission, the maximum number of dwellings that may be delivered on the Phase 3.2 and Phase 4 Land (which for the avoidance of doubt is identified on the DOV Land Plan) is 199 dwellings (including 61 affordable dwellings) which represents a reduction of 14 dwellings currently permitted under the Phase 3.2 and Phase 4 Permission.
- 11.1.3 the Phase 5 Development is chargeable development in accordance with the Community Infrastructure Levy Regulations 2010 (as amended);
- 11.1.4 the obligations to pay the Secondary Education Contribution, Primary Education Contribution, Library Contribution, Indoor Sports Contribution, Outdoor Sports Contribution and Fire Services Infrastructure Contribution in the Varied S106 Agreement (as amended by this Deed) have been paid in full but will result in an overpayment due to the Phase 5 Development being subject to the Community Infrastructure Regulations 2010 (as amended);
- 11.1.5 the Council and County Council hereby confirm that they will not enforce any of the Varied S106 Agreement (as amended by this Deed) obligations to pay the contributions set out at clause 11.1.4 above in so far as they relate to the development of Phase 5 pursuant to the Outline Permission.

11.2 The County Council covenants that it will within 60 Working Days of receipt of notice in writing from Berkeley Homes (Southern) Limited confirming Implementation of the Phase 5 Development (PROVIDED THAT such notice is not issued until after the owner of Phase 5 has given notice of Implementation of the Phase 5 Development (in accordance with clause 7.1.1 of the Phase 5 Section 106 Agreement) or in the absence of such notice being provided, until after payment of a community infrastructure levy pursuant to the Community Infrastructure Regulations 2010 (as amended) (or any equivalent legislation or regulations) has been

triggered for the Phase 5 Development), refund to Berkeley Homes (Southern) Limited ((who for the avoidance of doubt is the paying party of the County Council's Contributions)) £453,446 (four hundred and fifty three thousand four hundred and forty six pounds) being the proportionate overpayment of the Fire Services Infrastructure Contribution and of the first three instalments of the Primary Education Contribution and Secondary Education Contribution, as a result of Phase 5 being undertaken pursuant to the Phase 5 Development

- 11.3 The Council covenants that it will, within 60 Working Days of receipt of an invoice from Berkeley Homes (Southern) Limited (PROVIDED THAT such invoice is not issued until after the owner of Phase 5 has given notice of Implementation of the Phase 5 Development (in accordance with clause 7.1.1 of the Phase 5 Section 106 Agreement) to the Council in writing or in the absence of such notice being provided, until after payment of a community infrastructure levy pursuant to the Community Infrastructure Regulations 2010 (as amended) (or any equivalent legislation or regulations) has been triggered for the Phase 5 Development), refund Berkeley Homes (Southern) Limited (who for the avoidance of doubt is the paying party for the purposes of paragraph 7 of Schedule 22 of the Varied Section 106 Agreement) £357,795.40 (three hundred and fifty seven thousand seven hundred and ninety five pounds and forty pence) broken down as follows:

11.3.1 £208,556.40 (two hundred and eight thousand five hundred and fifty six pounds and forty pence) on behalf of the County Council being the proportionate overpayment of the Library Contribution and of the fourth instalments of the Primary Education Contribution and Secondary Education Contribution, as a result of Phase 5 being undertaken pursuant to the Phase 5 Development permission.

11.3.2 £149,239 (one hundred and forty nine thousand two hundred and thirty nine pounds) being the proportionate overpayment of the Indoor Sports Contribution and Outdoor Sports Contribution as a result of Phase 5 being undertaken pursuant to the Phase 5 Development permission.

- 11.4 The County Council hereby authorises the Council to issue the refund detailed at clause 11.3.1 on its behalf.

- 11.5 In the event of Implementation of the Phase 5 Development prior to the Section 73 Permission being quashed following a successful legal challenge the County Council and Berkeley Homes (Southern) Limited agree to recalculate the proportionate overpayment of the Fire Services Infrastructure Contribution, Library Contribution, Primary Education Contribution and Secondary Education Contribution (at clause 11.2 and 11.3.1 of this Deed) pursuant to Schedule 34 of the Varied S106 Agreement, based on the hHousing mMix at laAppendix XD (with no payment due for the development of any dwellings within Phase 5 which would be undertaken pursuant to the Phase 5 Development which is subject to community infrastructure levy) and subject to any further changes in the housing mix for the Phase 4 Land approved by the Council at the date of the calculation. ("Recalculated Proportionate Overpayment") and subject to any further changes in the Housing Mix.

