DATED 8th September 2011

T W ASSETS LIMITED (1)

and

MCGREGOR DEVELOPMENTS LIMITED (2)

and

THE COUNCIL OF THE BOROUGH OF HAVANT (3)

Deed of Variation pursuant to Section 106A
And Section 106 Town and Country Planning Act 1990 and
Section 111 of the Local Government Act 1972
in relation to the development of land at Raebarn House Car Park, Curzon Road, Waterlooville in Hampshire

P D J Griffith
Solicitor to the Council
Civic Offices
Civic Centre Road
Havant
Hampshire
PO9 2AX

THIS DEED OF VARIATION is made the 8th day of September 2011 between:

PARTIES

1. TW ASSETS LIMITED (Company registration no. 07097402) whose registered office is situate at 144 London Road North End Portsmouth PO2 9DJ ("the Owner")
2. MCGREGOR DEVELOPMENTS LIMITED (Company registration no. 07137860) whose registered office is situate at 1 Holmhills Cottages Conford Liphook Hampshire GU30 7QP ("the Mortgagee")
3. 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 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")
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/11/003433 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:

1. This Deed of Agreement is made pursuant to Section 106A of the Town and Country Planning Act 1990 (as amended) and Section 111 of the Local Government Act 1972 and all other powers enabling

2. Unless separately defined in this Deed the expressions in this Deed shall

have the same meanings as given to them in the Section 106 Agreement

A3 Bus Priority Corridor Scheme

3. The definition of the A3 Bus Priority Corridor Scheme within Clause 1 contained within the Section 106 Agreement shall be deleted and replaced with

"the Hampshire County Council Transport Contribution" means the sum of money specified in Paragraph Eight of the Schedule being a contribution (being applied at such time and in such manner as the County Council shall in its absolute discretion determine) to the costs to be incurred by the Council or Hampshire County Council in the provision, improvement and maintenance of Havant Borough Council's sustainable transport list.

4. Paragraph 8 of the Schedule contained within the Section 106 Agreement shall be deleted and replaced with

8. the Hampshire County Council Transport Contribution

£41,840 (Indexed)

5. Within Clause 1 contained within the Section 106 Agreement shall be inserted "the County Council" means Hampshire County Council being the local planning authority by whom the within written Obligations are enforceable

"Indexed" means in respect of the Hampshire County Council Transport Contribution such sum to be index linked in accordance with the All Items Index of Retail Prices (RPI) published by the Office of National Statistics or any replacement thereof from the date hereof until the date of payment and such indexation shall only be applied in circumstances where the RPI at the date of payment stands at a higher level than it did at 1 April 2011

6. Paragraph 10.1 of the Schedule contained within the Section 106 Agreement shall be deleted and replaced with

"Not to commence or introduce or cause permit or suffer to be commenced or introduced upon or at the Land any Material Operation permitted by the Permission at any time before the Owner shall have paid to the County Council or caused to be paid to the County Council the Hampshire County Council Transport Contribution (Indexed)"

Affordable Housing

7. Within Clause 1 contained within the Section 106 Agreement shall be inserted

the following	
"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
"Affordable Housing Units"	Means the 4 units comprising approximately 70% affordable rented and 30% shared ownership subject to market conditions, grant funding and by prior written agreement with the Council which are to be made available by the Owner for Affordable Housing on the Affordable Housing Land as herein provided
"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 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"

8. Within the Section 106 Agreement shall be inserted at Paragraph 11 of the Schedule the following

"The Owner covenants to the Council as follows

11.1 To provide the 30% (4 units) Affordable Housing Units. These Affordable Housing Units should reflect the mix of the site generally. The precise mix and tenure of the Affordable Housing Units to be approved in writing by the Council prior to Commencement of the Development subject to an assessment by the Council of local housing market conditions.

11.2 Prior to commencement of a Material Operation to provide to the Council a Block Plan showing location size and tenure of all Affordable Housing Units. All Affordable Housing Units on the Land will be integrated and compatible with the design of the Market Housing Units.

