

DATED

2022

- (1) **HORSHAM DISTRICT COUNCIL**
- (2) **STONEWATER (2) LIMITED**
- (3) **WEST SUSSEX COUNTY COUNCIL**
- (4) **NETWORK RAIL INFRASTRUCTURE LIMITED**

DEED OF VARIATION

**UNDER SECTION 106 OF THE TOWN
AND COUNTRY PLANNING ACT 1990**

in relation to
Land at Stopham Road, Pulborough, West
Sussex

ashfords

www.ashfords.co.uk

This **DEED** is made the

day of

2022

BETWEEN

- (1) **HORSHAM DISTRICT COUNCIL** of Parkside, Chart Way, Horsham, West Sussex RH12 1RL (the "**District Council**"); and
- (2) **STONEWATER (2) LIMITED** a charitable registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (registered number 19412R) whose registered office is at Suite C, Lancaster House, Grange Business Park, Enderby Road, Whetstone, Leicester, LE8 6EP (the "**First Owner**"); and
- (3) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex PO19 1RQ (the "**County Council**")
- (4) **NETWORK RAIL INFRASTRUCTURE LIMITED** of 1 Eversholt Street London NW1 2DN (company number 2904587) (the "**Second Owner**")

and is supplemental to the Principal Agreement (which is defined in clause 1.1 hereof).

Whereas:

- (A) The District Council is the local planning authority by whom the planning obligations in the Principal Agreement are enforceable pursuant to Section 106 of the Town and Country Planning Act 1990.
- (B) The First Owner is now the freehold owner of the First Owner's Land which is shown edged red on Plan 1.
- (C) The Second Owner remains the owner of the Second Owner's Land (as defined in the Principal Agreement)
- (D) The First Owner is a registered provider of social housing and intends to deliver all of the Dwellings as Qualifying Dwellings
- (E) The First Owner intends to deliver all the Dwellings as Affordable Housing Units and Additional Affordable Dwellings and the District Council is in agreement with this approach
- (F) The First Owner [has submitted] [intends to submit] an application for Social Housing Relief for all Dwellings and the District Council requires this obligation to be entered into in order to grant the Social Housing Relief
- (G) The District Council acknowledges that as all of the Dwellings will be allocated to occupants in accordance with its housing register and nominations policy criteria and

therefore occupiers will be drawn from the District Council's administrative area. The District Council therefore acknowledges that there will be no additional demand upon the infrastructure within the administrative area of the District Council

- (H) Pursuant to section 106 of the Act the District Council (being the local planning authority by whom the provisions of the Principal Agreement are enforceable) and the First Owner, the County Council and the Second Owner have agreed to enter into this Deed of Variation in order to amend the Principal Agreement and to secure the obligations set out in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:-

1. INTERPRETATION

- 1.1. In this Deed the following expression shall have the following meaning:-

"Principal Agreement" means a deed dated 12 November 2018 made under section 106 of the Act relating to the Site, made between George Henry Richards (1), Willowmead (Pulborough) Limited (2), Network Rail Infrastructure Limited (3), the District Council (4) and the County Council (5).

and definitions in the Principal Agreement shall apply when used in this Deed except where otherwise provided.

- 1.2. In this Deed, except where the context requires otherwise:

- 1.2.1. The singular includes the plural, the masculine includes the feminine, and vice versa;
- 1.2.2. References to clauses and schedules are to the clauses in and schedules to this Deed;
- 1.2.3. References to any party in this Deed shall include their respective successors in title to the land (or part of it) and their assigns;
- 1.2.4. Reference to any party having a statutory function referred to in this Deed shall include any successor to that statutory function;
- 1.2.5. Reference to any act or statutory instrument shall include any subsequent amendment or re-enactment of it;
- 1.2.6. Where an obligation applies to more than one person, their liabilities shall be joint and several.

2. AGREEMENT

The District Council, the County Council, the First Owner and the Second Owner hereby agree that:

- 2.1. With effect from the date of this Deed the Principal Agreement shall be varied as set out in the Schedule to this Deed.
- 2.2. This Deed is a local land charge and shall be registered as such by the District Council.
- 2.3. This Deed is made pursuant to section 106 of the Act and is a planning obligation enforceable by the District Council and the County Council made with the intent to bind the Site, and is also made pursuant to section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and any and all enactments and powers in that behalf.
- 2.4. The terms of the Principal Agreement not varied as detailed in the Schedule to this Deed shall remain unamended and fully enforceable.