Commented [VT3]: Rob please confirm if the housing mix is acceptable

Commented [CN4]: My client has requested we attach the Broadacres Schedule -as consented here

- 11.6 The County Council covenants that it will within 40 Working Days of receiving notice in writing from Berkeley Homes (Southern) Limited that the Section 73 Permission being has been quashed or revoked (as applicable) and requesting recalculation the County Council will provide a copy of the County Council's calculation of the Recalculated Proportionate Overpayment (including the full calculation) ("**County Council's Recalculated Overpayment**") to Berkeley Homes (Southern) Limited for agreement PROVIDED THAT Implementation of the Phase 5 Development has occurred.

Commented [CN5]: WSCC do not always received notice if a permission is quashed

- 11.7 Within 20 Working Days of receipt of the County Council's Recalculated Overpayment pursuant to clause 11.6, Berkeley Homes (Southern) Limited shall confirm in writing to the County Council whether it agrees to the County Council's Recalculated Overpayment or whether it disputes the County Council's Recalculated Overpayment, with reasons.

- 11.8 If Berkeley Homes (Southern) Limited disputes the County Council's Recalculated Overpayment pursuant to clause 11.7, the County Council and Berkeley Homes (Southern)

Limited shall use reasonable endeavours for a further 40 Working Days from notification by Berkeley Homes (Southern) Limited pursuant to clause 11.7 to agree the Recalculated Proportionate Overpayment.

- 11.9 In the event that Berkeley Homes (Southern) Limited and the County Council cannot reach agreement on the Recalculated Proportionate Overpayment in accordance with clauses 11.6–11.8 then either the County Council or Berkeley Homes (Southern) Limited shall be entitled to refer the matter to an expert pursuant to clause 18 of this Deed.
- 11.10 If the refund made to Berkeley Homes (Southern) Limited by and on behalf of the County Council pursuant to clauses 11.2 and 11.3.1 of this Deed exceeds the amount of the Recalculated Proportionate Overpayment determined by agreement between County Council and Berkeley Homes (Southern) Limited pursuant to clause 11.7 or pursuant to expert determination in accordance with clause 11.9 (as applicable) Berkeley Homes (Southern) Limited shall repay the difference between the payment made pursuant to 11.2 and 11.3.1 and the agreed / determined Recalculated Proportionate Overpayment to the County Council within 20 Working Days of the County Council and Berkeley Homes (Southern) Limited agreeing the Recalculated Proportionate Overpayment pursuant to clause 11.7 or the expert's determination pursuant to clause 11.9 (as applicable).
- 11.11 If the amount of the Recalculated Proportionate Overpayment determined by agreement between County Council and Berkeley Homes (Southern) Limited pursuant to clause 11.7 or pursuant to expert determination in accordance with clause 11.9 (as applicable) exceeds the refund made to Berkeley Homes (Southern) Limited pursuant to clauses 11.2 and 11.3.1, the County Council shall pay the difference between the payment made pursuant to 11.2 and 11.3.1 and the agreed / determined Recalculated Proportionate Overpayment to Berkeley Homes (Southern) Limited within 40 Working Days of the County Council and Berkeley Homes (Southern) Limited agreeing the calculation pursuant to clause 11.7 or the experts determination pursuant to clause 11.9 (as applicable).

~~11.12~~ If the County Council fails to provide the County Council's Recalculated Overpayment in accordance with clause 11.6 Berkeley Homes (Southern) Limited may issue a written reminder to the County Council and if the County Council fails to provide the County Council's Recalculated Overpayment within 20 Working Days of the written reminder - then it shall be deemed to accept the refund provided pursuant to clauses 11.2 and 11.3.1 and the provisions of clauses 11.5–11.11 shall cease and determine.

