

DATED

17th June

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

17th June

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 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, 2, 3.1 and 3.2 as at the date of this Deed and the proposed ongoing development of the Land within Phase 4 Land 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 the Phase 4 Land and Phase 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, 2, 3.1 and 3.2 and is confirmed in the breakdown at Appendix C below) not to carry out further development on the Phase 3.2 Land 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 Land 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 revoked, 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 Land 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.

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 housing mix at Appendix D (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"**)

- 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 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.
- 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.

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.

11.14 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 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

SEALED WITH THE COMMON SEAL OF

HORSHAM DISTRICT COUNCIL

in the presence of



Authorised Officer



EXECUTED AS A DEED by

BERKELEY HOMES (SOUTHERN) LIMITED

acting by two directors or one director and the company secretary

[Redacted Signature]

.....Signed (Director)

.....Signed (Director/Secretary)

In the presence of:

[Redacted Signature]

W Signature

I Robert Parkinson Print name

T 87b Park Hill Address 1

N Clapham Address 2

E Address 3

S SW4 9NT Post code

S Land Overseer Occupation

EXECUTED AS A DEED by

SEALED WITH THE COMMON SEAL OF

WEST SUSSEX COUNTY COUNCIL

in the presence of

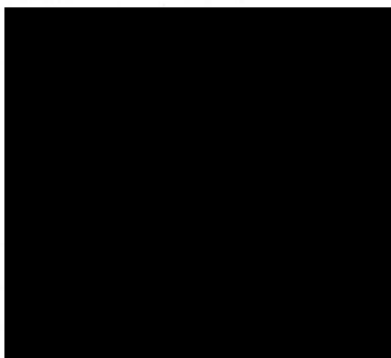
[Redacted Signature]

Authorised Signatory

SALLY BATCHECOR



EXECUTED AS A DEED by
BERKELEY HOMES PLC



Director and the company secretary

.....Signed (Director)

.....Signed (Director/Secretary)

In the presence of:



..... Signature

I MOLLY ANDREWS Print name

T 7 Wixs Lane Address 1

N London Address 2

E Address 3

S SW4 0AL Post code

S Assistant development Occupation
Manager

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:

"Plan 14" 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 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

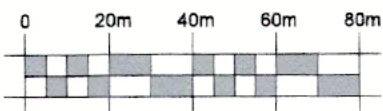
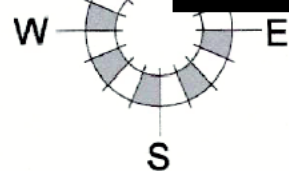
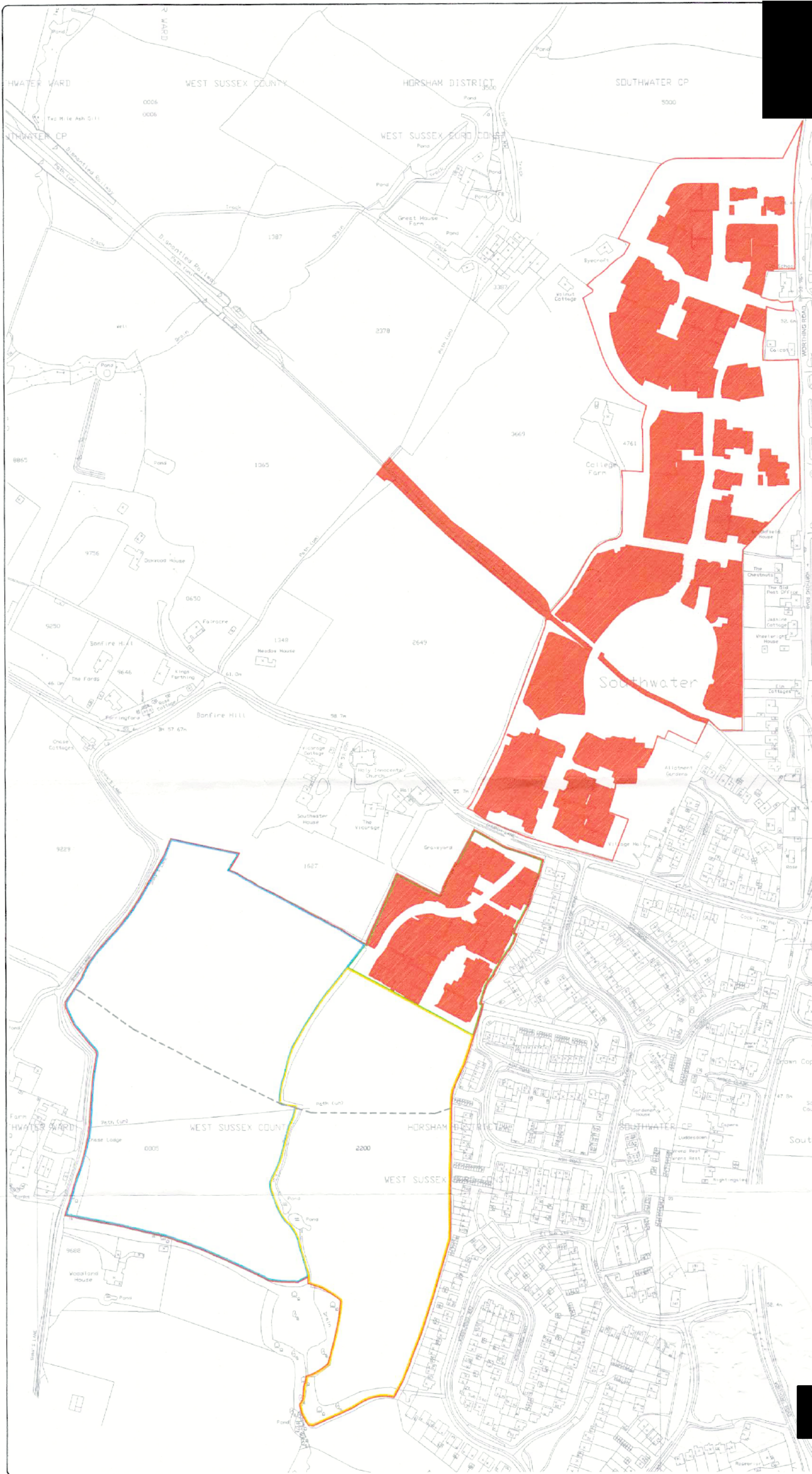
Schedule 16

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 from the date of payment”.

Appendix A – DOV Land Plan and Phase 5 Plan



- Land not bound by DoV
- DoV Land
- Phase 3.2
- Phase 4
- Phase 5
- Indicative line of PRow SOW-1652



34912/314/2026

- P03 1604 Drawing title updated
- P02 1604 Revised to include hatching to transferred land, cemetery land and PRow
- P01 1004 Revised to include phase boundaries

REV	DATE	REVISION
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DEVELOPMENT
Land West of Southwater
West Sussex

