

DATED

21st September

2016

THE SWAYTHING HOUSING SOCIETY LIMITED (1)

and

THE COUNCIL OF THE BOROUGH OF HAVANT (2)

**DEED OF VARIATION under Section 106A
OF THE TOWN AND COUNTRY
PLANNING ACT 1990 (AS
AMENDED) (the "1990 Act")**

**Relating to land at St Andrews House, 56-61 West Street, Havant, Hampshire
PO9 1LB**



Devonshires Solicitors LLP
30 Finsbury Circus
London
EC2M 7DT

THIS DEED OF VARIATION is made the 21st day of September 2016

BETWEEN:

- (1) **THE SWAYTHING HOUSING SOCIETY LIMITED** of Collins House, Bishopstoke Road, Eastleigh SO50 6AD ("the Owner"); and
- (2) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Civic offices, Civic Centre Road, Havant, Hampshire PO9 2AX ("the Council").

WHEREAS:

- (A) The Owner is the freehold owner of the Land, formerly known as St Andrews House, 56-61 West Street, Havant, Hampshire PO9 1LB, as registered at the Land registry under Title Number SH9920.
- (B) The Land is subject to a Section 106 Agreement dated 9th May 2013 made between (1) Julian Frederick Jones and Judith Frances Jones, Sarah Anne Mulley and Roger Frank Mulley, and (2) The Council of the Borough of Havant ("Section 106 Agreement").
- (C) Accordingly the Owner and the Council have agreed to enter into this Deed to make the variations detailed below to the Section 106 Agreement as agreed between the parties hereto.

NOW IT IS AGREED as follows:

1. Definitions and Interpretation

In this Deed the expressions and definitions under the Section 106 Agreement shall have the same meaning and will be applicable.

2. Variations

The following variations will be made to the Section 106 Agreement, detailed as follows:-

- 2.1 Clause 20.10.2 of the Section 106 Agreement shall be deleted and the following paragraph substituted therefor:-

"20.10.2 A covenant not to transfer or lease 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"

- 2.2 There shall be a new Clause 20.10.6 to be inserted in the Section 106 Agreement which states as follows:-

"20.10.6 PROVIDED THAT any transfer of the Affordable Housing Land shall include a provision stipulating that the covenants detailed at 20.10.1 - 20.10.5 shall not be binding on a mortgagee, chargee, receiver or manager including an administrative receiver appointed by such mortgagee or chargee ("Mortgagee") 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") and thereafter shall cease to apply to the successors in title to such Mortgagee or Receiver where the provisions of Clause 20.14 has been complied with by such Mortgagee or Receiver".

- 2.3 Clause 20.14 of the Section 106 Agreement shall be deleted in its entirety and the following clause shall be substituted therefor:-

"20.14 The Affordable Housing provisions in Clause 20 of this Agreement shall not be binding on a Mortgagee or Receiver of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT;

- (1) such Mortgagee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units; and

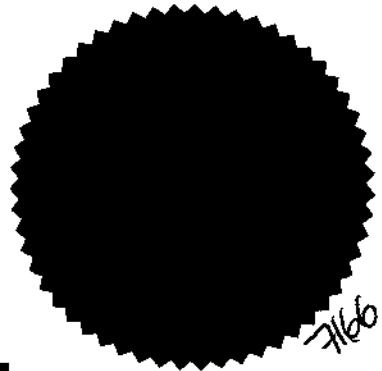
- (2) shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a transfer of the Affordable Housing Units to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- (3) if such transfer has not completed within the three month period, the Mortgagee or Receiver shall be entitled to dispose of the Affordable Housing Units, or any part thereof, free from the Affordable Housing provisions in Clause 20 of this Agreement which provisions shall cease and determine absolutely.

3. Miscellaneous provisions

- 3.1 Except as varied by clause 2 of this Deed the Section 106 Agreement is otherwise confirmed by the parties hereto and remains in full force and effect.
- 3.2 This Deed shall be registered a local land charge.

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 Swaything Housing Society**
Limited in the presence of:



.....
Authorised Signatory

Ralph Facey
Director of Housing & Customer Services



Lindsay Todd
Chief Executive

.....
Authorised Signatory

EXECUTED as a Deed by affixing the
Common Seal of **The Council of the**
Borough of Havant in the presence of:



.....
Authorised Signatory

.....
~~Authorised Signatory~~