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(1) STONEWATER LIMITED

(2) HORSHAM DISTRICT COUNCIL

DEED OF VARIATION

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

Land on the north side of Stopham Road, Pulborough, West Sussex

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

Legal ref: 002492

Planning ref: S106/22/0010 and DC/16/0278 (as amended by DC/21/1535)

Between:

- (1) **STONEWATER LIMITED** a charitable registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (registered number 20558R) whose registered office is at Suite C, Lancaster House, Grange Business Park, Enderby Road, Whetstone, Leicester, LE8 6EP (the “**Owner**”)
- (2) **HORSHAM DISTRICT COUNCIL** of Albery House, Springfield Road, Horsham, West Sussex RH12 2GB (“**the District Council**”)

together “the Parties”

1. BACKGROUND & RECITALS

Whereas

- 1.1 On 12 November 2018 an Agreement was entered into pursuant to section 106 of the Act between 1) George Henry Richards, 2) Willowmead (Pulborough) Limited, 3) Network Rail Infrastructure Limited, 4) the District Council and 5) the County Council relating to Land adjacent Railway Cottages and Pulborough Railway Station, Stopham Road, Pulborough, West Sussex, RH20 1DP (“the **Principal Agreement**”). Without prejudice to the covenants contained in the Principal Agreement the Parties have agreed to vary the terms of the Principal Agreement (insofar as it relates to the Stonewater Land) as set out in this Agreement.
- 1.2 The Owner is now the registered proprietor of the Stonewater Land.
- 1.3 The Council is the local planning authority for the purposes of S106 and S106A of the Act for the area within which the Stonewater Land is situated and is capable of enforcing the obligations in the Principal Agreement.
- 1.4 The Owner is a registered provider of Affordable Housing and intends to deliver all of the Dwellings as Qualifying Dwellings.
- 1.5 The Owner intends to deliver all the Dwellings as Affordable Housing Units and Additional Affordable Dwellings. The District Council is in agreement with this approach in this particular application but any additional requests for other sites shall be reviewed on a case-by-case basis.
- 1.6 The Owner shall submit an application for Social Housing Relief for all Dwellings and the District Council requires this obligation to be entered into in order to grant the Social Housing Relief.
- 1.7 The District Council acknowledges that as all of the Dwellings will be allocated to occupants in accordance with its housing register and nominations policy criteria and therefore occupiers will be drawn from the District Council’s administrative area. The

District Council therefore acknowledges that there will be no additional demand upon the infrastructure within the administrative area of the District Council.

- 1.8 Pursuant to section 106A of the Act the District Council and the Owner have agreed to vary the terms of the Principal Agreement as set out in this Deed.

NOW THIS AGREEMENT WITNESSES as follows:

2. INTERPRETATION

In this Agreement:

- 2.1 Words importing the one gender include reference to all the genders.
- 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 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those.
- 2.5 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.
- 2.6 Any reference to a clause, schedule, paragraph or plan is to a clause, schedule, paragraph or plan in, to or attached to this Agreement, unless expressly stated otherwise.
- 2.7 Any reference to a colour or letter is to a colour or letter on the plans attached to this Agreement.
- 2.8 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.
- 2.9 A reference to writing or written excludes fax and email.
- 2.10 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 2.11 References to any party to this 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.
- 2.12 The headings are for reference only and shall not affect construction.

3. DEFINITIONS

It is hereby agreed between the Parties set out in this Agreement that the following expressions have the following meanings:

“Act”	the Town and Country Planning Act 1990 (as amended);
“Principal Agreement”	The S106 Agreement dated 12 November 2018 made between 1) George Henry Richards, 2) Willowmead (Pulborough) Limited, 3)

Network Rail Infrastructure Limited, 4) the District Council and 5) the County Council relating to Land adjacent Railway Cottages and Pulborough Railway Station, Stopham Road, Pulborough, West Sussex, RH20 1DP

“Stonewater Land” the land on the north side of Stopham Road, Pulborough, West Sussex, comprising the Owner’s land in title number WSX434210 and shown for identification purposes only edged red on the Stonewater Land Plan

“Stonewater Land Plan” Shown at Appendix 1;

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

4. ENABLING PROVISIONS

- 4.1 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 Stonewater Land and are enforceable by the Council as local planning authority against the Owner as owner of the Stonewater Land and against their successors in title and assigns in respect of their interests in each and every part of the Stonewater Land 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 Stonewater Land or the part of the Stonewater Land in respect of which such breach occurs (save in relation to any antecedent breach which occurs prior to parting with such interest).

5. VARIATIONS TO THE PRINCIPAL AGREEMENT

- 5.1 The Parties hereby agree that:
- 5.1.1 Without prejudice to the other covenants in the Principal Agreement which shall continue in full force and effect, the Parties to this Agreement agree that from the date of this Agreement the Principal Agreement shall be varied as set out in the Schedule to this Agreement.

6. COVENANTS

- 6.1 The Owner covenants with the Council to comply with the obligations contained in this Agreement and to comply with the obligations and provisions of the Principal Agreement.
- 6.2 The Council covenants with the Owner that it will observe and perform the covenants restrictions and obligations on its part contained in the Principal Agreement as amended by this Agreement.

7. LOCAL LAND CHARGE

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

8. NO FETTER ON DISCRETION

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

9. SEVERABILITY

- 9.1 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.

10. COSTS

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

11. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 11.1 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.

12. WAIVER

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

13. JURISDICTION

- 13.1 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 England and Wales.

14. COMMENCEMENT

- 14.1 For the avoidance of doubt the provisions of this Agreement shall not have any effect until this document has been dated.