DRAWING TITLE
DoV Land Plan

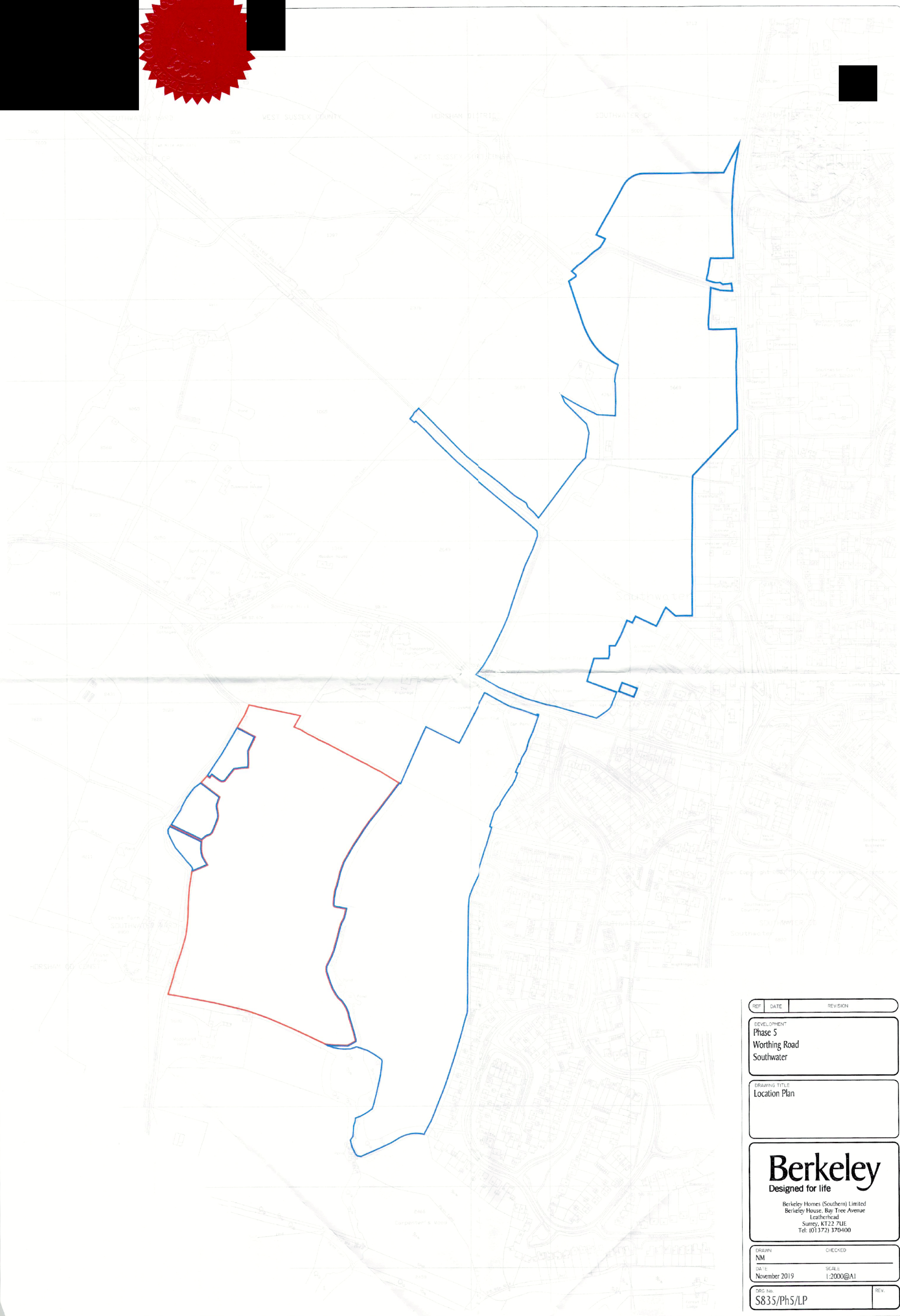
Berkeley
Designed for life

Berkeley Homes (Southern) Limited
Berkeley House, Bay Tree Avenue
Leatherhead
Surrey, KT22 7UE
Tel: (0) 372 370400

DRAWN	CHECKED
TJR	
DATE	SCALE
MAR 24	1:2500@A2

DRG No S835 SW_LTP_00	REV. P03
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84921/213/4/2026



REF	DATE	REVISION
DEVELOPMENT Phase 5 Worthing Road Southwater		
DRAWING TITLE Location Plan		
Berkeley Designed for life Berkeley Homes (Southern) Limited Berkeley House, Bay Tree Avenue Leatherhead Surrey, KT22 7UE Tel: (01372) 370400		
DRAWN NM		CHECKED
DATE November 2019		SCALE 1:2000@A1
DRG No. S835/Ph5/LP		REV.

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

Dated

2026

- (1) **HORSHAM DISTRICT COUNCIL**
- (2) **WEST SUSSEX COUNTY COUNCIL**
- (3) **BERKELEY HOMES (SOUTHERN) LIMITED**

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 in respect of
Land West of Worthing Road (Phase 5), Southwater, West Sussex

Legal Ref: SW/0001424
Planning Application Ref: DC/19/2464
Date of Authority: 5 August 2025

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

This Agreement is made as a Deed and dated

2026

Between

- (1) **HORSHAM DISTRICT COUNCIL** of Albery House, Springfield Road, Horsham, West Sussex RH12 2GB ("**the Council**")
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex PO19 1RQ ("**the County Council**")
- (3) **BERKELEY HOMES (SOUTHERN) LIMITED** (Company Regn No. 01454061) of Berkeley House, 19 Portsmouth Road, Cobham, Surrey, KT11 1JG ("**the Owner**")

1. **Background & Recitals**

Whereas

- 1.1 The Owner is the registered proprietor with Title Absolute of land registered at HM Land Registry under title number WSX376044.
- 1.2 The County Council is the highway authority for the area within which the Site is situated for the purposes of this Section 106 Agreement.
- 1.3 The Council is the Local Planning Authority as defined in the Act for the area within which the Site is situated for the purposes of this Section 106 Agreement and for the purposes of Section 106 of the Act.
- 1.5 Berkeley Strategic Land Limited was granted by the Council on 25 June 2015 under planning reference DC/14/0590 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 access works ("**the Outline Permission**").
- 1.6 The Outline Permission was granted subject to a deed of agreement made under Section 106 of the Act and dated 25 June 2015 between (1) Henry Egerton Aubrey-Fletcher, (2) Peter Robert Michael Bond, (3) Thomas Egerton Aubrey-Fletcher (4) Berkeley Strategic Land Limited (5) Berkeley Homes PLC (6) the Council and (7) the County Council ("**the Original Outline Section 106 Agreement**").

- 1.7 The Owner was granted reserved matters approval by the Council on 12 February 2016 under planning reference DC/15/2064 for Phases 1 and 2 of the Outline Permission being the erection of 244 dwellings (including 54 retirement living apartments) with associated access, parking and landscape works pursuant to the Outline Permission (**"First Reserved Matters Approval"**).
- 1.8 By a transfer date 10 May 2016, Berkley Strategic Land Limited transferred all of that land registered under Title Number WSX376044 to the Owner.
- 1.9 Following the grant of the First Reserved Matters Approval the Owner submitted an application under reference s106/16/0009 and PAG 1208 for the Original Section 106 Agreement to be amended. The (1) Council (2) County Council (3) Owner (4) Berkeley Homes PLC and (5) Southwater Property Promotion Limited entered into a deed of variation on 16 January 2017 varying the Original Section 106 Agreement (**"the First Deed of Variation"**).
- 1.10 The Owner submitted a full planning application for the erection of a building (Phase 2 Block B) to provide 25 apartments with associated parking and landscape works under reference DC/16/0863 (**"the 2017 Permission"**) and the 2017 Permission was subject to a standalone section 106 agreement dated 16 January 2017.
- 1.11 On 8 March 2017 the Council granted permission under planning reference DC/16/1919 for reserved matters of the Outline Permission for the provision of a community building, 2 x football pitches, a cricket pitch, 2 x tennis courts, a multi-use games area, a skate park, a LEAP-NEAP with associated access parking and landscaping works. (**"the Second Reserved Matters Approval"**).
- 1.12 On 13 June 2017 the Council granted permission under planning reference DC/17/0842 for reserved matters of the Outline Permission for the erection of a single storey sports pavilion (**"the Third Reserved Matters Approval"**).
- 1.13 On 13 June 2017 the Council granted permission under planning reference DC/17/2319 for reserved matters of the Outline Permission Phase 3.1 for the erection of 68 dwellings (including 8 affordable dwellings) with associated garaging access, parking and landscaping works (**"the Fourth Reserved Matters Approval"**).
- 1.14 On 21 December 2018 the Council granted permission under planning reference DC/18/1246 for reserved matters of the Outline Permission for layout appearance landscaping scale and

access for the erection of 213 dwellings (including 61 affordable dwellings) with associated access parking and landscaping works pursuant to phases 3.2 and 4 of the Outline Permission (**"the Fifth Reserved Matters Approval"**).

