

DATED 6 September 2021

VIVID HOUSING LIMITED (1)

and

EASTLEIGH BOROUGH COUNCIL (2)

and

HAMPSHIRE COUNTY COUNCIL (3)

and

PRUDENTIAL TRUSTEE COMPANY LIMITED (4)

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 Velmore, Chandlers Ford, Eastleigh, Hampshire

THIS DEED is made on

6 September

2021

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
- (4) **PRUDENTIAL TRUSTEE COMPANY LIMITED** of 10 Fenchurch Avenue, London EC3M 5AG ("the Mortgagee")

WHEREAS

- (1) The Owner is the freehold owner of part of the Site registered at the Land Registry under title numbers HP748675 and HP788801.
- (2) The Mortgagee has a charge over part of the Site owned by the Owner and registered at the Land Registry under title numbers HP748675 and HP788801.
- (3) 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.
- (4) 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 Velmore, Chandlers Ford, Eastleigh, Hampshire ("the Land") dated 1 October 2009 (the "Principal Agreement").
- (5) The County Council is the local highway authority and education authority for the area in which the Site is situated.

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 "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)

1.2 A new clause 17 shall be added in the following words:

"17 The obligations to the Council within this agreement shall not be binding upon any individual owner occupiers or tenant of the dwellings nor against their mortgagees or chargees, nor against any RSL or their Chargee in respect of the non-affordable housing obligations. For the avoidance of doubt this clause 17 shall not apply to obligations to the County Council."

2. SCHEDULE SEVEN

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

- 1.1 Paragraph 3.2 shall be deleted and replaced with the following:
 - 3.2 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 4 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 4 shall be deleted and replaced with the following:
 - 4.0 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

SIGNED AS A DEED BY CAPSTICKS SOLICITORS LLP
AS ATTORNEY FOR VIVID

EXECUTED as a DEED by VIVID)

HOUSING
HOMES LIMITED UNDER OF POWER ATTORNEY
DATED 31 MARCH 2021

in the presence of:)

Signature of witness: [REDACTED]

Authorised Signatory

Name of witness: [REDACTED]

Address of witness: 1 Capsticks LLP
St George's Road
Wimbledon
London
SW19 4DR

AS ATTORNEY FOR
VIVID HOUSING

EXECUTED as a DEED by affixing)

THE COMMON SEAL of EASTLEIGH)

BOROUGH COUNCIL in the)

presence of:)



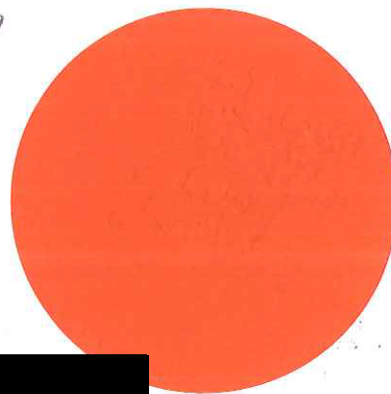
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Authorised Signatory

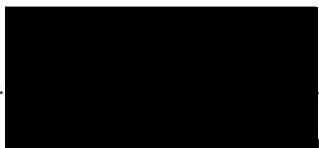


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EXECUTED as a DEED by affixing)
THE COMMON SEAL of HAMPSHIRE)
COUNTY COUNCIL in the)
presence of:)



.....
Authorised Signatory



.....
Name (in capitals)

.....
Position

Executed as a deed by
PRUDENTIAL TRUSTEE COMPANY LIMITED

