

THIS AGREEMENT is made this 2nd day of December 2020

(1) THE COUNCIL OF THE
BOROUGH OF
HAVANT

(2) LINDEN WATES
(LOVEDEAN) LIMITED

(3) VISTRY HOMES LIMITED

(4) ASTER COMMUNITIES

(5) HAMPSHIRE COUNTY
COUNCIL

DEED OF VARIATION
under Section 106 and 106A
of the Town and Country
Planning Act 1990

Relating to land at
Woodcroft Farm Development Site
Woodcroft Lane
Waterlooville
Hampshire

THIS DEED of VARIATION is dated

2nd December

2020

BETWEEN

- (1) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Civic Offices, Havant, Hampshire, PO9 2AX ("**the Council**");
- (2) **LINDEN WATES (LOVEDEAN) LIMITED** (company number 10883565) whose registered office is at Cowley Business Park, Cowley, Uxbridge, UB8 2AL ("**the First Owner**");
- (3) **VISTRY HOMES LIMITED** (company number 00397634) whose registered office is Tower View, Kings Hill, West Malling, ME19 4UY ("**the Second Owner**");
- (4) **ASTER COMMUNITIES** which is a charitable registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (registered number 31530R) and whose registered address for service is Sarsen Court, Horton Avenue, Cannings Hill, Devizes, Wiltshire, SN10 2AZ ("**the Third Owner**"); and
- (5) **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire SO23 8UJ ("**the County Council**")

Together are the **Parties** or **Party**

WHEREAS

1. The Council and County Council are the Local Planning Authorities for the purposes of the planning obligations pursuant to the provisions of Section 106 and Section 106A of the Act and are the bodies entitled to enforce the planning obligations created by the Principal Agreement and this Deed.
2. This Deed is supplemental to a Section 106 Agreement dated 5 May 2015 made between (1) Derwent Developments Limited; (2) the Council; and (3) Hampshire County Council as amended by a Deed of Variation dated 27 September 2017 made between (1) Derwent Developments Limited; (2) the Council; and (3) Hampshire County Council.
3. The First Owner is registered as freehold owner of that part of the Site which is registered at the Land Registry with title absolute under title numbers SH47858 and SH47860 subject to the matters referred to in the Charges Register and the transfer

documentation as referred at Recital 4 to this Deed but otherwise free from encumbrances.

4. Pursuant to transfers dated 5 May 2020 between the First Owner and the Third Owner, the Third Owner is now the freehold owner of the Affordable Housing Plots for the delivery of Affordable Housing.
5. Pursuant to a transfer dated 31 March 2020 between Derwent Developments Limited and the Second Owner, the Second Owner is now the freehold owner of that part of the Site registered at the Land Registry under title number SH22132 subject to the matters referred to in the transfer documentation but otherwise free from encumbrances.
5. The Parties agree that the Principal Agreement shall be modified in the manner set out in the Schedule hereof.

NOW THIS DEED is made in pursuance of Section 106 and 106A of the- Act and contains planning obligations and is a planning obligation for the purposes of that Section and **WITNESSES** as follows:

1. **INTERPRETATION**

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

"the Principal Agreement" means the Section 106 Agreement dated 5 May 2015 made between (1) Derwent Developments Limited; (2) the Council; and (3) Hampshire County Council as subsequently amended by a Deed of Variation dated 27 September 2017 made between (1) Derwent Developments Limited; (2) the Council; and (3) Hampshire County Council.

"the Affordable Housing Plots" means plots 4 - 9 and 19 - 34 on the Site as shown on the Affordable Housing Transfer Plans which shall be provided as Affordable Housing Units.

"the Affordable Housing Transfer Plans" means the plans attached to this Deed at Annex 1 showing the plots comprised in the Site which were transferred from the First Owner to the Third Owner on 5 May 2020.

"the Owner" means the First Owner, the Second Owner and the Third Owner

collectively

and except where otherwise specified or where the context otherwise requires, definitions in the Principal Agreement shall apply in this Deed.