11.3 That no more than 50% of Residential Units shall be constructed prior to provision of the Affordable Housing Units to provide a mixed development

11.4 That the Affordable Housing Units will be constructed to at least the minimum standard required by the Homes and Communities Agency (or such other successor body's standards) Design and Quality Standards (2007) and the Code for Sustainable Homes published by the Government (or such replacement guidance) or other similar standard as may be reasonably required by the Council.

11.5 Where Affordable Housing Funding has not been secured despite the use of reasonable endeavours so to do the Owner will notify the Council in writing that it has not been successful in securing Affordable Housing Funding The Council will then where it is reasonably satisfied that the Owner has complied with the obligations to use reasonable endeavours in all material aspects issue a written notice to the Owner confirming that in accordance with this Clause 11.5 authorising the Owner to adjust the proportion of Affordable Rented Housing Units to a figure to be agreed with the Council subject to:

(a) the level of any Affordable Housing Funding available

(b) the Homes and Communities Agency's "Economic Assessment Tool" or any such other economic assessment tool submitted by the Owner and agreed by the Council to evaluate the portion of Affordable Rented Housing Units to be provided with the level of Affordable Housing Funding available and

(c) the results of any financial viability assessment carried out by the Owner

11.6 The mortgage rent and service charges to be charged on the Shared Ownership Units shall meet the requirements of an Affordability Test as follows:

- the total cost to include mortgage rent and service charges payable by the Occupier of the Shared Ownership Unit does not exceed more than thirty per cent (30%) of the gross median income plus five per cent (5%) of those persons on the Housing Registers held by the HomeBuy Agent in relation to Havant

- the provisions of the Affordability Test may be varied by agreement in writing by the Owner and the Council

11.7 No more than 5 (Five) of the Market Housing Units within the Development will be Occupied until the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for residential Occupation and written notification in relation to that has been given to the Council.

11.8 No Market Housing Units within the Development will be Occupied until either:

(a) the Owner has entered into a binding contract or an agreement for lease with a Registered Provider or an Alternative Affordable Housing Provider for the transfer of the freehold or a long lease of no less than 125 years of the Affordable Housing Land to include the construction of the Affordable Housing Units (and has informed the Council to whom the Affordable Housing Land has been transferred) or

(b) the Affordable Housing Land has been transferred fully provided with services to a Registered Provider or an Alternative Affordable Housing Provider and written evidence of compliance in respect of the above has been supplied to the Council to its satisfaction

11.9 Where the Owner intends to provide Affordable Housing Units in association with an Alternative Affordable Housing Provider or a Registered Provider they shall only be used if the Registered Provider and/or the Alternative Affordable Housing Provider can demonstrate to the Council:

(a) A good judgement by the Tenant Services Authority or successor body; and

(b) acceptable sustainable management arrangements and community development policies.

11.10 The transfer to the Registered Provider or Alternative Affordable Housing Provider of the Affordable Housing Land shall contain the following:

(a) a covenant not to use the Affordable Housing Units otherwise than for the provision of Affordable Housing. and

(b) a covenant not to dispose of any of the Affordable Housing Units other than by sale by way of Shared Ownership or Affordable Rent to the intent that all Affordable Rented Housing Units **shall be used for** the purpose of providing Affordable Housing to Eligible Persons, and

(c) a covenant requiring the Registered Provider or the Alternative Affordable Housing Provider to enter into an agreement with the Council granting the Council the right to nominate 100 per cent of the Occupiers of the Affordable Rented Units when initially let and all subsequent true voids, and

(d) a covenant to manage all Staircasing Receipts of Affordable Housing Units which are grant funded in accordance with Housing Corporation or Homes and Communities Agency regulations, and

(e) a covenant to provide the Council with details of Staircasing Receipts from non-grant funded Affordable Housing Units and in co-operation with the Council to reach agreement to invest 50% of the Staircasing Receipts in the provision of new build Affordable Housing or to invest in measures to enhance the provision of Affordable Housing within the administrative area of the Council including facilitating the acquisition of market housing or the conversion or refurbishment of existing housing to bring such housing back into beneficial use to enable it to be occupied by Eligible Persons provided that the use of Staircasing Receipts is limited to provision within the administrative area of the Council for a period of 3 years after receipt by the Owner thereafter for a period of 1 year within the administrative area of Hampshire and

thereafter to any Affordable Housing provision within the United Kingdom.

