DATED 24th April 2013

CLOUD LIVING LIMITED (1)

and

THE COUNCIL OF THE BOROUGH OF HAVANT (2)

DEED OF VARIATION AND PLANNING OBLIGATION

Pursuant to (inter alia)
Section 106 and Section 106A of the Town and Country Planning Act 1990
Relating to land at
Raebarn House Car Park, Curzon Road, Waterlooville in Hampshire

Mrs J Barden-Hernandez
Solicitor to the Council
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant, Hampshire
PO9 2AX

THIS DEED OF VARIATION is made the 24th day of April 2013

BETWEEN

(1) CLOUD LIVING LIMITED (Co No: 08255092) of LARCH HOUSE PARKLANDS BUSINESS PARK DENMEAD HAMPSHIRE PO7 6XP ("the Owner")

(2) THE COUNCIL OF THE BOROUGH OF HAVANT OF the Public Service Plaza Civic Centre Road Havant Hampshire PO9 2AX ("the Council")

WHEREAS:

(1) This Deed is supplemental to a Deed of Agreement dated 9th May 2008 made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) and Section 111 of the Local Government Act 1972 between Raebarn House Limited (1) Abbey National PLC (2) and the Council (3) in relation to the development of land at Raebarn House Car Park, Curzon Road, Waterlooville in Hampshire ("the Section 106 Agreement"). The Section 106 Agreement was varied by a Deed of Variation Dated 8th September 2011 pursuant to Sections 106 and 106A of the Town and Country Planning Act 1990 (as amended) and Section 111 of the Local Government Act 1972 between TW Assets Limited (1) McGregor Developments Limited (2) and the Council (3) in relation to the development of land at Raebarn House Car Park, Curzon Road, Waterlooville in Hampshire as successors in title and to vary the Section 106 Agreement to impose obligations in relation to onsite provision of Affordable Housing.

2. Following a refusal of planning permission for planning application reference number 07/2542/000 by the Council the Raebarn House Limited appealed to the Planning Inspectorate under planning reference APP/X1735/A/08/2067034/NWF by Decision Notice dated 2 July 2007 conditional permission was granted.

3. Further to an application for extension of time for implementation of outline planning permission 07/72542/000 for erection of four storey building comprising 14No. 1 and 2 bed flats above secure car parking for Raebarn House Offices given planning reference number APP/11/00343 the Parties thereto agreed and consented to the terms of the Section 106 Agreement being varied in respect of the site.

4. Following an application for extension of time for implementation of outline planning permission 07/72542/000 for erection of four storey building comprising 14No. 1 and 2 bed flats above secure car parking for Raebarn

House Offices given planning reference number APP/11/00343 the Parties hereto agree and consent to the terms of the Section 106 Agreement being further varied in respect of the site as hereinafter provided.

NOW THIS DEED WITNESSETH as follows:

PRELIMINARY AND RECITALS

A Definitions

A.1 Words and phrases used in this Deed are defined at Clause 1.1. Save as otherwise provided words and phrases in this Deed shall have the meanings contained in the Section 106 Agreement.

B Purpose of Deed

B.1 This Deed is supplemental to and varies certain of the obligations contained in the Section 106 Agreement.

B.2 The Deed is being entered into to amend the Affordable Housing provisions contained within the Section 106 Agreement;

B.3 The provisions of this Deed bind the Land (and each and every part of it) the parties and their successors in title save where this Deed expressly provides to the contrary

C Statutory Authorities

C.1 The Council is for the purposes of Sections 106 and 106A of the Act the authority which can enforce the terms of this Agreement

C.2 This Deed is made pursuant to the provisions Section 106 and 106A of the 1990 Act Section 111 of the Local Government Act 1972 the Housing Acts and Section 2 of the Local Government Act 2000 and all other powers enabling

D Planning

D.1 This Deed is supplemental to the Section 106 Agreement which is varied by the provisions of this Deed

E Liability for this Deed

E.1 The Planning Obligations restrictions covenants limitations and obligations in this Deed relating to all clauses within the Section 106 Agreement as amended and this Deed of Variation relate to and are binding in their entirety upon the First Owner and Second Owner and their successors in title and assigns and their interest in the Land save as otherwise provided shall bind and run with the land and each and every part of it.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Undertaking (including the Recitals) the following expressions shall have the following meanings:

"Alternative Affordable Housing Contribution"	Means the payment of a financial contribution in lieu of the shortfall of on-site Affordable Housing Unit provision (calculated in accordance with the methodology contained in the Council's "Supplementary Planning Document – Housing July 2011")

1.2 The definitions contained in the Section 106 Agreement apply unless the context otherwise requires

1.3 The provisions of this Deed shall unless the context otherwise requires be construed as follows:

1.3.1 Words importing one gender shall include all other genders

1.3.2 The singular includes the plural and vice versa

1.3.3 Reference to a statute includes any amendment, modification, extension consolidation or re-enactment of it and any statutory instrument, regulation or order made under it which is for the time being in force

1.3.4 References to any "Clause" or "Sub-Clause" (or any part of them) shall (unless the context otherwise requires) be references to a Clause Sub-Clause (or any part of them) of this Deed

1.3.5 Headings to clauses of this Deed do not affect the interpretation or construction of this Deed

2 EFFECT OF AGREEMENT

2.1 The covenants restrictions and requirements imposed upon the First Owner and Second Owner under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the First Owner and Second Owner and their successors in title.

2.2 This Deed also varies and supplements certain of the provisions of the planning obligations contained in the Section 106 Agreement.

3 LAND BOUND AND ENFORCING AUTHORITY

3.1 The provisions of this Deed and the covenants restrictions limitations and obligations given by the Owner shall bind and run with the Land and each and every part of it and shall be binding against the Owner and its successors in title and assigns to the Land and each an every part of it save as provided elsewhere in this Deed.

3.2 The Owner and acknowledges that (notwithstanding the disposal Owner of parts of the Land) it remains liable under the Section 106 Agreement (as amended by this Agreement) and the obligations contained in this Agreement.

4 LOCAL LAND CHARGE REGISTRATION

4.1 This Deed is registerable by the Council as a local land charge in the Register of Local Land Charges kept by the Council.

5 THE OWNER'S COVENANTS

5.1 The Owner for itself and its successors in title to the Land and each and every part of it hereby covenants in favour of the Council to observe perform and abide by the obligations restrictions limitations and covenants contained in this Deed and in the Section 106 Agreement as varied by this Deed and the said obligations restrictions limitations and covenants shall run with and bind with the Land and each and every part of it as set out below.

6 VARIATIONS TO THE SECTION 106 AGREEMENT

6.1 The variations set out in the Schedule hereto shall have effect as of the date of this deed.

7 AGREEMENTS AND DECLARATIONS

It is hereby agreed and declared by the parties hereto that:

7.1 Except in so far as legally or equitably permitted this Deed shall not prejudice fetter or affect the exercise of any statutory power duty or discretion of the Council

7.2 The terms of the Section 106 Agreement except as varied by this Deed are confirmed as if the same were set out in this Deed in full and that such terms as so varied shall for all purposes be deemed incorporated in this Deed.

7.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

IN WITNESS whereof this Deed has been executed as a Deed by the parties hereto the day and year first before written

SIGNED as a DEED by)
CLOUD LIVING LIMITED)
Acting by)
A director and its secretary/)
/ two Directors)

Directo [redacted]

Directo [redacted]

EXECUTED as a DEED by affixing)
THE COMMON SEAL of)
THE COUNCIL OF THE BOROUGH)
OF HAVANT)
in the presence of:)

[redacted]