Commented [CN6]: WSCC cannot accept this clause as notice could be missed. WSCC will of course not ignore any notice that it received

~~11.12~~11.13 Save for as amended by this Deed and as set out in this clause 11, the Varied S106 Agreement is otherwise affirmed and acknowledged by the Parties to be in full force and effect and applies to the DOV Land, including the Phase 5 Development.

~~11.13~~11.14 In the event of conflict between the obligations and conditions secured for the Phase 5 Development and the Varied S106 Agreement (as amended by this Deed), then the Phase 5 Development shall take precedence in respect of Phase 5

12 LEGAL COSTS

- 12.1 The Owner hereby covenants that it will on the date of this Deed pay the District Council's and reasonable legal costs in connection with the preparation and completion of this Deed.
- 12.2 The Owner hereby covenants that it will on the date of this Deed pay the County Council's reasonable legal costs in connection with the preparation and completion of this Deed.

13 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to this Deed with the exception of a successor to the District Council's or County Council's statutory functions and for the avoidance of doubt the terms of this Deed may be varied by agreement between the parties without the consent of any such third party.

14 NO PROHIBITION ON OTHER DEVELOPMENT

Nothing in the Deed shall prohibit or limit the right to carry out and commence the development of the Land in accordance with any other planning permission other than (where specified in this Deed) the Outline Permission granted (whether or not on appeal) after the date of this Deed.

15 WAIVER

No waiver whether express or implied by the District Council or the County Council of any breach or default in performing or observing any of the covenants terms or planning obligations of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

16 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England.

17 DELIVERY

The provisions of the Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

18 DISPUTES

18.1 Save for matters of construction (which shall be matters for the Court) should a dispute or difference arise pursuant to this Deed concerning anything herein then the provisions of this Clause 18 shall apply

18.2 All differences and disputes which may arise concerning this Deed shall:

18.2.1 where the difference or dispute relates to the construction or interpretation of this Deed be referred to the determination (as an expert and not as an arbitrator) of an independent leading planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute;

18.2.2 where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practising in a leading firm of surveyors or civil engineers in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute PROVIDED that where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise.

- 18.3 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors to decide (as expert and not as arbitrator) in relation to any such matter which of Clauses 18.2.1 or 18.2.2 hereto is applicable.
- 18.4 Except as aforesaid any expert appointed pursuant to Clauses 18.2.1 or 18.2.2 or any other person shall:
- 18.4.1 on his appointment serve written notice thereof on the parties in dispute;
 - 18.4.2 consider any written representations by or on behalf of those parties which are received by him within twenty Working Days of such service in accordance with clause 18.4.1 and immediately forward a copy of the written representation of one party to the other party;
 - 18.4.3 allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within twenty Working Days of receipt by the other party thereof;
 - 18.4.4 have an unfettered discretion to determine the reference to him;
 - 18.4.5 serve notice of his determination as soon as he has made it;
 - 18.4.6 give full and clear reasons for his decision;
 - 18.4.7 be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as he may determine and his determination shall be final and binding on the parties in dispute (save in the case of manifest error or fraud),
- PROVIDED THAT if any such expert shall die become insolvent or of unsound mind or if either of the parties in dispute shall serve on him written notice in their reasonable opinion he has unreasonably delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert.
- 18.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, and specific performance, payment of any sum, damages, and any other means of enforcing this Agreement and consequential and interim orders and relief.

THIS DEED HAS BEEN EXECUTED AS A DEED AND DELIVERED on the date stated at the beginning of this Deed

SCHEDULE : VARIATIONS TO VARIED S106 AGREEMENT

The Varied S106 Agreement shall be amended as follows:

Clause 1

1 Clause 1.1 shall be amended as follows:

1.1 The definition of “**Ecological Mitigation Area**” shall be deleted in its entirety and replaced with the following:

*“**Ecological Mitigation Area**” means the area for ecological mitigation shown in the approximate position on the Site indicatively shown on Plan 14 (but excluding any areas within Phase 5) and provided in accordance with the approved Landscape Specification and the terms of Schedule 16 to be managed and maintained thereafter by the Management Company or the Developer”*