11.12 The covenants set out in Clause 11.10 shall not be binding or enforceable against any purchaser who purchases from the Registered Provider or Alternative Affordable Housing Provider the entire freehold to an Affordable Housing Unit or a long leasehold interest pursuant to an equity share arrangement nor shall such covenants be binding or enforceable against such a purchaser's successors in title

11.13 Where the Owner intends to provide management services for the Affordable Housing Units in association with a Registered Provider or an Alternative Affordable Housing Provider they shall only be used if the provider can demonstrate to the Council that they are approved and regulated for such activities by the Tenant Services Authority or any successory body.

11.14 The Affordable Rented Accommodation shall only be occupied by Eligible Persons.

11.15 In the event only that there is a default under any legal charge or mortgage of an Affordable Housing Unit or any default under any legal charge or mortgage held by a Registered Provider or an Alternative Affordable Housing Provider in relation to the Affordable Housing Units then a mortgagee chargee receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 ("the Mortgagee") shall be entitled to exercise its power of sale in respect of an Affordable Housing Unit or Affordable Housing Units free from the obligations PROVIDED THAT the Mortgagee shall first follow the procedures set forth below:

(a) the Mortgagee shall give 'written notice' ("the Notice") to the Council of its intention to exercise its powers of the sale and shall at the time offer to sell ("the Offer") the Affordable Housing Unit or Affordable Housing Units to the Council for an amount ("the Purchase Price") to be agreed or determined in accordance with Clause 11.15

(b) the Council shall notify the Mortgagee in writing within one (1) month of the date of the Offer whether or not it wishes to accept the Offer (in the case of acceptance such acceptance to be expressed to be conditional upon the Purchase Price being agreed) and if it does not wish to accept the Offer the

Council may at the time of notifying the Mortgagee of its decision nominate a nominee ("the Nominee") in its place

(c) if pursuant to Clause 11.15 the Council shall accept the Offer or shall nominate a Nominee so to do then the Mortgagee and the Council (or the Nominee as the case may be) shall endeavour to agree the Purchase Price which shall represent the open market value of the Affordable Housing Unit or Affordable Housing Units subject to tenancies subsisting at the date of the Notice but disregarding the provisions of this Deed which restrict Occupation to persons on the Council's Housing Register and in default of agreement on the Purchase Price within two months of the Council's notification under Clause 11.15 the Purchase Price shall be determined by an Expert pursuant to the provisions of Clause 14

(d) any transfer to the Council or to the Nominee shall be completed within two (2) months of the date the Purchase Price is agreed or determined by an Expert in accordance with the provisions of Clause 14 ("the Completion Period")

(e) either party may at any time give to the other written notice of its intention to discontinue in any of the following circumstances namely:

- if the Council shall fail to give notice of intention to accept the Offer within one month of the date of the Offer or
- if the Council shall decline the Offer and fail to nominate a Nominee within one month of the date of the Offer or
- if either the Council or the Nominee shall at any time serve notice of intention to discontinue or
- if the transfer of Affordable Housing Unit or Affordable Housing Units shall not be Completed within the Completion Period notwithstanding the readiness willingness and ability of the Mortgagee to complete the transfer

(f) Then in any of the above circumstances the Mortgagee shall be entitled (subject to compliance with Sections 39 to 50 of the Housing Act 1996 so far as is applicable) to exercise its powers of sale unfettered by the restrictions in this Clause 11.15 which shall not be binding upon any purchaser from the Mortgagee or any subsequent successor in title of the

Affordable Housing Unit or Affordable Housing Units and at the written request of the Mortgagee the Council shall expeditiously issue written confirmation that the restrictions in this Clause 11.15 have been discharged and rendered of no effect in respect of the Affordable Housing Unit or Affordable Housing Units and the Council shall take steps to cancel any entry in the Local Land Charges Register insofar as it may be recorded against the Affordable Housing Unit or Affordable Housing Units