Deputy to the
Solicitor to the Council

12796

SCHEDULE

Variation of Section 106 Agreement

1 Definitions

1.1 The Definitions set out in Clause 1.1 above shall be deemed to have been included in the Section 106 Agreement

1.2 The following definitions shall be deemed to be deleted from Clause 1 of the Section 106 Agreement:-

"Affordable Housing"	Means housing which is rented or sold (including an equity share in whole or part) below market levels by means of public or private subsidies such that it can be afforded by those whose incomes are insufficient for them to afford adequate housing locally on the open market
"Affordable Housing Land"	Means that part of the Land for the provision of Affordable Housing Units
"Alternative Affordable Housing Provider"	means any organisation or body operating as a private landlord who is not an Registered Provider but who has entered into a management contract with an Registered Provider for the management of the Affordable Housing Units to ensure the Affordable Rented Housing Units are retained for future Eligible Persons and to ensure the recycling of any grant
" Affordable Rent"	means rent that is subject to rent controls that require a rent of no more than 80 per cent of the local market rent to be paid by an Occupier of an Affordable Rented Housing Unit
"Affordable Rented Accommodation"	means rented housing let by Registered Providers of social rented housing and means in relation to the Affordable Rented Housing Units housing for rent available to persons who cannot afford to rent or buy houses generally available on the open market with the rent being at a Affordable

Raebarn House Car Park

	Rent
"Affordable Rented Housing units"	means 3 of the Affordable Housing Units (and associated car parking spaces the number of which is to be agreed between the Owner and the Council) Occupied as Affordable Housing by way of Affordable Rented Accommodation and the expression Affordable Rented Housing Unit shall be construed accordingly
"Eligible Persons"	means persons who are unable to afford housing accommodation on the open market (whether by renting or purchasing) within the administrative area of the Council and who are on those registers retained or referred to by the Council from time to time in the discharge of its housing function and the expression "Eligible Persons" shall be construed accordingly
"Homes and Communities Agency"	means the body corporate charged under the Housing and Regeneration Act 2008 with the functions of regulating the provision of Affordable Housing within the Council's administrative area by any Registered Provider or if such body ceases to exist or is superseded the equivalent body
"Open Market Housing Units"	Means the 10 Residential Units available for sale on the open market but excluding the Affordable Housing Units
"Residential Units"	Means residential dwellings whether individually or in groups and whether divided vertically or horizontally
"Registered Provider"	means a Registered Provider as defined in Part I of the Housing Act 1996 registered by the Tenant Services Authority or any successor body pursuant to Section 3 of

	that Act and not removed from the register pursuant to Section 4 of that Act and has been notified in writing to the Council
"Shared Ownership"	means affordable housing leased to a lessee who purchases a percentage of the equity of the intermediate housing unit and pays a rent in relation to the share of the equity retained by the Registered Provider/Alternative Affordable Housing Provider .
"Staircasing Receipts"	means monies received by a Registered Provider or an Alternative Affordable Housing Provider arising from the sale (net of reasonable evidenced sale costs) of any further share of the equity or ownership of a Shared Ownership Unit following the first acquisition by that occupier of an interest in that Affordable Housing Unit provided that such a receipt shall be excluded from this definition to the extent to which the Registered Provider or Alternative Affordable Housing Provider is required to pay that receipt to the Homes and Communities Agency or any other person or body pursuant to an arrangement for grant funding in relation to the provision of Affordable Housing Units on the Land
"Tenant Services Authority"	means the body corporate charged under the Housing and Regeneration Act 2008 with the functions of regulating the provision of Affordable Housing within the Council's administrative area by any Registered Provider or if such body ceases to exist or is superseded the equivalent body

1.3 The following definitions in Paragraph 5 of the Schedule to the Section 106 Agreement shall be amended as set out below:-

Defined Term in Section 106 Agreement	Amended Defined Term	Amendment to definition
(See clause 1.4) The Council's planning application reference number.	(See clause 1.4) The Council's planning application reference number.	07/2542/000 and APP/11/00343 and ###

2 Other Variations

2.1 Where a defined term which is amended in 1.3 above appears in the Section 106 Agreement it shall be deemed to include a reference to the amended defined term as set out in 1.3 above.

2.2 Paragraph 11 of the Schedule within the Section 106 Agreement shall be deleted in its entirety

2.3 A replacement Paragraph 11 of the Schedule within the Section 106 Agreement shall be inserted as follows:-

Affordable Housing

6.2 The First and Second Owners covenant to the Council as follows

6.2.1 Not to Occupy the Development under the Planning Permission at any time before the First and Second Owners shall have paid to the Council the Alternative Affordable Housing Contribution in the amount of Thirty Six Thousand Pounds (£36,000.00)