- 1.15 On 24 January 2019 the Council granted permission under planning reference DC/18/1255 for reserved matters of the Outline Permission pertaining to layout appearance landscaping and access for the extension of existing allotments, allotment car parking outdoor child play area associated with village hall and extension of existing village hall car park with associated access and landscaping works (**"the Sixth Reserved Matters Approval"**).
- 1.16 Following the grant of the Sixth Reserved Matters Approval the Owner submitted an application under reference s106/19/0003 and the Owner, Southwater Property Promotion Limited, the Council and the County Council entered into the deed of variation on 9 October 2019 varying the Original Section 106 Agreement as amended by the First Deed of Variation (**"the Second Deed of Variation"**).
- 1.17 On 24 June 2024 Berkeley Homes PLC, the Owner, Southwater Property Promotion Limited, the Council and the County Council entered into a deed of variation to amend the Original Section 106 Agreement as amended by the First Deed of Variation and Second Deed of Variation (**"the Third Deed of Variation"**).
- 1.18 On 9 December 2019 the Owner submitted the Application for the Development of the Site. On 26 July 2024 the Owner amended the Application for the Development.
- 1.19 On 24 June 2024 by Berkeley Homes PLC, the Owner, Southwater Property Promotion Limited, the Council and the County Council entered into a Deed of Variation to amend the Original Outline Section 106 Agreement as varied by the First Deed of Variation and Second Deed of Variation
- 1.20 The Council at a meeting dated 5 August 2025 through the Council's Planning Committee resolved to approve the Application subject to the conditions of the Planning Permission and the prior completion of this section 106 Agreement (**"the Section 106 Agreement"**) which includes:
 - (a) the provision of a LAP, LEAP and Open Amenity Space, including their management and maintenance, and
 - (b) the Bridleway Upgrade Works

- 1.20 This Section 106 Agreement made by deed is intended to create planning obligations for the purposes of Section 106 of the Act and where applicable highways obligations pursuant to Section 38 of the Highways Act 1980.
- 1.21 The Owner is willing to enter into and be bound by the obligations and be subject to the restrictions in this Section 106 Agreement on the terms set out herein.
- 1.22 The parties are satisfied that the provisions of this Section 106 Agreement comply with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and, accordingly, that the planning obligations contained in this Section 106 Agreement are necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development.
- 1.23 The Owner, Berkeley Homes PLC, the Council and County Council have agreed to enter into a further Deed of Variation to vary the obligations in the Varied Outline Section 106 Agreement (**"Fourth Deed of Variation"**). The purpose of the Fourth Deed of Variation is to give effect to the Section 73 Permission (which varies the number of dwellings that may be erected on Phase 3.2 and Phase 4 Land in order that the cumulative total number of dwellings across the Phases (and taking into account of the 94 dwellings permitted under this Planning Permission if it is Commenced) is capped at 594 in accordance with the Outline Planning Permission) and to make changes to the Varied Outline Section 106 Agreement so that it is consistent with the proposed Phase 5 Development. The Fourth Deed of Variation shall be completed simultaneously to this Section 106 Agreement.

NOW THIS DEED WITNESSES as follows:-

2. INTERPRETATION

In this Section 106 Agreement:

- 2.1 Words importing the masculine include the feminine and vice versa.
- 2.2 Words importing the singular include the plural and vice versa.
- 2.3 Words importing persons include companies and corporations and vice versa.

- 2.4 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.
- 2.5 Any reference to a clause or schedule or plan is to a clause schedule or plan in to or attached to this Section 106 Agreement, unless expressly stated otherwise.
- 2.6 Any reference to a colour or letter is to a colour or letter on the plan attached to this Section 106 Agreement, unless expressly stated otherwise.
- 2.7 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.
- 2.8 References to any party to this Section 106 Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their functions as local planning authority and local housing authority.
- 2.9 The headings are for reference only and shall not affect construction.

3. DEFINITIONS

- 3.1 It is hereby agreed between the parties set out in this Section 106 Agreement that the following expressions shall have the following meanings:

“Act” means the Town and Country Planning Act 1990 as amended;

“Application” means the application for full planning permission for the Development and given planning reference number DC/19/2464;

“BCIS Index” means the All-In Tender Price Index published by the Building Cost Information Service Index of the Royal Institution of Chartered Surveyors or (if such index is at the relevant time no longer published)

such other comparable index or basis for indexation as the Council may specify;

"Bridleway"

means the Footpath (or relevant part thereof) following the provision of the Bridleway Upgrade Works;

"Bridleway Upgrade Works"

means improvement and upgrade works to the Footpath between points "A" and "C" on Plan 2 to a bridleway in accordance with condition 13 of the Planning Permission (unless otherwise agreed by the County Council in writing);

"Certificate of Practical Completion"

means a certificate of practical completion issued by the Council confirming that all works to which the certificate relates are practically complete in accordance with the relevant specification as required;

"Commencement of Development"

means the carrying out of a material operation as defined in Section 56(4) of the Act in respect of the Development and "**Commence Development**" shall be construed accordingly;

"Commencement of the Section 73 Permission"

means the carrying out of a material operation as defined in Section 56(4) of the Act in respect of the Section 73 Permission but excluding (for the purposes of this Section 106 Agreement and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof site survey works, enabling works, demolition works, site clearance works, earthworks, archaeological investigations and digs, exploratory boreholes, operations permitted by the Town and Country Planning (General Permitted Development) (England) Order

2015, the erection of hoardings and fencing, temporary diversion of services and signage (including the formation of temporary construction accesses) and "Commence the Section 73 Permission" and Commenced the Section 73 Permission shall be construed accordingly;

"Commencement Notice"

means the written notice confirming the Commencement Date referred to in Clause 7.1.1 and served in accordance with Clause 7.3;

"Commencement Date"

means the date on which Commencement of the Development occurs;

"Completed"

- (1) In relation to the transfer of the Site or parts of the Site by the Owner(s) the completion of the registration of the name of the successor in title as the registered proprietor of the Site or relevant part(s) of the Site at the land registry
 - (2) in relation to the Bridleway Upgrade Works, LEAP, LAP and Open Amenity Space: practically complete save for minor snagging items such that it is reasonably fit for occupation or use,
- and the words "**Completion**" and "**Complete**" shall be construed accordingly;

"Council Contributions"

means the LEAP Maintenance Contribution;

"Council's Nominee"

means a reputable body whose principle purpose is for the maintenance and management of open spaces, and play areas and who is nominated by the Council to accept a transfer which, for the avoidance of doubt, may include the Management Company;

"County Council Monitoring Fee"	means the total sum of three thousand two hundred and forty pounds (£3,240) payable to the County Council for monitoring the delivery and performance of a Qualifying Trigger contained in this Deed over the lifetime of the Development;
"Development"	means the development of the Site for 94 Dwellings with associated access, parking and landscaping pursuant to the Planning Permission;
"Dwelling"	means a residential dwelling forming part of the Development and "Dwellings" shall be construed accordingly;
"Estate Roads"	means any roads within the Development which are not adopted or not to be adopted by the County Council;
"Footpath"	means public footpath 1652 which is to be upgraded to Bridleway between points "A" and "B" and "B" and "C" as shown on Plan 2;
"Head of Development and Building Control"	means the Head of Development and Building Control for the time being of the Council and shall include his duly authorised agents and representatives and any successor;
"Illustrative Phasing Plan"	means the plan identified as Plan 15 in Schedule 1 of the Outline Section 106 Agreement;
"Index Linked"	means as set out in clause 8;
"Interest"	means interest at the rate of 4% above the Bank of England base rate applicable at the Specified Date which shall be calculated on a day to day basis from the day following the Specified Date;

