DATED 24 April 2013

T. W. ASSETS LIMITED (1)

and

T. WARE DEVELOPMENTS LIMITED (2)

and

MCGREGOR DEVELOPMENTS LIMITED (3)

and

THE COUNCIL OF THE BOROUGH OF HAVANT (4)

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, Hulbert 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 24 day of April 2013
BETWEEN

(1) T W ASSETS LIMITED (Company Registered Number 07097402) of 144 London Road, North End, Portsmouth PO2 9DJ ("the First Owner")
(2) T WARE DEVELOPMENTS LIMITED (Company Registered Number 04279081) of 144 London Road, North End, Portsmouth PO2 9DJ ("the Second Owner")
(3) MCGREGOR DEVELOPMENTS LIMITED (Company Registered Number 713786) of 1 Holmehills Cottages, Conford, Hampshire GU30 7QP ("the First Mortgagee")
(4) THE COUNCIL OF THE BOROUGH OF HAVANT OF Civic Offices Civic Centre Road Havant Hampshire PO9 2AX ("the Council")

WHEREAS:

(1) This Deed is supplemental to a Deed of Agreement dated 8th September 2011 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 the First Owner (1) the Second Owner (2) the First Mortgagee (3) and the Council (4) in relation to the development of land at Raebarn House, Hulbert Road, Waterlooville in Hampshire ("the Section 106 Agreement")
2. The Parties hereto agree and consent to the terms of the Section 106 Agreement being 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 clause 3.2 are binding in their entirety upon the First Owner and Second Owners and their interest in the Land save as otherwise provided shall bind and run with the land and each and every part of it..

E.2 The Planning Obligations restrictions covenants limitations and obligations in this Deed relating to all other clauses within the Section 106 Agreement and this Deed of Variation relate to and are binding in their entirety upon the First Owner and Second Owners 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	Means the payment of a financial

Contribution"	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 First and Second Owner shall bind and run with the Land and each and every part of it and shall be binding against the First and

Second 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 First Owner and Second Owner agrees and acknowledges that (notwithstanding the disposal by the First Owner and Second 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 FIRST OWNER AND SECOND OWNER'S COVENANTS

5.1 The First 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.

5.2 The Second 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.

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
T W ASSETS LTD

acting by
its Director

[redacted]

Signed as a DEED by
T WARE DEVELOPMENTS LTD

acting by
its Director

SIGNED as a DEED by)
MCGREGOR DEVELOPMENTS LTD)
Acting by)
A director and its secretary/)
/ two Directors)

Director [redacted]

Director/ Secretary [redacted]

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

[redacted]

12745

Solicitor to the Council

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 5 of the Section 106 Agreement:-

""Affordable Housing Funding""	means one or more of the following funding sources: a) any funding from the Homes and Communities Agency of finance to subsidise the cost of providing Affordable Housing Units on the Land provided by the Homes and Communities Agency or any such other funding initiatives b) approval or such other indication from the Homes and Communities Agency that the Land (or part thereof) will be accepted as a reserve and/or strategic site and funding will be made available c) funding from a Registered Provider in anticipation of a grant allocation or other funding source.
"Alternative Affordable Housing Provider"	means any organisation or body operating as a private landlord who is not a Registered Provider but who has entered into a management contract with a Registered Provider for the management of the Affordable Housing Units to ensure the

	Social Rented Housing Units are retained for future Eligible Persons and to ensure the recycling of any grant
""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 provided that if the Council shall fail to nominate such persons within 4 weeks of written request it shall mean any persons who are unable to afford housing accommodation on the open market (whether by renting or purchasing)
"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
"Registered Provider"	means a Registered Provider as defined in section 80 of the Housing and Regeneration Act 2008 registered by the Tenant Services Authority or any successor body.
"Shared Ownership Accommodation"	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.

"Social Rent"	means the rent which shall be at a level equivalent to Homes and Communities Agency target rents or any replacement thereof applicable at the time of the transfer of the Affordable Housing Units to a Registered Provider to be paid by an Occupier of a Social Rented Housing Unit
"Social Rented Accommodation"	means in relation to the Social 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 Social Rent
"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 Clause 5 of the Section 106 Agreement shall be amended as set out below:-

Defined Term in Section 106 Agreement	**Amended Defined Term**	**Amendment to definition**
"Affordable Housing Units"	"Affordable Housing Units" (No change)	Delete "means the 8 Residential Units of 2no. 2 bed flats and 6no. 1 bed flats which are to be made available by the First and Second Owners for Affordable Housing on the Affordable Housing Land as herein provided" Replace with "means the 8 Residential Units of 2no. 2 bed flats and 6no. 1 bed flats which were to be made available by the First Owner and Second Owner for Affordable Housing on the Affordable Housing Land as originally provided by the Section 106 Agreement"

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 Clause 6.2 within the Section 106 Agreement shall be deleted in its entirety

2.3 A replacement Clause 6.2 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 Implement the Planning Permission at any time before the Owners shall have paid to the Council the Alternative Affordable Housing Contribution in the amount of One Hundred and Fifteen Thousand Pounds (£115,000.00)

2.4 Clause 13 shall be amended to delete the words "the Second Mortgagee"

2.5 Clause 18 (1) shall be deleted in its entirety

2.6 A replacement Clause 18 (1) shall be inserted as follows:-

18 (1) Other than the First and Second Owners no person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

2.7 Clause 18 (5) shall be deleted in its entirety