3. MISCELLANEOUS

- 3.1. This Deed is not made for the benefit of nor shall any of its provisions be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties hereto, but for the avoidance of doubt the exclusion of the application of that Act shall not prevent any future successor in title to any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed.
- 3.2. This Deed comes into force on the date hereof.

THE SCHEDULE

VARIATIONS TO THE PRINCIPAL AGREEMENT

1. The Principal Agreement shall be varied as follows:
 - 1.1. In Clause 3 (Definitions) of the Principal Agreement the following definitions shall replace those in the Principal Agreement:

“Affordable Housing”	means affordable housing comprising Social Rented Housing and/ or Affordable Rented Housing Units; and / or Shared Ownership Units (or such other forms of intermediate tenure as may be defined as affordable housing under the NPPF from time to time) provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable Housing should include provision to remain at an affordable price for future eligible households (save for where paragraph 12 of Part 2 Schedule 2 of the Principal Agreement (as varied) applies) or for the subsidy to be recycled for alternative affordable housing provision and as defined within the National Planning Policy Framework 2021 (NPPF) Glossary (Annex 2) or any amendment thereto or any Planning Policy Statement Guidance Notes or Circulars which may supersede it
“Affordable Housing Mix”	means the mix set out in the table at Part 1 of Appendix 2 of this Deed
“Plan 2”	means the site location plan 19-129 SRP MHA XX 00 DR A 002 P6 annexed at Appendix 1 of this Deed

- 1.2. In Clause 3 (Definitions) of the Principal Agreement the following definition shall be inserted:

“Additional Affordable Dwellings”	means the 19 Dwellings designated in the Principal Agreement as Open Market Dwellings which the First Owner proposes to deliver as Affordable Housing in accordance with mix detailed in the table at Part 2 of
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	Appendix 2 or such other mix of as may be notified to the District Council.
“Clawback Period“	means the period set out in Regulation 2 (1) of the Regulations under the heading “clawback period” (aa)
“Disqualifying Event”	shall have the same meaning as set out in Regulation 53(2) of the Regulations
“Notification Requirements”	means the duty to notify the District Council of the occurrence of a Disqualifying Event as set out in Regulation 53(6) and (7) of the Regulations
“Qualifying Dwellings”	means a Dwelling which complies with Regulation 49(2) of the Regulations and “Qualifying Dwellings” shall be construed accordingly
“Regulations”	means the Community Infrastructure Levy Regulations 2010 and all subsequent statutory amendments thereto
“Relevant Amount”	means an amount calculated in accordance with Regulation 53(4) of the Regulations
“Social Housing Relief”	means any relief granted pursuant to Regulation 49 of the Regulations

- 1.3. In paragraph 1.1 of Part 1 Schedule 2 the words “Commencement Date” shall be deleted and replaced with the words “commencement of the Highway Works”.
- 1.4. In paragraph 1.2 of Part 1 Schedule 2 the words “(other than drainage works)” shall be inserted after the words “Commencement of the Development”.
- 1.5. In paragraph 2 of Part 1 Schedule 2 the words “(other than drainage works)” shall be inserted after the words “Commencement of the Car Park”.
- 1.6. In paragraph 7.1 of Part 2 Schedule 2 the words “(for the avoidance of doubt the Additional Affordable Dwellings shall be included within the said deed of nomination for the duration of the Clawback Period)” shall be inserted after the words “Schedule 5”.
- 1.7. Paragraphs 8, 10 and 11 of Part 2 Schedule 2 shall be deleted and replaced with the following:

“8. The affordable housing provisions in Part 2 of Schedule 2 of this Agreement shall not be binding on a 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 Affordable Housing Units and/ or Additional Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

a) such mortgagee or chargee or Receiver shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Units and/ or Additional Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units and/ or Additional Affordable Dwellings to another Registered Provider or to the District 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

b) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units and/ or Additional Affordable Dwellings free from the affordable housing provisions in Part 2 of Schedule 2 of this Agreement which provisions shall determine absolutely”

1.8. Paragraphs 12-15 (inclusive) of Part 2 Schedule 2 shall be re-numbered as paragraphs 10-13 accordingly.

1.9. In paragraph 15 of Part 2 Schedule 2 (renumbered paragraph 13) the words “subject to paragraphs 10 and 11 above” shall be deleted and replaced with “subject to paragraph 8 above”.