"LAP" means the local area of play within the Development as shown on Plan 2;

"LEAP" means the local equipped areas of play within the Development as shown on Plan 2;

"LEAP Maintenance Contribution" means the sum of forty four thousand three hundred and thirty six pounds (£44,336) to be paid to the Council towards the future maintenance of the LEAP only if it is transferred to the Parish Council, Council or Nominee in accordance with Schedule 4

"Management Company" means a limited company or company limited by guarantee (or companies) established by the Owner in accordance with Schedule 5 to be responsible for the maintenance and management of the Managed Land and Other Managed Land (if applicable) in accordance with the provisions of this Section 106 Agreement and the Management Plan (and for the avoidance of doubt this includes any/all subsequent body/bodies that take on this responsibility) and which for the avoidance of doubt may be the same Management Company established pursuant to the Outline Section 106 Agreement for the Outline Permission Site;

"Management Company Structure Scheme" means a scheme that addresses the following in relation to the Management Company:

- (a) details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee with at least two named persons as Directors and one Company Secretary that are eligible to be

appointed and (if required) removed and replaced by the members of the Management Company

- (b) confirmation that the Management Company will hold at least one (1) meeting per year
- (c) to procure through the Management Company documentation that the purpose of the Management Company shall include but not be limited to the maintenance of the Managed Land and Other Managed Land;

and which for the avoidance of doubt may be the same Management Company Structure Scheme and Management Company established pursuant to the Outline Section 106 Agreement for the Outline Permission Site;

“Managed Land”

means the LAPs, LEAP and Open Amenity Space which are provided for in the Development and which are managed by the Management Company in accordance with Schedules 4 and 5 to this Section 106 Agreement and the Management Plan (but excluding any areas which have been or are to be adopted by the relevant highway or drainage authorities pursuant to an adoption agreement or any land transferred to the Council or Parish Council or Nominee (other than the Management Company));

“Management Plan”

means a detailed written scheme prepared by the Owner for the on-going maintenance of the Managed Land which shall include the following:

- (a) a plan showing the boundaries of the Managed Land (such plan may be amended from time to time as the boundaries of the Managed Land change);
- (b) demonstrate full integration of landscape, biodiversity and arboriculture considerations;
- (c) confirmation of the approximate location and details of any apparatus to be vested in or adopted by statutory undertakers or the drainage or highway authorities;
- (d) frequency of maintenance of the Managed Land;
- (e) measures to replace any trees shrubs or turf which may die or become diseased within the Managed Land following implementation of the Management Plan;
- (f) standard of maintenance and repair to be achieved and maintained;
- (g) how the costs of the maintenance of the Managed Land shall be funded and this shall include a mechanism for recovery of maintenance costs of the Managed Land;
- (h) details of the proposed Management Company;
- (i) the person who shall be the point of contact for anyone wishing to raise issues regarding the management or maintenance of the Managed Land;
- (j) the mechanisms which shall be put in place to ensure that the details of the point of contact are publicised to residents of the Dwellings

and members of the public entering the Managed Land and in the event of any change in the point of contact to notify the Council in writing within 7 days of the date of such change,

and which for the avoidance of doubt may be included in the 'Management Scheme' as defined in the Outline Section 106 Agreement for the Outline Permission Site;

“Monitoring Fee”

means the fee which the Council charges by virtue of its powers under S111 of the Local Government Act 1972 and S1 of the Localism Act 2011 and which shall be no more than eight hundred pounds (£800);

“Occupation”

means occupation for any purpose for which the Planning Permission has been granted by the Council other than occupation for the purposes of construction or fitting out or occupation for security, marketing or display and **“Occupy”** and **“Occupied”** and **“First Occupation”** shall be construed accordingly;

“Occupation Date”

means the date on which the first Dwelling is Occupied;

“Occupation Notice”

means the written notice confirming the Occupation Date referred to in Clause 7.1.2 and served in accordance with Clause 7.3;

“Open Amenity Space”

means only existing and proposed areas of green space, retained trees and public shared space (other than the LAP and LEAP) as shown on Plan 2 to be provided or maintained as part of the Development for use by the general public;

**“Open Amenity Space, LAP
and LEAP Inspection Fee”**

means the fee payable to the Council in accordance with Schedule 4 paragraph 4 of SIX HUNDRED POUNDS (£600) which is based on the current daily rate for the inspection of the works undertaken by the Owner to create the Open Amenity Space and the LAP and LEAP;

**“Open Amenity Space
Specification**

means the Open Amenity Space specification to be submitted and approved pursuant to condition 13 of the Planning Permission;

“Other Managed Land”

means land including Estate Roads including lighting, chattels and other street furniture which is provided for the Development which for the avoidance of doubt may include the Residential parts of the Development and which has been confirmed as such pursuant to Part 2 of Schedule 4 and will be managed by the Management Company in accordance with Schedules 4 and 5 to this Section 106 Agreement and the Management Plans (but excluding any areas which have been or are to be adopted by the relevant highway or drainage authorities pursuant to an adoption agreement);

“Outline Permission Site”

means the entire site for which planning permission was granted in accordance with the Outline Permission as detailed by plan 1 in Schedule 1 of the Outline Section 106 Agreement and comprising Phase 1, 2, 3, 4 and 5 as detailed in the Illustrative Phasing Plan;

“Outline Permission”

means outline planning permission granted by the Council on 25 June 2015 under planning reference DC/14/0590 for the residential development of up to 540 dwellings and 54 retirement living

apartments associated vehicular, cycle and pedestrian access, drainage and access works on the Outline Permission Site;

"Outline Section 106 Agreement"

means the Original Outline Section 106 Agreement as amended by the First Deed of Variation, the Second Deed of Variation and the Third Deed of Variation;

"Parish Council"

means Southwater Parish Council;

"Phase"

means a phase of the Outline Permission as detailed in the Illustrative Phasing Plan, Plan 15, Schedule 1 of the Outline Section 106 Agreement and the term "Phases" is to be construed accordingly to mean one or more phases as the context may require;

"Phase 3.2 and Phase 4 Permissions"

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 4 Land"

means the land shown edged red on Plan 3;

"Planning Permission"

means the planning permission to be granted by the Council pursuant to the Application;

"Plan 1"

means the Site plan reference S835/Ph5/LP attached to this Section 106 Agreement;

"Plan 2"

means plan reference S835/SL/001 Rev E showing the LAP, LEAP and Open Amenity Space (as may be amended with the written approval of the Council)

"Plan 3"	means plan reference S832-S106-100 Rev A identifying Phase 4 Land;
"Play Area"	means the LEAP and LAP;
"Play Area Specification"	means the specification for the Play Area which is to be submitted to the Council for approval in accordance with condition 13 of the Planning Permission;
"Qualifying Trigger"	means any trigger contained within this Deed that attracts the County Council Monitoring Fee because its implementation and/or adherence requires monitoring by the County Council;
"Section 73 Application"	means planning application reference DC/24/1158 for Minor Material Amendments (Section 73) to vary condition 2 of the permission granted pursuant to planning application reference DC/24/0772 (non-material amendment to previously approved application DC/18/1246) for 199 no. residential dwellings including 61 affordable dwelling and vary the plans approved under condition 1 of application reference DC/18/1246;
"Section 73 Consent"	means a planning permission granted pursuant to Section 73 of the Act (or any equivalent authority to vary a permission) which varies and /or removes any condition subject to which the Planning Permission and/or such planning permission pursuant to Section 73 of the Act was granted and for the avoidance of doubt includes any subsequent variations to those section 73 consents (or equivalent authority) amended consents;

"Section 73 Permission"	means the planning permission granted pursuant to the Section 73 Application (including any permissions granted to vary the Section 73 Permission pursuant to an application under section 73 or section 96A of the Act (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);
"Site"	means the land shown for identification purposes only edged red on Plan 1;
"Southwater Parish"	means the administrative area of Southwater Parish Council;
"Specified Date"	means the date upon which an obligation arising under this Section 106 Agreement is due to be performed;
"Travel Plan"	means the travel plan to be approved pursuant to condition 24 the Planning Permission;
"Travel Plan Monitoring Fee"	means the sum of THREE THOUSAND NINE HUNDRED AND FIFTY POUNDS (£3,950) payable to the County Council for monitoring the delivery of the Travel Plan over the lifetime of the Development;
"Working Day"	means a day other than a Saturday or Sunday or public holiday in England or the period between 24 December and 1 January inclusive.

