

DATED

2 DECEMBER 2024

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE
TOWN & COUNTRY PLANNING ACT 1990 ("TCPA 1990")
RELATING TO LAND AT UNIGATE DAIRY, SHAKESPEARE
ROAD, EASTLEIGH, HAMPSHIRE**

between

EASTLEIGH BOROUGH COUNCIL

and

VIVID HOUSING LIMITED

and

M&G TRUSTEE COMPANY LIMITED

Legal Services Manager
Eastleigh Borough Council
Eastleigh House
Upper Market Street
EASTLEIGH
SO50 9YN
Ref: F/05/53397

CONTENTS

CLAUSE

1. INTERPRETATION 1

2. STATUTORY PROVISION 3

3. VARIATIONS TO THE ORIGINAL AGREEMENT..... 3

4. COVENANTS TO THE COUNCIL 3

5. MORTGAGEE'S CONSENT 4

6. LOCAL LAND CHARGE 4

7. COUNCIL'S COSTS 4

8. VALUE ADDED TAX..... 5

9. THIRD PARTY RIGHTS 5

10. GOVERNING LAW..... 5

THIS DEED is dated 2 DECEMBER

2024

PARTIES

- (1) EASTLEIGH BOROUGH COUNCIL of Eastleigh House, Upper Market Street, Eastleigh, Hampshire, SO50 9YN (**Council**).
- (2) VIVD HOUSING LIMITED registered as a charitable community benefit society under the Co-operative and Community Benefit Societies Act 2014 with registered number 7544 and as a Registered Provider with the Social Housing Regulator with registered number 4850 whose registered office is at Peninsular House, Wharf Road, Portsmouth, PO2 8HB(**Owner**).
- (3) M&G TRUSTEE COMPANY LIMITED incorporated and registered in England and Wales with company number 01863305 whose registered office is at 10 Fenchurch Avenue, London, EC3M 5AG (**Mortgagee**).

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 subject to a mortgage in favour of the Mortgagee but otherwise free from encumbrances.
- (C) The Mortgagee is the owner of the charge dated 10 November 2023.
- (D) On 26 May 2005 the Council entered into the Original Agreement with the original owner.
- (E) 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.
- (F) 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 26 May 2005 and made between (1) Eastleigh Borough Council and (2) George Wimpey Southern Limited.

Property: the affordable housing units at 1 to 10 (inclusive) Rossetti Court, Byron Road, Eastleigh, SO50 4FL and registered with HM Land Registry under title number HP672764.

- 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 In respect of the Property, clause 4.7 to the Original Agreement shall be deleted and replaced with the following:

"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 and the restrictions and obligations set out in this clause 4.7 in its entirety shall not be binding on or apply:

- a) to a mortgagee or chargee or (to 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 Units and/or Site 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 Units 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 Units 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.

- b) on 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) to 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."

In all other respects, the Principal Deed (as varied by this deed) shall remain in full force and effect."

4. COVENANTS TO THE COUNCIL

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

5. MORTGAGEE'S CONSENT

The Mortgagee consents to the completion of this deed and acknowledges that from the date of this deed the Property shall be bound by the terms of this deed, as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.

6. LOCAL LAND CHARGE

This deed shall be registered as a local land charge.

7. 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.

8. VALUE ADDED TAX

- 8.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.
- 8.2 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.

9. 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.

10. 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.

11. COUNTERPART

This deed may be executed in any number of counterparts each of which when executed and delivered shall constitute a duplicate original of this deed but all the counterparts shall together constitute the one deed. No counterpart shall be effective until each party has executed at least one counterpart.

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:)

.....

Authorised Signatory

SIGNED as a deed by **Trowers & Hamlins LLP** as attorney, in the name of)
and on behalf of **VIVID HOUSING**)
LIMITED, pursuant to a general power of)
attorney dated 25 March 2024 acting by a)
member in the presence of)

.....
Signature of member: [REDACTED]

[REDACTED] (Partner, Trowers &
Hamlins LLP)

[REDACTED]
.....
Signature of witness:

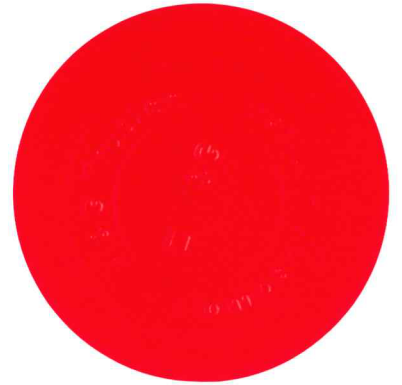
Name of witness: [REDACTED]

Address: [REDACTED]

Occupation: [REDACTED]

EXECUTED as a deed by affixing the)
common seal of M&G TRUSTEE)
COMPANY LIMITED in the presence)
of)

Sealing Officer



100

2