1.2 In this Deed, except where the context requires otherwise:-

1.2.1 The expressions "the Council", "the County Council" and "the Owner" shall include their successors in title and assigns and any person(s) or body corporate deriving title through or under them

1.2.2 Words importing the masculine gender only shall include all other genders and vice versa

1.2.3 Words importing the singular shall include the plural and vice versa

1.2.4 Words importing persons shall include companies and corporations and vice versa

1.2.5 Where any party consists of two or more persons companies or corporations the Deed expressed to be made by that party and the conditions and provisions contained in this Deed shall be deemed to have been made jointly and severally by the persons named as that party

1.2.6 All references to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it

1.2.7 References to clauses and schedules are to the clauses in and schedules to this Deed.

2 The Council, County Council and the Owner hereby agree that:-

2.1 The Principal Agreement shall be modified as set out in the Schedule to this Deed;

2.2 This Deed is a Local Land Charge and shall be registered as such;

2.3 This Deed is made pursuant to Sections 106 and 106A of the Act and is a planning obligation made with the intent to bind the Owner's interest in the Land;

2.4 Except as provided in this Deed, it is agreed between the parties that this Deed is supplemental to and not in substitution for the Principal Agreement, and that the terms of the Principal Agreement will continue in full force and effect subject only to the provisions of this Deed;

2.5 The modifications in this Deed shall apply to the Affordable Housing Land (as defined in the Principal Agreement).

3 OWNER'S FURTHER AGREEMENT

3.1 The Owner further agrees as follows:

3.1.2 To supply to the Council (within 21 days of the Council's written request to do so) such information as the Council within its reasonable discretion considers that it requires in order to determine whether the terms and conditions of this Deed are being observed; and

3.1.3 To pay the Council's and County Council's reasonable legal fees and any costs incurred in the negotiation preparation and execution of this Deed on completion of this Deed.

4 REGISTRATION

This Deed shall be registered by the Council as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

5 NOTICES

Any notice consent or approval required to be given under this Deed to any party to this Deed shall be in accordance with the notice provisions in the Principal Agreement.

6 SETTLEMENT OF DISPUTES

Any dispute arising out of the provisions of this Deed shall be settled in accordance with the settlement of dispute provisions in the Principal Agreement.

7 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England.

8 MISCELLANEOUS

- 8.1 This Deed 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 The Deed comes into force on the date hereof.

The Schedule

1. Amendments to the Principal Agreement

- 1.1 The definition of "Chargee" in paragraph 1 (Definitions) of the Principal Agreement shall be deleted and replaced with the following new definition:

"Chargee" means:

- any mortgagee or chargee;
- any receiver, administrative receiver or administrator appointed under the Law of Property Act 1925;
- any housing administrator appointed under the Housing and Planning Act 2016; or
- any other person appointed under any security document to enable a Chargee to realise its security

of the Affordable Housing Provider and the whole or any one or more of the Affordable Housing Units

- 1.2 All references to "Homebuy Agent" in the Principal Agreement shall be replaced with **"Help to Buy Agent"**.

- 1.3 Paragraph 3.1.10 of Schedule 3 of the Principal Agreement shall be deleted and replaced with the following new paragraph 3.1.10:

3.1.10 The affordable housing provisions in Schedule 3 of this Deed shall not be binding on a Chargee (or any person or bodies deriving title through such Chargee) PROVIDED THAT the Chargee will have first:

3.1.10(a) given written notice to the Council of its intention to exercise its powers of sale to dispose of any of the Affordable Housing Units ("Notice"); and

3.1.10(b) used reasonable endeavours over a period of three months from the date the Notice is served to complete a disposal of the relevant Affordable Housing Unit(s) to either:

- *another Affordable Housing Provider; or*
- *to the Council.*

- 1.4 Paragraph 3.1.11 of Schedule 3 of the Principal Agreement shall be renumbered as paragraph 3.1.14 and the following new paragraphs 3.1.11, 3.1.12 and 3.1.13 shall be inserted after paragraph 3.1.10 of the Principal Agreement:

3.1.11 Any disposal referred to in paragraph 3.1.10 (b) shall be for a consideration not less than the amount properly due and outstanding under the terms of the Chargee's relevant security documentation. This sum shall include all accrued principal monies, interest and the Chargee's reasonable costs and expenses.