4. ENABLING PROVISIONS

- 4.1 This Section 106 Agreement is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, and Section 1 of the Localism Act 2011 and all other enabling powers.

5. CONDITIONS PRECEDENT

- 5.1 This Section 106 Agreement shall come into effect upon:

5.1.1 the granting of Planning Permission; and

5.1.2 the Commencement of Development

save for clauses 5, 12.10 and 17 which shall come into effect immediately on completion of this Section 106 Agreement.

6. COVENANTS

- 6.1 The Owner covenants with the Council and the County Council so as to bind their interests in the Site to fully comply with and to perform the obligations contained herein and in the Schedules of this Section 106 Agreement in accordance with the requirements and timescales contained therein.

- 6.2 The Owner covenants with the Council and the County Council that the Development and use of the Site shall be in strict accordance with this Section 106 Agreement.

- 6.3 The Council covenants with the Owner and the County Council to fully comply and to perform the obligations contained herein and in Schedule 7 to this Section 106 Agreement in accordance with the requirements and timescales contained therein.

- 6.4 The County Council covenants with the Owner and the Council to fully comply and to perform the obligations contained herein and in Schedule 6 to this Section 106 Agreement in accordance with the requirements and timescales contained therein.

7. NOTICES

- 7.1 The Owner covenants with the Council as follows:

7.1.1 to give the Commencement Notice to the Council and the County Council not less than 14 days before the anticipated Commencement Date;

7.1.2 to give the Occupation Notice to the Council not less than 14 days before the anticipated Occupation Date.

7.2 The parties to this Section 106 Agreement agree that if the Owner fails to give the notice required by Clause 7.1.1 and Clause 7.1.2 above then the Council shall be entitled in to determine the Commencement Date or the Occupation Date and shall give notice to the Owner of the Council's determination.

7.3 Any notice certificate or other communication required or permitted to be given hereunder shall be given in writing to the relevant party at the relevant address referred to above or such other address as may be notified in writing to the other party and must be served personally or by registered or recorded delivery post and in the case of the Council the Owner shall address any notice to the Head of Legal and Democratic Services of the Council.

7.4 Any notice certificate or other communication sent by post shall be deemed (in the absence of evidence of receipt) to have been delivered two days after despatch and in proving the fact of despatch it shall be sufficient to show that the envelope was properly addressed and posted.

7.5 Any notice certificate or other communication delivered personally shall be deemed to have been delivered on the day of its despatch if despatched during or prior to normal business hours but otherwise on the next business day thereafter.

8. INDEX LINKING

8.1 The Owner undertakes to the County Council that any sum payable by the Owner under this Section 106 Agreement to the County Council save for the sum payable under clause 10.1.2 shall be increased by the application of the following formula:

$A = B \times \frac{C}{D}$ C is equal to or greater than 1

D

where: A is the sum actually payable on the Specified Date

B is the original sum mentioned in this Section 106 Agreement

C is the BCIS Index at the date payment falls due

D is the BCIS Index at the date of 1st April 2025

- 8.2 The Owner undertakes to the Council that any sum payable by the Owner under this Section 106 Agreement to the Council save for the sum payable under clause 10.1.1 shall be increased by the application of the following formula:

$$A = B \times \frac{C}{D}$$

C is equal to or greater than 1

D

where: A is the sum actually payable on the Specified Date

B is the original sum mentioned in this Section 106 Agreement

C is the BCIS Index for the quarter preceding the Specified Date

D is the BCIS Index for the quarter preceding the date of this Section 106 Agreement.

9. **INTEREST**

- 9.1 The Owner covenants to the Council to pay the Interest on sums due to the Council under this Section 106 Agreement but not paid on the Specified Date from the Specified Date until actual payment.

10. **COSTS**

- 10.1 The Owner undertakes to pay on or before the date hereof:

10.1.1 to the Council the Council's reasonable legal costs incurred in preparing and entering into this Section 106 Agreement; and

10.1.2 to the County Council the County Council's reasonable legal costs incurred in preparing and entering into this Section 106 Agreement.

11. **Monitoring Fee**

- 11.1 The Owner undertakes with the Council to pay to the Council on completion of this Section 106 Agreement the Monitoring Fee.

- 11.2 The Owner undertakes with the County Council to pay on completion of this Section 106 Agreement the County Council Monitoring Fee.

12. **GENERAL**

The parties undertake that:

- 12.1 to the extent that they fall within the terms of s106 of the Act the obligations contained in Clause 6 and the Schedules hereof are planning obligations for the purposes of s106 of the Act.
- 12.2 this Section 106 Agreement constitutes a deed.
- 12.3 this Section 106 Agreement is enforceable by the Council or County Council as appropriate.
- 12.4 nothing in this Section 106 Agreement confers or is intended to confer a benefit on a third party under the Contracts (Rights of Third Parties) Act 1999.
- 12.5 It is hereby agreed by the Owner that failure by the Council at any time to enforce the provisions of this Section 106 Agreement or to require performance strictly or otherwise by the Owner of any of the conditions covenants agreements or obligations of this Section 106 Agreement or any failure or delay by the Council to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of this Section 106 Agreement or any part thereof or the right of the Council to enforce any provision and any variation of this Section 106 Agreement shall not vitiate the remainder of the Section 106 Agreement which shall remain in full force and effect subject to such amendment or amendments.
- 12.6 The Owner hereby undertakes that
- 12.6.1 this Section 106 Agreement supersedes and replaces all previous negotiations whether oral or written; and
- 12.6.2 the Owner has not relied on any express or implied statement warranty representation or undertaking given by or on behalf of the other; and
- 12.6.3 nothing herein contained excludes the liability of the Owner in relation to fraud.

12.7 The Owner hereby consents to the registration of this Section 106 Agreement as a Local Land Charge against the Site.

12.8 If any provision in this Section 106 Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.

12.9 Reference to any statute or statutory provisions includes a reference to:-

12.9.1 that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced; and

12.9.2 all statutory instruments or orders made pursuant to it whether before or after the date of this Section 106 Agreement.

12.10 This Section 106 Agreement shall be governed by and interpreted in accordance with Laws of England and the Owner submits to the exclusive jurisdiction of the Courts of England.

12.11 The obligations in this Section 106 Agreement (with the exception of Clause 10) shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission:

12.11.1 expires;

12.11.2 is varied or revoked other than at the request of the Owner; or

12.11.3 is quashed following a successful legal challenge

But will remain in full force and effect so far as any subsisting Section 73 Consent is concerned

12.12 The obligations in this Section 106 Agreement (with the exception of Clause 10) shall cease to have effect (insofar only as it has not already been complied with) in so far only as the relevant Section 73 Consent is concerned if the relevant Section 73 Consent:

12.12.1 expires;

12.12.2 is varied or revoked other than at the request of the Owner; or

12.12.3 is quashed following a successful legal challenge,

but will remain in full force and effect so far as the Planning Permission and any other subsisting Section 73 Consent is concerned.

