

**DATED**

31<sup>st</sup> JANUARY

20  
**2019**

- (1) THE COUNCIL OF THE BOROUGH OF HAVANT
- (2) HAMPSHIRE COUNTY COUNCIL
- (3) THE SWAYTHLING HOUSING SOCIETY LIMITED
- (4) PORTAL HOUSING ASSOCIATION LIMITED
- (5) PRUDENTIAL TRUSTEE COMPANY LIMITED

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**DEED OF VARIATION**  
**of the S106 Agreement dated 30 July 2013 relating to land south of Ranelagh**  
**Road Havant in Hampshire**

**Pursuant to Section 106 and 106A**  
**of the Town and Country Planning Act 1990 (as amended)**

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Devonshires Solicitors LLP  
Park House  
Park Square West  
Leeds  
LS1 2PW

**THIS DEED OF VARIATION** is made the 31<sup>st</sup> day of JANUARY 2019<sup>30</sup>

**BETWEEN:**

- (1) THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road, Havant, Hampshire PO9 2AX **(Council);**
- (2) HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire SO23 8UJ **(County Council);**
- (3) THE SWAYTHLING HOUSING SOCIETY LIMITED** (Registered Society No. 10237R) of Collins House, Bishopstoke Road, Eastleigh, Hampshire SO50 6AD **(Society);**
- (4) PORTAL HOUSING ASSOCIATION LIMITED** (Registered Society No. 28635R) of Collins House, Bishopstoke Road, Eastleigh SO50 6AD **(Association);** and
- (5) PRUDENTIAL TRUSTEE COMPANY LIMITED** (Company Registration Number 1863305) of 10 Fenchurch Avenue, London, EC3M 5AG **(Security Trustee)**

**WHEREAS:**

- (A)** This Deed of Variation is made under Section 106A of the Act and is supplemental to the Original Agreement.
- (B)** The Council and the County Council are the local planning authorities for the purposes of the Act for the area within which the Land is situated and are entitled to enforce the obligations contained in this Deed of Variation.
- (C)** The Society is the freehold owner of part of the Land which is registered at the Land Registry with title numbers SH42536, SH46912 and SH46973 and is a successor in title to Jacobs Forman Developments Limited who succeeded Portsmouth Water Limited.
- (D)** The Association is the freehold owner of part of the Land which is registered at the Land Registry with title number SH48471 and is a successor in title to Portsmouth Water Limited.
- (E)** The Security Trustee is the proprietor of a registered charge dated 30 April 2018 referred to in entry number 6 of the charges register of title number SH48471.

- (F) The Association and Society have made an application for modification of the existing mortgagee exclusion clause contained within the Original Agreement to facilitate the provision of Affordable Housing.
- (G) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of the Original Agreement to modify the mortgagee exclusion clause in the manner set out within this Deed of Variation.

**NOW IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Deed of Variation the following definitions and rules of interpretation apply:

|                      |                                                                                                                                                                                                                                                                                                                                                              |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "Deed of Variation"  | means this deed of variation                                                                                                                                                                                                                                                                                                                                 |
| "Original Agreement" | the Section 106 of the Act dated 30 July 2013 between (1) Orchard Homes & Developments Limited (2) Brockhampton Property Investments Ltd (3) Portsmouth Water Limited (4) Council (5) County Council as varied by the deed of variation dated 15 September 2016 made between (1) Jacobs Foreman Developments Limited (2) Lloyds Bank Plc and (3) the Council |

- 1.2 Save where expressly stated otherwise the words and expressions used in this Deed of Variation shall have the meaning assigned to them in the Original Agreement as varied by the Deed of Variation.
- 1.3 The clause headings in this Deed of Variation are for reference only and do not affect its construction or interpretation.
- 1.4 References to clauses and Schedules are to the clauses and Schedules of this Deed of Variation, unless stated otherwise.
- 1.5 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 1.6 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 1.7 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 1.8 Unless this Deed of Variation states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments,

orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.

- 1.9 References to the Land include any part of it.
- 1.10 References to any party in this Deed of Variation include the successors in title of that party and any references to the Council and County Council include any successor local planning authority exercising planning powers under the Act.
- 1.11 References to "including" mean "including, without limitation".
- 1.12 Any covenant by the parties not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 1.13 Where two or more people form a party to this Deed of Variation, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 1.14 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed of Variation shall be unaffected.

## **2. STATUTORY PROVISION**

This Deed of Variation is made pursuant to section 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

## **3. VARIATIONS TO THE ORIGINAL AGREEMENT**

- 3.1 From and including the date of this Deed of Variation the Original Agreement shall be read and construed as varied by the provisions of the Schedule to this Deed of Variation.
- 3.2 Except as provided in this Deed of Variation, it is agreed between the parties that this Deed of Variation is supplemental to and not in substitution for the Original Agreement and that the terms of the Original Agreement will continue in full force and effect, subject only to the provisions of this Deed of Variation.

## **4. COSTS**

The Society shall pay the Council's and the County Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this Deed of Variation.

## **5. LAND CHARGES**

This Deed of Variation shall be registered as a local land charge by the Council.

