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(1) SOUTHERN HOUSING

(2) HORSHAM DISTRICT COUNCIL

Town and Country Planning Act 1990 Section 106A

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

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Planning Ref: S106/24/0017

This Agreement is made as a Deed and dated 2026

Between:

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

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

together "the **Parties**"

1. BACKGROUND

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

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

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

IT IS AGREED:-

2. INTERPRETATION

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

"1990 Act"	the Town and Country Planning Act 1990 (as amended).
"Application"	the application dated 24 September 2024 under reference S106/24/0017 to modify the Principal Agreement in relation to the Sites.
"Principal Agreement"	the Agreement dated 10 May 1994 made between John Mowlem Homes Ltd (1) Persimmon Homes (South East) Ltd (2) Higgs and Hill Homes Ltd (3)

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	Southwater Properties Ltd (4) John Mowlem Homes Ltd and Persimmon Homes (South East) Ltd (5) Higgs and Hill Homes Ltd (6) Southwater Properties Ltd (7) The Governor and Company of the Bank of Ireland (8) John Mowlem Homes Ltd (9) Persimmon Homes (South East) Ltd (10) and Horsham District Council (11) relating to Land at and adjoining Swabey's Yard Worthing Road and Southwater Street Southwater Horsham West Sussex.
"**Sites**"	the plots identified by address being 8, 10, 11, 13, 14 and 17 Nyes Lane, Southwater, Horsham RH13 9GP, 23-25 (odd) and 29-35 (odd) Castlewood Road, Southwater, Horsham RH13 9US, 3 and 5-10 (inclusive) Cowslip Close, Southwater, Horsham RH13 9UZ and 1-26 Buttercup Way, Southwater, Horsham RH13 9UPand shown edged red on the Site Plan.
"**Sites Plan**"	the plan attached to this Agreement and shown at Schedule 1.

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

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

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

2.5 References in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.

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

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

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

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

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

3. ENABLING PROVISIONS

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

4. VARIATIONS TO THE PRINCIPAL AGREEMENT

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

5. COVENANTS

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

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

6. LOCAL LAND CHARGE

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

7. NO FETTER ON DISCRETION

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

8. SEVERABILITY

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

9. COSTS

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

10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

11. WAIVER

11.1 No waiver (whether expressed or implied) by the District Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the District Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

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12. JURISDICTION

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

13. COMMENCEMENT

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

14. DISPUTE RESOLUTION

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

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SCHEDULE 1

Site Addresses and Site Plans

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

23-25 (odd) and 29-35 (odd) Castlewood Road, Southwater, Horsham RH13 9US

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

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

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SCHEDULE 2 – Amendments to Principal Agreement

1. The Principal Agreement is varied as follows:

1.1 Section 1 (Definitions) of the Principal Agreement shall be amended as follows:

1.1.1 the following terms and their corresponding definitions shall be deleted:

"Housing Association"

"Social Housing Land"

"Social Housing Site A"

"Social Housing Site B"

"Social Housing Units"

1.1.2 the following terms and their corresponding definitions shall be added where alphabetically appropriate in the Principal Agreement:

"Affordable Housing Land"	land for Affordable Housing Units to be provided on the Blue Land
"Affordable Housing Provider"	either one or a combination of: a) a registered provider of social housing within the meaning of the Housing and Regeneration Act 2008 (including its successors and assigns from time to time) who is on the District Council's approved list (as may be amended from time to time) OR another registered provider of social housing as may be proposed by the Owners and approved by the District Council; OR b) an unregistered provider of affordable housing approved by the District Council, or such other body or organisation approved by the District Council whose main object is the provision of Affordable Housing;
"Affordable Housing Site A"	that part of the Orange Land hatched green having an area of approximately 1.2 hectares intended for affordable housing
"Affordable Housing Site B"	that part of the unhatched Orange Land having an area of approximately 0.8 hectare
"Affordable Housing Units"	those dwellings for affordable housing purposes provided as part of Development and referred to in Clause 15;

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"Right to Acquire"	the right of a secure tenant to purchase their dwellinghouse as set out in Part V of the Housing Act 1996 (as amended) and Housing (Right to Acquire) Regulations 1997
"Right to Buy"	the right of a secure tenant to purchase their dwellinghouse as set out in Part V of the Housing Act 1985 (as amended)
"Shared Ownership Lease"	a lease which accords with HE's model form of lease issued from time to time such that the dwelling is occupied in accordance with shared ownership arrangements within the meaning of section 70(4) of the Housing and Regeneration Act 2008.
"Shared Ownership Unit"	the Affordable Housing Units made available by an Affordable Housing Provider whereby a person granted a Shared Ownership Lease can purchase an initial equity share in a Shared Ownership Unit of not less than 10% and not more than 75% and pay rent on the unsold equity with flexibility for such a person to purchase further equity shares in the Shared Ownership Unit up to 100% or such other equity sharing or retention terms from time to time approved by the District Council.

1.2 For the avoidance of doubt, throughout the Principal Agreement:

1.2.1 wherever the words "…Housing Association…" appear, they shall be deleted and replaced with the words "…Affordable Housing Provider…"

1.2.2 wherever the words "…Social Housing Land…" appear, they shall be deleted and replaced with the words "… Affordable Housing Land…";

1.2.3 wherever the words "…Social Housing Site A…" appear, they shall be deleted and replaced with the words "…Affordable Housing Site A…";

1.2.4 wherever the words "…Social Housing Site B…" appear, they shall be deleted and replaced with the words "…Affordable Housing Site B…"; and

1.2.5 wherever the words "…Social Housing Units…" appear, they shall be deleted and replaced with the words "…Affordable Housing Units…"

as the case may be.

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

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

"15.9 The affordable housing provisions in this Agreement shall not be binding on nor enforceable against:

*15.9.1 any mortgagee or chargee or any receiver (including an administrative receiver appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (**"Appointee"**) or any administrator (howsoever appointed) (**"Administrator"**) including a housing administrator (each "a **Receiver**") of an Affordable Housing Provider of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee chargee or Receiver PROVIDED THAT:*

15.9.1.1 any power of sale available to any such Appointee, Administrator or Receiver shall only be exercised in the event of there being a default of any obligation under the security documentation;

15.9.1.2 such Appointee, Administrator or Receiver shall first give written notice to the District Council of its intention to exercise its power of sale;

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

15.9.1.4 if such disposal has not completed within the three month period, the Appointee, Administrator or Receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely

15.9.2 a tenant of a Affordable Housing Unit who has exercised a Right to Acquire;

15.9.3 a tenant of a Affordable Housing Unit who has exercised a Right to Buy;

15.9.4 a Shared Ownership leaseholder who has acquired 100% of the shares in the Shared Ownership Unit; and

15.9.5 any successor in title of any person detailed in sub-paragraphs 15.9.2, 15.9.3 and 15.9.4 (above) or their mortgagee or chargee

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

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

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

Authorised Signatory

Authorised Signatory

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

Authorised Signatory

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