

DATED

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE TOWN AND
COUNTRY PLANNING ACT 1990 RELATING TO LAND AT PROVIDENCE HILL,
BURSLEDON SOUTHAMPTON**

between

EASTLEIGH BOROUGH COUNCIL

and

FOREMAN HOMES LIMITED

and

HERITABLE DEVELOPMENT FINANCE LIMITED

**Head of Legal Services
Eastleigh Borough Council
Upper Market Street
Eastleigh
SO50 9YN**

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This deed is dated

2025

Parties

- (1) EASTLEIGH BOROUGH COUNCIL of Eastleigh House, Upper Market Street, Eastleigh SO50 9YN (**Council**)
- (2) FOREMAN HOMES LIMITED incorporated and registered in England and Wales with company number 03313213 whose registered office is at Yarmouth House Parkway, Whiteley, Fareham, England, PO15 7AX (**Owner**)
- (3) HERITABLE DEVELOPMENT FINANCE LIMITED incorporated and registered in England and Wales with company number 08606584 whose registered office is at Reliance House Sun Pier, Medway Street, Chatham, Kent, ME4 4ET (**Lender**)

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) On 9 October 2014, the Original Agreement was entered into by the original parties.
- (C) The Owner is now the freehold owner of the Property subject to a mortgage in favour of the Lender but otherwise free from encumbrances.
- (D) The Lender is the registered proprietor of the charge dated 2 December 2016 referred to in entry numbers 4 and 5 of the charges register of Title number HP744331 and has agreed to enter into this deed to give its consent to the terms of this deed.
- (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 9 October 2014 between the Council (1), John Henry Garrett, Constance Patricia Garrett, Mark John Garrett and Derek Leslie Garrett (2) and Bryan Jezeph Consultancy Limited (3) (planning reference O/14/74322).

- 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 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.
- 1.11 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 The definition of “Council’s Contribution Payments” shall be amended by deleting the following wording:

“(iv) the On-Site Existing Woodland Commuted Maintenance Sum;

(v) the On-Site Existing Woodland Supervision Fee;

(vi) the On-Site Open Space Commuted Maintenance Sum;

(vii) the On-Site Open Space Supervision Fee;

(viii) the Play Area Contribution;

(ix) the Play Area Commuted Maintenance Sum;

(x) the Play Area Supervision Fee”

- 3.2 The following Definitions to the Original Agreement shall be deleted in their entirety:

- *“On-Site Existing Woodland Commuted Maintenance Sum”*
- *“On-Site Existing Woodland Supervision Fee”*
- *“On-Site Open Space Commuted Maintenance Sum”*
- *“On-Site Open Space Supervision Fee”*
- *“Play Area”*
- *“Play Area Contribution”*
- *“Play Area Commuted Maintenance Sum”*
- *“Play Area Land”*
- *“Play Area Supervision Fee”*

- 3.3 Paragraphs 1.6 – 1.10 (inclusive) of Schedule Five to the Original Agreement shall be deleted in their entirety.

- 3.4 Paragraph 3 of Schedule Five to the Original Agreement shall be amended by deleting the words "*with the exception of the On-Site Open Space Commuted Maintenance Sum, the On-Site Open Space Supervision Fee, the Play Area Contribution, the Play Area Supervision Fee, the On-Site Existing Woodland Commuted Maintenance Sum, the On-Site Existing Woodland Supervision Fee which shall be payable in accordance with the provisions of Schedule Seven*".
- 3.5 Paragraph 1 of Schedule Seven of the Original Agreement shall be amended by deleting the words "and Play Area Land" and replacing them with the words "(which shall include the On-Site Existing Woodland)".
- 3.6 Paragraph 2 of Schedule Seven of the Original Agreement shall be amended by deleting the words "and Play Area Land".
- 3.7 Paragraph 3 and 4 of Schedule Seven of the Original Agreement shall be deleted in their entirety.
- 3.8 Paragraph 5 of Schedule Seven of the Original Agreement shall be amended by deleting the words "and Play Area Land" from each of the second and third line.
- 3.9 Paragraphs 6 – 9 (inclusive) of Schedule Six of the Original Agreement shall be deleted in their entirety and the following new paragraph 6 shall be inserted:
6. *The Owner shall:*
- (a) *maintain the On-Site Open Space Land in accordance with the Approved Specification in perpetuity; and*
 - (b) *not use or permit use of the On-Site Open Space Land other than as open space and play area land (and the On-Site Existing Woodland as woodland) for unrestricted use by the public; and*
 - (c) *not make any disposal of the On-Site Open Space Land in part and shall not make any disposal of the whole of the On-Site Open Space Land other than to a private management company in which case the Owner shall:*
 - (i) *include in the transfer a restrictive covenant not to use the On-Site Open Space Land other than as open space (and the On-Site Existing Woodland*

as woodland) for use by the public in perpetuity and in accordance with the terms of this Deed; and

(ii) provide a copy of the transfer, together with details of the private management company (including relevant contact details) to the Council within 5 working days of completion of the disposal.”

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

5. Lender's consent

The Lender 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 before the creation of the Lender's interest in the Property.

6. Local land charge

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

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 value added tax (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 does 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) will 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.

THE COMMON SEAL of)
EASTLEIGH BOROUGH)
COUNCIL was hereto)
affixed in the presence)
of:

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Authorised signatory

EXECUTED as a DEED by
FOREMAN HOMES LIMITED

acting by two directors

Signature of Director

Signature of Director

EXECUTED as a DEED by
HERITABLE DEVELOPMENT
FINANCE LIMITED
acting by two directors

Signature of Director

Signature of Director