

DATED 21st November 2024

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE
TOWN & COUNTRY PLANNING ACT 1990 RELATING TO LAND
AT NIGHTINGALE AVENUE, EASTLEIGH**

between

EASTLEIGH BOROUGH COUNCIL

and

VIVID HOUSING LIMITED

Legal Services Manager
Eastleigh Borough Council
Eastleigh House
Upper Market Street
EASTLEIGH
SO50 9YN
Ref: V/23/95545

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THIS DEED is dated 21st November 2024

- (1) EASTLEIGH BOROUGH COUNCIL of Eastleigh House Upper Market Street Eastleigh Hampshire SO50 9YN (**Council**)
- (2) VIVID HOUSING LIMITED incorporated and registered in England and Wales as a registered society with company number 7544R whose registered office is at Peninsular House, Wharf Road, Portsmouth, PO2 8HB (**Owner**).

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner is the freehold owner of the Property free from encumbrances.
- (C) On 16 December 2005 the Council and Hampshire County Council (then the owner) entered into the Original Agreement.
- (D) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this deed.
- (E) This agreement is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Original Agreement: the agreement made under section 106 of the TCPA 1990 dated 16 December 2005 between the Council and Hampshire County Council.

Property: the Affordable Housing Dwellings at 14 – 17 (inclusive) and 26 – 31 (inclusive) Sand Martin Close, Eastleigh SO50 9PS and registered with HM Land Registry under title numbers HP709379 and HP709381

1.2 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this deed.

1.3 Clause headings shall not affect the interpretation of this deed.

- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Unless the context otherwise requires, references to clauses are to the clauses of this deed.
- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISION

This deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

- 3.1 Clause 4.7 of the Original Agreement shall be deleted in its entirety and replaced with the following:

4.7. That the affordable housing units constructed on the Site will not be used for any purpose other than as affordable housing to rent and/or affordable housing subject to a shared ownership or shared equity scheme save that such an obligation shall not apply to:

a) a mortgagee or chargee (or to a receiver appointed thereby including an administrative receiver) 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 Registered Provider (as defined in the Housing and Regeneration Act 2008) to which the freehold or long leasehold of the affordable housing unit(s) has been transferred or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

i. such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the affordable housing unit and shall have used reasonable endeavours over a period of 3 months from the date of the written notice to complete a disposal of the affordable housing unit 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 principle monies, interest, cost and expenses; and

ii. if such disposal is not completed within the 3 month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the affordable housing units free from the provisions and obligations contained in this Deed which shall determine absolutely; or

b) a sale to a tenant exercising their right to acquire or purchase under a statutory power or under a voluntary right to buy and their mortgagees and chargees and receivers and any persons or bodies deriving title through them;

c) a shared ownership or shared equity owner acquiring such percentage that will take their ownership to 100% of a property subject to a shared ownership or shared equity lease and their mortgagees and chargees and receivers or to the successors in title to such persons"

3.2 In all other respects the Original Agreement (as varied by this deed) shall remain in full force and effect.

4. COVENANTS TO THE COUNCIL

The Owner covenant to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

5. LOCAL LAND CHARGE

This deed shall be registered as a local land charge.

6. COUNCIL'S COSTS

The Owner shall pay to the Council on or before the date of completion of this deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

7. VALUE ADDED TAX

7.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.

7.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

8. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

9. 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 and Wales.

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

EXECUTED as a DEED by affixing)
THE COMMON SEAL of EASTLEIGH)
BOROUGH COUNCIL in the)
presence of: [REDACTED]



Authorised Signatory

EXECUTED as a deed in the name)
and on behalf of VIVID Housing)
Limited by [REDACTED] an)
Officer appointed for the purpose under)
section 74(4) of the Law of Property Act)
1925 by the board of **Trowers &**)
Hamlins LLP, its attorney under a)
power of attorney dated 25 March 2024)
in the presence of: [REDACTED]

VIVID Housing Limited

by its attorney

Trowers & Hamlins LLP

acting by

[REDACTED]

Signature of officer

Witness signature: [REDACTED]

Name: [REDACTED]

Address: *The Penate, Southemhay Garden, Exeter. EX1 1UG.*

Occupation: *Trainee Solicitor.*