

DATE 6th April 2023

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

(2) HAMPSHIRE COUNTY COUNCIL

(3) HOMES AND COMMUNITIES AGENCY

(4) VISTRY PARTNERSHIPS LIMITED

AND

(5) VIVID ^{HOUSING} DEVELOPMENTS LIMITED

PINSENT
MASONSLP

SECOND 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. ^{PARTNERSHIPS}
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 (**in its capacity as Undertenant and as Mortgagee**).

PINEANT
MASON
LLP

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 subject to a charge in favour of the Mortgagee.
- (E) The Undertenant is by:
 - a. an underlease dated 10 July 2020 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 and was varied by the First Deed of Variation.
- (G) The Undertenant has sought the Council's permission to vary the Original Agreement to modify the highways works obligations contained in the Original Agreement.
- (H) The Mortgagee has an interest in the Land pursuant to the charge dated 10 July 2020 on title number SH54923
- (I) 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.
- (J) 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:

"First Deed of Variation" means the deed of variation pursuant to section 106 and 106A of the Act dated _____ between (1) the Council, (2) the County, (3) the Owner, (4) the Leaseholder and (5) the Undertenant.

"Original Agreement" means the deed of agreement pursuant to s106 of the Act dated 29th January 2019 between (1) the Council, (2) the County and (3) the Owner which secured planning obligations in relation to the Development as varied by the First Deed of Variation.

2 INTERPRETATION

- 2.1 Save where expressly stated otherwise the words and expressions and capitalised defined terms 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

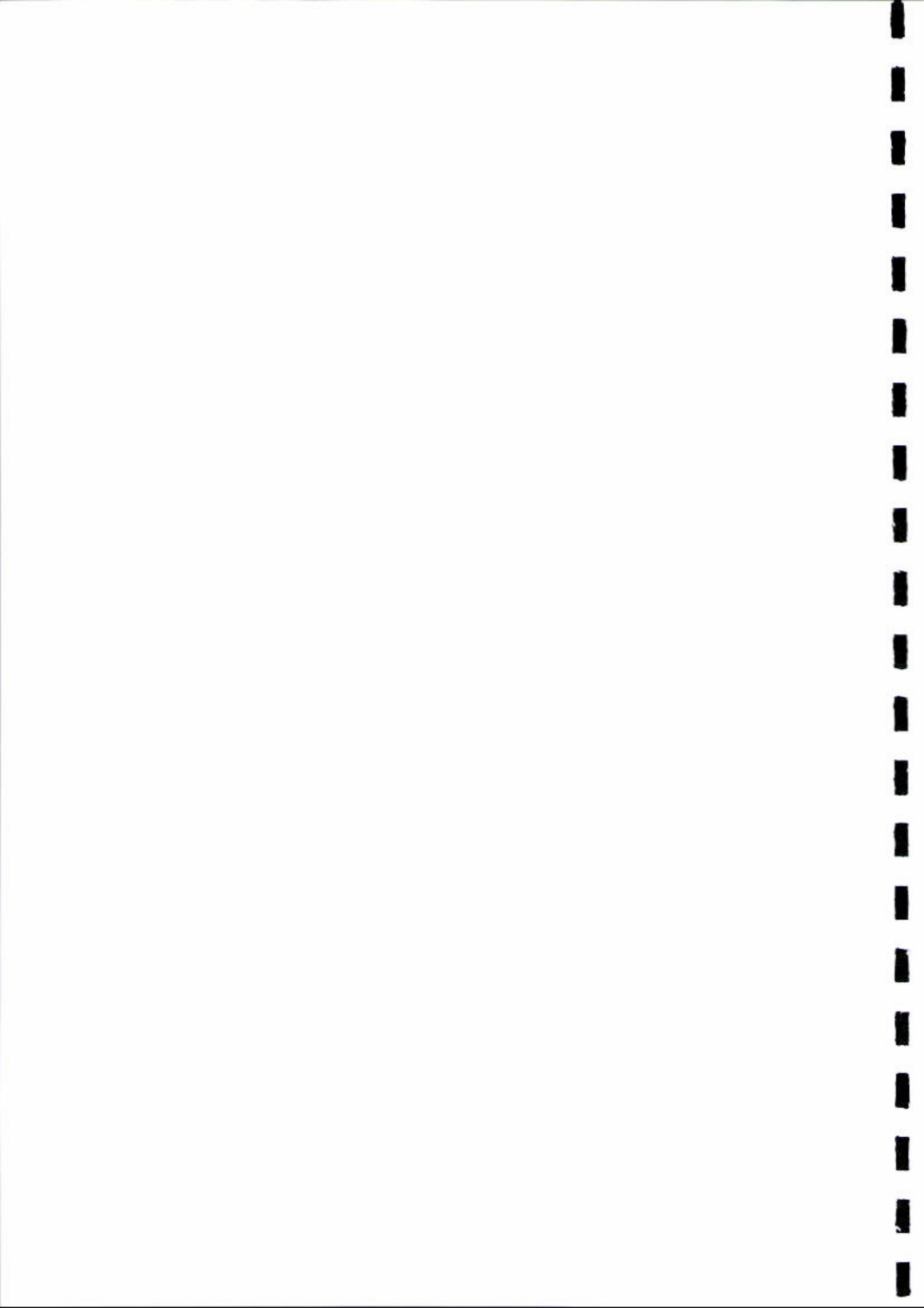
- 4.1 From and including the date of this deed the Original Agreement shall be read and construed as varied by the provisions of this clause 4.
- 4.2 The definition "Sustainable Access Works" contained at clause 1 of the Original Agreement shall be replaced with the following definition:

"Phase 1 Sustainable Access Works" means the highway works comprising of:

- (a) a site access on Martin Road
- (b) a footway cycleway along Martin Road between the site access and Prospect Lane and along Prospect Lane
- (c) refuge island crossings on Martin Road and on Bartons Road

as shown in principle in blue on drawing number 039.5021.SK10.F, annexed at Appendix 5 to this Agreement

- 4.3 The definition "Highways Agreement" contained at clause 1 of the Original Agreement shall be replaced with the following definition:



"Highways Agreement"

means one or more agreements made under section 278 and/or section 38 of the Highways Act 1980 to secure the Access Works and any deed of variation thereto

4.4 The following are to be inserted as new defined terms and definitions in clause 1 of the Original Agreement:

"Access Works"

means the Phase 1 Sustainable Access Works and the Phase 2 Sustainable Access Works

"Completion Certificate Standard"

means in the case of the Access Works completion to the full satisfaction of the County Council as evidenced by the issue of a certificate of completion by the County Council pursuant to a related Highways Agreement

"Martin Road Access Works"

means the Phase 1 Sustainable Access Works which have been carried out before the date of this Second Deed of Variation and shown marked 'WORKS ALREADY CONSTRUCTED' on drawing 039.5021.101 Rev V, annexed at Appendix 5 to this Agreement

"Phase 2 Sustainable Access Works"

means the highway works comprising of:

- a) a new three (3) metre wide shared use footway/ cycleway on New Lane and on the north of Bartons Road between Prospect Lane and the existing shared use path at Harrison Way;
- b) refuge island crossings on Bartons Road and on New Lane;
- c) tactile paving

as shown in principle in red on drawing number 039.5021.SK10.F, annexed at Appendix 5 to this Agreement

"Prospect Lane Works"

means the Phase 1 Sustainable Access Works but excluding the Martin Road Access Works

- 4.5 Paragraph 4 of Schedule 6 shall be deleted in its entirety and replaced with the following:

4 SUSTAINABLE ACCESS WORKS

- 4.1 Not to Commence nor permit the development of the Residential Land unless and until it has entered into a Highways Agreement with the County Council for the Martin Road Access Works and the parties hereby acknowledge that this obligation has been discharged.
- 4.2 Not to Occupy nor permit Occupation of any Dwelling unless and until it has sought and obtained from the County Council the booking of the road space for the Prospect Lane Works and the parties hereby acknowledge that this obligation has been discharged.
- 4.3 Not to Occupy nor permit Occupation of more than twenty four (24) Dwellings unless and until it has entered into a Highways Agreement for all of the Phase 1 Sustainable Access Works and Commenced the Prospect Lane Works pursuant to the Highways Agreement.
- 4.4 Not to Occupy nor permit Occupation of more than sixty four (64) Dwellings unless and until it has entered into a Highways Agreement with the County Council for the Phase 2 Sustainable Access Works and has provided the surety required under that Highways Agreement.
- 4.5 That it shall carry out and complete the Access Works to Completion Certificate Standard in accordance with the Highways Agreement(s).
- 4.6 The title page for Appendix 5 shall be entitled "Access Works" and the drawing reference "A090070-182-SK04 Rev B" on the title page shall be deleted and replaced with "039.5021.SK10.F and 039.5021.101 Rev V".
- 4.7 Drawing A090070-182-SK04 Rev B in Appendix 5 shall be deleted and replaced with the two drawings attached at Schedule 1 to this deed.

5 COVENANTS TO THE COUNCIL

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

6 COSTS

The Leaseholder shall pay on or before the date of completion of this deed the Owner's, the Council and the County Council's reasonable and proper legal costs and the County Council's technical 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 and by the County 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.

10 COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

SCHEDULE 1

039.5021.SK10.F

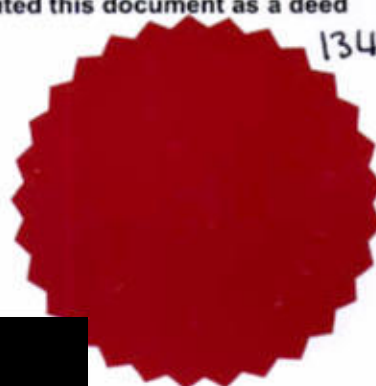
039.5021.101 Rev V

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

13443

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:

NAME:

POSITION:

EXECUTED as a DEED by
VISTRY PARTNERSHIPS LIMITED
acting by its attorneys

AUTHORISED SIGNATORY

in the presence of:
WITNESS.....

NAME:

Address:

ATTORNEY

in the presence of:
WITNESS.....

NAME:

Address:

ATTORNEY

11-11-11

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

ATTORNEY SIGNATURE

ATTORNEY NAME

WITNESS:

Signature:

Name:

Address:

The Common Seal of

HOMES AND COMMUNITIES AGENCY

Was hereunto affixed in the presence of:

069109

Authorised Signatory:

Print Name: M Harris