- 12.13 The obligations in clause 15.1.2 – 15.1.4 of this Section 106 Agreement shall cease to have effect if the Section 73 Permission is quashed following successful legal challenge or expires or is varied or revoked other than at the request of the owner of the Phase 4 Land.
- 12.14 the Owner (or any person deriving title to the Site from them) shall not be liable for any breach of the restrictions and obligations set out in this Section 106 Agreement where such breach arises after the relevant Owner has parted with its entire interest in the Site or such part of the Site to which such breach relates save in respect of liability for antecedent breach of this Section 106 Agreement.
- 12.15 The obligations in this Section 106 Agreement shall not be enforceable:
- 12.15.1 against individual lessees or purchasers and their successors in title occupying or entitled to occupy Dwellings within the Development or their mortgagees or chargees; or
- 12.15.2 against any statutory undertaker whose apparatus may be situated within the Site-
- 12.16 Any future chargee or mortgagee shall not be liable for any breach of the obligations in this Agreement unless committed or continuing at a time when it is in possession of all or any part of the Site in which case it will be bound by the obligations in this Agreement as if it were a person deriving title from the Owner.
- 12.17 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 applies to the covenants in this Section 106 Agreement.
- 12.18 References to the Site include any part of it.
- 12.19 The word "including" means "including without limitation".
- 12.20 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 12.21 Nothing in this Section 106 Agreement shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or any modification variation or amendment thereof) granted after the date of the Planning Permission.
- 12.22 Subject to the proviso to this Clause if any Section 73 Consent is granted after the date of this

Section 106 Agreement:

12.22.1 the obligations in this Section 106 Agreement shall relate to and bind such Section 73 Consent; and

12.2.2.2 the definitions of Application, Development and Planning Permission (other than for the purposes of Clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself;

PROVIDED THAT:

12.2.2.3 nothing in this clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

12.2.2.4 to the extent that any of the obligations in this Section 106 Agreement have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and

12.2.2.5 the Council reserves the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it desirable to do so.

13. DISPUTE RESOLUTION

13.1 Save for matters of construction (which shall be matters for the Court) should a dispute or difference arise between the Owner and the Council or County Council concerning anything herein then the provisions of this Clause 13 shall apply.

13.2 All differences and disputes which may arise between the parties hereto concerning this Section 106 Agreement shall:

13.2.1 where the difference or dispute relates to the construction or interpretation of this Section 106 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;

13.2.2 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.

13.3 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 13.2.1 or 13.2.2 hereto is applicable.

13.4 Except as aforesaid any expert appointed pursuant to Clauses 13.2.1 or 13.2.2 or any other person shall:

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

13.4.2 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 13.4.1 and immediately forward a copy of the written representation of one party to the other party;

13.4.3 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;

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

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

13.4.6 give full and clear reasons for his decision;

13.4.7 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.

13.5 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 Section 106 Agreement and consequential and interim orders and relief.

14 CHANGE IN OWNERSHIP

14.1 The Owner undertakes to the Council to give the Council written notice of any change in ownership of any of its interests in the Site (save for the change of ownership of any individual Dwellings) occurring before all the obligations under this Section 106 Agreement have been discharged within 3 Working Days of such change of ownership such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

15 PHASE 4 LAND

15.1 In consideration of the Council granting the Planning Permission in respect of the Site and entering into this Section 106 Agreement, the Owner covenants as follows):

15.1.1. not to Commence Development in accordance with the Planning Permission unless they have first Commenced the Section 73 Permission on the Phase 4 Land;

15.1.2. 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, 2, 3.1 and 3.2 and is confirmed in the breakdown at Schedule 9

below), not to continue development pursuant to the Phase 3.2 and Phase 4 Permissions on the Phase 4 Land from the date of grant of the Section 73 Permission;

15.1.3 the Owner covenants that they will not claim or seek compensation or legal redress in respect of the application of clause 15.1.2;

15.1.4 not to build more than 199 dwellings (of which 61 must be affordable units) on the Phase 3.2 and Phase 4 Land.

15.2 In the event that Commencement of Development occurs 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 Permissions.

16. Acknowledgment

16.1 The Parties hereby agree and acknowledge the following:

16.1.1 that no reserved matters application can be made under the Outline Permission for the Site due to the passage of time and therefore the Application has been submitted

16.1.2 the Development is chargeable development in accordance with the Community Infrastructure Levy Regulations 2010 (as amended);

16.1.3 the obligations to pay the Secondary Education Contribution, Primary Education Contribution, Library Contribution, Indoor Sports Contribution, Outdoor Sports Contribution, and Fire Services Infrastructure Contributions in set out the Outline Section 106 Agreement (as amended by the Fourth Deed of Variation) have been paid in full but will result in an overpayment due to the development of the Site being undertaken pursuant to the Planning Permission

16.1.4 the Council and County Council hereby confirm that they will not enforce any of the Outline Section 106 Agreement (as amended by the Fourth Deed of Variation) obligations to pay the contributions set out at clause 16.1.3 above in so far as they relate to the development of the Site pursuant to the Outline Permission and have agreed in the Fourth Deed of Variation to refund the contributions that have been overpaid as a result of the Site being developed pursuant to the Planning Permission.

16.1.5 the Outline Section 106 Agreement (as varied by the Fourth Deed of Variation) is otherwise affirmed and acknowledged by the Parties to be in full force and effect and applies to the Site

16.1.6 In the event of conflict between the obligations and conditions secured under this Section 106 Agreement and the Planning Permission and the Outline Section 106 Agreement (as amended by the Fourth Deed of Variation), then the Section 106 Agreement and Planning Permission shall take precedence in respect of the Site

17. Delivery

The provisions of this Section 106 Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

EXECUTED AS A DEED by

BERKELEY HOMES (SOUTHERN) LIMITED

acting by two directors or one director and the company secretary

.....Signed (Director)

.....Signed (Director/Secretary)

In the presence of:

W Signature

I Print name

T Address 1

N Address 2

E Address 3

S Post code

S Occupation

EXECUTED AS A DEED by

SEALED WITH THE COMMON SEAL OF
HORSHAM DISTRICT COUNCIL

in the presence of

Authorised Officer

SEALED WITH THE COMMON SEAL OF
WEST SUSSEX COUNTY COUNCIL

in the presence of

Authorised Signatory

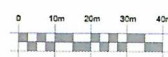
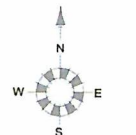
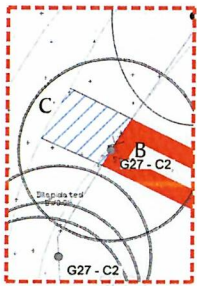
Schedule 1

Plans

Plan 1 means site plan reference S835/Ph5/LP

Plan 2 means plan reference S835/SL/001 Rev E

Plan 3 means plan reference S832-S106-100 Rev A identifying the Phase 4 Land



- LAP
- LEAP
- Open Space
- Bridgeway (A to B)
- Additional upgrade works (within adopted highways (B to C))



- E 20.04.15 Layout updated to capture comments from EPA
- D 20.04.15 Layout updated with new site plan
- C 13.07.10 Position of Plot 1 & 2 slightly re-adjusted to allow more open space. Additional landscaping added in front of Plot 1 & 2.
- B 05.06.10 Plotting house types adjusted on Plot 1 & 2 to 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.
- A 14.06.10 House type on Plot 61 revised

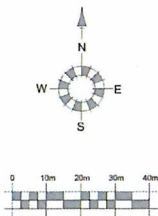
PHASE 5
SOUTHWATER
WEST SUSSEX

SITE LAYOUT

Berkeley
Designed for life

Berkeley Homes (Overseas) Limited
Berkeley House, 80, Finsbury Avenue
London EC2A 3DF
Surrey: 0121 712 7100
Tel: 0121 712 7100

