

THIS DEED is dated

10th July

2018

and is between:-

BETWEEN:-

- (1) **BELLWAY HOMES LIMITED** (Company No: 670176) whose registered office is Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle Upon Tyne NE13 6BE ("**the Owner**")
- (2) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Civic Offices, Civic Centre Road, Havant, Hampshire, PO9 2AX ("**the Council**")
- (3) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, S023 8UJ ("**the County Council**")
- (4) **SYNERGY HOUSING LIMITED** (Registered Society Number: 3147R) of Sarsen Court, Horton Avenue, Cannings Hill, Devizes, Wiltshire, SN10 2AZ ("**Synergy**")

WHEREAS:

- (1) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (2) The County Council is a Local Planning Authority for the purposes of the Act, the local highway authority for Hampshire (save for trunk roads and special roads) for the purposes of the Transport Acts of 1985 and 2000 and the local education authority for the area in which the Land is situate
- (3) The Owner is now the freehold owner of the Land pursuant to a transfer dated 29 September 2017
- (4) Synergy have a contract to purchase part of the Land dated 12 March 2018
- (5) The Council granted the Planning Permission on 29 April 2015.
- (6) This Deed is entered into by the Council the County Council, the Owner and Synergy to vary the affordable housing obligations.

NOW THIS DEED WITNESSES AND IT IS HEREBY AGREED BETWEEN THE PARTIES as follows:-

1 DEFINITIONS

- 1.1 In this Deed unless the context otherwise requires the following words and expressions shall have the following meanings:

"Principal Agreement"

means the Agreement entered into by (1) Philip Dymoke White, Fiona Elizabeth White and Alexander Stuart Dymoke White; (2) The Council of the Borough of Havant; and (3) Hampshire County Council pursuant to s.106 of the Act dated 20th April 2015

relating to the Land
and otherwise the definitions and expressions used in the Principal Agreement shall apply to this Deed as to the Principal Agreement

- 1.2 The provisions governing the interpretation of the Principal Agreement shall also apply to the Deed

2 STATUTORY PROVISIONS

The Owner Synergy the Council and the County Council hereby agree that:

- 2.1 This Deed is made pursuant to section 106 and section 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2000 and all other enabling powers
- 2.2 This Deed is supplemental to and not in substitution for the Principal Agreement which will continue in full force and effect

3 VARIATION

It is hereby agreed that the terms of the Principal Agreement shall be amended as follows:

- 3.1 The definition of "Affordable Housing Units" within clause 3.1 of the Principal Agreement shall be construed as if the words "approximately 70% Affordable Rented Units and 30% Shared Ownership" had been deleted and replaced with "13 Shared Ownership and 25 Affordable Rented Units".
- 3.2 The definition of "Affordable Rented Units" shall be construed as if it had been deleted and replaced with:
- "Affordable Rented Units" means those Affordable Housing Units which are to be let at an Affordable Rent"*
- 3.3 A new clause 19.6 shall be added as follows:
- "19.6 Save for the obligations within Paragraph 1 of Schedule One of this Agreement, the obligations within this Agreement shall not be binding on the Affordable Housing Land held by an Approved Provider for the provision of Affordable Housing"*
- 3.4 Paragraph 1.4 of Schedule One of the Principal Agreement shall be deleted and replaced with the following:
- "This paragraph 1.4 has been left intentionally blank"*
- 3.5 Paragraph 1.5 of Schedule One of the Principal Agreement shall be construed as if it had been deleted and replaced with the following:
- "The Low Cost Home Ownership Units (which for the avoidance of doubt shall include Shared Ownership) shall be let to persons who have been nominated by the Help to Buy Agent"*

- 3.6 Paragraph 1.8(b) of Schedule One of the Principal Agreement shall be construed as if it had been deleted and replaced with the following:

"Not to transfer or lease any Affordable Housing Unit to any person or body other than to an Approved Provider or in the case of Shared Ownership to an Eligible Person, otherwise than for the purpose of providing Affordable Housing to Eligible Persons."