3.1.12 In the event that a disposal referred to in paragraph 3.1.10 shall not have been completed within the period of three months referred to in paragraph 3.1.10 (b), the Chargee will be entitled to dispose of the relevant Affordable Housing Unit(s) free from the provisions of this Deed relating to Affordable Housing which shall determine absolutely in respect of the relevant Affordable Housing Unit(s).

3.1.13 For the avoidance of doubt in respect of the relevant Affordable Housing Unit(s) disposed of in accordance with paragraph 3.1.10 above the purchaser shall not be subject to the obligations of this paragraph 3 of Schedule 3 to this Deed.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

13569

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

)
)
)
)

Authorised Signatory



**EXECUTED as a DEED by
LINDEN WATES (LOVEDEAN) LTD**

Acting by its Attorneys

[ ]

signed



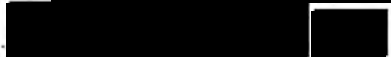
(Attorney)

In the presence of:

Witness signature ..



Witness name ..



Address

.....

PA to MD / Office Manager
VISTRY SOUTHERN
1a Guildford Business Park
Guildford
Surrey
GU2 8XG

And



signed



(Attorney)

In the presence of:

Witness signature ..



Witness name ..



Address

.....

PA to MD / Office Manager
VISTRY SOUTHERN
1a Guildford Business Park
Guildford
Surrey
GU2 8XG

EXECUTED as a DEED by
VISTRY HOMES LIMITED

Acting by its Attorneys

[[REDACTED]]

[REDACTED] (Attorney)

In the presence of:

Witness signature [REDACTED]

Witness name .. [REDACTED]

Address

PA to MD / Office Manager
VISTRY SOUTHERN
1a Guildford Business Park
Guildford
Surrey
GU2 8XG

And

[[REDACTED]]

signed [REDACTED] (Attorney)

In the presence of:

Witness [REDACTED]

Witness name [REDACTED]

Address

PA to MD / Office Manager
VISTRY SOUTHERN
1a Guildford Business Park
Guildford
Surrey
GU2 8XG

EXECUTED as a DEED by
ASTER COMMUNITIES

Acting by its Attorneys

[REDACTED]

signed [REDACTED] (Attorney)

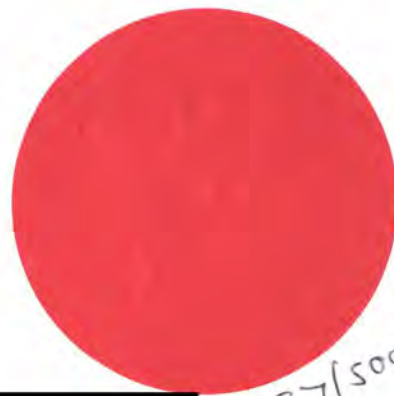
In the presence of:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Partner

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

)
)
)
)



37/5090

Signe



 WATORY

Annex 1
Affordable Housing Transfer Plans

P:17-110 - Woodcroft Farm, Havant\Tech\Drawings\2200 Series - Phase 1B\17-110-2201 HA Transfer Plan Phase 1.dwg



REPRODUCED FROM ORDNANCE SURVEY (R) BY THE PERMISSION OF THE CONTROLLER OF HER MAJESTY'S STATIONERY OFFICE. (C) CROWN COPYRIGHT. ALL RIGHTS RESERVED. LICENCE NUMBER 100045322.