1.10. A new paragraph 14 shall be inserted in Part 2 of Schedule 2 as follows:

14. For the duration of the Clawback Period and unless otherwise agreed in writing the First Owner covenants as follows

- a) to procure that the Additional Affordable Dwellings are Occupied as Qualifying Dwellings PROVIDED THAT in the event that a Disqualifying Event occurs in relation to any Additional Affordable Dwelling that Dwelling shall be released from the obligations set out in this Deed which shall cease and determine in relation to such Additional Affordable Dwelling
- b) in the event that a Disqualifying Event occurs in relation to any Additional Affordable Dwelling the First Owner shall comply with the Notification Requirements and the First Owner acknowledges that in such event the Relevant Amount shall become payable

1.11. In paragraph 3 of Part 3 Schedule 2 the words “including without limitation entering into a Section 278 and/or Section 38 Agreement with the County Council” shall be deleted.

1.12. In paragraph 6 of Part 3 Schedule 2 the words “Commencement of Development” shall be deleted and replaced with the words “commencement of the Highway Works”.

1.13. Paragraph 8 of Part 3 Schedule 2 shall be deleted and replaced with the following:

“8. The First Owner covenants with the County Council and the District Council to complete the Highway Works in full in accordance with the Approved Highway Works Scheme to the satisfaction of the County Council within six months of the Commencement of the Development.”

1.14. In paragraph 9 of Part 3 Schedule 2 the words “(other than drainage works)” shall be inserted after the words “Commencement of the Car Park”.

1.15. In paragraph 1 of Part 4 Schedule 2 the words “Commencement Date” shall be deleted and replaced with the words “commencement of the Highway Works”.

IN WITNESS of which the parties hereto have executed this document as a deed the day and year first before written

EXECUTED as a **DEED** by affixing

THE COMMON SEAL of)

HORSHAM DISTRICT COUNCIL)

in the presence of:)

Authorised signatory

EXECUTED as a **DEED** by affixing)

the common seal of)
STONEWATER (2) LIMITED)
in the presence of:

.....
Authorised signatory

Authorised signatory

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

Authorised signatory

EXECUTED as a **DEED** by
affixing the Common Seal of
NETWORK RAIL INFRASTRUCTURE LIMITED
in the presence of:

Authorised signatory

Appendix 1

Plan 2

Appendix 2

Part 1 - Affordable Housing Mix

Plot	Dwelling Type	Tenure
12a	2B / 3P FLAT	Social Rent
12b	2B / 3P FLAT	Social Rent
13	1B / 2P FLAT	Social Rent
14	1B / 2P FLAT	Social Rent
15	2B / 4P FLAT	Social Rent
16	2B / 3PFLAT	Social Rent
17t	2B / 4P HOUSE	Social Rent
18t	2B / 4P HOUSE	Social Rent
19t	2B / 4P HOUSE	Social Rent
20	2B / 3P BUNGALOW Wheelchair	Social Rent

Part 2

Additional Affordable Units

Plot	Dwelling Type	Tenure
01/02	4B / 6P HOUSE	Social Rent
3	4B / 6P HOUSE	Social Rent
04 / 05 / 24 / 25 / 27 / 28	3B / 5P HOUSE	Affordable Rent
06	2B / 4P HOUSE	Affordable Rent
07	2B / 4P HOUSE	Affordable Rent
08	3B / 4P HOUSE	Affordable Rent
09 / 21 / 26	3B / 5P HOUSE	Affordable Rent
10	3B / 5P HOUSE	Social Rent
11	3B / 5P HOUSE	Social Rent
22	2B / 4P HOUSE	Social Rent
23	2B / 4P HOUSE	Affordable Rent