- 3.7 Paragraph 1.11 of Schedule One shall be construed as if it had been deleted and replaced with the following:

"The affordable housing provisions in this Schedule One of the Agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) 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 or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Land or any Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

(A) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Unit(s) and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Unit(s) to another Approved Provider or to the Council 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; and

(B) If such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Unit(s) free from the affordable housing provisions in this Agreement which shall determine absolutely"

4 PRINCIPAL AGREEMENT TO CONTINUE IN FORCE

Save as varied by this Deed of Variation the Principal Agreement shall remain in full force and effect.

5 SYNERGY'S CONSENT

Synergy acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations in this Deed PROVIDED THAT Synergy shall not be liable in respect of the performance of the obligations herein until it has purchased the freehold or leasehold interest in the Land (or any part thereof) from the Owner AND FURTHER PROVIDED THAT Synergy shall not be liable for any breach of the provisions hereof prior to its purchase of the freehold or leasehold interest in the Land or any part thereof and nor shall it be liable for any breach committed after it has parted with or released its interest in the Land

6 REGISTRATION

- 6.1 This Deed shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council.
- 6.2 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall on the written request of the Owner arrange for the cancellation of all entries made in the Register of Local Land Charges against the Land in respect of this Deed

7 JURISDICTION

This Deed is governed by and interpreted in accordance with the Law of England and the parties submit to the non-exclusive jurisdiction of the courts of England

8 MISCELLANEOUS

- 8.1 This Deed of Variation is not made for the benefit of nor shall any of its provisions be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties hereto, but for the avoidance of doubt the exclusion of the application of that Act shall not prevent any future successor in title to any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed
- 8.2 This Deed of Variation comes into force on the date hereof
- 8.3 To the extent that any provision of this Deed of Variation is found by any court or competent authority to be invalid unlawful or unenforceable that provision shall be deemed not to be a part of this Deed of Variation and it shall not affect the legality validity or enforceability of the remainder of this Deed of Variation nor shall it affect the legality validity or enforceability of the Principal Agreement
- 8.4 This Deed of Variation has been executed as a Deed

IN WITNESS whereof the parties hereto have set their hands or caused their Common Seals to be hereunto affixed the day and year first before written

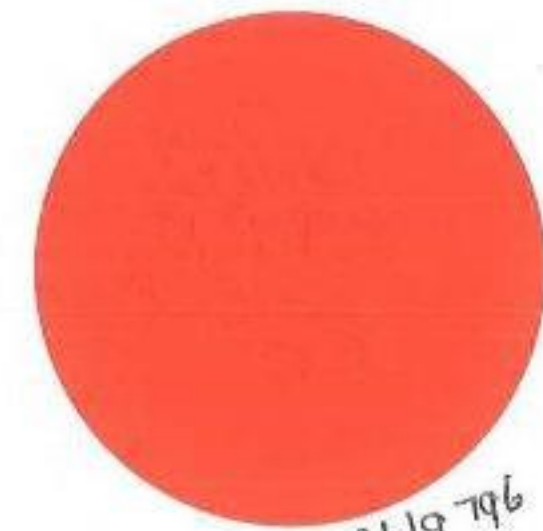
EXECUTED AS A DEED by affixing the Common Seal of
THE COUNCIL OF THE BOROUGH
OF HAVANT
affixing its COMMON SEAL in the
presence of:

Authorised Officer



EXECUTED AS A DEED by
HAMPSHIRE COUNTY COUNCIL
affixing its COMMON SEAL in the
presence of:

Authorised Officer



EXECUTED AS A DEED by the said
BELLWAY HOMES LIMITED
Acting by Nigel Clasby and/or Sumie Hall
(a Director) in the presence of: Acting as

Attorney for Bellway Homes Limited under a power of Attorney dated 21 May 2018
in the presence of:

Witness Signature:

Witness Name:

Witness Occupation:

Witness Address:

Nigel Clasby
Group Legal Adviser
Bellway Homes Limited
Seaton Burn House
Dudley Lane
Seaton Burn
Newcastle upon Tyne

EXECUTED AS A DEED by affixing the
common seal of
SYNERGY HOUSING LIMITED
in the presence of:

Authorised signatory

Authorised signatory

