

DATED

2020

- (1) **VIVID HOUSING LTD**
- (2) **THE COUNCIL OF THE BOROUGH
OF HAVANT**

DEED OF VARIATION TO S106 AGREEMENT

RELATING TO

**LAND AT SOUTHLEIGH PARK HOUSE, EASTLEIGH ROAD,
HAVANT, PO9 2PE**

**Lester Aldridge LLP
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Ref: MAI.BAR.527.59

THIS DEED is made on

2020

BETWEEN:-

- (1) **VIVID HOMES LIMITED** : incorporated and registered in England and Wales with company number 09383123 whose registered office is at 172a/B Bramcote Lane, Wollaton, Nottingham, Nottinghamshire, England, NG8 2QP
(**“the Owner”**)
- (2) **THE COUNCIL OF THE BOROUGH OF HAVANT** : of Public Service Plaza Civic Centre Road, Havant, PO92AX
(**“the Council”**)

BACKGROUND

- 0.1 This Deed is supplemental and collateral to the Original Agreement
- 0.2 The Owner has the freehold interest in the Land registered under Title numbers HP220538 and HP493510 at the Land Registry.
- 0.3 The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 in respect of the Land and by whom the obligations in the Original Agreement as amended by this Deed of Variation are enforceable.
- 0.4 The Owner and the Council have agreed that the Original Agreement shall be varied in accordance with section 106A (1) (a) of the Town and Country Planning Act 1990 in accordance with the provisions of this Deed.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions in this clause apply in this deed.
- “Original Agreement”** : means a s106 Agreement dated 30 January 2019 entered into by (1) the Council and (2) Joseph Augustine Wilcox, Roderick Saxon Snell, Jill Elisabeth Manson and Hartley SAS Limited as the trustees of the Snell and Wilcox Limited Pension Plan
- 1.2 A reference to the Original Agreement includes any deed, agreement, licence, consent, approval or other instrument supplemental to it.
- 1.3 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any

subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.

- 1.4 A person includes a corporate or unincorporated body.
- 1.5 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause of, or Schedule to, this Deed and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.
- 1.6 Clause, Schedule and paragraph headings do not affect the interpretation of this Deed.
- 1.7 Except to the extent that they are inconsistent with the definitions and interpretations in clause 1 of this Deed, the definitions and interpretations in clause 1 of the Original Agreement shall apply to this Deed.
- 1.8 Unless the context otherwise requires, a reference to the Land is to the whole and any part of it.

2. LEGAL EFFECT

- 2.1 This Deed is made pursuant to Section 106 and Section 106A of the Town and Country Planning Act 1990 Section 111 of the Local Government Act 1972 and all other powers so enabling.
- 2.2 This Deed contains planning obligations made pursuant to the Original Agreement which are enforceable by the Council and the Owner and which binds each and every part of the Land.

3. ORIGINAL AGREEMENT REMAINS IN FORCE

It is hereby agreed and declared as follows:

- 3.1 This Deed shall be construed as one with the Original Agreement.
- 3.2 The Owner and the Council agree that the Original Agreement is varied as set out in the Schedule with effect from the date of this Deed.
- 3.3 The Owner and the Council confirm that the covenants and conditions contained in the Original Agreement except as varied by this Deed are to continue in full force and effect, PROVIDED THAT the Owner shall never as a result of this Deed be required to perform an obligation set out in the Original Agreement more than once.

4. COSTS

The Owner hereby covenants with the Council to pay on the completion of the Deed the Council's legal advisors reasonable costs incurred in the preparation and execution of this Deed.

5. REGISTRATION OF THIS DEED

This Deed shall be registered as a local land charge for the purposes of the Local Land Charges Act 1975.

6. EXECUTION

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

7. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

8. CONTRACTUAL RIGHTS OF THIRD PARTIES

No term of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

Schedule 1 - Variations to the Original Agreement

The parties agree that the Original Agreement shall be varied as follows:

1. The definition of Development in the Original Agreement shall be deleted and replaced as follows:

““Development” means the development of the Land comprising:

- (a) *The change of use, alterations to and extensions of the existing buildings on the Land for the provision of 20 Dwellings (comprising 13 Dwellings within the Main House and 7 Dwellings in the other Listed Buildings, with associated landscaping, parking and amenity space; and*
- (b) *The Outline Development.”*

2. The following new definitions shall be inserted in to clause 1 of the Original Agreement:

““Commencement of Outline Development” means the date on which any material operation as defined in Section 56(4) of the Act) forming part of the Outline Development is begun other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, archaeological investigations, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, site survey works, temporary access construction works and erection of any temporary fences or hoardings around the Land and “Commence Outline Development” shall be construed accordingly.”

““Outline Development” means the construction of up to 70 Dwellings on part of the Land shown for the purposes of indication only edged blue on the plan at Appendix 5, together with associated landscaping, parking and infrastructure works, following the demolition of the 1983 office building (including demolition of the brick and glass corridor link)

““Outline Dwelling” means any Dwelling constructed as part of the Outline Development excluding for the avoidance of doubt any Dwellings constructed as part of the Conversion Works of the Listed Buildings as defined in Schedule 3.”

3. Paragraph 5.1 of Schedule 1 of the Original Agreement shall be deleted and replaced as follows:

“5.1 *prior to Commencement of the Outline Development to submit to the Council for its approval a bill of quantities detailing the open book construction costs for the SuDs.”*

4. Paragraph 5.4 of Schedule 1 of the Original Agreement shall be deleted and replaced as follows:

5.4 on or before Commencement of the Outline Development to:

5.4.1 provide to the Council a Bond for the Bond Amount

8.1.2 pay the Cash Deposit

5. Paragraph 7 of Schedule 1 of the Original Agreement shall be deleted and replaced as follows:

“7. Highway Works

7.1 to have submitted the Highways Agreement including the associated plans and information for the design checking of the Highway Works to the County Council before Commencement of any Development

7.2 not to Commence any Development or permit Commencement of any Development until the Owner has submitted the Highways Agreement including the associated plans and information for the design checking of the Highway Works to the County Council

7.3 to enter into a Highways Agreement with the County Council for the Highway Works before Commencement of Outline Development

7.4 not to Commence Outline Development or permit Commencement of Outline Development until the Owner has entered into the Highways Agreement with the County Council for the Highway Works

7.5 that it shall at its own expense carry out and complete the Highway Works in a good and workmanlike manner in accordance with the Highways Agreement; and

7.6 not to Occupy or permit Occupation of any Dwelling until the Highway Works have been completed to the reasonable satisfaction of the County Council”

6. The plan with reference [] annexed to this Deed shall be inserted in to the Original Agreement at new Appendix 5.

EXECUTED as a deed by **VIVID**)
HOUSING LTD acting by one director in)
the presence of) Director
)

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Witness Name:

Witness Address:

Witness Occupation:

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

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Authorised Signatory