11.16 The Affordable Housing Units provided on the Land will be monitored in order to ensure compliance with the obligations in this Clause 11 and the Owners will impose a covenant upon the Registered Provider or the Alternative Affordable Housing Provider which requires them at such dates to be agreed by the parties to make written returns to the Council detailing

-the affordable housing provision including
-the type of dwelling,
-the tenure of the dwelling,
-the next internal floor area of the dwelling
-details of the occupiers
-the grant funding provided for the dwelling
-technical information in relation to the Code for Sustainable Homes
-the location of the Affordable Housing Units
-any other information on the Affordable Housing Units as reasonably required by the Council. "

12. In all other respects the Section 106 Agreement is otherwise confirmed and remains in full force and effect

13. The Owner hereby covenants to pay on the date hereof the whole of the reasonable costs incurred by the Council in preparation and completion of this Deed.

14. Any dispute or difference between the parties in connection with this Agreement (which shall include any matter hereunder which the Council has the discretion to agree or approve but does not do so) shall be referred to and determined by a single arbitrator to be appointed by agreement by the parties to the dispute or in default of agreement to be either an independent and duly qualified surveyor to be appointed by the President for the time being of the Royal Institution of Chartered

Surveyors or a member of any other appropriate professional body as may be agreed between the parties and any person appointed shall act as arbitrator under the Arbitration Act 1996 Such arbitrator's decision (including without limitation as to the payment of costs of the arbitration) shall be final and binding upon the parties save in respect of any decision which is founded upon error in law or legal interpretation by such arbitrator

GENERAL ADMINISTRATIVE PROVISIONS

15. The Agreement is a local Land Charge and shall be registered as such by the Council

16. This Agreement constitutes a Deed

17. If any provision of the Agreement shall become or shall be declared by any Court or competent jurisdiction to be invalid or unenforceable in any way then the clause or clauses which become or are declared to be invalid or unenforceable shall be severed from the remainder of this Agreement (which shall continue in full force and effect)

18. Any notice required to be served or given by one party upon another under the terms of this Agreement shall be deemed to be validly served or given if transmitted by facsimile (and confirmed by a successful transmission confirmation slip) delivered by hand or sent by registered or recorded delivery post to the party on whom it is to be served or to whom it is to be given and (unless otherwise specified in writing by either party) the address that any such notice shall be-
    - In the case of the Owner at its registered office marked for the attention of the Company Secretary
    - In the case of the Council at its address shown above marked for the attention of the Executive Head of Planning and Built Environment and bearing the reference "Planning Reference number APP/11/00343"

19 The Owner has produced below a certificate of the solicitor upon which certificate the Council relies that the Owner is immediately entitled to possession and occupation of a freehold estate in the Land subject only to

the Mortgage no other person having an interest therein at law or to the best of the Owner's knowledge and belief) in equity

As Solicitor for the Owner we hereby certify that on the date of the Section 106 Deed of Variation what is set out below is true

19.1 The Owner (and each of them acting in concert in the case of more than one joint owner) is immediately entitled to possession and occupation of a freehold estate in the Land subject only to the Mortgage (if any) no other person having an interest therein at law or (to the best of the Owner's knowledge and belief) in equity

19.2 In the case that the Land is subject to any mortgage the Mortgagee (or in the case of more than one each of them) and no other mortgage or charge has been concluded which affects the Land other than the Mortgage.

[redacted]

IN WITNESS whereof the parties hereto have executed and delivered this instrument or document as a Deed the day and year first before written

SIGNED as a DEED)
by TW ASSETS LIMITED)
acting by:)
A Director and its secretary/)
Two Directors

Director [redacted]

Director/Secretary

SIGNED as a DEED
By MCGREGOR)
DEVELOPMENTS LIMITED)
Acting by)

[redacted]irector and its secretary/
[redacted]wo Directors

[redacted]

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

[redacted]

Solicitor to the Council