## **6. THIRD PARTY RIGHTS**

A person who is not a party to this Deed of Variation shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

7.

### GOVERNING LAW

This Deed of Variation and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

**IN WITNESS** whereof this deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

EXECUTED as a Deed by affixing the  
Common Seal of **THE COUNCIL OF  
THE BOROUGH OF HAVANT**  
in the presence of:

.....  
Authorised Signatory

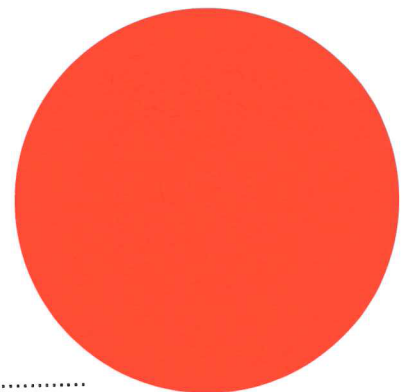


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EXECUTED as a Deed by affixing the  
Common Seal of **HAMPSHIRE COUNTY  
COUNCIL**  
in the presence of:

.....  
Authorised Signatory



EXECUTED as a Deed by AFFIXING THE  
COMMON SEAL OF **THE SWAYTHLING  
HOUSING SOCIETY LIMITED**  
In the presence of:-

[Redacted] Anne Costain  
Director of Finance  
Authorised Signatory

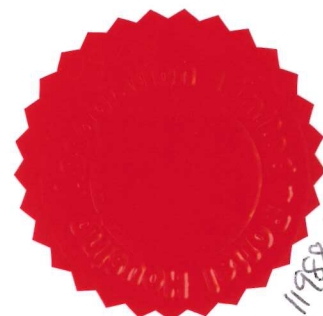
[Redacted] Malcolm Rule  
Company Secretary  
.....  
Authorised Signatory



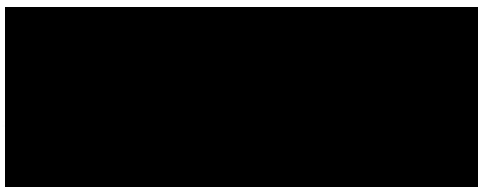
EXECUTED as a Deed by AFFIXING THE  
COMMON SEAL OF **PORTAL HOUSING  
ASSOCIATION LIMITED**  
In the presence of:-

[Redacted] Malcolm Rule  
Company Secretary  
.....  
Authorised Signatory

[Redacted] James Pennington  
Executive Director of Development  
.....  
Authorised Signatory



EXECUTED as a Deed by affixing the Common  
Seal of PRUDENTIAL TRUSTEE COMPANY  
LIMITED

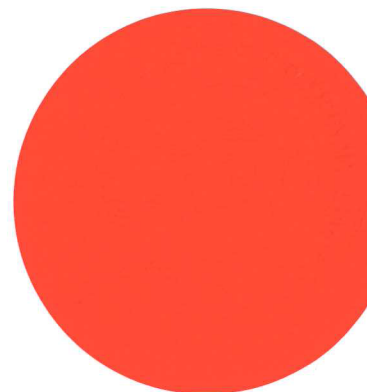


R Baker

Hereunto in the presence of:

.....

Sealing Officer



## SCHEDULE

### Variations to the Original Agreement

1. at clause 5 of the Original Agreement the following definitions shall be inserted:

**"Chargee"**

*shall mean:*

- *any mortgagee or chargee;*
- *any receiver, administrative receiver or administrator appointed under the Law of Property Act 1925;*
- *any housing administrator appointed under the Housing and Planning Act 2016; or*
- *any other person appointed under any security document to enable a Chargee to realise its security*

*of the Alternative Affordable Housing Provider and/or the Registered Provider of the whole of the Affordable Housing Land or any one or more of the Affordable Housing Units*

2. paragraph 6.15 of Schedule 2 to the Original Agreement shall be deleted replaced as follows:

*"6.15 The provisions of this Agreement relating to the Affordable Housing Units shall not be binding on a Chargee (or any person or bodies deriving title through such Chargee) PROVIDED THAT the Chargee will have first:*

*6.15.1 given written notice to the Council of its intention to exercise its powers of sale to dispose of any of the Affordable Housing Units ("Notice"); and*

*6.15.2 used reasonable endeavours over a period of three months from the date the Notice is served to complete a disposal of the relevant Affordable Housing Units(s) to either:*

- *another Affordable Housing Provider; or*
- *to the Council.*

6.16 *Any disposal referred to in paragraph 6.15.2 shall be for a consideration not less than the amount properly due and outstanding under the terms of the Chargee's relevant security documentation. This sum shall include all accrued principal monies, interest and the Chargee's reasonable costs and expenses.*

6.17 *In the event that a disposal referred to in paragraph 6.15 shall not have been completed within the period of three months referred to in paragraph 6.15.2, the Chargee will be entitled to dispose of the relevant Affordable Housing Units(s) free from the provisions of this Deed relating to Affordable Housing which shall determine absolutely in respect of the relevant Affordable Housing Units(s)."*

3. paragraph 6.16 of the Original Agreement shall be renumbered paragraph 6.18.