

DATE 6th April ³
2022

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

(2) HAMPSHIRE COUNTY COUNCIL

(3) HOMES AND COMMUNITIES AGENCY

(4) VISTRY PARTNERSHIPS LIMITED

AND

(5) VIVID DEVELOPMENTS LIMITED

DEED OF VARIATION
PURSUANT TO SECTION 106 AND 106A OF THE TOWN AND
COUNTRY PLANNING ACT 1990
relating to a Section 106 Agreement dated 29 January 2019 associated with
the development of land at the former Colt International Ltd, New Land, Havant, PO9 2LY

THIS DEED is dated 6th April

2023

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road, Havant PO9 2AX (**Council**);
2. **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire SO23 8UJ (**County Council**);
3. **HOMES AND COMMUNITIES AGENCY** of 4th Floor, One Friargate, Coventry CV1 2GN (**Owner**);
4. **VISTRY PARTNERSHIPS LIMITED** a company registered in England and Wales with company number 00800384 and whose registered office is at 11 Tower View, Kings Hill, West Malling ME19 4UY (**Leaseholder**);
5. **VIVID HOUSING LIMITED** whose registered office is at Peninsular House of Wharf Road, Portsmouth PO2 8HB a community benefit society registered under the Co-operative and Community Benefit Societies Act 2014 number 7544 (**Undertenant**).

BACKGROUND

- (A) For the purposes of the Act, the Council and the County Council are the local planning authorities for the area within which the Land is situated and are entitled to enforce the obligations contained in this deed.
- (B) The County Council is the highway authority for Hampshire (save for trunk roads and special roads) for the purposes of the Highway Act 1980, the transport authority for Hampshire for the purposes of the Transport Acts 1985 and 2000 and the local education authority for the area in which the Land is situated.
- (C) The Owner is the freehold owner of the Land registered under title number HP26714.
- (D) The Leaseholder is the leasehold owner of that part of the Land registered under title number SH54923.
- (E) The Undertenant is by:
 - a. an underlease dated 10 July 2020 originally made between (1) the Leaseholder and (2) Vestal Developments Limited, the undertenant in respect of that part of the Land upon which the Dwellings are to be constructed (excluding those Dwellings let to the Undertenant as set out in recital E(b) below). The underlease is registered under title number SH54927.
 - b. The Undertenant is by an underlease dated 10 July 2020 made between (1) the Leaseholder and (2) the Undertenant, the undertenant in respect of that part of the Land upon which the Shared Ownership Dwellings, the Residential Common Parts and the Residential SuDs, are to be constructed. The underlease is registered under title number SH54924.

- (F) On 29 January 2019 an agreement was entered into pursuant to section 106 of the Act between (1) the Council, (2) the County and (3) the Owner which secured planning obligations in relation to the Development (**Original Agreement**).
- (G) The Undertenant has sought the Council's permission to vary the Original Agreement to modify the mortgagee in possession requirements as contained in Schedule 1 (Affordable Housing) to the Original Agreement and further to modify the management company requirements as contained at Schedule 2 of the Original Agreement to allow for the Undertenant to be appointed as the Residential Management Company.
- (H) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to modify the Original Agreement in the manner set out within this deed.
- (I) This deed is made pursuant to section 106 and 106A of the Act and is supplemental to the Original Agreement.

AGREED TERMS

1 DEFINITIONS

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

"Original Agreement" means the agreement dated 29 January 2019 made pursuant to section 106 of the Act between (1) the Council, (2) the County and (3) the Owner which secured planning obligations in relation to the Development.

2 INTERPRETATION

- 2.1 Save where expressly stated otherwise the words and expressions used in this deed shall have the meaning assigned to them as in the Original Agreement.
- 2.2 The clause and paragraph headings in this deed are for reference only and do not affect its construction or interpretation.
- 2.3 References to clauses and Schedules are to the clauses and Schedules of this deed, unless stated otherwise.
- 2.4 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.5 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.6 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.7 Unless this deed states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.

- 2.8 References to the Land include any part of it.
- 2.9 References to any party in this deed include the successors in title of that party and any references to the Council and the County Council include any successor local planning authority exercising planning powers under the Act.
- 2.10 References to "including" mean "including, without limitation".
- 2.11 Any covenant by the owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.12 Where two or more people form a party to this deed, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.13 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed of Variation shall be unaffected.

