**ANTHONY HUGH JAMES**

**and**

**AKEHURST HOMES LIMITED**

**and**

**HORSHAM DISTRICT COUNCIL**

# DEED OF VARIATION

Pursuant to section 106A of the Town and Country Planning Act 1990 in respect of

**Land South of Furze Common Road, Thakeham, West Sussex**

**Registered at HM Land Registry as Land on the west side of Storrington Road, Thakeham, Pulborough**

Lauren Kelly – Head of Legal and Democratic Services
Horsham District Council
Albery House
Springfield Road
Horsham
West Sussex
RH12 2GB

Planning Ref.: S106/26/0035 (& DC/23/2146)

Legal Ref.: CB/12963

**THIS DEED** is made as a deed and dated 2026

Between:

(1) **ANTHONY HUGH JAMES** of 58 Lamont Road, London SW10 0HX (**"the Owner**"); and

(2) **AKEHURST HOMES LIMITED** (Company Regn No. 06919707) whose registered office is at 19/21 Swan Street, West Malling ME19 6JU ("**Akehurst**"); and

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

together "**the Parties**"

## 1. Background & Recitals

1.1 The Council is the local planning authority for the purposes of the 1990 Act and for the area within which the Land is situated and as such it is entitled to enforce and discharge planning obligations concerning land within its administrative area.

1.2 This Deed is made pursuant to the Principal Agreement.

1.3 The Owner is the registered proprietor with title absolute of the Freehold Land registered at HM Land Registry under title number WSX417296 described as, "Land on the west side of Storrington Road, Thakeham, Pulborough.

1.4 Akehurst has the benefit of a Restriction on title number WSX417296 referred to at paragraphs 2 and 3 of the Proprietorship Register for that title and at paragraphs 3 and 4 of the Charges Register in respect of an Option Agreement to purchase the land dated 31 July 2020 between Anthony Hugh James and Akehurst Homes Limited, and at paragraphs 5 and 6 of the Charges Register in respect of a Deed of Variation dated 27 January 2021 to that Option Agreement.

1.5 Akehurst submitted the S106A Application on 31 July 2026 and the Council validated it on 24 August 2026.

1.6 The Parties have agreed to enter into this Deed to vary the Principal Agreement thereby allowing the provision of Affordable Housing in the Development to be up to 100% of the total number of Housing Units and also to vary the Mortgagee in Possession clause, as set out herein.

1.7 This Deed is supplemental to and varies the Principal Agreement which shall continue in full force and effect with regard to the Planning Permission and any future Reserved Matters Approval(s) and any Section 73 Consent(s).

## 2. Definitions

2.1 In this Deed unless the context otherwise requires all expressions shall have the meaning given to them by the Principal Agreement save for the following expressions which shall have the following meaning and if there shall be any discrepancy between this Deed and the Principal Agreement, this Deed shall take precedence:

| | |
|---|---|
| **"Deed"** | this deed of variation pursuant to the S106A Application; |
| **"Principal Agreement"** | the deed entered into pursuant to Section 106 of the 1990 Act and all other enabling powers relating to the Development of Land south of Furze Common Road, Thakeham, West Sussex dated 8 July 2025 pursuant to Application DC/23/2146 between (1) Anthony Hugh James; (2) Akehurst Homes Limited; and (3) Horsham District Council. |
| **"Reserved Matters Approval"** | the approval of any application to the Council for approval of any of the following, details of which may have not been given in the Application – a) access, b) appearance, c) landscaping, d) layout, and e) scale; as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 (**"Reserved Matters"**), pursuant to the Planning Permission which was granted in outline on appeal. |
| **"S106A Application"** | the application made to the Council for: "Modification to s106 agreement under planning permission DC/23/2146 to allow for a minimum 35% affordable housing and to amend the mortgagee in possession clauses". |

## 3. Construction of this Deed

3.1. The headings in this Deed are for ease of reference only and shall not affect the construction of this Deed.

3.2. Reference to the singular includes the plural and references to any gender include all genders.

3.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

3.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

3.5. A reference to any party shall include that party's personal representatives, successors in title or permitted assigns and in the case of the Council their successors to their respective statutory functions.

3.6. Any reference to a clause or schedule or plan is to a clause schedule or plan in or attached to this deed.

3.7. In the absence of a contrary provision any reference to a statute or statutory provision includes any statutory modifications or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.

3.8. A reference to the Principal Agreement includes any deed, licence, consent, approval or other instrument supplemental to it, including, for the avoidance of doubt, any deeds of variation.

3.9. References to the Council include a reference to the person entitled for the time being to the immediate reversion to the Principal Agreement. References to the Owner include a reference to its respective successors in title and assigns.

## 4. Statutory Authority

4.1. This Deed is a planning obligation for the purposes of Section 106 of the 1990 Act and is made pursuant to the provisions of Section 106 and Section 106A of the 1990 Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and any other enabling powers.

4.2. This Deed is made with the intention that it binds the Land and the Owner's interests in the Land and their successors in title and assigns and that the planning obligations contained in the Principal Agreement (as varied herein) are enforceable by the Council as local planning authority.

4.3. Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of their functions and their rights, powers, duties and obligations under all public private statutes, byelaws and regulations may be as fully and effectively exercised as if they were not a party to this Deed.

4.4. This Deed comes into effect on the date of this Deed.

4.5. The parties agree that the Principal Agreement shall remain in full force and effect save as expressly varied by this Deed.