REV: 01/07/10
DATE: 01/07/10
BY: 01/07/10
APP: 01/07/10
S835/SL001



A 03/04/17 Site Layout revised

REV	DATE	REVISION
-----	------	----------

PHASES 3.2 & 4
SOUTHWATER
WEST SUSSEX

SECTION 106

Berkeley
Designed for life

Berkeley Homes (Southern) Limited
Berkeley House, Bay Tree Avenue
Leatherhead
Surrey, KT22 7UE
Tel: 01372 370400

DESIGNED BY TJR	CHECKED BY NCH
DATE SEPT 2025	SCALE 1:750 @ A1
REV NO S832-S106-100	REV A

Schedule 2
Bridleway Upgrade Works

The Owner hereby covenants with the County Council:

1. Prior to commencing the Bridleway Upgrade Works (or such longer period as may be agreed by the County Council) the Owner shall enter into an agreement under Section 25 of the Highways Act 1980 with the County Council to dedicate the Footpath to a Bridleway between points "A" and "B".
- 2.
3. Prior to first Occupation (or such longer period as may be agreed by the County Council) to enter into an agreement under Section 278 of the Highways Act 1980 with the County Council to undertake the Bridleway Upgrade Works.
4. To undertake the Bridleway Upgrade Works prior to Occupation of the 63rd (sixty third) Dwelling unless otherwise agreed in writing by the County Council.
5. Not to Occupy, cause or allow to be Occupied any more than 62 (sixty two) Dwellings until the Bridleway Upgrade Works have been provided unless otherwise agreed in writing by the County Council.

Schedule 3

Payment Notice

Payment of monies due under a Section 106 Agreement

Please answer all the questions

1. Payment made by/on behalf of

2. Land at:

Planning Reference

3. Agreement dated

4. Obligation in Agreement

(a) Clause No.

(b) Contribution towards:

(c) Amount of contribution due: £

(d) Date upon which contribution is due

(e) Amount of contribution enclosed

Schedule 4

LAP, LEAP and Open Amenity Space

The Owner covenants to the Council

Part 1 LAP, LEAP & Open Amenity Space

- 1.1 Not to Occupy or cause or allow the Occupation of more than 47 (forty seven) Dwellings within the Development until the Owner has provided the LAP in accordance with the Play Area Specification ready for use AND submitted to the Head of Development and Building Control at the Council written notification of completion of the LAP AND obtained written confirmation by the Head of Development and Building Control at the Council that the LAP has been Completed (such confirmation not to be unreasonably withheld or delayed)
- 1.2 Not to Occupy or cause or allow the Occupation of more than 73 (seventy three) Dwellings within the Development until the Owner has provided the LEAP in accordance with the Play Area Specification ready for use AND submitted to the Head of Development and Building Control at the Council written notification of completion of the LEAP and a post-installation report prepared by the Royal Society for the Prevention of Accidents (ROSPA) in respect of the LEAP AND obtained written confirmation by the Head of Development and Building Control at the Council that the LEAP has been Completed (such confirmation not to be unreasonably withheld or delayed)
- 1.3 Not to Occupy or cause or allow the Occupation of more than 73 (seventy three) Dwellings within the Development until the Owner has provided the Open Amenity Space in accordance with the Open Amenity Space Specification ready for use AND submitted to the Head of Development and Building Control at the Council written notification of completion of the Open Amenity Space AND obtained written confirmation by the Head of Development and Building Control at the Council that the Open Amenity Space has been Completed (such confirmation not to be unreasonably withheld or delayed)
- 1.4 Within ten Working Days of receipt of the Council's written confirmation of Completion of the LAP and Open Amenity Space or the LEAP (as applicable) the Owner will:
 - 1.4.1 Offer in writing to transfer the LAP and Open Amenity Space to the Management Company for £1 upon the contractual terms set out in paragraph 6 of this Schedule and notify the Head of Development and Building Control of the Council in writing that such an offer has been made;

- 1.4.2 Offer in writing to transfer the LEAP to the Parish Council, Council or the Council's Nominee (which for the avoidance of doubt may be the Management Company) for £1 upon the contractual terms set out in paragraph 6 of this Schedule and notify the Head of Development and Building Control of the Council in writing that such an offer has been made;
- 1.5 In the event that the Parish Council, Council or Council's Nominee does not accept the offer pursuant to paragraph 1.4.2 of this Schedule within one month (or such other period as may be agreed between the parties) the obligations at paragraph 1.4.2 and 1.6.2 of this Schedule shall immediately cease and determine.
- 1.6 Within 3 months of the acceptance of an offer pursuant to paragraph 1.4.1 or 1.4.2 (as applicable) of this Schedule by the Management Company and / or the Parish Council, Council or the Council's Nominee (as applicable), the Owner shall use reasonable endeavours to:
- 1.6.1 Enter into a binding contract for the transfer of the LAP and Open Amenity Space for the sum of £1 with the Management Company, which for the avoidance of doubt the Management Company will be required as a successor in title to the Owner to maintain in accordance with the Management Plan and Play Area Specification PROVIDED ALWAYS that notice of the entering into a contract shall be given to the Council within seven days of entering a contract and a copy of the binding contract shall be sent with such notice to the Council.
- 1.6.2 Enter into a binding contract for the transfer of the LEAP for the sum of £1 to the Parish Council, or the Council or the Council's Nominee (which for the avoidance of doubt may be the Management Company) (as applicable pursuant to paragraph 1.4), which the transferee will be required as a successor in title to maintain PROVIDED ALWAYS that notice of the entering into a contract shall be given to the Council within seven days of entering a contract a copy of the binding contract shall be sent with such notice to the Council.
- 1.7 In the event that the Parish Council, Council or Council's Nominee is unwilling to enter into a binding contract for the transfer of the LEAP to the Parish Council, Council or Council's Nominee (as applicable) pursuant to paragraph 1.6.2 of this Schedule within 3 months of the acceptance of an offer pursuant to paragraph 1.4.2 of this Schedule the obligations in paragraph 1.4.2, paragraph 1.6.2 and paragraph 6 of this Schedule shall immediately cease and determine.

2. The Owner shall use its reasonable endeavours to provide the LEAP, LAP and Open Amenity Space within the timescales referred to in Paragraph 1.1, 1.2 and 1.3 above and upon completion of the works shall notify the Head of Development and Building Control in accordance with paragraph 1.1, paragraph 1.2 and paragraph 1.3 of this Schedule (as appropriate). If following receipt of confirmation of completion of the LAP, LEAP or Open Amenity Space pursuant to paragraphs 1.1, 1.2 and 1.3 of this Schedule, in the reasonable opinion of the Head of Development and Building Control there are defects in the LEAP, LAP or Open Amenity Space the Owner covenants to make good any defects in the LEAP, LAP and Open Amenity Space prior to the transfer of the LAP or LEAP or Open Amenity Space in accordance with paragraph 1.6 of this Schedule and the Council's written confirmation referred to in paragraph 1.1, paragraph 1.2 and paragraph 1.3 will only be provided in the event that, in the reasonable opinion of the Head of Development and Building Control the Owner has complied with its obligation to make good any defects in the LEAP, LAP and Open Amenity Space (as applicable) notified to them pursuant to this paragraph.
3. The Owner shall at their expense continue to maintain and insure the Open Amenity Space, LAP and LEAP (as applicable) in accordance with the Management Plan, Open Space Specification and Play Space Specification, including any equipment such as play equipment keeping all trees and vegetation at all times clean cultivated fed and watered and shall replace any damaged or dying grass turf trees shrubs and other plants in accordance with details approved pursuant to condition 14 of the Planning Permission, for the period until the Open Amenity Space, LAP and LEAP (as applicable) are transferred in accordance with paragraph 1.6
4. Prior to or upon transfer of the LEAP to the Parish Council, Council or Council's Nominee (which for the avoidance of doubt may include the Management Company) pursuant to the terms of paragraph 1.4.2 and 6 of this Schedule, to pay to the transferee the LEAP Maintenance Contribution.
5. Not to Occupy or cause or allow the Occupation of more than 50% of the Dwellings within the Development until the Owner has paid to the Council the Open Amenity Space, LAP and LEAP Inspection Fee.
6. Not to transfer any parcel of land comprising or comprised of the Open Amenity Space, LAP and LEAP, except upon the following terms and conditions unless otherwise agreed between the parties to the transfer:
 - (i) title shall be deduced in accordance with the Land Registration Act 2002;

