

DATED 21st December 2022

- (1) EASTLEIGH BOROUGH COUNCIL
- (2) HAMPSHIRE COUNTY COUNCIL
- (3) MILLER HOMES LIMITED
- (4) BELLWAY HOMES LIMITED
- (5) RODNEY ATHUR POORE
- (6) IRIS ISABELLA WILTON COMBES, VICTORIA SUSAN
SAUNDERS AND PAUL JOHN SNOOK
- (7) JULIET HELEN HOOPER, CHARLES EDMUND
BROWNING, TIMOTHY MARK BROWNING AND
PETER MALCOLM BROWNING
- (8) MILLER HOMES LIMITED (in their capacity as chargee)
- (9) GLEESON LAND LIMITED

THIRD SUPPLEMENTAL DEED AND DEED OF VARIATION

Under Sections 106 and 106A of the Town and Country
Planning Act 1990

Relating to land to the west of Boorley Green, Winchester
Road, Eastleigh, Hampshire (also known as land at Hedge End
North)

THIS DEED is made the

21st

day of

December

2022

BETWEEN

- (1) **Eastleigh Borough Council** of Eastleigh House, Upper Market Street, Eastleigh, Hampshire, SO50 9YN ("**the Council**"); and
- (2) **Hampshire County Council** of The Castle, Winchester, Hampshire, SO23 8UJ ("**the County Council**"); and
- (3) **MILLER HOMES LIMITED** (Scottish Company Registration Number SC255429) whose registered address is Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH ("**the First Owner**"); and
- (4) **Bellway Homes Limited (registered company number 00670176)** of Woolsington House, Woolsington, Newcastle Upon Tyne, England, NE13 8BF ("**the Second Owner**"); and
- (5) **Rodney Arthur Poore** of West Down Farm, Peststead Lane, Soberton, Southampton, SO32 3RJ ("**the First Chargee**"); and
- (6) **Iris Isabella Wilton Combes** of ~~23 Earham Grove, Weston Super Mare, North Somerset~~ *Castle Combe, Cypress Gardens, Botley, Southampton* 
SO30 2GU ~~BS23 3JH~~, **Victoria Susan Saunders** of 15 Sherbourne Avenue, Bradley Stoke, Bristol, South Gloucestershire, BS32 8BB and **Paul John Snook** of 299 Water Lane, Totton, Southampton SO40 3GE ("**the Second Chargee**"); and
- (7) **Juliet Helen Hooper, Charles Edmund Browning, Timothy Mark Browning, and Peter Malcolm Browning** of Rutland House, 11 Park Road, Winchester SO22 6AA ("**the Third Chargee**"); and
- (8) **Miller Homes Limited (in their capacity as Chargee)** (Scottish Company Registration Number SC255429) whose registered office is Miller House, 2 Lochside View, Edinburgh Park, Edinburgh, EH12 9DH ("**the Fourth Chargee**"); and
- (9) **Gleeson Land Limited** (registered in England and Wales under company registration 05181745) whose registered office is 6 Europa Court, Sheffield Business Park, Sheffield, S9 1XE ("**the Fifth Chargee**")

WHEREAS:

- (A) This Deed of Variation is supplemental to the Principal Deed and is intended to vary the Principal Deed as set out herein. Save where it is specifically varied herein, the Principal Deed shall continue to have full force and effect on the terms set out therein.
- (B) The First Owner and the Second Owner are the Owners of the Site registered at HM Land Registry under title number HP859764.
- (C) The First, Second and Third Chargees all have an interest in the Site by virtue of registered charges dated 19 August 2021 and the Fourth and Fifth Chargees have an interest in the Site by virtue of the charges dated 23 September 2022 which is pending registration at the Land

Registry. The Chargees enter into this Deed to consent to the entry into it by the Owners and to the variations to the Principal Deed as set out herein.

- (D) The Council and the County Council are the local planning authorities entitled to enforce the planning obligations set out within the Principal Deed.
- (E) Outline planning permission O/15/75953 for the Development on the Site was granted on appeal on 30 November 2016 (ref: APP/W1715/W/15/3130073) ("the Outline Permission") subject to conditions and following the entry by the parties into the Principal Deed in order to provide for the performance of certain planning obligations therein.
- (F) The Principal Deed was varied by the First Deed of Variation on 7 December 2018 which was entered into in connection with the approval of reserved matters for the first phase of the Development.
- (G) The Principal Deed was further varied by the Second Deed of Variation on 22 May 2020 which was entered into pursuant to an application under s73 of the Act made to the Council to vary condition 3 on the Outline Permission.
- (H) The parties to this Deed wish to further vary the Principal Deed in the manner set out in this Deed.