1.2 The definition of “**General Open Space**” shall be deleted in its entirety and replaced with the following:

*“**General Open Space**” means the area of amenity green space to be provided in accordance with the Landscape Specification comprising of general open space indicatively shown in the approximate position on Plan 14 but excluding any areas within Phase 5 and provided in accordance with the terms of Schedule 16 to be managed and maintained thereafter by the Management Company or the Developer”*

1.3 The definition of “**Housing Mix**” shall be deleted in its entirety and replaced with the following:

*“**Housing Mix**” means the following:*

Private Units		Affordable Housing Units		Affordable Housing Units Over 55 Units	
Type	No	Type	No	Type	No
1 bed flats	9	1 bed flats	32	1 bed flats	20
2 bed flats	0	2 bed flats	53	2 bed flats	12
		3 bed flats	2		
2 bed houses	75	2 bed houses	39		
3 bed houses	161	3 bed houses	20		
4 bed houses	133				
5 bed houses	38				
Total	416	Total	146	Total	32
Grand Total					594

1.4 The definition of “**Landscaped Areas**” shall be deleted in its entirety and replaced with the following:

***“Landscaped Areas”** means any and all of the General Open Space the Landscape / Green Corridors the Existing Woodland the Structural Landscape and Buffer Strips and the Ecological Mitigation Area as shown indicatively on Plan 14 but excluding any areas within Phase 5, to be managed and maintained thereafter by the Management Company or the Developer”*

- 1.5 The definition of **“LAPs”** shall be deleted in its entirety and replaced with the following:

***“LAPs”** means all or any one of the local areas of play to be provided in accordance with the Play Areas Specification on the Site as part of the Development within the relevant Phases of Development shown by the Illustrative Phasing Plan but excluding Phase 5, in accordance with the LAP Specification and Schedule 8 and **“LAP”** shall be construed accordingly to be managed and maintained thereafter by the Management Company or the Developer”*

- 1.6 The definition of **“LEAPs”** shall be amended as follows:

1.6.1 The words *“and the Third LEAP”* shall be deleted

- 1.7 The definition of **“Library Contribution”** shall be deleted in its entirety and replaced with the following:

***“Library Contribution”** means the sum of one hundred and fifty three thousand three hundred and nine pounds (£153,309.00) to be paid to the District Council on behalf of the County Council subject to County Council Indexation in accordance with Schedule 3 towards the cost of providing additional floor space at Southwater Library and / or (in consultation with Southwater Parish Council) towards improvements at Horsham Library”*

- 1.8 The definition of **“Open Space”** shall be deleted in its entirety and replaced with the following:

***“Open Space”** means any or all of the Cemetery Extension, the Church Car Park, the Second LEAP, the Village Hall Car Park, the Village Hall Land Extension, the Ecological Mitigation Area, the Existing Woodland, the General Open Space, the Landscape / Green Corridors, the LAPs, the Storm Water Detention Areas and the Structural Landscape and Buffer Strips and any other areas as may be agreed, but excluding any areas within Phase 5 and **“Open Spaces”** shall be construed accordingly”*

- 1.9 There shall be a new definition of **“Phase 5”** as follows:

***“Phase 5”** means the area edged red on the Phase 5 Plan which for the avoidance of doubt was intended to be Phase 5 of the Outline Permission*

- 1.10 There shall be a new definition of **“Phase 5 Plan”** as follows:

***“Phase 5 Plan”** means plan reference S835/Ph5/LP”*

- 1.11 The definition of **“Structural Landscape and Buffer Strips”** shall be deleted in its entirety and replaced with the following:

***“Structural Landscape and Buffer Strips”** means those areas of land indicatively shown in the approximate position on Plan 14 but excluding any areas within Phase 5, to be provided in accordance with the Landscape Specification and Schedule 16 to be managed and maintained thereafter by the Management Company or the Developer”*

- 1.12 The definition of **“Storm Water Detention Areas”** shall be deleted in its entirety and replaced with the following:

“Storm Water Detention Areas” means the storm water attenuation areas provided in accordance with Schedule 7 indicatively shown in the approximate positions on Plan 19 and in accordance with the Storm Water Detention Specification but excluding any areas within Phase 5, to be managed and maintained thereafter by the Management Company or the Developer”