- (ii) the parcels of land comprising or comprised Open Amenity Space, LAP and LEAP will be transferred free of any financial charges together with the rights and easements but subject only to the exceptions reservations rights easements and other matters contained and referred to in the epitome of title to the Site;
- (iii) vacant possession of the parcel of land comprising the Open Amenity Space, LAP and LEAP shall be given on the date of the transfer in accordance with the provisions of this Section 106 Agreement;
- (iv) completion shall take place on the date falling 3 months (three months) after the date of acceptance of the written offer of transfer pursuant to paragraph 1.4.1 or paragraph 1.4.2 (as appropriate) of this Schedule unless otherwise agreed in a contract for the transfer/conveyance made between the Owner(s) and the Management Company or Parish Council or Council or Nominee (as appropriate);
- (v) the transfer of the Open Amenity Space and LAP to the Management Company and the transfer of the LEAP to the Parish Council, Council or Council's Nominee (if applicable) shall be subject to a covenant to comply with the following:
 - (a) That the Open Amenity Space, LAP and LEAP shall be made available for the use of the general public and shall, unless otherwise agreed with the Council in writing, only be used for the purposes of public open space and local areas of play and locally equipped areas of play as defined as LAP and LEAP respectively in this Section 106 Agreement and shall unless otherwise agreed with the Council in writing, not be used for any trade or business and that no development requiring planning permission shall be carried out thereon unless it is for the purpose of providing children's play facilities or for the maintenance of the LAP, LEAP or Open Amenity Space or is required to be carried out by a statutory undertaker; and
 - (b) The Owner and the Council agree that when the LAP and Open Amenity Space are transferred to the Management Company the Owner shall be entitled to include in the transfer of the title a requirement that the Management Company shall enter into a direct covenant with the Owner to restrict the use of the land in accordance with the restrictions set out in this Section 106 Agreement.

(c) The Owner and the Council agree that if the LEAP is transferred to the Parish Council, Council or Nominee, the Owner shall be entitled to include in the transfer of the title a requirement that the Parish Council shall enter into a direct covenant with the Owner to restrict the use of the land in accordance with the restrictions set out in this Section 106 Agreement; and

(d) The Owner will pay the reasonable legal costs of the Parish Council or the Council or its Nominee (as applicable) in accepting the transfer of the LEAP upon completion of the transfer.

7. That the Open Amenity Space, LAP and LEAP shall be maintained at all times to the reasonable satisfaction of the Council in a clean and safe condition in accordance with Plan 2 and the Management Plan approved in writing by the Council unless otherwise agreed in writing by the Council.

Part 2 Other Managed Land

1. Prior to Occupation of the first Dwelling the Owner shall notify the Council in writing of the details of Other Managed Land (including indicative plans) it intends will be transferred to a Management Company in accordance with Schedule 5 to this Section 106 Agreement.

SCHEDULE 5

Management Company

The Owner covenants with the Council as follows:

1. Subject to paragraph 5 of this Schedule not to occupy or permit the Occupation of any Dwelling until they have set up and registered the Management Company in accordance with the Management Company Structure Scheme and the provisions set out in this Schedule.
2. Not to transfer an individual Dwelling unless the Owner has made provision to include in the transfer of the freehold or leasehold sale of the relevant Dwelling a covenant by the purchaser to pay an annual charge as determined by the Management Company for the cost of maintenance of such parts of the Managed Land and Other Managed Land (if applicable) which have been or are to be transferred to the Management Company
3. On or prior to the transfer of the first individual Dwelling to provide the Council with copies of the Articles and Memorandum of Association of the Management Company and a copy of the transfer relating to the relevant Dwelling including the covenants referred to in Paragraph 2 of this Schedule
4. Where any Managed Land is to be managed and maintained by the Management Company in accordance with the terms of this Deed the Owner will comply with the provisions contained in paragraphs 4.1 and 4.2 of this Schedule
 - 4.1 Prior to the first Occupation of any Dwelling to submit for approval to the Council and gain approval from the Council to the Management Company Structure Scheme
 - 4.2 On approval of the Management Company Structure Scheme the Owner will establish the Management Company in accordance with the approved Management Company Structure Scheme and such Management Company shall be established prior to the date of issue of the first Certificate of Practical Completion in respect of any Managed Land.
5. It is hereby agreed between the Council and the Owner that the Owner may meet the obligations of this Schedule 5 by appointing the Management Company established pursuant to the Outline Section 106 Agreement in relation to the Outline Permission for the Outline Permission Site in respect of the Managed Land and Other Managed Land (if applicable) and that being the case the obligations in this Schedule 5 shall be duly met and discharged.

Schedule 6

The County Council's Obligations

The County Council covenants with the Owner:

1. Where in this Section 106 Agreement the approval (in writing or otherwise) of the County Council is required to be sought by the Owner, the County Council shall consider such request and provide such approval in writing within a reasonable period of time and such approval should not be unreasonably withheld.
2. Following the delivery by the Owner of the Bridleway Upgrade Works to the approved specification the County Council will use reasonable endeavours to progress the necessary amendment to the definitive map and statement required to ensure the Footpath is upgraded to bridleway status.
3. That it has sufficient rights within points "B" and "C" of the Footpath as shown on Plan 2 to enable the Owner to carry out the Bridleway Upgrade Works pursuant to an agreement under section 278 of the Highways Act 1980.

Schedule 7

Obligations by the Council

The Council hereby covenants and agrees with the Owner and where appropriate with the County Council:

1. Where in this Section 106 Agreement the approval (in writing or otherwise) of the Council is required to be sought by the Owner, the Council shall consider such request and provide such approval in writing within a reasonable period of time and such approval should not be unreasonably withheld.
2. Upon receipt by the Council of the Council Contributions to hold them as separately identifiable balance within the Council's interest bearing accounts.
3. To use the Council Contributions received by the Council in accordance with the terms of this Section 106 Agreement for the purposes set out in this Section 106 Agreement and not for any other purpose without the prior written consent of the party that paid the relevant Council Contribution.
4. That upon receiving a request in writing addressed to the Head of Legal and Democratic Services from the paying party to notify the paying party of how any of the Council Contributions paid under the terms of this Section 106 Agreement have been used provided that no such request shall be made until all of the Council Contributions have been made under this Section 106 Agreement.
5. To repay the Council Contributions received by the Council or any part thereof to the party who has paid the relevant Council Contribution in the event that the relevant Council Contribution or any part thereof has not been spent by the Council within 10 years from the date of payment of each individual contribution.
6. In the event the Council is in receipt of the LEAP Maintenance Contribution and if the LEAP is being maintained by the Parish Council or the Council's Nominee under the terms of this Section 106 Agreement to ensure that the LEAP Maintenance Contribution is made available to the Parish Council or the Council's Nominee (as the case may be) and to procure and ensure that such sum or any part thereof is spent for the purposes intended under this Section 106 Agreement.

Schedule 8

Travel Plan

The Owner hereby covenants with the County Council that:

- 1.1 Upon Commencement of Development the Owner shall pay to the County Council the Travel Plan Monitoring Fee.
- 1.2 It is hereby acknowledged for the avoidance of doubt and without prejudice to the above that the County Council is authorised to apply the Travel Plan Monitoring Fee.