THIS DEED WITNESSES the following:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed the following expressions shall have the meanings given to them in this Clause:

"the Act" means the Town and Country Planning Act 1990 (as amended)

"Chargees" means the First Chargee, the Second Chargee, the Third Chargee, the Fourth Chargee and the Fifth Chargee

"First Deed of Variation" means the Deed of Variation dated 7 December 2018 and made between (1) Eastleigh Borough Council (2) Hampshire County Council (3) Rodney Arthur Poore (4) Iris Isabella Wilton Combes, Victoria Susan Saunders & Paul John Snook (5) Georgina Louise Shorney, Julie Anne Louise Parr & Roslyn Frances Roderigo (6) Juliet Helen Hooper, Charles Edmund Browning, Timothy Mark Browning & Peter Malcolm Browning (7) Miller Homes Limited (8) Gleeson Strategic Land Limited (9) Welbeck Strategic Land LLP and (10) MF Strategic Land Limited

"Owners" means the First Owner and the Second Owner.

“Principal Deed” means the agreement relating to the Outline Permission and binding the Site dated 16 June 2016 and made between (1) Eastleigh Borough Council (2) Hampshire County Council (3) Rodney Arthur Poore (4) Iris Isabella Wilton Combes, Victoria Susan Saunders & Paul John Snook (5) Georgina Louise Shorney, Julie Anne Louise Parr & Roslyn Frances Roderigo (6) Juliet Helen Hooper, Charles Edmund Browning, Timothy Mark Browning & Peter Malcolm Browning (7) Miller Homes Limited (8) Gleeson Developments Limited (9) Welbeck Strategic Land LLP and (10) MF Strategic Land Limited as varied by the First Deed of Variation and the Second Deed of Variation.

“Second Deed of Variation” means the Deed of Variation dated 22 May 2020 and made between (1) Eastleigh Borough Council (2) Hampshire County Council (3) Rodney Arthur Poore (4) Iris Isabella Wilton Combes, Victoria Susan Saunders & Paul John Snook (5) Georgina Louise Shorney, Julie Anne Louise Parr & Roslyn Frances Roderigo (6) Juliet Helen Hooper, Charles Edmund Browning, Timothy Mark Browning & Peter Malcolm Browning (7) Miller Homes Limited (8) Gleeson Strategic Land Limited (9) Welbeck Strategic Land LLP and (10) MF Strategic Land Limited

“this Deed” means this Deed of Variation

1.2 All words and phrases defined in the Principal Deed have the same meaning in this Deed unless explicitly stated otherwise.

1.3 The provisions of the Principal Deed shall apply with similar effect to this Deed (construed with such consequential amendments as are necessary).

2. **LEGAL EFFECT**

2.1 This Deed is made pursuant to Section 106A of the Act and Section 111 of the Local Government Act 1972 so as to vary the Principal Deed in the manner set out in this Deed and the Owners' obligations and covenants contained in this Deed:

- (a) are covenants and planning obligations to which these statutory provisions apply; and
- (b) relate to the Site in the manner set out in this Deed; and
- (c) are enforceable by the Council and by the County Council as the local planning authorities.

2.2 This Deed shall be registrable as a local land charge by the Council and by the County Council.

3. **COMMENCEMENT**

The provisions in this Deed shall take effect upon its completion.

4. **VARIATION TO PRINCIPAL AGREEMENT**

4.1 The parties agree that the Principal Deed shall be varied as set out in the Schedule to this Deed but shall otherwise remain in full force and effect (in so far as the obligations in the Principal Deed have not been discharged).

4.2 This Deed shall be read in conjunction with the Principal Deed.

5. **LEGAL COSTS**

5.1 The Owners will pay on completion of this Deed the Council's reasonable legal costs and disbursements in connection with its preparation.

5.2 The Owners will pay to the County Council on completion of this Deed the County Council's reasonable legal and technical costs and disbursements in connection with its preparation.

6. **SEVERANCE**

6.1 If any court or other competent authority finds any provisions of this Deed (or part of any provision) to be invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of this Deed shall not be affected.

7. **GOVERNING LAW**

7.1 This Deed is governed by and interpreted in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England.

8. **CHARGEES' CONSENT**

8.1 The Chargees acknowledge and declare that this Deed has been entered into by the Owners with their consent to the intent that the planning obligations set out in the Principal Deed as varied by this Deed shall be binding on the Site and that the security of the mortgages/charges over the Site shall take effect subject to this Deed provided that the Chargees shall only be liable for any breach whilst mortgagee in possession and shall not be liable for any pre-existing breach.

