HDC version 07/2025

**(1) SOUTHERN HOUSING**

**(2) HORSHAM DISTRICT COUNCIL**

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**Town and Country Planning Act 1990 Section 106A**
**Deed of Variation to Section 106 Agreement dated 10 May 1994 in respect of land at and adjoining Swabey's Yard, Worthing Road and Southwater Street, Southwater, Horsham, West Sussex**

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Planning Ref: S106/24/0017

This Agreement is made as a Deed and dated 2025

Between:

(1) **SOUTHERN HOUSING** (Registered Society No. 8983) of Fleet House, 59-61 Clerkenwell Road, London EC1M 5LA ('the Owner') and

(2) **HORSHAM DISTRICT COUNCIL** of Albery House, Springfield Road, Horsham, West Sussex RH12 2GB ('the Council')

together "the **Parties**"

1. **BACKGROUND**

1.1 The Council is the local planning authority for the purposes of S106 and S016A of the 1990 Act for the area within which the Sites are situated and is capable of enforcing the obligations in the Principal Agreement.

1.2 The Owner is the registered proprietor of the Sites with Title Absolute of the freehold land registered at the Land Registry under Title Numbers WSX209586, WSX203843, WSX265139 and WSX204701.

1.3 The Principal Agreement was entered into on 10 May 1994. Without prejudice to the covenants in the Principal Agreement, and pursuant to the submission of the Application by the Owner, the Parties have agreed to vary the terms of the Principal Agreement as set out in this Agreement.

**IT IS AGREED**:-

2. **Interpretation**

2.1 In this Agreement unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

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| **"1990 Act"** | the Town and Country Planning Act 1990 (as amended). |
| **"Application"** | the application dated 24 September 2024 under reference S106/24/0017 to modify the Principal Agreement in relation to the Sites. |
| **"Principal Agreement"** | the Agreement dated 10 May 1994 made between John Mowlem Homes Ltd (1) Persimmon Homes |

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|---|---|
| | (South East) Ltd (2) Higgs and Hill Homes Ltd (3) Southwater Properties Ltd (4) John Mowlem Homes Ltd and Persimmon Homes (South East) Ltd (5) Higgs and Hill Homes Ltd (6) Southwater Properties Ltd (7) The Governor and Company of the Bank of Ireland (8) John Mowlem Homes Ltd (9) Persimmon Homes (South East) Ltd (10) and Horsham District Council (11) relating to Land at and adjoining Swabey's Yard Worthing Road and Southwater Street Southwater Horsham West Sussex. |
| "**Sites**" | the plots identified by address and shown edged red on the Site Plan. |
| "**Sites Plan**" | the plan attached to this Agreement and shown at Schedule 1. |

2.2 Unless the context requires otherwise, all words and phrases defined in the Principal Agreements shall have the same meaning in this Agreement (except to the extent that they are expressly varied in this Agreement).

2.3 References in this Agreement to the "Owner" shall include their respective successors in title to the Sites and their assigns.

2.4 References in this Agreement to the "Council" shall include any successor to its functions as local planning authority.

2.5 References in this Agreement 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.

2.6 The clause headings in this Agreement are for convenience only and do not form part of the Agreement.

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2.7 References to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Agreement.

2.8 References to the singular shall include the plural and vice versa.

2.9 Where any covenants in this Agreement are given by or for the benefit of more than one party they are given by or for the benefit of them jointly and severally.

2.10 Where a party includes more than one person, any obligations of that party will be joint and several.

3. **Enabling Provisions**

3.1 This Agreement is supplemental to and varies the Principal Agreements and is made pursuant to s106 and section 106A of the Act, s111 of the Local Government Act 1972, and Section 1 of the Localism Act 2011 and all other enabling powers and is subject to the Principal Agreement and it is acknowledged by the Parties that the obligations contained within it are binding on the Sites and are enforceable by the Council as local planning authority against the Owner as owner of the Sites and against their successors in title and assigns in respect of their interests in each and every part of the Sites provided always that no person shall be liable for any breach of any covenant or obligation in this Agreement after it has parted with all of its interest in the Sites or the part of the Sites in respect of which such breach occurs (save in relation to any antecedent breach which occurs prior to parting with such interest).