3 STATUTORY PROVISION

This deed is made pursuant to section 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

4 VARIATIONS TO THE ORIGINAL AGREEMENT

- 4.1 From and including the date of this deed the Original Agreement shall be read and construed as varied by the provisions of this clause 4.
- 4.2 The definition "Residential Management Company" contained at clause 1 of the Original Agreement shall be deleted and replaced with the following:

"Residential Management Company" *means a company limited by guarantee or by shares and established in accordance with the provisions of Schedule 2 to be charged with the management of the Residential Common Parts and Residential SuDs"*

- 4.3 The following definition shall be inserted at clause 1 of the Original Agreement:

"Pedestrian / Cycle Path" *means the pedestrian and cycle path and associated landscaping shown edged red on drawing 51938_001 attached to this deed"*

- 4.4 The following definition shall be inserted at clause 1 of the Original Agreement:

"Vivid" *means Vivid Housing Limited whose registered office is at Peninsular House of Wharf Road, Portsmouth PO2 8HB a community benefit society registered under the Co-operative and Community Benefit Societies Act 2014 number 7544.*

- 4.5 The following wording shall be inserted at the end of the definition of "Disposal" contained at clause 1 of the Original Agreement:
- (for the avoidance of doubt a Disposal shall exclude a mortgage or charge)*
- 4.6 The following wording shall be inserted at the end of the definition of "Residential Common Parts" contained at clause 1 of the Original Agreement:
- which for the avoidance of doubt shall include the Pedestrian / Cycle Path*
- 4.7 The following wording shall be inserted at the end of paragraph 2.6 of Schedule 1 to the Original Agreement :
- (subject to the exclusions contained in this Agreement)*
- 4.8 The first bullet point of paragraph 4.1 of Schedule 1 to the Original Agreement shall be amended by deletion of the words "and their successors in title".
- 4.9 Paragraph 4.2 of Schedule 1 to the Original Agreement shall be deleted and replaced with the following:
- "4.2 The provisions of this Agreement relating to the Affordable Dwellings shall not be binding on a Chargee or any persons or bodies deriving title through such Chargee PROVIDED THAT the Chargee will have: "*
- 4.10 Paragraphs 4.2.1 and 4.2.2 of Schedule 1 to the Original Agreement shall be deleted and replaced with the following:
- "4.2.1 given written notice to the Council of its intention to exercise its powers of sale to Dispose of any of the Affordable Dwellings ("Notice"); and*
- 4.2.2 used reasonable endeavours over a period of three months from the date the Notice is served to complete a Disposal of the relevant Affordable Dwelling(s) to either:*
- (a) another Affordable Housing Provider; or*
- (b) to the Council."*
- 4.11 The following wording shall be inserted at the end of Paragraph 4.4 of Schedule 1 to the Original Agreement:
- " which provisions shall determine absolutely."*
- 4.12 Paragraph 1.1 of Schedule 2 to the Original Agreement shall be deleted and replaced with the following:
- "1.1 Save where the Owner appoints Vivid as the Residential Management Company, not to Commence the Residential Development until the Council has approved in writing the Owner's proposal for the formation of the Residential Management Company and such proposal shall include full details of the proposed structure and voting rights of the Residential Management Company".*
- 4.13 Paragraph 1.5 of Schedule 2 to the Original Agreement shall be deleted and replaced with the following:

"1.5 Save where the Owner appoints Vivid as the Residential Management Company, not later than six months from Commencement of the Residential Development the Owner shall take all necessary steps to secure the formation and registration of the Residential Management Company at Companies House (taking into account any modifications reasonably required by the Council) and to notify the Council accordingly within fourteen days of completion of the registration of the Residential Management Company"

- 4.14 Paragraph 1.6.1 of Schedule 2 to the Original Agreement shall be deleted and replaced with the following:

"1.6.1 the Residential Management Company has been formed in accordance with the approved or deemed approved proposal or Vivid has been appointed as the Residential Management Company; and"

- 4.15 Paragraph 1.7.1 of Schedule 2 to the Original Agreement shall be deleted and replaced with the following:

"1.7.1 the Residential Management Company is registered or Vivid has been appointed as the Residential Management Company and the Residential Management Plan has been approved or deemed approved by the Council; and"

- 4.16 Except as provided in this deed, it is agreed between the parties that this deed is supplemental to and not in substitution for the Original Agreement and that the terms of the Original Agreement will continue in full force and effect, subject only to the provisions of this deed.