1.13 The definition of “**Third LEAP Maintenance Contribution**” shall be deleted in its entirety

1.14 The definition of “Plan 14” shall be deleted in its entirety and replaced with the following:

“means the plan included at Schedule 1 of this Agreement indicatively showing the approximate location of the Landscape Areas being cumulatively the General Open Space Existing Woodland Ecological Mitigation Area and the Structural Landscape and Buffer Strips and Landscape/Green Corridors and marked “Plan 14” and with drawing reference 00401F_SK40 Rev D5”

Clause 4

2 Clause 4 shall be amended as follows:

2.1 Clause 4.4.25 shall be deleted in its entirety

Clause 12

3. A new Clause 12 shall be inserted as follows:

12.1 Save for matters of construction (which shall be matters for the Court) should a dispute or difference arise between the Parties concerning anything herein then the provisions of this Clause 12 shall apply

12.2 All differences and disputes which may arise between the parties hereto concerning this Agreement shall:

12.2.1 where the difference or dispute relates to the construction or interpretation of this Agreement be referred to the determination (as an expert and not as an arbitrator) of an independent leading planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute;

12.2.2 where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practising in a leading firm of surveyors or civil engineers in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as

Commented [VT7]: LPA I understand there is no disputes provision in the DOV so have used the one from the S106

Commented [SW8R7]: Agreed.

appropriate on the application of any of the parties in dispute PROVIDED that where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise.

- 12.3 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors to decide (as expert and not as arbitrator) in relation to any such matter which of Clauses 12.2.1 or 12.2.2 hereto is applicable.

- 12.4 Except as aforesaid any expert appointed pursuant to Clauses 12.2.1 or 12.2.2 or any other person shall:

12.4.1 on his appointment serve written notice thereof on the parties in dispute;

12.4.2 consider any written representations by or on behalf of those parties which are received by him within twenty Working Days of such service in accordance with clause 12.4.1 and immediately forward a copy of the written representation of one party to the other party;

12.4.3 allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within twenty Working Days of receipt by the other party thereof;

12.4.4 have an unfettered discretion to determine the reference to him;

12.4.5 serve notice of his determination as soon as he has made it;

12.4.6 give full and clear reasons for his decision;

12.4.7 be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as he may determine and his determination shall be final and binding on the parties in dispute (save in the case of manifest error or fraud),

PROVIDED THAT if any such expert shall die become insolvent or of unsound mind or if either of the parties in dispute shall serve on him written notice in their reasonable opinion he has unreasonably delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert.

- 12.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, and specific

performance, payment of any sum, damages, and any other means of enforcing this Agreement and consequential and interim orders and relief.

Schedule 1

5. Plan 14 shall be deleted and replaced with Plan 14 at Appendix B

Schedule 5

- 6 Schedule 5 shall be amended as follows:

- 6.1 Paragraph 11 and 12 of Schedule 5 shall be deleted in their entirety and replaced with the following:

"11. To pay the Second LEAP Maintenance Contribution to the District Council upon the transfer of the Second LEAP to the Parish Council or to the District Council or its Nominee (as appropriate)

12. Not to Occupy or cause or allow to be Occupied more than 50% of the Dwelling Units in Phase 4 of the Development until the Second LEAP Maintenance Contribution has been paid to the District Council"

- 6.2 Paragraphs 12(a) to 17 of Schedule 5 shall be deleted in their entirety.

- 6.3 Paragraph 22 of Schedule 5 shall be deleted in its entirety and replaced with the following:

"22. On the District Council notifying the Owner and / or the Developer in writing that it is satisfied that the Second LEAP has been constructed provided equipped and maintained in accordance with the Play Area Specification the Owner / Developer shall offer to transfer the Second LEAP to the Parish Council or to the District Council or its Nominee for the sum of £1 and such transfer to be in the form or substantially in the same form as the draft transfer annexed at Schedule 26."