## 5. Covenant

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

## 6. Variation

6.1. The Principal Agreement is varied as set out in Schedule 1 of this Deed.

## 7. Governing Law

7.1. This Deed shall be governed and interpreted in accordance with the Laws of England.

## 8. Contracts Rights of Third Parties Act 1999

8.1. 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 and for the avoidance of doubt the terms of this Deed may be varied by deed between

the parties and their successors in title and the Council without the consent of any such third party.

**9. Registration**

9.1. This Deed is a local land charge and shall be registered as such by the Council.

**10. Costs**

10.1. The Akehurst agrees to pay the Council's reasonable legal costs incurred in the preparation and negotiation of this Deed on completion of this Deed.

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

**EXECUTED** as a **DEED** by
**ANTHONY HUGH JAMES**

…… Signature

In the presence of:

W …… Signature

I …… Print name

T …… Address 1

N …… Address 2

E …… Address 3

S …… Address 4

S …… Post code

**EXECUTED** as a **DEED** by
**AKEHURST HOMES LIMITED**
Acting by one Director

..…… Signature

In the presence of a witness:

W …… Signature

I …… Print name

T …… Address 1

N …… Address 2

E …… Address 3

S …… Address 4

S …… Post code

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

Authorised Officer

## SCHEDULE 1

## VARIATIONS TO THE PRINCIPAL AGREEMENT

The Parties agree that Schedule 2 (Affordable Housing) of the Principal Agreement shall be amended as follows:

1.1. Paragraph 1 shall be amended as follows:

1.1.1. the definition of "**Affordable Housing Tenure Mix**" shall be **amended** such that the words, "… 7 (seven)…" and "… 3 (three)" shall be **deleted**.

1.1.2. the definition of "**Affordable Housing Units**" shall be **deleted** and **replaced** with the following:

"a minimum of **35% (thirty five percent)** of the total number of Housing Units to be provided on the Application Site, which are to be transferred to an Affordable Housing Provider as housing for persons in Housing Need in accordance with the provisions of this Agreement and provided in a tenure mix required to fulfil the requirements of paragraph 3 of this Schedule".

1.1.3. the definition of "Affordable Rent" shall be **deleted** and **replaced** with the following:

"in relation to first lets only, chargeable rent that is subject to the Homes England's Rent Standard (April 2026) as expanded on by government guidance and any such document and/or associated guidance that may be amended updated or replaced from time to time and is required to be offered to eligible householders in Housing Need at an open market rental level which does not exceed 80% of gross local market rent (inclusive of service charges) for an equivalent property of that size and location calculated using the Royal Institution of Chartered Surveyors approved valuation methods OR the applicable Local Housing Allowance rate for the Council, whichever is the lower".

1.1.4. A new definition of "**Fully Serviced**" shall be **inserted** in the alphabetically appropriate order as follows:

"where the provision of Dwellings is made with access from the highway surfaced to adoptable standard and all utility connections, including electricity, mains water, sewerage and wiring for connection to high-speed broadband are installed and fully functional".

1.1.5. The definition of "Housing Register and Nominations Policy" shall be **amended** to refer to the "… Housing Register and Nominations Policy (April 2025) …"

1.2. Paragraph 3 shall be amended as follows:

1.2.1. Paragraph 3.1 shall be **deleted** and **replaced** with the following words:

"If Open Market Units are to be delivered in accordance with the approved Affordable Housing Scheme, then prior to Occupation of 25% (twenty-five percent) Open Market Units, to make reasonable endeavours to enter into a binding contract for:

3.1.1 the disposal of the Affordable Housing Land to an Affordable Housing Provider together with a contract requiring the construction of the Affordable Housing Units in accordance with the Planning Permission and the Affordable Housing Scheme; OR

3.1.2 the transfer to an Affordable Housing Provider of the Affordable Housing Units, Fully Serviced and in clean condition and the Affordable Housing Land

PROVIDED THAT if no Open Market Units are to be so delivered, to use reasonable endeavours to enter into a binding contract to effect the transfers set out in paragraphs 3.1.1 and 3.1.2 (above) prior to Occupation of any Affordable Housing Unit".

1.2.2. Paragraph 3.2 shall be **amended** such that after the words: "In the event of a transfer taking place pursuant to paragraph 3.1.2, prior to Occupation of 50% (fifty percent) of the Open Market Units", the following words shall be **inserted:**

"OR if there are no Open Market Units then prior to the Occupation of any Affordable Housing Unit, to:".

1.2.3. Paragraphs 3.3 and 3.4 shall be **amended** such that after the words, "Open Market Units", the words, "(if any)" shall be **inserted.**

1.2.4. Paragraph 3.10 shall be **amended** such that the words: "… the sale of a Shared Ownership Unit or the proceeds from …" shall be **deleted**.

1.3. Paragraph 4 shall be amended as follows:

1.3.1. There shall be a new sub-paragraph inserted at 4.2, worded as follows:

"The Owner and the Appellant may at their discretion provide any of the Open Market Units as additional Affordable Housing over and above the 35% required by the Council's housing policy and secured by this Agreement".

1.4. Paragraph 5.1.1 shall be **deleted** and **replaced** with the following to align it with the National Housing Federation specimen exclusion clause:

"5.1.1. 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 or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

5.1.2.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units 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 to another Affordable Housing Provider 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

5.1.2.2 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 free from the provisions of this Schedule which provisions shall determine absolutely".