15. DISPUTE RESOLUTION

- 15.1 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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THE SCHEDULE

VARIATIONS TO THE PRINCIPAL AGREEMENT

1. The Principal Agreement shall be varied as follows:

1.1 Clause 3 "DEFINITIONS" shall be amended as follows:

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

"Registered Provider"
"Open Market Dwellings"
"Social Rented Units"

1.1.2 The following terms shall be redefined and for the avoidance of doubt, the definition for each term shall be deleted in its entirety and replaced with:

"Affordable Housing" affordable housing comprising Rented Units and/ or Shared Ownership Units (or such other forms of intermediate tenure as defined in the National Planning Policy Framework (or any amendment or replacement thereto) provided to meet the needs of eligible households which are not met by the market, including availability at sufficiently low cost determined with regard to local incomes and local house prices and provision for the home to remain at an affordable price for future eligible households or if these restrictions are lifted for the subsidy to be recycled for alternative affordable housing provision ;

"Affordable Housing Mix" the mix set out in the table at Part 1 of Appendix 2 of this Deed;

"Affordable Housing Unit or Units" the Dwellings (which, for the avoidance of doubt, shall include the Additional Affordable Dwellings) to be constructed on the Affordable Housing Land as Affordable Housing in accordance with the Affordable Housing Mix;

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

"Additional Affordable Dwellings" the additional 19 Dwellings which the Owner proposes to deliver as Affordable Housing in accordance with mix detailed in the table at Part 2 of Appendix 2 or such other mix of as may be notified to the District Council;

"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 Owner 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;

“Clawback Period”	the period set out in Regulation 2(1) of the Regulations under the heading “clawback period” (aa)
“Disqualifying Event”	shall have the same meaning as set out in Regulation 53(2) of the Regulations;
“Notification Requirements”	a duty to notify the Head of Legal and Democratic Services of the District Council in writing of the occurrence of a Disqualifying Event as set out in Regulation 53(6) and (7) of the Regulations;
“Qualifying Dwellings”	a Dwelling which complies with Regulation 49(2) of the Regulations and “Qualifying Dwellings” shall be construed accordingly;
“Regulations”	the Community Infrastructure Levy Regulations 2010 as amended from time to time;
“Relevant Amount”	an amount calculated in accordance with Regulation 53(4) of the Regulations
“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 to 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.

**“Social
Housing
Relief”**

any relief granted pursuant to Regulation 49 of the Regulations.

- 1.2 Throughout the Principal Agreement wherever the words, “...Registered Provider...” appear, they shall be deleted and replaced with the words “...Affordable Housing Provider...” and wherever the words “...Open Market Dwelling...” appear, they shall be deleted and replaced with the words “...Additional Affordable Dwellings...”
- 1.3 In paragraph 7 of Part 2 Schedule 2 the words “(for the avoidance of doubt the Additional Affordable Dwellings shall be included within the said deed of nomination for the duration of the Clawback Period)” shall be inserted after the words “Schedule 5”.
- 1.4 Paragraph 8, 10 and 11 of Part 2 Schedule 2 shall be deleted and replaced with the following:

“8. The affordable housing provisions in Part 2 of Schedule 2 of this Agreement shall not be binding on nor enforceable against:

8.1 any mortgagee or chargee or any receiver (including an administrative receiver) or manager 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 and / or Additional Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED ALWAYS THAT:

8.1.1 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;

8.1.2 such Appointee Administrator or Receiver shall first have notified the District Council that it wishes to exercise its statutory power of sale;

8.1.3 for a period of 3 (three) clear calendar months from the date of such notification, the Appointee Administrator or Receiver shall use reasonable endeavours to complete a disposal of the relevant Affordable Housing Units and / or Additional Affordable Dwellings to another Affordable Housing Provider or to the District Council (who shall take subject to the provisions of this Deed) 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

PROVIDED THAT and for the avoidance of doubt if such disposal has not completed within the 3 (three) month period, the Appointee, Administrator or Receiver shall be entitled to dispose of the Affordable Housing Units and / or Additional Affordable Dwellings free from the affordable housing provisions in

Part 2 of Schedule 2 of the Principal Agreement which provisions shall determine absolutely

8.2 a tenant of an Affordable Rented Unit who has exercised a Right to Acquire;

8.3 a tenant of an Affordable Rented Unit who has exercised a Right to Buy;

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

8.5 any successor in title of any person detailed in sub-paragraphs 8.2, 8.3 and 8.4 (above) or their mortgagee or chargee.

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

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

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

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

14.1 to procure that the Additional Affordable Dwellings are Occupied as Qualifying Dwellings PROVIDED THAT in the event that a Disqualifying Event occurs in relation to any Additional Affordable Dwelling that Dwelling shall be released from the obligations set out in this Deed which shall cease and determine in relation to such Additional Affordable Dwelling;

14.2 in the event that a Disqualifying Event occurs in relation to any Additional Affordable Dwelling the Owner shall comply with the Notification Requirements within 5 (five) Working Days from the date of the Disqualifying Event and the Owner acknowledges that in such event the Relevant Amount shall become payable”.

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

EXECUTED as a **DEED** by affixing

THE COMMON SEAL of)

HORSHAM DISTRICT COUNCIL)

in the presence of:)

Authorised signatory

EXECUTED as a **DEED** by affixing)
the common seal of)
STONEWATER LIMITED)
in the presence of:

Authorised signatory

Printed Name

Authorised signatory

Printed Name

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Appendix 1

Stonewater Land Plan

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Appendix 2

Part 1 - Affordable Housing Mix

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

Part 2

Additional Affordable Units

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