- 6.4 Paragraph 24 of Schedule 5 shall be deleted in its entirety and replaced with the following:

"24. If the Parish Council or the District Council or its Nominee do not accept the offer to transfer or the transfer is not completed then the Second LEAP Maintenance Contribution shall not be payable and the Owner / Developer shall be released from the relevant Occupation restrictions"

- 6.5 Paragraph 25 of Schedule 5 shall be deleted in its entirety and replaced with the following:

"25. To pay the reasonable legal costs of the Parish Council or the District Council or its Nominee in accepting the transfer of the Second LEAP upon completion of the Second LEAP transfer"

Schedule 7

- 7 Schedule 7 shall be amended as follows:

- 7.1 The initial covenant of Schedule 7 shall be deleted in its entirety and replaced with the following:

"Save for in respect of Phase 5 the Owner and Developer hereby covenant and agree with the District Council:"

Schedule 16

8 Schedule 16 shall be amended as follows:

8.1 The initial covenant of Schedule 16 shall be deleted in its entirety and replaced with the following:

"Save for in respect of Phase 5 the Owner and Developer hereby covenant and agree with the District Council."

Schedule 19

9 Schedule 19 shall be amended as follows:

9.1 Paragraph 2.1 of Schedule 19 shall be deleted in its entirety and replaced with the following:

2.1 *"To provide within the Development in accordance with the Affordable Housing Delivery Schedule in Part 2 of this Schedule the Affordable Housing Units in the following tenure and mix:*

2.1.1 89 Affordable Rented Units being:

2.1.1.1 26 x 1 bed apartments 20 of which shall be Over 55 Units

2.1.1.2 27 x 2 bed apartments 12 of which shall be Over 55 Units

2.1.1.3 1 x 3 bed apartments

2.1.1.4 16 x 2 bed houses; and

2.1.1.5 19 x 3 bed houses

2.1.2 89 Shared Ownership Units being:

2.1.2.1 26 x 1 bed apartments

2.1.2.2 38 x 2 bed apartments

2.1.2.3 1 x 3 bed apartments

2.1.2.4 23 x 2 bed houses; and

2.1.2.5 1 x 3 bed houses

Schedule 21

10 Schedule 21 shall be amended as follows:

10.1 A new paragraph 5 of Schedule 21 shall be included as follows:

"5. For the avoidance of doubt the provisions of the Green Travel Plan and this Schedule 21 shall not apply to Phase 5"

Schedule 22

11 Schedule 22 shall be amended as follows:

11.1 Paragraph 6 of Schedule 22 shall be amended as follows:

11.1.1 The words "the Third LEAP" shall be deleted

11.2 Paragraph 8 of Schedule 22 shall be amended as follows:

11.2.1 The words “and Third LEAP Maintenance Contribution” shall be deleted

Schedule 16

12 Schedule 23 shall be amended as follows:

12.1 Paragraph 4 shall be deleted in its entirety and replaced with the following:

“To repay each of the County Council Contributions to the party who has paid the relevant County Council Contribution to the District Council in the event that the relevant County Council Contribution has not been spent by the County Council within 7 years from the date of payment SAVE FOR the Library Contribution which the County Council shall repay to the party who has paid the Library Contribution to the District Council in the event that the Library Contribution has not been spent by the County Council within 10 years.

EXECUTED as a DEED by)
BERKELEY HOMES (SOUTHERN) LIMITED)
acting by a Director and its Secretary or by)
two Directors)

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Director

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Director/Secretary

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.....BERKELEY HOMES PLC)
acting by a Director and its Secretary or by)
two Directors)

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Director

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Director/Secretary

EXECUTED as a **DEED** by affixing.....)
The COMMON SEAL of.....)
HORSHAM DISTRICT COUNCIL.....)
in the presence of:)

.....
Authorised Officer

EXECUTED as a **DEED** by affixing.....)
The COMMON SEAL of.....)
WEST SUSSEX COUNTY COUNCIL.....)
in the presence of:

.....
Authorised Officer

| **Appendix A – DOV Land Plan and Phase 5 Plan**

Appendix B – Plan 14

**Appendix C - Housing Mix and Affordable Housing mix (existing / pursuant to Section 73
Permission)**

Appendix D - Housing Mix and Affordable Housing mix (existing / pursuant to Phase 3.2 and Phase 4 Permission)

| Appendix E – Phase 5 Section 106 Agreement