LEGEND

- AFFORDABLE HOUSING BOUNDARY
- PHASE 1B HAMPSHIRE COUNTY COUNCIL ADOPTABLE HIGHWAY EXTENT
- PHASE 1A HAMPSHIRE COUNTY COUNCIL ADOPTABLE HIGHWAY EXTENT
- MANAGEMENT LAND ROADS AND PATHS
- MANAGEMENT LAND LANDSCAPE/ OPEN SPACE
- SHARED RIGHTS OF ACCESS
- PUBLIC RIGHT OF WAY
- SUBSTATION LAND
- UTILITIES EASEMENT
- AREA SUBJECT TO PLANNING
- BCP BIN COLLECTION POINT
- BOUNDARY OWNERSHIP
- GARAGE
- VISITOR PARKING BAY
- 1.2m x 1.8m SHED
- 35
- PATIO
- TACTILE PAVING



D	UPDATED AS PER CLIENT COMMENTS	JA	RM	LH	24.10.19
C	UPDATED AS PER CLIENT COMMENTS	JA	RM	LH	23.10.19
B	UPDATED AS PER CLIENT COMMENTS	JA	RM	LH	16.10.19
A	UPDATED IN LINE WITH OVERALL CONVEYANCE PLAN.	JA	LH	LH	03.10.19
Rev	Amendments	Drn	Chk	App	Date
Scale	1:500 @A3	Date	DEC 18	Designed	
Drawn	SOM	Checked	LH	Approved	LH
Job No	17-110	Drawing No	17-110/2201	Rev	D



ODYSSEY

Tuscany House
White Hart Lane
Basingstoke
Hampshire RG21 4AF

Telephone: 01256 331144
Fax: 01256 331134
E: enquiries@odysseyconsult.co.uk
W: www.odysseyconsult.co.uk

Job Title

WOODCROFT FARM, HAVANT
PHASE 1B

Drawing Title

HOUSING ASSOCIATION TRANSFER PLAN
PHASE 1: PLOTS 4 - 9

Client

Linden
HOMES

PLAN 1



P:\17-110 - Woodcroft Farm, Havant\Tech\Drawings\2200 Series - Phase 1B\17-110-2202 HA Transfer Plan Phase 2.dwg



LEGEND

- AFFORDABLE HOUSING BOUNDARY
- PHASE 1B HAMPSHIRE COUNTY COUNCIL ADOPTABLE HIGHWAY EXTENT
- PHASE 1A HAMPSHIRE COUNTY COUNCIL ADOPTABLE HIGHWAY EXTENT
- MANAGEMENT LAND ROADS AND PATHS
- MANAGEMENT LAND LANDSCAPE/ OPEN SPACE
- SHARED RIGHTS OF ACCESS
- PUBLIC RIGHT OF WAY
- SUBSTATION LAND
- UTILITIES EASEMENT
- AREA SUBJECT TO PLANNING
- BCP BIN COLLECTION POINT
- BOUNDARY OWNERSHIP
- G GARAGE
- V VISITOR PARKING BAY
- 1.2m x 1.8m SHED
- 35 PLOT NUMBER
- PATIO
- TACTILE PAVING

D	UPDATED AS PER CLIENT COMMENTS	JA	RM	LH	24.10.19
C	UPDATED AS PER CLIENT COMMENTS	JA	RM	LH	23.10.19
B	UPDATED AS PER CLIENT COMMENTS	JA	RM	LH	16.10.19
A	UPDATED IN LINE WITH OVERALL CONVEYANCE PLAN.	JA	LH	LH	03.10.19
Rev	Amendments	Dm	Chk	App	Date



ODYSSEY

Tuscany House
White Hart Lane
Basingstoke
Hampshire RG21 4AF

Telephone: 01256 331144
Fax: 01256 331134
E: enquiries@odysseyconsult.co.uk
W: www.odysseyconsult.co.uk

Job Title

WOODCROFT FARM, HAVANT
PHASE 1B

Drawing Title

HOUSING ASSOCIATION TRANSFER PLAN
PHASE 2: PLOTS 19 - 22

Client

Linden
HOMES

Scale

1:500 @A3

Date

DEC 18

Designed

Drawn

SOM

Checked

LH

Approved

LH

Job No

17-110

Drawing No

17-110/2202

Rev

D

PLAN 1