4. **Variations to the Principal Agreements**

4.1 Without prejudice to the other covenants in the Principal Agreements which shall continue in full force and effect, parties to this Agreement agree that from the date of this Agreement the Principal Agreements shall be amended as set out in Schedule 2.

5. **Covenants**

5.1 The Owner covenants with the Council to comply with the obligations contained in this Agreement and to comply with the obligations and provisions of the Principal Agreements.

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5.2 The Council covenants with the Owner that it will observe and perform the covenants restrictions and obligations on its part contained in the Principal Agreements as amended by this Agreement.

6. **Local Land Charge**

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

7. **No Fetter on Discretion**

7.1 Nothing in this Agreement shall fetter or prejudice the 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.

8. **Severability**

8.1 It is agreed that if any part of this Agreement 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 Agreement and the remainder of this Agreement shall continue in full force and effect.

9. **Costs**

9.1 The Owner agrees with the Council to pay to the Council on or before the date hereof the Council's reasonable legal costs incurred in preparing and entering into this Deed.

10. **Contracts (Rights of Third Parties) Act 1999**

10.1 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Agreement shall be enforceable by a third party who is not a party to the Agreement and the terms of the Agreement may be varied by a deed agreed between the Parties without the consent of any third party being required.

11. **Waiver**

11.1 No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall

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prevent the Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

12. **Jurisdiction**

12.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England, and the Parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

13. **Commencement**

13.1 For the avoidance of doubt the provisions of this Deed shall not have any effect until this document has been dated.

14. **Dispute Resolution**

14.1 Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by the President for the time being of the Law Society or such other body which may replace it.

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**SCHEDULE 1**

**Site Addresses and Site Plans**

8, 10, 11, 13, 14 and 17 Nyes Lane, Southwater, Horsham RH13 9GP

23-35 (odd) Castlewood Road, Southwater, Horsham RH13 9US

3 and 5-10 (inclusive) Cowslip Close, Southwater, Horsham RH13 9UZ

1-26 Buttercup Way, Southwater, Horsham RH13 9UP

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**Schedule 2 – Amendments to Principal Agreement**

1. The Principal Agreement is varied as follows:

1.1 Paragraph 15.6 shall be amended to include *"(other than by way of legal mortgage or charge)"* after the words 'dispose of' and after the words 'disposal of'

1.2 Paragraphs 15.9 to 15.13 (inclusive) shall be deleted in their entirety and replaced with the following new paragraph 15.9 and its sub-paragraphs:

*"15.9 The social housing provisions in this Agreement shall not be binding on any mortgagee or chargee or any receiver (including an administrative receiver 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 (each "a* ***Receiver****")) of the whole or any part of the Social Housing Units or any persons or bodies deriving title through such mortgagee chargee or Receiver PROVIDED THAT:*

*15.9.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Social Housing Units; and*

*15.9.2 shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Social Housing Units to another housing association or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and*

*15.9.3 if such disposal has not completed within the three month period, the mortgagee or chargee or Receiver shall be entitled to dispose of the Social Housing Units free from the social housing provisions in this Agreement which provisions shall determine absolutely"*

1.3 Paragraphs 15.10 to 15.13 (inclusive) shall be noted as *"NOT USED".*

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**IN WITNESS** whereof this Deed has been duly executed the day and year first hereinbefore mentioned

Executed as a Deed by affixing the Common
Seal of **SOUTHERN HOUSING**
in the presence of

Authorised Signatory

Authorised Signatory

SEALED WITH THE COMMON SEAL OF
**HORSHAM DISTRICT COUNCIL**
in the presence of

Authorised Signatory

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