9. **COUNTERPARTS**

9.1 This Deed may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SCHEDULE 1

The Principal Deed shall be varied as follows:

1. A new definition shall be inserted into clause 1 as follows:

"On – site Pedestrian and Cycle Route"	means a pedestrian and cycle route through the Development from Winchester Road to Shamblehurst Lane North which for the avoidance of doubt may be delivered as a temporary route whilst works are being undertaken to deliver the On-site Bus, Pedestrian and Cycle Route
"On – site Bus, Pedestrian and Cycle Route"	means a bus route and pedestrian and cycle route through the Development from Winchester Road to Shamblehurst Lane North

2. The words 'Not to Occupy nor permit Occupation of the Development' in Schedule Seven Part 1 paragraph 2 shall be deleted and replaced with the words 'Not to Occupy nor permit the Occupation of more than 50 Dwellings'
3. The words 'Not to Commence nor permit Commencement of the Development' in Schedule Seven Part 2 paragraph 1 shall be deleted and replaced with the words 'Not to Occupy nor permit the Occupation of the Development'
4. A new 'Part 3' shall be inserted into Schedule Seven as follows:

"Part 3 – On – site Bus, Pedestrian and Cycle Route"

1. The Owner covenants with the Council not to Occupy nor permit Occupation of more than 50 Dwellings unless and until the route of the On-site Pedestrian and Cycle Route has been agreed in writing by the Council and the On-Site Pedestrian and Cycle Route has been provided to an appropriate standard to the satisfaction of the Council and the County Council (acting reasonably)
2. The Owner covenants with the County Council not to Occupy nor permit Occupation of more than 150 Dwellings unless and until the On-site Bus, Pedestrian and Cycle Route has been completed to the satisfaction of the County Council (acting reasonably) PROVIDED THAT in the interests of safety the On-site Bus, Pedestrian and Cycle Route shall only be open for use by the public following the completion of the supporting infrastructure works to Shamblehurst Lane North and the Bus Access Restrictor Works.

In witness to the above the Owners and the Chargees have executed this document as a Deed and the Council and County Council have affixed their Common Seals the day and year above written:

EXECUTED as a DEED by affixing)
THE COMMON SEAL OF EASTLEIGH)
BOROUGH COUNCIL in the)
Presence of:

Legal Services Manager

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

.....
Authorised Signatory

.....
Name (capitals)

.....
Position (capitals)

Executed as a deed by)
MILLER HOMES LIMITED)
acting by:)

DIRECTOR
in the presence of:)

[SIGNATURE OF WITNESS]

[NAME OF WITNESS BLOCK CAPS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

Executed as a deed by)
BELLWAY HOMES LIMITED)
acting by:)

DIRECTOR

DIRECTOR/SECRETARY

Signed as a deed by **RODNEY**)
ARTHUR POORE)
in the presence of:)

[SIGNATURE OF WITNESS]

[NAME OF WITNESS BLOCK CAPS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

Signed as a deed by **IRIS ISABELLA**)
WILTON COMBES in the presence of:)

[SIGNATURE OF WITNESS]

[NAME OF WITNESS BLOCK CAPS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

Signed as a deed by **VICTORIA**)
SUSAN SAUNDERS in the)
presence of:)

[SIGNATURE OF WITNESS]

[NAME OF WITNESS BLOCK CAPS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

Signed as a deed by **PAUL JOHN**)
SNOOK in the presence of:)

[SIGNATURE OF WITNESS]

[NAME OF WITNESS BLOCK CAPS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

Signed as a deed by **JULIET HELEN**)
HOOPER in the presence of:)

[SIGNATURE OF WITNESS]

[NAME OF WITNESS BLOCK CAPS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

Signed as a deed by **CHARLES**)
EDMUND BROWNING in the)
presence of:)

[SIGNATURE OF WITNESS]

[NAME OF WITNESS BLOCK CAPS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

Signed as a deed by **TIMOTHY**)
MARK BROWNING in the)
presence of:)

[SIGNATURE OF WITNESS]

[NAME OF WITNESS BLOCK CAPS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

Signed as a deed by **CHARLES**)
EDMUND BROWNING as attorney for)
PETER MALCOLM BROWNING in the)
presence of:)

[SIGNATURE OF WITNESS]

[NAME OF WITNESS BLOCK CAPS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

Executed as a deed by)
GLEESON LAND LIMITED)
Acting by:)

DIRECTOR

DIRECTOR/SECRETARY

Executed as a deed by)
MILLER HOMES LIMITED (in their capacity as chargee))
acting by:)

DIRECTOR
in the presence of:)

[SIGNATURE OF WITNESS]

[NAME OF WITNESS BLOCK CAPS]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]