DATED 16 November **2020**

VIVID HOUSING LIMITED (1)

and

EASTLEIGH BOROUGH COUNCIL (2)

and

HAMPSHIRE COUNTY COUNCIL (3)

DEED OF VARIATION

Pursuant to Section 106A of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972 relating to land at the Monksbrook Estate, Cheriton Road, Eastleigh, Hampshire

Ian Austin
Legal Services Manager
Eastleigh Borough Council
Eastleigh House
Upper Market Street
EASTLEIGH
SO50 9YN

THIS DEED is made on 16 November 2020

BETWEEN

(1) **VIVID HOUSING LIMITED** (Community Benefit Society No. 7544) of Peninsular House, Wharf Road, Portsmouth PO2 8HB ("the Owner")

(2) **EASTLEIGH BOROUGH COUNCIL** of Eastleigh House Upper Market Street Eastleigh Hampshire SO50 9YN ("the Borough Council").

(3) **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire SO23 8UJ

WHEREAS

(1) The Owner is the freehold owner of part of the Site registered at the Land Registry under title numbers HP794019, HP794021 and HP794070.

(2) The Borough Council and the County Council are local planning authorities for the purposes of the Act for the area in which the Site is situated and by whom the obligations created by this deed are enforceable.

(3) The Owner the Borough Council and the County Council entered into the principal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972 relating to land at Monksbrook Estate, Cheriton Road, Eastleigh, Hampshire ("the Land") dated 6 July 2012 (the "Principal Agreement").

(4) The County Council is the local highway authority and education authority for the area in which the Site is situated.

(5) The Owner has made an application to the Borough Council to vary the Principal Agreement

LEGAL BASIS

1 This Deed is made pursuant to Section 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.

2 The obligations imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Borough Council and by the County Council as local planning authorities against the Owner and its successors in title and assigns and the persons claiming under or through it.

3 The definitions, clauses, obligations and provisions of the Principal Agreement shall remain in full force and effect except as varied or added to by this Deed and shall continue to be

applicable to the Land in respect of the Development and remain to be performed to the extent that they have not already been performed.

4 Save where the context otherwise requires the expressions used in this Deed shall have the same meaning or meanings as those stated in the Principal Agreement.

5 The Principal Agreement shall be varied as set out in Schedule 1 of this Deed.

6 This Deed is a local land charge and shall be registered as such by the Borough Council.

7 No person other than a party to this Deed shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

8 The Owner hereby covenants to pay to the Borough Council and the County Council on completion of this Deed their reasonable legal and other costs in connection with the preparation and approval of this Deed such costs to be paid prior to completion of this Deed.

9 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.

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

11 This Deed shall take effect from the date hereof.

SCHEDULE 1

VARIATIONS TO THE PRINCIPAL AGREEMENT

1 DEFINITIONS

The following definition shall be deleted and replaced as follows:

1.1 "On-Site open Space Land"

Means an area of not less than 0.28 hectares of public open space to be provided on the Site

The following definition shall be added to Clause 1 as follows:

1.2 "**Chargee**"

Means a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee 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)) of the whole or any part of the Affordable Housing Dwelling(s)

2. SCHEDULE SIX

Schedule Six of the Principal Agreement shall be amended as follows:

1.1 Paragraph 2.3 shall be deleted and replaced with the following:

2.3 a Chargee or any persons or bodies deriving title through such Chargee exercises its power of sale over a Dwelling PROVIDED THAT the provisions of paragraph 3 are complied with by the Chargee and which such obligations shall run parallel with the Chargee's obligations in relation to the Affordable Housing under any housing legislation or act of parliament or statutory instrument from time to time in force.

1.2 Paragraph 3 shall be deleted and replaced with the following:

3.0 The Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Dwelling(s) and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Dwelling(s) 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 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Dwelling(s) free from the affordable housing provisions in this Agreement which provisions shall determine absolutely

In Witness hereof the parties hereto have today executed and delivered this agreement as a Deed

Executed as a deed by Chimi Shakohoxha

as an Attorney for VIVID Housing Limited

[redacted]

.....

In the presence of:

Witness signat

Witness name

Witness addres

Witness occup

[redacted]

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EXECUTED as a DEED by affixing)

THE COMMON SEAL of EASTLEIGH)

BOROUGH COUNCIL in the)

presence of:)

[redacted]

Authorised Signatory

37/6048

EXECUTED as a DEED by affixing)

THE COMMON SEAL of HAMPSHIRE)

COUNTY COUNCIL in the)

presence of:)

[redacted]

.....

Authorised Signatory

[redacted]

.....

Name (in capitals)

[redacted]