5 COVENANTS TO THE COUNCIL

The Owner, Leaseholder and the Undertenant covenant to observe and perform the covenants restrictions and obligations contained in the Original Agreement as varied by this deed.

6 COSTS

The Undertenant shall pay on or before the date of completion of this deed the Owner's, the Council's and the County Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

7 LAND CHARGES

This deed shall be registered as a local land charge by the Council.

8 THIRD PARTY RIGHTS

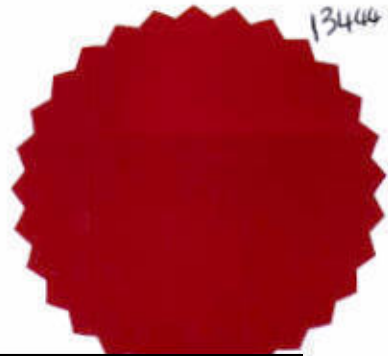
For the purposes of the Contracts (Rights of Third Parties) Act 1999 this deed is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to this deed and their successors in title.

9 GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

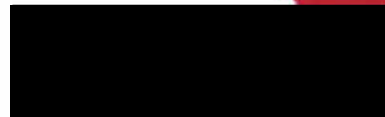
IN WITNESS whereof the parties hereto have sealed and/or executed this document as a deed the day and year first before written.

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



AUTHORISED SIGNATORY

EXECUTED as a DEED by affixing)
THE COMMON SEAL of the)
HAMPSHIRE COUNTY COUNCIL)
in the presence of:)



28/10/05

AUTHORISED SIGNATORY

NAME:

POSITION:

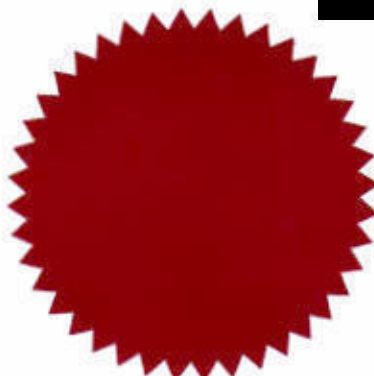
Executed as a deed by
affixing the common seal of
Vistry Partnerships Limited
in the presence of:



Authorised signatory
[print name]

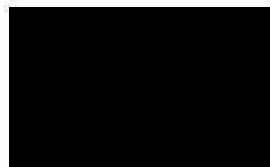


Authorised signatory
[print name]



EXECUTED as a DEED by
VIVID HOUSING LIMITED
Acting by its attorney Trowers &
Hamlin LLP under a power of
attorney dated
In the presence of:

)
)
)
)
)



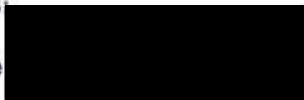
ATTORNEY SIGNATURE



ATTORNEY NAME

WITNESS

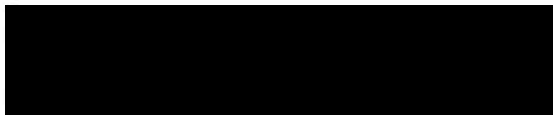
Signature



Name:



Address:





- Area A
- Land Unconditional Parcel 13773
- Land Ownership Parcel 18405

ESS

Line of Road



Making Homes Happen

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Title
Plan showing cycle area within the Employment Zone
Old Cott Factory
Martin Road
Havant
Hampshire
PO9 2LY

Parcel Ref	13773 (Part), 18405 (Part)
Date	21/03/2022
Scale	1:500
Size	A3
Plan Ref	51938_001



DL1500



DL1500

13773



18405

The Common Seal of

HOMES AND COMMUNITIES AGENCY

Was hereunto affixed in the presence of:

DE15070



Authorised Signatory:



Print Name:

